

ILLINOIS POLLUTION CONTROL BOARD  
June 17, 2010

AMERICAN LOUVER COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 10-99
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On May 21, 2010, American Louver Company (ALC) timely filed a petition (Pet.) asking the Board to review an April 15, 2010 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns ALC’s manufacturing facility located at 7700 Austin Avenue in Skokie, Cook 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. Further, Section 201.158 of the Board’s air pollution regulations (35 Ill. Adm. Code 201.158) provides that “[t]he applicant may treat the Agency’s notification that an application is incomplete as a denial of the application for purposes of review.”

In this case, the Agency issued to ALC a “Notice of Incompleteness” of construction permit application (Application No. 09110020). Pet. at 1, 3. The Agency’s determination letter is dated April 15, 2010, and was received by ALC on April 26, 2010. *Id.* at 3. ALC appeals on the grounds that the equipment in question is exempt from State permit requirements and that the Agency has waived the requirement for tests. *Id.* at 4-7. ALC’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. ALC 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 ALC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, ALC “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2008). With its petition for review, ALC filed an open waiver of the decision deadline.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 21, 2010, which is the first business day following 30 days after the Board received ALC’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 June 17, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board