

ILLINOIS POLLUTION CONTROL BOARD
July 11, 2013

CHATHAM BP, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 14-01
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On July 1, 2013, Chatham BP, LLC (Chatham BP) timely filed a petition asking the Board to review a May 28, 2013 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, 105.406. The Agency's determination concerns Chatham BP's leaking underground storage tank (UST) site located at 300 North Main Street in Chatham, Sangamon County. For the reasons below, the Board accepts Chatham BP'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 rejected Chatham BP's Stage 2 Site Investigation Plan and Budget, modified Chatham BP's Stage 1 costs, and required that Chatham BP submit a Stage 3 Site Investigation Plan and Budget or a Site Investigation Completion Report. Chatham BP contests the Agency's determination as arbitrary, capricious, and unsupported by statutory or regulatory authority. Chatham BP's petition claims that the Agency erred with respect to the requirements for addressing the extent of contamination and failed to adequately specify why Chatham BP's drum disposal costs exceed the minimum requirements necessary to comply with the Act.

The Board finds that Chatham BP's petition meets the content requirements of the Board's procedural rules and accepts the petition for hearing. *See* 35 Ill. Adm. Code 105.408. Chatham BP 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 Chatham BP 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 Chatham BP may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Chatham BP may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is October 29, 2013, which is the 120th day after the date on which the Board received the petition, July 1, 2013. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 17, 2013.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 31, 2013, which is 30 days after the Board received Chatham BP'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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 11, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board