

ILLINOIS POLLUTION CONTROL BOARD  
June 16, 2011

GARY COOPER,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 11-89
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On June 1, 2011, Gary Cooper timely filed a petition asking the Board to review an April 27, 2011 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Mr. Cooper's leaking underground storage tank (UST) site located at a former service station property, commonly known as Royal Station, in Royal, Champaign County. For the reasons below, the Board accepts Mr. Cooper's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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 (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Mr. Cooper's request for reimbursement from the UST fund for early action activities. In its decision, the Agency determined that Mr. Cooper's request in 2010 constituted a re-reporting of an incident in 2009, and thus Mr. Cooper's clean-up efforts in 2010 did not qualify as early action activities. Mr. Cooper appeals on the grounds that the Agency had no basis to conclude that the 2009 and 2010 reports were related to the same incident. Moreover, Mr. Cooper alleges that the Agency acted outside its jurisdiction when it ruled that the two incidents were redundant. Mr. Cooper's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Mr. Cooper 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) (2010)), which only Mr. Cooper may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Mr. Cooper may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is October 4, 2011, which is the 120th day after the date on which the Board received the petition, June 1, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for September 22, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 1, 2011, which is 30 days after the Board received Mr. Cooper's 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 June 16, 2011, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board