

ILLINOIS POLLUTION CONTROL BOARD  
February 5, 2009

APOLLO PLASTICS CORPORATION, )  
)  
Petitioner, )  
)  
v. ) PCB 09-44  
) (Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

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

On January 8, 2009, the Board in a related docket (Apollo Plastics Corporation v. IEPA, PCB 09-36), directed Apollo Plastics Corporation (Apollo) to file a new appeal in this docket reserved on that date. On January 22, 2009, Apollo filed its appeal of an October 24, 2008 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns Apollo's facility at 5333 N. Elston Avenue, Chicago, Cook County. This appeal is timely. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.208(a). For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Apollo's application for renewal of a construction permit for installation of a Regenerative Thermal Oxidation system at its facility. Apollo appeals on the grounds that the denial was arbitrary and capricious and based upon the Agency's failure to act on a related Federally Enforceable State Operating Permit. See [Amended Petition for Hearing and Appeal of Denial of Construction Permit for Pollution Control Equipment, page 4], Apollo Plastics Corporation v. IEPA, PCB 09-36 (Jan. 22, 2009). Apollo's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Apollo has the burden of proof. 415 ILCS 5/40(a)(1) (2006); 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).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2006)), which only Apollo may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Apollo “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is May 22, 2009, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 21, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 23, 2009, which is 30 days after the Board received Apollo’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).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 5, 2009, by a vote of 5-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board