

ILLINOIS POLLUTION CONTROL BOARD  
June 17, 2010

WHEELING/GWA AUTO SHOP, )  
)  
Petitioner, )  
)  
v. ) PCB 10-70  
) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

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

On March 18, 2010, at the parties' request, the Board extended until June 10, 2010, the time period for the Village of Wheeling (Village) to appeal a February 2, 2010 determination of the Illinois Environmental Protection Agency (Agency). On June 10, 2010, the Village timely filed a petition (Pet.) asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns the Village's leaking underground storage tank (UST) site, which is known as the "GWA Auto Shop," located at 434 South Milwaukee Avenue in Wheeling, Cook County. For the reasons below, the Board accepts the Village'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. The Agency also decides whether to approve 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 approved the Village's corrective action plan but modified the associated budget. Specifically, the Agency disapproved \$78,915.82 of the Village's budget as being ineligible for reimbursement from the UST Fund. Pet. at 3-4. The Agency stated that the disapproved costs were incurred before January 23, 2006, the date on which the Agency received the Village's election to proceed as "owner." *Id.* The Agency disapproved the costs because, according to the Agency, prior to January 23, 2006, the Village did not meet the definition of "owner" or "operator" under Section 57.2 of the Act (415 ILCS 5/57.2 (2008)). *Id.* The Village appeals on the grounds that it has been the owner of the site under Section 57.2 of the Act since August 9, 2002, and that the Agency's assertion that the Village was not the owner until January 23, 2006, is "contrary to law, and is an arbitrary and capricious interpretation of the law." *Id.* at 4. The Village's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. The Village 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 the Village may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Village may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is October 8, 2010, which is the 120th day after the date on which the Board received the petition, June 10, 2010. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 7, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 12, 2010, which is the first business day following the 30th day after the Board received the Village'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 June 17, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board