

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2020

BPS OIL, INC.,)
)
Petitioner,)
)
v.) PCB 20-65
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by B.F. Currie):

On March 17, 2020, BPS Oil, Inc. (BPS) timely filed a petition asking the Board to review a January 28, 2020, determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2018); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency’s determination concerns BPS’ leaking underground storage tank (UST) site located at 705 Old Route 36 in Illiopolis, Sangamon County. For the reasons below, the Board accepts BPS’ petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), the Agency decides whether to approve proposed cleanup plans and budgets for leaking UST sites, as well as requests for cleanup cost reimbursement from the State’s UST Fund, which consists of UST fees and motor fuel taxes. If the Agency disapproves or modifies a submittal, the UST owner or operator may appeal the decision to the Board. *See* 415 ILCS 5/40(a)(1), 57-57.17 (2018); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency partially denied petitioner’s request for reimbursement from the UST Fund. BPS appeals on the grounds that the Agency erroneously treated six different vendors as a single contract. Furthermore, BPS alleges that the Agency failed to perform or report to the Board whether the amounts are consistent with prevailing market rates. As a result, BPS argues that handling charges should be construed in a manner most consistent with the Agency’s last testimony to the Board. BPS’ petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. BPS has the burden of proof. *See* 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. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency’s reasons for its decision, information developed after the Agency’s decision typically is not admitted at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff’d sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2018)), which only BPS may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, BPS may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2018). Per Board rules, the decision deadline is July 15, 2020, which is the 120th day after the date on which the Board received the petition, March 17, 2020. *See* 35 Ill. Adm. Code 105.114. However, on March 31, 2020, BPS filed a waiver of deadline for decision, pursuant to the Board's procedural rules, 35 Ill. Adm. Code 101.308(c)(1). BPS has waived its right to a decision within 180 days after filing.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 16, 2020, which is the 30th day after the date on which the Board received BPS' petition. *See* 35 Ill. Adm. Code 105.116(a), 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. *See* 35 Ill. Adm. Code 105.116(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.410(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2020 by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.