

ILLINOIS POLLUTION CONTROL BOARD

June 7, 2007

LONE STAR INDUSTRIES, INC., )  
)  
Petitioner, )  
)  
v. ) PCB 07-112  
) (Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

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

On May 15, 2007, Lone Star Industries, Inc. (Lone Star) timely filed a petition asking the Board to review an April 6, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.404. Lone Star seeks review of certain conditions the Agency attached to its grant of a construction permit (number 06120047) to construct a new hopper and conveyor, and authorize an associated increase in material throughput for the existing finish mill operations at the facility. Lone Star owns and operates a Portland cement manufacturing facility at 490 Portland Avenue in Oglesby, LaSalle County. For the reasons below, the Board accepts the petition for review and grants Lone Star's motion to stay the effectiveness of the contested conditions at issue in this appeal.

Under the Environmental Protection Act (415 ILCS 5 (2004)), 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) (2004); 35 Ill. Adm. Code 105.Subpart D. In this case, Lone Star appeals on the grounds that the Agency included conditions in the permit that are not required by the Act (415 ILCS 5 (2004)) or Board regulations and are not necessary to prevent noncompliance with, or accomplish the purposes of, the Act or Board regulations. Lone Star's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

Lone Star 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). 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 (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) (2004)), which only the Lone Star may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the petitioner “may deem the permit issued” absent the contested conditions. 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is October 5, 2007 (the 120th day after June 7, 2007). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 4, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 9, 2007, which is the first business day after 30 days after Lone Star filed the petition. 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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

Accompanying the petition for review, Lone Star filed a motion to stay the effectiveness of the contested permit conditions (Mot.). To date, the Agency has not responded to the motion. Accordingly, the Agency has waived any objection to the Board granting the motion for stay. 35 Ill. Adm. Code 101.500(d).

The Board’s procedural rules provide that a motion to stay a proceeding “must be accompanied by sufficient information detailing why a stay is needed.” 35 Ill. Adm. Code 101.514(a). Lone Star asserts that permit conditions 2a, 2b, and 8 of the construction permit are not clear and require Lone Star to incur costs for activities that are redundant and overly burdensome. Mot. at 2.

Lone Star’s motion contends that a stay of the contested permit conditions is necessary to prevent irreparable harm to Lone Star and to protect its appeal rights. Mot. at 2. Lone Star also argues that it has a probability of success on the merits and lacks an adequate remedy at law. *Id.* Finally, Lone Star claims that the Agency, the public, and the environment will not suffer harm if a stay is granted.

The Board grants Lone Star’s motion to stay the effectiveness of permit conditions 2a, 2b, and 8 until the Board takes final action in this appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2007, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board