

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2004

JOHNSON OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 04-183
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On May 6, 2004, the Board, at the parties' request, extended until July 15, 2004, the time period within which Johnson Oil Company may appeal a March 12, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. On July 15, 2004, Johnson Oil Company filed a petition asking the Board to review the Agency's determination. The Agency approved petitioner's amended high priority corrective action plan and budget, with modifications, for Johnson Oil Company's leaking underground petroleum storage tank facility located at 901 N. Vermilion St., Danville, Vermilion County.

By an order dated July 22, 2004, the Board accepted Johnson Oil Company's petition as timely filed but found the petition deficient. The Board ordered Johnson Oil Company to file a new petition on or before August 23, 2004, finding that the corporation could not be represented by its manager. *See* 35 Ill. Adm. Code 101.400(a)(2). The Board stated that its decision deadline would recommence with the filing of an amended petition.

Johnson Oil Company filed an amended petition on August 23, 2004 that is signed by an attorney in Indianapolis, Indiana. Accompanying the petition is a motion of R. Ronalds, Walker, an attorney licensed to practice law in Illinois to admit attorney John D. Moriarity, of Plews Shadley Racher & Braun, an attorney licensed to practice in Indiana, as counsel *pro hac vice*. Accompanying the motion is the affidavit of John D. Moriarity reciting his qualifications to appear before the Board.

The Board hereby grants the motion for John D. Moriarity to appear *pro hac vice* before the Board. The Board accepts the amended petition for review.

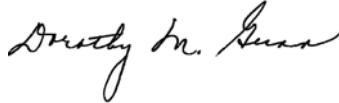
Johnson Oil Company appeals on the grounds that the budget approved by the Agency is arbitrary, capricious, and not based on corrective action activities in the approved high priority corrective action plan, and that that budget is less than is necessary to complete the corrective action.

Johnson Oil Company 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 Johnson Oil Company may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Johnson Oil Company may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is December 23, 2004 (the 120th day after August 23, 2004). *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 22, 2004, which is 30 days after Johnson Oil Company 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.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board