

ILLINOIS POLLUTION CONTROL BOARD
July 23, 2015

WABASH VALLEY POWER ASSOCIATION,)	
)	
)	
Petitioner,)	
)	
v.)	PCB 16-011
)	(CAAPP Permit Appeal - Air)
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On July 15, 2015, Wabash Valley Power Association (petitioner) timely filed a petition asking the Board to review a June 12, 2015, determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2014); 35 Ill. Adm. Code 101.300(b), 105.302(e). The Agency's determination concerns petitioner's landfill gas to energy facility located at 9560 Heritage Road in Clinton, DeWitt County. For the reasons below, the Board accepts petitioner's petition for hearing.

Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2014)) sets forth the Clean Air Act Permit Program (CAAPP), reflecting the requirements of Title V of the federal Clean Air Act Amendments of 1990 (42 U.S.C. §§ 7661-7661f). Generally, a CAAPP permit is designed to be a single, comprehensive document of all air pollution obligations that apply to a facility. The Agency decides whether to approve CAAPP permit applications, and Agency decisions may be appealed to the Board by, among others, the permit applicant and persons who participated in the Agency's public comment process. *See* 415 ILCS 5/40.2(a) (2014); 35 Ill. Adm. Code 105.SubpartC. In this case, the Agency granted a CAAPP permit for petitioner's DeWitt County facility.

Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (2014)) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency's public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2014)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2014)). *See* 415 ILCS 5/40.2(a) (2014); 35 Ill. Adm. Code 105.302(c). Petitioner is the CAAPP permit applicant. Petitioner appeals the Agency's decision to impose the following conditions: Section 1, Condition 1.3.b.i.B. and 1.3.b.ii.C.II.; Section 3, Condition 3.2.; Section 4, Condition 4.1., 4.1.2.a.ii, Testing, A.I. and II., 4.2.2.b.ii.B.II.2., 4.2.4.a.ii.C.IV. through VII, and 4.2.4.a.ii.E.III.2 through 4. Petitioner argues that the CAAP permit conditions are arbitrary, capricious and unreasonable.

The Board accepts the petition for hearing. Petitioner has the burden of proof. *See* 415 ILCS 5/40.2(a) (2014); 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 petitioner the opportunity to challenge the Agency's reasons for its decision, 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 5/40.2(c) (2014)), which only the petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, "the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2014)]." 415 ILCS 5/40.2(c) (2014). Currently, the decision deadline is November 12, 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 November 5, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. *See* 35 Ill. Adm. Code 105.302(f). 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 105.302(f).

Accompanying petitioner'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 July 23, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board