

ILLINOIS POLLUTION CONTROL BOARD
August 19, 2010

CATHERINE THOMAS d/b/a THOMAS)
12TH STREET DISPOSAL,)
)
Petitioner,)
)
v.) PCB 10-85
) (Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On May 6, 2010, at the parties' request, the Board extended until August 4, 2010 the time period for Catherine Thomas, d/b/a Thomas 12th Street Disposal (Thomas) to appeal a March 24, 2010 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns Thomas's solid waste management site in Vermilion County. On August 5, 2010, Thomas timely filed a petition asking the Board to review the Agency's determination. The petition was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.206, 105.208. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection 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 denied Thomas's application for a permit regarding Thomas's Vermillion County facility. Thomas appeals on the grounds that the Agency arbitrarily added additional standards not requested or required by the consulting engineers immediately before the end of the closure period. Thomas also asserts as grounds for appeal that the site post-closure care period has been completed in accordance with the approved post-closure plan. Thomas's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Thomas has the burden of proof. 415 ILCS 5/40(a)(1) (2008); *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) (2008)), 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 “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act (415 ILCS 5/41(d) (2008)).” 415 ILCS 5/40(a)(3) (2008). Currently, the decision deadline is December 3, 2010, 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 December 2, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 7, 2010, which is the first business day following the 30th day after the Board received Thomas’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 19, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board