

ILLINOIS POLLUTION CONTROL BOARD  
October 20, 2011

A & H IMPLEMENT COMPANY, )  
)  
Petitioner, )  
)  
v. ) PCB 12-53  
) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

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

On October 5, 2011, A & H Implement Company (A&H) timely filed a petition asking the Board to review a September 1, 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 A&H's leaking underground storage tank (UST) site located at 202 Cumberland Road, Altamont, Effingham County. For the reasons below, the Board accepts A&H'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, new TACO regulations were issued by the Board on February 15, 2007 which modified Tier 1 soil remediation objectives. On July 20, 2009, the Agency denied A&H's revised corrective action plan (CAP) and budget that was based on the new regulations. The Agency later reversed its reasoning and held that Tier 1 soil remediation objectives were indeed affected by the new TACO regulations and that further investigation was required and should have been included in the CAP. A revised CAP and budget were submitted to the Agency on March 15, 2011, and was approved June 9, 2011. A&H appeals the Agency's denial of costs incurred in consultations and drafting of revised CAPs and budgets based on the Agency's erroneous interpretation of the applicability of the new TACO regulations. A&H's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. A&H 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 A&H may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, A&H may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is Thursday, February 2, 2012 which is the 120th day after the date on which the Board received the petition, October 5, 2011. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for February 2, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Friday, November 4, 2011, which is 30 days after the Board received A&H'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 October 20, 2011, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board