

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,)	
)	
Petitioner,)	PCB _____
)	(Permit Appeal)
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

TO: All Parties of Record


PLEASE TAKE NOTICE that on October 7, 2014, I filed the following documents electronically with the Clerk of the Pollution Control Board of the State of Illinois:

1. Entries of Appearances
2. Petition for Review of Permit Modification No. 48 and Motion for Consolidation with PCB 2015-060
3. Notice of Electronic Filing

Copies of the above-listed documents were served upon you in the manner stated in the Certificate of Service attached hereto.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Petitioner

By:  _____
One of its attorneys

Brian J. Meghinnes, Esq. (bmeghinnes@emrslaw.com)

Janaki Nair, Esq. (jnair@emrslaw.com)

Elias, Meghinnes & Seghetti, P.C.

416 Main Street, Suite 1400

Peoria, IL 61602

Telephone: (309) 637-6000

Facsimile: (309) 637-8514

914-1006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,)	
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)	
Respondent.)	

**PETITION FOR REVIEW OF PERMIT MODIFICATION NO. 48
AND MOTION TO CONSOLIDATE WITH PCB 2015-060**

NOW COMES the Petitioner, CLINTON LANDFILL, INC. (“CLI”), by and through its undersigned attorneys, and as and for its Petition for Review of Modification No. 48 to Permit No. 2005-070-LF, issued by the Illinois Environmental Protection Agency (the “Agency”) on September 17, 2014, pursuant to 415 ILCS §5/40 and 35 Ill. Adm. Code Parts 101 and 105, and its Motion to Consolidate this case with PCB 2015-060, states as follows:

Petition for Review of Permit Modification No. 48

1. In this Petition for Review, CLI seeks review of Modification No. 48 to Permit No. 2005-070-LF *solely* in regard to the the changes made to the permit by the Agency in Modification No. 47. The changes made in Modification No. 47 were incorporated into Modification No. 48. These changes are the subject of PCB 2015-060, pending in the Pollution Control Board (the “Board”). Below, CLI requests that the Board consolidate this case with PCB 2015-060.¹

¹ In discussions between counsel for CLI and counsel for the Board leading up to the filing of this PCB 2015-060, counsel were unable to divine any procedure other than filing of serial Petitions for Review as Permit No. 2005-070-LF is modified throughout the pendency of PCB 2015-060, that would ensure that CLI does not inadvertently waive its objections to the changes made in Modification No. 47. CLI regrets the inconvenience that this procedure will cause.

2. On August 28, 2014, CLI filed a Petition for Review of Modification No. 47 to Permit No. 2005-070-LF, which was issued by the Agency on July 31, 2014, with the Board. The Board docketed the case as PCB 2015-060, and accepted the Petition for Review for hearing. A copy of Modification No. 47 to Permit No. 2005-070-LF is attached hereto as Exhibit A. Notably, Modification No. 47 includes the entire text of Permit No. 2005-070-LF, as amended through the date of Modification No. 47, in accordance with the standard practice of the Agency.

3. There were three (3) substantive changes to Permit No. 2005-070-LF made by the Agency in Modification No. 47, which are the subject of the Petition for Review filed in PCB 2015-060:

A. First, the Agency modified Special Condition Section II.10.f, “to add obtaining local siting approval as a precondition to accepting PCB waste.” (Ex. A, pg. 2 of cover letter). In particular, as of July 30, 2014, Section II.10.f provided that there were three (3) conditions before the Chemical Waste Unit at CLI’s Clinton Landfill No. 3 (the “Chemical Waste Unit” or “CWU”) could accept certain types of polychlorinated biphenyl (PCB) wastes. (See Ex. D, pg. 18, §II.10.f). On July 31, 2014, the Agency added a fourth condition: “The local siting authority for Clinton Landfill 3 (currently the DeWitt County Board) grants local siting approval specifically allowing such waste to be disposed of in CWU.” (Ex. A, pg. 17, §II.10.f).

B. Second, the Agency modified Special Condition Section III.A.2.f “to prohibit the disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU.” (Ex. A, pg. 2 of cover letter). In particular, as of July 30, 2014, Section III.A.2.f included the following

exception to the Agency's general policy prohibiting disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in landfills in Illinois: "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU." (Ex. D, pg. 25, §III.A.2.f). On July 31, 2014, the Agency deleted this exception. (*See* Ex. A, pg. 25, §III.A.2.f).

C. Finally, the Agency modified Special Condition Section VII.12 "to reflect the need to obtain local siting approval before accepting PCB waste...." (Ex. A, pg. 2 of cover letter). Section VII.12 of the Permit relates to management of leachate from the CWU. (*See* Ex. D, pg. 47, §VII.12). On July 31, 2014, the Agency added the following as a condition to triggering of the leachate management protocols in the section: "the local siting authority for Clinton Landfill 3 grants local siting approval specifically allowing PCB waste to be disposed of in the CWU...." (Ex. A, pg. 46, §VII.12).

4. In PCB 2015-060, CLI challenged the above changes to the permit on the grounds that they were arbitrary, capricious, unreasonable, unlawful, and beyond the regulatory authority of the Agency. CLI incorporates its Petition for Review filed in PCB 2015-060 as though set forth in its entirety herein.

5. On September 18, 2014, the Agency issued Modification No. 48 to Permit No. 2005-070-LF, at CLI's request. A copy of Modification No. 48 is attached herewith as Exhibit B. In Modification No. 48, the Agency simply altered the conditions governing the use of certain products as alternative daily cover material at Clinton Landfill No. 3. (*See* Ex. B, pg. 4 of cover letter). CLI requested these changes, and does not seek review of same.

6. However, Modification No. 48 includes the entire text of Permit No. 2005-070-LF, as amended since its initial issuance, including the changes made in Modification No. 47 that are on appeal in PCB 2015-060, namely:

A. Special Condition Section II.10.f includes the following condition prior to acceptance of PCB waste at the CWU: “The local siting authority for Clinton Landfill 3 (currently the DeWitt County Board) grants local siting approval specifically allowing such waste to be disposed of in CWU.” (Ex. B, pg. 18, §II.10.f.i).

B. Special Condition Section III.A.2.f does not include the following exception to the Agency’s general policy prohibiting disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in landfills in Illinois, which exception was in Permit No. 2005-070-LF prior to Modification No. 47: “Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU.” (See Ex. D to Petition for Review in PCB 2015-060, pg. 25, §III.A.2.f; see Ex. B hereto, pg. 25, §III.A.2.f).

C. Finally, Special Condition Section VII.12 includes the following as a condition to triggering of the leachate management protocols in the section: “the local siting authority for Clinton Landfill 3 grants local siting approval specifically allowing PCB waste to be disposed of in the CWU....” (Ex. B, pg. 47, §VII.12).

7. In this Petition for Review, CLI seeks review of the changes made to Permit No. 2005-070-LF in Modification No. 47, as incorporated into Modification No. 48, set forth above, for the reasons set forth in CLI’s Petition for Review filed in PCB 2015-060, which is incorporated herein in its entirety.

Motion to Consolidate

Section 101.406 of the Board's regulations provides as follows regarding consolidation of claims:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary.


35 Ill. Admin. Code §101.406.

CLI submits that it is in the interest of convenient, expeditious, and complete determination of claims for this case to be consolidated with PCB 2015-060 pending before the Board, as precisely the same issues are being reviewed in the two cases. The requested consolidation would not cause material prejudice to any party.

WHEREFORE, CLI respectfully requests that the Board (A) declare the Agency's action issuing Modification No. 47, as incorporated into Modification No. 48, to be arbitrary, capricious, unreasonable, unlawful, and/or beyond the regulatory authority of the Agency; (b) vacate the Agency's action issuing Modification No. 47, as incorporated into Modification No. 48; and (c) grant CLI such other and further relief as is deemed appropriate under the circumstances. CLI further respectfully requests that the Board enter an Order providing that this case is consolidated with PCB 2015-060.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Petitioner

By:  _____
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

914-1004

CERTIFICATE OF SERVICE

The undersigned certifies that on October 7, 2014, the foregoing document will be served upon each party to this case in the following manner:

X Enclosing a true copy of same in an envelope addressed to the attorney of record of each party or the party as listed below, with FIRST CLASS postage fully prepaid, and depositing each of said envelopes in the United States Mail at 5:00 p.m. on said date.

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(Per 35 Ill. Adm. Code §101.304(g)(1))

X VIA EMAIL with confirmation by United States Mail

Jennifer A. VanWie, Esq., Assistant Attorney General
Stephen Sylvester, Esq., Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Emails: jvanwic@atg.state.il.us
ssylvester@atg.state.il.us

Hearing Officer Carol Webb
VIA EMAIL ONLY: Carol.Webb@illinois.gov

By: _____


Attorney

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
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ENTRIES OF APPEARANCES

TO: Clerk of the Illinois Pollution Control Board and All Parties of Record

Please enter our appearances as counsel of record in this case for

CLINTON LANDFILL, INC

Respectfully submitted,

ELIAS, MEGINNES & SEGHETTI, P.C.

By: 
 Brian J. Meginnes, Esq.

ELIAS, MEGINNES & SEGHETTI, P.C.

By: 
 Janaki Nair, Esq.

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
 Janaki Nair, Esq. (jnair@emrslaw.com)
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Jennifer A. VanWie, Esq., Assistant Attorney General
Stephen Sylvester, Esq., Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Emails: jvanwie@atg.state.il.us
ssylvester@atg.state.il.us

Hearing Officer Carol Webb
VIA EMAIL ONLY: Carol.Webb@illinois.gov

By: _____


Attorney

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
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Jennifer A. VanWie, Esq., Assistant Attorney General
Stephen Sylvester, Esq., Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Emails: jvanwie@atg.state.il.us
ssylvester@atg.state.il.us

Hearing Officer Carol Webb
VIA EMAIL ONLY: Carol.Webb@illinois.gov

By: _____


Attorney

Brian J. Meghinnes, Esq. (bmeghinnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meghinnes & Seghetti, P.C.
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Peoria, IL 61602
Telephone: (309) 637-6000
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