

ILLINOIS POLLUTION CONTROL BOARD
September 8, 2016

METAL PROPERTIES, LLC,)
)
 Petitioner,)
)
 v.) PCB 17-5
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.A. Burke):

Metal Properties, LLC filed a petition asking the Board to review the Illinois Environmental Protection Agency's (Agency) determination not to reimburse certain costs to address a used oil release from an underground storage tank (UST) at 313 East Broadway in Trenton, Clinton County. *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), the Agency decides whether to reimburse cleanup costs for leaking UST sites 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 (2014); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency disapproved various costs including consulting costs, equipment and material costs, and vehicle charges. Metal Properties contends that the Agency erred in its decision to not reimburse these costs. Metal Properties' petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Metal Properties 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, the Board hearing affords Metal Properties the opportunity to challenge the Agency's reasons for its decision; however 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).

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 completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2014)), which only Metal Properties may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Metal Properties may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is December 20, 2016. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 15, 2016.

The Agency must file the entire record of its determination by September 21, 2016. *See* 35 Ill. Adm. Code 105.116(a), 105.410(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, the Agency must file the record electronically. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on a 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 September 8, 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.