

ILLINOIS POLLUTION CONTROL BOARD
May 21, 2015

CLINTON LANDFILL, INC. ,)	
)	
Petitioner,)	
)	
v.)	PCB 15-194
)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On May 5, 2015, Clinton Landfill Inc. (CLI) timely filed a petition (Pet.) asking the Board to review an April 10, 2015 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns CLI’s landfill No. 3 (the landfill) located in Clinton, DeWitt County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (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 issued permit Modification No. 52 to CLI. In Modification No. 52, the Agency allows use of landfill gas from the landfill for use as fuel at CLI’s gas-to-energy plant, makes revisions to the gas extraction wellfield, accepts construction in sections of the landfill, and makes revised closure and post-closure care cost estimates. Pet., Exh. B at 4-5. CLI does not seek review of that portion of Modification No. 52. However, Modification No. 52 also contains the same language as Modification No. 47, which is on appeal in Clinton Landfill Inc. v. IEPA, PCB 15-60.¹ CLI appeals Modification No. 52 on the grounds that the permit modification made in Modification No. 47 is arbitrary, capricious, unreasonable, unlawful, and beyond the regulatory authority of the Agency. 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,

¹ This appeal also relates to Clinton Landfill Inc. v. IEPA, PCB 15-76, 15-111, 15-113, and 15-166, which are all consolidated with PCB 15-60, and PCB 15-195, which is not yet consolidated. CLI states that it “will be filing a motion requesting that the Board consolidate this case with PCB 15-60 shortly.” Pet. at 1.


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 CLI has waived until October 15, 2015 (*see* 35 Ill. Adm. Code 101.308). Unless CLI waives the decision deadline further into the future, if the Board fails to take final action by that date, CLI "may deem the permit issued." 415 ILCS 5/40(a)(2) (2012). The Board has a regularly scheduled open meeting set for October 15, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 4, 2015, which is the 30th day 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).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 21, 2015, by a vote of 5 to 0.



John T. Therriault, Clerk
Illinois Pollution Control Board