

ILLINOIS POLLUTION CONTROL BOARD  
October 16, 2014

CLINTON LANDFILL, INC. )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 15-76  
 ) (Permit Appeal - Land)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by C.K. Zalewski):

On October 7, 2014, Clinton Landfill, Inc. (CLI) timely filed its Petition for Review of Permit Modification and Motion to Consolidate asking the Board to review a September 17, 2014 determination of the Illinois Environmental Protection Agency (Agency) and consolidate the review of the Agency's September 17th decision with CLI's prior filing, docketed as Clinton Landfill, Inc. v. IEPA, PCB 15-60. *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns CLI's municipal landfill facility located at 9550 Heritage Road Clinton, DeWitt County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2012)), the Agency is the permitting authority, responsible for administering Illinois' regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2012); 35 Ill. Adm. Code 105.Subpart D.

In this case, the Agency granted CLI's request for a permit modification for its landfill facility in the form of Modification No. 48 to Permit No. 2005-070-LF (Modification No. 48). On July 31, 2014, the Agency issued Modification No. 47 which incorporated the conditions challenged in PCB 15-60. Modification No. 48 includes the entire text of Permit No. 2005-070-LF, as amended since its initial issuance, including the changes made with Modification No. 47. Clinton Landfill, Inc. v. IEPA, PCB 15-60 (Sept. 4, 2014). CLI appeals the Agency's decision with regard to the following Special Conditions first included in Modification No. 47, but reiterated in Modification No. 48:

- A) The inclusion of a fourth condition in Special Condition Section II.10f to be met before CLI could accept certain types of polychlorinated biphenyl (PCB) wastes, specifically: "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 the CWU;"

- B) The deletion of Special Condition Section III.A.2.f which provided an exception to the Agency's general policy prohibiting disposal of Manufactured Gas Plant (MGP) waste exceeding specified regulatory levels, specifically: "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU;" and
- C) The inclusion of Special Condition VII.12, related to Special Condition Section II.10f (item A, above) to be met before leachate management protocols are triggered, specifically: "the local siting authority for Clinton Landfill 3 grants local siting approval specifically allowing PCB waste to be disposed of in the CWU..."

CLI's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. CLI has the burden of proof. 415 ILCS 5/40(a)(1) (2012); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2012)), which only CLI may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, CLI "may deem the permit issued." 415 ILCS 5/40(a)(2) (2012). Currently, the decision deadline is February 13, 2015, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for February 5, 2015. The Board notes that the parties have waived the decision deadline in PCB 15-60 to March 19, 2015. *See Clinton Landfill, Inc. v. IEPA*, PCB 15-60, Waiver of Decision Deadline (Oct. 7, 1014).

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 6, 2014, which is 30 days after the Board received CLI's petition. *See* 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

The Board reserves ruling on CLI's motion for consolidation until the Board has received the Agency's response to this petition.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 16, 2014 by a vote of 4 to 0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board