

ILLINOIS POLLUTION CONTROL BOARD
September 1, 2005

BASIC WIRE & CABLE CO.,)	
)	
Petitioner,)	
)	
v.)	PCB 05-198
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On June 2, 2005, at the parties' request, the Board extended until August 17, 2005, the time period for Basic Wire & Cable Co. (BWC) to appeal an April 11, 2005 determination of the Illinois Environmental Protection Agency (Agency). On August 17, 2005, BWC timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency rejected the corrective action completion report for BWC's petroleum leaking underground storage tank (UST) facility located at 3900 North Rockwell Street in Chicago, Cook County. For the reasons below, the Board accepts BWC's petition for hearing.

Under the Environmental Protection Act (415 ILCS 5 (2004)), 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) (2004); 35 Ill. Adm. Code 105.Subpart D.

In this case, BWC appeals the Agency's rejection on two grounds. First, BWC maintains that the Agency exceeded its authority by "attempting to apply regulations that have not yet been promulgated, namely the Board's proposed Part 734 rules." Petition at 3. Second, BWC argues that it should not be required to investigate and delineate contamination that is "already addressed by the existing City of Chicago groundwater ordinance institutional control." *Id.* BWC's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

BWC 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);

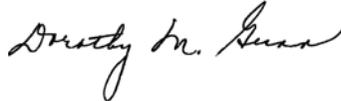
Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only BWC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, BWC may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is December 15, 2005, which is the 120th day after the Board received BWC's petition. *See* 35 Ill. Adm. Code 105.114. A Board meeting is scheduled for December 15, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 16, 2005, which is 30 days after the Board received BWC'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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 1, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board