

ILLINOIS POLLUTION CONTROL BOARD  
February 19, 2009

BAILEY ENTERPRISES, INC., )  
)  
Petitioner, )  
)  
v. ) PCB 09-57  
) (Permit Appeal – LUST)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

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

On February 10, 2009, Bailey Enterprises, Inc. timely filed a petition asking the Board to review a January 7, 2009, determination of the Illinois Environmental Protection Agency (Agency) (see 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.404 (2006)), denying petitioner's request for reimbursement from the Underground Storage Tank Fund. Petitioner seeks reimbursement for a site located at 105 N. 4th Street, Albion, Edwards County. The site and incident are known to the Agency as LPC #0470055030, and Incident #20080640 – 55145. Petitioner appeals on the grounds that the Agency's decision was lacking in statutory or regulatory authority, and is arbitrary. The petition meets the requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Petitioner has the burden of proof. 35 Ill. Adm. Code 105.112(a) (2006). Hearings will be based exclusively on the record before the Agency at the time the Agency issued the determination. 35 Ill. Adm. Code 105.412 (2006). Hearings will be scheduled in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2006)), which only petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308 (2006)). If the Board fails to take final action by the decision deadline, petitioner may deem the request granted. (*See* 415 ILCS 5/40(a)(2) (2006)). Currently, the decision deadline is June 10, 2009, which is the 120th day after February 10, 2009. *See* 35 Ill. Adm. Code 105.114 (2006). The Board meeting immediately before the decision deadline is June 4, 2009.

Unless the Board or hearing officer orders otherwise, the Agency must file the entire record by March 12, 2009, which is the first business day after the 30th day after petitioner filed the petition. 35 Ill. Adm. Code 105.410(a) (2006). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the day on which the record is due to be filed. 35 Ill. Adm. Code 105.116 (2006). 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 February 19, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board