

ILLINOIS POLLUTION CONTROL BOARD
September 29, 1977

CITY OF SPRINGFIELD,)	
)	
Petitioner,)	
)	
v.)	PCB 77-239, -240,
)	-241, -242, -243,
ENVIRONMENTAL PROTECTION AGENCY,)	-244, -245, -246
)	-247
)	<u>CONSOLIDATED</u>
Respondent.)	

ORDER OF THE BOARD (by Mr. Goodman):

This matter is before the Board on nine Permit Appeal Petitions filed by the City of Springfield (City) on September 19, 1977, alleging that the Environmental Protection Agency (Agency) improperly denied various operating permits under Chapter 2: Air Pollution for certain Units, Electrostatic Precipitators and Boilers at the City's Dallman and Lakeside Generating Stations.

Those Petitions for Permit Appeal are hereby consolidated.

We note that in each of the nine Petitions, the City has determined (apparently as a matter of law) that the Agency's permit denial notification was deficient insofar as that notice stated only that, "Rules 103, 204, 307 and 308", or "Rules 102, 103, 307 and 308 would be violated were the permit granted." (See footnote p.3 of each Petition.) The City bases this conclusion of law on §39(a) of the Act. Ill. Rev. Stat., Ch. 111-1/2, §1039(a) (1977).

We find that the City's conclusion in this regard significantly limits the potential issues before us in this case, with perhaps fatal implications for the City's Petition. The City apparently does not choose to contest either the legal or factual adequacy of those portions of the Agency's permit denial quoted above, except so far as the cited rules may be related to other, more detailed reasons given by the Agency for permit denial which the City has chosen to contest. (Again, see p.3 of each Petition.) Perhaps most significantly, the City's Petitions do not discuss compliance with Rule 307 and 308, which specify ambient air quality standards for particulate matter and SO₂.

27-391
~~26-835~~
27-535

By the terms of its Petitions, the City has not chosen to place all the issues of legal or factual adequacy of its permit applications or the Agency's permit denial before this Board.

This raises the possibility that the City's Petitions may all be inadequate on their face. The Board has previously stated that the Agency's determinations in permit matters enjoy a presumption of validity and adequacy. It would appear that this presumption would apply, unless contested, to the Agency's citation of the rules set out above in its denial of the City's various permit applications. Given such a presumption, what purpose is to be served by reviewing the Agency's decisions on other reasons for permit denial? Inasmuch as the denial as a whole would still stand, based on such presumption, our review of those portions of the denial which the City chooses to contest might be futile.


The City had (and will have under the terms of this Order) the option of bringing before this Board the legal adequacy of certain portions of the Agency's permit denial; it also had (and will have) the option of using discovery to determine the factual basis - if any - for the Agency's determinations with regard to the rules cited above, (e.g., noncompliance with ambient air quality standards).

Rather than face the possibility of having to dismiss all nine Petitions, we shall therefore grant the City leave to amend its Petitions within twenty-one days of the date of this Order, in conformity with our discussion above. Failure to so amend its Petitions may subject them to dismissal for inadequacy. The 90-day decision period set by statute for decision in permit appeal matters shall commence with the filing of such amended Petitions.

IT IS SO ORDERED.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 29th day of September, 1977 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board

27-392
26-636
27-536