

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2005

ESTATE OF GERALD HESS,)	
)	
Petitioner,)	
)	
v.)	PCB 06-9
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On July 19, 2005, the Estate of Gerald Hess (Estate) timely filed a petition asking the Board to review a June 15, 2005 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency denied the Estate's request for Underground Storage Tank (UST) Fund reimbursement of certain costs concerning a former gasoline service station located at 2977 State Route 4, in Marine, Madison County. For the reasons below, the Board accepts the Estate's petition for hearing.

Under the Environmental Protection Act (415 ILCS 5 (2004)), 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) (2004); 35 Ill. Adm. Code 105.Subpart D.

In this case, the Estate appeals the Agency's denial on the grounds that (1) the costs for which the Estate sought reimbursement are reasonable costs that are consistent with previously approved amounts; and (2) more than 120 days transpired from when the Agency received a complete application for reimbursement and when the Agency made its final decision, so the Estate may deem the costs submitted to the Agency approved by operation of law. This petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

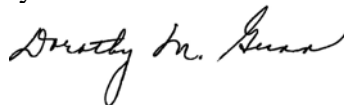
The Estate has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge 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) (2004)), which only the Estate may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Estate may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is November 16, 2005, which is the 120th day after the Board received the Estate's petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for November 3, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 18, 2005, which is 30 days after the Board received the Estate'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 August 4, 2005, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board