

ILLINOIS POLLUTION CONTROL BOARD
January 7, 2010

SMOOT OIL COMPANY, INC.,)
)
Petitioner,)
)
v.) PCB 10-45
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On December 24, 2009, Smoot Oil Company, Inc. (petitioner) timely filed a petition asking the Board to review a November 4, 2009 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The petitioner indicates that the letter was received on November 16, 2009 and the appeal was mailed on December 21, 2009. The petition was timely filed because it was postmarked on or before the filing deadline. The Agency's determination concerns petitioner's underground storage tank (UST) site in Mt. Vernon, Jefferson County. For reasons below, the Board accepts petitioner's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008))¹, 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 (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied reimbursement for certain costs because the costs were ineligible for reimbursement because the costs were incurred without an amended corrective action plan. Petitioner appeals on the grounds that the decision is erroneous because no formal decision that an amended correction action plan had been made and there is no basis for an amended corrective action plan. The 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,

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

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) (2008)), 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) (2008). Currently, the decision deadline is April 23, 2010, which is the 120th day after the date on which the Board received the petition, December 24, 2009. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 15, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 25, 2010, which is the first business day after 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 7, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board