

ILLINOIS POLLUTION CONTROL BOARD
May 2, 2013

TEXACO INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 13-37
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 24, 2013, at the parties' request, the Board extended until April 21, 2013, the deadline for Texaco Inc. (Texaco) to appeal a December 14, 2012 determination of the Illinois Environmental Protection Agency (Agency). On April 19, 2013, Texaco timely filed a petition 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 Texaco's leaking underground storage tank (UST) site located 329 North 25th Road (Route 251 & R. Moyle Sr. highway), LaSalle County (site). For the reasons below, the Board accepts Texaco'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 Texaco's early action budget in the amount of \$119,987.22 on the basis that those costs required additional documentation and explanation in connection with leaking UST Incident No. 20090361, LPC No. 0990855126. Texaco appeals on the grounds that it had submitted sufficient documentation for the Agency to approve these costs under the requirements of the Act.

The Board accepts the petition for hearing. Texaco 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 Texaco may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Texaco may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is August 16, 2013, which is the 120th day after the date on which the Board received the petition, April 19, 2013. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 8, 2013.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 20, 2013, which is 30 days after the Board received Texaco'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 May 2, 2013 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board