

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2014

PIASA MOTOR FUELS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 14-131
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On May 16, 2014, Piasa Motor Fuels, Inc. (Piasa) timely filed a petition asking the Board to review an April 8, 2014 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency’s determination concerns Piasa’s leaking underground storage tank (UST) site located at 4101 Alby Street, Alton, Madison County. For the reasons below, the Board accepts Piasa’s petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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 (2012); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency modified Piasa’s Stage II Site Investigation Plan (Plan) and Budget to disallow UST Fund recovery for soil samples taken below groundwater level at Piasa’s Madison County facility. Piasa appeals the determination, arguing that, while testing of samples from below groundwater is not allowed in Stage II investigations, no such prohibition exists for Stage I investigations, such as the one it conducted. Piasa’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Piasa 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) (2012)), which only Piasa may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Piasa may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2012). Currently, the decision deadline is September 15, 2014, which is the 120th day after the date on which the Board received the petition, May 16, 2014. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for September 4, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 16, 2014, which is 30 days after the Board received Piasa'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 June 5, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board