

ILLINOIS POLLUTION CONTROL BOARD
September 30, 2008

HANNEL OIL COMPANY, an Illinois corporation,)	
)	
)	
Petitioner,)	
)	
v.)	PCB 09-19
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
)	
Respondent.)	

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

On September 22, 2008, Hannel Oil Company (Hannel Oil) timely filed a petition asking the Board to review an August 18, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.402. The Agency’s determination concerns Hannel Oil’s leaking underground storage tank (UST) site located at 1002 South Main Street in Jacksonville, Morgan County. For the reasons below, the Board accepts Hannel Oil’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 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 rejected Hannel Oil’s proposed Corrective Action Plan (CAP) budget regarding the Morgan County site. Hannel Oil appeals on numerous grounds, including that “the Agency’s new practice of deeming bidders to be unqualified based upon the undisclosed results of its own *ex parte* telephone conferences placed directly to the bidders is an invalid rule or, alternatively, is unauthorized under Board rules.” Petition at 4-6 (emphasis in original). Hannel Oil’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Hannel Oil 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 Hannel Oil 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 Hannel Oil may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Hannel Oil may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is January 20, 2009, 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 January 8, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 22, 2008, which is the 30th day after the Board received Hannel Oil's petition for review. *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 September 30, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board