

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2010

MOTHER HUBBARD’S CUPBOARD,)	
)	
Petitioner,)	
)	
v.)	PCB 11-05
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On July 30, 2010, MHC timely filed a petition (Pet.) asking the Board to review a June 28, 2010 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency’s determination concerns MHC’s leaking underground storage tank (UST) site in Moline, Rock Island County. For the reasons below, the Board accepts MHC’s petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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 (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency, in response to MHC’s “Stage 3 Site Investigation Plan & Stage 1 Actual Costs budget,” determined that the incident is not subject to Title XVI of the Act or 35 Ill. Adm. Code 734. Pet. at 3, Attach. MHC seeks review of this determination “purporting to deny the plan and reimbursement for approved work.” *Id.* at 2. MHC appeals on the grounds that the Agency violated the Act, as well as MHC’s constitutional and statutory due process rights, by retroactively reversing its previous approvals and directions. According to MHC, “[i]t is illegal and arbitrary for the [Agency] to neither pay for the approved work performed to reach the point where no further action is required, nor issue the requisite letter to that effect.” *Id.* at 3. MHC’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. MHC 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) (2008)), which only MHC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, MHC may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is November 29, 2010, which is the first business day following the 120th day after the date on which the Board received the petition, July 30, 2010. *See* 35 Ill. Adm. Code 101.300(a), 105.114. The Board meeting immediately before the decision deadline is scheduled for November 18, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 30, 2010, which is the first business day following the 30th day after the Board received MHC'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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 5, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board