

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CATHERINE THOMAS, d/b/a THOMAS)
12th STREET DISPOSAL,)
)
)
Petitioner,)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 10-69
(Permit Appeal-Land)

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STATE OF ILLINOIS
Pollution Control Board

PETITION TO REVIEW THE DENIAL OF
SUPPLEMENTAL PERMIT APPLICATION LOG NO. 2007-497
BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

The Petitioner CATHERINE THOMAS d/b/a Thomas 12th Street Disposal hereby appeals the denial of a supplemental permit by the Illinois Environmental Protection Agency, pursuant to 35 Ill. Adm. Code 105.100 et seq., stating as follows:

1. On January 29, 2010, the Illinois Environmental Protection Agency denied Supplemental Permit Application Log No. 2007-497 (to original Permit No. 1974-44-DE/OP) to Catherine Thomas d/b/a Thomas 12th Street Disposal. (A copy of the denial of the Supplemental Permit Application Log No. 2007-497 is attached to this Petition as Petitioner's Exhibit 1).
2. The denial was served on Catherine Thomas on February 2, 2010.
3. The Petitioner, through counsel, requested a 90-day extension from the Illinois Environmental Protection Agency on March 3, 2010.
4. The Illinois Environmental Protection Agency and the Petitioner joined in requesting a 90-day extension of the Board on March 8, 2010.
5. The Board on March 18, 2010 granted the request for the extension and extended the deadline until June 7, 2010.
6. The denial of the permit application was improper based on the following:
 - A. Pursuant to 35 Ill. Adm. Code 807.622(d), post-closure care cost estimates must include all groundwater monitoring parameters at the frequency indicated in the permit. This application failed to meet this regulation. The cost estimate of \$35,606.00 proposed in the application assumes that only detection groundwater monitoring

will need to be done during the remainder of the post-closure care period. However, there are groundwater exceedences in the vicinity of this landfill and a groundwater assessment must be done as described in Supplemental Permit No. 2007-300-SP. Therefore, estimates should be calculated incorporating the assessment monitoring required by supplemental permit No. 2007-300-SP.

The requirement for additional groundwater assessment activities is the subject of an ongoing appeal (Supplemental Permit No. 2007-300-SP). The post-closure care cost estimate provided as Log No. 2007-497 sufficiently addresses the requirements outlined in 35 Ill. Adm. Code 807.622(d). Specifically, the provided post-closure cost estimate includes the following elements:

- (1) The number of years of post-closure care required.
- (2) Groundwater monitoring:
 - a. Number of monitoring points;
 - b. Parameters to be monitored;
 - c. Frequency of sampling;
 - d. Cost per parameter per sampling.
- (3) Cover stabilization:
 - e. Estimate of the area which is expected annually to require residual settlement or erosion control work;
 - f. Annual cost of residual settlement and erosion control work;
 - g. Annual cost of mowing.

B. The cost estimate for assessment activities beyond routine groundwater sampling and cover stabilization was provided in addendums dated April 16, 2008 and May 21, 2008. These addendums provided estimated costs associated with additional groundwater sampling and analyses cost associated with the proposed assessment monitoring plan (Log No. 2007-300).

However, Supplemental Permit No. 2007-300-SP contains assessment activities that were not proposed as part of the application. These costs to complete the assessment activities associated with these arbitrarily imposed permit conditions are not included as part of the proposed post-closure care costs.

C. Furthermore, 35 Ill. Adm. Code 811.622(e) specifically states that Section 811.622 does not grant authority to the Illinois EPA to require the operator to perform any of the indicated activities; however, if the site permit requires a closure activity, the operator must include the cost estimate. Once the operator has completed

an activity, the operator may file a permit application indicating that the activity has been completed, and zeroing that element of the cost estimate.

D. Additionally, Section 807.622 (a) (Cost Estimate for Post-Closure Care) states "The post-closure care cost estimate is calculated by multiplying the annual cost estimate by the number of years of post-closure care required by this Part." The regulation does not address assessments or site investigations. Because these are typically done on an as-needed basis, costs incurred are typically accounted for at the time of the investigations.

E. Section 807.623(b) "The operator must review the closure and post-closure care plans prior to filing a revised cost estimate in order to determine whether they are consistent with the current operations and regulations." The approved Post-Closure Care Plan does not mandate or suggest the cost estimates need to be revised to account for unforeseen site assessments. The application Log No. 2007-497 was consistent with the latest approved Post-Closure Care Plan.

F. The Illinois EPA has indicated that the post-closure cost estimate application and addendums have satisfied the Illinois EPA, but issuance of the permit will not occur until a permit is issued for 2007-300.

7. Petitioner requests that the Board reverse the decision of the Illinois Environmental Protection Agency.

CATHERINE THOMAS,
d/b/a THOMAS 12th STREET
DISPOSAL,

By: 

David K. Cox
Attorney at Law

David K. Cox
Attorney for Petitioner
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112 West Washington Street
Monticello, Illinois 61856
217-762-3800
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2029
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/524-3300

January 29, 2010

Certified Mail

7004 2510 0001 8615 9968

Thomas 12th Street Disposal
Attn: Mrs. Catherine Thomas
55 Greenwood Cemetery Road
Danville, Illinois 61832

Re: 1838040009 -- Vermilion County
Thomas 12th St Disposal
Log No. 2007-497
Permit Landfill 807 File
Permit Denial

RELEASABLE

JAN 29 2010

REVIEWER MD

Dear Mrs. Thomas:

This will acknowledge receipt of your Application for Permit to modify a solid waste management site, dated and received by the Illinois EPA on December 4, 2007.

Your permit application to revise the post-closure care cost estimates 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:

1. Pursuant to 35 Ill. Adm. Code Section 807.622(d), post-closure care cost estimates must include all groundwater monitoring parameters at the frequency indicated in the permit. This application failed to meet this regulation. The cost estimate of \$35,606.00 proposed in the application assumes that only detection groundwater monitoring will need to be done during the remainder of the post-closure care period. However, there are groundwater exceedences in the vicinity of this landfill and a groundwater assessment must be done as described in Supplemental Permit No. 2007-300-SP. Therefore, estimates should be calculated incorporating the assessment monitoring required by Supplemental Permit No. 2007-300-SP.

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

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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

SAB
SFN: IWH/mls/103372.doc
SALTON

cc: Sean C. Chisek, P.E., Andrews Engineering

bcc: Bureau File
Champaign Region
Hope Wright
Bur Filson
Brett Bersche
Tom Hubbard *Steve Nightingale*

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the PETITION TO REVIEW THE DENIAL OF SUPPLEMENTAL PERMIT APPLICATION LOG NO. 2007-497 BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY was served on:

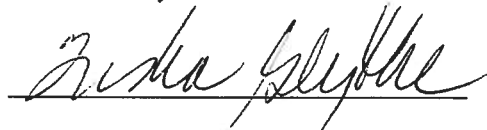
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Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
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by placing the documents in an envelope, properly addressed and with proper postage affixed, and placing the envelope in the United States Mail box located in Monticello, Illinois, on the 4th day of June, 2010.



David K. Cox
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