ILLINOIS POLLUTION CONTROL BOARD
September 20, 2007

GATEWAY FS, INC.,   )
)
          Petitioner,   )
)
     v.   )   PCB 07-126
)   (UST Appeal)
ILLINOIS ENVIRONMENTAL   )
PROTECTION AGENCY,   )
)
          Respondent.   )

ORDER OF THE BOARD (by N.J. Melas):

On June 21, 2007, at the parties' request, the Board extended until September 7, 2007, the time period for Gateway FS, Inc. (Gateway) to appeal a May 2, 2007 determination of the Illinois Environmental Protection Agency (Agency). On September 7, 2007, Gateway timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency's determination concerns Gateway's leaking petroleum underground storage tank (UST) site at "C" Avenue, Prairie Du Rocher, Randolph County. For the reasons below, the Board accepts Gateway's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Gateway reimbursement from the UST Fund in the amount of $1,579.90. Petition at 1. Gateway appeals on the grounds that the Agency's determination, that Gateway's analysis costs and shipping costs lack supporting documentation, are not reasonable, and may exceed minimum requirements, is erroneous, arbitrary, and capricious. *Id*. at 2. Gateway's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Gateway 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.* Community Landfill Co. & City of Morris v. PCB & IEPA, 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) (2006)), which only Gateway may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Gateway may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). On September 10, 2007, Gateway filed an open waiver of the decision deadline.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 9, 2007, which is the first business day following the 30th day after the Board received Gateway'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).

Finally, the Board notes that on September 12, 2007, Gateway filed a motion to consolidate this case with fourteen other UST appeals. The Board reserves ruling on that motion to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 20, 2007, by a vote of 4-0.

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John Therriault, Assistant Clerk
Illinois Pollution Control Board