

ILLINOIS POLLUTION CONTROL BOARD  
October 6, 2022

EMCO CHEMICAL DISTRIBUTORS, INC., )  
an Illinois corporation, )  
 )  
Petitioner, )  
 )  
v. ) PCB 23-16  
 ) (UST Appeal)  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by A. Palivos):

On September 12, 2022, Emco Chemical Distributors, Inc. (Emco) filed an amended petition for review of a June 16, 2022 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency’s determination concerns Emco’s leaking underground storage tank (UST) site located at 2525 Greenfield Lane in North Chicago, Lake County. On July 19, 2022, the Board received a letter sent on behalf of Emco by EPS Environmental Services, Inc. (EPS) asking the Board to review the determination. In an August 11, 2022 Order, the Board accepted EPS’ letter as timely filed but directed Emco to file an amended petition correcting specified deficiencies within 30 days. On September 12, 2022, Emco timely filed an amended petition. For the reasons below, the Board accepts Emco’s amended petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), 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 (2020); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Emco’s corrective action completion report (CACR) due to the continued presence of groundwater in the excavation requiring a Stage 1 groundwater investigation at the UST site. Emco appeals on the grounds that a groundwater investigation is not required because the CACR submitted to the Agency by EPS on Emco’s behalf demonstrates that the excavation soils were not in contact with groundwater. *See* 35 Ill. Adm. Code 734.210(h)(4)(c). Rather, Emco alleges the water onsite was a combination of rainwater, water from adjacent building downspouts, and water from a leaking water line near the excavation area. Emco alleges that a Stage 1 groundwater investigation is therefore an unnecessary and burdensome expense not justified by the circumstances.

The Board accepts the amended petition for hearing. Emco 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).


Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (see 415 ILCS 5/40(a)(2) (2020)), which only Emco may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Emco may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2020). Currently, the decision deadline is January 10, 2023, which is the 120th day after the date on which the Board received the amended petition, September 12, 2022. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for January 5, 2023.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 12, 2022, which is the 30th day after the date on which the Board received Emco's amended petition. *See* 35 Ill. Adm. Code 105.116(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(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.410(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).<sup>1</sup>

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 6, 2022, by a vote of 5-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.