

ILLINOIS POLLUTION CONTROL BOARD
April 19, 2007

L.W. PAUL SUPPLY CO., INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-99
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On April 2, 2007, L.W. Paul Supply Co., Inc. (Paul Supply) timely filed a petition asking the Board to review a March 7, 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 Paul Supply's underground storage tank (UST) site located at 11120 Richland Avenue in Worth, Cook County. For the reasons below, the Board accepts Paul Supply'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 Paul Supply's request for reimbursement from the UST Fund regarding the Worth site. The denied amount is \$11,936.89. Paul Supply asserts that the Agency's determination that Paul Supply's application lacked supporting documentation is erroneous, arbitrary, and capricious. Further, according to the petition, because Paul Supply submitted an application for reimbursement, not a budget, the Agency erred in concluding that the Agency could not determine if the \$11,936.89 would be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Paul Supply's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Paul Supply 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,

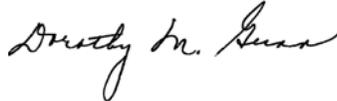
PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

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 Paul Supply may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Paul Supply may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is July 31, 2007, which is 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 July 26, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 2, 2007, which is the 30th day after the Board received the 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 April 19, 2007, by a vote of 3-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board