

ILLINOIS POLLUTION CONTROL BOARD  
April 19, 2007

T-TOWN DRIVE THRU, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 07-85
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

On March 14, 2007, T-Town Drive Thru, Inc. (T-Town) timely filed a petition asking the Board to review a March 2, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.402, 105.406. The Agency's determination concerns T-Town's underground storage tank (UST) site located at 101 West Main Street in Teutopolis, Effingham County. For the reasons below, the Board accepts T-Town'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 partially denied T-Town's request for reimbursement from the UST Fund regarding the Teutopolis site. The denied amount is \$8,109.02. T-Town asserts that the Agency's determination that T-Town's application lacked supporting documentation is erroneous, arbitrary, and capricious. Further, according to the petition, because T-Town submitted an application for reimbursement, not a budget, the Agency erred in concluding that the Agency could not determine if the \$8,109.02 would be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. T-Town's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. T-Town 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,

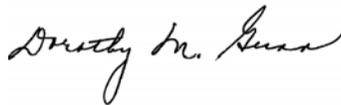
PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

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 T-Town may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, T-Town may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is July 12, 2007, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 101.300(a), 105.114. A Board meeting is scheduled for July 12, 2007.

The deadline for the Agency to file the entire record of its determination was April 13, 2007, *i.e.*, 30 days after the Board received the petition. *See* 35 Ill. Adm. Code 101.300(a), 105.410(a). 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 April 19, 2007, by a vote of 3-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board