

ILLINOIS POLLUTION CONTROL BOARD
April 7, 2011

DICK'S SUPER SERVICE,)	
)	
Petitioner,)	
)	
v.)	PCB 11-63
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On March 28, 2011, Dick's Super Service (Dick's) filed a petition asking the Board to review a February 17, 2011 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Dick's leaking underground storage tank (UST) site located at 500 South Locust Street, Delevan, Tazewell County. For the reasons below, the Board accepts Dick's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Dick's Corrective Action Plan Budget Amendment. Dick's appeals on the grounds that the reimbursement amounts requested were reasonable, "customary, and necessary for property completion of the project and site closure." Pet. at 2. Dick's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

A petition for review must be filed within 35 days after the date of service of the Agency's final determination. 35 Ill. Adm. Code 105.404. The Agency's final determination was made on February 17, 2011 and served on Dick's on February 23, 2011. Dick's served its petition for review on the Agency and the Board via first class mail on March 21, 2011. This is within 35 days of service of the determination and the petition is therefore timely filed.

The Board accepts the petition for hearing. Dick's 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) (2006)), which only Dick's may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dick's may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is July 26, 2011, which is the 120th day after the date on which the Board received the petition, March 28, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for July 21, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 27, 2011, which is 30 days after the Board received Dick'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 April 7, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board