

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2012

BROADUS OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB No. 12-124
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.A. Holbrook):

On May 3, 2012, at the parties' request, the Board extended until July 24, 2012 the time period for Broadus Oil Company (Broadus) to appeal a March 20, 2012 determination of the Illinois Environmental Protection Agency (Agency). On July 24, 2012, Broadus timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns Broadus's leaking underground storage tank (UST) site located at 1006 West Main Street, Streator, LaSalle County. For the reasons below, the Board accepts Broadus'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 rejected Broadus's corrective action plan amended budget received by the Agency on November 17, 2011. Broadus appeals on the grounds that the proposed budget amounts expended were reasonable and necessary to complete work on the project. Broadus's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Broadus 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 Broadus may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Broadus may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is November 21, 2012, which is the 120th day after the date on which the Board received the petition, July 24, 2012. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for November 15, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 23, 2012, which is 30 days after the Board received Broadus'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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 9, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board