

ILLINOIS POLLUTION CONTROL BOARD  
August 13, 2020

JAMES COVELLO, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 21-4  
 ) (Permit Appeal - PWSO)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

On July 22, 2020, the Board received from James Covello material that the Board construes as a petition for review (Pet.) under the Public Water Supply Operations Act (PWSO Act) (415 ILCS 45 (2018)). The petition does not include the final appealable decision of the Illinois Environmental Protection Agency (IEPA). Further, the Board lacks jurisdiction to review a 2018 decision included in the materials.

Under PWSO Act, community water supplies must employ on their operational staff at least one certified water supply operator. All portions of a community water supply must be supervised by a certified operator. 415 ILCS 45/1 (2018); *see* 35 Ill. Adm. Code 681.215(a), (b).

IEPA conducts examinations to qualify applicants for certification as water supply operators. 415 ILCS 45/10 (2018); *see* 35 Ill. Adm. Code 681.300, 681.500. IEPA issues certifications for a three-year period, and operators may renew their certification. 415 ILCS 45/18 (2018); *see* 35 Ill. Adm. Code 681.800. To renew, operators must obtain a specified number of hours of training. 415 ILCS 45/18(c) (2018); *see* 35 Ill. Adm. Code 681.815. An operator whose certification has been expired for less than two years may restore certification by paying the required fee and completing the required training. An operator whose certification has been expired for more than two years “may reapply for certification as a water supply operator.” 415 ILCS 45/18(d).

The PWSO Act establishes a water supply operators’ Advisory Board. Its duties include assisting with Illinois Environmental Protection Agency (IEPA) policies and programs and providing IEPA with technical advice and assistance. 415 ILCS 45/11 (2018).

IEPA’s rules provide that “[a]ny water supply operator who disagrees with the Agency's decision regarding renewal or restoration may seek review of the Agency's decision, as provided in Section 681.515.” 35 Ill. Adm. Code 681.850.

Section 681.515 first provides the applicant “may request that the application be presented to the Advisory Board for its review and recommendation.” 35 Ill. Adm. Code

681.515(a). The applicant must make this request “within 35 days after the date the Agency issued its determination”. *Id.* The Advisory Board then determines “if the applicant meets the requirements of this Part.” 35 Ill. Adm. Code 681.515(b). Next, the Advisory Board makes “a recommendation to the Agency for reconsideration or confirmation of the Agency's determination.” *Id.* The Agency considers the recommendation and notifies the applicant in writing of the Agency's final decision within 45 days after it receives the recommendation. 35 Ill. Adm. Code 681.515(c). The applicant may appeal the Agency’s final decision to the Board under Section 12 of the PWSO Act. *Id.*; *see* 415 ILCS 45/12 (2018).

Section 12 of the PWSO Act provides that

- (a) The Pollution Control Board shall, upon the sworn written request of the applicant or certificate holder, conduct hearings or proceedings for the Agency's refusal to issue, suspension, revocation, or denied renewal of certificates of individuals applying for or holding certification under the provisions of this Act.
- (b) Hearings shall be conducted under Rules and Regulations adopted by the Pollution Control Board outlining the procedures to be followed in conducting a hearing. 415 ILCS 45/12 (2018).

Part 105 of the Board’s procedural rules governs the appeal of final decisions of state agencies. *See* 35 Ill. Adm. Code 105.200. “If the Agency’s final decision is to deny or to conditionally grant or approve, the person who applied for or otherwise requested the Agency decision . . . may petition the Board for review of the Agency’s final decision.” 35 Ill. Adm. Code 105.204(f). Among other requirements, the petition must include “[t]he Agency’s final decision.” 35 Ill. Adm. Code 105.210(a).

The material submitted to the Board by Mr. Covello includes a May 31, 2018 letter from Wayne Nelson, the Chair of the Illinois Water Supply Operators’ Advisory Board, to Andrea Rhodes of IEPA. Pet. at 2. The letter addresses Mr. Covello’s “request for an extension to obtain his training hours for his July 1, 2013 to June 30, 2016 renewal period after his two-year grace period ends June 30, 2018.” *Id.* The Board determined with a 4-0 vote not to extend the June 30, 2018 deadline. *Id.* The letter indicates that IEPA received it on June 4, 2018 (*id.*), and Mr. Covello states that he received it “on or about June 6, 2018” (*id.* at 1). *Id.* While this appears to be the recommendation on which IEPA would issue its final decision (35 Ill. Adm. Code 681.515(c)), it is not a final IEPA decision appealable to the Board. The petition does not satisfy the petition content requirements. *See* 35 Ill. Adm. Code 105.210(a).

However, an additional issue appears. The Board’s procedural rules provide that, “if a person who may petition the Board under Section 105.204 wishes to appeal the Agency’s final decision, the person must file the petition with the Clerk within 35 days after the date of service of the Agency’s final decision.” 35 Ill. Adm. Code 105.206(a). IEPA’s own rules required it to act on the Advisory Board’s recommendation regarding Mr. Covello within 45 days after receiving it on June 4, 2018, by July 19, 2018. *See* 35 Ill. Adm. Code 681.515(c). If Mr. Covello wished to appeal any final IEPA decision to the Board, the petition indicates that the 35-

day deadline to do so passed no later than August 23, 2018 - nearly two years ago. *See* 35 Ill. Adm. Code 105.206(a).

The petition does not include the appealable final IEPA decision. Further, the Board lacks jurisdiction to review a 2018 decision, and it declines to accept the petition. *See* 35 Ill. Adm. Code 105.108(a), (b) (Dismissal of Petition).

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 13, 2020, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown".

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Don A. Brown, Clerk  
Illinois Pollution Control Board