

ILLINOIS POLLUTION CONTROL BOARD
August 25, 2016

DERSCH ENERGIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 17-3
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.M. Keenan):

Dersch Energies, Inc. owns a former service station in Lawrenceville, Lawrence County where underground storage tanks (USTs) existed. The tanks leaked and remediation, which began in 2005, is ongoing. Dersch submitted a plan for corrective action to the Illinois Environmental Protection Agency. The Agency only approved some of the plan's costs, rejecting others.¹ On August 18, 2016, Dersch petitioned the Board for review of the Agency's decision. The Board will accept the petition for hearing.

Illinois' UST fund contains money received from UST fees and motor fuel taxes. Under the Environmental Protection Act, the Agency decides whether to approve a corrective action budget for a UST owner seeking payment from the UST fund.² If the Agency modifies a corrective action budget, the tank owner may appeal the decision to the Board.³ Dersch argues that the Agency's determination should be reversed.⁴ The petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Dersch has the burden of proof.⁵ Hearings will be based exclusively on the record before the Agency at the time of its determination.⁶ At hearing, the petitioner may challenge the reasons for the Agency's decision, but the Board typically does not consider information developed after the Agency's decision.⁷

¹ Pet. at 1-2.

² 415 ILCS 5/57.7(b)(3) (2014).

³ 415 ILCS 5/40(a)(1), 57-57.17 (2014); 35 Ill. Adm. Code 105.Subpart D.

⁴ Pet. at 3.

⁵ 35 Ill. Adm. Code 105.112(a).

⁶ 35 Ill. Adm. Code 105.412.

⁷ Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 415 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.⁸ Only the petitioner may extend the deadline.⁹ If the Board fails to take final action by the deadline, Dersch may deem its request granted.¹⁰ Currently, the deadline is December 16, 2016 (120 days after the Board received the petition).¹¹ The Board meeting immediately before the deadline is scheduled for December 15, 2016.

Unless the Board or the hearing officer orders otherwise, the Agency must file the record of its determination by September 19, 2016 (the first business day after 30 days after the Board received the petition).¹² If the Agency would like additional time, it must request an extension before September 19, 2016.¹³ The record must comply with the Board's content requirements.¹⁴

IT IS SO ORDERED.

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



John T. Therriault, Clerk
Illinois Pollution Control Board

⁸ 415 ILCS 5/40(a)(2) (2014).

⁹ 35 Ill. Adm. Code 101.308.

¹⁰ 415 ILCS 5/40(a)(2) (2014).

¹¹ See 35 Ill. Adm. Code 105.114.

¹² 35 Ill. Adm. Code 105.410(a).

¹³ See 35 Ill. Adm. Code 105.116.

¹⁴ 35 Ill. Adm. Code 105.410(b).