

ILLINOIS POLLUTION CONTROL BOARD
January 26, 2007

GATEWAY FS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-59
)	PCB 07-61
ILLINOIS ENVIRONMENTAL)	(Permit Appeal - Land)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

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

Gateway FS, Inc. (Gateway) has appealed two determinations of the Illinois Environmental Protection Agency (Agency) concerning the same property located at 201 East Pine Street, Red Bud, Randolph County. For the reasons below, the Board accepts the appeals and, on its own motion, consolidates them for hearing.

On January 9, 2007, Gateway timely filed a petition asking the Board to review a November 30, 2006 Agency determination. *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.206(a). The Agency rejected Gateway's amended Site Classification Work Plan Budget concerning Gateway's property located at 221 East Pine Street, Red Bud, Randolph County (Incident Nos. 980020 and 980391). Gateway appeals on the grounds that the amended budget includes necessary and reimbursable personnel based on the Agency's request that Gateway conduct further soil and groundwater investigation and evaluation.

On January 11, 2007, Gateway timely filed a second petition asking the Board to review a December 2, 2006 Agency determination regarding the same property. *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.206(a). The Agency rejected Gateway's amended High Priority Corrective Action budget (Incident Nos. 980020 and 980391). Gateway appeals on the grounds that the amended budget includes additional legitimate, reasonable, reimbursable investigation and personnel costs.

Both petitions meet the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petitions for hearing.

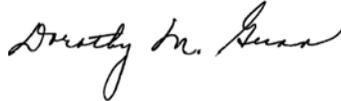
Gateway has the burden of proof. 415 ILCS 5/40(a)(1) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only Gateway may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Gateway "may deem the permit issued." 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline for Gateway

FS, Inc., v. IEPA, PCB 07-59 is May 9, 2007, and the decision deadline for Gateway FS, Inc., v. IEPA, PCB 07-61 is May 11, 2007 (the 120th day after the date the petition was filed with the Board). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before both decision deadlines is scheduled for May 3, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of both determinations by February 12, 2007, which is the first business day following 30 days after Gateway filed the petition in Gateway FS, Inc., v. IEPA, PCB 07-61. 35 Ill. Adm. Code 105.212(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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(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 January 26, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board