

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2007

HARLEY FREY,)	
)	
Petitioner,)	
)	
v.)	PCB 07-105
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On April 19, 2007, Harley Frey (Frey) timely filed a petition asking the Board to review a March 23, 2007 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's determination concerns Frey's property located at Rural Road 4, Highway 45 South in Barnhill, Wayne County. The property was previously the site of a gasoline service station containing two underground storage tanks (UST's). For reasons below, the Board accepts Frey's petition for hearing.

Under the Environmental Protection Act (415 ILCS 5 (2004)), the Agency determines 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 (2004); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency partially denied Frey's request for reimbursement from the UST Fund regarding the Wayne County site. The denied amount is \$16,448.99. According to Frey, the Agency's decision is without merit and is contrary to the regulations set forth at 35 Ill. Admin. Code 734. Petition at 5. Frey's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Frey 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 (3rd 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 Frey may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Frey may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is August 17, 2007, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 101.300(a), 105.114. The Board meeting immediately before the decision deadline is scheduled for August 9, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 21, 2007, which is the first business day following the 30th day after the Board received Frey's 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board