

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

D&L LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 15-137
)	(Permit Appeal- Land)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

Elizabeth Dubats, Assistant Attorney General, hereby certifies that she has served a copy of the foregoing Notice of Filing and Plaintiff's Motion for Summary Judgment upon:

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by placing a copy of same in the United States Mail in Springfield, Illinois, with postage fully prepaid on October 1, 2015.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
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RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT AGAINST D&L LANDFILL, INC.

Respondent, Illinois Environmental Protection Agency (“Agency” or “IEPA”), pursuant to Section 101.516 of the Board’s Procedural Rules, 35 Ill. Adm. Code 101.516, Supreme Court Rules 191 and 192, and Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005, hereby moves for summary judgment against the Petitioner, D&L Landfill, Inc., affirming the Agency’s denial of Petitioner’s supplemental permit application requesting certification to end post-closure care at Petitioner’s landfill.

INTRODUCTION

On December 31, 2012, D&L Landfill, Inc. (“D&L” or “Petitioner”) submitted a supplemental permit application requesting the Agency certify the end of post-closure care for D&L Landfill (“2012 Application”). R.0023. On February 26, 2013, the Agency sent Petitioner a draft denial letter advising Petitioner that the 2012 Application was insufficient because it failed to address ongoing exceedances of Part 620 groundwater quality standards and background values of contamination at the site across 26 different parameters measured at the site’s six downgradient detection monitoring wells. Over the next two years, Petitioner allowed multiple extensions of the Agency’s decision deadline to provide more time for Petitioner to produce

additional justification for its 2012 Application. On December 19, 2014, the Agency issued a final decision denying certification to end post-closure care due to Petitioner's failure to address the landfill's ongoing exceedances.

As explained in the Agency's December 19, 2014 decision, the Agency's determination to deny certification to end post-closure care was based on Section 807.524 of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807.524, which requires that the Agency "certify that the post-closure care period has ended when it determines ...that the site will not cause future violations of the [Illinois Environmental Protection] Act or this Part [807]." At the time of Petitioner's permit application, and continuing through the time of the Agency's final decision, Petitioner's groundwater monitoring data showed measured levels of several contaminants as exceeding permit background levels and the applicable Part 620 Class IV, groundwater quality standards that are used to assess the groundwater conditions at the site. 35 Ill. Adm. Code Part 620; R. 0041-R.0042 (Petitioner's 2012 Application, describing the Part 620 Class IV groundwater standards as "[t]he applicable groundwater quality standards"). Given exceedances of both groundwater quality standards and background levels of contamination at the site, the Agency's final decision explained that Petitioner had failed to demonstrate that the landfill had not impacted groundwater in violation of Sections 807.313 and 807.315 of the Board's Landfill Regulations. 35 Ill. Adm. Code 807.313 and 807.315. Sections 807.313 and 807.315 prohibit the operation of a sanitary landfill (1) "so as to cause or threaten to allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois... or so as to violate regulations or standards adopted by the Pollution Control Board under the [Illinois Environmental Protection] Act" and (2) unless "the applicant proves to the

satisfaction of the Agency that no damage or hazard will result to waters of the State” 35 Ill. Adm. Code 807.313 and 807.315.

Under Section 807.524 of the Board’s Regulations, 35 Ill. Adm. Code 807.524, the Agency cannot certify end of post-closure care for D&L Landfill unless it can make a reasoned determination that the landfill will not cause future violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.*, or Part 807 of the Board’s Solid Waste Regulations, 35 Ill. Adm. Code Part 807, including by causing or threatening to discharge any contaminants so as to cause water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 807.313, or creating a hazard of water pollution to waters of the State, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d), and 35 Ill. Adm. Code 807.315. Petitioner’s failure to address ongoing groundwater exceedances left the Agency with no choice but to deny certification of the end of post-closure care at D&L Landfill.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Section 101.516(b) of the Board’s Procedural Rules, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (b) If 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.

A motion for summary judgment should be granted when the pleadings demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); *People ex. rel. Madigan v. Lincoln, Ltd.*, 383 Ill. App. 3d 198, 204; 890 N.E. 2d 975, 980 (1st Dist. 2008). A genuine issue of material fact exists when “the material facts are disputed, or, if [they] are undisputed, reasonable persons

might draw different inferences from the undisputed facts.” *Adames v. Sheahan*, 233 Ill. 2d 276, 296, 909 N.E.2d 742, 754 (2009).

Inferences or conclusions drawn from the evidentiary material before the court must be reasonable; courts are not required to adduce remote factual possibilities in favor of the opponent of such a motion. *Gehrman v. Zajac*, 34 Ill. App. 3d 164, 166; 340 N.E.2d 184, 185 (1st Dist. 1974). The use of summary judgment is encouraged under Illinois law to facilitate litigation and avoid unnecessary trials. *Lincoln*, 383 Ill. App. 3d at 204; 890 N.E. 2d at 980. As was noted by the Supreme Court in *Allen v. Meyer*, 14 Ill. 2d 284, 292; 152 N.E. 2d 576, 580 (1958):

Summary judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein is presented no genuine issue as to any material fact, is to be encouraged. The benefits of summary judgment in a proper case insure not only to the litigants, in the saving of time and expense, but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trials.

Summary judgment is appropriate in this case because Petitioner’s objections to the Agency’s decision are limited to the legal questions of whether or not the Agency properly applied Sections 807.313 and 807.315 of the Board’s Solid Waste Regulations, 35 Ill. Adm. Code 807.313 and 807.315, in denying the certification, and whether or not Part 620 of the Board’s Groundwater Regulations apply to Part 807 landfills. Nowhere in Petitioner’s Petition for Review of Agency Permitting Decision does Petitioner challenge the factual basis of the Agency’s decision. The Agency’s denial of the 2012 Application was based on data submitted by Petitioner in the application itself, a supplemental filing from Petitioner, and self-reported groundwater monitoring data, the accuracy of which is not in dispute.

BURDEN OF PROOF AND STANDARD OF REVIEW

Section 40 of the Act, 415 ILCS 5/40 (2014), and Section 105.112 of the Board's Procedural Rules, 35 Ill. Adm. Code 105.112, provide that the burden of proof in the appeal of an Agency decision is on the petitioner. *Browning-Ferris Indus. of Ill., Inc. v. PCB*, 179 Ill. App. 3d 598, 601, 534 N.E.2d 616, 619 (1989) ("In its opinion the Board discussed, as a preliminary issue, the burden of proof element of permit appeal proceedings and emphatically, and correctly, found that the burden was on BFI."). As articulated in *Jersey Sanitation Corp. v. IEPA*, PCB 00-82 (June 21, 2001), in order to successfully appeal the Agency's determination on a motion for summary judgment the "Board must determine that as a matter of law [Petitioner] has proven that the application, as submitted to the Agency, demonstrated that no violations of the Act or Board rules would have occurred if the requested permit had been issued." The standard of review applied by the Board to an Agency permitting decision is that of reasonableness. *Waste Mgmt. Inc. v. IEPA*, PCB 84-45, 84-61, 84-68 (Nov. 26, 1984). In this case, the burden is on Petitioner to show, as a matter of law, that its 2012 Application demonstrated no violations of the Act or Board regulations would result from the Agency's certification to end post-closure care for the Site, and that the Agency's denial therefore was unreasonable.

ISSUE PRESENTED

The issue before the Board is whether Petitioner demonstrated that the Agency's certification of the end of post-closure care for D&L Landfill would not allow future violations of the Act and Part 807 of the Board's Regulations.

RELIEF SOUGHT

Respondent seeks a finding upholding the Agency's denial of certification to end post-closure care at the Site.

UNCONTESTED FACTS

Background and Administrative History

Petitioner owns and operates a landfill located at 825 West Willard Street, in Greenville, Illinois ("Landfill"). R.0033. Petitioner's operating permit, Permit No. 1974-34-OP, was issued by IEPA on May 13, 1974. *Id*; R.001. On February 15, 1991, IEPA approved Supplemental Permit No. 1990-370-SP, which included a closure/post-closure plan and a revised groundwater monitoring plan. R.002. On January, 21, 1997, IEPA approved Supplemental Permit No. 1996-357-SP, approving certification of completion of closure for the landfill pursuant to Part 807 of the Board's Solid Waste Regulations, 35 Ill. Adm. Code Part 807, and identifying the 15-year minimum post-closure care period as beginning on August 31, 1996. R.003.

On December 31, 2012, Petitioner submitted its application for certification to end post-closure care. R. 0023. The 2012 Application proposed ending leachate collection at the site, even though, as the application stated, 216,000 gallons of leachate had been extracted from the site during 2012. R. 0040. The application also proposed that the Landfill's groundwater monitoring system be eliminated. R. 0046. Petitioner provided groundwater monitoring data in Appendices B and C of the application. R. 0052-79. With respect to groundwater monitoring requirements,

the application conceded that: 1) Part 620 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code Part 620, contained "the applicable groundwater quality standards" for the Landfill; 2) under Petitioner's permit, significant changes in groundwater quality were to be determined by comparing monitoring well data to established background values and Part 620 values for Class IV groundwater (R. 0041-42), Supplemental Permit No. 2005-067, Attachment A, ¶¶ 6 and 8; and 3) the analytical results of the third quarter 2012 monitoring well data showed at least some exceedances of both background values and Part 620 values for Class IV groundwater (R.0042-46).

Following Petitioner's application, IEPA conducted a follow-up inspection of the site on January 18, 2013 in order to verify the claims made in the 2012 Application. R. 0168. The January 22, 2013 inspection report noted that some claims in Petitioner's application did not appear to be accurate. R. 0168. The report included observations of erosion ditches, settling, ponding, and significant ongoing leachate collection. *Id.* IEPA also conducted a follow-up analysis of Petitioner's reported groundwater data from the Agency's groundwater database. In a February 25, 2013 memorandum, IEPA compared the data provided in Attachment B of the 2012 Application to an analysis of groundwater monitoring report data and found a number of exceedances both of background values and of Part 620 Class IV groundwater quality standards. R. 0172-73. The February 25, 2013 memorandum recommended forwarding notice of these exceedances to Petitioner with the recommendation that Petitioner address these exceedances with an alternative source demonstration or assessment monitoring plan, as required by Special Condition A.8 of Petitioner's Permit, and Part 807 of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807. R. 0172-73. Based on the findings of this review, IEPA sent Petitioner by email a draft denial letter citing the unaddressed exceedances on February 26, 2013. The email

accompanying the draft denial letter informed Petitioner that IEPA would need a response or an extension of the decision deadline prior to the IEPA's March 3, 2013 decision deadline, or IEPA would need to formally deny the application. R.0174. Petitioner then provided multiple extensions of IEPA's decision deadline. R.0175-180.

On August 14, 2013, Petitioner submitted additional information in response to the groundwater quality exceedances noted in IEPA's February 26, 2013 draft denial letter ("August 14, 2013 Supplement"). R.0182. Petitioner did not supply an assessment monitoring plan, as required by Special Condition A.8 of Petitioner's Permit. On December 3, 2013, representatives of Petitioner met with IEPA permitting staff in order to discuss the status of Petitioner's application. R.0437, R.0448. At this meeting, IEPA explained to Petitioner that the August 2013 Supplement did not properly address the ongoing groundwater exceedances at that Site. *Id.* Petitioner then provided a number of additional extensions of the decision deadline, up to and including December 31, 2014. R. 0437-444. On December 19, 2014, IEPA issued its final decision denying a certification of the end of post-closure because of Petitioner's failure to address the Landfill's long-standing groundwater quality issues. R.0448-89.

Current and Past Groundwater Exceedances of Background Values of Contamination and Groundwater Quality Standards

In both its February 26, 2013 draft denial letter and its December 19, 2014 final decision, IEPA identified the following groundwater exceedances at the Landfill site:¹

¹ See February 26, 2013 Draft Denial, R.0170-73, and December 19, 2014 final decision, R. 0450-52. IEPA's February 23, 2013 draft denial letter and December 19, 2014 final decision both incorrectly cited several parameters as having exceedances of both background values and Part 620 Class IV groundwater quality standards, when in fact there were reported exceedances only of background values for those parameters. This table therefore removes the following exceedances of Part 620 Class IV standards that were listed in February 26, 2013 draft denial letter and the December 19, 2014 final decision: G106 - total dissolved solids, dissolved iron, total iron, total chloride / G112 - total dissolved solids, dissolved iron, dissolved manganese, dissolved chloride, total iron, total chloride, total manganese / G113 - dissolved

Parameter	Wells with Exceedances of Background Values	Wells with Exceedances of Standards in 35 Ill. Adm. Code 620.440(c).
Total Dissolved Solids	G106, G111, G112, G113, G114	
Dissolved Nitrate	G110	
Dissolved Barium	G106, G110, G111, G112, G113, G114	
Dissolved Boron	G106, G111, G112, G113, G114	G112, G114
Dissolved Iron	G106, G112	
Ethyl Ether	G106, G112	
Total Organic Halogen	G106, G112, G113, G114	G106, G112, G113, G114
Dissolved Chloride	G106, G110, G111, G112, G113	
Dissolved Sulfate	G111	
Dissolved Manganese	G111, G112, G113, G114	
Dissolved Nickel	G112, G114	
Phenols	G114	G112, G114
Oil	G112	
Chlorobenzene	G114	
Total Ammonia	G106, G112	
Total Barium	G106, G112, G114	
Total Fluoride	G110, G114	
Total Manganese	G106, G112, G113, G114	
Total Sodium	G106, G110, G111, G112, G113, G114	

chloride, total chloride / G114 - total dissolved solids, dissolved iron, dissolved chloride, dissolved manganese, total iron, total chloride, total manganese.

This table also reflects the correction of a decimal place error which was discovered in the process of reviewing the Agency Record for this appeal. In order to correct this error, exceedances of the Part 620 Class IV standard for total iron at wells G106, G112, and G114 have also been removed from the list of exceedances.

Total Arsenic	G106	
Total Iron	G112, G114	
Total Sulfate	G111	
Tetrahydrofuran	G112, G114	
Total Chloride	G106, G110, G111, G112, G113, G114	
Total Boron	G106, G111, G112, G113, G114	G111, G112
Alkalinity	G114	
COD	G114	

In its Petition, Petitioner does not dispute the above exceedances. To provide an even closer view of the groundwater exceedances at the Landfill, the following table includes groundwater exceedances reported within the six months preceding the Agency's December 19, 2014 final decision:

Parameter	Wells with Exceedances of Background values	Wells with Exceedances of 35 Ill. Adm. Code 620.440(c)
Total Dissolved Solids	G106, G111, G112, G113, G114	
Dissolved Nitrate	G110	
Dissolved Barium	G106, G110, G111, G112, G113, G114	
Dissolved Boron	G106, G111, G112, G113, G114	G112, G114
Dissolved Iron	G106, G112, G114	
Ethyl Ether	G106, G112	

Total Organic Halogen	G106, G112, G113, G114	
Dissolved Chloride	G106, G110, G111, G112, G113	
Dissolved Sulfate	G111	
Dissolved Manganese	G111, G112, G113, G114	
Dissolved Nickel	G112, G114	
Phenols	G112, G114	G114
Chlorobenzene	G114	
Total Ammonia	G106, G112	
Total Barium	G106, G112, G114	
Total Fluoride	G110, G114	
Total Manganese	G106, G112, G114	
Total Sodium	G106, G110, G111, G112, G113, G114	
Total Arsenic	G106	
Total Sulfate	G111	
Tetrahydrofuran	G112, G114	
Total Chloride	G106, G110, G111, G112, G113, G114	
Total Boron	G106, G111, G112, G113, G114	G112

COD	G114	
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APPLICABLE STATUTES AND REGULATIONS

Illinois Statutes

- **415 ILCS 5/22.17:** Landfill post-closure care.

(a) The owner and operator of a sanitary landfill site that is not a site subject to subsection (a.5) or (a.10) of this Section 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.**
- **415 ILCS 5/3.550:** Waters

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

Pollution Control Board Regulations

- **35 Ill. Adm. Code 807.524:** Implementation and Completion of Post-Closure Care Plan

a) The operator of a waste disposal site shall implement the post-closure care plan commencing with receipt of a certification of closure pursuant to Section 807.508.
b) The operator of an indefinite storage unit shall implement the contingent post-closure care plan commencing with receipt of certification of closure pursuant to the contingent closure plan. The operator is not required to implement the contingent post-closure care plan if the Agency determines that the operator has removed all wastes and waste residues from the indefinite storage unit.
c) 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 violations of the Act or this Part.
- **35 Ill. Adm. Code 807.313,** 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 807.315**, 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 620.440**: Groundwater Quality Standards for Class IV: Other Groundwater

- a) Except as provided in subsection (b) or (c), Class IV: Other Groundwater standards are equal to the existing concentrations of constituents in groundwater.
- b) For groundwater within a zone of attenuation as provided in 35 Ill. Adm. Code 811 and 814, the standards specified in Section 620.420 must not be exceeded, except for concentrations of contaminants within leachate released from a permitted unit.
- c) For groundwater within a previously mined area, the standards set forth in Section 620.420 must not be exceeded, except for concentrations of TDS, chloride, iron, manganese, sulfates, pH, 1,3-dinitrobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, HMX (high melting explosive, octogen), nitrobenzene, RDX (royal demolition explosive, cyclonite), 1,3,5-trinitrobenzene, or 2,4,6-trinitrotoluene (TNT). For concentrations of TDS, chloride, iron, manganese, sulfates, pH, 1,3-dinitrobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, HMX, nitrobenzene, RDX, 1,3,5-trinitrobenzene, or 2,4,6-trinitrotoluene (TNT), the standards are the existing concentrations.

- **35 Ill. Adm. Code 807.302: Compliance with Permit**

All conditions and provisions of each permit shall be complied with.

Relevant Permit Conditions

- D&L Landfill Permit No. 2005-067 Attachment A (R.0010-20):
 - Paragraph 6: “The permittee shall conclude that a significant change in groundwater quality has occurred if the results of the evaluation in item No. 5 above indicate that the value for any parameter exceeds:
 - a. The background value established for that parameter at the 95% confidence level; or
 - b. The Class VI [sic] groundwater quality standards listed in Subpart D of 35 Ill. Adm. Code 620 Standards

- Paragraph 8: “In the event a significant change in groundwater quality has occurred or has been confirmed, the permittee shall:
 - a. Notify the IEPA, Division of Land Pollution Control, Permit Section, in writing, within 10 days of the change in groundwater quality, identifying each well and each parameter;
 - b. Submit an assessment of monitoring plan within 30 days of the significant change as determined in item No. 6 or item No. 7 above in the form of a supplemental permit application. The assessment monitoring plan shall include appropriate methods for determining the source of the increase, the potential threat to human health and the environment and the concentration and extent of the contaminants if any. The assessment monitoring plan shall, at a minimum, include expanded sampling requirements for the affected well(s) and shall be implemented within 30 days of approval from the Agency.
 - c. Submit assessment report, based on and including the data and information generated from the completion of item No. 8b above to the Agency within 90 days of approval of the assessment monitoring plan.
 - d. Propose a corrective action plan if assessment monitoring indicates that the facility has impacted the groundwater. The corrective action plan shall be submitted within 30 days of approval of the assessment report required by item 8c above in the form of a supplement permit application and include appropriate response action to address any impact of the facility. The plan shall be implemented within 30 days of Agency approval.

LEGAL ARGUMENT

I. Petitioner Has Not Demonstrated that the Agency’s Certification of the End of Post-Closure Care at the Landfill Would Not Allow Future Violations of the Act or Part 807.

Petitioner has not demonstrated that the Landfill will not cause future violations of the Act or Part 807 of the Board’s Solid Waste Regulations. Petitioner’s 2012 Application did not properly address ongoing groundwater exceedances at the site, nor was Petitioner able to adequately address these issues during the two-year period its application was pending before the Agency. Under Section 807.524 of the Board’s Solid Waste Regulations, 35 Ill. Adm. Code

807.524, the Agency “shall certify that the post-closure care period has ended when it determines ... [t]hat the site will not cause future violations of the Act or this Part.” The Agency cannot certify the end of post-closure care unless it has determined that future violations will not occur. In this case, certification would result in the end of leachate collection and groundwater monitoring. R.0040; R. 0046. Ending these preventative measures despite documented groundwater contamination in excess of Part 620 groundwater quality standards and background values for the Landfill site would violate Section 807.524 by leaving a strong probability of future violations of the Act and Part 807 Regulations. 35 Ill. Adm. Code 807.524.

A. The Act’s 15-Year Post-Closure Care Period is a Floor, not a Ceiling.

Probable future violations of the Act and Board regulations at the Landfill mandate continued groundwater monitoring beyond the fifteen-year minimum post-closure care period. Section 22.17 of the Act, 415 ILCS 5/22.17 (2014), expressly provides for a post-closure care period that exceeds fifteen years if necessary to ensure compliance with Board regulations. Specifically:

The owner and operator of a sanitary landfill site that is not a site subject to subsection (a.5) or (a.10) of this Section 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.*

Section 807.524 of the Board’s Solid Waste Regulations, 35 Ill. Adm. Code 807.524, requires an Agency determination that the Site will not cause future violations of the Act or Part 807 of the Board’s Regulations before it can certify the end of post closure care. Read together, an Agency determination that certification would leave ongoing groundwater quality issues unaddressed means that the minimum fifteen-year post-closure care period must be extended until such time as the Agency determines that the end of post-closure care would not result in additional violations of the Act or Part 807 Regulations.

B. Petitioner Failed to Properly Address Groundwater Exceedances in Violation of its Permit.

Petitioner's Permit Special Condition 8 requires that any significant change in groundwater quality, as defined by Special Permit Condition Nos. 6a and 6b, be addressed by submitting an assessment monitoring plan, followed by an assessment report 90 days after IEPA's approval of the monitoring plan, in order to determine the source of the change in groundwater quality. R.010-11. Special Condition 8c further requires that the permittee "propose a corrective action plan if assessment monitoring indicates that the facility has impacted the groundwater." R.011. In evaluating the 2012 Application, the Agency conducted a review of Petitioner's reported groundwater data dating back to January of 2010 until February of 2014. R. 0170. In that review, the Agency found exceedances of background values for Total Dissolved Solids, Dissolved Nitrate, Dissolved Barium, Dissolved Boron, Dissolved Iron, Ethyl Ether, Total Organic Halogen, Dissolved Chloride, Dissolved Sulfate, Dissolved Manganese, Dissolved Nickel, Phenols, Oil, Chlorobenzene, Total Ammonia, Total Barium, Total Fluoride, Total Manganese, Total Sodium, Total Arsenic, Total Iron, Total Sulfate, Tetrahydrofuran, Total Chloride, Total Boron, Alkalinity, and COD. R.0170-73; Table 1, above. The Agency review also found violations of Part 620 of the Board's Groundwater Regulations for well samples exceeding Class IV groundwater standards for Dissolved Boron, Total Boron, Total Organic Halogen, and Phenols. R. 0170-73; Table 1, above. The draft denial sent to Petitioner on February 26, 2013 expressly noted requirements of Special Condition 8 that are triggered by the detection of any "significant change" in groundwater quality, which is defined by Special Conditions 6a and 6b as "a. The background value established for that parameter at the 95% confidence level; or b. The Class [IV] groundwater quality standards listed in Subpart D of 35 Ill. Adm. Code 620 Standards" Despite receiving notice from the Agency in February of 2013 of

“significant change[s]” in groundwater quality as defined by Special Condition 6 of D&L’s permit, Petitioner never submitted an assessment monitoring plan or assessment report as required by Special Condition 8, much less propose a corrective action plan. The Agency found the Petitioner’s August 14, 2013 Supplement inadequate as an alternative source demonstration, and Petitioner does not contest that conclusion in the Petition for Review of Agency Decision.

While not specifically cited in the December 19, 2014 denial letter, it is worth noting that Petitioner’s failure to address these exceedances as specified in its permit is in itself a violation of Part 807, Section 807.302 of the Board’s Landfill Regulations, which requires that “All conditions and provisions of each permit shall be complied with.” 35 Ill. Adm. Code 807.302. In any event, Petitioner’s failure to follow the requirements of its Permit means that the Landfill’s groundwater exceedances have gone unaddressed.

C. Petitioner’s Unaddressed Groundwater Exceedances Demonstrate a High Probability of Future Violations of the Act and Part 807 Regulations.

By failing to address the ongoing groundwater exceedances cited in the February 26, 2013 draft denial (R.0170) and the December 19, 2014 final decision (R.0450), Petitioner failed to demonstrate D&L Landfill will not cause future violations of the Act and Board Regulations. As noted in the Agency’s February 26, 2013 draft denial letter and the Agency’s December 19, 2014 final decision, among the unaddressed exceedances detected in D&L Landfill’s monitoring wells were Dissolved Boron, Total Boron, Total Organic Halogen, and Phenol levels that exceed Class IV Groundwater Standards. R.0170; R.0450. Section 807.313 of the Board’s Landfill Regulations, prohibits a person from operating a sanitary landfill so as to cause, threaten or allow discharge of contaminants into the environment so as to cause or tend to cause water pollution or in violation of regulations and standards adopted by the Pollution Control Board under the Act. 35 Ill. Adm. Code 807.313. Section 807.315 of the Board’s Landfill Regulations, requires

landfill operators to prove “to the satisfaction of the Agency” that the operation of a landfill will not result in “damage or hazard” “to the waters of the State.” 35 Ill. Adm. Code 807.315.

There are no genuine issues of material fact regarding the existence of unaddressed exceedances. Petitioner does not deny that down gradient monitoring wells G106, G110, G111, G112, G113, and G114 have detected the significant, long-term, and ongoing exceedances of both Class IV groundwater standards and permit background values cited in the December 19, 2014 final decision. *See* Table 1, above, R.0170, and R.0450. Petitioner acknowledges these exceedances exist in the 2012 Application and in the August 2013 Supplement. R.0040 and R.0203. Petitioner does not deny that these exceedances include organic parameters such as Ethyl Ether, Chlorobenzene, and Tetrahydrofuran, which do not occur in nature. R.0042-45 and R.0202-03. The Petitioner did not perform the assessment monitoring required under Special Condition 8 of its permit. Nowhere in the Petition for Review of Agency Decision does Petitioner claim that Petitioner demonstrated that these exceedances were caused by any source other than D&L Landfill. *See* Petition for Review of Agency Decision, Apr. 27, 2015.

The Board has found unaddressed groundwater exceedances of background values and Part 620 Class values to be Part 807 violations. In *People v. Jersey Sanitation Corp.*, PCB 97-2 (Feb. 3, 2005), the Board found that a Respondent’s failure to address post-closure Part 620 Class exceedances at a Part 807 landfill resulted in violations of Sections 807.313 and 807.315. In applying these regulations, the Board explained:

Part 807 requires landfill operators to prove that they do not and will not affect the waters of the State. 35 Ill. Adm. Code 807.313 and 807.315. Further, Jersey Sanitation's permit provides:

Groundwater monitoring results will be evaluated each quarter against background data, General Use Water Quality Standards, and other historic water analysis information. If a trend is believed to be developing, more frequent sampling (e.g. monthly) may be performed to

substantiate or dismiss the likelihood of a site impact. A professional engineering firm should be retained to develop future actions and/or plans for subsequent IEPA approval. Parties Exh. 41, Att. 5, at 4.

Jersey Sanitation's groundwater monitoring results actually showed exceedances of Class II standards. Regardless of whether "a trend is believed to be developing," Jersey Sanitation is under an obligation to retain a professional engineering firm to develop future actions or plans for Agency approval. By failing to retain a professional engineering firm to develop future actions and/or plans for Agency approval, the Board finds that Jersey Sanitation operated its landfill in a manner that constitutes a threat to waters of the State. Jersey Sanitation therefore violated Sections 12(a) and (d) of the Act and Sections 807.313 and 807.315 of the Board's regulations.

Id. at 21-22.

Like the Part 807 landfill in *Jersey Sanitation*, Petitioner's permit also required a specific response to groundwater exceedances that it did not follow. Also, as in *Jersey Sanitation*, D&L Landfill's groundwater monitoring results show exceedances of Part 620 standards. R.0450. In the absence of a response that meets the requirements of Special Condition 8 of D&L Landfill's permit, it would be a reckless violation of Section 22.17 of the Act and Section 807.524 of the Board's Landfill Regulations, for the Agency to certify the end of post-closure care while current ongoing exceedances remain unresolved. 415 ILCS 5/22.17 (2014); 35 Ill. Adm. Code 807.524.

D. Ending Post Closure Care Would Leave Existing Exceedances Unaddressed and Future Exceedances Unmonitored.

In addition to correctly reasoning that Petitioner's failure to properly address current ongoing groundwater exceedances necessarily results in a failure to demonstrate the Act and Part 807 of the Board's Regulations will not be violated in the future, it is worth noting that Petitioner's 2012 Application is specifically incompatible with the measure required of D&L Landfill to properly address the ongoing exceedances. The 2012 Application specifically requests ending all groundwater monitoring on the Site. R. 0046. Petitioner's permit specifically requires additional groundwater monitoring whenever background level and Part 620 standards

are exceeded. R.010-11. The fact that groundwater exceedances have occurred and continue to occur at the Site is undisputed. *See* Section I.C., above. Certification of the end of post-closure care would end all groundwater monitoring at the Site under the very circumstances where Petitioner's permit and Board Regulations require continued monitoring. In any Agency permit denial appeal, the burden is on the Petitioner to show that no violations of the Act or Board Regulations would result from granting the permit. *Jersey Sanitation Corp. v. IEPA*, PCB 00-82 (June 21, 2001). Granting a certification for the end of post-closure care without a clear demonstration D&L Landfill is not impacting the groundwater is particularly dangerous because such an approval would remove the very tools the Agency needs to assess the Landfill's impact. To do so when the permit record contains clear evidence of groundwater impact is akin to treating a suspicious mole by covering it up with a Band-Aid and hoping it is not and does not become cancerous.

CONCLUSION

As there are no genuine issues of material fact that the 2012 Application did not demonstrate certification of the end of post-closure care at D&L Landfill would not allow future violations of the Act or Part 807 of the Board's Solid Waste Regulations, the Board should grant summary judgment for Respondent and against Petitioner.

WHEREFORE, Complainant, People of the State of Illinois, respectfully request that the Board enter a final order:

- A) Granting Respondent's motion for summary judgment;

B) Affirming Respondent's denial of Certification to End Post-Closure Care;

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
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