

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PETITION OF BRICKYARD DISPOSAL & RECYCLING, INC.,)	
)	PCB _____
)	(Permit Appeal- Land)
Petitioner,)	
)	
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
)	
Respondent)	

NOTICE OF FILING

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Petition for Review of Permit Decision and the Appearances of Claire A. Manning and William D. Ingersoll. Copies of these documents are hereby served upon you.

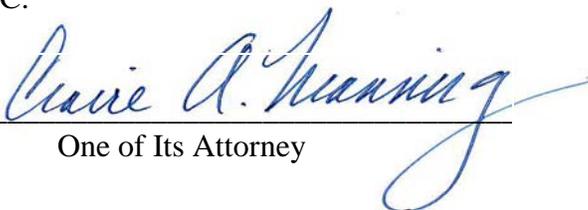
To: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Dated: March 29, 2016.

Respectfully submitted,
BRICKYARD DISPOSAL & RECYCLING,
INC.

BROWN, HAY & STEPHENS, LLP
205 S. 5th Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491

By: 
One of Its Attorney

Claire A Manning
Registration No.: 3124724
cmanning@bhslaw.com

William D. Ingersoll
Registration No.: 6186363
wingersoll@bhslaw.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

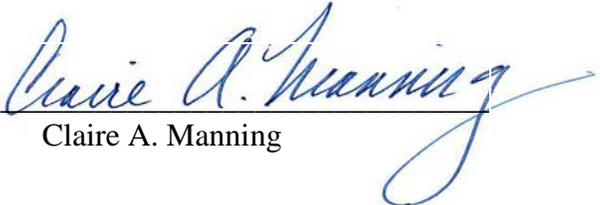
PETITION OF BRICKYARD DISPOSAL & RECYCLING, INC.,)	
)	PCB_____
)	(Permit Appeal- Land)
Petitioner,)	
)	
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent)	

ENTRY OF APPEARANCE

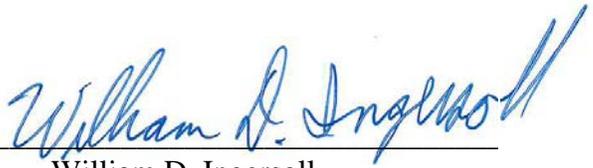
The undersigned attorneys, Claire A. Manning and William D. Ingersoll, hereby enter their appearances in the above-titled proceeding on behalf of Brickyard Disposal & Recycling, Inc.

Dated: March 29, 2016.

Respectfully submitted,
BRICKYARD DISPOSAL & RECYCLING,
INC.

By: 
Claire A. Manning

BROWN, HAY & STEPHENS, LLP
205 S. 5th Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491

By: 
William D. Ingersoll

Claire A Manning
Registration No.: 3124724
cmanning@bhsllaw.com

William D. Ingersoll
Registration No.: 6186363
wingersoll@bhsllaw.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PETITION OF BRICKYARD DISPOSAL & RECYCLING, INC.,)	
)	PCB 2016 - _____
)	(Permit Appeal- Land)
Petitioner,)	
)	
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent)	

PETITION FOR REVIEW OF PERMIT DECISION

Pursuant to Section 40 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/40, and the regulations of the Illinois Pollution Control Board (“Board”) at 35 Ill. Adm. Code Part 105, Subpart B, Petitioner Brickyard Disposal & Recycling, Inc. (“Brickyard”) hereby requests review of the November 25, 2015 permit decision made by Respondent, the Illinois Environmental Protection Agency (“Agency”). The decision denied review of the Petitioner’s permit request, finding the permit application incomplete. On December 17, 2015 the Board, acting on a Request For Ninety Day Extension of Appeal Period pursuant to Section 40(a)(1) of the Act, extended the due date for this Petition to March 30, 2016. Accordingly, this Petition is timely.

The November 25, 2015 decision, effectively final, declared the Petitioner’s permit application in Log No. 2015-421 incomplete, erroneously finding (1) that the permit applicant sought development of a “new pollution control facility” which required new local siting prior to Agency review; and (2) that the permit applicant was required to submit a new Groundwater Impact Assessment “as part of a complete permit application for facility expansion”.

The Agency erred in denying review of the Permit because (1) it failed to give a sufficiently specific or detailed rationale for the legal conclusions reached; (2) even if the rationale was sufficiently specific and detailed, the Act and relevant regulations do not provide a valid basis for its decision, the effect of which is to limit local siting decisions via IEPA permit decisions; and (3) the conclusion that the application seeks to permit a “new pollution control facility” for which new siting is required, and constitutes a “facility expansion” for which a new/revised GIA is required, misconstrues the Act and existing Board regulations.

In support of its Petition, Brickyard states as follows:

I. BACKGROUND

1. Brickyard owns and operates a municipal solid waste landfill facility (“facility”) in Vermilion County, located at 601 Brickyard Road, Danville, Illinois.

2. The facility has been assigned IEPA Bureau of Land I.D. #1838040029.

3. The facility consists of two separate waste units, Brickyard Unit 1 and Brickyard Unit 2. Together, these two units comprise a landfill waste area that is approximately 152 acres within a 293 acre site.

4. Brickyard Unit 1 is regulated pursuant to the Board’s landfill regulations found at 35 Ill. Adm. Code, Part 814, Subpart D; Brickyard Unit 2 is regulated pursuant to the Board’s landfill regulations found at 35 Ill. Adm. Code, Part 814, Subpart C.

5. On September 18, 1991 a Request for Site Approval for a Pollution Control Facility was submitted to the Vermilion County Board, seeking approval for siting of a facility expansion as one landform, specifically by filling in waste in the proposed new unit (now Unit 2) such that it would be contiguous with the waste in the then existing unit (Unit 1). The Request for Site Approval addressed all of the relevant statutory criteria for consideration by local governments in decision-making pursuant to Section 39.2 of the Act.

6. The Request for Site Approval referenced above contained a depiction of the final landform, labeled Drawing No. 89-115-3 (Final Site Conditions), which included cross-section Drawings Nos. 89-115-4 and No. 89-115-5. These cross section drawings clearly delineate that waste would be disposed under the entire landform, including the areas that are between Units 1 and 2. The siting application referred to the Request for Site Approval as a request for “volumetric expansion”.

7. On February 2, 1992, pursuant to Section 39.2 of the Act and subsequent to the requisite public hearing required thereunder, the Vermilion County Board adopted a resolution granting the “requested site approval for a regional pollution control facility, consisting of a lateral and vertical expansion of permitted landfill boundaries, within existing property boundaries.” The resolution referred to the drawings presented in the Request for Site Approval and contained no volumetric waste calculations or restrictions. The only referenced condition was that leachate would be collected and disposed of through the leachate collection system designed for the expansion area, but that the condition “was not intended to impose any technical or design standards other than those applicable to new sanitary landfills.”

8. On July 2, 1992, Brickyard submitted supplemental permit application Log No. 1992-188, detailing the vertical expansion for both Units 1 and 2. The application was accompanied by LPC-PA8 (“Certificate of Siting Approval”), dated and executed by then Vermilion County Board Chairman on February 25, 1992. The form attested that the county “approved the site location suitability of Brickyard Road Disposal & Recycling as a new regional pollution control facility in accordance with Section 39.2 of the Illinois Environmental Protection Act”. Attached to LPC-PA8 was a legal description that corresponds to the configuration of the combined units.

9. The Agency approved Permit No. 1992-188-SP on October 22, 1992 and reissued the permit on November 13, 1992, with a correction that is not relevant here. Two subsequent development permits were issued by the Agency: Permit No. 1993-057-LF, on April 14, 1994, authorizing the development of Cells 1-3 of Unit 2; and Permit No. 1994-419, on May 4, 1995, authorizing the development of Cells 4-7 and Zone A (an area between Units 1 and 2, referred to as “the wedge”).

10. As with the previous permit modifications, Permit No. 1994-419, contains the same final contours (one landform) as requested and approved via local siting. However, in the context of discussions related to the portion of this permit related to the development of Zone A, the Agency required that it be filled with clean fill, not waste.

11. On August 31, 2015 Brickyard filed an application for significant modification (Permit Log No. 2015-421) that is the subject of this appeal. The application would allow for the final development of the landfill configuration authorized by siting, by filling in the wedge and making one landform of the two units. However, in this application Brickyard seeks to fill Zone A (the wedge) with municipal solid waste, as originally contemplated at siting, effectively seeking to revisit the previous determination that the wedge area be filled with clean fill. On September 24, 2015, the Agency issued a permit decision declaring the application incomplete, for reasons substantially similar to those set forth in the November 24, 2015 letter that is the instant subject of appeal.

12. On October 30, 2015, in response to the above-referenced incompleteness letter, Brickyard filed a permit application entitled “Additional Information for Log No. 2015-421: Zone A Redesign” – primarily for the purpose of providing more information as it related to the county’s 1992 siting decision, including the entire Request for Approval siting application. On

November 25, 2015, the Agency responded with the permit decision that is the subject of this appeal. **Exhibit A.**

II. STANDARD OF REVIEW

13. The Board treats permit decisions which deny review on the basis of incompleteness as a permit denial for purposes of review. See *Atkinson Landfill Company v. IEPA, PCB 13-8 (June 20, 2013)*. (Board reversed Agency's determination that permit application was incomplete for lack of siting.)

14. In an appeal of a permit decision, the standard of review the Board must apply is whether granting the permit would not violate the Act or Board regulations. 415 ILCS 5/29(a).

15. Here, the Board must determine whether the Agency can grant the permit to place municipal solid waste in Zone A (the wedge) pursuant to the existing local government siting decision without violating the Act.

16. Further, the Board must determine whether the Act and/or the Board rules cited by the Agency in its permit denial (35 Ill. Adm. Code 811.317(a)(1) and 811.317(c)(1)) require that, prior to a technical review of the permit application, an entirely new groundwater impact assessment must be developed and applied for, where one is already in place at Brickyard pursuant to Part 814, Subpart C.

III. ISSUES ON APPEAL

17. The Agency's denial of review for purposes of incompleteness is erroneous for the following reasons, and the Board should remand the application back to the Agency for full technical review without regard to the conditions precedent set forth in the determination letter.

18. The Agency's conclusions that the Act requires new local siting is erroneous and must be reversed because:

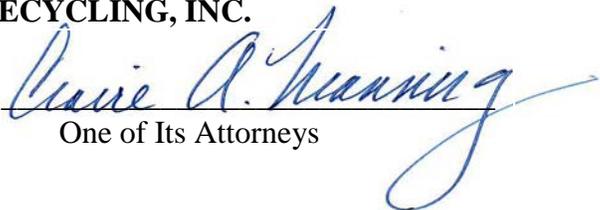
- A. Neither the Agency's reading of Board regulations, nor the decisions made by the Agency in previous design and development permits, can restrict the General Assembly's determination as to when siting is or is not required.
 - B. The only manner provided for in the Act which would declare that the local siting here has expired would be if the Petitioner did not apply to the Agency for a permit to develop the landfill within three years of February 2, 1992, the date Vermilion County made its local siting determination. See *Id.* and *Saline County Landfill v. IEPA, PCB No. 2004-117* (May 6, 2004).
 - C. The Petitioner applied for its first development permit on July 2, 1992; the Agency granted the permit on October 22, 1992.
 - D. The Petitioner does not here seek to expand the landfill in any manner not contemplated by the 1992 siting decision.
 - E. Permit Application Log. No. 2015-421 does not seek permitting of a "new pollution control facility" since Zone A is not an area beyond the boundaries of a currently permitted facility.
16. The Agency's conclusion that it cannot perform a technical review of the wedge re-design permit application without the inclusion of an entirely new Groundwater Impact Assessment constitutes an erroneous reading of the Board's landfill regulations, for the following reasons:
- A. Brickyard already has in place a Groundwater Impact Assessment relevant to Unit 2, which meets the criteria of Part 814 and which should be reviewed for efficacy with the re-design petitioned for in Permit Application Log. No. 2015-421.

B. Nothing in the Act or Board regulations cited by the Agency in its permit decision, specifically 35 Ill. Adm. Code 811.317(a)(1) and 811.317(c), requires a legal conclusion, as the Agency has done here, that the application constitutes a “facility expansion” for which an entirely new Groundwater Impact Assessment is required.

WHEREFORE, for the reasons set forth above, Petitioner requests that the Board find that Petitioner’s Permit Application Log No. 2015-421 (Zone A Redesign) be remanded to the Agency for review on its technical merits, without the requirement that it be accompanied by any further proof of siting than that which accompanied the subject application and without the requirement that an entirely new Groundwater Impact Assessment be developed and included in the application.

Respectfully submitted,

**BRICKYARD DISPOSAL &
RECYCLING, INC.**

By: 
One of Its Attorneys

BROWN, HAY & STEPHENS, LLP
205 S. 5th Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491

Claire A Manning
Registration No.: 3124724
cmanning@bhslaw.com

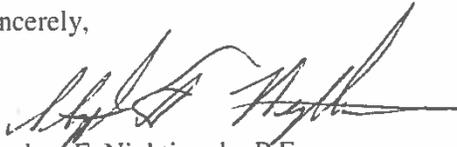
William D. Ingersoll
Registration No.: 6186363
wingersoll@bhslaw.com

Page 2

In the 35 days following the date of this letter, you may appeal this final decision to the Illinois Pollution Control Board pursuant to Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision¹. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the applicant and the Illinois EPA within the initial 35-day appeal period². If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

If you have any questions regarding this letter, please contact Doug VanNattan at 217/782-7505.

Sincerely,



Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

SFN:DCV ^{CFL}
2CV M57EAM

cc: Douglas W. Mauntel, P.E., Andrews Engineering, Inc. (by e-mail)
Jenny Trimmell, Vermilion County Health Department (by e-mail)
Todd Hamilton, Republic Services, Inc. (by e-mail)

bcc: Bureau File
Champaign Region
Bur Filson
Ellen Robinson, Bob Mathis & Nancy Moore
Brett Bersche
Doug VanNattan

1000010000

1 For information regarding the filing of an appeal, please contact:
Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

2 For information regarding the request for an extension, please contact:
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 29th day of March, 2016, I have served by the manner indicated below the attached ENTRY OF APPEARANCE, NOTICE OF FILING and PETITION FOR REVIEW OF PERMIT DECISION upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276