ILLINOIS POLLUTION CONTROL BOARD December 5, 2013

WILL SCARLET PROPERTIES, L.L.C.,)	
)	
Petitioner,)	
)	
V.)	PCB 14-25
)	(Permit Appeal - NPDES)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser)¹:

On September 24, 2013, the parties timely filed a joint notice to extend the 35-day period within which the Will Scarlet Properties, L.L.C. (petitioner) may appeal an August 19, 2013 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206(c), 105.208(a), (c). On October 17, 2013, the Board extended until November 25, 2013, the time period for petitioner to appeal the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2012);); 35 Ill. Adm. Code 105.406. On November 25, 2013, petitioner timely filed a petition for review. *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns petitioner's facility, Old Will Scarlet Mine located in Saline and Williamson Counties. On November 25, 2013, petitioner also moved to stay the effectiveness of the challenged conditions in the permit during the pendency of this proceeding. Pet. at 5-6, citing 5 ILCS 100/10-65 (2012) (Illinois Administrative Procedure Act). 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 (2012)), 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) (2012); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency issued the petitioner a renewed NPDES Permit No. IL0064068 regarding petitioner's Old Will Scarlet Mine. Petitioner appeals on the grounds that specific limits for manganese and sulfates are unnecessary and arbitrary. Petitioner also appeals the lack of a schedule of compliance that identifies a timeframe and specific milestones that petitioner should follow to bring the discharges into compliance. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

¹ Chad Kruse, who worked for the Illinois Environmental Protection Agency prior to joining the Board as an attorney assistant on March 19, 2013, took no part in the Board's drafting or deliberation of any order or issue in this matter.

The Board accepts the petition for hearing. Petitioner has the burden of proof. 415 ILCS 5/40(a)(1) (2012); 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) (2012)), which only the petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2012). The petitioner filed a waiver of the decision deadline with the petition; the decision deadline is September 22, 2014. The Board meeting immediately before the decision deadline is scheduled to take place on September 18, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Monday, December 23, 2013, which is the first business day after 30 days after the Board received petitioner'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).

In its petition for review, petitioner moved to stay the effectiveness of permit in its entirety. Pet. at 5-6, citing 5 ILCS 100/10-65 (2012). 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.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 5, 2013, by a vote of 4-0.

John T. Therriault, Clerk

Illinois Pollution Control Board