

ILLINOIS POLLUTION CONTROL BOARD

October 2, 2014

STEVE SHANK,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 15-75
	)	(Permit Appeal – UST)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by D. Glosser):

On September 24, 2014, Steve Shank (respondent) timely filed a petition asking the Board to review an August 21, 2104 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns respondent's underground storage tanks formally located at a service station in Greenville, Bond County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2012)), the Agency is the permitting authority, responsible for administering Illinois' regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2012); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied respondent's application for payment because it found that respondent's application contained costs that lacked supporting documentation. The Agency stated that such costs are ineligible for payment from the Underground Storage Tank (UST) Fund pursuant Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.630(cc). Respondent appeals on the following grounds: (1) The application was complete, containing all of the information required of a complete application pursuant to Section 57.8 of the Act (415 ILCS 5/57.8(a)(6) (2012)); (2) the application was complete, containing all of the information required of a complete application pursuant to 35 Ill. Adm. Code § 734.605; (3) the application was complete pursuant to forms that existed at the time application for payment was submitted to the Agency; (4) respondent is relieved from the obligation to submit or file forms that are not in compliance with the Forms Notice Act (20 ILCS 435/1 *et seq.*); (5) the information sought is irrelevant under the leaking UST Program; and (6) the Agency improperly seeks to review documents that exceed its scope of review, including mandating the creation of new documents that did not exist when the underlying transactions occurred, and were not relied upon in the completion of the application for payment. Respondent's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Respondent has the burden of proof. 415 ILCS 5/40(a)(1) (2012); *see also* 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 permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, 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) (2012)), which only respondent may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, respondent "may deem the permit issued." 415 ILCS 5/40(a)(2) (2012). Currently, the decision deadline is January 22, 2015, 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 January 22, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 24, 2014, which is 30 days after the Board received respondent's petition. *See* 35 Ill. Adm. Code 105.212(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 105.212(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 October 2, 2014 by a vote of 4-0.




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John T. Therriault, Clerk  
Illinois Pollution Control Board