

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2008

JOYCE FARMS RECYCLING, INC.,)
)
 Petitioner,)
)
 v.) PCB 08-49
) (Permit Appeal – Land)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
 Respondent.)

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

On March 20, 2008, at the parties' request, the Board extended until June 2, 2008, the time period for Joyce Farms Recycling, Inc. (Joyce Farms) to appeal a January 28, 2008 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns a landscape waste compost facility consisting of approximately 13.62 acres located at 3000 N. Road, Essex, Kankakee County. On June 2, 2008, Joyce Farms timely filed a petition asking the Board to review the Agency determination. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.208(a). 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. In this case, the Agency issued a permit renewal, subject to conditions, to modify Joyce Farms' existing landscape waste compost facility. Joyce Farms appeals on the grounds that several conditions in the permit are not required by the Act or the Board's implementing regulations. Joyce Farms' petition meets the content requirements of 35 Ill. Adm. Code 105.201.

The Board accepts the petition for hearing. Joyce Farms 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 Joyce Farms may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Joyce Farms “may deem the permit issued” as requested. 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is September 30, 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 September 18, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 2, 2008, which is the 30th day after the Board received Joyce Farm’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 June 5, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board