

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2017

JAYVIR, Inc.,)
)
Petitioner,)
)
v.) PCB 17-64
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On May 1, 2017, Jayvir, Inc. timely filed a petition asking the Board to review a March 24, 2017 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns Jayvir's leaking underground storage tank (UST) site located at 101 East Union Avenue in Litchfield, Montgomery County. For the reasons below, the Board accepts Jayvir's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), 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 (2014); 35 Ill. Adm. Code 105.Subpart D.

In this case, the Agency partially denied Jayvir's request for reimbursement from the UST fund for \$12,667.19 of its early action response costs. The Agency made this decision relying on Sections 57.1(a), 57.7(c)(3) and 57.8(k) of the Act (415 ILCS 5/57.1(a), 57.7(c)(3), 57.8(k) (2014)). These provisions concern UST owner or operator requirements, Agency review and approval of corrective action plans, and Agency payment of corrective action or indemnification costs. Jayvir appeals the decision on the grounds that legal provisions concerning corrective action plans do not support denying reimbursement for early action response costs. Jayvir's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Jayvir 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).

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 (*see* 415 ILCS 5/40(a)(2) (2014)), which only Jayvir may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Jayvir may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is August 29, 2017, which is the 120th day after the date on which the Board received the petition, May 1, 2017. *See* 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 May 31, 2017, which is the 30th day after the date on which the Board received Jayvir's petition. *See* 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. *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, 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. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

IT IS SO ORDERED.

I, Don 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 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.