

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2012

ROCK RIVER WATER RECLAMATION)
DISTRICT,)
)
Petitioner,)
)
v.) PCB 13-11
) (Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by T. A. Holbrook):

On August 31, 2012, Rock River Water Reclamation District (RRWRD) timely filed a petition (Pet.) asking the Board to review an August 1, 2012 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns RRWRD’s wastewater treatment plant at 3501 Kishwaukee Street, Rockford, Winnebago County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2010)), 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) (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied RRWRD’s application for a construction and operating permit regarding a proposed excess flow basin at RRWRD’s facility. Pet., Exh B (Agency letter). RRWRD appeals on the grounds that the application “clearly shows that water pollution will not occur” as result of the proposed basin. Pet. at 3. RRWRD further claims that “all applicable regulatory requirements will be met” because the proposed basin is not equivalent to or subject to the design standards of a waste stabilization pond or an aerated lagoon, as the Agency’s denial suggests. *Id.* RRWRD’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. RRWRD has the burden of proof. 415 ILCS 5/40(a)(1) (2010); *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) (2010)), which only RRWRD may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, RRWRD “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is December 29, 2012, 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 20, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 30, 2012, which is 30 days after the Board received RRWRD’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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2012 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board