

ILLINOIS POLLUTION CONTROL BOARD

October 3, 2013

SABIC INNOVATIVE PLASTICS US LLC, )  
)  
Petitioner, )  
)  
v. ) PCB 14-24  
) (Permit Appeal - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by D. Glosser):

On September 19, 2013, SABIC Innovative Plastics (petitioner) timely filed a petition asking the Board to review an August 19, 2013, 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 petitioner's plastics manufacturing plant at 2148 North 2753rd Road, Ottawa, LaSalle County. Simultaneously with their petition to review the permit, petitioner filed a motion to allow Andrew S. Hogeland to appear *pro hac vice* on behalf of SABIC. For the reasons below, the Board reserves ruling on petitioner's motion to allow Andrew S. Hogeland to appear *pro hac vice* on behalf of SABIC and accepts the petition for review.

Under the Environmental Protection 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 granted a National Pollutant Discharge Elimination System (NPDES) permit, subject to conditions, regarding petitioner's LaSalle County facility. Petitioner appeals on the grounds that certain terms and conditions of the NPDES permit are arbitrary, capricious, unreasonable, unlawful, and/or beyond the regulatory and legislative authority of the Agency. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Petitioner 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. 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 petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act 415 ILCS 5/41(d) (2012). 415 ILCS 5/40(a)(3) (2012).] Currently, the decision deadline is January, 15, 2014, 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 January 9, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 21, 2013, which is the first business day 30 days after the Board received petitioner'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).

**Pro hac vice**

Accompanying petitioner's petition for review is a motion to allow Andrew S. Hogeland to appear *pro hac vice* on behalf of SABIC. The Board reserves ruling on the motion 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 October 3, 2013, by a vote of 4-0.



John T. Therriault, Clerk  
Illinois Pollution Control Board