

ILLINOIS POLLUTION CONTROL BOARD  
December 6, 2007

WEBEL FEEDS and TLHUS, INC., as	)	
Successor-in-Interest,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 08-34
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On November 15, 2007, Webel Feeds and its successor-in-interest TLHUS, Inc. (petitioner) timely filed a petition asking the Board to review an October 4, 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 determination concerns petitioner's leaking petroleum underground storage tank (UST) site located on Rural Route 3, Pittsfield, Pike County. For reasons below, the Board accepts the 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 rejected petitioner's Amended Corrective Action Plan (CAP) for the Pittsfield site. Petitioner's appeal grounds are the Agency's allegedly arbitrary and capricious actions in rejecting the Amended CAP, including the Agency's rejection of petitioner's alternative remedy, the Agency's requirement that the groundwater recovery and remediation system currently operated by petitioner be shut down, the Agency's error in identifying downgradient off-site groundwater as Class II groundwater, and the Agency's determination that a No Further Remediation (NFR) Letter can be issued without further remediation to meet offsite groundwater cleanup objectives or without elimination of the offsite groundwater pathway using an institutional control. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Petitioner 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 petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is March 14, 2008, which is the 120th day after the date on which the Board received the petition, November 15, 2007. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for March 6, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by December 17, 2007, which is the first business day following the 30th day after the Board received the 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 December 6, 2007, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board