

ILLINOIS POLLUTION CONTROL BOARD
January 6, 2011

GAS & MINI MART,)	
)	
Petitioner,)	
)	
v.)	PCB 11-34
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On December 23, 2010, Gas & Mini Mart timely filed a petition asking the Board to review a November 30, 2010 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Gas & Mini Mart's leaking underground storage tank (UST) site located at 315 West Beaufort in Normal, McLean County. For reasons below, the Board accepts Gas & Mini Mart's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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 (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency rejected Gas & Mini Mart's Site Investigation Actual Cost Stage 3 Budget for the McLean County site. Gas & Mini Mart appeals on the grounds that the amounts expended were reasonable, customary, and necessary, and the "scope of the additional work performed was within the guidelines pre-approved by the IEPA." Petition at 2. Gas & Mini Mart's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Gas & Mini Mart 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) (2008)), which only Gas & Mini Mart may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Gas & Mini Mart may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is April 22, 2011, which is the 120th day after the date on which the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 21, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 22, 2011, which is the 30th day after the date on which the Board received Gas & Mini Mart'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 January 6, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board