

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2007

DALEE OIL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 08-16
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On August 20, 2007, Dalee Oil Company (petitioner) timely filed a petition asking the Board to review a July 12, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency's determination concerns petitioner's property located at Broadway and Olive Street, Madison County. For reasons below, the Board accepts petitioner's petition for hearing.

Under the Environmental Protection Act (415 ILCS 5 (2006)), the Agency determines whether to approve proposed cleanup plans for leaking Underground Storage Tank (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 (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied petitioner's corrective action plan and budget regarding the Madison County site. According to petitioner, the Agency's decision is erroneous, arbitrary, and capricious. Petition at 2. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Petitioner 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.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2006)), which only petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the

decision deadline is December 18, 2007, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 6, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 24, 2007, which is the first business day following the 30th day after the Board received petitioner's petition. *See* 35 Ill. Adm. Code 101.300(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. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 23, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board