

ILLINOIS POLLUTION CONTROL BOARD  
April 16, 2020

BANK OF PONTIAC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 20-48
	)	PCB 20-49
ILLINOIS ENVIRONMENTAL	)	PCB 20-50
PROTECTION AGENCY,	)	PCB 20-51
	)	PCB 20-52
Respondent.	)	(UST Appeal)
	)	(Consolidated)

ORDER OF THE BOARD (by A. Palivos):

The Board today accepts for hearing five amended petitions filed by the Bank of Pontiac and also grants Bank of Pontiac’s motion to consolidate.

**Procedural Background**

On January 17, 2020, Bank of Pontiac timely filed a petition asking the Board to review five decisions made by the Illinois Environmental Protection Agency (Agency) between December 13, 2019 and January 11, 2020. *See* 415 ILCS 5/40(a)(1) (2018); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency’s decisions concern Pontiac’s leaking underground storage tank (UST) site at 12 East Jackson Street, in Morton, Tazewell County. On February 6, 2020, the Board issued an order directing Pontiac to file separate amended petitions for each of the Agency’s decisions.

On March 9, 2020, Bank of Pontiac timely filed five amended petitions. PCB 20-48 relates to the Agency’s rejection of the Site Investigation Completion Report; PCB 20-49 relates to the Agency’s denial of reimbursement for Stage 2 site investigation; PCB 20-50 relates to the Agency’s denial of reimbursement for Stage 3 site investigation; PCB 20-51 relates to the Agency’s modifications to the proposed Stage 2 Budget; and PCB 20-52 relates to the Agency’s modifications to the proposed Stage 3 Budget.

**The Board Accepts the Amended Petitions for Hearing**

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), 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 (2018); 35 Ill. Adm. Code 105.Subpart D. As described above, Bank of Pontiac seeks review of five separate Agency determinations concerning its site.

The Board accepts the five petitions for hearing. Bank of Pontiac 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).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2018)). On March 24, 2020, Bank of Pontiac filed an open waiver of its decision deadline in each of these appeals (*see* 35 Ill. Adm. Code 101.308).

The Board's procedural rules generally require the Agency to file the entire record of its decision with the Board within 30 days after the filing of the amended petitions for review on March 9, 2020. *See* 35 Ill. Adm. Code 105.116(a), 105.410(a). Because of restrictions presented by COVID-19, the Board has not met since that date, and the Agency's 30-day deadline has passed. However, the procedural rules provide that the Board may order a different filing deadline. *See id.* Accordingly, the Board directs the Agency to file the entire record of its determination by Monday, May 18, 2020, which is the first business day after the 30th day after the date of this order. 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(a).

The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.410(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).<sup>1</sup>

### **The Board Grants Bank of Pontiac's Motion to Consolidate**

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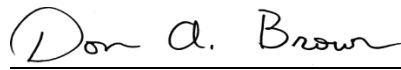
<sup>1</sup> Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.

On March 31, 2020, Bank of Pontiac filed a Motion to Consolidate the amended petitions. The Motion stated that the five amended petitions involve the same parties and very similar factual issues. Mot. at 1. The cases also relate to the same ongoing environmental remediation. *Id.* Thus, Pontiac argues that consolidating the cases allows for a more “convenient, expeditious, and complete determination of claims.” *Id.* at 2. Further, the cases are all UST appeals and have the same burden of proof. *Id.* at 1. Pontiac finally argued that consolidation would not cause material prejudice to the Illinois Environmental Protection Agency (IEPA).

On this record, the Board finds that consolidating these five proceedings serves “the interest of convenient, expeditious, and complete determination of claims” and will not result in material prejudice to any party. 35 Ill. Adm. Code 104.406; *see Gautschy’s Corner v. IEPA*, PCB 18-56, 18-60 (cons.) (Feb. 8, 2018). However, although the Board consolidates these five proceedings for hearing, it does not consolidate these proceedings for decision. The proceedings address different determinations with different factual issues. Thus, on its own motion, the Board consolidates these five proceedings for hearing.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2020 by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board