

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2016

KNAPP OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 16-103
)	(UST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On April 14, 2016, Knapp Oil Company (Knapp) timely filed a petition (Pet.) asking the Board to review a March 8, 2016, 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. The Agency’s determination concerns Knapp’s leaking underground storage tank (UST) site located at 1117 East 5th Street in Metropolis, Massac County. For the reasons below, the Board accepts Knapp’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 made four modifications to Knapp’s Stage 1 Site Investigation Plan budget. Knapp appeals on the grounds that, 1) the application was complete in accordance with Agency forms and instructions; 2) the Agency is not authorized to remove budget items unless they believe such costs cannot be incurred or would be necessarily unreasonable; 3) the rates proposed are reasonable, 4) the costs associated with the camera budget item are not precluded from payment; and 5) “[n]o statutory or regulatory provisions would be violated by approving a budget containing the four contested items.” Pet. at 3. Knapp’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Knapp 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 Knapp may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Knapp may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is August 12, 2016, which is the 120th day after the date on which the Board received the petition, April 14, 2016. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 4, 2016.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 16, 2016, which is 30 days after the Board received Knapp'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 April 21, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board