

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2004

BUNKER HILL AMOCO,)	
)	
Petitioner,)	
)	
v.)	PCB 05-36
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On August 26, 2003, Bunker Hill AMOCO timely filed a petition asking the Board to review a July 23, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402. The Agency rejected petitioner's high priority corrective action plan budget for Bunker Hill AMOCO's leaking underground petroleum storage tank facility located at 206 South Washington Street, Bunker Hill, Macoupin County.

Bunker Hill AMOCO appeals on the grounds that the Agency is applying "statewide observations" as an invalid rule that does not meet the requirements of the Administrative Procedure Act. 5 ILCS 100 (2002). Bunker Hill AMOCO's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

The August 26, 2004 petition for review was accompanied by a motion for expedited consideration. In its motion, Bunker Hill AMOCO alleges that (1) the Agency is continuing to apply an invalid rule to make decisions and require additional procedures without advanced notice of the requirements, which creates material prejudice; and (2) the Agency's allegedly illegal activities are damaging Bunker Hill AMOCO because the Agency has refused to approve its budget as submitted and without additional information, even though the Agency has approved similar budgets in the past with similar documentation. The Board will grant expedited consideration and move this matter to a final determination as expeditiously as procedural requirements and the Board's case load will allow.

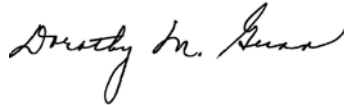
Bunker Hill AMOCO has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Bunker Hill AMOCO may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Bunker Hill AMOCO may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is December 24,

2004 (the 120th day after August 26, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 16, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 25, 2004, which is 30 days after Bunker Hill AMOCO filed the petition. 35 Ill. Adm. Code 105.410(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 2, 2004, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board