

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CONGRESS DEVELOPMENT,
COMPANY)
)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 11- 90
(Permit Appeal - Land)

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JUN 03 2011
STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

NOTICE OF FILING


John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that today I filed with the Illinois Pollution Control Board a Petition for Review of Denial of Significant Permit Modification Application and Entry of Appearance for Russell R. Eggert and Andrew L. Schulkin, copies of which are hereby served upon you.

Dated: June 3, 2011

Respectfully Submitted,

By: 

Russell R. Eggert
Andrew L. Schulkin
LATHROP & GAGE LLP
100 N. Riverside Plaza
Suite 2100
Chicago, Illinois 60606
312.920.3300 (Telephone)
312.920.3301 (Facsimile)

Attorneys for Petitioner Congress
Development Company

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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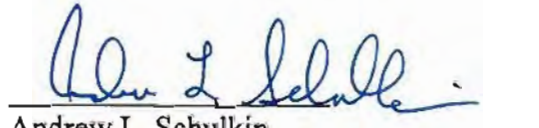
ORIGINAL

ENTRY OF APPEARANCE

COMES NOW Russell R. Eggert and Andrew L. Schulkin of the law firm Lathrop & Gage LLP, and hereby enter their appearance in the above-styled matter on behalf of Petitioner Congress Development Company.

Respectfully Submitted,

By: 
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on June 3, 2011, the foregoing Entry of Appearance was served by first class United States mail upon the following


by hand delivery:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

by U.S. first class mail:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

By:


Russell R. Eggert
Andrew L. Schulkin
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**PETITION FOR REVIEW OF DENIAL OF SIGNIFICANT PERMIT
MODIFICATION APPLICATION**

Petitioner Congress Development Company ("Congress"), pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/40(a)(1) and 35 Ill. Admin. Code Part 105, Subpart B, and 35 Ill. Admin. Code 813.106, hereby requests review of the April 29, 2011 decision by Respondent, the Illinois Environmental Protection Agency (the "Agency" or "IEPA"), to deny Petitioner's Application for Permit to modify a solid waste management site, dated January 27, 2011.

In support of its Petition, Congress states as follows:

1. Congress owns a sanitary landfill in Hillside, Illinois (the "Landfill") and is a permittee under IEPA Permit No. 1995-165-LFM (the "Permit").
2. There have been detections of constituents in the perimeter groundwater wells at the Landfill above the background values listed in the Permit. Although the surrounding communities obtain their water from Lake Michigan and have ordinances prohibiting the use of groundwater as drinking water, the Illinois solid waste management regulations, 35 Ill. Admin. Code Part 811, required Congress to perform additional groundwater sampling.

3. On October 29, 2009, Congress submitted a permit application (Log No. 2009-522) to expand investigation activities to determine the rate and extent of potential groundwater impacts (the "Assessment Monitoring Report"). As part of the Assessment Monitoring Report, Congress proposed installing 44 new assessment monitoring wells beyond the existing groundwater monitoring network and retrofitting well G117.

4. The proposed well locations were designated as A-31 to A-52. Proposed well locations A-33, A-39, A-40, A-41, A-42, A-43, A-44, A-45, A-46, A-47, A-48, A-49, A-50, A-51, and A-52 were outside of the Landfill property. An addendum to the Assessment Monitoring Report expressly stated that the off-site wells would be installed "if permission is granted from adjoining landowners."

5. The Agency approved the Assessment Monitoring Report on June 17, 2010 and incorporated it into Modification No. 43 to the Permit as Condition VII.24.

6. Condition VII.24 directed Congress to install and sample the 44 new wells and one retrofitted well described in the Assessment Monitoring Report. It also required Congress to submit a Significant Permit Modification Application to IEPA by January 30, 2011, detailing the new well installations, sampling results, general findings and conclusions about groundwater quality, and a proposed course of action.

7. On January 27, 2011, Congress submitted a Significant Permit Modification Application to IEPA in the form of an Expanded Assessment Monitoring Report in which it provided installation information and sampling results for groundwater monitoring wells A-31, A-32, A-34, A-35, A-36, A-37, A-38 and G117. The Expanded Assessment Monitoring Report included the information required under Condition VII.24 for these seven new wells and one

retrofitted well, discussed general findings and conclusions about groundwater quality in and around the Landfill, and presented a proposed course of action.

8. In the Expanded Assessment Monitoring Report, Congress stated that it was unable to obtain access to neighboring properties to install the remaining groundwater monitoring wells referenced in Condition VII.24. Congress explained that on June 30, 2010, it sent letters to each of the neighboring property owners requesting access to their properties and subsequently made dozens of follow-up phone calls to discuss the access issues. Only two of five adjoining property owners, Public Storage and the Illinois Department of Transportation, expressed a willingness to allow groundwater monitoring wells to be installed on their properties and neither responded in time for access arrangements and well installations to be completed before the Significant Permit Modification Application was due. Other neighbors did not respond to Congress's letters or phone messages.

9. On March 9, 2011, IEPA notified Congress that the Significant Permit Modification Application, dated January 27, 2011, was complete. The completeness letter is attached as Exhibit 1.

10. On April 29, 2011, IEPA sent a letter to Congress stating that it was denying the January 27, 2011 Significant Permit Modification Application (the "Denial Letter") for the following reasons:

(a) The operator has failed to install rate and assessment monitoring wells A-33, A-39, A-40, A-41, A-42, A-43, A-44, A-45, A-46, A-47, A-48, A-49, A-50, A-51, and A-52 and to conduct assessment monitoring at these wells to define the rate, nature and extent of the groundwater impacts as required by Condition VII.24 of Modification No. 47 of Permit No. 1995-165-LFM.

(b) The rate and extent (vertically down to the Ordovician Maquoketa Shale Formation and laterally) of groundwater impacts observed at Congress Development Company have not been demonstrated as required by Condition VII.24 of Permit No. 1995-165-LFM.

(c) The halo effect (increasing competency of bedrock, thus reduced impacts further away from the waste boundary) conceptually described on page 23 does not delineate the rate and extent of groundwater impacts. Rate and extent must be physically demonstrated by installation and sampling of groundwater assessment wells in accordance with Condition VII.24 of Modification No. 47 of Permit No. 1995-165-LFM.

(d) Leachate withdrawal is proposed as a form of corrective action as described on pages 24 and 27 of the application. Leachate withdrawal is part of the design standard of Congress Development Company. Further, the purpose of this application was to have defined the rate, nature (landfill gas and/or leachate) and extent of contamination as required by Condition VII.24 of Log No. 2009-522. Any selection, implementation and efficiency of a selected remedy are subject to procedures in 35 IAC 811.324, 811.325 and 811.326 which is not the subject of this application.

11. Each of the reasons given for the denial of the January 27, 2011 Significant Permit Modification Application is based on Petitioner's inability to install and sample groundwater monitoring wells on neighboring properties. The Denial Letter is attached hereto as Exhibit 2.

12. The Agency informed Congress that if it was unable to reach an agreement with adjoining landowners for access, it should have brought an action pursuant to Section 22.2c of the Act, 415 ILCS 5/22.2c, to compel its neighbors to permit Congress to install groundwater monitoring wells on their properties.

13. Section 22.2c is entitled "Adjacent site remediation; injunction" and provides,

If **remediation** of real property contaminated by hazardous substances or petroleum products cannot be reasonably accomplished without entering onto land adjoining the site from which those substances were released, and if the owner of the adjoining land refuses to permit entry onto the adjoining land **for the purpose of effecting remediation**, then the owner or operator of the site may bring an action to compel the owners of the adjoining land to permit immediate entry **for purposes relating to the remediation of the site**, the adjoining land, and any other real property that may be contaminated with hazardous substances or petroleum products. The court shall prescribe the conditions of the entry and shall determine the amount of damages, if any, to be paid to the owner of the adjoining land as compensation for the entry. The court may require the owner or operator who is seeking entry to give bond to the owner of the adjoining

land to secure performance and payment.

415 ILCS 5/22.2c (emphasis added).

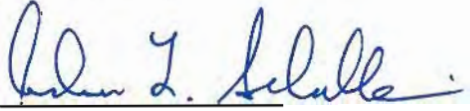
14. Congress has been seeking access to neighboring properties to conduct a groundwater investigation, not to perform a remediation. Section 22.2c of the Act provides no authority for a court to grant an injunction compelling an adjoining landowner to allow entry on to its land for an environmental investigation, and Congress is aware of no other authority that can be used to compel an adjoining landowner to provide access to its property to a private party.

15. The Agency therefore erred when it denied Congress's Significant Permit Modification Application. Despite its best efforts, Congress was unable to install the off-site groundwater monitoring wells described in Condition VII.24, and aside from the absence of data and analysis relating to these wells, the Significant Permit Modification Application was otherwise complete. There is no legal authority that Congress could have used to obtain access to neighboring properties to perform a groundwater investigation.

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that the Board reverse the IEPA's April 29, 2011 denial of Petitioner's Significant Permit Modification Application and enter an order directing IEPA to modify Condition VII.24 or to use its authority to compel adjoining landowners to allow Congress to install groundwater monitoring wells on their properties.

Dated: June 3, 2011

Respectfully Submitted,

By: 

Russell R. Eggert
Andrew L. Schulkin
LATHROP & GAGE LLP
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Suite 2100
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312.920.3301 (Facsimile)

Attorneys for Petitioner Congress
Development Company

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CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that on June 3, 2011, the foregoing Petition for Review of Denial of Significant Permit Modification Application was served upon the following

by hand delivery:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

by U.S. first class mail:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

By: 

Russell R. Eggert
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312.920.3301 (Facsimile)

Attorneys for Petitioner Congress
Development Company



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

217/524-3300

March 9, 2011

Congress Development Company
Attn: Josh McGarry
4100 W. Frontage Road
Hillside, Illinois 60162

Re: 0318170002 -- Cook County
Congress Development Co
Permit Log No. 2010-046
Permit Landfill 810-817 File
Permit File

Dear Mr. McGarry:

The Illinois Environmental Protection Agency has reviewed, for purposes of completeness only, the above-referenced permit application, dated January 27, 2011 and received January 31, 2011, pursuant to 35 Ill. Adm. Code 813.103(b). Based on this review the Illinois EPA has determined that the subject application is complete.

Therefore, in accordance with 35 Ill. Adm. Code 813.103(a), the Illinois EPA's deadline for taking action on this application is May 1, 2011. The technical review will continue and should be completed by that date.

The review of the portions of the application dealing with groundwater has been assigned to Brett Bersche of the Groundwater Assistance Unit. Any questions about other aspects of the application should be directed to the primary reviewer, Tom Hubbard. These reviewers may be contacted at 217/524-3300.

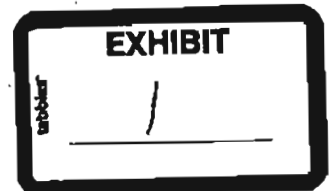
Sincerely,

Stephen F. Nightingale by *CTL*

Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

SFN:TWH/mls/113021.doc
wH

cc: Jesse Varsho, P.E., Shaw Environmental





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

217/524-3300

April 29, 2011

Certified Mail

7009 3410 0002 3808 1318

Congress Development Company
Attn: Mr. Josh McGarry
4100 West Frontage Road
Hillside, Illinois 60162

Re: 0318170002 -- Cook County
Congress Development Co
Log No. 2011-046
Permit Landfill 810-817 File
Permit Denial



Dear Mr. McGarry:

This will acknowledge receipt of your Application for Permit to modify a solid waste management site, dated January 27, 2011, and received by the Illinois EPA on January 31, 2011.

Your permit application containing the expand assessment monitoring report is denied.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act (Act). Section 39(a) of the Act [415 ILCS 5/39(a)] requires the Illinois EPA to provide the applicant with specific reasons for the denial of permit. The following reason(s) are given:

Pursuant to 35 Ill. Adm. Code, 811.319(b)(3), if the analysis of the assessment monitoring data shows that the concentration of one or more of constituents, monitored at or beyond the zone of attenuation is above the applicable groundwater quality standards of 35 Ill. Adm. Code, 811.320 and is attributable to the solid waste facility, then the operator shall determine the nature and extent of the groundwater contamination. The application does not meet this requirement as groundwater contamination has been attributed to the facility but the facility failed to determine the nature and extent. Specifically:

1. The operator has failed to install rate and assessment monitoring wells A-33, A-39, A-40, A-41, A-42, A-43, A-44, A-45, A-46, A-47, A-48, A-49, A-50, A-51 and A-52 and to conduct assessment monitoring at these wells to define the rate, nature and extent of the groundwater impacts as required by Condition VII.24 of Modification No. 47 of Permit No. 1995-165-LFM.
2. The rate and extent (vertically down to the Ordovician Maquoketa Shale Formation and laterally) of groundwater impacts observed at Congress Development Company have not been demonstrated as required by Condition VII.24 of Permit No. 1995-165-LFM.
3. The halo effect (increasing competency of bedrock, thus reduced impacts further away from the waste boundary) conceptually described on page 23 does not delineate the rate and extent of groundwater impacts. Rate and extent must be physically demonstrated by the installation and

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Bureau of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-6463

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

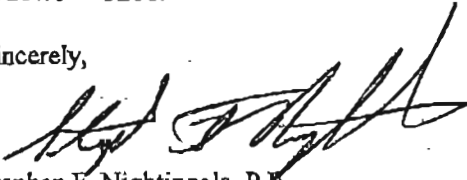
sampling of groundwater assessment wells in accordance with Condition VII.24 of Modification No. 47 of Permit No. 1995-165-LFM.

4. Leachate withdrawal is proposed as a form of corrective action as described on pages 24 and 27 of the application. Leachate withdrawal is part of the design standard of Congress Development Company. Further, the purpose of this application was to have defined the rate, nature (landfill gas and/or leachate) and extent of contamination as required by Condition VII.24 of Log No. 2009-522. Any selection, implementation and efficiency of a selected remedy are subject to the procedures in 35 IAC 811.324, 811.325 and 811.326 which is not the subject of this application.

Within 35 days after the date of mailing of the Illinois EPA's final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

Should you wish to reapply or have any questions regarding this application, please contact Tom Hubbard at 217/524-3286.

Sincerely,



Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

CSJ
SFM:TWH:m/s/112471s.doc
at TWH

- cc: Jesse Varsho, P.E., Shaw Environmental
Illinois Attorney General's Office
Jeep & Blazer, L.L.C.
Weaver Boos Consultants, Inc.
Shaw Environmental, Inc.
Village of Hillside
BT2
Seyfarth Shaw, LLP
Sachnoff & Weaver, Ltd.
Environmental Information Logistics, LLC
Allied Waste
CDM