

ILLINOIS POLLUTION CONTROL BOARD
November 19, 2009

EXXONMOBIL OIL CORPORATION,)
)
Petitioner,)
)
v.) PCB 10-30
) (NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On November 6, 2009, Exxonmobil Oil Corporation (Exxon) timely filed a petition (Pet.) asking the Board to review a September 30, 2009 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) (2008); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Exxon's petroleum refinery located at I-55 and Arsenal Road in Channahon Township, Will County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency issued a National Pollutant Discharge Elimination System (NPDES) Permit, No. IL0002861, for Exxon's petroleum refinery in Will County. Exxon appeals on the grounds that the Agency improperly limited the concentration of ammonia nitrogen (NH₃-N) at Outfall 001 to 3.0 mg/L at all times, rather than only when the total discharge exceeds 100 lbs/day as specified in Section 304.122(b) of the Board's regulations (35 Ill. Adm. Code 304.122(b)). Pet. at 5. According to the petition, this requirement is not authorized by regulation or supported by the record and thus, is improper. *Id.* Exxon's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

On November 6, 2009, Exxon also filed a motion (Mot.) to stay the effectiveness of the contested permit condition. Exxon challenges the inclusion of the contested condition and asks the Board to stay its effectiveness until ultimately ruling on the merits. Mot. at 4. To date, the Board has not received a response from the Agency regarding Exxon's request for stay. The Board today reserves ruling on stay issues until the Agency has filed a response or the response time has elapsed. 35 Ill. Adm. Cod 101.500(d).

The Board accepts the petition for hearing. Exxon has the burden of proof. 415 ILCS 5/40(a)(1) (2008); *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) (2008)), which only Exxon may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Exxon "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2008)]." 415 ILCS 5/40(a)(3) (2008). Currently, the decision deadline is March 6, 2010, which is 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 March 4, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by December 6, 2009, which is 30 days after the Board received Exxon'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.

C.K. Zalewski abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 19, 2009, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board