

ILLINOIS POLLUTION CONTROL BOARD
September 30, 2008

DALEE OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 09-17
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On September 17, 2008, Dalee Oil Company (Dalee) timely filed a petition asking the Board to review an August 11, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.402. The Agency's determination concerns Dalee's leaking underground storage tank (UST) site located at Broadway and Olive Street in Highland, Madison County. For the reasons below, the Board accepts Dalee's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Agency decides whether to approve proposed cleanup plans and budgets 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 rejected Dalee's Amended High Priority Corrective Action Plan and associated budget regarding the Madison County site. Dalee appeals on the grounds that the Agency's rejection of the plan and budget was "erroneous, arbitrary, capricious and contrary to law." Petition at 2. Dalee's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Dalee 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 Dalee 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 Dalee may extend by waiver

(see 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dalee may deem its request granted. See 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is January 15, 2009, which is 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 January 8, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 17, 2008, which is the 30th day after the Board received Dalee's petition for review. 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 September 30, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board