

ILLINOIS POLLUTION CONTROL BOARD
June 3, 2004

SALINE COUNTY LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 04-117
)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent,)	
)	
COUNTY OF SALINE,)	
)	
Intervenor.)	

ORDER OF THE BOARD (by G.T. Girard):

This order denies the County of Saline’s motion for stay of the Board’s May 6, 2004 opinion and order during the pendency of appeal.

On January 8, 2004, Saline County Landfill, Inc. (SCLI) filed a petition for review of a determination by the Illinois Environmental Protection Agency (Agency) to deny a permit for expansion of the landfill located in Harrisburg, Saline County. On February 19, 2004, the Board granted a motion by Saline County to intervene in this proceeding. The Agency denied the permit because the Agency determined that SCLI did not provide proof pursuant to 39(c) of the Environmental Protection Act (Act) (415 ILCS 5/39(c) (2002) that SCLI had local siting approval for the expansion of the landfill pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (2002)).

In its May 6, 2004 opinion and order, based on the record, the Board found that SCLI provided proof of local siting approval pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (2002)) and the Agency’s determination that SCLI failed to provide proof of local siting approval pursuant to Section 39(c) of the Act was incorrect. The Board ordered the Agency to issue the permit.

On May 12, 2004, the Board received from the County of Saline a motion for stay of the May 6, 2004 order, “pending administrative review in the Fifth District Appellate Court.” The County filed a petition for review in that court on May 11, 2004. County of Saline v. Saline County Landfill, Inc., IPCB, and IEPA, No. 5-04-0295 (Fifth Dist. May 11, 2004). On May 25, 2004, SCLI filed a response in opposition to the stay.

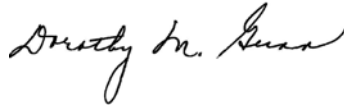
The Board generally denies motions to stay where the matter is before the appellate court, and has held that it lacks jurisdiction after an appeal has been filed. See, e.g. ESG Watts, Inc.

(Sangamon Valley Landfill, Taylor Ridge Landfill, and Viola Landfill) v. IEPA, PCB 01-139 (June 6, 2002), aff'd. sub nom. IEPA v. IPCB, No. 4-02-0560 (Fourth Dist. Dec. 11, 2002) (Rule 23 order specifically affirming jurisdictional holding citing Cain v. Sukar, 167 Ill. App. 3d 941, 945, 521 N.E. 2d 1292 (Fourth Dist. 1988); Concerned Citizens v. Kibler, PCB 94-262 (May 4, 1995); and Calvary Temple Church v. IEPA, PCB 90-3 (Aug. 30, 1990).

The County of Saline's motion for stay is denied. The County is free to make the motion to the Fifth District Appellate Court.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 3, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board