

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2020

STEVE AND JARILYN STAVROPOULOS,)
)
 Petitioners,)
)
 v.) PCB 20-56
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On February 28, 2020, Steve and Jarilyn Stavropoulos (the Stavropouloses) filed a petition asking the Board to review a January 17, 2020 determination of the Illinois Environmental Protection Agency (Agency). The Agency’s determination concerns the Stavropouloses’ leaking underground storage tank (UST) site located at 2844 West 47th Street in Chicago, Cook County.

On March 5, 2020, the Board adopted an order noting that the petition did not include the date of service of the Agency’s final decision, a requirement for such petitions. *See* 35 Ill. Adm. Code 105.408(b). The Board’s order directed the Stavropouloses to file an amended petition on or before March 26, 2020 and stating the date of service.

On March 6, 2020, the Stavropouloses filed an amended petition (Amended Pet.) stating “[p]etitioners were served with the Agency’s decision on January 25, 2020, according to United States Postal Service records.” Amended Pet. at 2. The Board finds the Stavropouloses timely filed their petition. *See* 35 Ill. Adm. Code 105.404. For the reasons below, the Board accepts the Stavropouloses’ amended 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 denied petitioner’s request for reimbursement from the UST Fund. The Stavropouloses appeal on the grounds that the Agency’s decision was arbitrary and capricious and not supported by regulatory authority. The Stavropouloses’ petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Petitioners have 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 the Stavropouloses may extend by waiver (*see* 35 Ill. Adm. Code 101.308). On March 26, 2020, the Stavropouloses filed an open waiver of the decision deadline.

The Board's procedural rules generally require the Agency to file the entire record of its decision with the Board within 30 days after the filing of the amended petition for review on March 5, 2020. *See* 35 Ill. Adm. Code 105.116(a), 105.410(a). Because of restrictions presented by COVID-19, the Board has not met since that date, and the Agency's 30-day deadline passed on Monday, April 6, 2020. However, the procedural rules provide that the Board may order a different filing deadline. *See id.* Accordingly, the Board directs the Agency to file the entire record of its determination by Monday, May 18, 2020, which is the first business day after the 30th day after the date of this order. 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.

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.

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.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board