

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2004

DIMUCCI DEVELOPMENT)
CORPORATION,)
)
Petitioner,)
)
v.) PCB 04-209
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On June 3, 2004, at the parties' request, the Board extended until August 18, 2004, the time period for DiMucci Development Corporation (DiMucci) to appeal an April 15, 2004 determination of the Illinois Environmental Protection Agency (Agency). On August 19, 2004, the Board received from DiMucci a petition asking the Board to review the Agency's determination. The petition was timely filed because it was postmarked on the filing deadline of August 18, 2004. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. The Agency's determination concerns DiMucci's underground storage tank (UST) site at the northeast corner of South Cicero Avenue and 31st Street in Cicero, Cook County. For the reasons below, the Board accepts DiMucci's 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 rejected a Site Investigation Plan, Site Investigation Completion Report, Corrective Action Plan, and Corrective Action Plan Budget. DiMucci appeals on numerous grounds, including that the documentation it submitted contains sufficient information. DiMucci's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

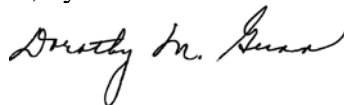
The Board accepts the petition for hearing. DiMucci has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords 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) (2002)), which only DiMucci may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, DiMucci may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is December 17, 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 December 16, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 20, 2004, which is first business day following the 30th day after the Board received DiMucci's 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 September 2, 2004, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board