

ILLINOIS POLLUTION CONTROL BOARD
January 22, 2004

KRAMER SERVICE STATION,)
)
 Petitioner,)
)
 v.) PCB 04-52
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On December 4, 2003, at the parties' request, the Board extended until January 8, 2004, the time period for Kramer Service Station (Kramer) to appeal a September 5, 2003 determination of the Illinois Environmental Protection Agency (Agency). On January 8, 2004, Kramer timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency's determination concerns Kramer's underground storage tank (UST) site, a service station, located at 1015 E. Main Street, Danville, Vermilion County. For the reasons below, the Board accepts Kramer's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), the Agency decides whether to approve proposed cleanup plans 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 (2002); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency approved a site classification plan, with modifications, for Kramer's facility. Kramer appeals on the grounds that the Agency's decision to disallow certain costs was arbitrary and capricious. Kramer's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

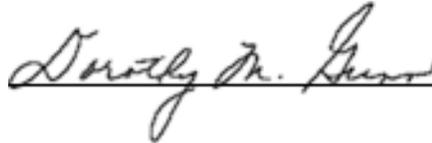
The Board accepts the petition for hearing. Kramer has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords 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.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Kramer may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Kramer may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is May 11, 2004, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 6, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 11, 2004, which is first business day following the 30th day after the Board received Kramer's petition. *See* 35 Ill. Adm. Code 101.300(a); 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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 22, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board