

ILLINOIS POLLUTION CONTROL BOARD
September 7, 2006

J.D. STRETT & COMPANY, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-006
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On July 31, 2006, J.D. Strett & Company, Inc. (J.D. Strett) filed a petition asking the Board to review a June 21, 2006 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5.40(a)(1) (2004); 35 Ill. Adm. Code 105.402. The Agency rejected the corrective action plan and budget for J.D. Strett & Company's leaking underground storage tank site located at 510 East Linn Street, Canton, Fulton County.

On August 4, 2006, the Board found the petition deficient for failing to state the grounds for appeal and allowed J.D. Strett until September 5, 2006 to file an amended petition curing the deficiency. The Board, on its own motion, also struck a paragraph in the petition purporting to reserve a right to add grounds for appeal at any time, stating that all reasons for appeal must be set forth in the original petition.

On August 28, 2006, J.D. Strett timely filed an amended petition asking the Board to review the Agency's July 21, 2006 determination. For the reasons below, the Board accepts J.D. Strett's amended petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), the Agency decides whether to approve proposed cleanup plans for leaking Underground Storage Tank (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 (2004); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency rejected J.D. Street's entire Corrective Action Plan & Budget. J.D. Strett states that it disagrees with the Agency's reasons for denying the plan and budget and specifically appeals on the grounds that the documentation it submitted was "complete and in accordance with all applicable legal requirements and best engineering practices." J.D. Strett's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. J.D. Strett has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency

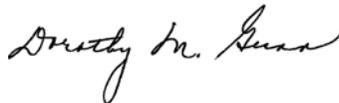
at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, information developed after the Agency's decision typically is not admitted at hearing or considered 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.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only J.D. Streett may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, J.D. Streett may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is December 26, 2006, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 21, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 27, 2006, which is the 30th day after the Board received J.D. Streett's petition. *See* 35 Ill. Adm. Code 101.300(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. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 7, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board