

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2007

PEORIA DISPOSAL COMPANY,)
)
Petitioner,)
)
v.) PCB 08-25
) (Permit Appeal - RCRA)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On September 17, 2007, Peoria Disposal Company (PDC) timely filed a petition asking the Board to review an August 30, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.206. In the determination, the Agency denied PDC's application to modify the permit for its landfill in Peoria County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied PDC's application to modify its "RCRA [Resource Conservation and Recovery Act] Part B Permit No. ILD000805812/1438120003, Log No. 24," which the Agency issued to PDC on November 4, 1987. Petition at 1. The Agency stated that PDC's proposed changes to the landfill would constitute the creation of a new pollution control facility and that PDC does not qualify for the exclusion under Section 3.330(a)(3) of the Act (415 ILCS 5/3.330(a)(3) (2006)). *Id.* at 2. The Agency further stated that Section 39(c) of the Act (415 ILCS 5/39(c) (2006)) prohibits it from issuing the requested permit because PDC failed to provide proof of local siting approval. *Id.* PDC appeals on the grounds that the Agency erred as a matter of law in concluding that the Section 3.330(a)(3) exclusion for sites handling "wastes generated by such person's own activities" is inapplicable. *Id.* PDC maintains that its proposed "Residual Waste Landfill" would accept for disposal only "treated residue waste generated by PDC" and that PDC was therefore not required to submit proof of local siting approval. *Id.* at 2-3. PDC's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. PDC has the burden of proof. 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 PDC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, PDC "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 January 15, 2008, 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 January 10, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 17, 2007, which is 30 days after the Board received PDC'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 September 20, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board