

ILLINOIS POLLUTION CONTROL BOARD
January 21, 2010

VEOLIA ES TECHNICAL SOLUTIONS,)
L.L.C.)
)
Petitioner,)
) PCB 10-50
v.) (Permit Appeal - RCRA)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

On January 5, 2010, Veolia ES Technical Solutions, L.L.C. (Veolia) timely filed a petition asking the Board to review a December 2, 2009 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.206. The Agency renewed a permit issued under Part B of the Resource Conservation and Recovery Act (RCRA Part B permit) for Veolia's waste management facility involved in the storage, treatment, and incineration of hazardous waste and located at 7 Mobile Avenue in Sauget, Madison County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2008)), 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 5/4, 5, 40(a)(1) (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency issued a renewal RCRA Part B permit subject to conditions for Veolia's St. Clair County facility. Veolia's petition for review (Pet.) challenges the grant of its renewal RCRA Part B permit "in its entirety", and appeals the Agency denial of the specific permit as requested in Veolia's application filed over a 12 year period. Pet. at 2.. More specifically, Veolia appeals 15 specified portions of the permit for various reasons (Pet. at 2-10), including that a) various findings of fact and conclusions of law are "erroneous", b) the Agency "abused its discretion" by "arbitrarily or capriciously" including and excluding conditions, and c) the permit "raises numerous important policy considerations which the Board in its discretion should review. Pet. at 10-11.

Veolia's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing. Veolia has the burden of proof. 415 ILCS 5/40(a)(1) (2008); *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. 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) (2008)), which only Veolia may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Veolia “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2008)].” 415 ILCS 5/40(a)(3) (2008).] Currently, the decision deadline is May 5, 2010, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 15, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 4, 2010, which is 30 days after the Board received Veolia’s petition. *See* 35 Ill. Adm. Code 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).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 21, 2010, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board