

ILLINOIS POLLUTION CONTROL BOARD
January 20, 2011

ESTATE OF GERALD D. SLIGHTOM,)	
)	
Petitioner,)	
)	
v.)	PCB 11-25
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On December 6, 2010, the Estate of Gerald D. Slightom (Slightom) filed a petition asking the Board to review an October 29, 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 Slightom’s leaking underground storage tank (UST) site located at 103 North Third Street in Girard, Macoupin County. On January 12, 2011, pursuant to the Board’s December 16, 2010 order, Slightom filed an amended petition. For the reasons below, the Board accepts Slightom’s amended petition for hearing.

On December 16, 2010, the Board accepted Slightom’s original petition as timely filed under 35 Ill. Adm. Code 105.404. However, the Board found the petition deficient because it did not include a statement specifying the service date of the Agency’s determination. *See* 35 Ill. Adm. Code 105.408(b). The Board noted that, based on the October 29, 2010 date of the Agency’s determination letter, Slightom’s appeal might be untimely. The Board’s December 16, 2010 order required that Slightom cure the deficiency by filing an amended petition no later than January 17, 2011, or face dismissal.

On January 12, 2011, Slightom timely filed an amended petition, specifying the date on which the Agency’s determination was served as November 2, 2010. Because Slightom filed the original petition on December 6, 2010, within 35 days of service, the petition was timely filed, conferring jurisdiction upon the Board. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 105.404. In the October 29, 2010 determination, the Agency denied Slightom’s request for reimbursement of \$83,912.58 from the UST Fund. Slightom appeals on the grounds that the Office of the State Fire Marshal’s \$10,000 deductibility determination of 2008, rather than the Agency’s \$100,000 deductibility determination of 1991, applies to this site and, alternatively, that the Agency is estopped and barred by laches from changing legal positions upon which Slightom relied to its prejudice. Slightom’s amended petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the amended petition for hearing. Slightom 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).

The filing of an amended petition restarts the Board's decision period. *See* 35 Ill. Adm. Code 105.114(b). 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 Slightom may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Slightom may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is May 12, 2011, which is the 120th day after the date on which the Board received the amended petition, January 12, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 5, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 11, 2011, which is 30 days after the Board received Slightom's amended 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 20, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board