

ILLINOIS POLLUTION CONTROL BOARD
February 15, 2007

2F, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-76
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On February 9, 2007, 2F, Inc. (2F) timely filed a petition asking the Board to review a January 5, 2007 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, 105.406. The Agency's determination concerns 2F's underground storage tank (UST) site located at 1011 West Poplar Street in Harrisburg, Saline County. For reasons below, the Board accepts 2F's petition for hearing.

Under the Environmental Protection 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 partially denied 2F's request for reimbursement from the UST Fund regarding the Harrisburg site. The denied amount is \$3,081. In its petition for review, 2F asserts that its request was approved by operation of law because the Agency failed to approve the payment application within 120 days. Alternatively, according to 2F, the Agency's claims that 2F's application for the funds at issue lacked supporting documentation are erroneous, arbitrary, and capricious. 2F's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

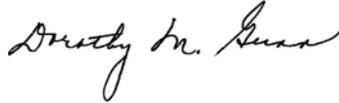
The Board accepts the petition for hearing. 2F has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords 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 (3rd 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 2F may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, 2F may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is June 11, 2007, which is the first business day following the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 101.300(a), 105.114. The Board meeting immediately before the decision deadline is scheduled for June 7, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 12, 2007, which is the first business day following the 30th day after the Board received 2F'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 February 15, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board