

ILLINOIS POLLUTION CONTROL BOARD
November 15, 2007

DUNN'S UNIVERSITY BP,)	
)	
Petitioner,)	
)	
v.)	PCB 08-10
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On August 9, 2007, at the parties' request, the Board extended until October 30, 2007, the time period for Dunn's University BP (Dunn) to appeal a June 22, 2007 determination of the Illinois Environmental Protection Agency (Agency). On October 30, 2007, Dunn timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns Dunn's leaking underground storage tank (UST) site located at 419 West Lincoln Avenue in Charleston, Coles County. For the reasons below, the Board accepts Dunn's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Agency decides whether to approve proposed cleanup plans and budgets 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, the Agency modified Dunn's corrective action plan and budget for the Charleston UST site. Dunn appeals on the grounds that the Agency's determination to modify the corrective action plan and budget so as to delete and deny approval of \$10,401.66 in consulting personnel and consultant's material costs is erroneous, arbitrary, capricious, and contrary to law. Dunn's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Dunn 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. Community Landfill Co. & City of Morris v. PCB & 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 Dunn may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dunn may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). On November 8, 2007, Dunn filed an open waiver of the decision deadline. *See* 35 Ill. Adm. Code 101.308(c)(1), 105.114.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 29, 2007, which is 30 days after the Board received Dunn'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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 15, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board