

ILLINOIS POLLUTION CONTROL BOARD

August 17, 2006

K.A. STEEL CHEMICAL, INC.)
)
 Petitioner,)
)
 v.) PCB 07-9
) (NPDES Permit Appeal - Water)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On August 7, 2006, K. A. Steel Chemical, Inc. (K.A. Steel) timely filed a petition asking the Board to review a June 29, 2006 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.206(a). The Agency issued a modification of the National Pollutant Discharge Elimination System (NPDES) permit for Outfalls 001-007 for K. A. Steel’s production facility for household bleach located in Lemon, Cook County.

K.A. Steel appeals on the grounds that the Agency erroneously failed to process its request for change in the condition relating to discharges of non-contact cooling water and other miscellaneous waters from Outfall 001, discharging into the Illinois and Michigan Canal. K.A. Steel had requested in April 11, 2006, that discharges from Outfall 001 be moved to Outfall 004, discharging into the Sanitary and Ship Canal. The purpose of the request was to eliminate compliance issues with effluent limits for chlorides and total dissolved solids. K. A. Steel attaches to its petition an internal Agency e-mail indicating that failure to process the request was a “mix-up” that the permit section would “rectify” as soon as possible. *See* Pet. at 3-4, para. 10, and Attach. E.

Along with its petition, K.A. Steel filed a motion to stay this proceeding for 30 days, asserting that the Agency could not complete its processing of K.A. Steel’s permit modification prior to the end of the company’s 35-day statutory appeal period. K.A. Steel therefore suggests that “it would conserve the resources of the Board and the parties to stay this proceeding for a reasonable time pending these discussions [of the modification request],” suggesting a 30-day stay. Mot. at 2.

The Board finds that K.A. Steel’s petition meets the content requirements of 35 Ill. Adm. Code 105.210, and accepts the petition for hearing. The Board will not, however, rule on K. A. Steel’s stay request. Section 101.514(a) of the Board’s procedural rules requires that any stay motion be accompanied “in decision deadline proceedings, by a waiver of any decision deadline.” 35 Ill. Adm. Code 101.514(a). K. A. Steel’s motion did not include the necessary waiver. If and when K.A. Steel corrects this procedural deficiency, the hearing officer is

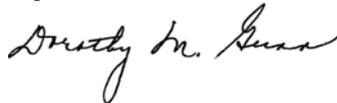
authorized to rule on the motion and to grant a “reasonable” stay of no longer duration than that of any waiver.

K.A. Steel has the burden of proof. 415 ILCS 5/40(a)(1) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings “will be based exclusively on the record before the Agency at the time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only K.A. Steel may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, K.A. Steel “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 [415 ILCS 5/41(d) (2004)].” 415 ILCS 5/40(a)(3) (2004). Currently, the decision deadline is December 5, 2006 (the 120th day after August 7, 2006). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for November 16, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 6, 2006, which is the first business day after 30 days after K.A. Steel filed the 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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 17, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board