

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2004

ROBERT and TONY THOMPSON,)
)
 Petitioners,)
)
 v.) PCB 04-85
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by A.S. Moore):

On December 4, 2003, at the parties' request, the Board extended until February 20, 2004, the time period for Robert and Tony Thompson (Thompsons) to appeal an October 17, 2003 determination of the Illinois Environmental Protection Agency (Agency). On February 20, 2004, the Thompsons 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 the Thompsons' underground storage tank (UST) site at Fourth and Jefferson in Cairo, Alexander County. For the reasons below, the Board accepts the Thompsons' petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (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 denied UST Fund reimbursement for some of the Thompsons' requested costs, stating that the rejected costs were unreasonable. The Thompsons appeal on the grounds that the costs at issue are reasonable corrective action costs and eligible to be reimbursed under the Act. The Thompsons' petition meets the content requirements of 35 Ill. Adm. Code 105.408.

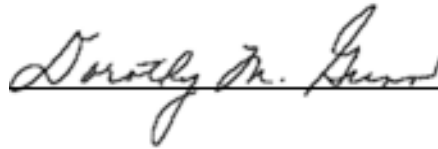
The Board accepts the petition for hearing. The Thompsons have the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing 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 (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 the Thompsons may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Thompsons may deem their request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is June 19, 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 March 22, 2004, which is the first business day following the 30th day after the Board received the Thompsons' 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 4, 2004, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board