

ILLINOIS POLLUTION CONTROL BOARD

January 22, 2004

MARTIN OIL MARKETING, LTD.,	)
	)
Petitioner,	)
	)
v.	)      PCB 04-93
	)      (UST Appeal)
ILLINOIS ENVIRONMENTAL	)
PROTECTION AGENCY,	)
	)
Respondent.	)

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

In a December 18, 2003 order, the Board granted Martin Oil Marketing, Ltd. (Martin Oil) 30 days to cure two procedural defects in the company's original petition for review: (1) have an attorney file an appearance on behalf of the company; and (2) have the attorney file an amended petition stating the company's grounds for appealing an Illinois Environmental Protection Agency (Agency) Underground Storage Tank (UST) Fund decision. For the reasons below, the Board finds that the company has satisfied these requirements and the Board therefore accepts the amended petition for hearing.

On December 2, 2003, Martin Oil filed a petition asking the Board to review a November 6, 2003 determination of the Agency. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency's determination concerns Martin Oil's leaking UST site at 1901 West Market Street in Bloomington, McLean County. Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), the Agency decides whether to approve proposed cleanup plans 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 (2002); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency rejected Martin Oil's amended UST Fund budget for a high priority corrective action plan.

On December 18, 2003, the Board accepted Martin Oil's appeal as timely filed, but noted that the petition failed to state any grounds for the appeal and failed to indicate whether the petition was filed by an attorney on behalf of the company. Under the Board's procedural rules, petitions for Board review of Agency UST Fund decisions must specify the grounds for appeal. *See* 35 Ill. Adm. Code 105.408(c). Also under the Board's procedural rules, any party to an adjudicatory proceeding, other than an individual, must be represented by an attorney. *See* 35 Ill. Adm. Code 101.400(a)(1), (2). In its December 18, 2003 order, the Board gave Martin Oil 30 days to have an attorney file an appearance and amended petition.

On January 14, 2004, within the Board's 30-day deadline, Mr. Joseph F. Madonia, attorney with the law firm Wildman Harrold Allen & Dixon, LLP, filed both an appearance on behalf of Martin Oil and an amended petition. The amended petition states as grounds for appeal that the Agency's rejection of line item amendments to a previously-approved UST Fund budget for a previously-approved corrective action plan is unreasonable, arbitrary, contrary to law, and barred by estoppel. Martin Oil's amended petition meets the content requirements of 35 Ill. Adm. Code 105.408.

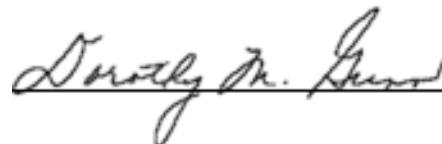
The Board accepts the amended petition for hearing. Martin Oil has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board 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 Martin Oil may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Martin Oil may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is May 13, 2004, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 6, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 13, 2004, which is the 30th day after the Board received Martin Oil's amended petition. *See* 35 Ill. Adm. Code 101.300(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. 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 January 22, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board