

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COALVILLE ROAD ENTERPRISES,)	
)	
Petitioner,)	
v.)	PCB No. 10-76
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING


To: See Attached Service List

PLEASE TAKE NOTICE that on October 12, 2010, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
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Attorney General of the
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BY: 
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Dated: October 12, 2010

CERTIFICATE OF SERVICE

I, MICHAEL D. MANKOWSKI, Assistant Attorney General, certify that on October 12, 2010, I caused to be served by First Class Mail Respondent's Motion for Summary Judgment and Notice of Filing to the parties named on the attached Service list, by depositing same in postage paid envelopes with the United States Postal Service located in Springfield, Illinois.

A handwritten signature in cursive script, reading "Michael D. Mankowski", is written over a horizontal line.

MICHAEL D. MANKOWSKI
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COALVILLE ROAD ENTERPRISES,)	
INC., an Illinois corporation,)	
)	
Petitioner,)	
)	
v.)	PCB No. 10-76
)	(Landfill Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT

NOW COMES the Respondent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and, pursuant to Section 101.500, 101.508, and 101.516 of the Illinois Pollution Control Board's ("Board") General Rules, 35 Ill. Adm. Code 101.500, 101.508 and 101.516, hereby respectfully moves the Board to enter summary judgment in favor of the Illinois EPA and against the Petitioner, COALVILLE ROAD ENTERPRISES, INC. ("Coalville"), in that there exist herein no genuine issues of material fact, and that the Illinois EPA is entitled to judgment as a matter of law with respect to the following grounds. In support of said motion, the Illinois EPA states as follows:

I. STANDARD FOR ISSUANCE AND REVIEW

A motion for summary judgment should be granted where the pleadings, depositions, admissions on file, and affidavits disclose no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998); McDonald's Corporation v. Illinois Environmental

Protection Agency, PCB 04-14, slip op. at 2 (January 22, 2004).

After the Illinois EPA's final decision on a permit is made, the permit applicant may appeal the decision to the Board pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/40(a)(1) (2008). The question before the Board in permit appeal proceedings is whether the applicant proves that the application, as submitted to the Illinois EPA, demonstrated that no violations of the Act would have occurred if the requested permit had been issued. Sutter Sanitation, Inc. et al. v. Illinois EPA, PCB 04-187, slip op. at 7 (September 16, 2004); Panhandle Eastern pipe Line Company v. Illinois EPA, PCB 98-102 (January 21, 1999); Joliet Sand & Gravel Co. v. Illinois Pollution Control Board, 163 Ill. App. 3d 830, 833, 516 N.E.2d 955, 958 (3rd Dist. 1987). Furthermore, the Illinois EPA's denial letter frames the issues on appeal. ESG Watts, Inc. V. Illinois Pollution Control Board, 286 Ill. App. 3d 325, 676 N.E.2d 299 (3rd Dist. 1997).

In deciding whether the Illinois EPA's decision under appeal here was appropriate, the Board must look to the documents within the Administrative Record ("Record" or "AR"). The Illinois EPA asserts that the Record and the arguments presented in this motion are sufficient for the Board to enter a dispositive order in favor of the Illinois EPA on all relevant issues. Accordingly, the Illinois EPA respectfully requests that the Board enter an order affirming the Illinois EPA's decision.

II. BURDEN OF PROOF

Pursuant to Section 40(a)(1) of the Act, 415 ILCS 5/40(a)(1) (2008), and Section 105.112(a) of the Board's Procedural Rules, 35 Ill. Adm. Code 105.112(a), the burden of proof shall be on the petitioner. Here, the Petitioner must demonstrate to the Board that approval of the

permit application would not cause a violation of the Act or underlying regulations. On appeal, the sole question before the Board is whether the applicant proves that the application, as submitted to the Illinois EPA, demonstrates that no violation of the Act would occur if the permit was granted. Sutter Sanitation, Inc. et al. v. Illinois EPA, PCB 04-187, slip op. at 7 (September 16, 2004).

III. ISSUE

The issue before the Board is whether the approval of the Petitioner's permit application would cause a violation of the Act or underlying regulations. More specifically, whether the Illinois EPA properly denied Petitioner's application because it violated Sections 807.313 and 807.502(b) of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807.313 and 807.502(b), by failing to: 1) demonstrate compliance regarding the horizontal and vertical extent of contamination at the Streator Area Landfill; and 2) define the rate and extent of groundwater impact at the Streator Area Landfill.

IV. FACTS

The facts in the Illinois EPA record supporting this motion are as follows:

1. On June 15, 1994, the Illinois EPA approved the transfer of ownership and operating rights for a solid waste management facility on property located at R.R. #7 Coal Ville Road, Streator, Illinois (and commonly referred to as "Streator Area Landfill"), Illinois EPA Site No. 1058220007 ("the facility") from Streator Area Landfill, Inc. to Coalville Road Enterprises, Inc. (Illinois EPA Permit History)
2. On January 16, 1996, the Illinois EPA certified that the Streator Area Landfill was closed as of October 9, 1994, and that Petitioner was to provide 15 years of post-closure care.

3. On May 13, 2008, the Illinois EPA issued Petitioner Supplemental Permit No.2008-082-SP which approved a biennial revision of Petitioner's post-closure care cost estimate. (Illinois EPA Permit History)

4. Special Condition 23, found in Attachment A of Supplemental Permit No.2008-082-SP states as follows:

The operator shall continue quarterly sampling of wells G103 and G104 for the volatile organic compounds (VOC) in List 4 of Special Condition 18, above and report the results in accordance with the schedule in Special Condition 21, above. Annually, the operator shall prepare an assessment of the effectiveness of the corrective action, described in Log no. 1998-288, to control and reduce the VOC contamination detected in wells G103 and G104. If continued increases of organic parameters are observed, the operator shall re-evaluate the corrective action plan and propose improvements if necessary. This assessment shall include, at a minimum, all historic List 4 organic sampling results and all historic list 3 organic sampling results, beginning with the second quarter of 1996, for wells G103 and G104, trend analysis for all detected organic compounds, the conclusions of the assessment, and a recommendation to either continue the corrective action, conduct additional corrective action, or return to detection monitoring at wells G103 and G104. PQLs shall be consistent with historical PQLs (e.g., historical PQLs measured at 2 ug/L for dichlorodifluoromethane shall be set at 2 ug/L, not 5 ug/L). This assessment shall be submitted as a supplemental permit application to the Illinois EPA by August 15.

(Andrews August 2008 Corrective Action Plan p. 2)

5. Special Condition 24, found in Attachment A of Supplemental Permit No.2008-082-SP states as follows:

The operator shall perform assessment monitoring activities for monitoring well G105 as described in Log No. 2007-355. The operator shall submit all findings, conclusions, trend analysis, all groundwater/leachate data presented in tabular form, proposed course of actions, identification of source of impacts, and re-evaluate current corrective actions. If it is determined that the source of impacts is from Streator Area Landfill, the operator should propose a Groundwater Management Zone (GMZ) delineating the horizontal and vertical extent of contamination. Additional downgradient investigation activities will be required to establish a GMZ downgradient of G105. This should include vertical and lateral investigations. Furthermore, the operator should delineate the vertical and

horizontal extent of contamination observed at G103 and G104 and propose a formal Groundwater Management Zone. This information should be submitted as a supplemental permit application to the Illinois EPA by August 15, 2008.

(Andrews August 2008 Corrective Action Plan p. 7)

6. On August 15, 2008, in accordance with Special Conditions 23 and 24, Petitioner submitted an Application for a Permit ("the Application"), to modify the solid waste management facility at the Streator Area Landfill. (Andrews August 2008 Corrective Action Plan/Supplemental Permit Application No. 2008-355-SP p. 1)

7. The Application addressed the requirements of Special Conditions 23 and 24. (Andrews August 2008 Corrective Action Plan/Supplemental Permit Application No. 2008-355-SP p. 1)

8. The Illinois EPA reviewed the Application and on November 6, 2008, sent Petitioner a draft deficiency letter which addressed: the sections of this Act which may be violated if Petitioner's Application were granted; the provision of the regulations, promulgated under this Act, which may be violated if Petitioner's Application were granted; the specific type of information which the Illinois EPA deemed the Petitioner did not provide; and a statement of specific reasons why the Act and the regulations might not be met if the permit were granted. (Illinois EPA Memorandum dated November 6, 2008)

9. The November 6, 2008 Illinois EPA Memorandum specifically outlined 6 deficiencies in the Application.

- a. The application does not identify the source of groundwater impacts observed at G105, landfill gas or leachate or combination of leachate/landfill gas as required by Condition 24 of Supplemental Permit No. 2007-355-SP.

- b. The application acknowledges that the source of impacts at G105 is likely from Streator Area Landfill. A formal Groundwater Management Zone is not proposed for G103, G104, and G105 delineating the horizontal and vertical extent of contamination as required by Condition 24 of Supplemental Permit No. 2007-355-SP. The horizontal and vertical extent of the proposed GMZ shall be demonstrated through groundwater investigations.
- c. The application does not contain proposals to expand current corrective actions to mitigate groundwater impacts observed at G105.
- d. Piezometer P108 (adjacent to G105) should be monitored for the List 2 and List 4 parameters to aid in defining the nature and upper vertical extent of impacts for establishing a Groundwater Management Zone.
- e. The applicant should install a monitoring point between G105 and the waste boundary in the Coal Seam Void (same screen interval as G105) in confirming the source of impacts is from Streator Area Landfill. This point should be monitored for the List 2 and List 4 parameters.
- f. The application does not contain detailed groundwater investigation proposal for determining the extent of contamination downgradient of G103, G104, and G105. Stepping out every 50 feet, groundwater samples should be collected through piezometers or discrete groundwater collection methodologies to determine the extent of impacts.

(Illinois EPA Memorandum dated November 6, 2008)

10. In response to the November 6, 2008 Illinois EPA Memorandum, Petitioner submitted Supplemental Information to the Illinois EPA on December 21, 2009. (Letter from Andrews Engineering to Illinois EPA dated December 21, 2009)

11. After reviewing the Supplemental Information, on February 24, 2010, the Illinois EPA denied the Petitioner's Application, stating that Petitioner failed to provide proof that the permit would not result in violations of the Act or associated regulations, specifically Sections 807.313 and 807.502(b) of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807.313 and 807.502(b), because:

- a. The horizontal and vertical extent of contamination (Benzene, 1,1-Dichloroethane, cis-1,2-Dichloroethene and Vinyl Chloride - above Class IV Standard at G103, Acetone, Benzene, 1,1-Dichloroethane, cis-1,2-Dichloroethane and Vinyl Chloride - above Class IV Standard at G104 and for Acetone, 1,1-Dichloroethane, cis-1,2-Dichloroethane, Tetrachloroethylene - above Class IV Standard, and Trichloroethene - above Class IV Standard at G105) has not been determined in the areas of G103, G104 and G105 in order to establish a Groundwater Management Zone in this application. This information was required to be submitted in this Assessment Monitoring Report pursuant to Condition 24 of Supplemental Permit No. 2009-417-SP. The horizontal and vertical extent of the proposed GMZ must be demonstrated through groundwater investigations (e.g. stepping out in the direction of groundwater flow from G103, G104 and G105); groundwater samples should be collected through piezometers or discrete groundwater collection methodologies to determine the extent of groundwater impacts.
- b. It cannot be determined whether the current and proposed corrective actions are adequate. Once the rate and extent of groundwater impacts is defined, the applicant should propose revisions to the corrective action program as necessary.

(February 24, 2010 Illinois EPA Denial Letter)

VII. APPLICABLE LAW

A. ENVIRONMENTAL PROTECTION ACT:

Section 39(a) of the Act, 415 ILCS 5/39(a) (2008) states, in part, as follows:

- (a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In making its determinations on permit applications under this Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment. In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance. The Agency may impose such other conditions as may be

necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit under this Section, the Agency shall transmit to the applicant within the time limitations of this Section specific, detailed statements as to the reasons the permit application was denied. Such statements shall include, but not be limited to the following:

- (i) the Sections of this Act which may be violated if the permit were granted;
- (ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were granted;
- (iii) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and
- (iv) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted.

Section 40(a) of the Act, 415 ILCS 5/39(a) (2008) states, in part, as follows:

- (a) (1) If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days after the date on which the Agency served its decision on the applicant, petition for a hearing before the Board to contest the decision of the Agency. However, the 35-day period for petitioning for a hearing may be extended for an additional period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. The Board shall give 21 day notice to any person in the county where is located the facility in issue who has requested notice of enforcement proceedings and to each member of the General Assembly in whose legislative district that installation or property is located; and shall publish that 21 day notice in a newspaper of general circulation in that county. The Agency shall appear as respondent in such hearing. At such hearing the rules prescribed in Section 32 and subsection (a) of Section 33 of this Act shall apply, and the burden of proof shall be on the petitioner. If, however, the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules.

B. POLLUTION CONTROL BOARD REGULATIONS:

35 Ill. Adm. Code 807.313, Solid Waste; Water Pollution, states as follows:

No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act.

35 Ill. Adm. Code 807.502(b), Solid Waste; Closure Performance Standard, states as follows:

In addition to the specific requirements of this Part, an operator of a waste management site shall close the site in a manner which:

* * *

- b) Controls, minimizes or eliminates post-closure release of waste, waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment.

VIII. ARGUMENT AND ANALYSIS

There exists no genuine issue of material fact. The Illinois EPA properly determined that Petitioner's Application, if approved, would lead to violations of Sections 807.313 and 807.502(b) of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807.313 and 807.502(b). Organic compounds are currently present in, and are negatively impacting the groundwater at and around the facility. Petitioner is required to continue corrective actions to control the contamination present in and around the Streator Area Landfill. As part of the corrective action, Petitioner is required by Supplemental Permit No. 2008-082-SP to monitor the impacts of the groundwater contamination and to determine whether the current corrective action is succeeding

in controlling the contamination at and around the facility. Petitioner's current application does not properly address the rate and extent of these impacts as required by its permit. By failing to address these impacts, Petitioner continues to allow the discharge of contaminants from the Streator Area Landfill, in a manner that continues to cause groundwater pollution in the State of Illinois. Petitioner's Application also fails to minimize or eliminate post-closure release of waste decomposition products to the groundwater at and around the Streator Area Landfill to the extent necessary to prevent threats to human health and the environment. As such, the Illinois EPA properly denied Petitioner's Application because Petitioner failed to prove that issuance of the permit would not cause violations of the Act and associated regulations .

Special Condition 23 requires the Petitioner to monitor and assess the current corrective actions already in place at the facility. If the Petitioner observes continued increases of organic compounds during this monitoring, the Petitioner is required to re-evaluate the corrective action plan and propose any necessary improvements. Special Condition 24 requires Petitioner to determine the source of impacts in and around the Streator Area Landfill. If Petitioner discovers that the source of impacts is the Streator Area Landfill, it is required by Special Condition 24, to propose a Groundwater Management Zone ("GMZ") delineating the horizontal and vertical extent of contamination. In order to establish a GMZ downgradient of the facility, Special Condition 24 also requires the Petitioner to conduct additional downgradient investigation activities, including vertical and lateral investigations.

In its Application dated August 15, 2008, and Supplemental Information submitted to the Illinois EPA on December 21, 2009, Petitioner included the results of the monitoring it conducted in accordance with Special Condition 23. The results show that organic

contamination continues to be detected in G103, G104, and G105. The results also show that landfill gas from the Streator Area Landfill is likely the source of the organics impacting the groundwater at G103, G104, and G105.

The determination that landfill gas from the Streator Area Landfill is the likely source of the contamination present in G103, G104, and G105, triggers the GMZ requirement present in Special Condition 24. In response to the discovery that landfill gas from the facility is the likely source of the contamination, Petitioner proposes the addition of one well, T107, which is to the east/side gradient of G105. In the Application, Petitioner failed to propose a formal GMZ or any additional groundwater wells downgradient of the facility to delineate the horizontal and vertical extent of the contamination. Based on what has been submitted by the Petitioner, all of which is included in the Administrative Record, the Illinois EPA properly determined that the course of action detailed in the Application, is not sufficient to properly delineate the extent of the contamination leaving the facility, as required by Special Condition 24. Therefore, Petitioner failed to both: propose a GMZ; and additional testing procedures to determine the extent of the groundwater contamination present in and around the facility.

Section 807.313 of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807.313, makes it illegal for any person to cause or allow the operation of a sanitary landfill so as to cause, threaten, or allow the discharge of any contaminants into the environment so as to cause, threaten or allow water pollution in Illinois. 807.502(b) of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807.502(b), requires an operator of a waste management site to close the site in a manner which controls, minimizes or eliminates post-closure release of waste, waste constituents, leachate, contaminated rainfall, or waste decomposition products to the

groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment.

Here, landfill gas from Petitioner's landfill is contaminating the groundwater in and around the Streator Area Landfill. Petitioner is required to operate its landfill, in a manner which does not cause the discharge of any contaminants in a manner which causes water pollution. Petitioner is also required to close the landfill in a manner which controls, minimizes, or eliminates the release of landfill gas to the extent necessary to prevent threats to human health and the environment. Supplemental Permit No. 2008-082-SP, allows Petitioner to conduct corrective actions in order to control and eventually eliminate the groundwater contamination which exists at and around the site.

In its application, Petitioner has failed to agree to a course of action which delineates the extent of the contamination present at the site as part of the corrective action required by Supplemental Permit No. 2008-082-SP. If the Illinois EPA approved the Application and granted Supplemental Permit No. 2008-355-SP, it would be permitting Petitioner to continue to allow landfill gas from the facility to cause groundwater pollution without conducting the proper corrective action to control and eliminate the pollution. The Illinois EPA would be permitting Petitioner to violate both Sections 807.313 and 807.502(b). In denying the Application, the Illinois EPA properly determined that Sections 807.313 and 807.502(b) would be violated if the Petitioner were permitted to continue allowing landfill gas to contaminate the groundwater in and around the facility without properly delineating the extent of the contamination and conducting the proper corrective action to control and one day eliminate the contamination. Because

granting Petitioner's Application would lead to violations of the Board's Solid Waste Regulations, the Illinois EPA acted with authority to deny Petitioner's Application.

IX. SUMMARY

On February 24, 2010, the Illinois EPA denied the Petitioner's Application, stating that Petitioner failed to provide proof that the permit would not result in violations of the Act or associated regulations, specifically Sections 807.313 and 807.502(b) of the Board's Solid Waste Regulations, 35 Ill. Adm. Code 807.313 and 807.502(b). The Record clearly shows that granting Petitioner's Application would lead to violations of Sections 807.313 and 807.502(b). Consequently, Illinois EPA acted with authority to deny Petitioner's Application.

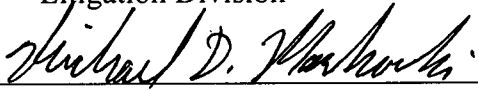
X. CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board grant summary judgment in favor of the Illinois EPA and affirm the Illinois EPA's decisions deny Petitioner's Application as detailed in the February 24, 2010 final decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
ex rel. LISA MADIGAN,
Attorney General
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