

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2013

PEORIA DISPOSAL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 14-28
)	(Permit Appeal - NPDES)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On October 18, 2013, Peoria Disposal Company (PDC) timely filed a petition (Pet.) asking the Board to review a September 20, 2013 permit 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 PDC’s landfill facility located at 4349 Southport Rd., Peoria, Peoria County. On October 18, 2013, PDC also moved to stay the effectiveness of the permit in its entirety during the pendency of this proceeding. Pet. at 5-6, citing 5 ILCS 100/10-65 (2012) (Illinois Administrative Procedure Act). For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion for stay.

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 B. In this case, the Agency issued PDC a revised NPDES Permit No. IL0064777 regarding PDC’s Peoria County landfill facility. PDC appeals on the grounds that specific sampling and analysis requirements in Special Condition 1(E) are unnecessary and arbitrary. PDC’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. PDC 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 PDC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, PDC may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2012). Currently, the decision deadline is February 15, 2013, 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 to take place on February 6, 2013.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Monday, November 18, 2013, which is the first business day after 30 days after the Board received PDC'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).

In its petition for review, PDC moved to stay the effectiveness of permit in its entirety. Pet. at 5-6, citing 5 ILCS 100/10-65 (2012). The Board reserves ruling on the motion for stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board