

ILLINOIS POLLUTION CONTROL BOARD  
March 6, 2008

METROPOLITAN WATER RECLAMATION )  
DISTRICT OF GREATER CHICAGO, )  
 )  
Petitioner, )  
 )  
v. ) PCB 08-47  
 ) (NPDES Permit Appeal)  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Respondent. )

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

On February 29, 2008, the Metropolitan Water Reclamation District of Greater Chicago (District) timely filed a petition asking the Board to review a January 25, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.206(a). The determination concerns the District’s water reclamation plant at 13 Stephen Street in Lemont, Cook County (Lemont WRP). For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 105. In this case, the Agency issued a National Pollutant Discharge Elimination System (NPDES) permit, No. IL0028070, for the District’s Lemont WRP. The District appeals on the grounds that Special Condition 14.1.b of the NPDES permit is not necessary to accomplish the purposes of the Act and Board regulations and is otherwise arbitrary and capricious. According to the petition, the permit condition is “not reflective of the average dry weather flow that is currently being treated at the existing Lemont WRP” and “does not distinguish between existing plant capacity and the proposed expanded plant capacity.” Petition at 3. The District’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. The District has the burden of proof. 415 ILCS 5/40(a)(1) (2006); *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) (2006)), which only the District may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the District “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2006)].” 415 ILCS 5/40(a)(3) (2006). Currently, the decision deadline is June 30, 2008, which is the first business day following 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 June 19, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 31, 2008, which is the first business day following the 30th day after the Board received the District’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).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2008, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board