

ILLINOIS POLLUTION CONTROL BOARD  
February 16, 2012

ATKINSON LANDFILL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 12-58
	)	(Permit Appeal – Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by D. Glosser):

On November 23, 2012, the Illinois Environmental Protection Agency (Agency) filed a motion “to withdraw the contested paragraph at issue in this permit appeal” (Ag. Mot.). Atkinson Landfill Company (Atkinson Landfill) did not file a response to that motion. However during a January 26, 2012 status conference, the parties indicated that a motion to dismiss addressing the outstanding motion would be filed. *See* Hearing Officer Order of January 30, 2012. On February 9, 2012, the Agency and Atkinson Landfill filed a joint motion to dismiss this permit appeal (Joint Mot.). The Board therefore finds that the motion “to withdraw the contested paragraph at issue in this permit appeal” is moot.

The joint motion seeks dismissal of this appeal without prejudice. Joint Mot. at 1. This appeal was filed on October 21, 2011, by Atkinson Landfill seeking review of a September 30, 2011 decision by the Agency that petitioner’s landfill development permit application was incomplete. The determination concerns Atkinson Landfill’s Henry County Landfill #2 (facility) in Atkinson, Henry County.

The Agency’s motion to withdraw states that the “issues described in the contested section were raised prematurely, and the subject matter raised is not relevant to the Agency’s decision at this stage of its review of the permit application.” Ag. Mot. at 1. The Agency then comments that the paragraph was included in error and “does not represent a final Agency decision.” Ag. Mot. at 2. The Agency concludes that since the contested paragraph was the sole basis for the petitioner’s basis for appeal, that if the Board “grants Respondent’s motion to Withdraw, this matter should be dismissed as moot.” Ag. Mot. at 2.

The joint motion states:

The Agency while reserving the right to raise the issues contained therein in the future, concedes that the Contested Provision was inappropriately included in the Notice, and has therefore officially withdrawn this paragraph. Because the sole contested issue in this Permit Appeal has now been withdrawn, this matter should be dismissed as moot.

The parties agree that the subject matters raised in the withdrawn Contested Provision may arise in future permit proceedings related to the Atkinson Landfill. Therefore, the Parties request that dismissal be granted without prejudice to the Agency's right to raise the issues described in the Contested Provision in the future, and without prejudice to Petitioner's right to contest these matters before the Agency or the Board. Joint Mot. at 1-2.

The Board cannot dismiss the October 21, 2011 permit appeal without prejudice. *See* 415 ILCS 5/40(a)(1) (2010). Under Section 40(a)(1) of the Act, an appeal of a decision by the Agency denying a permit must be filed within 35 days of the Agency's decision or within the agreed upon extension of the appeal time. *Id.* A subsequent petition seeking review of the Agency's September 30, 2011 decision would be time barred. *See Metropolitan Airport Authority of Rock Island v. Office of State Fire Marshal*, PCB 94-45 (Mar. 31, 1994); *Joliet v. IEPA*, PCB 07-94 (June 19, 2008). The Board has allowed a motion to dismiss without prejudice in a permit appeal where the contested issue could arise in another permit. *See Joliet v. IEPA*, PCB 11-08 (July 7, 2011) (granting dismissal without prejudicing Joliet's ability to contest limits on the land application of sewage sludge that may be imposed through any future permit determination of Agency).

The Board finds that the petition challenging the Agency's September 30, 2011 decision must be dismissed with prejudice. However, the Board's dismissal does not prejudice any appeal rights that Atkinson Landfill might have to appeal future Agency decisions; nor does the Board's dismissal limit the Agency's ability to make determinations on future applications consistent with the Act and the Board's rules. The Board dismisses the appeal, and closes the docket.

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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 16, 2012, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board

