

ILLINOIS POLLUTION CONTROL BOARD  
January 21, 2010

LOGAN HOLLOW PHILLIPS 66, )  
)  
Petitioner, )  
)  
v. ) PCB 10-51  
) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by T.E. Johnson):

On January 8, 2010, Logan Hollow Phillips 66 (Logan Hollow) timely filed a petition (Pet.) asking the Board to review a December 9, 2009 determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The IEPA's determination concerns Logan Hollow's leaking underground storage tank (UST) site located at 21118 Highway 3, near Jacob, in Jackson County. For the reasons below, the Board accepts Logan Hollow's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), the IEPA 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 IEPA 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 IEPA granted Logan Hollow's request for reimbursement from the UST Fund as to some costs, but denied it as to other costs. Logan Hollow appeals on the grounds that the IEPA:

unjustifiably denied costs for reason of lacking supporting documentation. Prior to rendering its final decision, the IEPA did not request additional information or revise its payment application forms to identify additional information above and beyond that which was provided in the voluminous submissions of petitioner's consultants. Consequently, \$6,908.33 was deducted.

\*\*\*

Furthermore, the IEPA appears to have improperly reassigned job tasks from those performed by Project Engineer and Senior Project Manager to someone else without legal justification. Consequently, \$688.05 was deducted. Pet. at 5-6.

Logan Hollow's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Logan Hollow has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the IEPA

at the time the IEPA issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the IEPA's reasons for its decision, information developed after the IEPA'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) (2008)), which only Logan Hollow may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Logan Hollow may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is May 12, 2010, which is the 120th day after the date on which the Board received the petition, January 8, 2010. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 6, 2010.

Unless the Board or the hearing officer orders otherwise, the IEPA must file the entire record of its determination by February 8, 2010, which is first business day following the 30th day after the Board received Logan Hollow's petition. *See* 35 Ill. Adm. Code 105.410(a). If the IEPA 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 21, 2010, by a vote of 4-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board