

ILLINOIS POLLUTION CONTROL BOARD
June 22, 2017

ILLINOIS RAILWAY, LLC,)
)
 Petitioner,)
)
 v.) PCB 17-54
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On June 12, 2017, Illinois Railway, LLC (Illinois Railway) timely filed a petition asking the Board to review a February 2, 2017 determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(a)(1) (2016); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. IEPA's determination concerns Illinois Railway's leaking underground storage tank (UST) site located at the intersection of County Highway 21 and Walnut Street in Wedron, LaSalle County. For the reasons below, the Board accepts Illinois Railway's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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. If IEPA 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 (2016); 35 Ill. Adm. Code 105.Subpart D. In this case, IEPA rejected petitioner's site investigation completion report on the grounds that the Stage 2 site investigation indicated that the applicable contaminants exceed the most stringent Tier 1 remediation objectives. Therefore, IEPA demands a Stage 3 site investigation plan. Illinois Railway appeals on the grounds that IEPA lacks authority under the Act to demand investigation or corrective action at its site, that IEPA's determination was arbitrary and capricious and lacks support in IEPA's record, and that IEPA's determination letter fails to describe the basis for the determination. Illinois Railway's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Illinois Railway 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).

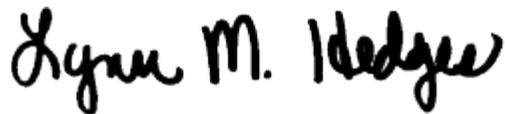
Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility 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 (*see* 415 ILCS 5/40(a)(2) (2016)), which only Illinois Railway may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Illinois Railway may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2016). Currently, the decision deadline is October 10, 2017, which is the 120th day after the date on which the Board received the petition, June 12, 2017. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 5, 2017.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 12, 2017, which is the 30th day after the date on which the Board received Illinois Railway'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, Lynn Hedges, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 22, 2017, by a vote of 5-0.



Lynn Hedges, Acting 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.