

ILLINOIS POLLUTION CONTROL BOARD
November 19, 2015

ILLINOIS POWER GENERATING)
COMPANY (NEWTON POWER STATION),)
)
Petitioner,)
)
v.) PCB 16-60
) (Permit Appeal - Water)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J.D. O’Leary):

On November 5, 2015, Illinois Power Generating Company (petitioner) filed a petition (Pet.) asking the Board to review a September 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. In that determination, the Agency issued a National Pollutant Discharge Elimination System (NPDES) permit with conditions for petitioner’s coal-fired electric generating plant located at 6725 500th Street in Newton, Jasper County. The petitioner states that it received a copy of the permit on October 15, 2015. Pet. at 1. The petition includes a motion requesting that the Board stay the effectiveness of contested permit conditions. Pet. at 5-8. For the reasons below, the Board accepts the petition for review but reserves ruling on the motion for partial 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 petitioner appeals on the grounds that specified conditions are not necessary to accomplish the purpose of the Act and are arbitrary and capricious. The petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Petitioner 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 it 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 (3d Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (415 ILCS 5/40(a)(2) (2014)), which only petitioner may extend by waiver. 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, petitioner may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is March 4, 2016, which is 120 days after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for March 3, 2016.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Monday, December 7, 2015, which is the first business day after 30 days from the filing of the 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 petitioner's petition for review is a motion requesting that that the Board stay the effectiveness of contested permit conditions. The Board reserves ruling on the motion for partial stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 19, 2015, by a vote of 5 to 0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board