

ILLINOIS POLLUTION CONTROL BOARD

May 7, 2009

HOLLAND ENERGY, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 09-96
)	(CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On April 24, 2009, Holland Energy, LLC (Holland) timely filed a petition (Pet.) asking the Board to review a March 20, 2009 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.302(e). The Agency approved with conditions Holland's Clean Air Act Permit Program (CAAPP) permit renewal application under Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2006)). The CAAPP permit application concerns Holland's natural gas-fired power plant facility located at Rural Route 2, 270-A, Beecher City, Shelby County. Pet. at 1. For the reasons below, the Board accepts Holland's petition for hearing.

Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2006)) sets forth the Clean Air Act Permit Program (CAAPP), reflecting the requirements of Title V of the federal Clean Air Act Amendments of 1990 (42 U.S.C. §§ 7661-7661f). Generally, a CAAPP permit is designed to be a single, comprehensive document of all air pollution obligations that apply to a facility. The Agency decides whether to approve CAAPP permit applications, and Agency decisions may be appealed to the Board. *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.Subpart C. In this case, the Agency granted a renewal of Holland's existing CAAPP permit, subject to conditions. Holland appeals the language and substance of many of these conditions. Pet. at 1, Exhibit A. Holland further acknowledges that the renewal permit is stayed as of the filing of its petition, and that the prior permit remains in effect until the Board rules on the merits of the petition or Holland voluntarily dismisses the petition. *Id.*

Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (2006)) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency's public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2000)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2006)). 415 ILCS 5/40.2(a) (2006); *see also* 35 Ill. Adm. Code 105.302(c). Holland is the CAAPP permit applicant. Holland appeals on several grounds including that: (1) the facts and citations stated in the permit are

incorrect; (2) the permit conditions are not clear and require clarification; (3) the permit includes requirements that are not applicable to Holland's facility; and (4) certain insignificant activities are designated as significant activities. Pet. at 3.

The Board accepts the petition for hearing. Holland has the burden of proof. 415 ILCS 5/40.2(a) (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. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, 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 5/40.2(c) (2006)), which only Holland may extend by waiver (*see* 35 Ill. Adm. Code 101.308). Along with its petition, Holland filed an Open Waiver of Statutory Decision Deadlines (Waiver), thereby "completely and unequivocally [waiving the decision deadline] until [Holland] elects to reinstate the 120-day decision period by filing with the Board a notice to reinstate." Waiver at 1; *see also* 35 Ill. Adm. Code 101.308(c)(1). If, after reinstatement by Holland, the Board fails to take final action by the decision deadline, "the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act." 415 ILCS 5/40.2(c) (2006).

Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. 35 Ill. Adm. Code 105.302(f). 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 105.302(f).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 7, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board