

ILLINOIS POLLUTION CONTROL BOARD  
March 6, 2014

KCBX TERMINALS COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 14-110
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.D. O’Leary):

On February 21, 2014, KCBX Terminals Company (KCBX) timely filed a petition asking the Board to review a January 17, 2014 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns KCBX’s bulk material terminal at 10730 South Burley Avenue in Chicago, Cook County (South Facility). On February 25, 2014, KCBX filed a motion to supplement the petition for review. For the reasons below, the Board accepts the petition for review, but the Board reserves ruling on the motion to supplement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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) (2012); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency issued a permit denial in response to KCBX’s “Request for Revision to Revised Construction Permit for its South Facility”. KCBX appeals on the grounds that the Agency’s decision to deny the permit was arbitrary and capricious. KCBX also argues that the Agency’s decision was not supported or required by the Act or Board regulations and is not necessary to prevent noncompliance with the Act or regulations. KCBX’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. KCBX has the burden of proof. 415 ILCS 5/40(a)(1) (2012); *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) (2012)), which only KCBX may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, KCBX “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2012). Currently, the decision deadline is June 23, 2014, 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, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 24, 2014, which is the first business day following the 30th day after the Board received KCBX’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 T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2014 by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board