## ILLINOIS POLLUTION CONTROL BOARD May 16, 2013

SPECTRUM PREFERRED MEATS, INC.,	)	
Petitioner,	)	
v.	)	PCB 13- 63
H I INOIG ENNIDONIMENTAL	)	(NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

## ORDER OF THE BOARD (by D. Glosser):

On May 8, 2013, Spectrum Preferred Meats, Inc. (Spectrum) timely filed a petition asking the Board to review an April 4, 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. The determination concerns Spectrum's pork slaughtering and processing facility located at 6194 West Pines Road, Mt. Morris, Ogle County. Additionally, on May 8, 2013, Spectrum filed a motion to stay the effectiveness of the contested permit conditions. 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 issued Spectrum a revised National Pollutant Discharge Elimination System (NPDES) permit regarding Spectrum's Ogle County facility. Spectrum appeals on the grounds that certain permit conditions of the final NPDES permit are not necessary to accomplish the purposes of the Act and Board regulations, or are otherwise arbitrary and capricious. Pet. at 1. Spectrum's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Spectrum has 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 Spectrum may extend by waiver (see 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Spectrum may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is September 5, 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 August 22, 2013.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 7, 2013, which is 30 days after the Board received Spectrum'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 III. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

Accompanying Spectrum's petition for review is a motion to stay the effectiveness of contested permit conditions. The Board reserves ruling on the motion for 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 abstains.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 16, 2013 by a vote of 4-0.

John T. Therriault, Assistant Clerk

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