

ILLINOIS POLLUTION CONTROL BOARD  
February 3, 2005

GATEWAY FS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 05-84
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On November 18, 2004, at the parties' request, the Board extended until February 7, 2005, the time period for Gateway FS, Inc. (Gateway FS) to appeal an October 1, 2004 determination of the Illinois Environmental Protection Agency (Agency). On January 19, 2005, Gateway FS 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 Gateway FS' underground storage tank (UST) site at C Avenue, in Prairie Du Rocher, Randolph County. For the reasons below, the Board accepts Gateway FS' 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, on October 1, 2004, the Agency rejected Gateway FS' amendment to the company's High Priority Corrective Action Plan Budget. The Agency's denial letter states that various costs and charges in the amendment are identical "with a few exceptions" to those in a prior submittal, and the Agency "previously notified the owner or operator of its final action regarding these costs." Petition, Exhibit A, Attachment A. According to Gateway FS' petition for review, however, the company's amendment "contains new and different information and justification . . . not already addressed by the Agency." Petition at 3. Gateway FS seeks reversal of the Agency's determination and recovery of attorney fees and costs. *Id.* at 4.

The Board finds that Gateway FS' petition meets the content requirements of 35 Ill. Adm. Code 105.408 and accepts the petition for hearing. Gateway FS 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,

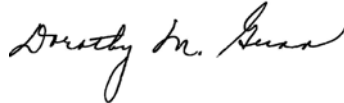
738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

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 Gateway FS may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Gateway FS may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is May 19, 2005, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. A Board meeting is scheduled for May 19, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 18, 2005, which is 30 days after the Board received Gateway FS' 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 February 3, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board