

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2009

BUGAIESKI OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 09-49
)	(UST - Fund Reimbursement)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 26, 2009, Bugaiesk Oil Company (Bugaieski), timely filed a petition (Pet.) asking the Board to review a determination by the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402. The Agency’s determination concerns Bugaieski’s former Underground storage tank site located at Route 184 and Route 14 in Mulkeytown, Franklin County. For the reasons below, the Board accepts the petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006)); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency partially rejected Bugaieski’s reimbursement application, stating that Bugaieski failed to include sufficient “supporting documentation and justification” for its costs. Bugaieski appeals on the grounds that the Agency’s requirements of cost “breakdown[s]” and “justification[s]” on reimbursement forms are not supported by statute. Pet at 2-3. Bugaieski’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Bugaieski 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 the petitioner an opportunity to challenge the Agency’s bases 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.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) (2006)), which only Bugaieski may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Bugaieski may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is May 26, 2009. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 21, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 25, 2009, which is 30 days after the Board received Bugaieski's petition. 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. 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 5, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board