

ILLINOIS POLLUTION CONTROL BOARD
August 6, 2015

DISTRESSED PROPERTIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 15-108
)	PCB 16-32
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

ORDER OF THE BOARD (by J.A. Burke):

On July 22, 2015, Distressed Properties, Inc. (DPI) timely filed a petition asking the Board to review a June 18, 2015 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Agency's determination concerns DPI's underground storage tank (UST) site located at 15401 South Park Avenue in South Holland, Cook County. On July 24, 2015, DPI filed a motion to consolidate PCB 16-32 with PCB 15-108 (Mot.). For the reasons below, the Board accepts the petition for review and grants the motion to consolidate.

PETITION FOR REVIEW

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 partially denied DPI's request for partial reimbursement of corrective action from the UST Fund. DPI appeals on the grounds that the costs were incurred in executing an approved corrective action plan and were part of an approved budget, and therefore the costs should be reimbursed. DPI's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

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

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 21, 2015, which is 30 days after the Board received DPI'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).

MOTION TO CONSOLIDATE

On April 2, 2015, DPI timely filed a petition for review of an Agency November 26, 2014 decision. The Board docketed the petition as PCB 15-108, and accepted that petition for hearing on April 16, 2015. DPI now moves to consolidate this petition for review with PCB 15-108. DPI states that the Agency's June 18, 2015 determination "grew out of additional discussion of costs denied by the Agency" in its November 26, 2014 determination. Mot. at 1. DPI further states that, "in an effort to resolve differences, DPI submitted additional information to the Agency following the November 2014 denial." *Id.* On June 18, 2015, the Agency issued its additional decision "approving payment of some, but not all, of the costs at issue." *Id.* at 1-2.

The Board's procedural rules allow for consolidating proceedings. Section 101.406 of those rules provides:

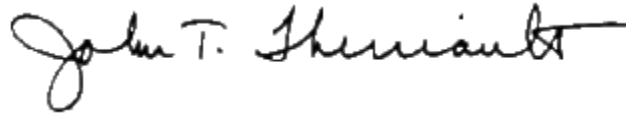
The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

The parties in both appeals are the same, and both appeals arise from Agency decisions on the same application for reimbursement. Mot. at 2. The issues presented differ only in the specific amount approved. *Id.* The Board finds that consolidating the UST appeals for purposes of hearing is in the interest of convenient, expeditious, and complete determination of the claims. The Board also finds that consolidation will not cause material prejudice to either party, and therefore grants DPI's motion to consolidate PCB 16-32 with PCB 15-108 for hearing and decision. Future filings must reflect the amended caption of this order.

DPI states in its motion that, if the two appeals are consolidated, DPI “will ensure that the decision deadlines in each case are extended together.” Mot. at 2. The decision deadline in this appeal is currently November 19, 2015, and the decision deadline in PCB 15-108 is currently February 5, 2016.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 6, 2015, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board