

ILLINOIS POLLUTION CONTROL BOARD
March 6, 2014

METROPOLITAN WATER)
RECLAMATION DISTRICT OF GREATER)
CHICAGO(O'Brien WRP) ,)
)
Petitioner,)
)
v.) PCB 14-104
) (Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. A. Burke):

On February 6, 2014, at the parties' request, the Board extended until March 3, 2014, the time period for Metropolitan Water Reclamation District of Greater Chicago (District) to appeal a December 23, 2013 determination of the Illinois Environmental Protection Agency (Agency), which was served upon the District on December 27, 2013. The determination concerns the District's Terrence J. O'Brien Water Reclamation Plant at 3500 West Howard Street, Skokie, Cook County. On March 3, 2014, the District timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206, 105.208. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2012)) (Act), 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) (2012); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency granted a National Pollutant Discharge Elimination Program permit, with conditions relating to daily grab sampling for fecal coliform and continuous monitoring of dissolved oxygen, for the District's Cook County facility. The District appeals on the grounds that the conditions are not necessary to accomplish the purposes of the Act or the Board's regulations. The District's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. The District has the burden of proof. 415 ILCS 5/40(a)(1) (2012); *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) (2012)), which only the District may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the District “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act (415 ILCS 5/41(d) (2012)).” 415 ILCS 5/40(a)(3) (2012). Currently, the decision deadline is July 1, 2014, 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 June 19, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 2, 2014, which is 30 days after the Board received the District’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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2014 by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board