

ILLINOIS POLLUTION CONTROL BOARD  
September 8, 2011

BERNIE’S WOOD RIVER GAS,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 12-42
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On August 31, 2011, Bernie’s Wood River Gas (Wood River) timely filed a petition asking the Board to review an August 3, 2011 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency’s determination concerns Wood River’s leaking underground storage tank (UST) site located 303 East Ferguson, Wood River, Madison County, and assigned LPC #1191155022. For the reasons below, the Board grants Wood River’s petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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 (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency approved half of the \$21,030.64 payment for approved site investigative work but denied the remainder on the basis that “Lust incident number 900231 [was] not eligible.” Pet. at 3.

Wood River appeals on the grounds that: 1) the application was for a plan and budget submitted for Lust incident number 2010-0682, not 900231; 2) the Agency had previously approved the sufficiency of the Office of the State Fire Marshall’s eligibility determination for the work performed and that the Agency was without regulatory authority to reject the full eligibility of costs at the payment application stage, and 3) the Agency violated Petitioner’s due process right to prior notice and opportunity to respond prior to the final, appealable determination. Wood River’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Wood River 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) (2010)), which only Wood River may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Wood River may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is December 9, 2011, which is the 120th day after the date on which the Board received the petition, August 31, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 15, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 30, 2011, which is 30 days after the Board received Wood River'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 September 8, 2011, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board