

ILLINOIS POLLUTION CONTROL BOARD
May 7, 2015

BAKER BROTHERS II, INC.,)
)
Petitioner,)
)
v.) PCB 15-192
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On May 1, 2015, Baker Brothers II, Inc. (petitioner) timely filed a petition asking the Board to review a March 25, 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 formerly located at 1 Westwood Drive, Steeleville, Randolph 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 denied the petitioner's application for payment on the grounds that the application was incomplete. Petitioner appeals on the grounds that the application was complete, the information sought is irrelevant under the leaking UST program, and the Agency improperly seeks to review documents that exceed its scope of review. 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 31, 2015, which is the 120th day after the date on which the Board received the petition, May 1, 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 June 1, 2015, which is the first business day 30 days after the Board received petitioner'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, 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.



John T. Therriault, Clerk
Illinois Pollution Control Board