

ILLINOIS POLLUTION CONTROL BOARD  
April 1, 2021

SHREE KUBER, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 21-05
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by A. Palivos):

On March 18, 2021, Shree Kuber filed both a Motion to Consolidate (Mot.) and a Motion to Supplement (Mot. to Supp.) the record in PCB dockets 21-05 and 21-03. Below, the Board first discusses a brief procedural history. Next, the Board summarizes the motions and makes its decision.

**PROCEDURAL HISTORY**

In PCB 21-5, Shree Kuber, Inc. (Shree Kuber) filed a request for a 90-day extension on July 23, 2020. On August 13, 2020, at the parties' request, the Board extended until November 3, 2020, the time period for Shree Kuber, Inc. (Shree Kuber) to appeal a June 30, 2020, determination of the Illinois Environmental Protection Agency (Agency). The Agency's determination concerns Shree Kuber's leaking underground storage tank (UST) site located at 1406 North Prospect Avenue in Champaign, Champaign County. On November 4, 2020, Shree Kuber timely filed a petition asking the Board to review the Agency's determination, denying an application for payment of \$46,809 from the UST Fund. *See* 415 ILCS 5/40(a)(1) (2018); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Board accepted Shree Kuber's petition for review on November 19, 2020.

Similarly, in PCB 21-3, Shree Kuber filed a request for a 90-day extension on July 23, 2020. On August 13, 2020, at the parties' request, the Board extended until November 4, 2020, the time period for Shree Kuber to appeal a June 30, 2020, determination of the Illinois Environmental Protection Agency. The Agency's determination concerns Shree Kuber's leaking UST site located at 1406 North Prospect Avenue in Champaign, Champaign County. On November 4, 2020, Shree Kuber timely filed a petition asking the Board to review the Agency's determination, rejecting Shree Kuber's 45-Day/Corrective Action Completion Report. *See* 415 ILCS 5/40(a)(1) (2018); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Board accepted Shree Kuber's petition for review on November 19, 2020.

**BOARD DISCUSSION**

Below, the Board first summarizes the Motions at issue. Next, the Board discusses, and ultimately grants, Shree Kuber's Motion to Supplement the record. Finally, the Board considers the Motion to Consolidate and ultimately grants the Motion and consolidates dockets PCB 21-3 and PCB 21-5.

### **Summary of Motions**

On March 18, 2021, Shree Kuber filed both a Motion to Consolidate and a Motion to Supplement the Record. In its Motion to Consolidate, Shree Kuber first briefly summarized the record and then requested dockets PCB 21-05 and 21-03 be consolidated for efficiency. Mot. At 2.

Next, Shree Kuber filed a Motion to Supplement. In its motion, Shree Kuber argues that five documents should be included in the record. Mot. to Supp. at 3–4. Specifically, Shree Kuber argues that because these documents were relied upon or considered when making the LUST determination, the documents should be included in the administrative record for appeal. *Id.*

### **The Board Grants Petitioner's Motion to Supplement Administrative Record**

On March 18, 2021, Shree Kuber filed a Motion to Supplement the record. First, Shree Kuber argues that three documents asserting that LUST Incident No. 20200005 is a re-reporting of LUST Incident No. 20080225 must be included in the record. Mot. to Supp. at 1. Specifically, Shree Kuber argues that because the Agency relied on these documents to make its determination that LUST Incident No. 20200005 is a re-reporting of LUST Incident No. 20080225, the documents must be included in the administrative record for appeal. *Id.* at 2.

Next, Shree Kuber states that in the Agency's final decision letter, the Agency explained its re-reporting assertion. *Id.* at 3. In this explanation, the Agency identified letters dated August 22, 2013 and August 28, 2013 that approved Corrective Action Plans for Incident 20080255. *Id.* However, these letters were not included in the record. Shree Kuber argues that the Agency clearly considered these letters in its decision that the LUST Incident No. 20200005 is a re-reporting of LUST Incident No. 20080225. *Id.* Thus, Shree Kuber concludes that these letters should be included in the administrative record for appeal.

Furthermore, Shree Kuber argues that a failure to include these documents would be prejudicial "because the documents include information Respondent had in its possession and should have reviewed and considered when making its decision that is the subject of this appeal." *Id.* It is also important to note that counsel for Shree Kuber and counsel for the Agency have conferred, and the Agency counsel has indicated that they have no objection to the Motion to Supplement. *Id.* at 4.

The Board has granted motions to supplement the record when: (1) the documents were before the Agency during its review, and (2) the Agency either relied upon or should have relied upon the documents when making its decision. See KCBX Terminals Co. v. IEPA, PCB 14-110 at 7 (May 1, 2014). Here, based on the description of the documents, the Board concludes that the documents were before the Agency during its review of Shree Kuber's petition and that the

Agency either relied upon or should have relied upon those documents in reviewing Shree Kuber's petition. Accordingly, the Board grants Shree Kuber's Motion to Supplement the record.

**The Board Grants Petitioner's Motion to Consolidate**

On March 18, 2021, Shree Kuber also filed a Motion to Consolidate the petitions. The Motion states that the appeals concern the same site, LUST incident, and the same reasoning for the Agency's final decision. Mot. at 2. Further, Shree Kuber argues that consolidation is appropriate because the two LUST appeal proceedings have the same burden of proof and involve the same LUST incident and petitioner. *Id.* Finally, Shree Kuber argues that "consolidation will not cause material prejudice to any party and is in the interest of convenient and expeditious determination of claims." *Id.*

On this record, the Board finds that consolidating these proceedings serves "the interest of convenient, expeditious, and complete determination of claims" and will not result in material prejudice to any party. 35 Ill. Adm. Code 104.406; *see Gautschy's Corner v. IEPA*, PCB 18-56, 18-60 (cons.) (Feb. 8, 2018). Here, the proceedings concern the same site, parties, LUST incident, and the same reason for the Agency's final decision. Furthermore, counsel for petitioner conferred with counsel for respondent and respondent indicated no objection to the Motion. Thus, the Board grants Shree Kuber's unopposed motion and consolidates these two proceedings for hearing.

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 1, 2021, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board