

ILLINOIS POLLUTION CONTROL BOARD
July 9, 2015

NORM CREVELING,)	
)	
Petitioner,)	
)	
v.)	PCB 15-169
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (D. Glosser):

On March 19, 2015 at the parties' request, the Board extended until June 19, 2015 the time period for Norm Creveling (petitioner) to appeal a February 11, 2015 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns petitioner's leaking underground storage tank (UST) site formerly located at 302 South Railroad Avenue, in Buckley, Iroquois County. On June 19, 2015, petitioner timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. For the reasons below, the Board accepts the petition for a hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), 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 (2014); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency approved the 2014 Corrective Action Plan (CAP), but denied all personnel costs sought in the 2014 CAP Budget. Petitioner appeals on the grounds that the supporting documentation and justification included in the 2014 CAP Budget demonstrate that the Consulting Personnel Costs identified in the 2014 CAP Budget were essential to completion of the minimum corrective requirements of the Act and 35 Ill. Adm. Code Part 734. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts the petition for hearing. Petitioner 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) (2014)), which only the petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is October 19, 2015, which is the first business day 120 days after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 15, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 20, 2015, which is the first business day 30 days after the Board received petitioner'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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 9, 2015 by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board