

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2008

STREATOR PETROL PUMP,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 09-7
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On July 22, 2008, Streator Petrol Pump (Streator) timely filed a petition asking the Board to review a June 17, 2008 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency’s determination concerns a leaking petroleum underground storage tank (UST) site located at 2108 North Bloomington Street, Streator, La Salle County. For the reasons below, the Board accepts Streator’s petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Agency decides whether to approve proposed cleanup plans and budgets for leaking UST sites, as well as requests for cleanup costs 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 partially denied Streator UST Fund reimbursement in the amount of \$570.14 for costs associated with site investigation and corrective action. Streator appeals on the grounds that the Agency’s contentions and conclusions are erroneous, arbitrary, and capricious. Streator’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Streator 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).

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 Streator may extend by waiver

(*see* 35 Ill. Adm. Code 101.308). On August 1, 2008, Streator filed an open waiver of the Board's mandatory decision date and request for the postponement of the hearing. *See* 415 ILCS 5/40(a)(2); 35 Ill. Adm. Code 101.308, 105.104. Therefore, the 120-day statutory decision deadline does not apply. *See* 35 Ill. Adm. Code 101.308, 105.114(a).

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 21, 2008, which is 30 days after the Board received the petition. *See* 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. *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 7, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board