

ILLINOIS POLLUTION CONTROL BOARD
April 8, 2024

1441 KINGSHIGHWAY LLC,)
)
 Petitioner,)
)
 v.) PCB 24-32
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)
)

HEARING OFFICER ORDER

On February 29, 2024, the Agency filed a motion to supplement the record. The supplemental materials, marked as pages AR000368-AR000377, consist of the Underground Storage Tank Removal Inspection Narrative with photographs (Narrative). Having received no objection from petitioner, the motion was granted on March 18, 2024.

On March 22, 2024, petitioner filed a motion for reconsideration stating that it did not receive the Agency's motion to supplement the record. Petitioner objected to the Agency's motion, arguing that the Agency did not rely on the Narrative in making its determination. The Agency did not respond.

The central issue on appeal is the number of tanks removed. According to petitioner, OSFM determined that three tanks were eligible for corrective action costs. (Pet. pp. 3-4). The Narrative prepared by Agency staff at the Marion Regional Office in August, 2022 supports the Agency's finding of two tanks.

As counsel for petitioner successfully argued in Weeke Oil v. IEPA PCB 10-1 (May 20, 2010), additional evidence must be admitted into the record for a party to cross-examine and present testimony to challenge the information relied on by the other party. In this case, the Narrative existed before the Agency made its determination, it is directly relevant to the issue on appeal, and the Agency must be allowed to support and defend its actions.

The order granting the Agency's motion to supplement the record is affirmed.

IT IS SO ORDERED.

Carol Webb

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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on April 8, 2024, to each of the person on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on April 8, 2024:

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SERVICE LIST

@ Consents to Electronic Service

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