

ILLINOIS POLLUTION CONTROL BOARD
May 21, 2020

M. SIDHU ENTERPRISES, INC.,)
)
 Petitioner,)
)
 v.) PCB 20-72
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On April 22, 2020, M. Sidhu Enterprises, Inc. (Sidhu Enterprises) timely filed a petition asking the Board to review a March 20, 2020 determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. IEPA's determination concerns Sidhu Enterprises' leaking underground storage tank (UST) site located at 500 South 7th Street in Cuba, Fulton County. For the reasons below, the Board accepts Sidhu Enterprises' petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), 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 (2018); 35 Ill. Adm. Code 105.Subpart D. In this case, IEPA partially denied Sidhu Enterprises' request for reimbursement from the UST Fund for costs related to early action at its site. Sidhu Enterprises appeals on the grounds that the costs were reasonable and required to perform work at the site and that it had submitted necessary documentation to IEPA. Sidhu Enterprises also argues that, if there are maximum reimbursement rates for any of this work, then an exception for unusual or emergency circumstances should apply. Sidhu Enterprises' petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Sidhu Enterprises 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 petitioner 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).

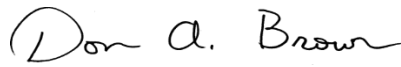
Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility 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) (2018)), which only Sidhu Enterprises may extend by waiver (*see* 35 Ill. Adm. Code 101.308). On May 12, 2020, Sidhu Enterprises filed an open waiver of the decision deadline.

Unless the Board or the hearing officer orders otherwise, IEPA must file the entire record of its determination by June 22, 2020, which is the first business day after the 30th day after the date of this order. *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 May 21, 2020, by a vote of 4-0.



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) 814-3620 or (312) 814-3461.