

ILLINOIS POLLUTION CONTROL BOARD  
November 3, 2011

CLEAN CONSTRUCTION AND	)	
RECYCLING, LLC, and G & E EIGHT	)	
SERIES, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 12-20
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T. A. Holbrook):

On August 4, 2011, at the parties' request, the Board extended until October 25, 2011, the time period for Clean Construction and Recycling, LLC and G & E Eight Series, LLC (collectively, petitioners) to appeal a June 17, 2011 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns petitioners' transfer station at 13125 North Second Street, Roscoe, Winnebago County. On October 24, 2011, petitioners timely filed a petition asking the Board to review the Agency's determination. See 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206, 105.208. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2010)), the Agency is the permitting authority and is 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) (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency imposed a certain condition on petitioners' Supplemental Permit regarding petitioners' Winnebago County facility. Petitioners appeal on the grounds that they did not consent to such a condition. Petitioners' petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Petitioners have the burden of proof. 415 ILCS 5/40(a)(1) (2010); *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) (2010)), which only Petitioners may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Petitioners “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is February 21, 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 February 16, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 23, 2011, which is 30 days after the Board received Petitioners’ 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 3, 2011, by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board