

ILLINOIS POLLUTION CONTROL BOARD

June 16, 2011

CONGRESS DEVELOPMENT	)	
COMPANY,	)	
	)	
Petitioner,	)	
	)	PCB 11-90
v.	)	(Permit Appeal - Land)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On June 3, 2011, Congress Development Company (Congress) timely filed a petition asking the Board to review an April 29, 2011 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Congress's sanitary landfill facility located at 4100 West Frontage Road, Hillside, Cook County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2010)), 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) (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Congress's application for a significant land permit modification regarding Congress's Cook County facility. Congress appeals on the grounds that the Agency erred in denying Congress's significant permit modification application. The Agency had informed Congress that if it was unable to reach an agreement with adjoining landowners for access to install and sample groundwater monitoring wells on neighboring properties, it should have brought an action pursuant to Section 22.2c of the Act (415 ILCS 5/22.2c (2010)) to compel its neighbors to permit Congress to install groundwater monitoring wells on their properties. However, Congress asserts that Section 22.2c provides no authority that can be used to compel adjoining landowners to provide access to its property to a private party. Congress's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Congress has the burden of proof. 415 ILCS 5/40(a)(1) (2010); *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) (2010)), which only Congress may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Congress “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is October 3, 2011, 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 September 22, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 5, 2011, which is 30 days after the Board received Congress’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 June 16, 2011, by a vote of 5-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board