

ILLINOIS POLLUTION CONTROL BOARD
February 8, 2018

GAUTSCHY'S CORNER,)	
)	
Petitioner,)	
)	
v.)	PCB 18-56
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	PCB 18-60
PROTECTION AGENCY,)	(UST Appeal)
)	(Consolidated)
Respondent.)	

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

On January 23, 2018, Gautschy's Corner (Gautschy) timely filed a petition asking the Board to review two December 19, 2017 determinations of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2016); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determinations concern Gautschy's leaking underground storage tank (UST) site located at 2402 N. Bloomington Street in Streator, LaSalle County. Because Gautschy appeals two separate determinations, the Board docketed each appeal separately. For the reasons below, the Board accepts Gautschy's petition for hearing and consolidates the two appeals.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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 (2016); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency issued two separate determinations, one rejecting Gautschy's corrective action plan budget and the other rejecting its corrective action completion report. Gautschy alleges that the money spent on remediation was reasonable and necessary. Gautschy also alleges the work performed was within the Agency's pre-approved guidelines. Gautschy's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. The parties, the leaking UST site, and the burden of proof are the same in both appeals. On this record, the Board finds that consolidating the appeals "is in the interest of convenient, expeditious, and complete determination of claims" and "would not cause material prejudice to any party." 35 Ill. Adm. Code 101.406. The Board therefore, on its own motion, consolidates the two appeals for hearing and decision.

Gautschy 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).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2016)), which only Gautschy may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Gautschy may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2016). Gautschy filed a waiver on February 6, 2018, extending the decision deadline to June 30, 2018. *See* 35 Ill. Adm. Code 101.308(c)(2); 105.114(a). The Board meeting immediately before the decision deadline is scheduled for June 21, 2018.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 22, 2018, which is the 30th day after the date on which the Board received Gautschy's petition. *See* 35 Ill. Adm. Code 105.116(a), 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(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.410(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 8, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.