

ILLINOIS POLLUTION CONTROL BOARD
October 5, 2006

ATKINSON LANDFILL CO.,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 07-20
THE VILLAGE OF ATKINSON and THE)	(Pollution Control Facility Siting
VILLAGE BOARD OF THE VILLAGE OF)	Appeal)
ATKINSON,)	
)	
Respondents.)	

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

On September 28, 2006, Atkinson Landfill Company (Landfill Company) filed a petition requesting the Board to review the special conditions imposed in Resolution No. 185 dated August 28, 2006 adopted by the Board of Trustees of the Village of Atkinson (Village). In the resolution, the Village granted the Landfill Company's March 6, 2006 application for horizontal and vertical expansion of its existing landfill. For the reasons set forth below, the Board accepts the petition for hearing.

Section 40.1(a) of the Environmental Protection Act (Act) (415 ILCS 5/40.1(a) (2004)) authorizes the Landfill Company's appeal to the Board. Resolution 185 contains five Special Conditions. The Landfill Company challenges four of the five Special Conditions on both procedural and substantive grounds. The Landfill Company challenges the content of the four conditions that require, in brief: (1) a maximum height limit for the vertical expansion; (2) amendment of the Village Host Agreement to increase fees, or otherwise offset "the additional burden placed upon the general public"; (3) amendment of the Village Host Agreement to provide a "property protection plan to all residences in the Village; and (4) replacement of any damaged, destroyed or removed off-site visual buffer vegetation or creation of replacement on-site visual buffering. (The Landfill Company does not challenge the fifth special condition requiring compliance with Resolution No. 178 adopted August 23, 1999.) Petition at 1, 4, para. 15.

As a first procedural point, the Landfill Company asks the Board to deem the application for site location approval approved by operation of law due to the Village's failure to take timely action as required by Section 39.2(e) of the Act. 415 ILCS 5/39.2(e) (2004). The Landfill Company contends that "the decision deadline is September 4, 2006" and there has been no final action regarding Special Conditions [*e.g.*, increase in host fees not specified]." Petition at 6, para. 21.

Next, the Landfill Company contends that each of the challenged Special Conditions is a result of fundamental unfairness in the proceedings. Among other things, the Landfill Company

charges the Special Conditions were adopted as a result of *ex parte* contacts, at an improper private closed door meeting in violation of the Village's siting ordinance, based on an insufficient record, after application of an incorrect burden of proof and improper standards and criteria. Petition at 7, para. 22.

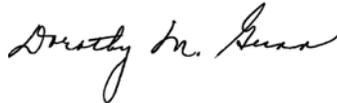
As to the conditions' substance, the Landfill Company contends each of the four challenged conditions is "unduly prejudicial and invalid" for one or more reasons including that the conditions are neither reasonable nor necessary to accomplish the purposes of Section 39.2 of the Act (415 ILCS 5/39.2(a) (2004)), are an abuse of discretion, are otherwise invalid, and are not based on the nine criteria a local siting authority must consider when deciding whether to grant siting to a pollution control facility (415 ILCS 5/39.2(a) (2004)). Petition at 5-6, para. 20.

The Board accepts the petition for hearing. The Landfill Company has the burden of proof. 415 ILCS 5/40.1(a) (2004); *see also* 35 Ill. Adm. Code 105.506. Hearings will be based exclusively on the record before the Village. 415 ILCS 5/40.1(a) (2004). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a) (2004)), which only the Landfill Company may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Landfill Company "may deem the site location approved." 415 ILCS 5/40.1(a) (2004). Currently, the decision deadline is January 26, 2007 (the 120th day after September 28, 2006). *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for January 18, 2007.

The Village must file the entire record of its proceedings within 21 days after the date of this order. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. The Landfill Company must pay to the Village the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2004); 35 Ill. Adm. Code 107.306; *see also* 35 Ill. Adm. Code 107.502(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 5, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board