

ILLINOIS POLLUTION CONTROL BOARD  
April 3, 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 (Pet.) 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. In this case, the Agency denied KCBX’s “Request for Revision to Revised Construction Permit for its South Facility.” KCBX appealed on various grounds.

On March 26, 2014, the Attorney General filed a notice stating that the Agency withdraws one of the reasons on which it had based its denial of KCBX’s request (Notice). The Attorney General stated that the Agency “hereby notifies the Illinois Pollution Control Board and KCBX Terminals Company that it is withdrawing Permit Denial Reason #5 and each of its subparts for all purposes in the above-captioned appeal.” Notice at 1. One of the three subparts of Reason 5 cites the definition of “pollution control facility” in the Environmental Protection Act (Act). Pet., Exh. 1 at 2 (January 17, 2014 Agency permit denial letter), citing 415 ILCS 5/3.330 (2012). A second subpart reviews statutory requirements applicable to issuance of permits for the development or construction of a new pollution control facility. Pet., Exh. 1 at 2, citing 415 ILCS 5/39(c), 39.2 (2012). The third subpart of Reason 5 states in its entirety that, “[b]ased upon the observations of made by the Bureau of Land’s field staff, storage pile #8 was determined to be a waste pile due to vegetative growth observed during the inspection conducted on November 6, 2013.” Pet., Exh. 1 at 3.

The Board notes that “[t]he Illinois Supreme Court has held that an administrative agency has no inherent authority to amend or change a decision and may undertake a reconsideration of a decision only where authorized by statute.” Reichhold Chemicals, Inc. v. PCB, 204 Ill. App.3d 674, 677, 561 N.E.2d 1343, 1345 (1990) (citations omitted). The notice here cites no statutory, regulatory, or caselaw authority to amend its decision by striking an entire basis for the Agency’s decision to deny the requested permit revision. *See* Notice at 1.

Section 40(a)(1) of the Act allows an extension of the appeal period for as long as 90 days if the permit applicant and the Agency provide written notice of the extension to the Board within the initial 35-day appeal period. *See* 415 ILCS 5/40(a)(1) (2012). While such an

extension suggests that there is some opportunity for the Agency to reconsider a permitting decision, the parties did not provide the Board notice of any extension under Section 40(a)(1), and KCBX filed a petition within the statutory 35-day period. Once KCBX filed that petition, the Board was obligated to review the Agency's denial. *See Reichhold*, 204 Ill.App3d at 678, 561 N.E.2d at 1346; *see also Pulitzer Community Newspapers v. IEPA*, PCB 90-142, slip op. at 6 (Dec. 20, 1990) (citations omitted) (denial letter frames issues on appeal).

The Board notes that the Attorney General's filing is not styled as a motion and requests no action on the part of the Board or hearing officer. *See* Notice at 1. The Board will not consider the notice but directs the parties to hearing on the Agency's January 17, 2014 determination according to the schedule established by the hearing officer.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2014 by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Clerk  
Illinois Pollution Control Board