

ILLINOIS POLLUTION CONTROL BOARD
July 21, 2008

WOODWORTH & SONS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 09-4
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On July 9, 2008, Woodworth & Sons, Inc. (Woodworth) timely filed a petition asking the Board to review a June 5, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.402, 105.404. The Agency's determination concerns Woodworth's facility located at 400 Woodworth Drive in Tolono, Champaign County. In the determination, the Agency denied Woodworth reimbursement from the Underground Storage Tank (UST) Fund for costs associated with the removal of two 10,000-gallon diesel tanks. For the reasons below, the Board accepts Woodworth's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Agency decides whether to approve proposed cleanup plans and budgets 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 Woodworth UST Fund reimbursement in the amount of \$390,576.11 for costs associated with ineligible tanks. Woodworth appeals on several grounds, describing the Agency's conclusion that the costs were associated with ineligible tanks under former Section 22.18b(a)(5) of the Environmental Protection Act (Ill. Rev. Stat., ch. 111½, ¶ 22.18b(a)(5)) as "erroneous, arbitrary, and capricious." Petition at 1. Woodworth's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Woodworth 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 Woodworth may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Woodworth may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is November 6, 2008, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. There is a Board meeting scheduled for that date.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 8, 2008, which is 30 days after the Board received Woodworth'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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 21, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board