

ILLINOIS POLLUTION CONTROL BOARD

July 9, 2015

CLINTON LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 15-60, PCB 15-76,
)	PCB 15-111, PCB 15-113,
ILLINOIS ENVIRONMENTAL)	PCB 15-166, PCB 15-194,
PROTECTION AGENCY,)	PCB 15-195, PCB 15-207
)	(Permit Appeal - Land)
Respondent.)	(Consolidated)

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

On June 17, 2015, Clinton Landfill Inc. (CLI) timely filed a petition (Pet.) asking the Board to review a June 12, 2015 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns CLI's landfill No. 3 (the landfill) located in Clinton, DeWitt County. On June 29, 2015, CLI and the Agency filed a joint motion to consolidate PCB 15-207 with PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, 15-194, and PCB 15-195 along with a joint motion to designate the record of PCB 15-207 (Mot.). Also on June 29, the parties filed a joint motion to extend stay (Stay), requesting that the Board extend the stay until July 31, 2015. For the reasons below, the Board accepts the petition for review, grants the joint motion to consolidate, designates the record, and extends the stay as requested.

PETITION FOR REVIEW

Under the Environmental Protection Act (415 ILCS 5 (2014)), 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) (2014); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency issued permit Modification No. 54 to CLI. That modification approves the alternate source demonstration for 3rd quarter 2014 groundwater exceedances and the establishment of intrawell Applicable Groundwater Quality Standards or "AGQS" values for these parameters, which were not the subject of Modification No. 47. Pet. Exh. B at 4. CLI does not seek review of that portion of Modification No. 54. However, Modification No. 54 also contains the same language as Modification No. 47, which is on appeal in Clinton Landfill Inc. v. IEPA, PCB 15-60. CLI appeals Modification No. 54 on the grounds that the 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) (2014); *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) (2014)), which CLI has waived until November 19, 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) (2014). The Board has a regularly scheduled open meeting set for November 19, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 17, 2015, 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).

JOINT MOTION TO CONSOLIDATE

On August 28, 2014, CLI timely filed a petition for review of a permit determination made by the Agency on July 31, 2014. The Board accepted that petition for review in an order dated September 4, 2014. Since that time, CLI has filed a number of subsequent petitions for review, all regarding the same landfill, landfill development permit, and modification of that permit. *See* Clinton Landfill, Inc. v. IEPA, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194, PCB 15-195 (consol.) (June 4, 2015). Most recently, on June 4, 2015, the Board consolidated PCB 15-194 and PCB 15-195 with the already consolidated cases and designated the record in the consolidated cases as the record in PCB 15-194 and PCB 15-195. *Id.* On June 29, 2015, the parties filed a joint motion to consolidate PCB 15-207 with the already consolidated docket and to designate the record in PCB 15-207. In the joint motion, the parties state that "precisely the same issues are being reviewed in these cases." Mot. at 3.

The Board's procedural rules allow for consolidating proceedings. Section 101.406 of those rules provides:

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. Adm. Code 101.406.

The parties are the same in Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194 , PCB 15-195 (consol.), and PCB 15-207. The case is a permit appeal challenging permit determinations made by the Agency and is related to CLI's permit for its Clinton, DeWitt County site. Further, the case concerns the same provisions of CLI's permit, modified in Permit Modification No. 47 of Permit No. 2005-070-LF, but reiterated in Permit Modification Nos. 48, 49, 50, 51, 52, 53, and 54. CLI's burden of proof is the same in this case as it is in the already consolidated cases. Further, PCB 15-207 shares a decision deadline of November 19, 2015 with the already consolidated permit appeals.

For the reasons stated above, the Board finds that consolidating the permit appeals for purposes of hearing is in the interest of convenient, expeditious, and complete determinations of the claims. The Board also finds that such consolidation would not cause material prejudice to either party, and therefore the Board grants the parties' joint motion to consolidate PCB 15-207 with the already consolidated Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, 15-194 and PCB 15-195 (consol.) for hearing and decision. Future filings must reflect the amended caption of this order.

JOINT MOTION TO DESIGNATE THE RECORD

With the June 29, 2015 motion to consolidate in PCB 15-207, the parties also included a motion to designate the record stating, "CLI and the Agency have agreed that the Administrative Record filed in PCB 15-60, as supplemented to date and in the future, should stand as the Administrative Record relative to the instant case." Mot. at 3. The parties agreed that the record should be supplemented to include Permit Modification No. 54. *Id.* The Board grants the parties' motion to designate the record.

JOINT MOTION TO EXTEND STAY

In the June 29, 2015 joint motion to extend the stay, the parties state that they continue to conduct settlement negotiations which, if successfully concluded, would most likely result in CLI's dismissal of the consolidated case. Stay at 1. They continue that, "[b]y July 31, 2015, the parties reasonably anticipate that settlement negotiations will most likely have concluded, either successfully or not." *Id.* at 2.

Section 101.514(a) of the Board's procedural rules provides:

Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. 35 Ill. Adm. Code 101.514(a).

In addition, the Board's rules demand that the parties file a status report at the close of any stay granted by the Board. 35 Ill. Adm. Code 101.514(b).

CLI and the Agency have indicated that they are engaged in settlement discussions that may lead to dismissal of the consolidated cases. The parties have also waived the decision deadline to accommodate the requested stay in the already consolidated docket. Therefore, the Board grants the joint motion to stay the cases consolidated, above. The stay will be lifted on July 31, 2015, at which time the parties must provide the Board with a status report.

CONCLUSION

For the reasons set forth above, the Board accepts CLI's petition for review. The parties' joint motion to consolidate is granted and future filings must reflect the amended caption of this order. The Board grants the parties' joint motion to designate the record filed in Clinton Landfill, Inc. v. IEPA, PCB 15-60, as the administrative record for the consolidated docket. Finally, the Board grants the motion to extend stay, and extends the stay until July 31, 2015.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 9, 2015 by a vote of 5 to 0.



John T. Therriault, Clerk
Illinois Pollution Control Board