

ILLINOIS POLLUTION CONTROL BOARD

April 2, 2015

CLINTON LANDFILL, INC.)	
)	
Petitioner,)	
)	
v.)	PCB 15-60, PCB 15-76,
)	PCB 15-111, PCB 15-113,
ILLINOIS ENVIRONMENTAL)	PCB 15-166
PROTECTION AGENCY,)	(Permit Appeal - Land)
)	(Consolidated)
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On March 6, 2015, Clinton Landfill Inc. (CLI) timely filed a petition asking the Board to review a February 27, 2015 determination of the Illinois Environmental Protection Agency (Agency or IEPA). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns CLI's landfill No. 3 located in Clinton, DeWitt County. *See* Clinton Landfill, Inc. v. IEPA, PCB 15-60, 15-76, 15-111, 15-113 (consol.) (Jan. 22, 2015) (Clinton Landfill). On March 11, 2015, CLI and the Agency filed a joint motion to consolidate PCB 2015-166 with PCB 2015-060, PCB 2015-076, PCB 2015-111, and PCB 2015-113 along with a joint motion to designate the record regarding PCB 2015-166 (Mot.). On March 17, 2015, CLI filed a waiver of the decision deadline to September 30, 2015 in the present case. On March 18, 2015, CLI filed a joint motion to stay and waiver of decision deadline to September 30, 2015 (Mot. Stay) in Clinton Landfill, PCB 15-60, 15-76, 15-111, 15-113 (consol.). In an order dated March 19, 2015, the Board accepted CLI's petition for hearing in PCB 2015-166. *See* Clinton Landfill, Inc. v. IEPA, PCB 15-166 (March 19, 2015). For the reasons below, the Board grants the joint motion to consolidate, designates the record, and grants the joint motion to stay.

JOINT MOTION TO CONSOLIDATE

On August 28, 2014 and October 7, 2014, CLI timely filed Petitions for Review of permit determinations made by the Agency on July 31, 2014 and September 17, 2014. The Board accepted those petitions for review in orders dated September 4, 2014 and October 16, 2014 and consolidated the cases in a Board order dated November 20, 2014.

On December 18, 2014 and December 19, 2014, CLI timely filed Petitions for Review of similar permit determinations made by the Agency on November 26, 2014 and December 16, 2014. The Board accepted those petitions for review in orders dated January 8, 2015. On January 6, 2015, the parties filed joint motions to consolidate (Mot.) in Clinton Landfill, Inc. v. IEPA, PCB 15-111 and Clinton Landfill, Inc. v. IEPA, PCB 15-113 asking the Board to consolidate the review of the Agency's November 26, 2014 and December 16, 2014 determinations with CLI's prior filings, docketed as Clinton Landfill, Inc. v. IEPA, PCB 15-60, 15-76 (consol.). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The

Board consolidated the cases in a Board order dated January 22, 2015. *See* Clinton Landfill, PCB 15-60, 15-76, 15-111, 15-113 (Jan. 22, 2015) (consol.). On March 11, 2015, the parties filed a joint motion to consolidate PCB 2015-166 with the already consolidated docket and to designate the record regarding PCB 2015-166. In the joint motion, the parties state that “precisely the same issues are being reviewed in these cases.” Mot. at 4.

The Board’s procedural rules allow for consolidating proceedings. Section 101.406 of those rules provides:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code. 101.406.

The parties are the same in Clinton Landfill, PCB 15-60, 15-76, 15-111, 15-113 (consol.) and PCB 15-166. The cases are permit appeals challenging permit determinations made by the Agency and are regarding CLI’s permit for its Clinton, DeWitt County site. Further, the cases concern the same provisions of CLI’s permit, modified in Permit Modification No. 47 to Permit No. 2005-070-LF, but reiterated in Permit Modifications 48, 49, 50, and 51. CLI’s burden of proof is the same in these cases. The Board also notes that CLI filed a decision deadline waiver to September 30, 2015 on March 18, 2015 for Clinton Landfill, PCB 15-60, 15-76, 15-111, 15-113 (consol.) and on March 17, 2015 for PCB 15-166. Therefore, the cases share a decision deadline of September 30, 2015 and no apparent prejudice to either party would result from consolidation. The Board meeting immediately before the decision deadline is scheduled for September 17, 2015.

For the reasons stated above, the Board finds that consolidating the permit appeals for purposes of hearing is in the interest of convenient, expeditious, and complete determinations of the claims. The Board also finds that such consolidation would not cause material prejudice to either party, and therefore the Board grants the parties’ joint motion to consolidate PCB 15-166 with the already consolidated Clinton Landfill, PCB 15-60, 15-76, 15-111, 15-113 (consol.) for hearing and decision. Future filings must reflect the amended caption of this order.

JOINT MOTION TO DESIGNATE THE RECORD

With the March 11, 2015 motion to consolidate in PCB 15-166, the parties also included a motion to designate the record stating, “CLI and the Agency have agreed that the Administrative Record filed in PCB 2015-060, as supplemented to date and in the future, should stand as the Administrative Record relative to the instant case.” Mot. at 4. The parties agreed that the record should be supplemented to include Modification No. 51. *Id.* The Board grants the parties’ motion to designate the record.

JOINT MOTION TO STAY

In the March 18, 2015 joint motion to stay, the parties state that they “are conducting settlement negotiations which, if successfully concluded, would most likely result in CLI’s dismissal of these consolidated cases.” Mot. Stay at 1. They continue that, “[b]y April 30, 2015, the parties reasonably anticipate that settlement negotiations will most likely have concluded, either successfully or not.” *Id.* Further, the parties state that “CLI and the Agency request that the Board (1) rules on the Joint Motion to Consolidate filed in PCB 2015-166, and (2) if the consolidation is granted, that PCB 2015-166 thereafter be stayed along with” Clinton Landfill, PCB 15-60, 15-76, 15-111, 15-113 (consol.). *Id.* at 2.

Section 101.514(a) of the Board’s procedural rules provides:

Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. 35 Ill. Adm. Code 101.514(a).

In addition, the Board’s rules demand that the parties file a status report at the close of any stay granted by the Board. 35 Ill. Adm. Code 101.514(b).

CLI and the Agency have indicated that both parties are engaged in settlement discussions that may lead to dismissal of the consolidated cases. The parties have also waived the decision deadline to accommodate the requested stay. Therefore, the Board grants the joint motion to stay the cases consolidated, above. The stay will be lifted on April 30, 2015, at which time the parties must provide the Board with a status of the case.

CONCLUSION

For the reasons set forth above, the parties’ joint motion to consolidate is granted and future filings must reflect the amended caption of this order. The Board grants the parties’ joint motion to designate the record filed in Clinton Landfill, Inc. v. IEPA, PCB 15-60, as the administrative record for the consolidated docket. Finally, the Board grants the joint motion to stay the consolidated cases until April 30, 2015, at which time the parties must provide the Board with a status report.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 2, 2015 by a vote of 5 to 0.



John T. Therriault, Clerk
Illinois Pollution Control Board