

ILLINOIS POLLUTION CONTROL BOARD
February 2, 2012

KB SULLIVAN, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 12-105
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 23, 2012, KB Sullivan, Inc. timely filed a petition asking the Board to review a December 28, 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 KB Sullivan, Inc.'s leaking underground storage tank (UST) site located at 111 West Jackson Street, Sullivan, Moultrie County. For the reasons below, the Board accepts KB Sullivan, Inc.'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 KB Sullivan, Inc.'s full request for reimbursement from the UST Fund by assessing a deductible of \$10,000.00. KB Sullivan, Inc. appeals on the grounds that the Agency erred in assessing the deductible because a deductible had already been assessed on the previous owner for the UST release incident in question and under Section 57.8(a)(4) of the Act only one deductible applies per UST site. KB Sullivan, Inc.'s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. KB Sullivan, Inc. 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 KB Sullivan, Inc. may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, KB Sullivan, Inc. may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is May 22, 2012, which is the 120th day after the date on which the Board received the petition, January 23, 2012. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 17, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 22, 2012, which is 30 days after the Board received KB Sullivan, Inc.'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 February 2, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board