

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2011

COALVILLE ROAD ENTERPRISES, INC.,)
)
Petitioner,)
)
v.) PCB 10-76
) (Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

Petitioner Coalville Road Enterprises, Inc. (CRE) appeals a February 24, 2010 determination by the Illinois Environmental Protection Agency (Agency or Illinois EPA) to deny CRE a permit to modify its solid waste management facility. The determination concerns CRE's facility known as the Streator Area Landfill, which is located at R.R. 7, Coalville Road, Streator, Livingston County (facility). For the reasons described below, the Board today grants the Agency's unopposed motion for summary judgment and affirms the Agency's determination to deny a permit to modify CRE's facility.

Below, the Board first reviews the procedural history and factual background before summarizing CRE's petition for review. Next, the Board summarizes the Agency's unopposed motion for summary judgment. Finally, after providing the legal and statutory background of the case, the Board discusses the motion, reaches its conclusion, and issues its order.

PROCEDURAL HISTORY

On March 31, 2010, CRE timely filed a petition (Pet.) seeking the Board's review of a February 24, 2010, determination of the Agency. In an order dated April 15, 2010, the Board accepted the petition for hearing. The order also directed the Agency to file the administrative record of its determination by April 30, 2010.

On May 19, 2010, the Agency filed a motion for leave to file a reduced number of copies of the Agency record, a motion for leave to file the record *instanter*, and the Agency record (R.). In an order dated June 16, 2010, the hearing officer granted the Agency's motions. On November 15, 2010, the Agency filed a corrected copy of a document in the Agency record (Corr. R.).

In an order dated October 5, 2010, the hearing officer set deadlines of October 15, 2010, for the Agency to file a motion for summary judgment; November 15, 2010, for CRE's response; and December 6, 2010, for the Agency's reply. On October 12, 2010, the Agency filed a motion for summary judgment (Mot.). In an order dated October 13, 2010, the hearing officer extended

the deadline for CRE to file its response to January 3, 2011. In an order dated January 4, 2011, the hearing officer noted CRE's statement that it would not file a response to the Agency's motion. Section 101.500(d) of the Board's procedural rules provides in pertinent part that, "[i]f no response [to a motion] is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d).

FACTUAL BACKGROUND

Closure and Post-Closure

On June 15, 1994, the Agency approved transfer of ownership and operating rights for a solid waste management facility from Streator Area Landfill, Inc. to Coalville Road Enterprises, Inc. R. at 44 (Supplemental Permit No. 1994-156-SP). The facility is located at RR 7 Coalville Road, Streator, Livingston County. R. at 894 (GIS Location Worksheet). The Agency has identified the facility as Site No. 1058220007. *E.g., id.* at 1, 48, 868, 894, 904. The Agency's permit history describes the facility as follows: "[t]he landfill site is a 17.5 acre parcel of land with a net refuse fill area of 9.6 acres. Final cover consists of three feet of compacted soil and 6 inches of vegetative soil." *Id.* at 43.

"The facility stopped accepting waste on March 26, 1994." R. at 43. On January 16, 1996, the Agency certified that the facility had closed and begun 15 years of post-closure care on October 9, 1994. R. at 43, 44 (Supplemental Permit No. 1995-385-SP). A series of supplemental permits addressed the facility's post-closure care. *Id.* at 45-46 (Permit History). On May 13, 2008, the Agency approved a biennial revision of the facility's post-closure care costs estimate. *Id.* at 46 (Supplemental Permit No. 2008-082-SP).

"The groundwater monitoring at the facility is composed of six monitoring wells and three piezometers." R. at 51 (Andrews Engineering, Inc. August 2008 Corrective Measures Assessment Report). At the facility, the uppermost aquifer "is a coal seam/void space located within the coal and/or coal mined strata. This zone was identified as the shallowest unit with a coherent flow system suitable for monitoring and all six monitoring wells screen this zone." *Id.* "The permitted upgradient monitoring wells are designated as G102 and G103. The permitted downgradient wells are designated as G101, G104, G105 and G106." *Id.*; *see id.* at 78, 91, 149 (facility maps).

"All six wells are sampled on a quarterly basis for the List 1 and List 2 parameters. . . ." R. at 51; *see id.* at 877-78 (Lists 1 and 2 naming seven field parameters and fourteen routine indicator parameters, respectively, in Condition 18 of Attachment A to Supplemental Permit 2007-355-SP). The six wells are sampled annually for List 3 parameters. *Id.* at 51; *see id.* at 878-80 (List 3 naming 24 inorganic and 47 organic parameters in Condition 18 of Attachment A to Supplemental Permit 2007-355-SP). Under Special Conditions 23 and 24, the monitoring program assesses monitoring wells G103, G104, and G105 quarterly for 13 volatile organic compounds in List 4: acetone; benzene; carbon disulfide; chloroethane; chloromethane; dichlorodifluoromethane; 1,1-Dichloroethylene; cis-1,2-Dichloroethylene; ethyl ether; methylene

chloride; tetrachloroethylene; trichloroethylene; and vinyl chloride. *Id.* at 51; *see id.* at 880 (List 4 in Condition 18 of Attachment A to Supplemental Permit 2007-355-SP).

Special Condition 23 “requires an annual assessment of the effectiveness of the corrective action at monitoring site G103 and G104. . . .” R. at 51. “The corrective action consists of two gas vents, which were installed (February 1995) in the vicinity of monitoring wells G103 and G104 to reduce potential gas migration in that area.” *Id.* “[S]everal organic parameters detected in groundwater samples from wells G103 and G104 correlated with the parameters detected in gas samples obtained from gas vents installed in 1995.” *Id.* at 52. Analyses concluded that elevated gas concentrations in groundwater samples from G102 and G104 likely resulted from gas migration. *Id.* In December 1998, two additional gas vents, GV-3 and GV-4, were installed near monitoring wells G103 and G104 to reduce potential effects of gas migration in groundwater. *Id.*; *see id.* at 45 (Supplemental Permit No. 1998-288-SP approving gas vents as corrective action).

Attachment A to Supplemental Permit No. 2008-082-SP, issued on May 13, 2008, includes a Special Condition 23 providing that

[t]he 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 historical List 4 organic sampling results and all historical 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, or return to detection monitoring at wells G103 and G104. PQLs shall be consistent with historical PQL (*e.g.*, historical PQLs measured at 2 µg/L for dichlorodifluoromethane shall be set at 2 µg/L, not 5 µg/L). This assessment shall be submitted as a supplemental permit application to the Illinois EPA by August 15. R. at 52; *see also* R. at 46 (Permit History), 881 (Attachment A to Supplemental Permit No. 2007-355-SP).

This annual assessment is intended “[t]o ensure the corrective actions remain effective.” *Id.* at 52.

Special Condition 24 “requires assessment monitoring for specific parameters at monitoring well G105.” R. at 56. Specifically, Attachment A to Supplemental Permit No. 2008-082-SP, issued May 13, 2008, includes a Special Condition 24 providing that

[t]he 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 action. 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 supplement permit application to the Illinois EPA by August 15, 2008. *Id.* at 57; *see R.* at 881-82 (Attachment A to Supplemental Permit No. 2007-355-SP).

Supplemental Permit Application

On August 15, 2008, Andrews Engineering, Inc. (Andrews) on behalf of the facility submitted to the Agency an application for a supplemental permit to modify the facility. *R.* at 47. The application specifically addressed Special Conditions 23 and 24 of Attachment A of Supplemental Permit 2008-082-SP. *Id.* at 47, 51; *see id.* at 48-161 (Corrective Measures Assessment Report).

Special Condition 23

Andrews' report included a "[g]raphical analysis for each organic parameter that was detected at any time from second quarter 1996 to present in well G103 or G014. . . ." *R.* at 53; *see id.* at 95-126 (trend graphs at Attachment C). The report also included "a comparison of the detected organic parameters during the review period (third quarter 2007 through second quarter 2008) to the permit-specified PQLs [practical quantitation limits]." ¹ *Id.* at 53; *see id.* at 73 (Table 3: 2007-2008 Organic Parameter Detections). The report adds that "third quarter 2008 laboratory analyses were completed at the time this application was compiled; therefore, those results were also included in the tables and graphs. *Id.* at 53. Andrews' trend analysis states that "only concentrations of 1,1-dichloroethane, acetone, cis-1,2-dichloroethene, ethyl ether, and vinyl chloride are currently above the respective PQL in well G103 or G104." *Id.* at 53.

Under Special Condition 23, the assessment separately addresses these parameters. *See id.* at 53-56. Andrews' report first addresses 1,1-Dichloroethane. *R.* at 53. At well G103, it states that "[c]oncentrations decreased below the PQL during the last seven sampling events (first quarter 2007 through third quarter 2008)." *Id.*; *see id.* at 72 (Table 3), 95 (trend graph). The report also describes a seasonal trend with consistently higher concentrations during the third and fourth quarter of the year. *Id.* at 53, 95. It indicates that "[i]ncreased precipitation rates

¹ Section 620.110 of the Board's groundwater regulations defines "practical quantitation limit" or "PQL" as "the lowest concentration or level that can be reliably measured within specified limits of precision and accuracy during routine laboratory operating conditions in accordance with 'Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods', EPA Publication No. SW-846, incorporated by reference at Section 620.125." 35 Ill. Adm. Code 620.110.

during the first and second quarter may result in a high potentiometric surface, preventing/decreasing the migration of landfill gas containing this parameter.” *Id.* at 53. At well G104, monitoring revealed concentrations of 7 µg/l in the third quarter of 2007 and 6 µg/l in the second quarter of 2008, both of which exceeded the PQL of 5 µg/l. *Id.* at 72; *see id.* at 96 (trend graph).

Andrews’ report then addresses acetone. R. at 53-54. It states that “[a]cetone was detected in well G103 at 11.2 µg/l [micrograms per liter] during second quarter 2001 and at 6 µg/l during fourth quarter 2006 sampling events. The parameter was not detected in any other sampling events.” *Id.* at 53, 63-65 (Table 1 Historical Organic Data), 99 (trend graph). Third quarter 2008 monitoring at well G103 shows a concentration of <5 µg/l, less than the PQL of 10 µg/l. *Id.* at 69-72, 99. At well G104, the report notes acetone concentrations of 160 µg/l in the fourth quarter of 2007 and 120 µg/l in the second quarter of 2008. *Id.* at 54, 68, 72, 100. The report claims that “[t]he detection during the fourth quarter 2007 was not confirmed by the next sampling event,” which showed a concentration of <5 µg/l. *Id.* at 54; *see id.* at 68, 72, 100. The report further claims that “[a] resample for the second quarter 2008 monitoring event was collected on July 16, 2008 and the result was 7 µg/l, which is below the PQL (10 µg/l).” *Id.* at 54; *see id.* at 72, 100. The report argues that, “[s]ince acetone is a known laboratory contaminant and no increasing trends are noted in either well, the unconfirmed increases do not appear to be attributable to the waste unit.” *Id.* at 54.

Regarding benzene, Andrews’ report states that concentrations at well G103 have been below the PQL of 5 µg/l since the second quarter of 1996 with the exception of the third quarter of 1999, when monitoring showed a concentration of 9.1 µg/l. R. at 54; *see id.* at 63, 69, 101. The report characterizes concentrations at this well as “stable with no increasing trends.” *Id.* at 54. At well G104, the report states that benzene concentrations have been below the PQL since the second quarter of 1996. *Id.* at 54; *see id.* at 66-72, 102. The report also characterizes concentrations at this well as “stable with no increasing trends.” *Id.* at 54.

The Andrews report next addresses chloroethane. R. at 54. The report states that “[t]he highest concentration at [well] G103 (13.6 µg/l) was measured during the second quarter 1996 event and there has not been a detection exceeding the PQL since third quarter 2001.” *Id.*; *see id.* at 63-65, 69-72, 106. The report claims that these concentrations reveal no overall increasing trend. *Id.* at 54. The report adds that “chloroethane has been non-detect in well G103 for the last four monitoring events (fourth quarter 2007 through third quarter 2008).” *Id.*; *see id.* at 72, 106. Regarding well G014, the report states that concentrations of chloroethane “have never been measured above the PQL.” *Id.* at 54; *see id.* at 66-71, 107.

Addressing cis-1,2-Dichloroethene, the Andrews report states that monitoring at well G103 has consistently detected concentrations above the PQL since the second quarter of 1996. R. at 54-55; *see id.* at 63-65, 69-72, 109. The report also describes a seasonal trend with higher concentrations during the third and fourth quarters of the year. *Id.* at 54, 109. It indicates that “[i]ncreased precipitation rates during the first and second quarter may result in a higher potentiometric surface, preventing/decreasing the migration of landfill gas containing this parameter.” *Id.* at 54. The report characterizes the concentrations of this parameter as stable “with no significant increasing or decreasing trend.” *Id.* The report notes that the last two

monitoring events at well G103 revealed concentrations below the PQL. *Id.* at 54, 72, 109. At well G104, the report states that concentrations have been decreasing since the third quarter of 2006 and that the most recent concentrations fell below the PQL. *Id.* at 55, 66-72, 110. Andrews stresses the “groundwater monitored by wells G103 and G104 is classified as Class IV groundwater due to previous mining activities” and that the applicable water quality standard is therefore 200 µg/l. *Id.* at 55, citing 35 Ill. Adm. Code 620.440(c) (Class IV standards for previously mined areas); *see* 35 Ill. Adm. Code 620.420 (Class II standards).

The Andrews report next addresses ethyl ether. R. at 55. It states that ethyl ether concentrations at well G103 “have fluctuated above the PQL.” *Id.*; *see id.* at 63-65, 69-72, 113. The report further states that “[i]n recent quarters the concentrations at G103 have exhibited a decreasing trend, with seasonal fluctuations.” *Id.* at 54; *see id.* at 63-65, 69-72, 113. “Concentrations at well G103 have decreased in the last three quarters to non-detect at the PQL of 5 µg/l.” *Id.* at 55, 113. At well G104, the report indicates that concentrations “have exhibited a slight increasing trend, with slight seasonal fluctuations.” *Id.*; *see id.* at 66-72, 114. The last two monitoring events revealed concentrations of 13 µg/l, which exceed the PQL of 5 µg/l. *Id.* at 71-72, 114.

Turning to tetrachloroethene, the Andrews report indicates that, at well G103, the highest concentration of 11.7 µg/l occurred in the fourth quarter of 2000. R. at 55.; *see id.* at 63, 69, 119. The report indicates that, “[s]ince that time, the concentrations have shown an overall decreasing trend and have been below the permitted PQL since first quarter 2003 and non-detect at 0.7 µg/l since fourth quarter 2007.” *Id.*; *see id.* at 64-65, 69-72, 119. At well G104, concentrations “have never been measured above the PQL (5µg/l) and have been non-detect since second quarter 2003.” *Id.* at 55; *see id.* at 66-72, 120.

The Andrews report next addresses trichloroethene. R. at 55. At well G103, concentrations have shown a decreasing trend since the third quarter of 1999 “and have not been measured above the PQL (5 µg/l) since fourth quarter 2005.” *Id.*; *see id.* at 63-65, 69-72, 122. “[T]richloroethene has not been detected in well G103 in the last three monitoring events.” *Id.*; *see id.* at 65, 71-72, 122. At well G104, concentrations “have never been measured about the PQL (5 µg/l) and have not been detected since third quarter 2007.” *Id.* at 55; *see id.* at 66-72, 123. The report stresses that the “groundwater monitored by wells G103 and G104 is classified as Class IV groundwater due to previous mining activities” and that the applicable water quality standard is therefore 25 µg/l. *Id.* at 55, citing 35 Ill. Adm. Code 620.440(c); *see* 35 Ill. Adm. Code 620.420. The report states that “[t]he current level of trichloroethene is well below this level in both wells.” *Id.* at 55.

The Andrews report next reviews vinyl chloride data. R. at 55-56. At well G103, “[v]inyl chloride concentrations have historically been above the PQL” and rose above historic levels during 2004. R. at 55; *see id.* at 63-65, 69-72, 124. The report adds that “concentrations of vinyl chloride have not been detected at G103 for the last three sampling events.” *Id.* at 56.; *see id.* at 65, 71-72, 124. At well G104, concentrations of vinyl chloride “have historically been above the PQL” and rose above historic levels during 2004. *Id.* at 55; *see id.* at 66-72, 125. The report states that “[c]oncentrations of vinyl chloride at well G104 have remained stable at around 8 µg/l since the second quarter 2005.” *Id.* at 56; *see id.* at 67-68, 70-72, 125. The report notes a

Class IV groundwater quality standard of 10 µg/l for vinyl chloride and stresses that “[t]he current concentration of vinyl chloride is below this level in both wells.” *Id.* at 56; *see id.* at 65, 68, 71, 72, 124-25.

Turning to conclusions under Special Condition 23, the Andrews report states that,

[r]esults show the concentrations of the majority of the subject parameters continue to decrease or have minor, yet stable fluctuations as a result of the seasonal variation of the water table. Of the previously detected organics, only four constituents (1,1-dichloroethane, cis-1,2-dichloroethene, ethyl ether and vinyl chloride) had confirmed detections above the PQL during the evaluation period (third quarter 2007 through second quarter 2008). In addition, data from the most recent quarterly sampling events typically indicate decreasing trends for parameters that had appeared to be increasing during previous annual evaluations (vinyl chloride and cis-1,2-dichloroethene). Additionally, concentrations of both vinyl chloride and cis-1,2-dichloroethene are currently below the 35 IAC 620.440 Class IV standard.

The decreases noted in tetrachloroethene and trichloroethene concentrations indicate that the corrective measures have been and continue to be effective in reducing/eliminating the landfill gas source. Although concentrations of 1,1-dichloroethane, cis-1,2-dichloroethene and vinyl chloride have shown recent decreases, stabilization may occur because the dechlorination of the lower chlorinated solvents (1,1-dichloroethane, cis-1,2-dichloroethene and vinyl chloride) requires stronger reducing conditions and therefore does not occur as readily as dechlorination in tetrachloroethene and trichloroethene. *R.* at 56.

The report notes that concentrations of both vinyl chloride and cis-1,2-dichloroethene are now below Class IV groundwater quality standards. *Id.*; citing 35 Ill. Adm. Code 620.440.

Under Special Condition 23, the Andrews report concludes that “[a]ssessment monitoring of the groundwater at wells G103 and G104 will continue in accordance with Supplemental Permit No. 1998-288-SP. .” *Id.* at 56. The conclusion noted that “effectiveness of the corrective action measures will be re-evaluated by August 15, 2009.” *Id.*

Special Condition 24

Regarding Special Condition 24, the Andrews report noted that the facility implemented assessment under Supplemental Permit No. 2007-355-SP through quarterly monitoring of volatile organic parameters at well G105. *Id.* at 57; *see id.* at 880 (List 4 parameters). Assessment also included collection of a sample from GV-3 during the second quarter 2008 monitoring event for both routine indicators and inorganic and organic parameters. *Id.* at 57; *see id.* at 877-79 (List 2 and 3). The report includes historical data on organics at well G015. *Id.* at 73. Andrews’ report also includes “[g]raphical analysis for each organic parameter that was detected in well G105. . . .” *Id.* at 57; *see id.* at 127-35 (trend graphs). The report states that

concentrations of 1,1-dichloroethane, atrazine, benzene, bis(2-ethylhexyl)phthalate, cis-1,2-dichloroethene, ethyl ether, methylene chloride, tetrachloroethene, trichloroethene and vinyl chloride were detected above the respective PQL in well G105 during one or more events in the last four quarters. It should be noted that the detections of atrazine, bis(2-ethylhexyl)phthalate and vinyl chloride were not confirmed by subsequent monitoring events. R. at 57.

Under Special Condition 24, the assessment separately addresses these parameters. See R. at 57-59. The Andrews report first addresses 1,1-dichloroethane. *Id.* at 58; *see id.* at 73, 128. It states that monitoring at well G105 in the first quarter of 2008 detected 1,1-dichloroethane above the PQL of 5 µg/l at a concentration of 6 µg/l. *Id.* at 58; *see id.* at 73, 128. The report adds that “[n]o detections above the PQL were noted in the two subsequent monitoring events.” *Id.* at 58; *see id.* at 73, 128. The report claims that “[t]he parameter has been typically detected at concentrations above the PQL in upgradient well G103 and G104; however, concentrations in G105 have been below the PQL in all but one sampling event.” *Id.* at 58; *see id.* at 63-72, 95-96. The report on this parameter concludes that, in the absence of a confirmed exceedances and historical data, “no further investigation of this parameter is necessary at G105.” *Id.* at 58.

The Andrews report next addresses benzene by noting that, “[a]lthough minor detections of benzene have been noted in well G105, none have been above the PQL (5µg/l).” R. at 58; *see id.* at 73, 131. The report determines that, “[b]ased on the lack of exceedances, no further action is necessary for this parameter.” *Id.* at 58.

The Andrews report next reviews cis-1,2-dichloroethene data. R. at 58. Monitoring at G105 in the second quarter of 2007 detected a concentration of 44 µg/l, above the PQL of 5 µg/l. *Id.*; *see id.* at 73, 133. The report states that, although “[c]oncentrations have remained above the PQL during the review period,” data show a “clear, overall decreasing trend for cis-1,2-dichloroethene.” *Id.* at 58; *see id.* at 73, 133. Noting that the most recent measured concentration at well G105 was 21 µg/l in the third quarter of 2008, the report stresses that concentrations have consistently been below the Class IV groundwater quality standard of 200 µg/l. *Id.* at 58; citing 35 Ill. Adm. Code 620.440.

Next, the Andrews report notes that monitoring at well G105 detected ethyl ether in the fourth quarter of 2007 at a concentration of 26 µg/l and that concentrations have remained above the PQL of 5 µg/l. R. at 58; *see id.* at 73, 129. The report notes that “[t]he most recent concentration was 16 µg/l measured during the third quarter 2008 monitoring event” and argues that the data reveal a “clear, overall decreasing trend for ethyl ether.” *Id.* at 58; *see id.* at 73, 129.

The Andrews report states that, “[a]lthough minor detections of methylene chloride have been noted in well G105, none have been above the PQL (5µg/l).” R. at 59; *see id.* at 73, 134. The report stresses that the most recent concentration in the third quarter of 2008 was 0.5 µg/l. R. at 59; *see id.* at 73, 134. The report concludes that, “[b]ased on the lack of exceedances, no further action is necessary for this parameter.” *Id.* at 59.

The Andrews report next addresses tetrachloroethene by noting that monitoring at well G105 in the second quarter of 2007 showed a concentration of 41 µg/l, above both the PQL of 5

µg/l and the Class IV groundwater quality standard of 25 µg/l. R. at 59; *see id.* at 73, 136. The report acknowledges that concentrations remained above the PQL throughout the review period but fell below the Class IV standard in the fourth quarter of 2007 and then from the second quarter of 2008 to the present. *Id.* at 59; *see id.* at 73, 136. The report stresses that “[t]he most recent concentration was 10 µg/l measured during the third quarter 2008 monitoring event.” *Id.* at 59; *see id.* at 73, 136.

Turning to trichloroethene, the Andrews report characterizes the trends as “similar to those for tetrachloroethene.” R. at 59. The report notes that this parameter was first detected in well G105 above the PQL of 5 µg/l in the second quarter of 2007 at a concentration of 20 µg/l. *Id.*; *see id.* at 73, 137. The report states that “[d]ecreasing trends have been noted since that time” and the most recent concentration was 9 µg/l. *Id.* at 59; *see id.* at 73, 137. The report claims that “[c]oncentrations have consistently been below the Class IV Standard (25 µg/l).” *Id.* at 59; *see id.* at 73.

The Andrews report concluded its analysis under Special Condition 24 by stating that, beginning in approximately the second quarter of 2007, sampling results revealed “elevated concentrations of several organic parameters.” *Id.* at 59-60. The report stated that

[s]everal of the detected parameters (including 1,1-dichloroethane, cis-1,2-dichloroethene, ethyl ether and vinyl chloride) are monitored as part of the corrective measures implemented for well G103 and G104. The fact that there are some similarities in the detected parameters indicates the elevated concentrations at G105 are likely associated with landfill gas migration as with wells G103 and G104. However, detections of parameters not associated with landfill gas (*i.e.*, benzene and acetone) and the recent decreases recorded for all of the organic parameters concentrations at G105 make a definitive source determination difficult. The lack of historical detections at G105 and the rapid decreases noted in recent sampling events indicates the elevated concentrations may have been a temporary/anomalous increase and not indicative of a groundwater impact at this location. *Id.* at 60.

The report proposed five actions “necessary” for further investigation of organic concentrations at G105.

1. Streator Area Landfill will collect an additional four quarters of samples for the List 4 organic parameters from G105 to determine trends.
2. Continued quarterly sampling for the List 4 parameters at well G103 and G104.
3. Streator Area Landfill will install a temporary investigation well point (T107) east of G105, midway between the well and the eastern property boundary. . . . The boring will be continuously sampled to the G105 screen interval at which point a discreet groundwater sample will be collected and analyzed for the List 4 parameters. Headspace readings will also be

collected from the boring during drilling of the unsaturated deposits and after completion of the drilling. This data will then be evaluated to determine if impacts associated with landfill gas are present to the east of G105. The boring and sampling will be overseen by a professional geologist.

4. An environmental survey of the area surrounding the landfill will be conducted. This survey will evaluate alternative investigation locations for future GMZ delineation investigations. Research into neighboring property ownership and land-use will also be conducted for use in future GMZ investigation work (if necessary).
5. A Freedom of Information Act (FOIA) request will be submitted for the Streator #3 Landfill facility located east of the Streator Area Landfill. Wells along the western side of the Streator #3 facility are approximately 350 feet away from the Streator Area Landfill monitoring wells. FOIA records pertaining to organic detections at that facility and landfill gas concentrations at the facility will be used to further characterize the groundwater east of G105. *Id.* at 60-61; *see id.* at 78 (Figure 1: Facility Map), 880 (List 4 volatile organic parameters); *see also* 5 ILCS 140/1 *et seq.* (2008) (Freedom of Information Act); 35 Ill. Adm. Code 620.250 (Groundwater Management Zone).

The Andrews report stated that the Agency would receive the results of the proposed action “in the form of a significant modification permit application. . . .” *Id.* at 61. The report further stated that the application would include, “if necessary, recommendations for the delineation of a formal Groundwater Management Zone in the areas surrounding G102, G104, and G105.” *Id.*

Agency Action

On November 6, 2008, the Agency provided to CRE a draft letter denying the August 15, 2008 application for a supplemental permit. R. at 36-38. The draft letter stated CRE had “failed to provide proof that granting this permit would not result in violations” of the Act. *Id.* at 37. Citing Section 39(a) of the Act (415 ILCS 5/39(a) (2008)), the Agency provided the following six reasons for denying the permit:

- 1) 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.
- 2) 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.

- 3) The application does not contain proposals to expand current corrective actions to mitigate groundwater impacts observed at G105.
- 4) Piezometer P108 (adjacent to G105) should be monitored for the List 2 and List 4 parameters to aid in defining the nature and the upper vertical extent of impacts for establishing a Groundwater Management Zone.
- 5) 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.
- 6) The application does not contain a 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. *Id.* at 33-38.

In response to the Agency's November 6, 2008 draft letter, Andrews on behalf of CRE submitted to the Agency on December 21, 2009, an addendum to the permit application. R. at 146-47; *see id.* at 20-24. Andrews separately responded to each of the Agency's six draft denial points. *Id.* at 146-47; *see id.* at 20-22 (revised Agency memorandum). In response to the first reason for denial, Andrews stated that

[w]ell G105 contains similar parameters that have been identified in wells G103 and G104 where previous landfill gas impacts have been inferred. The corrective action for wells G103 and G104 included the installation of additional gas vents. This corrective action has been successful in reducing the concentrations of volatile organic parameters noted in wells G103 and G104. Since no other indicator parameters have increased in well G105, it is concluded that landfill gas is likely the source of the concentration increases. *Id.* at 146.

Responding to the second reason for denial, Andrews claimed that "[t]emporary assessment well T107 was proposed in the original application to determine if impacts associated with landfill gas are present to the east of G105. In addition, the groundwater quality from wells along the western side of Streator Area Landfill #3 will be assessed." *Id.* at 146; *see id.* at 78 (Figure 1: Facility Map). Addressing the Agency's third reason, Andrews claimed that, "[i]n order to mitigate groundwater impacts observed at G105, two passive gas vents will be installed in the southeast corner of the facility. . . . The gas vents will be installed upon approval and when ground conditions allow." *Id.* at 146; *see id.* at 149 (Figure 1: Facility Map), 150 (gas vent detail).

Turning to the Agency's fourth reason for denial, Andrews responded that "[p]iezometer P108 will be tested for List 2 and List 4 upon approval of the application, including proposals provided in this addendum." R. at 147; *see id.* at 877-78, 880 (Lists 2 and 4). Addressing the fifth reason, Andrews stated that

[a]n additional monitoring well will not be installed between G105 and the waste boundary. The application acknowledges that the landfill is most likely the source of the noted increases in volatile organic parameters observed in G105. Given that the notes parameters are sporadically increasing and decreasing, an additional well in this location would likely prove inconclusive results. *Id.* at 147.

Finally, responding to the Agency's sixth reason for denial, Andrews indicated that "the groundwater quality at well G103 and G104 continues to improve." *Id.* at 147. Andrews proposed no additional investigation for those wells. *Id.*

In a letter dated February 24, 2010, the Agency acknowledged receiving CRE's application for a permit to modify the facility and its supplemental information. R. at 1. In the letter the Agency stated that "[y]our permit application addressing Special Conditions 23 and 24 is denied." *Id.* The Agency concluded that CRE's permit application failed to demonstrate compliance with Sections 807.313 and 807.502(b) of the Board's solid waste regulations. *Id.*, citing 35 Ill. Adm. Code 807.313 and 807.502(b). Citing Section 39(a) of the Act, the Agency provided specific reasons for denying the application:

1. The horizontal and vertical extent of contaminations (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-Dichloroethene and Vinyl Chloride -- above Class IV Standard at G104 and for Acetone, 1,1-Dichloroethane, cis-1,2-Dichloroethene, 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.
- 2) 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. R. at 2; *see id.* at 23-24 (Agency recommendations in review of application).

SUMMARY OF PETITION FOR REVIEW

CRE alleges that, on its behalf, Andrews submitted an application to modify a solid waste management facility. Pet. at 1 (¶1). CRE alleges that the facility is located at RR 7 Coalville Road, Streator; that it is commonly referred to as the Streator Area Landfill; and that it bears Agency Site No. 1058220007. *Id.*

CRE alleges that, in a letter dated February 24, 2010, the Agency denied the application, claiming that Andrews “failed to provide proof that granting the permit would not result in violations” of the Act. Pet. at 1 (¶2); *see id.*, Exh. A (Agency letter). CRE argues that the Agency’s denial states “that the submittal fails to demonstrate compliance regarding the horizontal and vertical extent of contamination and the rate and extent of groundwater impact was not defined. Pet. at 2.

CRE states its disagreement with this determination and requests review of the Agency’s decision including a hearing at which “to establish the merits of its position.” Pet. at 2. CRE further requests reversal or modification of the Agency’s determination, granting the application for a permit. *Id.* CRE alleges that the Agency’s denial letter “was designated as a final an appealable order.” Pet. at 1 (¶2); *see id.*, Exh A (noting 35-day appeal period).

SUMMARY OF AGENCY MOTION FOR SUMMARY JUDGMENT

The Agency argues that organic compounds are present in and affecting groundwater at and in the vicinity of the facility. Mot. at 9. The Agency further argues that CRE must continue corrective action in order to control contamination there. *Id.* Specifically, the Agency claims that Supplemental Permit No. 2008-082-SP requires CRE “to monitor the impacts of the groundwater contamination and to determine whether the current corrective action is succeeding in controlling the contamination. . . .” *Id.* at 9-10.

The Agency argues that CRE’s August 15, 2008 permit application “does not properly address the rate and extent of these impacts as required by its permit.” Mot. at 10. The Agency claims that, because CRE has failed to do so, it continues to allow contaminants to be discharged from the facility “in a manner that continues to cause groundwater pollution in the State of Illinois.” *Id.* The Agency further argues that the 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.” *Id.* The Agency claims that, because the application failed to prove that the requested permit would not cause violations of the Act and Board regulations, it properly denied the application. *Id.*

The Agency elaborates that Special Condition 23 requires CRE “to monitor and assess the current corrective actions already in place at the facility.” Mot. at 10. In the event that CRE’s monitoring detects continued increases of organic compounds, the Agency argues that CRE must “re-evaluate the corrective action plan and propose any necessary improvements.” *Id.*

The Agency states that Special Condition 24 obligates CRE to determine the source of impacts at and in the vicinity of the facility. Mot. at 10. The Agency argues that, if CRE determined that the facility is the source of impacts, then Special Condition 24 requires CRE to propose a Groundwater Management Zone (GMZ) “delineating the horizontal and vertical extent of contamination.” *Id.* The Agency further argues that establishing a downgradient GMZ requires CRE “to conduct additional downgradient investigation activities, including vertical and lateral investigations.” *Id.*

The Agency notes that both CRE’s August 15, 2008 application and December 21, 2009 supplemental information include results of monitoring under Special Condition 23. Mot. at 10. The Agency argues that “[t]he results show that organic contamination continues to be detected in G103, G104, and G105.” *Id.* at 10-11. The Agency further argues that “[t]he results also show that landfill gas from the Streator Area Landfill is likely the source of the organics impacting groundwater at G013, G014, and G015.” *Id.* at 11. The Agency claims that this determination triggers the requirement for a GMZ under Special Condition 24. *Id.* The Agency states that CRE responded only by proposing one additional well, T107 to the east or sidegradient of G105, and “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.” *Id.* The Agency argues that the steps described in CRE’s submissions were not sufficient under Special Condition 24 to delineate contamination leaving the facility. *Id.*

The Agency argues that Section 807.313 of the Board’s solid waste regulations “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.” Mot. at 11, citing 35 Ill. Adm. Code 807.313. The Agency also cites Section 807.502(b) of the solid waste regulations, which “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, 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.” Mot. at 11-12, citing 35 Ill. Adm. Code 807.502(b). The Agency argues that, although CRE’s permit allows it to undertake corrective action to control and ultimately eliminate groundwater contamination in and around the facility, landfill gas from it is contaminating groundwater. Mot. at 12.

The Agency argues that CRE’s permit application “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.” Mot. at 12. The Agency further argues that approving the application would enable CRE “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.” *Id.* The Agency claims that approving the application would thus permit CRE to violate Section 807.313 and 807.502(b). *Id.* The Agency concludes that, because the record clearly shows that approval would lead to these violations, it “acted with authority to deny Petitioner’s Application.” *Id.* at 13; *see id.* at 9.

BOARD ANALYSIS

Section 101.500(d) of the Board's procedural rules provides in pertinent part that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d).

As noted above under "Procedural History," CRE has stated that it will not respond to the Agency's motion for summary judgment, and the Board has received no response. CRE has waived objection to the granting of that motion. However, as the Board is not bound by CRE's waiver of objection, the Board will proceed in the following subsections to address the substantive issues raised in the Agency's motion.

Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is 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). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." *Id.* Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to the relief "is clear and free from doubt." *Id.*, citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

Standard of Review and Burden of Proof

Under Section 40(a)(1) of the Act, an applicant may appeal the Agency denial of a permit. 415 ILCS 5/40(a)(1) (2008). The standard of review under Section 40 of the Act is whether the application, as submitted to the Agency, would not violate the Act and Board regulations. 415 ILCS 5/40 (2008). The Board will not consider new information that was not before the Agency prior to its final determination regarding the issues on appeal. Kathe's Auto Service Center v. IEPA, PCB 95-43, slip op. at 14 (May 18, 1995). The Agency's denial letter frames the issues on appeal. Pulitzer Community Newspapers, Inc. v. IEPA, PCB 90-142 (Dec. 20, 1990).

The Board's procedural rules provide that, in appeals of final Agency determinations, "[t]he burden of proof shall be on the petitioner. . . ." 35 Ill. Adm. Code 105.112(a), citing 415 ILCS 5/40(a)(1), 40(b), 40(e)(3), 40.2(a).

Legal and Statutory Background

Section 807.313 of the Board's solid waste regulations provides in its entirety that

[n]o 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 807.313.

Section 807.502(b) of the Board's solid waste regulations provides that, in addition to other requirements, the operator of a waste management site must close the site in a manner that "[c]ontrols, 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." 35 Ill. Adm. Code 807.502(b).

Discussion of Motion

In its motion for summary judgment, the Agency states that "[t]here exist herein no genuine issues of material fact, and that the Illinois EPA is entitled to judgment as a matter of law" Mot. at 1. The Agency continues 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." *Id.* Having reviewed the administrative record and the Agency's unopposed motion for summary judgment, the Board concurs that there are no genuine issues of material fact and that summary judgment in the Agency's favor is appropriate as a matter of law.

Supplemental Permit No. 2008-082-SP, issued to CRE on May 13, 2008, includes a Special Condition 23. R. at 52; *see id.* at 881 (Attachment A to Supplemental Permit No. 2007-355-SP). That condition "requires an annual assessment of the effectiveness of the corrective action at monitoring wells G103 and G104 at the Streator Area Landfill." R. at 51. The permit also included a Special Condition 24 requiring "assessment monitoring for specific parameters at monitoring well G105." R. at 56; *see id.* at 57, 881-82 (Attachment A to Supplemental Permit No. 2007-355-SP).

On August 15, 2008, Andrews on behalf of CRE submitted to the Agency an application for a supplemental permit, which specifically addressed the requirements of Special Conditions 23 and 24. R. at 47-161. Regarding Special Condition 23, Andrews submitted monitoring results showing decreasing trends for concentrations of organics since 2000 in monitoring wells G103 and G104. CRE proposed to continue implementing corrective action measures at G103 and G104 and to submit an additional report one year later. *Id.* at 26. In a response, the Agency concurred that "[t]he corrective actions implemented are mitigating impacts upon groundwater quality. It is recommended that current corrective action activities continue at this time." *Id.*

Regarding Special Condition 24, Andrews submitted assessment monitoring data for monitoring well G105. The data revealed organics present in groundwater at G105, some at concentrations exceeding the PQL and others at concentrations exceeding the applicable Class

IV groundwater standard. *See* R. at 29-32. Andrews proposed five actions for further investigation of the organic concentrations at G105. *See id.* at 60-61.

On November 6, 2008, the Agency submitted to Andrews a draft letter proposing to deny the supplemental permit application on various grounds pertaining to monitoring well G105 and the requirements of Special Condition 24. R. at 36-38. As bases for the denial, the Agency's draft letter first noted that Andrews had not satisfied Condition 24 because it has not determined whether groundwater impacts at G105 were attributable to CRE's landfill. *Id.* at 37. In addition, the Agency indicated that Andrews had failed to propose a GMZ as required by Condition 24. *Id.* The Agency also emphasized the need to investigate the downgradient extent of contamination. *Id.* at 38. In addition, the Agency also stressed the need for a GMZ, which delineates the horizontal and vertical extent of any contamination attributable to the landfill. *Id.* at 37. The Agency also favored installation of an additional monitoring point to confirm the source of groundwater impacts. *Id.* at 38.

On December 21, 2009, Andrews on behalf of CRE submitted to the Agency an addendum to the original permit application. R. at 146-47; *see id.* at 20-24. The response stated that landfill gas is the likely source of increased concentrations of organics at G105. *Id.* at 20, 146. Based on the addendum, the Agency determined that CRE had satisfied one of the denial points by committing to test piezometer P108, which is adjacent to G105, for various parameters. *Id.* at 21, 147. However, the Agency determined that CRE had failed to comply with other requirements pertaining to G105 and Special Condition 24. The Agency concluded that CRE had still not formally proposed a GMZ, had not proposed corrective action sufficient to mitigate groundwater impacts at G105, and had failed to propose an additional monitoring well and a detailed groundwater investigation. *Id.* at 20-22.

On February 24, 2010, the Agency determined that CRE's application for a modified permit, as supplemented by Andrews, failed to comply with the Board's solid waste regulations. R. at 1, citing 35 Ill. Adm. Code 807.313, 807.502(b). Specifically, the Agency concluded that CRE had failed to determine the horizontal and vertical extent of contamination in the areas of G103, G014, and G105 in order to establish a GMZ as required by Special Condition 24. *Id.* In the absence of defined impacts, the Agency determined that "[i]t cannot be determined whether the current and proposed corrective actions are adequate." *Id.* at 2. Consequently, the Agency informed CRE that its "permit application addressing Special Conditions 23 and 24 is denied." *Id.* at 1.

Condition 24 serves to implement the Board's solids waste regulations at 35 Ill. Adm. Code 807. The Condition plainly establishes what must occur in the event that monitoring activities reveal contamination at G105 that is attributable to CRE's landfill. CRE has acknowledged that its landfill accounts for the impacts detected at G105, yet it has not proposed or undertaken responses including delineation of the extent of contamination in order to propose a GMZ. On the basis of the record before it and in the absence of any response to the Agency's motion for summary judgment, the Board concludes that there is no genuine dispute of material fact that CRE has failed to prove that issuing the requested supplemental permit would not result in violations of the Act and the Board's solid waste regulations. Accordingly, the Board grants

the Agency's motion for summary judgment and affirms the Agency's denial of CRE's August 15, 2008 application, as supplemented on December 21, 2009, for a supplemental permit.

CONCLUSION

For the reasons stated above, the Board grants the Agency's unopposed motion for summary judgment and affirms the Agency's determination to deny CRE's application for a modified permit.


ORDER

1. The Board grants the Agency's unopposed motion for summary judgment.
2. The Board affirms the Agency's February 24, 2010 determination to deny CRE's application for a supplemental permit to modify CRE's solid waste management facility.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 21, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board