

ILLINOIS POLLUTION CONTROL BOARD
February 17, 2011

LAKELAND FOODS & GAS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 11-44
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On February 10, 2011, Lakeland Food & Gas, Inc. (Lakeland) timely filed a petition asking the Board to review a January 7, 2011 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 Lakeland’s leaking underground storage tank (UST) site located at 1420 Lakeland Boulevard in Mattoon, Coles County. For the reasons below, the Board accepts Lakeland’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 rejected Lakeland’s request for reimbursement from the UST Fund because Lakeland’s application included an Office of the State Fire Marshal (OSFM) “eligibility and deductibility” determination for a past owner, not for Lakeland. Lakeland appeals on the grounds that neither the Act nor the Board’s rules require an additional OSFM determination for each future owner. Lakeland’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Lakeland 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 Lakeland may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Lakeland may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is June 10, 2011, which is the 120th day after the date on which the Board received the petition, February 10, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 2, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 14, 2011, which is the first business day following the 30th day after the date on which the Board received Lakeland's petition. *See* 35 Ill. Adm. Code 101.300(a), 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 February 17, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board