

ILLINOIS POLLUTION CONTROL BOARD
August 11, 2022

PQ LLC,)
)
Petitioner,)
)
v.) PCB 23-15
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by M. Gibson):

On July 18, 2022, PQ LLC (PQ) timely filed a petition asking the Board to review a June 13, 2022, permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns PQ's sodium silicate manufacturing facility at 111 Ingalls Avenue, Joliet in Will County. Additionally, on July 18, 2022, PQ filed a motion to stay the effectiveness of the contested Condition 6 of the permit. For the reasons below, the Board accepts the petition for review, but reserves ruling on the request for a stay.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), 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) (2020); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency granted PQ's application for a construction permit, subject to conditions, regarding PQ's facility in Will County. PQ appeals on the grounds that the Agency's requirement to install and operate a NOx continuous emissions monitoring system (CEMS) was erroneous, arbitrary, capricious, not supported by statutory or regulatory authority, and unnecessary to accomplish the purposes of the Act. PQ's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. PQ has the burden of proof. 415 ILCS 5/40(a)(1) (2020); *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).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.


Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2020)), which only PQ may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, PQ may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2020). Currently, the decision deadline is November 15, 2022, 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 November 3, 2022.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 17, 2022, which is 30 days after the Board received PQ's petition. *See* 35 Ill. Adm. Code 105.116(a), 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(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.212(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

Accompanying PQ's petition for review is a motion to stay the effectiveness of the contested Condition 6 of the permit. 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, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 11, 2022, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.