

ILLINOIS POLLUTION CONTROL BOARD
June 18, 2015

KINCAID GENERATION, L.L.C.,)
)
 Petitioner,)
)
 v.) PCB 15-203
) (Permit Appeal - Water, NPDES)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On June 5, 2015 Kincaid Generation L.L.C. (Kincaid) timely filed a petition asking the Board to review an April 30, 2015 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Kincaid’s coal-fired steam electric generating plant located 4 miles west of Kincaid on Route 104 in Kincaid, Christian County. Additionally, on June 5, 2015, Kincaid 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 (2014)), 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) (2014); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency issued Kincaid a National Pollutant Discharge Elimination System (NPDES) permit regarding Kincaid’s Christian County facility. Petitioner appeals on the grounds that conditions are not necessary to accomplish the purpose of the Act and are arbitrary and capricious. Kincaid’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Kincaid has the burden of proof. 415 ILCS 5/40(a)(1) (2014); *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) (2014)), which only Kincaid may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Kincaid may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is October 3, 2015, 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 October 1, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 6, 2015, which is the first business day after 30 days after the Board received Kincaid'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).

Accompanying Kincaid's petition for review is a motion to stay the effectiveness of contested 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 T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 18, 2015 by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board