

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ATKINSON LANDFILL COMPANY)	
)	
Petitioner)	
)	
v.)	PCB 12-58
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that I have electronically filed with the Office of the Clerk of the Pollution Control Board, Atkinson Landfill Company's **Motion for Summary Judgment**, copies of which are herewith served upon you.

ATKINSON LANDFILL COMPANY

By: Joshua R. More
By Its Attorneys

Dated: March 4, 2013

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

ATKINSON LANDFILL COMPANY’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005, and Section 101.516 of the Board’s Procedural Rules, 35 Ill. Adm. Code § 101.516, Petitioner Atkinson Landfill Company (“Atkinson”) submits this Motion for Summary Judgment. There are no genuine issues of material fact in this case and Atkinson is entitled to judgment as a matter of law. In support of its motion, Atkinson states as follows:

I. BACKGROUND

1. This matter arises out of the Illinois Environmental Protection Agency’s (“IEPA’s”) denial of Atkinson’s application to expand its landfill in Atkinson, Illinois.

2. The facility was originally permitted as Henry County Landfill #2 on September 22, 1980, permit 1980-33-DE. On January 16, 2004, IEPA issued a permit authorizing the expansion of the landfill to include a 125.8-acre area.

3. On March 6, 2006, the Atkinson Landfill Company submitted an application to the Village of Atkinson seeking authorization to expand the existing landfill both horizontally and vertically.

4. On August 28, 2006, the Village of Atkinson passed and approved a resolution granting with conditions the siting approval request to increase the permitted landfill area, both vertically and horizontally.

5. On September 28, 2006, Atkinson filed a petition with the Illinois Pollution Control Board (PCB 2007-020) challenging certain conditions imposed by the Village of Atkinson in the local siting approval. The local siting approval appeal process was concluded on September 4, 2008.

6. On September 2, 2011, within the three years following the conclusion of the local siting approval appeal process, Atkinson submitted an application to IEPA for a development permit to expand the existing permitted landfill area consistent with the local siting approval.

7. On July 6, 2012, IEPA issued a denial of permit finding, among other things, that the local siting approval for the proposed landfill extension had expired on September 4, 2011. Due to the expiration of the local siting approval, IEPA stated it was barred from granting a development permit to expand the landfill unless Atkinson provides proof of new local siting approval. In its permit denial, IEPA also raised a number of technical issues. Atkinson is prepared to submit a revised permit application addressing those technical issues in a timely manner.

8. On August 2, 2012, Atkinson filed an appeal of IEPA's permit denial in this matter on the basis that IEPA's conclusion that the local siting had expired was erroneous and should be reversed.

II. STANDARD OF REVIEW

Summary judgment "shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2–1005(c). The only issue before the Board in this matter is whether local siting approval granted by the Village of Atkinson continues to be valid under Section 39.2(f) of the Environmental Protection Act (“the Act”), 415 ILCS 5/39.2. As the Board has already noted in the instant case, as a purely legal issue, IEPA’s construction of Section 39.2(f) should not be accorded any special deference by the Board. Hearing Officer Order, February 14, 2013, slip op. at 4 and 5; *see also Saline County Landfill, Inc. v. IEPA*, PCB 04-117, May 6, 2004, slip op. at 14. Accordingly, Atkinson respectfully requests that the Board enter an order (1) finding that IEPA’s determination that local siting had expired was incorrect and (2) remanding the permit to IEPA.

III. ARGUMENT

Local siting approval for the Atkinson’s proposed facility expansion has not expired. Under Section 39.2(f) of the Act, local siting approval for a sanitary landfill operation expires on the third anniversary of the date on which it was granted or, if the local siting decision has been appealed as in this case, the date on which the appeal process was concluded *unless* “within that period the applicant has made application to the Agency for a permit to develop the site.” Because Atkinson “made application” to IEPA for a permit authorizing an expansion of its landfill on September 2, 2011, local siting approval for the expansion remains valid under Section 39.2(f) of the Act.

The question before the Board is what it means for an applicant to have “made application” under Section 39.2(f). In interpreting the Act, “[t]he cardinal rule of statutory construction is to ascertain and give effect to the true intent of the legislature. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning.” *Paris v. Feder*, 688 N.E.2d 137, 139 (Ill. 1997) (internal citations omitted).

The United States Supreme Court discussed the plain meaning rule in *Caminetti v. United States*, 242 U.S. 470 (1917), reasoning “[i]t is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms.” If a statute’s language is plain and clear, the Court further warned that “the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.” *Id.* Under Illinois law, an exception to the “plain meaning” rule exists in cases where the literal interpretation of a statute would yield an absurd or unjust result. *In re D.F.*, 802 N.E.2d 800, 80 (Ill. 2003). However, that exception does not apply here.

In this case it is not the plain meaning of Section 39.2(f), but rather IEPA’s extratextual interpretation of the Act which would yield absurd and unjust consequences. IEPA would have the Board modify the Act to permit the local siting expiration period to toll *only* in cases where, within that three-year period, *an administratively complete application for a permit to develop the site was filed with the Agency.* (See IEPA’s July 6, 2012 permit denial and IEPA’s September 30, 2011 incompleteness determination, attached hereto as Exhibits 1 and 2 respectively, citing 35 IAC 813.103(b).) The filing of an administratively complete application with the Agency is a procedural requirement wholly unrelated to when an applicant makes application to the Agency. An applicant *makes application* to the Agency once it submits the application to the Agency.

Section 813.103, “Agency Decision Deadlines,” does not interpret or implement Section 39.2(f) of the Act. It interprets and implements Section 39(a) of the Act, which provides that a permit will be deemed to be issued if IEPA fails to act on a permit application within the designated time frame. It is logical, in that context, that an application will not be deemed *filed* for purposes of when the permit decision deadline “clock” starts running against IEPA until the

date on which permit application is complete; Section 813.103(b) thus avoids the absurd result that a permit might be deemed issued by default on the expiration of the applicable 90- or 180-day period, even though the applicant never submitted a complete permit application.

IEPA's equating the date on which Atkinson's permit application was *filed* under Section 813.103(b) with the date on which Atkinson *made application* for its permit for purposes of Section 39.2(f) is not logical and creates an absurd and unjust result. Because Section 813.103(b) allows IEPA 30 days after the submission of a permit application to issue a completeness determination, under IEPA's interpretation, applicants would, at a minimum, need to submit permit applications at least 30 days prior to the expiration of local siting. Moreover, given the likelihood that IEPA might find the application to be incomplete and the inability of the applicant to guess exactly how long it might take to collect any additional required application materials and submit them to IEPA, applicants would potentially need to submit their permit application to IEPA years in advance of the local siting expiration date. There is no evidence that the legislature ever contemplated such a ludicrous result—instead, the Illinois legislature drafted Section 39.2(f) in such a way as to provide applicants with a definite, predictable deadline to submit permit applications to IEPA. The plain meaning of Section 39.2(f) is clear and IEPA's interpretation of this provision to include such additional requirement is erroneous and must be reversed.

The circumstances of this case are similar to those of *Saline County Landfill*, a case in which the Board found that local siting had not expired. In that case, local siting approval was granted to Saline County Landfill, Inc. ("SCLI") on November 21, 1996 and thus set to expire on November 21, 1999. *Id.*, slip op. at 4. SCLI then "submitted application materials" to IEPA over more than a two-year period, between October 1999 and December 2001. *Id.* Thus, while SCLI's initial application was made within the statutory three-year period (October 1999),

SCLI's application was apparently not deemed complete and *filed* by IEPA until December 2001, more than two years after the date local siting approval was set to expire. However, in that case, IEPA agreed that SCLI had satisfied the requirement to make application for a permit within the three-year local siting expiration period. *Id.*, slip op. at 16. Nevertheless, in January 2002, IEPA denied SCLI's permit application for failure to conform to the design for which SCLI had obtained local siting approval. *Id.*, slip op. at 4. After SCLI's unsuccessful appeal of that denial, SCLI submitted a new permit application to IEPA on April 4, 2003, three-and-a-half years after the local siting was set to expire. *Id.* The issue before the Board in *Saline County Landfill* was whether the November 1996 local siting approval was expired at the time SCLI submitted its April 4, 2003 permit application. *Id.*, slip op. at 6. The Board found in that case that the local siting approval *had not expired* because SCLI had made its initial permit application to IEPA within the three years of obtaining local siting approval. *Id.*, slip op. at 16. Likewise, in another analogous case, *ESG Watts, Inc. v. IEPA*, the Board appears to have determined that a permittee "made application" for a renewal permit on the date that the application was mailed to IEPA, despite the fact that the permittee allegedly failed to designate an appropriate "Land Disposal Restricted Waste Code" on the permit renewal application, indicating that the application itself was not complete. PCB 95-133, May 18, 1995 order, slip op. at 2.

IEPA has never disputed that the landfill expansion described in the permit application submitted to IEPA is substantially the same as the design for which local siting approval was granted. Nor has IEPA ever suggested that the 2006 local siting approval was insufficient in any other respect. Under the circumstances, IEPA's unreasonable interpretation of Section 39.2(f) to include requirements beyond those specified by statute lacks "justification grounded in the words and policies of the Act." *See Saline County Landfill, Inc. v. IEPA*, PCB 2002-108, April 18,

2002, slip op. at 21 (commenting on the expensive and time-consuming nature of the local siting process and expressing reluctance to require an applicant to repeat that process without good reason, citing *Medical Disposal Services, Inc. v. IEPA*, 286 Ill. App. 3d 562, 677 N.E.2d 428 at 432 (1st Dist. 1996)).

IV. CONCLUSION

WHEREFORE, Atkinson respectfully requests that the Board grant its Motion for Summary Judgment.

Respectfully submitted,

ATKINSON LANDFILL COMPANY

By: 
By Its Attorneys

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Dated: March 4, 2013



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

PAT QUINN, GOVERNOR

JOHN J. KIM, INTERIM DIRECTOR

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July 6, 2012

Certified Mail

7010 2780 0002 1163 1412

Atkinson Landfill Company
Mr. Branko Vardijan
221 North Washtenaw
Chicago, Illinois 60612

Re: 0730200003 -- Henry County
Atkinson Landfill
Permit No. 2001-021-LFM
Log No. 2011-406
Permit Landfill 810-817 File
Permit Denial

Dear Mr. Vardijan:

This will acknowledge receipt of your application requesting a development permit for a vertical and horizontal expansion of the above referenced landfill. The original application, dated September 2, 2011, was received by the Illinois EPA on September 2, 2011. The Illinois EPA issued a letter on September 30, 2011 deeming the application to be administratively incomplete. An addendum to the application, dated November 3, 2011, was received by the Illinois EPA on November 4, 2011. The Illinois EPA determined the application, as amended by the first addendum, to be administratively incomplete in a letter dated December 2, 2011 and revised on December 8, 2011. A second addendum, dated January 5, 2012, was received by the Illinois EPA on January 9, 2012. The Illinois EPA issued a letter on February 8, 2012 stating that the application, as amended by its two addenda, was administratively complete. Thus, the application was filed on January 9, 2012, the date that the addendum making it administratively complete was received by the Illinois EPA.

Your permit application for significant modification requesting a development permit for a vertical and horizontal expansion is denied.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act (Act). Section 39(a) of the Act [415 ILCS 5/39(a)] requires the Illinois EPA to provide the applicant with specific reasons for the denial of permit. The following reasons are given:

- 1) The application provides proof that local siting approval for the proposed expansion was granted on August 28, 2006. However, this local siting approval seems to have expired no later than September 4, 2011 (i.e. three years after September 4, 2008, the date that the docket was closed on Illinois Pollution Control Board Case No. PCB 2007-020 in which

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the applicant appealed some of the conditions placed on local siting approval). The permit application (Log No. 2011-406) was filed on January 9, 2012. Therefore, the Illinois EPA appears to be barred by Section 39(c) of Environmental Protection Act, 415 ILCS (the Act) from approving this application for a development permit due to the lack of proof that the applicant has obtained local siting approval for this project, which has not expired pursuant to Section 39.2(f) of the Act.

- 2) The Site Location Map does not show all state and federal parks and recreational areas as required in IAC 812.303(a)(5).
- 3) Documentation showing compliance with the airport notification as required by IAC 811.302(f) was not provided.
- 4) Verification was not provided that the foundation shall be constructed and graded to provide a smooth, workable surface on which to construct the liner as required by IAC 811.305(e) if in-situ soils are unacceptable.
- 5) Verification was not provided that the construction and compaction of the liner shall be carried out so as to reduce void spaces and allow the liner to support the loadings imposed by the waste disposal operation without settling that causes or contributes to the failure of the leachate collection system as required by IAC 811.306(d)(3).
- 6) Verification was not provided that the geomembrane in conjunction with the compacted earth liner shall perform as well as or better than a compacted liner meeting the requirements of 35 IAC 811.306(d)(1-4) and the equivalent performance shall be evaluated at maximum annual leachate flow conditions as required by IAC 811.306(d)(5)(B).
- 7) Verification was not provided that the geomembrane shall have sufficient strength and durability to function at the site for the design period under the maximum expected loadings imposed by the waste and equipment, and stresses imposed by settlement, temperature, construction, and operation as required by IAC 811.306(e)(4).
- 8) Verification was not provided that seams shall be made in the field according to the manufacturer's specifications and all sections shall be arranged so that the use of field seams is minimized and seams are oriented in the direction subject to the least amount of stress as required by IAC 811.306(e)(5).
- 9) Verification was not provided that the leachate collection system shall be designed to avoid loss of leachate through openings through the geomembrane as required by IAC 811.306(e)(6).

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- 10) A plan showing the locations of all openings through the 60-mil geomembrane in the bottom liner was not provided as required by IAC 812.306(b)(4).
- 11) A cross section and description of how openings in the membrane will be constructed to minimize leaks was not provided as required by IAC 812.306(b)(5).
- 12) A plan view of the leachate collection system as required by IAC 812.307(a) and (c) was not provided.
- 13) Verification was not provided that leachate shall be able to drain freely from the collection pipes and pump requirements were not demonstrated as required in IAC 811.308(h).
- 14) A map showing the components of the leachate collection system as required by IAC 812.308(a)(3) was not provided.
- 15) The leachate monitoring system is inadequate. The network of leachate monitoring locations should include, at a minimum, all discharge sump locations. A guideline for acceptable leachate characterization is at least four leachate monitoring points and at least one leachate monitoring point for every 25 acres of the waste boundary.
- 16) Verification was not provided that leachate monitoring will comply with IAC 811.309(g) and after the initial monitoring schedule, the leachate monitoring shall be performed at least once every six months and each established leachate monitoring point shall be monitored at least once every two years.
- 17) A demonstration that the proposed gas monitoring program will detect any gas buildup and/or migration as required by IAC 812.309(a) and 811.310(b)(1 through 3) was not provided.
- 18) Verification was not provided that the gas collection system and all associated equipment including compressors, flares, monitoring installations, and manholes shall be considered part of the facility as required by IAC 811.311(d)(7).
- 19) Verification was not provided that under no circumstances shall the gas collection system compromise the integrity of the liner, leachate collection, or cover systems as required by IAC 811.311(d)(9).
- 20) A map showing the location of the gas processing facility was not provided as required by IAC 812.311(b).

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- 21) The Construction Quality Assurance Plan proposes disregarding failed test if they qualify as "outliers" as defined in the CQA Plan. Failed tests cannot be disregarded pursuant to IAC Part 811.
- 22) The Construction Quality Assurance Plan did not state that geomembrane seaming shall be made in accordance with GRI test method GM19 where four of the five replicate test specimens must pass given values and the fifth must meet or exceed 80% of the given values. In addition, the peel separation (or incursion) should not exceed the values given in Tables 1(a) and 1(b) of GM19.
- 23) The Construction Quality Assurance Plan did not include the CQA Officer responsibilities required by IAC 811.506(a) and (b).
- 24) A minimum number of samples taken from the sidewalls of the compacted earth liner for the CQA Officer to verify achievement of liner strength on sidewalls as required by IAC 811.507(c)(6) was not provided.
- 25) The Construction Quality Assurance Plan did not include the CQA Officer responsibilities required by IAC 811.507(c)(9) and (10).
- 26) Assurance that the CQA Officer shall certify that the placement plan has been followed as required by IAC 811.508(b) was not included.
- 27) An estimate of the expected year of closure as required by IAC 812.114(f) was not provided.
- 28) Verification was not provided that vegetation shall be tolerant of the landfill gas expected to be generated as required by IAC 811.322(c)(5).
- 29) Identification of the source of final cover and a demonstration that the proposed source contains an adequate volume of suitable soil as required by IAC 812.313(d) and 811.704(f) was not provided.
- 30) Assurance that the final protective layer shall be installed soon enough after the low permeability layer is constructed to prevent desiccation, cracking, freezing, or other damage to the low permeability layer as required by IAC 811.314(c)(4) was not provided.
- 31) Verification that the permeability of the low permeability layer of the final cover system is less than or equal to the permeability of the bottom liner system as required by IAC 811.314(b)(4) was not provided.

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- 32) Assurance that all holes and depressions created by settling shall be filled and recontoured so as to prevent standing water as required by IAC 811.111(c)(4) was not provided.
- 33) The estimate of 10 acres being the largest area of the MSWLF unit ever requiring a final cover as required by IAC 811.111(d)(3) is not justified.
- 34) The cost for final cover includes 9.9 acres, but the premature closure area is stated as 37.5 acres. The premature closure area should be used in the cost estimate.
- 35) No costs were provided for equipment decontamination (work stated as manual cleaning).
- 36) Assurance that waste shall not be placed over areas that are subject to freezing conditions until the liner has been inspected, tested, and reconstructed as required by IAC 811.321(b)(4) was not provided.
- 37) The liquid restrictions for MSWLF units (as required by IAC 811.107(m)) were not provided.
- 38) The recordkeeping requirements for MSWLF units (as required by IAC 811.112) were not provided.
- 39) The Load Checking Program did not include the requirement in IAC 811.323(d)(3) for subsequent shipments by those previously responsible for shipping regulated hazardous waste.
- 40) The application does not meet the requirements of 35 IAC 811.315(d), 811.315(e) & 811.315(f). Sheet No. 17 depicts cross section A to A' with the landfill invert to closely overlay the "under clay" which the applicant claims is an aquitard. But no hydraulic conductivities are provided to demonstrate this claim. Additionally, the applicant has not demonstrated whether or not the shale in the upper regions of the Spoon Formation which underlies the "under clay" is a water bearing unit. The hydraulic relationship between the mine spoils/till to the under clay to the Spoon Formation should be thoroughly addressed (hydraulic conductivities for each) for potential migration pathways.
- 41) The application does not meet the requirements of Part 620, 35 IAC 811.315(b), 811.315(c), 811.315(d) & 811.315(e) in regards to groundwater classification and defining the Uppermost Aquifer. The lower limit of the upper most aquifer has not been adequately demonstrated. The hydraulic relationship between the mine spoils/till to the under clay to the Spoon Formation should be thoroughly addressed (hydraulic conductivities for each) for potential migration pathways.

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- 42) The application does not meet the requirements of 35 IAC 812.314(h), 811.315(d)(1)(F) & 811.315(e)(1)(H). Four recent consecutive quarters of potentiometric data for the site as a whole (existing and expansion area) are not provided. Once four recent quarters of data is obtained, the horizontal gradient and seepage velocity should be revised accordingly.
- 43) The application does not meet the requirements of 35 IAC 812.314(h), 812.317(1) and 811.315(e)(1)(H) for updated interwell AGQS/MAPC values have not been proposed for dissolved magnesium and dissolved chromium. Condition VIII.26 of Modification No. 5, Permit No. 2001-021-LFM is out of compliance for a significant modification permit application has not been submitted proposing AGQS/MAPC values for dissolved magnesium and dissolved chromium.
- 44) The application does not meet the requirements of 35 IAC 811.315(d)(2)(D): groundwater monitoring wells shall be established to determine the direction and flow characteristics of the groundwater in all strata and extending down to the bottom of the uppermost aquifer. The lower limit of the upper most aquifer has not been adequately demonstrated. The hydraulic relationship between the mine spoils/till to the under clay to the Spoon Formation and each should be thoroughly assessed (hydraulic conductivities for each) for potential migration pathways.
- 45) The application does not meet the requirements of 35 IAC 812.314(f) and 811.315(a): no direct site specific hydrogeologic information is provided for the "underclay" and the upper regions of the Spoon Formation.
- 46) The application does not meet the requirements of 35 IAC 812.315 & 811.316(d): adequate documentation has not been provided demonstrating all exploratory borings were sealed (not converted to groundwater monitoring wells). All excess drilling mud, oil, drill cuttings, and any other contaminated materials uncovered during or created by drilling shall be disposed of in accordance with the requirements of 35 Ill Adm. Code 700 through 749, 807, and 809 through 815.
- 47) The application does not meet the requirements of 35 IAC 812.317(a): a site plan showing all zones of attenuation. The applicant shall provide a site map (similar to Sheet No. 2) depicting the entire groundwater monitoring network, waste boundary and the zone of attenuation.
- 48) The application does not meet the requirements of 35 IAC 812.317(c): location and depth of all monitoring points. Specifically, the location (northing and easting), depths and strata for monitoring wells G216, G217, G218, G219, G220 and G221 are not provided. Additionally, it has not been adequately demonstrated that the upper regions of the Spoon Formation do not require nested monitoring wells in order to monitor all potential migration pathways.

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- 49) The application does not meet the requirements of 35 IAC 811.318(b). The monitoring well phasing schedule is not proposed, detailing the changes in the groundwater monitoring network during each of the sites Cell developmental stages. A clear and concise table should be provided detailing the groundwater monitoring network during each of the cells developmental stages (Cell A through DD) in order of development. Note: the groundwater monitoring network shall at all times during the well phasing and cell construction program must have installed and monitor at least one Zone of Attenuation Well.
- 50) The application does not meet the requirements of 35 IAC 811.318(b)(1): a network of monitoring points shall be established at sufficient locations downgradient with respect to groundwater flow to detect any discharge of contaminants from any part of a potential source of discharge. The distance perpendicular to groundwater flow between G216 (expansion well) and G210 (existing well) appears to be approximately 400 feet, which is greater than the modeled and proposed 250 foot well spacing. One additional groundwater monitoring well should be proposed between G210 and G216.
- 51) The application does not meet the requirements of 35 IAC 812.317(g), 811.318(e)(1) and 811.318(e)(2). The applicant's proposal to purge three well volumes is not acceptable for Agency approval. The applicant should explain how groundwater levels will not fall below the top of the well screen during groundwater purging and sampling. Groundwater levels that drop within the well screen cause "cascading" of the water, which promotes volatilization of organic parameters. The operator shall propose to monitor groundwater elevations during purging to ensure groundwater elevations do not fall below the top of the well screen.
- 52) The application does not meet the requirements of 35 IAC 812.317(g), 811.318(e)(1) and 811.318(e)(2). The application does not contain the procedures and disposition of purged groundwater produced from groundwater sampling events.
- 53) The application does not meet the requirements of 35 IAC 811.319(a)(4), confirmation procedures of monitored increase in the groundwater. Section VIII of Permit No. 2001-021-LFM, Modification No. 5 has been updated to meet the Illinois Administrative Code 811 amendments adopted by the Illinois Pollution Control Board in the R07-8 rulemaking. The proposed procedures outlined in C-5.5.3 appear to predate the latest rule making and the current procedures outlined in the facilities Permit, Mod No. 5. The operator should withdraw Section C-5.5.3 (Confirmation of an Increase) and propose to follow the confirmation procedures outlined in Conditions VIII.13 through 17 of Permit No. 2001-021-LFM, Modification No. 5.

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- 54) The application does not meet the requirements of 35 IAC 811.319(b)&(c), assessment monitoring and assessment of potential groundwater impacts. The facility's permit, Permit No. 2001-021-LFM, Modification No. 5 has been updated to meet the Illinois Administrative Code 811 amendments adopted by the Illinois Pollution Control Board in the R07-8 rulemaking. The proposed procedures outlined in C-5.5.4 appear to predate the latest rule making and the current procedures outlined in the facilities Permit, Mod No. 5. The operator should withdraw Section C-5.5.4 (Assessment Monitoring) and update Section C-5.5.4 or the applicant can propose, via a statement to follow the facilities permit (Permit No. 2001-021-LFM, Mod No. 5) and the requirements of 35 IAC 811.319(b)&(c).
- 55) A Remedial Action Contingency Plan has not been proposed to satisfy the requirements of 35 IAC 811.319(d).
- 56) In accordance with 35 IAC 811.317 a) 3); The application did not provide adequate information concerning the creation of the surrogate groups and the criteria for differentiating the parameters for each group (Groups #1 through #6). The applicant should provided additional justification why there were different grouping and this information should be provided to determine the validity of the surrogates groups.
- 57) In accordance with 35 IAC 811.317; Surrogate modeling should be kept to revisions to 1 parameter to address site specific conditions. The applicant has applied retardation and revisions to diffusion coefficient to multiple surrogate runs. In order to adequately assess changes in the model, the applicant should separate these model input changes and provide additional revisions in sensitivity analysis of the surrogate model run. These separate model runs should be clearly identified for review.
- 58) In accordance with 35 IAC 811.317 In model runs for Group #5 and #6, the applicant applied both retardation and half-life to layer 1 of the model, the synthetic HDPE liner material. This is in appropriate and should be revised.
- 59) In accordance with 35 IAC 811.317 c) 3); The applicant failed to provide adequate justification for the time series seepage rates through the base liner for the proposed expansion. The Illinois EPA accepts a conservative value for landfill seepage rates through the liner. Seepage calculations should be revised. The use of the Giroud equation from the MIGRATE model is adequate and should be used with acceptable input parameters.
- 60) In accordance with 35 IAC 811.317 b); The modeled seepage rate for years 0-10 (0.001326 m/a) and years 10-20 (0.000643 m/a) are considered to be conservative and reasonable MIGRATE input values for seepage. The value for years 20-120 (0.00001428 m/a) is considered to be an order of magnitude to low, and thus is not a conservative input value and should be revised based upon the Giroud equation and upon final leachate head levels,

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derived from the HELP model. At a minimum, should leachate heads remain at or below 12 inches (1 foot) leakage from years 20-120 should be no lower than 2.6×10^{-4} m/a.

- 61) In accordance with 35 IAC 811.317 c); The applicant has adequately used previously approved diffusion values for the recompacted liner and for the unsaturated mine spoil. However, the value for the uppermost aquifer is not acceptable. The applicant used a 20 percent value is from the LPC-PA2 guidance document which has been superseded by the revised LPC-PA19 (revised 11/9/2010). The Illinois EPA recommends that dispersivity be calculated by Gelhar (1992) for all distances or Xu and Eckstein (1995) for distance greater than 100 meters. These values should be revised.
- 62) In accordance with 35 IAC 811.317 c); For the distribution coefficient used in surrogate Group #3, the application used a K_d value taken directly from Appendix C to LPC-PA2. This is not acceptable, the LPC-PA2 document is no longer considered valid for use. The applicant should calculate K_d for surrogate Group #3 using the same method as for Groups 4-6 (with the exception of the 95% lower confidence listed below).
- 63) In accordance with 35 IAC 811.317 c); The K_d value for surrogate Group #5 and #6 was based upon a low, but arbitrary K_{oc} value and was used with the lower 95% confidence limit for F_{oc} (site specific data). This is not adequate; the lowest K_{oc} value should be used to generate the K_d input value.
- 64) In accordance with 35 IAC 811.317 a) 2); The applicant failed to adequately characterize leachate at the facility and for use in this GIA. The use of only two leachate data point from the original portion of the facility does not take into account data from the existing expansion and the current waste stream going to the facility. The facility should perform a review of all leachate data from the life of the facility and use the maximum leachate concentrations or the 95% UCL values for the data, and use this value for assessment of the contaminant transport model.
- 65) In accordance with 35 IAC 811.317 c); The applications use of the vertical Darcy velocity (leakage rate) through the composite liner to calculate the vertical diffusion coefficient for the mine spoil aquifer is unacceptable. For recompacted clay and mine spoil, a value of 0.016 through 0.02 m^2/y would be considered appropriate.
- 66) In accordance with 35 IAC 811.317; The HELP model included a value of 86.29 for the SCS Runoff Curve which is acceptable, showing a good stand of grass (>75%). However, in the post closure care model (years 70) it is not reasonable in its assumption that the final cover will maintain area runoff at 100.00%. The final cover will be subject to vegetative and animal activities, and will also be subject to frost-heave situations over this 70 year period. These conditions will result in less than perfect runoff situation. Therefore, this input parameter should be revised to reflect these conditions and the HELP model rerun.

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- 67) In accordance with 35 IAC 811.317 c); With regards to the 5 surrogate model run, the applicant inappropriately applied a lesser diffusion coefficient to the base liner (HDPE) than was used in the baseline model without adequate explanation as to the appropriateness of the use of this value. Additional information addressing the revised values (HDPE diffusion coefficient) and a characterization of the specific leachate parameters is required for evaluation.
- 68) In accordance with 35 IAC 811.318 c)The applicants proposal for MAPC values is not acceptable. Illinois EPA guidance documents LPC-PA19 requires that MAPC values be based upon revisions to the baseline model (and surrogate models) where the approved model will calculate predicted concentrations at the 50 foot distance. This method allows for calculated values instead of an arbitrary ½ value from these locations.

The applicant may appeal this final decision to the Illinois Pollution Control Board pursuant to Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the applicant and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the request for an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

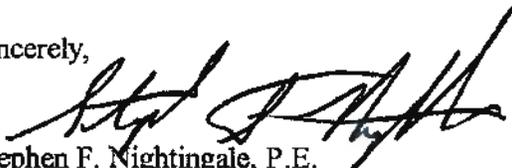
For information regarding the filing of an appeal, please contact:

Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

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Should you wish to reapply or have any questions regarding this application, please contact Greg Morris at 217-782-5174.

Sincerely,



Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

HEA BJBMS
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CJL BJA

cc: Brian Horvath, P.E., Weaver Boos Consultants



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

217/524-3300

September 30, 2011

Certified Mail

7009 2820 0001 7489 7772

Atkinson Landfill Company
Attn: Mr. Branko Vardijan
221 North Washtenaw
Atkinson, Illinois 61235

Re: 0730200003 -- Henry County
Atkinson Landfill
Log No. 2011-406
Permit Landfill 811 File
Permit DOI

Dear Mr. Vardijan:

Pursuant to 35 Ill. Adm. Code 813.103(b), the Illinois Environmental Protection Agency has reviewed, for purposes of completeness only, the application referenced above, dated September 2, 2011 and received September 2, 2011. This review has revealed that the application does not contain the information required by the referenced sections of 35 Ill. Adm. Code, Parts 811 through 814 and therefore is incomplete. This determination of incompleteness is based on the omission of the following items:

1. The LPC-PA8 form is not signed and notarized.
2. Prior Conduct Certification of the Chief Operator was not included. -- 812.113.
3. Section 3. Description of this Permit Request was not completed on the General Application for Permit form LPC-PA1.
4. In Section V of form LPC-PA2, the location in the application for the information submitted was not stated in accordance with the instructions.
5. Geologic Cross Sections which include stratigraphic interpretation of boring log data and show trench invert and limits of zone of attenuation – 812.314(c) and 811.315(e)(1)(C).
6. Potentiometric/groundwater flow maps which include the field information as data points derived from four consecutive quarters of monitoring including background monitoring well BW-1 – 812.314(h), 811.315(d)(1)(F), 811.315(d)(2)(D) and 811.315(e)(1)(H).
7. Description of Applicable Groundwater Quality Standards including specific numerical values for each constituent- 812.314(h), 812.317(1) and 811.315(e)(1)(H).

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

Page 2

8. Site Map showing Zone of Attenuation – 812.317(a).
9. Location and depth of all monitoring points installed in all strata down to bottom of uppermost aquifer – 812.317(c).
10. Network of monitoring wells as close as practical to the waste boundary and a minimum of One Zone of Attenuation well – 811.318(b)(3).
11. Well locations justified by hypothetical liner failure and contaminant plume dimensions – 811.318(a) and 811.318(b).
12. Criteria for choosing constituents to be monitored – 811.319(a)(2).
13. List of parameters to be tested including organics – 812.317(e), 811.319(a)(2) and 811.319(a)(3).
14. Description of laboratory analysis, procedures, QAQC and error tolerance – 812.317(j) and 811.318(e)(3).
15. Description of statistical analysis methods and techniques 812.317(k), 812.317(m) and 811.320(e)
16. Remedial Action Contingency – 811.319(d).
17. The applicant did not submit a Groundwater Impact Assessment (GIA) for the proposed vertical and horizontal expansion of the Atkinson Landfill (0730200003). In order to meet completeness requirements, the facility must submit a GIA that addresses the following regulatory requirements:

O. Results of the Groundwater Impact Assessment (GIA)

- O1 Vendor Authorized Copy of the Contaminant Transport Model and Users Documentation of the Model – 812.316(a) and 811.317(c)(1):
- O2 Tabulated Summary of Values Used for the GIA Parameters – 812.316(b):
- O3 Sensitivity Analysis of GIA Parameters and Predictions -- 812.316(c) and 811.317(c)(5):
- O4 Concentration vs. Time and distance Profiles – 812.316(d), 812.316(e), 812.317(f) and 811.317(b):
- O5 Documentation showing Model Reliability -- 812.316(f), 811.317(c)(2), 811.317(c)(3) and 811.317(b):

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- O6 Documentation demonstrating Validity of Parameters and Assumptions of GIA – 812.316(g), 811.317(c)(4), 811.317(c)(6), 811.317(c)(7) and 811.317(c)(8):
- O7 Justification of Leachate Characterization in Accordance with the Instructions – 812.317(a)(2):
- O8 Assessment of the Uncertainty of model Parameters and Assumptions – 812.316(f), 812.316(g) and 811.317(c):
- O9 Maximum Allowable Predicted Concentrations – 811.318(c):
- O10 Evaluation showing GIA Results – 812.316(h) and 811.317(b):
- O11 Model Results for All Leachate constituents (Surrogate Modeling) – 811.317(b):

Please note the local siting approval for the proposed expansion, obtained on August 28, 2006, appears to have expired on September 4, 2011, per Section 39.2(f) of the Environmental Protection Act (the Act). The application, submitted on September 2, 2011, has been found to be incomplete and, therefore, in accordance with 35 IAC 813.103(b), the application will be considered to have been filed on the day additional information making it complete is received by the Illinois EPA. Since the local siting approval, obtained on August 28, 2006, seems to have expired, the Agency would appear to be barred, by Section 39(c) of the Act, from granting a development permit to expand this landfill unless proof of new local siting approval is provided.

In the 35 days following the date of this letter, you may take either of the actions described below:

1. You may submit to the Illinois EPA additional information addressing the deficiencies identified.
2. Within 35 days after the date of mailing of the Illinois EPA's final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

The additional information addressing the deficiencies identified in this letter shall be submitted to the Illinois EPA within 35 days from the date of the letter.

Failure to actively pursue approval under 35 Ill. Adm. Code Part 814 may result in the determination that this facility is no longer considered timely filed and the operating rights under the existing permits will end upon notification of that determination.

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If you take neither of the courses of action described above within 35 days, the Illinois EPA shall consider the application not to have been filed. In this case, to reapply you will need to submit a new permit application in its entirety.

If you do submit additional information within 35 days, the Illinois EPA shall review it for completeness in conjunction with the current application. Assuming that with the additional information the application is complete, the application will be considered to have been filed on the day that the additional information was received by the Illinois EPA. Please be aware that any additional information should:

1. be in a format which allows incorporation of the new information into the appropriate sections of the current application;
2. include a cross-reference indicating where in the new information each deficiency, identified above, has been addressed;
3. have the date of the revision on each page and on each drawing;
4. include an original and at least three copies; and
5. be submitted to the address below.

Illinois Environmental Protection Agency
Bureau of Land -- #33
Permit Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

If you have any questions regarding this letter, please contact Greg Morris of my staff at 217/782-5174 or Brett Bersche at 217/558-4718.

Sincerely,



Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

MEM BTB.
SFN:GEM:bjh\11951s.doc
CSL IBM

cc: Brian J. Horvath, P.E., Weaver Boos Consultants

CERTIFICATE OF SERVICE

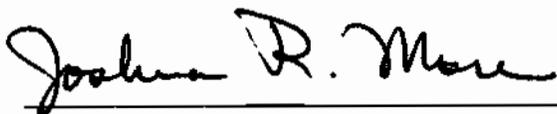
I, the undersigned, certify that on this 4th day of March, 2013, I have served by first class mail the attached **MOTION FOR SUMMARY JUDGMENT** upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Michelle Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Evan J. McGinley
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602



Joshua R. More

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SCHIFF HARDIN LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
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