

ILLINOIS POLLUTION CONTROL BOARD

July 26, 2001

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 97-193
	)	(Enforcement - Land)
COMMUNITY LANDFILL COMPANY,	)	
INC., an Illinois corporation,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by N.J. Melas):

This matter comes before the Board on a motion for reconsideration (motion) filed on May 15, 2001, by respondent Community Landfill Company (CLC) for its sanitary landfill in Morris, Grundy County, Illinois (landfill). In the motion, CLC asks that the Board reconsider its order in this matter dated April 5, 2001. The Attorney General's Office on behalf of the People of the State of Illinois (complainant) filed a response to CLC's motion on May 29, 2001 (response).

By today's action, the Board grants CLC's motion for reconsideration in part and denies it in part. As a result, the Board denies complainant's motion for summary judgment with respect to count 12, thereby reversing its decision of April 5, 2001, ordering that count 12 be presented at hearing.

PROCEDURAL HISTORY

Complainant initiated this action by filing a complaint on May 1, 1997. On April 3, 1998, complainant filed an amended complaint, and on November 24, 1999, complainant filed a second amended complaint (sec. am. comp.).

CLC filed a motion for partial summary judgment on counts 5 and 12 on July 31, 2000 (comp. mot.). On October 30, 2000, CLC filed a response to complainant's motion for partial summary judgment and filed its own cross-motion for partial summary judgment with respect to count 12 (CLC mot.).

In its order of April 5, 2001, the Board granted complainant's motion for summary judgment on count 5, but ordered that related penalty issues be presented at hearing. The Board denied both parties' motions for summary judgment with respect to count 12 because the Board determined that there were outstanding issues of material fact. The Board ordered that all issues related to count 12 be presented at hearing. The Board also stated that penalties and costs related to counts 5 and 12 involved factual determinations, and, as such, were not properly decided in an order on cross motions.

for summary judgment. The Board also found that complainant's request for a cease and desist order was moot.

### STATUTORY/REGULATORY FRAMEWORK

The regulations for non-hazardous waste landfills (such as the landfill at issue herein) which accept waste after 1992 are set forth at 35 Ill. Adm. Code 814 Subpart C (Subpart C), 35 Ill. Adm. Code 814 Subpart D (Subpart D), and 35 Ill. Adm. Code 814 Subpart E (Subpart E). Landfills that meet the requirements of Subpart C may stay open for an indefinite period of time. Landfills that cannot meet the requirements of Subpart C are subject to the requirements of Subpart D or Subpart E.

Subpart D requires that owners and operators of non-hazardous waste landfills initiate closure by September 18, 1997, if they can not demonstrate compliance with the requirements of Subpart C. Subpart E requires that owners and operators of these landfills initiate closure by September 18, 1992, if they can not demonstrate compliance with Subpart C or Subpart D.

The Board's regulations at 35 Ill. Adm. Code 814.104 require that an owner or operator of a landfill (except for certain landfills that closed in 1996) subject to Section 21(d) of the Environmental Protection Act (Act) (415 ILCS 5/21(d) (2000)) file a significant modification (sigmod) permit application by September 18, 1994, or by an earlier deadline if the Illinois Environmental Protection Agency (Agency) specified one.

Section 814.105(b) of the Board's regulations provides temporary relief from the closure requirement at Subpart D if an owner or operator of a landfill timely files a sigmod application. Those landfills timely filing a sigmod application were allowed to operate under their existing permits issued under 35 Ill. Adm. Code 807. Furthermore, until the Agency rejects a permit application, a landfill is deemed to operate under its old permit issued pursuant to 35 Ill. Adm. Code 807.

Section 21(d) of the Act addresses operators of waste disposal operations. 415 ILCS 5/21(d) (2000). Section 21(d)(1) of the Act states that no person shall conduct any waste disposal operation without a permit from the Agency or in violation of the conditions in an Agency permit. Section 21(d)(2) of the Act states that no person shall conduct any waste-storage operation "in violation of any regulations or standards adopted by the Board under this Act." 415 ILCS 5/21(d)(2) (2000).

### UNCONTESTED FACTS

CLC's landfill is divided into two parcels – A and B. Parcel A was still accepting waste as of November 24, 1999. Sec. am. comp. at 2.

In accordance with 35 Ill. Adm. Code 814.104, the Agency demanded that CLC submit sigmod applications by June 15, 1993, for Parcels A and B, but CLC did not submit them by that date. Comp. mot. at 3; sec. am. comp. at 35; Community Landfill Company and City of Morris v. IEPA (April 5, 2001), PCB 01-48, 01-49, slip op. at 4.

On April 26, 1995, CLC filed a variance petition with the Board requesting that the Board allow it to file sigmod applications after the June 15, 1993 Agency-imposed deadline. Comp. mot. at 3. The Board denied the variance. Community Landfill Co. v. IEPA (September 21, 1995), PCB 95-137.

CLC sought review of the variance denial. The Third District Illinois Appellate Court “set aside and remanded” the denial on June 17, 1996. The appellate court would not award CLC a retroactive variance but instead ordered the Board to grant CLC a prospective variance. Community Landfill Co. v. IPCB and IEPA, No.3-96-0182 (1996), (unpublished order under Supreme Court Rule 23). The Board granted the prospective variance to CLC on June 20, 1996, by allowing the sigmod applications to be filed by August 5, 1996. Community Landfill Co. v. IEPA (June 20, 1996), PCB 95-137. Pursuant to the prospective variance, CLC and the City of Morris filed applications for sigmod permits on August 5, 1996. Comp. mot. at 3.

The Agency denied CLC’s August 5, 1996 sigmod permit applications on September 1, 1999. See Community Landfill Company and City of Morris v. IEPA (April 5, 2001), PCB 01-48, 01-49, slip op. at 5.

On October 11, 1996, the Agency issued a permit that authorized CLC to operate the vertical expansion of Parcel A. In the letter filed with the permit, the Agency wrote “this permit does not constitute a partial approval of the significant modification required by 35 Ill. Adm. Code 814.104.” CLC mot. at 3, exh. C.

On August 4, 2000, the Agency issued sigmod permits authorizing CLC to operate Parcels A and B. CLC mot. at 4, exh. D.

### STANDARD

“In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change the law, to conclude that the Board’s decision was in error.” 35 Ill. Adm. Code 101.902. In addition, the Board will consider errors in its application of the law. Citizens Against Regional Landfill v. County Board of Whiteside (March 11, 1993), PCB 92-156, slip op. at 2, citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991).

### COUNT 5

#### Background

Count 5 pertains to Parcel B. Complainant alleged that CLC neglected to timely file a required sigmod permit application by the June 15, 1993 deadline established by the Agency pursuant to 35 Ill.

Adm. Code 814.104. Complainant alleged that CLC has violated Section 21(d)(2) of the Act and 35 Ill. Adm. Code 814.104. Sec. am. comp. at 14-16.

CLC did not file a sigmod application for Parcel B by the Agency-imposed June 15, 1993 deadline but instead filed the sigmod application on August 5, 1996. The prospective nature of the appellate court holding did not put CLC in the position as having timely filed its sigmod application. As a result the Board found that CLC violated Section 814.104 of the Board's regulations and Section 21(d)(2) of the Act by missing the filing deadline. The Board found that the violation of count 5 lasted from June 15, 1993, until August 5, 1996. The Board granted summary judgment to the Agency on count 5 with respect to liability, but not penalties and costs.

### Arguments

CLC disagrees with the Board's decision to grant partial summary judgment to complainant and contends that it should not be subject to a penalty for a violation of count 5. CLC requests that Board grant summary judgment in its favor with respect to count 5. Motion at 3.

However, if the Board does eventually levy a penalty, CLC claims that the penalty period should be shorter. CLC contends that the period of non-compliance for purposes of count 5 lasted from June 15, 1993, until April 26, 1995; in other words, between the due date for the original sigmod application and the date that CLC filed the variance petition with the Board. Motion at 3.

Complainant responds that CLC has not disclosed any new evidence or changes in the law. Complainant states that that the 22-month period from June 1993 to April 1995 was merely the period when CLC took no action on its sigmod application. It pointed out that the appellate court cited the 22-month delay as a reason for denying CLC a retroactive variance but not as a basis for determining a period of noncompliance. Complainant asks that the Board deny CLC's motion with respect to count 5. Response at 3, 4-5.

### Discussion

The Board agrees with complainant that CLC has not presented any new evidence, law, or errors in the application of law with respect to count 5. The Board maintains that CLC's filing of the sigmod application on August 5, 1996, not the filing of the variance on April 26, 1995, serves as the date when the violation of count 5 ended. The Board denies CLC's motion with respect to count 5.

### Background

Count 12 pertains to Parcel A. Complainant alleged that by failing to timely file a sigmod application, CLC had no legal authority to continue accepting waste at Parcel A past September 18, 1997. Complainant claimed that CLC conducted a landfill operation without a permit by accepting waste at Parcel A after September 18, 1997. Complainant alleged that CLC violated Section 21(d) of the Act, Subpart C at 35 Ill. Adm. Code 814.301(b), and Subpart D at 35 Ill. Adm. Code 814.401. Sec. am. comp. at 36-37.

The Board was persuaded by CLC's arguments about the prospective effect of the variance and its relation to Section 815.104(b) of the Board's regulations. The Board found that, once CLC filed its sigmod application on August 5, 1996, (as allowed by the Board's June 20, 1996 variance) the sigmod was properly filed for purposes of 35 Ill. Adm. Code 814.105(b). While CLC was in violation of the Act and the Board's regulations for the period from June 15, 1993, until August 5, 1996, CLC operated lawfully under the terms of 35 Ill. Adm. Code 814.105(b) until the Agency took action on the August 5, 1996 application and all appeals on that action were completed.

The Board found that it did not have enough facts to properly decide if CLC violated count 12 from the Agency's denial of the August 5, 1996 sigmod permit application on September 1, 1999, to the filing of the most recent sigmod permit application on August 4, 2000. In the April 5, 2001 order the Board ordered that count 12 be presented at hearing.

### Arguments

CLC argues that the Board should have granted its motion for summary judgement with respect to count 12 because CLC appealed the September 1, 1999 permit denials to the Board and those appeals were pending until they were dismissed on August 24, 2000. See Community Landfill Company and City of Morris (August 24, 2000), PCB 00-65, PCB 00-66. CLC points out that the appeals were timely filed on October 5, 1999. Motion at 2, exh. A and B. CLC claims that the provisions of 35 Ill. Adm. Code 814.105(b) allow it to operate under its existing permits. Motion at 2.

Complainants do not object to CLC's arguments on count 12. Complainant acknowledges CLC appealing the Agency's denial of the sigmod application on October 5, 1999. Complainant also acknowledges that the appeal was pending until August 24, 2000. Response at 3, 4.

### Discussion

Here, as opposed to count 5, CLC has brought forth evidence that the Board did not consider in its April 5, 2001 order. CLC is correct that it timely appealed an Agency denial of its sigmod permit application. See 415 ILCS 5/40 (2000). CLC is also correct in its interpretation of 35 Ill. Adm. Code

814.105(b) which provides that owners who have appealed Agency permit decisions may continue to legally operate under their existing permits during the pendency of the appeal.

The Board finds that CLC properly appealed the Agency's September 1, 1999 sigmod permit application denial. The pendency of the appeal lasted until the Board's dismissal of the appeal on August 24, 2000. According to the terms of 35 Ill. Adm. Code 814.105(b), CLC was operating under the terms of its existing permit during the period September 1, 1999, to August 4, 2000. The Board can now be certain that CLC did not violate the provisions of count 12 during this period.

The Board grants complainant's motion for reconsideration with respect to count 12.

### CONCLUSION

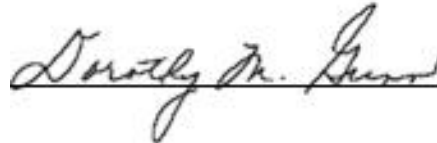
The Board grants CLC's motion for reconsideration in part and denies it in part.

Regarding count 12, CLC provided evidence that the Board did not consider in its April 5, 2001 order in this matter. As a result, the Board denies complainant's motion for summary judgment on count 12, thereby reversing its decision of April 5, 2001 ordering that count 12 be presented at hearing.

The Board has not changed its position granting complainant's motion for summary judgment with respect to count 5. Penalty issues related to count 5 must be presented at hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 26th day of July 2001 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board