

ILLINOIS POLLUTION CONTROL BOARD

July 10, 2008

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 08-103
)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On June 27, 2008, KCBX Terminals Company (KCBX) timely filed a petition asking the Board to review a May 23, 2008 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 100.300(b), 105.206(a). The Agency's determination concerns a joint construction and operating permit application made by KCBX for two conveyors at the company's bulk material terminal. The facility is located at 3259 East 100th Street, Chicago, Cook County. Additionally, on June 27, 2008, KCBX filed a motion to stay the effectiveness of the contested permit conditions. For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion for stay.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Agency is the permitting authority, responsible for administering Illinois' regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency granted with conditions the construction permit but denied the operating permit. KCBX appeals on the grounds that the Agency incorrectly denied the operating permit and included conditions in the construction permit that are not required by the Act or regulations, and are not necessary to correct, detect, or prevent noncompliance with, or to otherwise accomplish the purposes of the Act or regulations. KCBX's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. KCBX has the burden of proof. *See* 415 ILCS 5/40(a)(1) (2006)); *see also* 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 permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, 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) (2006)), which only KCBX may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, KCBX may deem the requested permit issued. *See* 415 ILCS 5/40(a)(2)(2006). Currently, the decision deadline is October 27, 2008, which is the first business day following the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 101.300(a), 105.114. The Board meeting immediately before the decision deadline is scheduled for October 16, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 28, 2008, which is the first business day following the 30th day after the Board received KCBX's petition. *See* 35 Ill. Adm. Code 101.300(a), 105.212(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 105.212(b).

Accompanying KCBX's petition for review is a motion to stay the effectiveness of contested construction permit conditions. The Board reserves ruling on the motion for stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 10, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board