

ILLINOIS POLLUTION CONTROL BOARD

October 7, 2010

MIDWESTERN REGIONAL MEDICAL)
CENTER, INC.,)
)
 Petitioner,)
)
 v.) PCB 11-15
) (Permit Appeal - Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On September 28, 2010, the Board received a petition from Midwestern Regional Medical Center, Inc. (MRMC) asking the Board to review an August 18, 2010 determination of the Illinois Environmental Protection Agency (Agency). The petition was timely filed because it was postmarked on September 23, 2010, before the filing deadline. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(a), 101.300 (b)(2), 105.206. The Agency’s determination, the issuance of an air permit with conditions, concerns MRMC’s facility located at 2520 Elisha Avenue in Zion, Lake County. MRMC’s petition includes a request that the Board either stay the contested aspects of two permit conditions or confirm the effect of an automatic stay. For the reasons below, the Board accepts the petition for review but reserves ruling on the stay request.

Under the Environmental Protection Act (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency granted a lifetime operating permit for an emergency generator, subject to conditions, regarding MRMC’s Lake County facility. MRMC appeals on the grounds that the emissions limits listed in special conditions 8 and 13 are “incorrect, not necessary to maintain compliance with, and not justified by [the Act and the Board’s regulations]” and should be recalculated. Petition at 2. MRMC’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. MRMC has the burden of proof. 415 ILCS 5/40(a)(1) (2008); *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) (2008)), which only MRMC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, MRMC “may deem the permit issued” as requested. 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is January 26, 2011, 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 January 20, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 28, 2010, which is 30 days after the Board received MRMC’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).

Finally, as noted, MRMC asks the Board to stay the effectiveness of special conditions 8 and 13 “in the particulars” described in the petition, “or confirm the effectiveness of an automatic stay.” Petition at 2. To date, the Board has not received a response from the Agency. The Board therefore reserves ruling on MRMC’s stay request to allow the Agency’s response time to expire. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 7, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board