

ILLINOIS POLLUTION CONTROL BOARD  
August 23, 2012

WOOD RIVER ACQUISITIONS, LLC, and )  
HERITAGE TRANSPORT, LLC, )  
 )  
Petitioners, )  
 )  
v. ) PCB 12-128  
 ) (Permit Appeal - Land)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

On June 7, 2012, at the parties' request, the Board extended until August 19, 2012 the deadline for Wood River Acquisitions, LLC (Wood River) and Heritage Transport, LLC (Heritage) to appeal an April 12, 2012 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns Wood River and Heritage's 10-day transfer facility located at 251 North Old St. Louis Road, Wood River, Madison County. On August 16, 2012, Wood River and Heritage 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 (2010)), 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) (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency granted a permit to develop and operate a 10-day transfer facility for hazardous and non-putrescible solid waste regarding Wood River and Heritage's Madison County facility. Wood River and Heritage appeal on the grounds that the Agency relied upon 35 Ill. Adm. Code 807 as the basis to require a permit and to impose various conditions within that permit. Wood River and Heritage claim that these regulations deal with actions that Wood River and Heritage never planned on engaging in; as such, the majority of the regulatory provisions in the permit are not applicable to Wood River and Heritage's operations. Wood River and Heritage's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Wood River and Heritage 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 Wood River and Heritage may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Wood River and Heritage “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is December 14, 2012, 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 December 6, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 15, 2012, which is 30 days after the Board received Wood River and Heritage’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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 23, 2012 by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board