

ILLINOIS POLLUTION CONTROL BOARD
December 1, 2011

EVERGREEN FS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 12-61
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T. A. Holbrook):

On November 16, 2011, Evergreen FS, Inc. (Evergreen) timely filed a petition asking the Board to review an October 12, 2011 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Evergreen's leaking underground storage tank (UST) site located in Dwight, Livingston County. For the reasons below, the Board accepts Evergreen'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 Evergreen's request for reimbursement from the UST Fund. Petitioner appeals on the ground that there has been no determination that the incident for which Evergreen seeks reimbursement is ineligible, nor would there be any factual or legal basis for such a finding. Evergreen's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Evergreen 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 the 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 Evergreen may extend by waiver

(see 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Evergreen may deem its request granted. See 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is March 15, 2012, which is the 120th day after the date on which the Board received the petition, November 16, 2011. See 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for March 15, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by December 16, 2011, which is 30 days after the Board received Evergreen'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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 1, 2011, 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 flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board