

ILLINOIS POLLUTION CONTROL BOARD

March 5, 2009

|                        |   |              |
|------------------------|---|--------------|
| S&D REALTY, INC.,      | ) |              |
|                        | ) |              |
| Petitioner,            | ) |              |
|                        | ) |              |
| v.                     | ) | PCB 09-33    |
|                        | ) | (UST Appeal) |
| ILLINOIS ENVIRONMENTAL | ) |              |
| PROTECTION AGENCY,     | ) |              |
|                        | ) |              |
| Respondent.            | ) |              |

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

On December 4, 2008, the Board, at the parties' request, extended until February 16, 2009, the time period within which S&D Realty, Inc. (S&D) may appeal an October 10, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2000); 35 Ill. Adm. Code 105.406. On February 17, 2009, S&D filed a petition asking the Board to review the Agency's determination. Because the postmark date of the petition is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404.

The Agency denied portions of S&D's request for reimbursement from the Underground Storage Tank Fund regarding an underground storage tank site at 2935 South Archer Avenue in Chicago, Cook County. S&D appeals on the ground that the Agency's decisions to deny two specific portions of the request were erroneous, arbitrary and capricious. S&D's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

S&D has the burden of proof. 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. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2000)), which only S&D may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, S&D may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2000). Currently, the decision deadline is June 17, 2009 (the 120th day after February 17, 2009). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 4, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 19, 2009, which is 30 days after S&D filed the petition. 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. 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 March 5, 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.

---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board