

ILLINOIS POLLUTION CONTROL BOARD  
March 17, 2011

SCF DEVELOPMENT, LLC, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 11-57  
 ) (Permit Appeal - Air)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

On March 2, 2011, SCF Development, LLC (SCF) timely filed a petition asking the Board to review a January 27, 2011 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns SCF's handling facility at 600 North Front Street, East St. Louis, St. Clair County.. For the reasons below, the Board accepts the petition for review.

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 D. In this case, the Agency granted an air permit, subject to conditions regarding SCF's St. Clair County facility. SCF appeals on the grounds that the Agency included conditions that do not reflect the information SCF provided to the Agency or accurately reflect the proposed operations of the Grain and Dry Bulk Commodity Terminal. SCF further contends that the Agency's conditions are arbitrary and capricious. SCF's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. SCF 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 SCF may extend by waiver (*see*

35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, SCF “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is June 30, 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 June 16, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 1, 2011, which is 30 days after the Board received SCF’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 SCF’s petition for review is a motion to confirm the automatic stay of effectiveness of the Construction Permit. To allow the Agency’s response time to run, the Board reserves ruling on SCF’s motion. *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 March 17, 2011, by a vote of 5-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board