

ILLINOIS POLLUTION CONTROL BOARD  
February 15, 2007

LONE STAR INDUSTRIES, INC.,                    )  
  )  
    Petitioner,                                    )  
  )  
    v.    )     PCB 07-71  
  )     (Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL                    )  
PROTECTION AGENCY,                        )  
  )  
    Respondent.                                )

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

On January 29, 2007, Lone Star Industries, Inc. (Lone Star) timely filed a petition asking the Board to review a December 22, 2006 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.208(a). The determination concerns a revised air construction permit for Lone Star's cement manufacturing facility at 490 Portland Avenue in Oglesby, La Salle County. Also on January 29, 2007, Lone Star 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 (2004)), 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) (2004); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency granted a revised air construction permit regarding Lone Star's Oglesby County facility. Lone Star appeals on the grounds that the Agency included conditions in the construction permit that are not required by the Act or Board regulations, and are not necessary to correct, detect, or prevent noncompliance with, or accomplish the purposes of, the Act or Board regulations. Lone Star's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Lone Star has the burden of proof. *See* 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 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.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

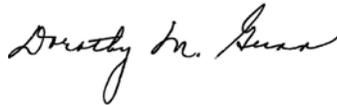
Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only Lone Star may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Lone Star “may deem the permit issued” absent the contested conditions. 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is May 29, 2007, 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 May 17, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 28, 2007, which is 30 days after the Board received Lone Star’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).

Accompanying Lone Star’s petition for review is a motion to stay the effectiveness of the 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 15, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board