

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2010

GHB 630, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 10-66
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	
)	

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

On February 24, 2010, GHB 630, LLC (GHB 630) timely filed a petition asking the Board to review a January 21, 2010 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 Agency's determination concerns GHB 630's leaking underground storage tank (LUST) site at 630 North McClurg Court in Chicago, Cook County. For reasons below, the Board accepts GHB 630's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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 GHB 630's request to be included in the LUST Program. GHB 630 appeals on the grounds that the Agency did not state the basis for its conclusion that the incident is not subject to the UST Program. GHB 630's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. GHB 630 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) (2008)), which only GHB 630 may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, GHB 630 may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is June 25, 2010, which is the 120th day after the date on which the Board received the petition, February 24, 2010. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 17, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 26, 2010, which is 30 days after the Board received GHB 630'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 March 4, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board