

ILLINOIS POLLUTION CONTROL BOARD  
May 21, 2020

IMTT ILLINOIS LLC, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 20-47  
 ) (Permit Appeal - NPDES)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by C.M. Santos):

On April 20, 2020, IMTT Illinois LLC (IMTT) timely filed an amended petition for review of a determination by the Illinois Environmental Protection Agency (IEPA). For the reasons below, the Board accepts the petition for review.

On January 16, 2020, the Board granted the parties' request and extended until February 20, 2020, the deadline for IMTT to appeal a December 13, 2019 IEPA determination. On February 6, 2020, the parties filed a joint request for an additional 60-day extension of the appeal period. In an order on February 20, 2020, the Board noted that "the 35-day period for petitioning for a hearing may be extended . . . *within the initial appeal period*. 415 ILCS 5/40(a)(1) (2018) (emphasis added); *see* 35 Ill. Adm. Code 105.406. The Board concluded that the Act does not provide it authority to extend an appeal deadline once the initial 35-day appeal period has passed. However, the Board construed the request as a timely petition for review and directed IMTT Illinois to file an amended petition for review on or before Monday, April 20, 2020. On April 20, 2020, IMTT timely filed an amended petition.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), IEPA is the permitting authority, responsible for administering Illinois' regulatory programs to protect the environment. If IEPA denies a permit or grants one with conditions, the permit applicant may appeal IEPA's decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2018); 35 Ill. Adm. Code 105.Subpart D. In this case, IEPA issues a renewed National Pollutant Discharge Elimination System (NPDES) permit with conditions to IMTT's chemical storage facility 13589 Main Street in Lemont, Cook County. IMTT appeals on the grounds that specified conditions are arbitrary and capricious, without basis in its record, and contrary to the Act or Board regulations. IMTT's amended petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the amended petition for hearing. IMTT has the burden of proof. 415 ILCS 5/40(a)(1) (20148; *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before IEPA at the time IEPA issued its permit decision, unless the parties agree to supplement the record pursuant to Section 40(d) of the Act." *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the

opportunity to challenge IEPA's reasons for denying or conditionally granting the permit, information developed after IEPA'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).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2014)), which only IMTT may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, IMTT "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2018)]." 415 ILCS 5/40(a)(3) (2018). Currently, the decision deadline is August 18, 2020, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 13, 2020.

On May 20, 2020, IEPA electronically filed the record of its determination.<sup>1</sup> *See* 35 Ill. Adm. Code 105.116, 105.212.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 21, 2020, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> On March 17, 2020, IEPA filed a motion requesting that, if the Board set this deadline based on the February 20, 2020 order construing the request as a petition, the Board extend the deadline 60 days to May 20, 2020. Since IEPA has filed the record, the Board denies the motion as moot.