

ILLINOIS POLLUTION CONTROL BOARD  
May 7, 2009

PRIME LOCATION PROPERTIES, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 09-67
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On March 9, 2009, Prime Location Properties, LLC (Prime) timely filed a petition asking the Board to review a January 27, 2009 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.404. The Agency's determination concerns Prime's leaking underground storage tank (UST) site located at 600 W. 10th Street in Metropolis, Massac County.

On March 19, 2009, the Board issued an order accepting the matter as timely filed, but finding that it was unclear whether the petition had been filed by an attorney. The Board directed Prime to file an amended petition for review, along with the appearance of an attorney, by April 20, 2009. *See* 35 Ill. Adm. Code 101.400(a)(2). On April 20, 2009, Prime filed an amended petition for review (Am. Pet.) accompanied by the appearance of an attorney.

Under the Environmental Protection Act (415 ILCS 5 (2006)), the Agency determines 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 rejected Prime's amended corrective action plan and associated budget. Prime appeals on the grounds that the Agency "erred in concluding that the plan relates to a new incident, as opposed to the same incident that has been the subject of continuing remediation efforts, and/or a re-reporting of the same." Am. Pet. at 2. Prime's amended petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the amended petition for hearing. Prime 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

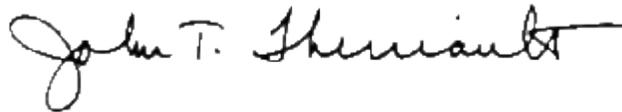
Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

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 Prime may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Prime may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). The filing of the amended petition restarted the time period within which the Board must decide this appeal. *See* 35 Ill. Adm. Code 105.114(b). Accordingly, the decision deadline is August 17, 2009 (the first business day following the 120th day after April 20, 2009). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 6, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 20, 2009, which is 30 days after the Board received Prime's amended 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 May 7, 2009, by a vote of 5-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board