

ILLINOIS POLLUTION CONTROL BOARD

April 21, 2005

RED ROOSTER CORPORATION (f/k/a)	
CLARK RETAIL ENTERPRISES, INC.))	
(CLARK OIL #2086) (December 6, 2004)	
IEPA determination),)	
)	
Petitioner,)	
)	
v.)	PCB 05-125
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 20, 2005, at the parties' request, the Board extended until April 14, 2005, the time period for Red Rooster Corporation to appeal a December 6, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. On April 19, 2005, Red Rooster Corporation filed a petition asking the Board to review the Agency's determination. Because the postmark date of the petition is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency denied petitioner's request for reimbursement of certain costs of corrective action from the UST Fund for Red Rooster Corporation's leaking underground petroleum storage tank facility located at 4805 North War Memorial Drive, Peoria, Peoria County.

Red Rooster Corporation appeals on the grounds that the stated bases for denial were arbitrary, capricious, and without statutory authority. Red Rooster Corporation's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

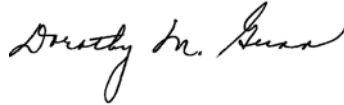
Red Rooster Corporation has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Red Rooster Corporation may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Red Rooster Corporation may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is August 17, 2005 (the 120th day after April 19, 2005). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 4, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 19, 2005, which is 30 days after Red Rooster Corporation

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 April 21, 2005, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board