

ILLINOIS POLLUTION CONTROL BOARD
August 17, 2017

J.D. STRETT & COMPANY, INC.,)
)
 Petitioner,)
)
 v.) PCB 18-3
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On July 26, 2017, J.D. Strett & Company, Inc. (J.D. Strett) timely filed a petition asking the Board to review a June 19, 2017 determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(a)(1) (2016); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. IEPA’s determination concerns J.D. Strett’s leaking underground storage tank (UST) site located at 701 South Park in Herrin, Williamson County. For the reasons below, the Board accepts J.D. Strett’s petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), IEPA 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 IEPA 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 (2016); 35 Ill. Adm. Code 105.Subpart D. In this case, IEPA modified J.D. Strett’s corrective action plan and budget. J.D. Strett appeals on the grounds that the submitted plan and budget are complete, that additional costs allowed for investigating vapor intrusion are inadequate, and that removing other costs is not authorized by the Act or regulations. J.D. Strett’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. J.D. Strett has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before IEPA at the time IEPA issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords J.D. Strett the opportunity to challenge IEPA’s reasons for its decision, information developed after IEPA’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).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by

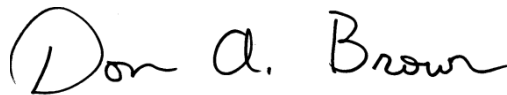
videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2016)), which only J.D. Streett may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, J.D. Streett may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2016). Currently, the decision deadline is November 27, 2017, which is the first business day following the 120th day after the date on which the Board received the petition, July 26, 2017. *See* 35 Ill. Adm. Code 101.300(a), 105.114. The Board meeting immediately before the decision deadline is scheduled for November 16, 2017.

Unless the Board or the hearing officer orders otherwise, IEPA must file the entire record of its determination by August 25, 2017, which is the 30th day after the date on which the Board received J.D. Streett's petition. *See* 35 Ill. Adm. Code 105.116(a), 105.410(a). If IEPA 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(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.410(b). In addition, IEPA must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 17, 2017, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at 312-814-3629.