

ILLINOIS POLLUTION CONTROL BOARD

November 4, 2004

HARTFORD WORKING GROUP, )  
)  
Petitioner, )  
)  
v. ) PCB 05-74  
) (Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by A.S. Moore):

On October 21, 2004, Hartford Working Group (HWG) timely filed a petition asking the Board to review a September 14, 2004 determination of the Illinois Environmental Protection Agency (Agency) imposing a contested special condition in an air permit. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.Subpart B. The air permit, which is a joint construction and operating permit, concerns the “Hartford Area Hydrocarbon Plume Site.” Also on October 21, 2004, HWG filed a motion to stay the effectiveness of the contested special condition of the permit. For the reasons below, the Board accepts the petition for review but reserves ruling on the motion for stay.

The petition explains that HWG consists of Atlantic Richfield Company, Equilon Enterprises, L.L.C., d/b/a Shell Oil Products US, and The Premcor Refining Group Inc. Petition at 1. HWG was established to perform remediation work and share costs for the Hartford Area Hydrocarbon Plume Site “pursuant to an Administrative Order on Consent from the United States Environmental Protection Agency.” *Id.*

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), 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 5/40 (2002); 35 Ill. Adm. Code 105. In this case, HWG states that it submitted an air permit application to the Agency under Section 39 of the Act (415 ILCS 5/39 (2002)) and 35 Ill. Adm. Code 201.163 “to construct and operate three vacuum extraction systems” at the site. Petition at 1-2. The Agency issued a joint construction and operating permit containing the contested special condition, Special Condition 2.0, which states in part that “unless [HWG] is determined to be a separate source from the Premcor Refining Group, 201 East Hawthorne, Hartford,” HWG “must submit its complete CAAPP [Clean Air Act Permit Program] application for the extraction system within 12 months after commencing operation.” *Id.* at 2, Exhibit A (quoting Special Condition 2.0).

HWG requests that Special Condition 2.0 be deleted from the permit “because HWG is a separate source from the Premcor Refining Group facilities, *i.e.*, the Premcor Hartford

Distribution Center, as 'source' is defined in the Act." Petition at 2. HWG appeals on the grounds that the special condition "does not reflect the current applicable requirements at the facility, and is thus arbitrary, capricious, without merit, and poses an unreasonable hardship on HWG." *Id.* HWG's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. HWG has the burden of proof. *See* 415 ILCS 5/40(a)(1) (2002); *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.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

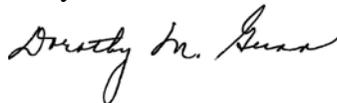
Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only HWG may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, HWG "may deem the permit issued" absent the contested condition. 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is February 18, 2005, 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 currently scheduled for February 17, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 22, 2004, which is the first business day following the 30th day after the Board received HWG'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).

Accompanying HWG's petition for review is a motion to stay the effectiveness of Special Condition 2.0. The Board reserves ruling on the motion for stay until after the 14-day timeframe for the Agency to file a response to the motion. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 4, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board