

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2025-002
	)	(Permit Appeal – Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

PETITIONER WASTE MANAGEMENT OF ILLINOIS, INC.’S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Applying the relevant provisions of the Illinois Environmental Protection Act (“Act”) to the undisputed facts compels the conclusion that Illinois Environmental Protection Agency (“IEPA”) wrongfully denied Waste Management of Illinois, Inc. (“WMI”) a permit to accept leachate from one of its landfills (PCC #2) for treatment at the leachate evaporator at another one of its landfills (Prairie Hill Landfill). IEPA reaches the conclusion that the leachate evaporator must undergo siting only by adopting an untenable reading of Section 3.330(a)(3) of the Act. IEPA concedes that the leachate evaporator, used as it is now to treat on-site generated leachate only, is not a “pollution control facility” under Section 3.330(a)(3). IEPA argues that the evaporator would lose that exemption if it accepts leachate from PCC #2, even though Section 3.330(a)(3) further provides that the exemption also applies “when such wastes are transported within *or between sites or facilities* owned, controlled or operated by such person.” (emphasis added). The IEPA’s attempt to read this exemption out of Section 3.330(a)(3) does not withstand scrutiny. The exemption applies, and is dispositive in this case.

Even if the facility were not exempt, however, the denial is still unlawful because (i) the leachate evaporator is not a “new” pollution control facility; (ii) Whiteside County has already

granted local siting approval for this site to manage special waste; and (iii) IEPA cannot require WMI to undergo local siting approval for a modification to an operating permit at an existing facility. IEPA's positions are not based on the text of the Act. IEPA does not hide its belief that, as a matter of policy, local siting should be required as a condition of this permit. But that outcome is inconsistent with the plain language of the statute. No reasonable reading of the Act allows IEPA to require local siting here. The legislature decided that once a facility has been constructed and is permitted to accept special waste, it need not go through siting to accept special waste from a different source. Whether the facility was initially constructed pursuant to local siting approval or an exemption is not relevant. Accordingly, WMI is entitled to the permit it requested.

A. The Section 3.330(a)(3) Exemption Applies to Sites that Manage Waste that Has Been Transported from Another Site Owned, Controlled, or Operated by the Same Person.

In its Motion for Summary Judgment and its Response to IEPA's Motion for Summary Judgment, WMI explained that given its only reasonable meaning, Section 3.330(a)(3) applies to the permit WMI is requesting. (See WMI MSJ at 5-7; WMI Response to IEPA MSJ at 3-6). The exemption is for sites where any type of waste management activity occurs—"sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof"—if the waste is generated by the person's "own activities." The final clause states that in addition to circumstances where the waste is generated on site, the exemption applies also "when such wastes are transported within or between sites or facilities owned, controlled or operated by such person."

In its Response, IEPA continues advocating for an illogical and impermissible interpretation of that section. Specifically, IEPA argues that the final clause of the section should be read separately from the language preceding it. IEPA's position is that the final clause only exempts the act of transporting waste within or between specified sites. This interpretation ignores

the fact that Section 3.330(a)(3) is an exemption to the definition of pollution control *facility*. The entirety of Section 3.330 concerns the identification of certain types of *sites*—physical places—that are subject to local siting approval. “[W]hen such wastes are transported...between sites or facilities,” read in isolation, as IEPA argues it should be, does not identify a site or facility. The act of transporting waste between two facilities could not be a “pollution control facility.” Thus, the legislature did not intend to create an exemption for that activity. Under IEPA’s reading, a sister facility can transport waste to a related facility but the receiving facility could do nothing with the waste, not even store it. This is a nonsensical result. To interpret Section 3.330(a)(3) in this manner would render the final clause meaningless and without effect, contrary to rules of statutory construction. *See Mosby v. Ingalls Mem’l Hosp.*, 2023 IL 129081, ¶ 36 (“Each word in a statute is to be given a reasonable meaning and not rendered superfluous.” (internal quotation omitted)); *See also In re K.C.*, 186 Ill. 2d 542, 55 (1999) (prohibiting interpretation that would render statutory language “meaningless surplusage.”)

WMI’s interpretation, in contrast, gives the clause meaning and makes sense. The legislature treats facilities that manage either on-site generated waste, or waste generated at another facility owned, controlled or operated by the same person, differently than facilities which manage waste generated by third-parties. Waste facilities will typically generate a narrow category of wastes. Section 3.330(a)(3) encourages these facilities to manage their own waste “in-house” not only because they will understand their own waste streams but also because it is often more efficient to manage wastes internally. The legislature also recognized the efficiency of allowing companies with multiple facilities to manage their waste on a company-wide basis, rather than having redundant waste management operations at each site. This was a reasonable judgment and IEPA offers no argument why it is not. It is also the only reasonable reading of Section 3.330(a)(3)

and, hence, the Board should apply it here. The result is that IEPA's denial of WMI's permit application was improper as a matter of law. The Board should therefore order IEPA to issue the permit.

B. WMI Is Not Requesting a Permit to Become a “New Pollution Control Facility” Under Section 3.330(b)(3).

In its prior briefs, WMI has explained that, by its plain terms, Section 3.330(b)(3) does not apply here. A facility may only become “new” under that provision if it is “requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.” WMI is not requesting to manage special waste for the first time. It is not even requesting approval to manage landfill leachate for the first time. Section 3.330(b)(3) does not apply to the permit for which WMI has applied. Because Section 3.330(b)(3) was the only basis asserted by IEPA for denying the permit, the denial was unlawful.

In its letter denying the application, IEPA conveniently amended Section 3.330(b)(3) to bolster its argument that the section applies to this case. It wrote that WMI “is proposing using a treatment facility (leachate evaporator) that would be accepting leachate, which is a special waste, *from other facilities* for the first time.” (emphasis added). (Exhibit G to Joint Statement of Facts and Documents (“JSFD”)). “From other facilities” is not part of Section 3.330(b)(3). Without that language, the section cannot reasonably be read to apply to the activity for which WMI is requesting a permit. IEPA cannot insert words into the statute to fit its desired policy outcome. *See Sigcho-Lopez v. Illinois State Bd. of Elections*, 2022 IL 127253, ¶ 27 (“Where the statutory language is clear and unambiguous, we will enforce it as written and will not read into it exceptions, conditions, or limitations that the legislature did not express.”)

In its response brief, IEPA introduces a new interpretation of Section 3.330(b)(3), but one that still relies on improperly writing words into the statute. IEPA's new argument is that the

leachate evaporator is a new pollution control facility because it is requesting to manage special waste “for the First Time *as a Pollution Control Facility*.” (IEPA Response at 5) (emphasis in the original).

This argument fares no better. Again, it is axiomatic that adding words to a statute to change its meaning is not “statutory interpretation.” *See People v. Reyes*, 2023 IL 128461, ¶ 34 (stating that courts “are not free to rewrite legislation or to ignore an express requirement contained in a statute.”) Moreover, IEPA’s new argument is internally inconsistent and in direct conflict with the language of Section 3.330(b)(3). The premise of IEPA’s argument is that “the Leachate evaporator has never previously been permitted *as a pollution control facility*[.]” (IEPA Response at 4) (emphasis in the original). But Section 3.330(b)(3) applies only to “a permitted pollution control facility requesting approval....” If the leachate evaporator, which at the moment is permitted only to treat on-site leachate, is not currently a pollution control facility at all, it cannot be “a permitted pollution control facility requesting...,” and therefore Section 3.330(b)(3) does not apply.

IEPA appears aware of this flaw in its interpretation, as it also argues that as a result of WMI’s application to take leachate from PCC #2, “the Leachate Evaporator is now a pollution control facility because the on-site generation exception does not apply.” (*Id.* at 5). But WMI does not *currently* accept leachate from PCC # 2 or have a permit to do so. WMI has only submitted an application to conduct the activity in the future. IEPA cannot have it both ways. IEPA cannot consider the leachate evaporator to be both *currently* “a permitted pollution control facility,” as required to satisfy the first portion of Section 3.330(b)(3), and also *currently not* a pollution control facility, such that WMI’s application is requesting that the leachate evaporator be permitted “as a pollution control facility for the first time.” In sum, IEPA is tying itself in knots attempting to find

an interpretation of Section 3.330(b)(3) that is consistent with the outcome it wants. But IEPA's position cannot be reconciled with the language of the Act.

C. The Leachate Evaporator is Authorized by Whiteside County's Siting Approval to Manage Special Waste at Prairie Hill.

WMI already has local siting approval for the leachate evaporator, even were the Board to find that accepting leachate from PCC #2 exceeds the scope of the Section 3.330(a)(3) exemption. It is undisputed that (1) Whiteside County granted local siting approval for the Prairie Hill Landfill; (2) Whiteside County chose to remove the condition of that local siting that had originally precluded WMI from managing special waste at the site; and (3) the leachate evaporator is part of the geographic site that is the Prairie Hill Landfill.

IEPA argues that the siting approval for Prairie Hill Landfill does not apply because the leachate evaporator independently meets the definition of a pollution control facility. But even if that is true, IEPA offers no support for its conclusion that it is therefore a *separate* pollution control facility. This position is contrary to Act's definition of "site," which includes land, its facilities, and improvements used for regulated activities. See 415 ILCS 5/3.460. It is also contrary to the Board's regulations for solid waste facilities, which specifically provide that "[a] site may include one or more units." 35 Ill. Admin Code § 807.104. It is irrelevant whether the leachate evaporator, had it been constructed elsewhere, would have been a stand-alone pollution control facility. It is at Prairie Hill Landfill.

IEPA also argues that the local siting approval for Prairie Hill is not sufficient because special waste was initially prohibited by a condition of the approval. It is undisputed, however, that Whiteside County amended its local siting approval to allow Prairie Hill to manage special waste. (See JSFD, ¶ 7). The Act permits local siting authorities to remove conditions of siting

approval at a later date. *See Town of Ottawa v. Illinois Pollution Control Bd.*, 129 Ill. App. 3d 121 (3rd Dist. 1984).

IEPA attempts to distinguish *Tazewell County, Browning-Ferris Indus., Inc. of Iowa*, and *Sierra Club*. But it does not dispute that in each case the forum in question found that, under Section 3.330(b)(3), once a facility is authorized to manage special or hazardous waste, it does not require local siting approval to accept a different type of special or hazardous waste, or waste from a different source. Moreover, IEPA does not claim to challenge this reading of Section 3.330(b)(3). Instead, IEPA is arguing that there should be an exception to the rule for the facts of this case. But as explained above, there is no textual basis in the Act or governing legal authorities that support its interpretation.

D. Local Siting Approval is Not Required Because WMI Did Not Apply for a “Development or Construction” Permit.

Under Section 39(c), IEPA can only require proof of local siting approval for a permit for the “*development or construction* of a new pollution control facility.” (emphasis added). IEPA does not dispute that the application at issue is not for a development or construction permit. That concession alone is dispositive in this case. “When statutory language is plain and unambiguous, the statute must be applied as written without resort to aids of statutory construction.” *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 184 (2009).

IEPA asks the Board to ignore the plain language of Section 39(c) and find that the legislature must have intended the siting requirement to also apply for modifications to operating permits because of language the legislature used in Section 3.330(b). IEPA argues that “[i]f local siting requirements of Section 39(c) were limited to the construction and development of facilities, there would be no need to include existing facilities making certain modifications in the definition of a new pollution control facility.” (IEPA Response at 13). But the absence of a siting requirement

for operating permits under Section 39(c) is entirely consistent with 3.330(b). As long as there are *any* circumstances where a construction or development permit would be required for a facility that is new under 3.330(b)(3) and (2), IEPA's argument fails, because those sections are not superfluous. There are many such circumstances. Sections 3.330(b)(2) and (3) each apply whenever an existing, permitted facility is physically modified—i.e. “developed” or “constructed”—to be either bigger ((b)(2)) or capable of handling new types of waste ((b)(3)). Thus, local siting is required in most instances where an existing pollution control facility becomes “new” under those sections. These sections are easily harmonized under the plain reading of Section 39(c). There is therefore no merit to IEPA's argument.

United Disposal of Bradely, Inc. v. Illinois EPA does not support the conclusion that IEPA may ignore the plain language of Section 39(c). As explained in WMI's response to IEPA's Motion for Summary Judgment (WMI Response at 8-9), that case is distinguishable in several ways. Significantly, it involved unique circumstances that occurred only because the Act's original distinction between regional and non-regional pollution control facilities was held to be unconstitutional and the Act was amended to reflect that ruling. Furthermore, neither the Board nor the reviewing court found that Section 39(c) allows IEPA to require local siting approval as a condition of modification to an operating permit. Rather, the Board found that the applicant required a development permit and, consistent with the plain language of Section 39(c), proof of local siting approval was required for that permit. WMI did not apply for a development permit modification and IEPA did not deny the permit based on an assertion that WMI needs a new or modified development permit. Finally, the Board found that the landfill in *Bradely* was either a new facility under Section 3.330(b)(1) or expanded under Section 3.330(b)(2). That case did not involve Section 3.330(b)(3). In sum, *Bradely* does not support IEPA's position.

IV. CONCLUSION

For the reasons stated above and in Waste Management of Illinois, Inc.'s Motion for Summary Judgment, the Illinois Environmental Protection Agency improperly denied WMI's application for a permit to accept leachate from Peoria City-County Landfill No. 2 for treatment at its Prairie Hill leachate evaporator. The Illinois Pollution Control Board should reverse the denial and order IEPA to issue the permit.

Dated: May 1, 2025

Respectfully submitted,

/s/ Philip L. Comella

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NOTICE OF FILING

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PLEASE TAKE NOTICE that I have today, May 1, 2025, filed with the Office of the Clerk of the Pollution Control Board Petitioner Waste Management of Illinois, Inc.'s Reply in Support of Its Motion for Summary Judgment, copies of which are herewith served upon you.

/s/ Ryan G. Rudich
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date May 1, 2025, the Petitioner Waste Management of Illinois, Inc.'s Reply in Support of Its Motion for Summary Judgment, and Notice of Filing of same, upon the following persons by e-mail before 4:30 p.m. The documents consist collectively of 11 pages.

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/s/ Ryan G. Rudich
Ryan G. Rudich

Dated: May 1, 2025