

ILLINOIS POLLUTION CONTROL BOARD
November 2, 2006

WEBB & SONS, INC.,)
)
 Petitioner,)
)
 v.) PCB 07-24
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by A.S. Moore):

On October 13, 2006, the Board received a petition from Webb & Sons, Inc. (Webb), asking the Board to review a September 12, 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's determination concerns Webb's underground storage tank (UST) site at 1201 DeWitt Avenue in Mattoon, Coles County. For the reasons below, the Board accepts Webb's petition for hearing.

Initially, the Board notes that Webb's petition was not accompanied by the required \$75 filing fee. *See* 415 ILCS 5/7.5 (2004); 35 Ill. Adm. Code 101.302(e)(3). On October 18, 2006, Webb filed the fee. Under the Board's procedural rules, the petition is considered filed only when the omitted filing fee is filed. *See* 35 Ill. Adm. Code 101.302(e). Accordingly, Webb's petition, though received on October 13, 2006, is deemed filed on October 18, 2006. Under the Environmental Protection Act (Act) (415 ILCS 5/40(a)(1) (2004)) and the Board's procedural rules (35 Ill. Adm. Code 101.300(b), (c), 105.404), Webb has timely appealed the Agency's determination.

Under the Act, the Agency decides whether to approve proposed cleanup plans 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 (2004); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency rejected aspects of Webb's proposed budget for UST Fund reimbursement. Specifically, Webb appeals the Agency's rejection of all personnel costs. Webb appeals on the grounds that the Agency acted arbitrarily and capriciously in rejecting these costs based on an alleged lack of detail in Webb's proposed budget. Webb's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Webb 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,

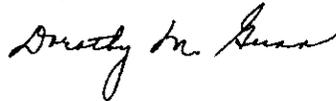
though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 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 Webb may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Webb may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is February 15, 2007, which is the 120th day after the filing date of Webb's petition. *See* 35 Ill. Adm. Code 101.302(e), 105.114. A Board meeting is scheduled for the decision deadline date of February 15, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 17, 2006, which is 30 days after the filing date of Webb's petition. *See* 35 Ill. Adm. Code 101.302(e), 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 November 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board