

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2008

CITY OF JOLIET,)
)
Petitioner,)
)
v.) PCB 09-25
) (Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On October 17, 2008, the City of Joliet (City) timely filed a petition asking the Board to review a September 12, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.206(a). The determination concerns a permit addressing the City's application of sewage sludge from its wastewater treatment operations to agricultural lands. 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 B. In this case, the Agency denied the City's requested permit modification concerning permissible increased radium levels in soil from sludge application. The City asserts that there is no basis in law or fact to support the inclusion of the condition it sought to modify. The City's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. The City has the burden of proof. *See* 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 the City may extend by waiver

(see 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the City “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is February 16, 2009, which is the 120th day after the Board received the petition. The Board meeting immediately before the decision deadline is scheduled for February 5, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 17, 2008, which is the first business day following the 30th day after the date on which the Board received the City’s petition. See 35 Ill. Adm. Code 101.300(a), 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 November 5, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board