

ILLINOIS POLLUTION CONTROL BOARD

April 15, 2010

BROADUS OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 10-48
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G. L. Blankenship):

On January 7, 2010, the Board, at the parties' request, extended until April 12, 2010, the time period within which Broadus Oil Company¹ (Broadus) may appeal a December 3, 2009 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008)²; 35 Ill. Adm. Code 105.406. On April 12, 2010, the Board received Broadus' petition for review. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Broadus' high priority corrective action plan budget regarding an underground storage tank site located at 1106 West Main Street in Streator, LaSalle County. For reasons below, the Board accepts Broadus' petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), the Agency determines whether to approve proposed cleanup plans 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. In this case, the Agency rejected Broadus' corrective action plan budget. Broadus appeals on the grounds that the requested reimbursement was "reasonably [sic], customary and necessary for the proper completion of site closure". Broadus' petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Broadus 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*,

¹ The Agency's original January 4, 2010 petition to extend the 35-day period to appeal incorrectly named the petitioner as Freedom Oil Company. The Board corrects the caption to note the correct petitioner.

² 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.

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 Broadus may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Broadus may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is August 10, 2010, which is the 120th day after the date on which the Board received the petition, April 12, 2010. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 5, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 12, 2010, which is 30 days after the Board received Broadus' 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 April 15, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board