

ILLINOIS POLLUTION CONTROL BOARD

September 6, 2012

ATKINSON LANDFILL COMPANY,                 )  
   )  
    Petitioner,   )  
   )  
    v.   )     PCB 13-8  
   )     (Permit Appeal – Land)  
ILLINOIS ENVIRONMENTAL                     )  
PROTECTION AGENCY,                         )  
   )  
    Respondent.   )

ORDER OF THE BOARD (by T.A. Holbrook):

On August 22, 2012, Atkinson Landfill Company (Atkinson) timely filed an amended petition asking the Board to review a July 6, 2012 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Atkinson’s landfill which is known as the Henry County Landfill #2. For the reasons below, the Board accepts the petition for review.

Atkinson originally filed a petition for review on August 2, 2012. On August 9, 2012, the Board accepted the petition as timely but directed Atkinson to file an amended petition by September 10, 2012. The Board found the original petition deficient in that it did not include the Agency’s denial letter as required by Section 105.210(a) of the Board’s rules. 35 Ill. Adm. Code 105.210(a). The amended petition cures this deficiency.

Under the Environmental Protection Act (415 ILCS 5 (2010)), 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) (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Atkinson’s permit request, finding the permit was incomplete because Atkinson’s siting approval had expired. Atkinson appeals on the grounds that the previous local siting approval decision was still valid and challenges the Agency determination that the permit application was incomplete because of a lack of local siting approval. Atkinson’s amended petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the amended petition for hearing. Atkinson has the burden of proof. 415 ILCS 5/40(a)(1) (2010); *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) (2010)), which only Atkinson may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Atkinson “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is December 20, 2012, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 13, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 21, 2012, which is 30 days after the Board received Atkinson’s amended 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, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2012 by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board