

ILLINOIS POLLUTION CONTROL BOARD  
January 7, 2010

SCATES SERVICE STATION, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 10-44  
 ) (UST Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

On December 21, 2009, Scates Service Station (Scates) timely filed a petition asking the Board to review a November 13, 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 petition was timely filed because it was postmarked on or before the filing deadline. The Agency's determination concerns Scates' underground storage tank (UST) site in Shawneetown, Gallatin County. For the reasons below, the Board accepts Scates' 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 granted Scates' request for reimbursement from the UST Fund for the site as to some costs, but denied it as to other costs. Scates appeals on the grounds that the Agency determinations is

erroneous, to the extent it denied \$9, 9935.28 for costs lacking supporting documentation and justification. The decision is unjustified since prior to rendering its final decision, the IEPA 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 Scates Service Station's consultants. Pet at 5.

Scates' petition meets the content requirements of 35 Ill. Adm. Code 105.408.

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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.

The Board accepts the petition for hearing. Scates 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) (2008)), which only Scates may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Scates may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is April 20, 2010, which is the 120th day after the date on which the Board received the petition, December 21, 2009. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 15, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 20, 2010, which is first business day following the 30th day after the Board received Scates' 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 7, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board