

ILLINOIS POLLUTION CONTROL BOARD  
September 8, 2011

GARY COOPER,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 12-29
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On August 17, 2011, Gary Cooper timely filed a petition asking the Board to review a July 27, 2011 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Gary Cooper's leaking underground storage tank (UST) site located at 103 East Main Street, Royal, Champaign County. For the reasons below, the Board accepts Gary Cooper's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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 (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Gary Cooper's request for reimbursement from the UST Fund, because the Agency found that the 2010 incident at issue in the July 27, 2011 determination was a re-reporting of an earlier 2009 incident. Gary Cooper appeals on the grounds that the 2010 incident is separately eligible for reimbursement from the 2009 incident. Gary Cooper's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Gary Cooper 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) (2010)), which only Gary Cooper may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Gary Cooper may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is December 15, 2011, which is the 120th day after the date on which the Board received the petition, August 17, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 8, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 16, 2011, which is 30 days after the Board received Gary Cooper'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 September 8, 2011, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board