

ILLINOIS POLLUTION CONTROL BOARD
April 15, 2010

CATHERINE THOMAS, d/b/a THOMAS)
12TH STREET DISPOSAL,)
)
Petitioner,)
)
v.) PCB 10-52
) (Permit Appeal-Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C. K. Zalewski):

On January 21, 2010, at the parties' request, the Board extended until April 11, 2010 the time period within which Catherine Thomas, d/b/a Thomas 12th Street Disposal (Thomas) might appeal a December 3, 2009 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008)¹; 35 Ill. Adm. Code 105.406. On April 12, 2010, the Board received Thomas' petition for review. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The petition was timely filed because it was postmarked April 9, 2010, before the April 11 filing deadline. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.208(a). The Agency's determination concerns Thomas' closed landfill located in Vermilion County. For reasons below, the Board accepts Thomas' petition for hearing.

Under the Environmental Protection Act (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 D. In this case, the Agency issued Thomas a supplemental permit with conditions to modify maintenance requirements for the closed landfill. Thomas appeals on the grounds that the challenged conditions are "unjustified and unnecessary to protect the public and the environment". Pet at 1.

Thomas' petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing. Thomas has the burden of proof. *See* 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 determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, 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

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

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 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 its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is August 10, 2010, which is the 120th day after the date on which the Board received the petition, April 12, 2010. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 5, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 12, 2010, which is 30 days after the Board received received Thomas' petition. *See* 35 Ill. Adm. Code 105.410(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 105.410(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 April 15, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board