

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2010

CATHERINE THOMAS d/b/a THOMAS 12th )	)	
STREET DISPOSAL, )	)	
	)	
Petitioner, )	)	
	)	
v. )	)	PCB 10-80
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL )	)	
PROTECTION AGENCY, )	)	
	)	
Respondent. )	)	

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

On April 15, 2010, at the parties' request, the Board extended until July 18, 2010, the time period for Catherine Thomas, doing business as Thomas 12th Street Disposal (Thomas) to appeal a March 4, 2010 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns Thomas' landfill in Vermilion County. On July 19, 2010, Thomas timely filed a petition asking the Board to review the Agency's determination. The petition was timely filed because it was postmarked on July 16, 210, before the filing deadline. See 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b)(2), 105.206, 105.208. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency denied Thomas' permit affidavit for certification of completion of post-closure care regarding Thomas' landfill. Thomas appeals on the grounds that the Agency improperly ruled that the facility did not meet the requirements for completion of post-closure care. Thomas' petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Thomas has the burden of proof. 415 ILCS 5/40(a)(1) (2008); 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) (2008)), which only Thomas may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Thomas “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2008). On July 30, 2010, Thomas filed an open waiver of the decision deadline.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 18, 2010, which is 30 days after the Board received Thomas’ 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 August 5, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board