

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2016

FRIENDS OF THE ENVIRONMENT, NFP,)
)
Petitioner,)
)
v.) PCB 16-102
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.M. Keenan):

Friends of the Environment, NFP (petitioner) owned or operated two underground storage tanks (USTs) located at 3609–3623 West Harrison Street, Chicago, Cook County. The tanks began to leak and were removed. Pet. at 1-2. The Office of the Illinois State Fire Marshal deemed the removal eligible for reimbursement from the state’s UST fund. Friends of the Environment requested reimbursement for its cleanup costs, but the Illinois Environmental Protection Agency (Agency) prepared a voucher for less than the full amount requested. Exh. A to Pet. On April 5, 2016, Friends of the Environment petitioned the Board for review of the Agency’s decision. See 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. The Board will accept the petition for hearing.

Under the Environmental Protection Act, the Agency decides whether to reimburse UST cleanup costs from the state’s UST fund. 415 ILCS 5 (2014). The UST fund contains money received from UST fees and motor fuel taxes. If the Agency modifies a reimbursement request, the tank owner or operator may appeal the decision to the Board. 415 ILCS 5/40(a)(1), 57–57.17 (2014); 35 Ill. Adm. Code 105.Subpart D. Friends of the Environment argues that the Agency’s decision was arbitrary, capricious, and not supported by statutory or regulatory authority. Pet. at 7. The petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Friends of the Environment has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time of its determination. 35 Ill. Adm. Code 105.412. At hearing, the petitioner may challenge the reasons for the Agency’s decision, but the Board typically does not consider information developed after the Agency’s decision. 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. 415 ILCS 5/40(a)(2) (2014). Only the petitioner may extend the deadline.

35 Ill. Adm. Code 101.308. If the Board fails to take final action by the deadline, Friends of the Environment may deem its request granted. 415 ILCS 5/40(a)(2) (2014). Currently, the deadline is August 3, 2016—120 days after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the deadline is scheduled for July 21, 2016.

Unless the Board or the hearing officer orders otherwise, the Agency must file the record of its determination by May 5, 2016—30 days after the Board received the petition. 35 Ill. Adm. Code 105.410(a). If the Agency would like additional time, it must request an extension before May 5, 2016. *See* 35 Ill. Adm. Code 105.116. The record must comply with the Board's content requirements. 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 April 21, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board