

ILLINOIS POLLUTION CONTROL BOARD
February 17, 2011

KCBX TERMINALS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 11-43
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On February 1, 2011, KCBX Terminals Company (KCBX) timely filed a petition asking the Board to review a December 29, 2010 permit 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. In the determination, which concerns KCBX's bulk materials terminal located at 3259 East 100th Street in Chicago, Cook County, the Agency issued to KCBX a renewed federally enforceable state operating permit (renewed FESOP). Also on February 1, 2011, KCBX filed a motion concerning a stay of the renewed FESOP. For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion.

Under the Environmental Protection Act (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 B. In this case, KCBX appeals on the grounds that the renewed FESOP includes conditions that are arbitrary and capricious, not required by the Act or regulations, and not necessary to correct, detect, or prevent noncompliance with, or to otherwise accomplish the purposes of, the Act or regulations. Further, KCBX appeals on the grounds that the Agency failed to include certain conditions in the renewed FESOP that are necessary to accurately reflect the information KCBX provided and the actual operations of the facility. Finally, KCBX contends that the renewed FESOP contains miscellaneous errors that must be corrected to accurately reflect facility operations. KCBX's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. KCBX 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 KCBX may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, KCBX may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is June 1, 2011, 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 May 19, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 3, 2011, which is 30 days after the Board received KCBX'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).

Accompanying KCBX's petition for review is a motion to confirm the automatic stay of effectiveness of the renewed FESOP or, alternatively, to grant a stay of effectiveness of the renewed FESOP. To allow the Agency's response time to run, the Board reserves ruling on KCBX's motion. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 17, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board