

ILLINOIS POLLUTION CONTROL BOARD  
December 21, 2006

VILLAGE OF WILMETTE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 07-48
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On December 14, 2006, the Village of Wilmette (Village) timely filed a petition asking the Board to review a November 13, 2006 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.402. The Agency's determination concerns the Village's former underground storage tank (UST) site located at 710 Ridge Road in Wilmette, Cook County. For the reasons below, the Board accepts the Village's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), the Agency determines 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 the Village's reimbursement application, stating that the billings submitted exceeded the approved budget amounts. The Village appeals, alleging that its reimbursement request "was less than the IEPA approved budget amount." Petition (Pet.) at 1. The Village's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. The Village 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 the Village may extend by

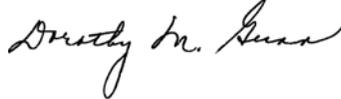
waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Village may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is April 13, 2007, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 5, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 15, 2007, which is the first business day following 30 days after the Board received the Village'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).

Lastly, the Board addresses two additional procedural items. First, the Village's petition requests that the "IEPA be deemed to have joined in this appeal notwithstanding IEPA's refusal to join in this appeal." Pet. at 2. What is apparent from the Village's filing is that the Agency did not refuse to "join in this appeal," but rather merely refused to join in the Village's request for a 90-day extension of the appeal period. The Agency is required to appear as respondent in appeals such as this and is named as respondent here. *See* 415 ILCS 5/40(a)(1), 57.8(i) (2004); 35 Ill. Adm. Code 105.400, 105.402, 105.406. Second, the Board notes that a related UST budget appeal is pending before the Board, Village of Wilmette v. IEPA, PCB 07-27, which involves the same two parties, the same site, and the same Leaking UST Incident No. (982714). The Village's petition for review in PCB 07-27 has already been accepted for hearing. *See* Village of Wilmette, PCB 07-27 (Nov. 2, 2006). The Board has not received, but either party may file for Board consideration, a motion to consolidate the two proceedings for purposes of hearing or decision or both. *See* 35 Ill. Adm. Code 101.406.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 21, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board