

ILLINOIS POLLUTION CONTROL BOARD
May 5, 2005

MIDWEST PETROLEUM COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 05-186
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

On April 22, 2005, Midwest Petroleum Company (Midwest) filed a petition asking the Board to review a March 14, 2005 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.404. At issue is the Agency's failure to consider Midwest's amended budget for a leaking underground petroleum storage tank facility at 529 Maple Street, Shiloh, St. Clair County.

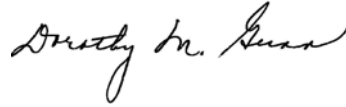
Midwest appeals on the grounds that the Agency's decision to not consider Midwest's amended budget is arbitrary and capricious in that the excavation, transportation and disposal rate and the backfill rate sought is less than rates accepted by the Agency in the past. Midwest's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Midwest 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 Midwest may extend by waiver. See 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Midwest may deem its request granted. See 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is August 22, 2005 (the first business day following the 120th day after April 22, 2005). See 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 18, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 23, 2005, which is the first business day following the 30th day after Midwest 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 May 5, 2005, 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