BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

D&L LANDFILL, INC.,	)	
Petitioner,	)	
v.	)	PCB 2015-137
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Elizabeth Dubats
Assistant Attorney General
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Springfield, IL 62706

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, an original and three copies of Petitioner's Motion for Summary Judgment, copies of which are herewith served upon the Hearing Officer and upon the attorney of record in this case.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the documents described above, were today served upon the Hearing Officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys and to said Hearing Officer with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mailbox in Springfield, Illinois on the 1st day of October, 2015.

D&L LANDFILL, INC.

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE POLLUTION CONTROL BOARD
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D&L LANDFILL, INC.,	)	
Petitioner,	)	
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
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PETITIONER'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, D&L LANDFILL, INC., by its undersigned attorney, pursuant to Section 101.516 of the Board's Procedural Rules (35 Ill. Adm. Code § 101.516), stating as follows:

INTRODUCTION

The D&L Landfill ceased operations in the mid-90s and completed closure on August 31, 1996, which is over nineteen years from today. As a landfill which began closure before the new, comprehensive landfill regulations became applicable, it has a fifteen-year post-closure care period, which has never been extended by Board or federal regulation. This proceeding arises from the landfill's request to discontinue monitoring gas, water and settling at the site in an orderly and appropriate fashion, and obtain an Agency certification that post-closure care has been completed. The Agency has refused either by assuming that the Agency has authority to extend the post-closure care period, and conditioning post-closure certification on groundwater standards Board regulations never intended to be required to complete post-closure care.

STATEMENT OF FACTS

On May 13, 1974, the D & L Landfill[1] received a permit to develop a solid waste landfill in Green County, Illinois, to handle general municipal waste and a small volume of dewatered sewage sludge. (R.0001) Since 1967, portions of the site were operated as the city dump and regulated by the Illinois Department of Public Health. (R.0445; R.1357) At all times relevant hereto, the landfill has been a "Part 807" facility, regulated by 35. Ill. Adm. Code Part 807. (R.0430)

On February 15, 1991, the Illinois EPA approved the first closure/post-closure care plan for the landfill. (R.0002; R.1347-R.1389) At roughly the same time, the Illinois Pollution Control Board (herein "the Board") enacted new, comprehensive landfill regulations. (R88-7 (effective date, Sept. 18, 1990)) On August 10, 1992, D & L Landfill, Inc. notified the Illinois EPA that it intended to initiate closure by September 18, 1992, and consequently avoid the new landfill requirements and remain a "Part 807" facility. (R.1315) At the same time, the landfill submitted a modified closure/post-closure care plan, with revised cost estimates of $460,868.00. (R.0002; R.1324-R.1346) As a result of subsequent legislative changes stemming from the 1993 Mississippi River, the requirement to initiate closure was extended to October 8, 1994. (R.0003)

On January 21, 1997, the Illinois EPA certified that the landfill had completed closure requirements for an 807 landfill, and the fifteen year post-closure care period began on August 31, 1996. (R.0003)

On January 2, 2013 (R.0025), a supplemental permit application for certification of

[1] Technically, the permit was issued to its predecessor, D&L Disposal Company (R.0002), but since the ownership history does not appear to be relevant, this Motion will just refer to D&L Landfill, or "the landfill" for simplicity sake.

completion of post-closure care was submitted to the Illinois EPA. (R.0025) The application stated that the fifteen year post-closure care period had passed, and all post-closure care of the landfill had been completed. (R.0038) The application further addressed several points:

- Landfill gas. There remain three passive flares operating at the site, and "[d]ue to diminishing volume of landfill gas and the proposed abandonment of the groundwater monitoring system," these units should be removed and the wells properly plugged and covered in order to prevent air and water infiltration. (R.0038-R.0039)
- Leachate. The volume of leachate collected has decreased since 2004 and further decreased in the past two years. "Due to the presence of the landfill's final cover system and the presence of the noted slurry cutoff wall, it is anticipated leachate production will remain relatively low and possible migration of leachate will be minimized," and therefore leachate collection and disposal can be stopped. (R.0039-R.0040)
- Groundwater. "Considering the number of non-detects, the percentage of non-exceedences, the decreasing concentrations of compounds and the low number of organic exceedences, it appears the facility is not having a negative impact on local groundwater quality." (R.0042-R.0046)
- Stormwater management. Stormwater is being diverted away from the landfill and will continue to do so. (R.0046)

The application included an Affidavit for Certification of Post-Closure Care signed by a representative of the landfill and a licensed professional engineer. (R.0033-R.0034)

Following a site inspection of the facility, the Illinois EPA sent a draft denial letter to the landfill's consultants on February 26, 2013. (R.0174; R.0207) Two reasons were given

(1) "The inspector found several eroded and ponded areas around the landfill. Pursuant Condition V.5 of Supplemental Permit No. 1999-396-SP and IAC Section 807.502, the final cover must be repaired."

(2) Groundwater exceedences.

(R.0207)

On August 15, 2013, the landfill's consultant submitted additional information in response to the draft denial letter. (R.0180 -R.429) First, the landfill documented that it had worked with the IEPA Regional Office to repair areas of localized erosion. (R.185) That this denial reason was subsequently removed indicates that this was done to the satisfaction of the Illinois EPA. Second, the submittal discussed each parameter of concern for each individual well, demonstrating that pursuant to trend analysis conducted pursuant to Sen's Slope Test that:

> **The overall trend of inorganic parameter concentrations at the downgradient detection monitoring well locations is downward. A few organic parameters (TOX, chlorobenzene, ethyl ether, tetrahydrofuron) have been identified at specific well locations. The concentrations of these parameters have generally remained constant and/or have decreased over time. In some areas (e.g., chlorobenzene at G106 and tetrahydrofuron at G112) parameters are either no longer detected or the parameters are not routinely detected at the well location.**

(R.0203)

The repairs made to the final cover were approved, but the Agency issued a denial letter with respect to the groundwater issues:

> **Pursuant to 807.524, the Agency must certify that the post-closure care period has ended upon determining that the facility will not cause future violations of 35 Illinois Administrative Code Part 807 or the Act. 35 IAC**

> **807.313 states, no person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contamination into the environment. And 35 IAC 807.315 states, no person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill. Due to the exceedences described below, the affidavit fails to adequately demonstrate that the D & L Landfill has not impacted the groundwater. Therefore, a determination that 35 Illinois Administrative Code (IAC) 807.313 and 807.315 will not be violated cannot be made:**

(R.0450)

Subsequently, the denial letter lists various exceedences of background value and/or Part 620 groundwater standards. (R.0450-R.452) From this decision, a timely petition for review was filed with the Board.

LEGAL ARGUMENT

Pursuant to Section 101.516 of the Board's Procedural Rules, "[i]f the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment." (35 Ill. Adm. § 101.516(b)) There do not appear to be any genuine issues of material fact, but a disagreement as to the proper legal and regulatory standards.

I. BACKGROUND OF REGULATORY HISTORY.

A large part of the apparent disagreement with the Illinois EPA is rooted in the issue of anachronism, projecting current laws and environmental understandings to a regulatory program of which they do not belong. When the Board promulgated new, comprehensive landfill regulations in 1990 and arguably its first true groundwater quality standards in 1991, there were a

number of existing landfills that were developed and operated legally under existing standards that had no hope of compliance. The standard for these landfills was to begin the process of closing forthwith in order to avoid these standards. Their compliance plan was closure. By imposing current groundwater standards as a precondition of certifying completion of post-closure care, the Illinois EPA has misinterpreted the applicable legal and regulatory standards, and created absurd outcomes in which landfills closed prior to the application of the new regulations are held to higher requirements than those that remained open.

A. INITIAL BOARD LANDFILL REGULATIONS – 1973.

The Illinois Pollution Control Board (herein "the Board") was created in 1970, and inherited landfill rules which had been adopted by the Illinois Department of Public Health in 1966. (Board Opinion in R72-5, at p. 1 (July 31, 1973)) On July 31, 1973, the Board promulgated those rules as its own, with some modifications, including introducing the post-closure care requirement that remains applicable to Part 807 facilities today:

> **Rule 318: Completion or Closure Requirements.**
>
> **(a) The owner or operator of a sanitary landfill site shall monitor gas, water and settling at the completed site for a period of three years after the site is completed or closed.**
>
> **(b) The owner or operator shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during the three year period.**
>
> **© The owner or operator shall, upon completion or closure, file a detailed description of the site, including a plat, with the appropriate county land recording authority for the county in which the site is located.**

(35 Ill. Adm. Code § 807.318) (promulgated in R72-5 (July 31, 1973)

Later the three year period would be superceded by legislation, but other than the duration of post-closure, the substantive requirements for post-closure care for Part 807 landfills remain unchanged. At the time, the Board explained that "[t]he requirement that the owner or operator of a sanitary landfill site monitor the site and abate any environmental problems which might arise during a period of three years from the date the site is completed or closed . . . ensures environmental protection against subsequently occurring pollution problems." (Board Opinion in R72-5, at p. 4 (July 31, 1973)) In other words, performing post-closure care, including abatement, is intended to protect against future problems.

B. ATTEMPTS TO UPDATE LANDFILL REGULATIONS.

In 1984, the Board complained: "As the Board has acknowledged in the past, the decade-old Part 807 is 'sadly out-of-date, under-comprehensive, and under specific,' with several attempts to generate successor rules having failed." Waste Management v. IEPA, PCB No. 84-45, at p. 18 (Oct. 1, 1984). At that time, the Board had opened a new rulemaking (R84-17) which held the "promise" of completing this task. (Id.) However, the R84-17 docket would be dismissed in 1988, and new comprehensive landfill regulations would not be promulgated until 1990.

While new, comprehensive landfill regulations would have to wait, the legislature prodded a few reforms in the interim. In 1983, the legislature directed the Board to promulgate regulations to ensure adequate financial security for landfills to perform closure and post-closure care. (415 ILCS 5/21.1(a) (effective Sept. 24, 1983)) Since the Board was required to promulgate the rules by January 1, 1985 (id.), and landfills were required to comply by March, 1,

1985, (415 ILCS 5/21.1(a)), the Board opened a new docket just for the procedural requirements of meeting financial assurance (R84-22), while leaving the pre-existing docket for the anticipated new, comprehensive landfill regulations. (R84-17) As such, the financial assurance rules ultimately promulgated "rely on the existing closure and post-closure care requirements for sanitary landfills in Part 807. These are subject to revision in R84-17." In re Financial Assurance for Closure and Post-Closure Care, R84-22, at pp. 9-10 (Nov. 21, 1985).

In promulgating financial assurance requirements, the Board had an opportunity and need to reflect upon what was currently required by closure and post-care:

> **The closure standard requires closure so as to prevent post-closure release of "waste constituents" and "waste decomposition products". This is not to be construed as an absolute prohibition on release of water or gas from the completed landfill. Control is required only "to the extent necessary to prevent threats to human health or the environment."**
>
> **The closure performance standard, which is a minimal standard to avoid gross pollution, applies to all sites, whether required to have a permit or not ®. 56, 111**).

(R84-22, at p. 15 (Dec. 27, 1984) (emphasis added))[2]

The term "gross pollution" refers to the common definition of "gross," i.e. "visible without the aid of a microscope: large enough to be seen with the naked eye." Webster's Third New International Dictionary; see, e.g., IEPA v. Carlton, PCB 81-145 (July 21, 1982) ("the violations . . . led to *gross pollution* involving the discharge of floating solids, colored, malodorous water and accumulation of sludge banks downstream of the plant."); IEPA v. County of DuPage, PCB No. 72-107 (March 15, 1973) ("*gross pollution* at the outfall which consists of

[2] It is clear from the context of the Board's discussion here, that the closure standard being discussed encompasses all post-operation activities, expressly including post-closure care such as "[m]onitoring of gas, water and settling for three years after closure." Id.

rags, paper and vegetable particles.")

In order to determine when financial assurance could be released, the financial assurance regulations introduced a procedure for certifying completion:

> **The Agency shall certify that the post-closure care period has ended when it determines:**
>
> **(1) That the post-closure care plan has been completed; and**
> **(2) That the site will not cause future violation of the Act or this Part.**

(35 Ill. Adm. Code § 807.524©)

Since the financial assurance requirements were not intended to change post-closure care requirements, the "minimal standard" of avoiding gross pollution is still the basic requirement. Nor did the new procedural rules extend the post-closure care period:

> **The Agency is to certify that the post-closure care period has ended when it determines that the post-closure care plan has been completed and that the site will not cause future violations. The length of the post-closure care period for sanitary landfills is determined from the existing Subpart C rules.**

(R84-22, at p. 20 (Dec. 27, 1984))

Then, as now, Subpart C simply states that post-closure care is "a period of three years after the site is completed or closed." (35 Ill. Adm. Code § 807.318(a)) In 1986, the Illinois General Assembly amended the three-year period to five:

> **The owner and operator of a sanitary landfill site shall monitor gas, water and settling at the completed site for a period of 5 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.**
>
> **The owner and operator shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period.**

(P.A. 84-1320, effective date Sept. 4, 1986 (415 ILCS 5/22.17(a) & (b) (emphasis added))

The underlined words identify changes the legislation essentially made to 35 Ill. Adm. Code § 807.318(a) & (b). As such, the purpose of the amendment was not to make any substantive changes to the requirement of post-closure care or change how the period was calculated, other than to replace the number "3" with the number "5." Subsequently, the Illinois General Assembly repeated this same exercise, replacing the number "5" with the number "15." (P.A. 85-1240, effective date July 1, 1990) In each of these amendments, the Illinois General Assembly preserved the Board and the federal government's right to increase the post-closure care period, but it never made the post-closure care an indefinite period. Nor did it authorize the Agency to extend the post-closure care period. "Section 22.17 of the Act requires a landfill operator to monitor gas, water, and settling at the site for 15 years after the site is closed or longer as required by the Board. 415 ILCS 5/22.17(a)." IEPA v. Jersey Sanitation, 336 Ill. App. 3d 582, 594 (4th Dist. 2003).

As will be discussed shortly, the Board never increased the post-closure care period for Part 807 landfills, but the Board did provide for a longer period of time for landfills that opted into the new, comprehensive landfill regulations. (35 Ill. Adm. Code § 813.403(a) (imposing performance standards for each post-closure activity)). The subject landfill is a Part 807 landfill, that was only required to perform monitoring and abatement for a period of fifteen years.

C. ATTEMPTS TO UPDATE GROUNDWATER REGULATIONS.

Closely related to the history of landfill regulations were the Board's groundwater rules, which similarly inherited, though this time from the Sanitary Water Board. In re Water Quality Standards, R71-14, Final Opinion, at p. 1 (March 7,1972). However, the Sanitary Water Board rules had not applied to groundwater, and the Board's contribution at this point was merely to

extend the general use and public and food processing standards for surface water to underground waters. (Id. at p. 14) When the Board repealed this provision in 1992 in favor of its new groundwater standards, it explained the incongruities posed by this approach:

> **The principal reason why there are now groundwater standards different from the General Use Standards and the Public and Food Processing Water Supply Standards of Subtitle C is that the latter standards are not fully relevant to groundwater. This Board has observed at length that groundwaters differ in important regards from surface waters, and that standards based on surface water considerations (as are the Subtitle C standards) often have no basis in groundwater considerations. For example, toxicity to aquatic organisms is the factor that most often controls the General Use Standards; toxicity to aquatic organisms is not a relevant groundwater matter.**

(R89-14© at p. 8 (Sept. 3, 1992))

> **In particular, there is little in the General Use and Public and Food Processing Water Supply Quality Standards that seems to be germane to underground waters. The prohibition against offensive conditions of sludge, bottom deposits, floating debris, algal growth, etc. of Section 302.203 is not germane; the aquatic toxicity standards of Sections 302.208 and 302.210 are not germane. Neither are the reservoir and lake phosphorus standard of Section 302.205, the fecal coliform standards of Sections 302.208 and 302.306, the river temperature limitations of Section 302.211, the algicide permits of Section 302.302, and the finished water standards of Section 302.303. The pH and dissolved oxygen standards of Sections 302.204 and 302.206 are, at best, of questionable relevance.**

(Id. at p. 9)

In 1984, the Illinois General Assembly mandated that the Board to study groundwater issues and publish its findings and conclusions, which were released under the tile of "A Plan for Protecting Illinois Groundwater." (R86-08 (Aug. 26, 1986)) The Plan would ultimately result in passage of the Illinois Groundwater Protection Act in 1987, and the regulations promulgated by the Board pursuant thereto in 1991, were guided by the policies contained therein. With respect to the unique groundwater quality issues respecting existing landfills, the Board emphasized the

importance of not merely creating an appropriate standard, but also specifically identifying the exact point at which compliance is to be measured:

> **Point of Application of Standards. It is necessary that the point of application of standards be clearly specified for any standards adopted. This is of particular significance with regard to potential sources of contaminants. For example, existing federal regulations for hazardous wastes and RCRA Subtitle D facilities specify both standards and precisely where those standards are to be met. If these standards differed in any substantial way from general Illinois water quality standards for ambient groundwater, it would be necessary to specify precisely how the transition from one set of standards to the other was to be made.**
>
> **A major point with regard to where standards are to be applied is whether some type of "mixing zone" or "zone of attenuation" should be allowed in the vicinity of potential sources of contaminants. In the case of such point sources as landfills, such a concept is incorporated into both existing federal and Illinois regulations for hazardous wastes and federal criteria for Subtitle D facilities.**

(R86-08, at p. IV-19 (Aug. 26, 1986) (emphasis added))

While the new landfill regulations adopted in 1990, preceded the new groundwater regulations adopted in 1991, they were clearly promulgated within a shared context. Both were perceived as antiquated standards that as time passed necessitated more than incremental change. The new landfill regulations would identify what groundwater standards would apply to which existing landfill, how the transition to a new standard would occur, as well as the point those standards applied.

D. NEW LANDFILL AND GROUNDWATER REGULATIONS.

From the perspective of landfill owners and operators, the new, comprehensive landfill regulations that emerged from the R88-7 proceedings offered a choice: close or perform significant updates to the facility. It was a Hobson's choice for many of the older landfills could not meet requirements necessary to stay open.

The most significant new requirement was that landfills were to be constructed with a leachate collection system and liner, and while existing landfills could grandfather past this specific requirements (e.g., 35 Ill. Adm. Code § 814.302(a)(4)), many of the performance standards for new landfills would apply to existing landfills that tried to continue accepting waste. The length of time the landfill remained open determined the extent to which the new requirements would apply. Specifically, existing landfills were divided into three categories: (I) those that would remain open indefinitely and would be subject to most new landfill regulations, also known as Subpart C facilities (35 Ill. Adm. Code, Part 814, Subpart C); those that must initiate closure within seven years, also known as Subpart D facilities (Id. at Subpart D); and those must initiate closure within two years, also known as Subpart E facilities (Id. at Subpart E).

The subject landfill closed pursuant to Subpart E, and thus was not subject to any of the new landfill requirements. (35 Ill. Adm. Code § 814.501) They are subject to the law pre-existing the new landfill regulations and their "existing permit." (Id. § 814.502) "The intent of this Subpart is to ease the work burden of the Agency and encourage borderline facilities to close as soon as possible." (Opinion of the Board, R88-7, Appendix A1, Background Report, at p. 109) The landfill's existing permit expressly referenced groundwater quality standards being measured by "general use water quality standards) (R.1344), as presumably all did at the time.

This interpretation of the regulatory intent is supported by how groundwater quality standards and point of application differ between the three categories of existing facilities:

EXISTING LANDFILLS

Closure Initiation	Point of Application	Groundwater Quality Standard
More than Seven Years (Subpart C facility	Zone of Attenuation. (35 Ill. Adm. Code 814.302(a); 811.320©)	Background concentrations. (35 Ill. Adm. Code 814.302(a)(5))
Within Seven Years (Subpart D facility)	Edge of Unit or Zone of Attenuation by Adjusted Standard. (35 Ill. Adm. Code 814.402(b)(3))	Part 302 Public and Food Processing Water Supply Standards (35 Ill. Adm. Code 814.402(b)(3))
Within Two Years (Subpart E facility)	None. Begin closure. (35 Ill. Adm. Code 814.502)	None. Begin closure. (35 Ill. Adm. Code 814.502)

The borderline facilities were not required to transition to a new groundwater protection program; they were required to close. For those remaining open indefinitely, the highest groundwater quality standard would apply, with a zone of attenuation designed to provide a reasonable point of compliance. For intermediate facilities, an intermediate water quality standard (the highest from the Part 302 rules), with a presumptive compliance boundary at the edge of the unit, which can be modified by Board if unreasonable.[3] There is no zone of attenuation available for facilities initiating closure forthwith because there was no justification for further weakening antiquated groundwater quality standards for them or expending new, additional administrative costs in establishing such a zone.

In summary, post-closure standards for Part 807 facilities are not contingent upon

[3] "The groundwater standards for this class of existing facilities are less ambitious than for new facilities. The standards in [Section 814.402(b)(3)] are taken from the federal criteria. They apply at the edge of the unit and are applicable only in aquifers used for drinking water. The Board may adjust the standards based upon site-specific conditions and a petition from the applicant. The limitations placed upon existing units in this category are intended to discourage their use and encourage all units without leachate collection systems to close as soon as possible." (Opinion of the Board, R88-7, Appendix A1, Background Report, at p. 144)

meeting the background concentrations required of existing facilities that remained open indefinitely, nor the Part 620 groundwater standards that did not exist when the Board carefully detailed how existing facilities would (or would not) transition to the new rules. While we agree with the Illinois EPA that there is no zone of attenuation or point of compliance boundary for Part 807 facilities (R.0456), this is not simply some fluke by which landfills that remained open indefinitely were subject to less stringent regulation. Part 807 facilities were subject to minimal standards of gross pollution, for which adding a zone of attenuation concept made no sense.

II. DENIAL POINTS.

Under Section 40 of the Act (415 ILCS 5/40), the Board's standard of review is whether or not the application as submitted to the Agency would violate the Act and Board regulations. Illinois Ayers v. IEPA, PCB 03-214, at p. 8 (April 1, 2004). Therefore, the Board must decide whether or not the application as submitted to the Agency, demonstrates compliance with the Act and Board regulations. Id.

Furthermore, the Agency's denial or modification letter frames the issue on appeal. Id. Pursuant to Section 57.7(c)(4) of the Act, this letter must contain:

> **(A) an explanation of the Sections of this Act which may be violated if the plans were approved;**
> **(B) an explanation of the provisions of the regulations, promulgated under this Act, which may be violated if the plan were approved;**
> **(C) an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and**
> **(D) a statement of specific reasons why the Act and the regulations might not be met if the plan were approved.**

(415 ILCS 5/57.7(c)(4))

The Agency has a duty to specify its reasons in the letter or be precluded from raising that

issue. Illinois Environmental Protection Agency v. Illinois Pollution Control Board, 86 Ill.2d 390, 405 (1981).

A. THE POST-CLOSURE CARE PERIOD HAS ENDED.

The denial letter states that "[p]ursuant to 807.524, the Agency must certify that the post-closure care period has ended upon determining that the facility will not cause future violations of 35 Illinois Administrative Code Part 807 or the Act." (R.0450).

The post-closure care period is not determined by the Agency, nor by Section 807.524 of the Board's regulations. Section 807.524 is a procedural requirement relevant to release of financial assurance. (R84-22, at p. 20 (Dec. 27, 1984)) The post-closure care period and requirements are codified as follows:

> **(a) The owner and operator of a sanitary landfill site . . . shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.**
>
> **(b) The owner and operator of a sanitary landfill . . . shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a). . . .**

(415 ILCS 5/22.17(a) & (b))

D & L Landfill, Inc. monitored gas, water and settling for a period of fifteen years. While the Board has subsequently required longer post-closure care period under new landfill regulations (Part 811), these do not apply to Part 807 facilities. Furthermore, when the Illinois EPA identified settling problems at the landfill, these were abated to its satisfaction. Previously during the post-closure care a slurry cutoff wall was installed that will offer further longterm environmental protection as well. (R.0039-R.0040)

There were two sets of requests in the supplemental permit application, one was for approval as to how post-closure care would be ended (such as how the well holes would be plugged), something which the Agency does not appear to have expressed any specific concern, and the other was for certification of the completion of post-closure care, which would allow release of financial assurance. There is no factual or legal issue that the 15 year post-closure care period has ended.

B. THE PART 807 STANDARDS CITED IN THE DENIAL LETTER DO NOT APPLY TO THE POST-CLOSURE CARE PERIOD.

The two main provisions of Part 807 cited in the denial letter are:

> **WATER POLLUTION. No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act.**

(35 Ill. Adm. Code § 807.313)

> **PROTECTION OF WATERS OF THE STATE. No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill.**

(35 Ill. Adm. Code § 807.315 (emphasis added))

By their express terms, these are both standards for development and operation of a landfill. However, a facility such as the subject landfill "that has a certificate of closure and is in the post-closure care portion of its life, has ceased day-to-day operations." Jersey Sanitation Corp. v. IEPA, PCB 00-82, at p. 9 (June 21, 2001) (rejecting Agency argument that a landfill in post-closure needs a certified operator), aff'd IEPA v. Jersey Sanitation, 336 Ill. App. 3d 582 (4th

Dist. 2003).

The purpose of these two provisions is to provide standards for issuance of development and operating permits. The post-closure care standards for Part 807 facilities are contained in Section 807.318 of the Part 807 rules, as modified by legislation.

C. PART 807 DOES NOT REQUIRE THERE TO BE NO EXCEEDENCE OF BACKGROUND VALUES OR PART 620 GROUNDWATER QUALITY STANDARDS TO CERTIFY POST-CLOSURE HAS ENDED.

The most specific legal authority cited in the denial letter, of course, is in the various exceedences of Part 620 groundwater standards and background values that are only required of operating landfills, not those that were "encouraged" to close to avoid these standards and remain governed by Part 807. Part 620 did not even exist when the Board developed the new landfill regulations. And those existing facilities that remained open indefinetely and became subject to monitoring groundwater for background concentrations, were given zones of concentration from which compliance would be achieved. (35 Ill. Adm. Code 814.302(a)(5)) Regulations should be interpreted to avoid absurd outcomes, and requiring a Part 807 facility to meet requirements not imposed on Part 811 facilities is absurd.

Furthermore, the Board has previously found, neither the Act, nor Part 807, require a Part 807 facility to meet Part 620 standards as a pre-condition to Illinois EPA issuance of a certificate that post-closure care is completed. Jersey Sanitation Corp. v. IEPA, PCB 00-82, at pp. 2-3 (June 21, 2001) aff'd IEPA v. Jersey Sanitation, 336 Ill. App. 3d 582 (4th Dist. 2003). Instead, the Board found the proposal of monitoring for "general use water quality standards" and background data to determine if "a trend is believed to be developing," was sufficient to meet the requirements of the Act and Board regulations. Id. at p. 13. Similarly, the information submitted

herein demonstrated that the trend is downward, as one would expect at a landfill that ceased operations decades ago. There would be no violation of the Act or the Board's regulations if the post-closure care certification was granted.

CONCLUSION

For the above reasons, D&L Landfill, Inc. prays that the Board reverse the Agency's denial of the subject permit application, and specifically grant its request to discontinue monitoring gas, water and settling in the manner described in the application, direct the Agency to execute certification of completion of post-closure care, and for such other relief as the Board deems meet and just.

Respectfully submitted,

D&L LANDFILL, INC.,
Petitioner,

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