

ILLINOIS POLLUTION CONTROL BOARD  
November 19, 2009

JONES SERVICE STATION, )  
)  
Petitioner, )  
)  
v. ) PCB 10-34  
) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

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

On November 13, 2009, Jones Service Station (Jones) timely filed a petition asking the Board to review an October 9, 2009, determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008)<sup>1</sup>; 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Jones' underground storage tank (UST) site in Olive Branch, Alexander County. For reasons below, the Board accepts Jones' petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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 (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency rejected \$5,470.74 of Jones' request for reimbursement from the UST Fund for the site. Jones appeals on the grounds that the Agency did not request additional information or revise its payment application forms to identify additional information above and beyond that which was provided in the voluminous submissions of Jones Service Station's consultants. Jones also states that the Agency improperly reassigned job tasks from those performed by Project Engineer and Senior Project Manager to someone else without legal justification. Jones' petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Jones 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,

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<sup>1</sup> All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

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 Jones may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Jones may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is March 10, 2010, which is the 120th day after the date on which the Board received the petition, November 13, 2009. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for March 4, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by December 10, 2009, which is 30 days after the Board received Jones' 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.

C.K. Zalewski abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 19, 2009, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board