

ILLINOIS POLLUTION CONTROL BOARD  
July 1, 2010

METROPOLITAN PIER & EXPOSITION	)	
AUTHORITY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 10-73
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On April 1, 2010, at the parties' request, the Board extended until June 27, 2010, the time period for the Metropolitan Pier and Exposition Authority (MPEA) to appeal a February 18, 2010 determination of the Illinois Environmental Protection Agency (Agency). On June 25, 2010, MPEA timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns MPEA's leaking underground storage tank (UST) site located at 234 E. 24th Street in Chicago, Cook County. For the reasons below, the Board accepts MPEA's 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 denied MPEA's request for reimbursement from the UST Fund because the reimbursement application was received by the Agency on November 23, 2009, more than one year after issuance of the January 23, 2008 No Further Remediation (NFR) letter for the incident. Petition, Exhibit 12. MPEA appeals on the grounds that it timely submitted its reimbursement application to the Agency on December 14, 2007, and that the subsequent submittal was only made to again provide ownership and eligibility information already possessed by the Agency from earlier submittals. Petition at 7. MPEA's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. MPEA 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 MPEA may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, MPEA may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is October 23, 2010, which is the 120th day after the date on which the Board received the petition, June 25, 2010. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 21, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 26, 2010, which the first business day following the 30th day after the date of which the Board received MPEA's petition. *See* 35 Ill. Adm. Code 101.300(a), 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 July 1, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board