

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 2007

LINDENHURST SANITARY DISTRICT	)	
(NPDES Permit No. IL0020796),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 08-21
	)	(NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On August 31, 2007, Lindenhurst Sanitary District (petitioner) timely filed a petition asking the Board to review a July 26, 2007 determination of the Illinois Environmental Protection Agency (Agency). The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.208(a). The determination concerns a National Pollutant Discharge Elimination System (NPDES) permit for petitioner's sewage treatment plant at Grass Lake Road, Lindenhurst, Lake County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency granted NPDES permit No. IL0020796, subject to conditions, regarding petitioner's Lake County facility. Petitioner appeals on the grounds that a dissolved oxygen (DO) effluent limitation in the permit will increase user costs without providing any clear benefit for the stream receiving the discharge; a three-year DO compliance period is more reasonable than the two-year period set forth in the permit; and the permit allows for a possibly more stringent DO limit, but not a less stringent one, based upon changes to the current DO general use water quality standard that may be adopted by the Board in pending rulemaking docket R04-25, In the Matter of: Proposed Amendments to Dissolved Oxygen Standard 35 Ill. Adm. Code 302.206. Petitioner's 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) (2006); *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) (2006)), which only petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2006)].” 415 ILCS 5/40(a)(3) (2006). Currently, the decision deadline is December 31, 2007, which is the first business day following 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 December 20, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October, 1 2007, which is the first business day following the 30th day after the Board received petitioner’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).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2007, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board