

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2007

AMERICAN BOTTOM CONSERVANCY,)
)
 Petitioner,)
)
 v.) PCB 06-171
) (Third Party NPDES Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY and UNITED)
 STATES STEEL CORPORATION -)
 GRANITE CITY WORKS,)
)
 Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

On January 27, 2007, the Board issued a final opinion and order concerning the petition filed on May 8, 2006, by American Bottom Conservancy (American Bottom). American Bottom timely filed a petition contesting the March 31, 2006 issuance of a National Pollutant Discharge Elimination System (NPDES) permit by the Illinois Environmental Protection Agency (Agency) to the United States Steel Corporation Granite City Works (U.S. Steel) for its steelmaking facility at 20th and State Streets in Granite City, Madison County.

The sole issue properly raised on appeal was American Bottom's assertion that the Agency improperly denied American Bottom's request for a public hearing prior to issuing the permit, since the record before the Agency demonstrated the existence of "a significant degree of public interest in the proposed permit," within the meaning of Section 309.115(a)(1) of the Board's rules for NPDES permit issuance (35 Ill. Adm. Code 309.115(a)(1)). The Board found that American Bottom had demonstrated that the Agency improperly denied the permit, noting that the rule provides in pertinent part that "instances of doubt shall be resolved in favor of holding the hearing." The Board invalidated the permit.

On February 22, 2007, U.S. Steel filed a motion to reconsider, to which American Bottom filed a response in opposition on March 8, 2007. On March 9, 2007, U.S. Steel filed an amended motion (Am. Mot), which by its terms withdrew the prior motion. Am. Mot. at 1 n.1. U.S. Steel alleged that the Board had improperly applied prior law, had applied an incorrect standard of review to the Agency decision, and that in any case the Board should allow U.S. Steel to operate under the terms of the March 2006 permit pending the "outcome of the issue related to the public hearing." *Id.* at 2-3. On March 12, 2007, the Agency filed its own motion to reconsider, also alleging that the standard of review applied to its decision was incorrect. American Bottom filed its response in opposition on March 22, 2007.

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm.

Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board observed that “the intended purpose of a motion for reconsideration is to bring to the court’s attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court’s previous application of the existing law.” Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

The motions filed by respondents do not present new evidence, a change in the law, or errors in the application of existing law that would indicate that the Board’s decision was in error. Indeed, the Board notes that a recent decision of the Illinois Supreme Court discusses, in another context, the appropriateness of the standard of review used by the Board. *See Town & Country Utilities, Inc., et al. v. PCB, et al.*, Nos. 101619, 101652, slip op. at 13 (Ill. Mar. 22, 2007) (discussing the Court’s decision in IEPA v. PCB, 115 Ill. 2d 65, 70 (1986), in which the Court found that the Board was not required to apply the manifest weight of the evidence standard to review of an Agency decision to deny a permit because of the “lack of an adversarial hearing under the regular permitting process.”) Respondents’ motions to reconsider are denied.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board