

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2009

SCHROF SERVICE CENTER,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 09-50
ILLINOIS ENVIRONMENTAL)	(UST - Appeal)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 26, 2009, Schrof Service Center (Schrof), 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 Schrof's Amended High Priority Corrective Action Plan (plan) regarding an underground storage tank site located at 402 West Howard Street, Pontiac, Livingston 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 denied the plan as a result of defects in the logistics of the plan itself relating to potential groundwater contamination and as a result the plan's budget. Schrof appeals on the grounds that the Agency's determinations on all counts are arbitrary and capricious. Pet at 2-3. Schrof's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Schrof 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.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) (2006)), which only Schrof may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Schrof 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 Schrof'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