

ILLINOIS POLLUTION CONTROL BOARD
April 4, 2013

AKZONOBEL SURFACE CHEMISTRY)
LLC,)
)
Petitioner,)
)
v.) PCB 13-49
) (NPDES Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J.D. O’Leary):

On March 25, 2013, AkzoNobel Surface Chemistry LLC (AkzoNobel) timely filed a petition (Pet.) asking the Board to review a February 14, 2013 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206(a) (must file petition within 35 days after service of Agency determination); Pet. at 1 (AkzoNobel served with Agency determination on February 19, 2013). The Agency’s determination concerns AkzoNobel’s industrial organic chemicals manufacturing plant located at 8005 North Tabler Road in Morris, Grundy County. Within AkzoNobel’s petition is the company’s motion for partial stay of the permit, requesting that the Board “stay the effectiveness of the effluent limitation of fecal coliform at Outfall 001 and related Special Condition No. 9, during the pendency of this appeal.” Pet. at 3. For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion for stay.

Under the Environmental Protection Act (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 B. In this case, the Agency granted a National Pollutant Discharge Elimination System (NPDES) permit, subject to conditions. AkzoNobel appeals on the ground that the Agency improperly applied a water quality standard as the effluent limitation for fecal coliform. Pet. at 4-5. AkzoNobel’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. AkzoNobel has the burden of proof. *See* 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 AkzoNobel may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, AkzoNobel “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2010)].” 415 ILCS 5/40(a)(3) (2010). Currently, the decision deadline is July 23, 2013, 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 July 11, 2013.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 24, 2013, which is 30 days after the Board received AkzoNobel’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).

As noted above, within AkzoNobel’s petition for review is a motion for partial stay of the permit. The Board reserves ruling on the motion for partial stay to allow the Agency’s response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

Board Member J.A. Burke abstained.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 4, 2013, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board