

ILLINOIS POLLUTION CONTROL BOARD
March 2, 2006

WESLEY BRAZAS, JR.,)
)
Petitioner,)
)
v.)
) PCB 06-131
MR. JEFF MAGNUSSEN, president,) (Third-Party NPDES Permit
VILLAGE OF HAMPSHIRE, and the) Appeal – Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondents.)

ORDER OF THE BOARD (by N.J. Melas):

On January 13, 2006, Mr. Wesley Brazas, Jr. filed a petition asking the Board to review a December 9, 2005 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2000); 35 Ill. Adm. Code 105.206(a). On December 9, 2005, the Agency issued a National Pollutant Discharge Elimination System (NPDES) permit No. IL 0020281 to the Village of Hampshire for its wastewater treatment plant in Kane County. Mr. Brazas appeals on the grounds that the permit is “not sufficiently protective of the environment and not in accord with the law.” Pet. at 8. On February 2, 2006, the Board found the petition deficient and requested more information from the petitioner before the Board could accept the matter for hearing. Today the Board dismisses the allegations of air and water pollution and accepts the remainder of Mr. Brazas amended petition that concerns the December 9, 2005 NPDES permit for hearing.

The Agency modified the Village of Hampshire’s NPDES permit to allow an increase in the facility’s design average flow and design maximum flow as a result of a plant expansion. The modification keeps the concentration limits and load limits at their current levels. Mr. Brazas appeals on the grounds that: (1) the issued permit violates public notice requirements; (2) the Agency and the Village of Hampshire failed to perform a study assuring that the increase in discharge will not cause a violation of any other applicable water quality standard as required by Special Condition 5; (3) the permit fails to require monitoring of radium in the effluent in violation of Special Condition 9; and (4) the modified permit “unnecessarily jeopardizes the water quality of Hampshire Creek.”

THIRD-PARTY APPEAL

Section 40(e)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(e)(1) (2004)) allows certain third parties to appeal Agency determinations to grant NPDES permits. The third party’s petition to the Board must contain:

a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held; and

a demonstration that the petitioner is so situated as to be affected by the permitted facility. 415 ILCS 5/40(e)(2) (2000); *see also* 35 Ill. Adm. Code 105.210(d).

The petition also must, among other things, specify the grounds for appeal and include a copy of the issued permit. 35 Ill. Adm. Code 105.210(a), (c). The third party must file the petition within 35 days after the “date of issuance of the Agency’s decision.” 415 ILCS 5/40(e)(1) (2004); *see also* 35 Ill. Adm. Code 105.206(b). If the Board determines that the third party’s petition for review is not “[duplicative] or frivolous,” the Board will hear the petition. 415 ILCS 5/40(e)(3) (2004); *see also* 35 Ill. Adm. Code 105.214(d).

On February 21, 2006, Mr. Brazas filed an amended petition for review, accompanied by the NPDES permit and certificate of service. Mr. Brazas’s petition states that, during the Agency’s public notice period on the Village of Hampshire’s NPDES permit application, Mr. Brazas raised the issues on which he now appeals. Mr. Brazas’s petition also states that he is so situated as to be affected by the permitted facility. The petition meets the content requirements of 35 Ill. Adm. Code 105.210. The certificate of service also demonstrates that Mr. Brazas filed its petition within 35 days after the Agency issued its determination.

An action before the Board is duplicitous if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is “a request for relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.*

The Board finds that all claims other than those that concern the Agency’s issuance of the December 9, 2005 NPDES permit to the Village of Hampshire are frivolous, and dismisses those claims. The Board accepts the remainder of Mr. Brazas’s petition for hearing.

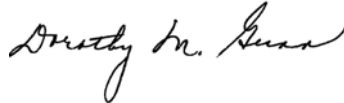
HEARING AND DECISION DEADLINE

Mr. Brazas has the burden of proof. 415 ILCS 5/40(a)(1) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings “will be based exclusively on the record before the Agency at the time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only Mr. Brazas may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Mr. Brazas “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2004)].” Currently, the decision deadline is May 13, 2006, the 120th day after January 13, 2006. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 4, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 22, 2006, which is 20 days from the date of this order. 35 Ill. Adm. Code 105.116, 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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 2, 2006, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board