

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

MAY 25 2004

STATE OF ILLINOIS
Pollution Control Board

SALINE COUNTY LANDFILL, INC.,)

PETITIONER,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

RESPONDENT.)

No. PCB 04-117
(PERMIT APPEAL)

RESPONSE TO MOTION FOR STAY PENDING APPEAL

Comes now petitioner, Saline County Landfill, Inc., and responds to the motion filed by Intervenor State's Attorney for a stay of this Board's May 6, 2004 Order.

1. This response is timely, per 35 Illinois Administrative Code 101.500 (d), and 35 Illinois Administrative Code 101.904 (e). The County of Saline filed May 12 its motion to stay.

2. Though not cited by Intervenor State's Attorney, 35 Illinois Administrative Code 101.904 (b) is instructive concerning its motion for stay. Sec. 101.904(b) is relevant because the motion to stay is a motion seeking relief from and review of a final Order entered in a contested proceeding.

On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:

- 1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
- 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
- 3) Void order, such as an order based upon jurisdiction defects.
35 Illinois Administrative Code 101.904 (b).

3. None of the grounds for relief listed in 35 Illinois Administrative Code 101.904 (b), are alleged in the motion for stay pending appeal. Therefore, the motion for stay lacks merit.

4. The motion for stay presents essentially the same arguments against issuance of a permit as already presented in the case in chief. Where the motion for stay presents no arguments except those already rejected in the final Board Order, the motion for stay should be denied. See, e.g., Alton Packaging Corporation v. Illinois EPA, PCB 83-49 (August 18, 1988).

5. Intervenor State's Attorney argues in paragraph seven of its motion for stay that "reversal by the Appellate Court for the Fifth District is a possibility". Saline County Landfill respectfully disagrees with any inference about the likelihood of reversal. Furthermore, such a possibility is irrelevant under the criteria in 35 Illinois Administrative Code 101.904 (b).

6. Paragraphs eight through ten of the motion for stay argue the people of Saline County would be "severely prejudiced" by the possibility of allowing Saline County Landfill to construct a facility, because of possible reversal by the Appellate Court. On the contrary, the record reflects the December 5, 2003 permit denial letter was not based on any environmental, safety, or public health concerns.

The construction of a facility which is later denied an operational permit by an appellate court, would not damage anyone except Saline County Landfill, Inc. Intervenor's argument is the permit should be stayed because Saline County Landfill risks revocation of its permit to develop and operate the site, after constructing the facility. No explanation is offered as to how this hypothetical risk to Saline County Landfill, Inc., prejudices Saline County's environment or its citizens.

7. Admittedly, motions for stay are referenced in this Board's regulations, including 35 Illinois Administrative Code 101.906. This regulation may be read in the context of this Board's past practices. This Board has held its customary practice is to deny motions for stay pending

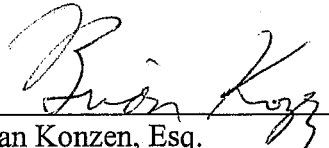
appeal. See, for example, Centralia Environmental Services, Inc., v. Illinois EPA, PCB 89-170 (April 11, 1991). Calvary Temple Church v. Illinois EPA, PCB 90-3 (August 30, 1990).

8. The Board's practice of customarily denying motions for stay pending appeal avoids the risk of reversal on jurisdictional grounds. This Board has held it lacks jurisdiction after an appeal to the appellate court is filed. Concerned Citizens v. Kibler, PCB 94-262 (May 4, 1995). People v. Watts, PCB 94-127 (August 24, 1995). This Board should simply deny the motion for stay.

CONCLUSION

Saline County Landfill, Inc., requests the Board be consistent with its findings of fact and Order entered May 6, 2004, which directed the IEPA to issue the permit sought by Saline County Landfill, Inc. Saline County Landfill, Inc., requests the Board deny the motion for stay pending appeal.

By:



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CERTIFICATE OF SERVICE

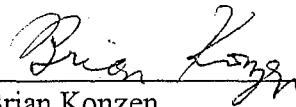
I, the undersigned, certify that I have served the attached response of Saline County Landfill, Inc., to the motion for stay pending appeal, on this 24th date of May, 2004, by first class mailing to the following addressees:

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NOTICE OF FILING

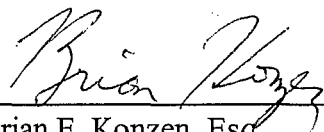
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Please take notice that I have today filed with the Clerk of the Pollution Control Board, the response of Saline County Landfill, Inc., to motion to stay, and the certificate of service.



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