

ILLINOIS POLLUTION CONTROL BOARD

WAUCONDA COMMUNITY UNIT)
SCHOOL DISTRICT #118,)
)
Petitioner,)
)
v.) PCB 08-39
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On December 19, 2007, Wauconda Community Unit School District #118 (Wauconda) timely filed a petition asking the Board to review a November 14, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.402, 105.404. The Agency's determination concerns Wauconda's leaking underground storage tank (UST) site located 225 Osage Street, Wauconda, Lake County. For the reasons below, the Board accepts Wauconda's petition for hearing.

Under the Environmental Protection 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 Wauconda's Corrective Action Completion Report. Wauconda appeals on the grounds that numerous conclusions reached by the Agency are erroneous, arbitrary, and capricious. Wauconda's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Wauconda 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 Wauconda may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision

deadline, Wauconda may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is April 17, 2008, which is the 120th day after the date on which the Board received the petition, December 19, 2007. *See* 35 Ill. Adm. Code 105.114. A Board meeting is scheduled for April 17, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 18, 2008, which is 30 days after the Board received Wauconda'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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 10, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board