

ILLINOIS POLLUTION CONTROL BOARD
July 10, 2003

UNITED DISPOSAL OF BRADLEY, INC.,)
and MUNICIPAL TRUST & SAVINGS)
BANK AS TRUSTEE UNDER TRUST 0799,)
)
Petitioners,) PCB 03-235
) (Permit Appeal - Land)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On June 19, 2003, United Disposal of Bradley, Inc., and Municipal Trust & Savings Bank, as Trustee under Trust 0799 (complainants), timely filed a petition asking the Board to review a May 15, 2003 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(a).

The Agency denied the complainants' application for a permit to modify Operating Permit, No. 1994-30-OP regarding United Disposal's transfer station facility located in the Village of Bradley, Kankakee County. The complainants appeal on two grounds: (1) that the application seeks only to strike invalid and unconstitutional language¹ from one of the permit conditions (Special Condition No. 9); and (2) that siting approval is not necessary for the modification of an operating permit. In the alternative, the complainants argue that permission to modify the operating permit is not necessary because the portion of Special Condition No. 9 it wishes to modify is unconstitutional and, therefore, null and void. The complainants' petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

The complainants have the burden of proof. 415 ILCS 5/40(a)(1) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only the complainants may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the complainants "may deem the permit issued." 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is

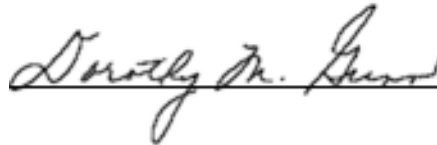
¹ The language that the complainants claim is unconstitutional prohibits the transfer station from accepting waste from outside the Village of Bradley. The language reads: "No waste generated outside the municipal boundaries of the Village of Bradley may be accepted at this facility."

October 17, 2003 (the 120th day after June 19, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 16, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 17, 2003, which is 30 days after the complainants filed the petition. 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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 10, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board