

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2007

WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 08-101
)	(NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On July 10, 2008, at the parties' request, the Board extended until July 28, 2008, the time period for Waste Management of Illinois, Inc. (Waste Management) to appeal a May 22, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.208. The Agency's determination concerns Waste Management's Chain of Rocks closed municipal waste landfill located at 3399 West Chain of Lakes Road on Chouteau Island in Granite City, Madison County. On July 28, 2008, Waste Management timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.206, 105.208(a). For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2006)) (Act), 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, 540(a)(1) (2006); 35 Ill. Adm. Code 105, Subpart D. In this case, the Agency issued a National Pollutant Discharge Elimination System (NPDES) permit to Waste Management, subject to conditions. Waste Management appeals on the grounds that "because the landfill is closed, no waste is exposed and storm water cannot come into contact with waste, no NPDES permit is required." Petition at 3. Additionally, Waste Management alleges that the permit condition requiring the implementation of a Storm Water Pollution Prevention Plan (SWPPP) is "extensive and burdensome." *Id.* Waste Management's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Waste Management has the burden of proof. *See* 415 ILCS 5/40(a)(1) (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. *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) (2006)), which only Waste Management may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Waste Management “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 November 25, 2008, which is the 120th day after the Board received the petition. The Board meeting immediately before the decision deadline is scheduled for November 20, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 27, 2008, which is the 30th day after the Board received Waste Management’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 August 7, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board