

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2015

CLINTON LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 15-60, PCB 15-76, PCB 15-111,
)	PCB 15-113, PCB 15-166, PCB 15-194,
ILLINOIS ENVIRONMENTAL)	PCB 15-195, PCB 15-207, PCB 16-34,
PROTECTION AGENCY,)	PCB 16-59
)	(Permit Appeal - Land)
Respondent.)	(Consolidated)

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

On October 26, 2015, Clinton Landfill Inc. (CLI) timely filed a petition (Pet.) asking the Board to review an October 13, 2015 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns CLI's landfill No. 3 (the landfill) located in Clinton, DeWitt County. Also on October 26, 2015, the parties filed a joint motion to extend stay (Stay), requesting that the Board extend the stay until December 31, 2015 in Clinton Landfill, Inc. v. IEPA, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194, PCB 15-195, PCB 15-207, PCB 16-34 (consol.) (Aug. 20, 2015). On October 28, 2015, CLI and the Agency filed a joint motion to consolidate PCB 16-59 with PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, 15-194, PCB 15-195, PCB 15-207, and PCB 16-34 along with a joint motion to designate the record of PCB 16-59 (Mot.). For the reasons below, the Board accepts the petition for review, grants the joint motion to consolidate, designates the record, and extends the stay as requested.

PETITION FOR REVIEW

Under the Environmental Protection Act (415 ILCS 5 (2014)), 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) (2014); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency issued Permit Modification No. 56 to CLI. That modification approved aspects of leachate monitoring, groundwater monitoring updates and corrections, and revised closure and post-closure care cost estimates, which were not the subject of Modification No. 47. Pet. at 4. CLI does not seek review of that portion of Modification No. 56. However, Modification No. 56 also contains the same language as Modification No. 47, which is on appeal in Clinton Landfill Inc. v. IEPA, PCB 15-60. CLI appeals Modification No. 56 on the grounds that the modification made in Modification No. 47 is arbitrary, capricious, unreasonable, unlawful, and beyond the regulatory authority of the Agency. CLI's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. CLI has the burden of proof. 415 ILCS 5/40(a)(1) (2014); *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) (2014)), which is May 31, 2016 (*see* 35 Ill. Adm. Code 101.308). Unless CLI waives the decision deadline further into the future, if the Board fails to take final action by that date, CLI "may deem the permit issued." 415 ILCS 5/40(a)(2) (2014). The Board has a regularly scheduled open meeting set for May 19, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 25, 2015, which is 30 days after the Board received CLI'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).

JOINT MOTION TO CONSOLIDATE

On August 28, 2014, CLI timely filed a petition for review of a permit determination made by the Agency on July 31, 2014. The Board accepted that petition for review in an order dated September 4, 2014. Since that time, CLI has filed a number of subsequent petitions for review, all regarding the same landfill, landfill development permit, and modification of that permit. *See Clinton Landfill, Inc. v. IEPA*, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194, PCB 15-195, PCB 15-207, PCB 16-34 (consol.) (Aug. 20, 2015). Most recently, on August 20, 2015, the Board consolidated PCB 16-34 with the already consolidated cases and designated the record in the consolidated cases as the record in PCB 16-34. *Id.* On October 28, 2015, the parties filed a joint motion to consolidate PCB 16-59 with the already consolidated docket and to designate the record in PCB 16-59. In the joint motion, the parties state that "precisely the same issues are being reviewed in these cases." Mot. at 3.

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, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194 , PCB 15-195, PCB 15-207, PCB 16-34 (consol.), and PCB 16-59. The case is a permit appeal challenging permit determinations made by the Agency and is related to CLI's permit for its Clinton, DeWitt County site. Further, the case concerns the same provisions of CLI's permit, modified in Modification No. 47 of Permit No. 2005-070-LF, but reiterated in Modification Nos. 48, 49, 50, 51, 52, 53, 54, 55, and 56. CLI's burden of proof is the same in this case as it is in the already consolidated cases. Further, with the waivers filed on October 28, 2015, PCB 16-59 shares a decision deadline of May 31, 2015 with the already consolidated permit appeals.

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 16-59 with the already consolidated Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, 15-194, PCB 15-195, PCB 15-207, and PCB 16-34 (consol.) for hearing and decision. Future filings must reflect the amended caption of this order.

JOINT MOTION TO DESIGNATE THE RECORD

With the October 28, 2015 motion to consolidate in PCB 16-59, the parties also included a motion to designate the record stating, "CLI and the Agency have agreed that the Administrative Record filed in PCB 15-60, as supplemented to date and in the future, should stand as the Administrative Record relative to the instant case." Mot. at 3. The parties agreed that the record should be supplemented to include Modification No. 56. *Id.* The Board grants the parties' motion to designate the record.

JOINT MOTION TO EXTEND STAY

On October 26, 2015, Clinton Landfill Inc. (CLI) and the Illinois Environmental Protection Agency (Agency) filed a joint motion to extend stay (Mot.). The parties state that "[s]ettlement negotiations amongst CLI, the Agency, and various other State and local government entities, which affect this case, have been on-going for many months. The local governmental entities have now approved the proposed settlement. CLI and the Agency believe that the settlement will be finalized by the end of December, 2015." Mot. at 1. They continue that, "it is in the interest of efficiency and would aid the parties in resolving these matters for the Board to extend the stay . . . until December 31, 2015, at which time, unless the stay is extended by request of the parties, the stay will be lifted." *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 they are engaged in settlement discussions that may lead to dismissal of the consolidated cases. The parties have also waived the decision deadline to May 31, 2016 in order to accommodate the requested stay in the already consolidated docket. Therefore, the Board grants the joint motion to stay the consolidated cases. The stay will be lifted on December 31, 2015, at which time the parties must provide the Board with a status.

CONCLUSION

For the reasons set forth above, the Board accepts CLI's petition for review. 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 motion to extend stay, and extends the stay until December 31, 2015.

IT IS SO ORDERED.

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



John T. Therriault, Clerk
Illinois Pollution Control Board