

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2007

MAHR'S SERVICE & SALES,)
)
 Petitioner,)
)
 v.) PCB 07-119
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On June 7, 2007, at the parties' request, the Board extended until August 24, 2007, the time period for Mahr's Service & Sales (Mahr) to appeal an April 18, 2007 determination of the Illinois Environmental Protection Agency (Agency). On August 24, 2007, Mahr timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency's determination concerns Mahr's leaking petroleum underground storage tank (UST) site at 8810 East IL 9 Highway in Ellisville, Fulton County. For the reasons below, the Board accepts Mahr's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Agency decides 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 (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Mahr UST Fund reimbursement for \$1,967.40 in analysis costs and shipping costs. Petition at 1-2. Mahr appeals on the grounds that the Agency's determination is erroneous, arbitrary, and capricious. *Id.* at 2. Mahr's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Mahr 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.* Community Landfill Co. & City of Morris v. PCB & IEPA, 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) (2006)), which only Mahr may extend by waiver (*see*

35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Mahr may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is December 24, 2007, which is the first business day following the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 20, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 24, 2007, which is the first business day following the 30th day after the Board received Mahr's petition. *See* 35 Ill. Adm. Code 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board