

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2017

WEBB & SONS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 17-65
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On May 2, 2017, Webb & Sons, Inc. timely filed a petition asking the Board to review a March 29, 2017 determination of the Illinois Environmental Protection Agency (Agency). 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 105.402, 105.404. The Agency's determination concerns Webb & Sons' leaking underground storage tank (UST) site located at 1201 DeWitt Avenue, Mattoon, Coles County. For the reasons below, the Board accepts Webb & Sons' petition for hearing.

Under the Environmental Protection Act (Act), 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. If the Agency rejects or modifies a submittal, the UST owner or operator may appeal the decision to the Board. 415 ILCS 5/40(a)(1), 57-57.17 (2014); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency rejected the corrective action plan and the corrective action plan budget, stating that the plan and budget describe work that was approved by the Agency as a part of previous plans and budgets approved by the Agency for the same site in 2006 and 2007. The Agency also states that the corrective action plan budget submitted by Webb & Sons lacks supporting documentation. Webb & Sons appeals on the grounds that the 2017 corrective action plan and budget address contamination remaining at the site and that adequate supporting documentation was submitted to the Agency. Webb & Sons' petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Webb & Sons has the burden of proof. 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. 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).

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 making that decision, 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. 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 Webb & Sons may extend by waiver. 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, Webb & Sons may deem its request granted. 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is August 30, 2017, which is the 120th day after the date on which the Board received the petition, May 2, 2017. 415 ILCS 5/40.1 (2014); 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 17, 2017.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Thursday, June 1, 2017, which is the 30th day after the date the Board received Webb & Sons' petition. 35 Ill. Adm. Code 105.116(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. 35 Ill. Adm. Code 105.116(a). The record must comply with the Board's requirements for content, organization, and certification. 35 Ill. Adm. Code 105.116(b), 105.410(b). The Agency 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 format. 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 18, 2017, by a vote of 5-0.



Don A. Brown, 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.