

ILLINOIS POLLUTION CONTROL BOARD  
December 18, 2003

SATHER ENTERPRISES, LTD,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 04-92
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by A.S. Moore):

On December 8, 2003, the Board received the petition of Sather Enterprises, Ltd. (Sather) asking the Board to review an October 31, 2003 determination of the Illinois Environmental Protection Agency (Agency). The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency reduced Sather's proposed High Priority Corrective Action Plan Budget for purposes of reimbursement from the underground storage tank (UST) Fund. The Agency's determination concerns Sather's leaking UST site at Route 54 and East Route 150 in DeWitt County.

Sather appeals on the grounds that the Agency's reduction of the budget for personnel costs is arbitrary and capricious in that Sather's proposed budget was justified and consistent with the Environmental Protection Act (415 ILCS 5 (2002)), applicable regulations, and generally accepted engineering practices. Sather's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Sather 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.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

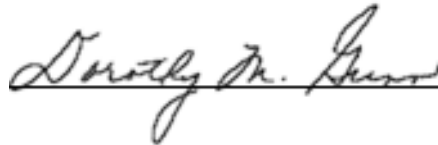
Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Sather may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Sather may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is April 6, 2004, which is the 120th day after the Board received the petition. *See* 35 Ill.

Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 1, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 7, 2004, which is the 30th day after the Board received Sather's petition. *See* 35 Ill. Adm. Code 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. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 18, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board