

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2010

CITY OF JOLIET,)	
)	
Petitioner,)	
)	
v.)	PCB 11-8
)	(Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

On August 24, 2010, the City of Joliet (Joliet) timely filed a petition asking the Board to review a July 30, 2010 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 determination concerns Joliet's East, West, and Aux Sable wastewater treatment plants located in Joliet, Illinois. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (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, on March 2, 2010, the Agency issued Joliet a Sewage Sludge Permit (Sludge Permit) with conditions for Joliet's three wastewater treatment plants. The Agency issued the Sludge Permit based on a finding issued by the Illinois Emergency Management Agency (IEMA), granting Joliet a temporary exemption from the licensing requirements of the Radiation Protection Act. *See* 420 ILCS 40 (2008); 32 Ill. Adm. Code 330. The Sludge Permit allows Joliet to apply land sludge where the sludge radium concentration is less than or equal to 75 pCi/g and where the soil radium concentration does not increase by greater than 0.4 pCi/g.

On April 21, 2010, Joliet requested that the Agency modify the Sludge Permit to remove the maximum sludge radium concentration of 75 pCi/g and allow a soil radium concentration of 1.0 pCi/g rather than the 0.4 pCi/g granted by the Agency. On July 30, 2010, the Agency denied Joliet's request to modify the Sludge Permit. Joliet now appeals the Agency's denial on the grounds that the Agency and IEMA issued the limitations provided in the permit without providing Joliet fair notice or the opportunity to participate in the process, and the limitations provided by the Agency and IEMA are not substantiated by law or science. Joliet's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Joliet 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. *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) (2008)), which only Joliet may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Joliet "may deem the permit issued." 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is December 22, 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 December 16, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 23, 2010, which is 30 days after the Board received Joliet'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 September 2, 2010, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board