

ILLINOIS POLLUTION CONTROL BOARD

June 7, 2007

RUSS TAYLOR d/b/a MAHOMET HEN )  
HOUSE, )  
 )  
Petitioner, )  
 )  
v. ) PCB 07-80  
 ) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

On March 1, 2007, the Board, at the parties' request, extended until May 23, 2007, the time period within which Russ Taylor d/b/a Mahomet Hen House (petitioner) may appeal a January 10, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.406. On May 23, 2007, petitioner filed a petition asking the Board to review the Agency's determination. The Agency modified petitioner's High Priority Corrective Action Budget for petitioner's leaking underground petroleum storage tank site located at Route 47 and Eastwood Drive, Mahomet, Champaign County.

Under the Environmental Protection Act (415 ILCS 5 (2004)), the Agency determines whether to approve proposed cleanup plans for leaking underground storage tank (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 modified petitioner's budget regarding the Champaign County site. The Agency modified the budget by denying eligibility for costs in the amount of \$6,016.02. According to petitioner, the Agency's decision is erroneous, arbitrary, and capricious. Petition at 2. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Petitioner 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 petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is September 20, 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 September 20, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 22, 2007. *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2007, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board