

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2013

CONGRESS DEVELOPMENT COMPANY,)
)
Petitioner,)
)
v.) PCB 14-27
) (Permit Appeal – Air, Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On October 16, 2013, Congress Development Company (petitioner) timely filed a petition asking the Board to review a September 12, 2013 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns petitioner’s solid waste landfill located at 4100 West Frontage Road, Hillside, Cook County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2012)), 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) (2012); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied petitioners request for alternate operating parameters and procedures for certain active landfill gas extraction collectors at petitioner’s Cook County facility. Petitioner appeals on the grounds that the Agency’s rationale is “arbitrary, capricious, and otherwise unlawful”. Petitioner’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Petitioner has the burden of proof. 415 ILCS 5/40(a)(1) (2012); *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, 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) (2012)), which only petitioner may extend by waiver

(see 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioner “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2012). Currently, the decision deadline is February 13, 2014, 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 February 6, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 15, 2013, which is the 30th day after the Board received petitioner’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 T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2013 by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board