

ILLINOIS POLLUTION CONTROL BOARD

October 7, 2004

ROCK ROAD COMPANIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 05-54
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On September 16, 2004, Rock Road Companies, Inc. (Rock Road Companies) timely filed a petition asking the Board to review a August 5, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(a). Because the postmark date of the joint request is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency granted a construction permit, with conditions, for alternative firing of Rock Road Companies' asphalt plant at 801 Beale Court, Rockford, Winnebago County.

Rock Road Companies appeals six conditions of the permit on the grounds that (1) the combustion unit is exempt from 35 Ill. Adm. Code 215.301, as incorrectly applied in condition 4; (2) the prohibition against burning oil and waste oil, as provided in condition 7b, is internally inconsistent and arbitrarily contradictory of the purpose of the permit; (3) condition 9a imposes AP-42 Emission Factors for various pollutants as unattainable emissions limits without support of law or regulations; (4) condition 10 imposes an arbitrary and unreasonable hardship by prescribing notice requirements, tests, and testing procedures that are not feasible given time constraints involved with a construction permit; (5) to the extent that condition 13 characterizes the emission factors of condition 9a as emission limitations, it does so without a proper basis in law or regulation; and (6) condition 14 may prohibit issuance of an operating permit if the equipment has not been demonstrated to operate in accordance with the conditions of the construction permit. Rock Road Companies' petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

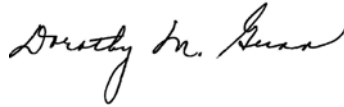
Rock Road Companies has the burden of proof. 415 ILCS 5/40(a)(1) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Rock Road Companies may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Rock Road Companies "shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2002)]." 415 ILCS 5/40.2(c) (2002). Currently, the decision deadline is

January 14, 2005 (the 120th day after September 16, 2004). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for January 6, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 16, 2004, which is 30 days after Rock Road Companies filed the petition. 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. 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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 7, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board