

ILLINOIS POLLUTION CONTROL BOARD  
May 7, 2015

SHARON BURGESS, )  
)  
Petitioner, )  
)  
v. ) PCB 15-186  
) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by C.K. Zalewski):

On April 22, 2015, Sharon Burgess (petitioner) timely filed a petition asking the Board to review a March 19, 2015 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns petitioner's leaking underground storage tank (UST) site located at 2835 US Highway 52, Kankakee, Kankakee County. For the reasons below, the Board accepts petitioner's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), 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 (2014); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency approved a corrective action plan and budget, but reduced reimbursement amounts to the rates set forth in the Board's rules. Petitioner appeals on the grounds that under the Economic Development Act, petitioner is required to pay prevailing wage and that amount is above the rate in the Board's rules. *See* 820 ILCS 130/2 (2014). Petitioner claims that the Agency cannot reduce the request for reimbursement unless the request will violate the Act. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

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 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) (2014)), which only 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 its request granted. *See* 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is August 20, 2015, which is the 120th day after the date on which the Board received the petition, April 22, 2015. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 20, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 22, 2015, which is 30 days after the Board received the 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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 7, 2015, by a vote of 5-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board