

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2014

CLINTON LANDFILL, INC. ,)
)
 Petitioner,)
)
 v.) PCB 15-60
) (Permit Appeal - Land)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On August 28, 2014, Clinton Landfill timely filed a petition asking the Board to review a July 31, 2014 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Clinton Landfill’s landfill No. 3 (the landfill) located in Clinton, DeWitt County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2012)), 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) (2012); 35 Ill. Adm. Code 105.Subpart D. In this case, on or about February 1, 2008, Clinton Landfill filed an application with the Agency seeking a modification to its existing landfill Permit No. 2005-070-LF, to allow Clinton Landfill to develop a small portion of the landfill (22.50 acres out of the 157.50 acre landfill) as a Chemical Waste Unit (CWU). On November 3, 2009, the Agency held a public availability session in DeWitt County, concerning Clinton Landfill’s application. The Agency received public comment on the application through December 3, 2009. On January 8, 2010, the Agency issued Modification No.9 to Permit No. 2005-070-LF permitting the development of the CWU.

On July 31, 2014, the Agency made three substantive changes to Petitioner’s existing landfill permit in the form of Modification No. 47 of Permit No. 2005-070-LF (Modification No. 47). The Agency modified Special Condition Section II.10.f to add obtaining local siting approval as a precondition to accepting polychlorinated biphenyl (PCB) waste. The Agency also modified Special Condition Section III.3.A.2.f to prohibit the disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU. The Agency further modified Special Condition Section VII.12 “to reflect the need to obtain local siting approval before accepting PCB waste...” by adding the following as a condition to triggering of the leachate management protocols in that section: “the local siting authority for Clinton Landfill 3 grants local siting approval specifically allowing PCB waste to be disposed of in the CWU . . .” Clinton Landfill appeals on the grounds that the Agency’s

changes as enumerated in Modification No. 47 were arbitrary, capricious, unreasonable, unlawful, and beyond the regulatory authority of the Agency. Clinton Landfill's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Clinton Landfill has the burden of proof. 415 ILCS 5/40(a) (1) (2012); *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) (2012)), which only Clinton Landfill may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Clinton Landfill "may deem the permit issued." 415 ILCS 5/40(a)(2) (2012), the decision deadline is December 26, 2014, 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 December 18, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 29, 2014, which is the first business day following the 30th day after the Board received Clinton Landfill'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).

Accompanying Clinton Landfill's petition for review is a motion to stay the effectiveness of contested permit conditions. The Board reserves ruling on the motion for stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 4, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board