

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2014

DANNY SCHWENDEMAN,)
)
Petitioner,)
)
v.) PCB 15-45
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On August 1, 2014, Danny Schwendeman (Schwendeman) timely filed a petition asking the Board to review a July 11, 2014 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns Schwendeman's leaking underground storage tank (UST) site located at 1905 North Belt West in Belleville, St. Clair County. For the reasons below, the Board accepts Schwendeman's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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 (2012); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency rejected the application on the grounds that the application was incomplete. Schwendeman appeals on the grounds that the application was complete, containing all of the information required for a complete application. Schwendeman's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Schwendeman 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).

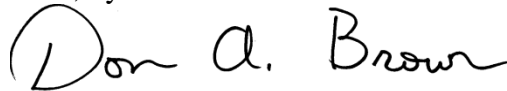
Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2012)), which only Schwendeman may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision

deadline, Schwendeman may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2012). Currently, the decision deadline is December 1, 2014, which is the 120th day after the date on which the Board received the petition, August 1, 2014. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for November 20, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 1, 2014, which is the first business day 30 days after the Board received Schwendeman'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, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 7, 2014, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board