

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2011

FREEDOM OIL COMPANY,)
)
Petitioner,)
)
v.) PCB 11-59
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On March 9, 2011, Freedom Oil Company (Freedom) timely filed a petition asking the Board to review a January 31, 2011 determination of the Illinois Environmental Protection Agency (Agency).¹ See 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Freedom's leaking underground storage tank (UST) site located at 219 West Van Buren, Clinton, DeWitt County. For the reasons below, the Board accepts Freedom'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 Freedom's corrective action plan budget. Freedom appeals on the grounds that the reimbursement amounts requested in the budget were reasonably and legitimately expended and that the additional work performed was within the guidelines pre-approved by the Agency. Freedom's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Freedom 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).

¹ Freedom Oil asserts in the petition that the Agency's decision was received on February 3, 2011; also, the petition for review was mailed on February 7, 2011.

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 Freedom may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Freedom may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is July 7, 2011, which is the 120th day after the date on which the Board received the petition, March 9, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 16, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 8, 2011, which is 30 days after the Board received Freedom'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 March 17, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board