

ILLINOIS POLLUTION CONTROL BOARD

March 18, 2004

A & R, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 04-90
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On December 18, 2003, at the parties' joint request, the Board extended until March 2, 2004, the time period for A & R, Inc. (A & R) to appeal an October 29, 2003 determination of the Illinois Environmental Protection Agency (Agency). On March 1, 2004, A & R timely mailed for filing 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 the approval of a high priority corrective action plan budget, with corrections, for A & R's leaking underground petroleum storage tank facility located at 6229 West Ogden Avenue, Berwyn, Cook County. For the reasons below, the Board accepts the petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), the Agency decides whether to approve proposed cleanup plans for leaking Underground Storage Tank (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 denied UST Fund reimbursement for some of A & R's requested costs, stating that the rejected costs were unreasonable. A & R appeals on the grounds that the costs at issue are reasonable corrective action costs and eligible to be reimbursed under the Act. The petition meets the content requirements of 35 Ill. Adm. Code 105.408.

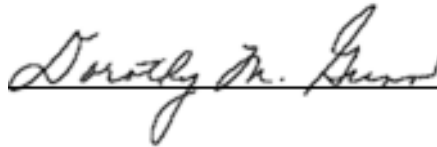
The Board accepts the petition for hearing. A & R has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioners 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 (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) (2002)), which only A & R may extend by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, A & R may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is July 2, 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 June 17, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 5, 2004, being the first business day following the 30th day after the Board received the 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 March 18, 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