

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2012

BRIMFIELD AUTO & TRUCK,)
)
Petitioner,)
)
v.) PCB 12-134
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by T.A. Hollbrook):

On June 21, 2012, at the parties' request, the Board extended until September 4, 2012, the time period for Brimfield Auto & truck to appeal an April 30, 2012 determination of the Illinois Environmental Protection Agency (Agency). On September 4, 2012, Brimfield Auto & Truck timely filed a petition (Pet.) asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns Brimfield Auto & Truck's leaking underground storage tank (UST) site located at 408 East Knoxville Road, Brimfield, Peoria County (site). For the reasons below, the Board accepts Brimfield Auto & Truck'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 modified a site investigation plan budget for activities at the site. Brimfield Auto & Truck appeals on the grounds that the amounts requested "were reasonable, customary, and necessary for proper completion of the project and site closure. Brimfield Auto & Truck also claims that its costs "were actually and legitimately expended and performed." *Id.* Brimfield Auto & Truck's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Brimfield Auto & Truck 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 Brimfield Auto & Truck may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Brimfield Auto & Truck may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is January 2, 2013, which is the 120th day after the date on which the Board received the petition, September 4, 2012. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 20, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Thursday, October 4, 2012, which is 30 days after the Board received Brimfield Auto & Truck'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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 20, 2012 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board