

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2007

L. KELLER OIL PROPERTIES,)	
INC./FARINA,)	
)	
Petitioner,)	
)	
v.)	PCB 07-147
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On June 27, 2007, L. Keller Oil Properties, Inc./Farina (Keller) timely filed a petition asking the Board to review a May 17, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.404. The Agency rejected Keller's Stage II Site Investigation Plan and Budget regarding an underground storage tank site 1003 West Washington Avenue, Farina, Fayette County. For the reasons below, the Board accepts Keller's petition for hearing

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2006)), 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 (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, Keller appeals on the grounds that that the Agency violated its statutory authority by re-reviewing information it had previously approved, that the Agency has required documentation that does not appear on any Agency forms or in applicable regulations, and that the Agency has ignored or chosen not to consider provided information. Keller alleges that the sole purpose of the Agency's denial is to harass Keller's consultant and that the denial is an abuse of the Agency's discretion. Keller's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Keller has the burden of proof. 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. 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. and City of Morris v. PCB and IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2006)), which only Keller may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Keller may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is October 25, 2007, the 120th day after June 27, 2007. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled to take place on October 18, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Friday, July 27, 2007, which is 30 days after Keller filed the petition. 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. 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 12, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board