

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

|                        |   |                      |
|------------------------|---|----------------------|
| D & L LANDFILL, INC.,  | ) |                      |
| Petitioner,            | ) |                      |
|                        | ) |                      |
| v.                     | ) | PCB 15-138           |
|                        | ) | (LAND Permit Appeal) |
| ILLINOIS ENVIRONMENTAL | ) |                      |
| PROTECTION AGENCY,     | ) |                      |
| Respondent.            | ) |                      |

**NOTICE OF FILING AND PROOF OF SERVICE**

|  |  |
|--|--|
| To: John T. Therriault                   | James G. Richardson                      |
| Clerk                                    | Division of Legal Counsel                |
| Illinois Pollution Control Board         | Illinois Environmental Protection Agency |
| 100 West Randolph Street                 | 1021 North Grand Avenue East             |
| State of Illinois Building, Suite 11-500 | P.O. Box 19276                           |
| Chicago, IL 60601                        | Springfield, IL 62794-9276               |

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 27<sup>th</sup> day of April, 2015

Respectfully submitted,  
D & L LANDFILL, Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

|                        |   |                      |
|------------------------|---|----------------------|
| D & L LANDFILL, INC.,  | ) |                      |
| Petitioner,            | ) |                      |
|                        | ) |                      |
| v.                     | ) | PCB 15-138           |
|                        | ) | (LAND Permit Appeal) |
| ILLINOIS ENVIRONMENTAL | ) |                      |
| PROTECTION AGENCY,     | ) |                      |
| Respondent.            | ) |                      |

**PETITION FOR REVIEW OF AGENCY PERMIT DECISION**

NOW COMES Petitioner, D & L Landfill, Inc., pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/50, and hereby appeals the Agency's denial of certification for completion of post-closure care at a solid waste landfill, and in support thereof states as follows:

1. D & L Landfill is a closed landfill in Bond County Illinois, which received its original development permit in 1974 (Permit No. 1974-34-DE), and was certified closed by the Illinois EPA on August 31, 1996.

2. Consistent with practices and regulations of its time, the landfill was not constructed with a leachate collection system or liner.

3. The original permit was issued pursuant to the Board's original sanitary landfill regulations from 1973, which were later codified in Part 807 of the Board's rules.

4. D & L Landfill is and always has been a "Part 807" landfill.

5. The post-closure requirements for a "Part 807" facility are located in Section 807.318 of the Board's rules:

**Section 807.318 Completion or Closure Requirements.**

- (a) **The owner or operator of a sanitary landfill site shall monitor gas, water and settling at the completed site for a period of three years after the site is completed or closed.**
- (b) **The owner or- operator shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during the three year period.**
- (c) **The owner or operator shall, upon completion or closure, file a detailed description of the site, including a plat, with the appropriate county land recording authority for the county in which the site is located.**

(35 Ill. Adm. Code § 807.318)

6. In the early to mid 1980s, the Board opened various rulemaking dockets for the purpose of updating landfill regulations, including post-closure care requirements.

7. In 1986, the post-closure care period was increased by the Illinois General Assembly to five years.

**The owner and operator of a sanitary landfill site shall monitor gas, water and settling at the completed site for a period of 5 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.**

(P.A. 84-1320, effective date Sept. 4, 1986) codified at 415 ILCS 5/22.17(a))

8. In 1990, the post-closure care period was increased by the Illinois General Assembly to fifteen years:

**The owner and operator of a sanitary landfill site shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.**

(P.A. 85-1240, effective date July 1, 1990 (codified at 415 ILCS 5/22.17(a))

9. Subsequently, both the Board and the USEPA adopted regulations increasing the post-closure care period:

a. In Illinois, the Pollution Control Board promulgated new solid waste landfill regulations in Parts 811 through 814 of the Board's regulations. (R88-7 (Aug. 17, 1990) (authorized in part by 415 ILCS 5/22.17)).

b. The federal government likewise promulgated municipal solid waste landfill regulations in 40 CFR Part 258. (56 FR 50978 (Oct. 9, 1991))

10. The new state and federal landfill regulations not only increased post-closure care periods for many facilities, but they also contained significant new requirements for landfill design and operation.

11. Many older landfills were incapable of meeting the new requirements and were expected, if not encouraged, to begin closure.

12. On August 7, 1992, Petitioner notified the Illinois EPA that it intended to initiate closure forthwith under the provisions of Subpart E of Part 814.

13. Subpart E of Part 814 governs those facilities that cannot demonstrate compliance with the new regulations and are required to timely begin closure. (35 Ill. Adm. Code § 814.501(b))

14. There are two standards imposed on landfills closing pursuant to Subpart E:

**a) All units regulated in this Subpart are subject to all requirements in 35 Ill. Adm. Code 807.**

**b) All units regulated under this Subpart are subject to all conditions of the existing permit.**

(35 Ill. Adm. Code § 814.502)

15. Implicit in these standards is an exemption from all of the new landfill requirements enacted.

16. The Board has previously described the closure standards for Part 807 facilities as “a minimal standard to avoid gross pollution.” (R84-22a, at p. 15 (Dec. 27, 1984))

17. D & L Landfill timely ceased accepting waste, so as to remain governed by Part 807 and avoid obligations as a municipal solid waste landfill pursuant to federal regulation.

18. The fifteen year post-closure care period ended on August 31, 2011.

19. On December 31, 2012, D & L Landfill, Inc. submitted an Affidavit for Certification of Completion of Post-Closure Care for Non-Hazardous Waste Facilities.

20. On January 18, 2013, Illinois EPA inspectors visited D & L Landfill, and identified visible problems pertaining to several eroded and ponded areas around the landfill that needed repair.

21. On February 26, 2013, the Illinois EPA issued a draft denial letter in response to the request to discontinue post-closure care, identifying the need to repair several eroded and ponded areas around the landfill and the presence of exceedances caused by the landfill.

22. Thereafter, Petitioner repaired the eroded and ponded areas around the landfill.

23. On December 19, 2014, the Illinois EPA issued a denial letter, stating that the certification to end post-closure care was denied. A true and correct copy of said letter is attached hereto as Exhibit A.

24. Specifically, the Illinois EPA identified numerous groundwater exceedances, that purport to violate Sections 807.313 and 807.315 of the Board’s Procedural Rules.

25. The effect of the Illinois EPA’s decision and reasoning is that while older

facilities such as D & L Landfill were understood as incapable of complying with the new landfill regulations, including the subsequently enacted Part 620 groundwater standards, and thus were compelled or encouraged to close under the pre-existing laws, D & L Landfill is being held to standards applicable to modern landfills designed with leachate collection systems and liners.

26. Part 807 landfills, such as D & L Landfill, Inc., were expected to close and conduct post-closure monitoring for a fixed period of fifteen years, which was not extended by Board or federal regulation. The closure standard for these facilities was a minimal standard to avoid “gross pollution,” *i.e.*, visible without the aid of a microscope, or large enough to be seen with the naked eye, such as erosion gullies.

27. In many ways, the Illinois EPA’s interpretation of the requirements for Part 807 landfills impose higher standards than are applicable to new landfills, which, for example, are allowed to violate groundwater quality standards within a zone of attenuation 100 feet away. (35 Ill. Adm. Code § 811.320) Such “mixing zones” were an unknown concept for Part 807 landfills, and some of the monitoring points for the D & L Landfill are quite close to the deposited waste.

28. Furthermore, none of the Board regulations cited in the denial letter apply to D & L Landfill. Sections 807.313 and 807.315 are applicable to the operating stage of landfills. The requirements for landfills that have been closed are in Section 807.318 and in Sections 807.501 to 807.524. Likewise, Part 620 is not applicable to landfills that closed under Part 807. Compare 35 Ill. Adm. Code § 814.302(a)(5) (existing landfills staying open indefinitely must meet incorporated Part 620 groundwater quality standards) with § 814.402(b)(3)) (existing landfills staying open seven years must meet intermediate water quality standards of Part 302).

29. D & L Landfill has completed the fifteen year post-closure care period for

monitoring the closed landfill, and pursuant to the Certification should be permitted to discontinue doing so.

30. The appeal deadline in this matter was extended by agreement of the parties and by Board order to April 28, 2015, and therefore this appeal is timely filed before the deadline.

WHEREFORE, Petitioner, D & L LANDFILL, INC. prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the post-closure certification, and (e) the Board grant Petitioner such other and further relief as it deems meet and just.

D & L LANDFILL, INC.,  
Petitioner

By its attorney,  
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484

THIS FILING IS SUBMITTED ON RECYCLED PAPER



**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

PAT QUINN, GOVERNOR

JOHN J. KIM, DIRECTOR

217/524-3301

December 19, 2014  
D & L Landfill, Inc.  
Attn: Lee Roy McCray  
1212 Ayers Road  
Greenville, Illinois 62246

Certified Mail  
7012 0470 0001 2976 3557

Re: 0050050001-- Bond County  
D & L Landfill  
Log No. 2013-007  
Permit Landfill 807 File  
Permit Denial

Dear Mr. McCray:

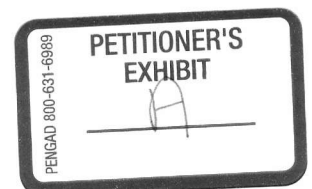
This will acknowledge receipt of your certification for completion of post-closure care at a solid waste management site, dated December 31, 2012, and received by the Illinois EPA on January 2, 2013.

Your certification to end post-closure care is denied.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act (Act). Section 39(a) of the Act [415 ILCS 5/39(a)] requires the Illinois EPA to provide the applicant with specific reasons for the denial of permit. The following reason(s) are given:

1. Pursuant to 807.524, the Agency must certify that the post-closure care period has ended upon determining that the facility will not cause future violations of 35 Illinois Administrative Code Part 807 or the Act. 35 IAC 807.313 states, no person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contamination into the environment. And 35 IAC 807.315 states, no person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill. Due to the exceedances described below, the affidavit fails to adequately demonstrate that the D & L Landfill has not impacted the groundwater. Therefore, a determination that 35 Illinois Administrative Code (IAC) 807.313 and 807.315 will not be violated cannot be made:

The following exceedances are unaddressed:





- a. G106: (TDS – background value & 620 standard), (dissolved barium – background value), (dissolved boron – background value), (dissolved iron – background value & 620 standard), (ethyl ether – over 2 times PQL), (TOX – background value & 620 standard), (dissolved chloride – background value), (total ammonia – background value), (total barium – background value), (total boron – background value), (total iron – background value & 620 standard), (total manganese – background value), (total sodium – background value), (total arsenic – background value), (total chloride – background value & 620 standard).
- b. G110: (dissolved nitrate – background value), (dissolved barium – background value), (dissolved chloride – background value), (total fluoride – background value), (total sodium – background value), (total fluoride – background value), (total chloride – background value).
- c. G111: (TDS – background value), (dissolved barium – background value), (dissolved boron – background value), (dissolved manganese – background value), (dissolved sulfate – background value), (dissolved chloride – background value), (total boron – background value), (total sodium – background value), (total sulfate – background value), (total chloride – background value).
- d. G112: (TDS – background value & 620 standard), (dissolved barium – background value), (dissolved boron – background value & 620 standard), (dissolved iron – background value & 620 standard), (dissolved manganese – background value), (dissolved nickel – background value), (ethyl ether – over 2 times PQL), (TOX – background value & 620 standard), (phenols – 620 standard), (dissolved chloride – background value & 620 standard), (oil – background value), (total ammonia – background value), (total barium – background value), (total boron – background value & 620 standard), (total iron – background value & 620 standard), (total manganese – background value & 620 standard), (total sodium – background value), (tetrahydrofuran – over 2 times PQL), (total chloride – background value & 620 standard).
- e. G113: (TDS – background value), (dissolved barium – background value), (dissolved boron – background value), (dissolved manganese – background value), (TOX – background value & 620 standard), (dissolved chloride – background value & 620 standard), (total boron – background value), (total manganese – background value), (total sodium – background value), (total chloride – background value & 620 standard).
- f. G114: (Alkalinity – background value), (TDS – background value & 620 standard), (dissolved barium – background value), (dissolved boron – background value & 620 standard), (dissolved iron – background value & 620 standard), (dissolved manganese – background value & 620 standard), (dissolved nickel – background value),

Page 3

(chlorobenzene – over 2 times PQL), (TOX – background value & 620 standard), (phenols – background value & 620 standard), (total fluoride – background value), (dissolved chloride – background value & 620 standard), (COD – background value), (total barium – background value), (total boron – background value), (total iron – background value & 620 standard), (total manganese – background value & 620 standard), (total sodium – background value), (tetrahydrofuran – over 2 times PQL), (total chloride – background value & 620 standard).

- g. Exceedences noted in the facility GMZ: G116 - dissolved boron, G124 - dissolved manganese, G145 - dissolved boron & dissolved manganese.

The applicant may appeal this final decision to the Illinois Pollution Control Board pursuant to Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the applicant and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the request for an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276  
217/782-5544

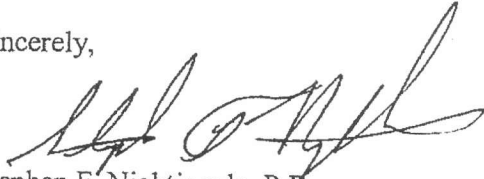
For information regarding the filing of an appeal, please contact:

Illinois Pollution Control Board, Clerk  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601  
312/814-3620

Page 4

Should you wish to reapply or have any questions regarding this application, please contact Tom Hubbard at 217/524-3286.

Sincerely,



Stephen F. Nightingale, P.E.  
Manager, Permit Section  
Bureau of Land

CJL  
SFN:TWH:0050050001-807LF-2013007 - Denial.docx  
TWH TBW

cc: Michael Emken, P.E., Hurst-Rosche Engineers

BCC:  
Bureau File  
FOS - Collinsville  
Tom Hubbard  
Will Sparks