

ILLINOIS POLLUTION CONTROL BOARD  
March 6, 2008

TOM EDWARDS,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 08-42
	)	(Third-Party RCRA Permit Appeal)
PEORIA DISPOSAL COMPANY and	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by N.J. Melas):

*Pro se* petitioner in this matter, Mr. Tom Edwards, seeks to proceed with a third-party appeal of a permit implementing the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§6901 *et seq.* As explained below, the Board finds that Mr. Edwards' March 3, 2008 amended petition (Am. Pet.) has addressed all of the petition deficiencies identified in the Board's February 21, 2008 order. Also finding that the petition as a whole is not duplicative or frivolous as explained below, the Board accordingly accepts the amended petition for hearing, and finds that the decision time clock is restarted.

**PROCEDURAL HISTORY**

This matter came before the Board on three letters filed *pro se* by Mr. Tom Edwards and received by the Board on January 4 and 7, 2008. Mr. Edwards sought either an extension of time to file a third-party appeal, or proceed with an appeal based on his filings.

By order of February 21, 2008, the Board found that Mr. Edward's filing, received January 7, 2008 but dated and postmarked January 1, 2008, was a timely-filed petition for review under the Board's mailbox rule at 35 Ill. Adm. Code 101.300(b)(2). The permit was issued November 27, 2007 by the Illinois Environmental Protection Agency (Agency) to Peoria Disposal Co. (PDC). The permit at issue here, as submitted by Mr. Edwards on January 7, 2008, states, in the first paragraph that:

A Part B permit is hereby granted pursuant to the Resource Conservation and Recovery Act, Illinois Environmental Protection Act, and Title 35 Ill. Adm. Code Parts 702, 703, 705, and 720 through 729 to the Peoria Disposal Company facility to construct/maintain and operate a waste management facility involved in the treatment, storage and disposal of hazardous waste and specified non-hazardous waste. Peoria Disposal Company is located at 4349 Southport Road, Peoria, Illinois. Permit at 1.

The Board's February 21, 2008 order denied motions to dismiss filed by PDC and the Agency, but found deficiencies in the petition. The Board ordered Mr. Edwards to file an amended petition remedying the deficiencies outlined in the order, and complying with all requirements for filing a permit appeal as set out in the Environmental Protection Act (Act), 415 ILCS 5/1 *et seq.*, (2006), the Board's procedural rules at 35 Ill. Adm. Code 101 and 105?, and the Board's RCRA rules at 35 Ill. Adm. Code 705. Among other deficiencies noted were that Mr. Edwards did not serve respondents with his filings. Additionally, the Board found that the initial filings failed to: specify the Section of the Act under which the appeal is brought, address the requirements of 35 Ill. Adm. Code 705.212(a), and make clear whether Mr. Edwards is appearing on his own behalf or on behalf of an organization. *See* 35 Ill. Adm. Code 101.400(a) (specifying when a person can appear himself or must appear through an attorney at law).

### **Mr. Edwards' March 3, 2008 Amended Petition**

Mr. Edwards' amended petition is a 3-page document, to which is attached a copy of testimony he states that he provided at the Agency hearing held February 28, 2007, and a notice of filing and proof of service. On the first page, Mr. Edwards clarifies that he is appealing on his own behalf, so that no attorney is necessary as specified in 35 Ill. Adm. Code 101.400(a)(1)<sup>1</sup>. He states that the statutory basis for his appeal is Sections 40(b) and (c) of the Act, and that he participated in the Agency's public hearing on the renewal permit as required by 35 Ill. Adm. Code 705.212(a). Mr. Edwards attached a photocopy of a single page document headed "PDC's Toxic Waste Landfill—Testimony at EPA's Public Hearing." Am. Pet. at 4.

On the first page of the amended petition, Mr. Edwards states in part:

Succeeding pages include:

- Amended text for this appeal (pages 2 and 3).
- Copy of original testimony of this appellant at IEPA's public hearing Feb. 28, 2007, in Peoria on IEPA's proposed new permit to replace the present one issued in 1987, (This copy was submitted at the hearing; a second also mailed to insure inclusion.). [The attachment is a photocopy of a single-page document headed "PDC's Toxic Waste Landfill—Testimony at EPA's Public Hearing." Am. Pet. at 4.]
- Proof of service. Am. Pet. at 1.

The text of the "amended appeal" includes 13 points, pointing out deficiencies Mr. Edwards perceives in the issued permit and overall state landfill oversight process

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<sup>1</sup> The caption in the February 21, 2008 order listed petitioner as "Tom Edwards/River Rescue" to reflect the typewritten signature on Mr. Edwards' filings. But, the Board's Clerk had originally docketed the petitioner as "River Rescue". The caption of today's order has been changed to reflect the clarification in the March 3, 2008 amended petition.

## **BOARD DISCUSSION**

### **Mr. Edwards' Motion for Relief from Filing and Service Requirements**

The Board will first address a motion contained on the first page of the amended petition, which reads as follows:

NOTE: Motion not to include repeated filing of the bulky 197-page IEPA proposed new "RCRA Part B Permit" with the IPCB in this amended appeal, and service copies of that permit to above cited parties in that appeal, because [the Board was previously served and the Agency and PDC have copies]. Am. Pet. at 1.

Section 101.500(d) of the Board's procedural rules provides that the Board does not rule on motions prior to the expiration of the 14-day response time "[u]nless undue delay or material prejudice will result." 35 Ill. Adm. Code 101.500(d). As the Board indicated in its February 21, 2008 order that it wished to determine whether this appeal would proceed without delay, the Board will rule on the motion. The motion is granted, and Mr. Edwards need not provide the Board, Agency, or PDC with another copy of the permit. The Agency will provide the Board with an official copy of the permit as part of the record. See 35 Ill. Adm. Code 105.116, 705.211, and 705.212.

### **Contents of Mr. Edwards' Petition**

Section 40(b) of the Act authorizes a third-party appeal of a RCRA permit. 415 ILCS 5/40(b) (2006). The Board's procedural rules state that:

*[i]f the Agency grants a RCRA permit for a hazardous waste disposal site, a third party, other than the permit applicant or the Agency, may petition the Board for a hearing to contest the issuance of the permit. . . . [415 ILCS 5/40(b)] 35 Ill. Adm. Code 105.204(b) (italics in original, designating quotation from statutory language)*

As the first step to consideration of the acceptability of the petition and all of its contents, the Board first construes the March 3, 2008 document as superseding all prior filings: the Board views the entirety of the grounds for this appeal as being the 13 points listed by Mr. Edwards. Am. Pet. at 2-3.

Section 40(b) provides that if the Board determines that the petition is not duplicative or frivolous and that the petitioner is so located as to be affected by the permitted facility, the Board shall "hear the petition in accordance with the terms of [Section 40(a)] and its procedural rules." 415 ILCS 5/40(b) (2006). Section 705.212(c) of the Board's RCRA rules further provides that:

A petition for review must include a statement of the reasons supporting that

review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) . . . ; in all other respects, the petition must comport with the requirements for permit appeals generally, as set forth in 35 Ill. Adm. Code 105. 35 Ill. Adm. Code 705.212(c).

In his petition, Mr. Edwards represents that he presented testimony at a public hearing on the draft permit and the same material as a written public comment. The petition does not explicitly state that petitioner is so located as to be affected by the PDC RCRA landfill. But, the petition makes clear that Mr. Edwards is a Peoria resident, so this portion of the standing test is fulfilled.

An action before the Board is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is “a request for relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* No evidence currently before the Board indicates that this petition as a whole is duplicative or frivolous within the meaning of Section 40(b) of the Act.

As Mr. Edwards has addressed all of the deficiencies identified in the Board’s February 21, 2008 order and the petition as a whole is not duplicative or frivolous as explained above, the Board will accept the amended petition for hearing, and finds that the decision time clock is restarted as discussed below. But, in accepting this matter for hearing, the Board in no way intends to preclude the respondents from the timely filing of any motions to strike or dismiss any of the 13 points of error alleged by Mr. Edwards in the petition.<sup>2</sup> The Act, the procedural rules, 35 Ill. Adm. Code 705.212(a), and precedential case law establish the proper scope of a third-party RCRA permit appeal.

### **Relevant Issues and Standard of Review**

The question before the Board in permit appeal proceedings is: (1) whether the applicant proves that the application, as submitted to the, demonstrated that no violation of the Act would Agency have occurred if the requested permit had been issued; or (2) whether the third party proves that the permit as issued will violate the Act or Board regulations. Joliet Sand & Gravel, 163 Ill. App. 3d 830, 833, 516 N.E.2d 955, 958 (3rd Dist. 1987); Prairie Rivers Network v. IPCB, IEPA and Black Beauty Coal Company, 335 Ill. App. 3d 391, 401, 781 N.E.2d 372, 380 (4th Dist. 2002).

The Board’s review of permit appeals is limited to information before the IEPA during the IEPA’s statutory review period, and is not based on information developed by the permit applicant, or the IEPA, after the IEPA’s decision. Prairie Rivers Network v. IEPA and Black Beauty Coal Company, PCB 01-112 (Aug. 9, 2001), *aff’d sub nom.* Prairie Rivers Network v. IPCB, IEPA and Black Beauty Coal Company, 335 Ill. App. 3d 391, 401, 781 N.E.2d 372, 380 (4th Dist. 2002); Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280

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<sup>2</sup> Such motions may include only reasons other than the untimeliness of the filing of the original petition, which the Board addressed in the February 21, 1008 order and does not intend to revisit.

(5th Dist. 1987). The record must contain evidence to support the issuance of the permit and the conditions attached to that permit. The Board reviews the entirety of the record to determine (1) if the record supports the IEPA's decision, and (2) that the procedures used by the IEPA are consistent with the Act and Board regulations. The Board does not affirm the IEPA's decision on the permit unless the record supports the decision. Des Plaines River Watershed Alliance, Livable Communities Alliance, Prairie Rivers Network, and Sierra Club v. IEPA and Village of New Lenox, PCB 04-88 slip op. at 12 (Apr. 19, 2007), *appeal pending sub nom. IEPA and Village of New Lenox v. IPCB, Des Plaines River Watershed Alliance, Livable Communities Alliance, Prairie Rivers Network, Sierra Club*, Nos. 3-07-575 and 3-07-0819 (cons.) (3rd Dist.).

A permit appeal is not the proper forum for a citizen to generally challenge the Agency's performance of its statutory duties. *See, e.g. Landfill Inc. v. PCB*, 74 Ill. 2d 541, 387 N.E.2d 258, 265 (1978)

### **Hearing and Decision Deadline**

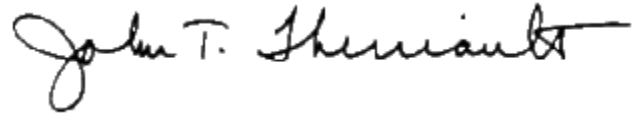
As previously stated, the Board accepts the amended petition for hearing. Mr. Edwards has the burden of proof. 415 ILCS 5/40(a)(1) and (b)(2006); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. Accordingly, 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)(3) (2006)), which only PDC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, PDC "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2006)]." 415 ILCS 5/40(a)(3) (2006). Currently, the decision deadline is July 1, 2008, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 19, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 2, 2008, which is 30 days after the Board received Mr. Edwards' amended 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board