

ILLINOIS POLLUTION CONTROL BOARD
May 6, 2010

AMERICAN LOUVER COMPANY,)
)
 Petitioner,)
)
 v.) PCB 10-90
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On April 27, 2010, American Louver Company (petitioner) timely filed a petition (Pet.) asking the Board to review a March 19, 2010 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2008)¹; 35 Ill. Adm. Code 101.300(b), 105.302(e). According to the petition, petitioner received the Agency’s determination on March 22, 2010. The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.208(a). The Agency’s determination concerns petitioner’s plastic molding facility located at 7700 Austin Avenue, Skokie, Cook County. For the reasons below, the Board accepts petitioner’s petition for hearing.

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 issued an air permit, subject to conditions, for petitioner’s facility.

Petitioner appeals on the grounds that “no state construction permit is necessary or require in order for ALC to construct its new blow molder and operate it”. Pet. at 4-5. Petitioner challenges the inclusion of Standard Condition No. 6 and asks the Board to stay their effect until ultimately ruling on the merits. *Id.* at 5. To date, the Board has not received a response from the Agency regarding petitioner’s request for a stay. The Board today reserves ruling on stay issues until the Agency has filed a response or the response time has elapsed. 35 Ill. Adm. Code 101.500(d).

The Board accepts the petition for hearing. Petitioner has the burden of proof. *See* 415 ILCS 5/40.2(a) (2008); 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

record before the Agency at the time the Agency issued its permit decision. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, 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 5/40.2(c) (2008)), which only Petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, "the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2008)]." 415 ILCS 5/40.2(c) (2008). Currently, the decision deadline is August 25, 2010, 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 August 19, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. *See* 35 Ill. Adm. Code 105.302(f). 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 105.302(f).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 6, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board