

ILLINOIS POLLUTION CONTROL BOARD

July 6, 2006

D & L LANDFILL, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 06-185
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

On June 14, 2006, D & L Landfill, Inc. (D & L) timely filed a petition asking the Board to review a May 12, 2006 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.208(a). The determination concerns an air construction permit for D & L's municipal solid waste landfill in Bond County. For the reasons below, the Board accepts the petition for review.

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 determination to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2004); 35 Ill. Adm. Code 105.Subpart D. D & L states that the active landfill unit at its facility was sold to Allied Waste Industries, Inc. in 2003 and renamed "Bond County Landfill." According to its petition, D & L retained ownership of only the closed units for which closure and post-closure care is being provided. D & L maintains that in November 2005, it "applied for permission to construct an additional gas well and flare to control gas migration along the northern edge of the closed landfill." Petition at 1. The Agency issued an air construction permit to D & L, with conditions. D & L appeals on the ground that some of the permit conditions "are premised on the legal assumption that the closed D & L landfill . . . is considered a single source with Bond County Landfill . . ." *Id.* D & L disagrees that the "closed landfill and the active landfill are the same unit." *Id.* at 2. The Board finds that D & L's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. D & L 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 Agency issued its permit determination. 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 determination 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.

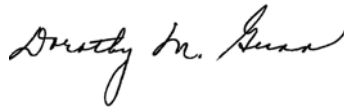
1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

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 D & L may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, D & L may deem the permit issued absent the contested conditions. 415 ILCS 5/40(a)(2) (2004); Hartford Working Group v. IEPA, PCB 05-74 (Nov. 4, 2004). Currently, the decision deadline is October 12, 2006, 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 October 5, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 14, 2006, which is 30 days after the Board received D & L'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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 6, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board