

ILLINOIS POLLUTION CONTROL BOARD  
October 17, 2019

LANDFILL 33, LTD.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2019-018
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by B. K. Carter):

On October 10, 2019 Landfill 33, Ltd. (Landfill 33) timely filed a petition asking the Board to review a September 6, 2019 permit determination by the Illinois Environmental Protection Agency (Agency). The determination concerns Landfill 33’s municipal solid waste landfill facility (Facility) at 1713 S. Willow Street, Effingham, Effingham County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2018)), 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) (2018); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Landfill 33’s application for a significant modification of its landfill permit to increase waste disposal capacity. The Agency found the application incomplete because it did not satisfy the local siting approval requirements of Section 39.2 of the Act and did not demonstrate that a duly authorized representative signed it. Landfill 33 appeals on the grounds that (1) the Agency failed to give a sufficiently specific or detailed rationale for its legal conclusions; (2) even if the rationale is correct, the Act and Board regulations do not provide a valid basis for the Agency’s decision, the effect of which limits local siting approval through Agency permitting and (3) the Agency misconstrued the Act and existing Board precedent regarding what is considered a “facility expansion” requiring site approval. Landfill 33’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Landfill 33 has the burden of proof. 415 ILCS 5/40(a)(1) (2018); *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. 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).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2018)), which only Landfill 33 may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Landfill 33 "may deem the permit issued." 415 ILCS 5/40(a)(2) (2018). Currently, the decision deadline is February 7, 2020, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board will soon determine the date of the Board meeting immediately before the decision deadline.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 12, 2019, which is the first business day following 30 days after the Board received Landfill 33's petition. *See* 35 Ill. Adm. Code 101.300(a), 105.116(a), 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(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.212(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).<sup>1</sup>

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 17, 2019, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.