

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2012

SCENIC RIDGE PLAZA, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 13-4
	)	(Permit Appeal - LPC 0870205019)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On July 26, 2012, Scenic Ridge Plaza, Inc. (petitioner) timely filed a petition asking the Board to review a June 21, 2012 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 petitioner's leaking underground storage tank (UST) site located at 3495 Goreville Road, Goreville, Johnson County. For the reasons below, the Board accepts the petition for review. For the reasons below, the Board accepts petitioner'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 authorized partial payment of petitioner's request for reimbursement from the Leaking Underground Storage Tank Fund. Petitioner appeals on the grounds that the Agency's reimbursement only accounted for two tanks removed instead of four, resulting in insufficient reimbursement. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Petitioner 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 permit decision. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, 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 the petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner may deem the request granted. 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is November 23, 2012, which is the 120th day after the Board received the petition. *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 Monday, August 27, 2012, which is the first business day 30 days after the Board received petitioner's petition. *See* 35 Ill. Adm. Code 105.410(a); *see* 35 Ill. Adm. Code 101.300(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.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board