

ILLINOIS POLLUTION CONTROL BOARD
August 25, 2016

MIDSTATE SALVAGE CORP.,)	
)	
Petitioner,)	
)	
v.)	PCB 17-2
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On August 15, 2016, Midstate Salvage Corp. (Midstate) timely filed a petition (Pet.) asking the Board to review a July 7, 2016 determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. IEPA’s determination concerns Midstate’s underground storage tank site at 109 Chestnut Street in Taylorville, Christian County. For the reasons below, the Board accepts Midstate’s petition for hearing.

Under the Environmental Protection Act (Act), the IEPA 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. *See* 415 ILCS 5 (2014). If IEPA denies 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 (2014); 35 Ill. Adm. Code 105.Subpart D. In this case, IEPA modified the Corrective Action Plan budget by cutting “\$188.05 for all costs budgeted for the measuring wheel and PID, and partially for mileage.” Pet. at 2. Midstate appeals on the grounds the application was legally complete, the materials are listed as reimbursable by IEPA, the costs were based on established rates and do not exceed maximums in Board regulations, and approval would not violate any statutory or regulatory provision. Pet. at 2-4.

Also on August 15, 2016, Midstate filed a motion to substitute Exhibit B (Mot.) stating that the original filing “erroneously attached as Exhibit B the final decision in an unrelated matter.” Mot. at 1. Midstate attached the correct Exhibit B to its motion. Given the timeliness of Midstate’s motion to substitute and the obvious nature of Midstate’s error, the Board grants the motion. With the correct Exhibit B, Midstate’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Midstate has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before IEPA at the time IEPA issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge IEPA’s reasons for its decision,

information developed after IEPA'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).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline, which only Midstate may extend by waiver. *See* 415 ILCS 5/40(a)(2) (2014); 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Midstate may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is December 13, 2016, which is the 120th day after the date on which the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 1, 2016.

Unless the Board or the hearing officer orders otherwise, IEPA must file the entire record of its determination by September 14, 2016, which is the 30th day after the date on which the Board received Midstate's petition. *See* 35 Ill. Adm. Code 105.116(a), 105.410(a). If IEPA 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(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 105.116(b), 105.410(b). In addition, IEPA must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 25, 2016, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at 312-814-3629.