ILLINOIS POLLUTION CONTROL BOARD
November 17, 2016

BRICKYARD DISPOSAL & RECYCLING, INC.,	)	
Petitioner,	)	
v.	)	PCB 16-66
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

Brickyard Disposal & Recycling, Inc. (Brickyard) applied to the Illinois Environmental Protection Agency (Agency) to modify the permit for its municipal solid waste landfill at 601 Brickyard Road, Danville, Vermilion County. Brickyard's landfill has two units, Unit 1 and Unit 2, with a wedge of clean fill separating the units. Brickyard seeks to dispose waste in the wedge area, which requires a permit modification. The Agency determined that the application was incomplete because it did not include (1) a new local siting approval from the Vermilion County Board and (2) a new groundwater impact assessment (GIA). Brickyard asks the Board to review this Agency determination.

Brickyard moves for summary judgment (Brickyard Mot.) on both "incompleteness" grounds, but the Agency moves for summary judgment (Agency Mot.) only as to the first ground. Each party filed a response to the other's motion (Brickyard Resp. and Agency Resp.), and a reply (Brickyard Reply and Agency Reply). The Board grants summary judgment for Brickyard on both grounds. The Board finds that Brickyard's proposal to fill the wedge area does not require new local siting approval because it is not a "new pollution control facility." Accordingly, the Board denies the Agency's motion for summary judgment. Also, the Board finds Brickyard's GIA submittal complete. The Board, therefore, directs the Agency to perform a technical review of Brickyard's permit application.

AGENCY RECORD

As required by 35 Ill. Adm. Code 105.116(a), the Agency filed the record of its determination. Brickyard objects to the contents of the record, claiming it does not comply with Board procedural rules. Brickyard Mot. at 11. For example, Brickyard notes that the index identifies broad categories, one of which contains 42,754 pages. *Id*. at 12. Brickyard contends that the format of the record denies it the opportunity to effectively address the issues on appeal. *Id.* at 13. Brickyard requests that the Board order the Agency to refile its record and include only documents the Agency relied on to make its determination. *Id.*

The Agency states that its record complies with the procedural rules and contains all of the information the Agency has or should have considered as part of its permit application review. Agency Resp. at 24-26. Brickyard responds that, by not tethering documents in the record to any specified rationale for the Agency's decision, the Agency is able to come up with new arguments on review. Brickyard Reply at 7. The Agency also contends that it is not required to file the record chronologically, but can instead arrange the record categorically. Agency Resp. at 26. The Agency further argues that Brickyard has not been prejudiced by the record. *Id.* at 29.

The Board requires records to be organized chronologically with an index listing individual documents identifying beginning and ending page numbers for each document. 35 Ill. Adm. Code 105.116(b). The Agency produced 47,578 pages, but the index has only eleven line items. Six of the line items are individual documents and comprise ten pages. The remaining five line items (comprising 47,568 pages) are identified as permit logs for each of five permits and "related documents and drawings." Under the Board's rules, it is acceptable to arrange the record by category. However, the Agency's index does not comply with the Board's requirement to list individual documents and page ranges. Within each of the five line items described as permit logs and related documents and drawings, the Agency was required to list individual documents and page ranges.

The Board struggled with the format of the Agency's record and had concerns similar to Brickyard's. However, at this stage of the proceeding, the Board accepts the Agency's record as filed. The Board therefore denies Brickyard's request to order the Agency to refile the record.

FACTS

The parties stipulated to a joint statement of facts (Stip.). The material facts are not disputed.

Landfill

Brickyard owns and operates a landfill in Vermilion County. Stip. at 1. On June 1, 1981, the Agency issued a development permit for the landfill which consisted of a 293-acre site with waste disposal on 152 acres under a single landform with a maximum height of 675 feet. *Id.* at 2. On April 27, 1987, the Agency issued a supplemental permit dividing the landfill into two units: Unit 1 to the south and Unit 2 to the north. *Id.*

Siting

In 1991, Brickyard requested that the Vermilion County Board approve siting to expand the volume of the landfill. Stip. at 2. Brickyard sought a 21-acre lateral expansion and a 40-foot vertical expansion. *Id.* The expansion was depicted in a diagram. *Id.*, citing R47355 (Agency's record cited as R___). The siting request also included a real estate analysis describing the expansion as a 40-foot vertical increase over a 90-acre portion of the 293-acre facility, raising the maximum height from 675 to 715 feet above sea level. *Id.*

In 1992, the Vermilion County Board passed a resolution approving "a lateral and vertical expansion of permitted landfill boundaries, within existing property boundaries." Stip. at 2; R47498.

Permitting

Following siting approval, Brickyard submitted to the Agency a permit application to develop the landfill. R00036. The Agency issued the permit in October 1992 and approved landfill contours within the approval granted by the Vermilion County Board. Stip. at 2-3.

In 1994, Brickyard applied to the Agency for a permit to continue to develop portions of Unit 2. R05139. As part of its application, Brickyard proposed having clean fill between Unit 1 and Unit 2. R05140. The Agency issued the resulting permit in 1995. Stip. at 3; R04879. The permit describes the landfill as having "a footprint area of approximately 152 acres within the 293 acre site" and a final peak elevation of 715 feet above sea level. *Id.* The permit mentions the area between Unit 1 and Unit 2 in the monitoring provisions and states that "a separate berm shall be maintained between Unit I and Unit II which will allow independent groundwater monitoring." Stip. at 3; R04898. This area between Unit 1 and Unit 2 is known as the "wedge." R05253.

In 2015, Brickyard submitted the permit application at issue in this appeal. Stip. at 3. Brickyard proposes to fill the wedge area with municipal solid waste instead of clean fill. *Id*. The application describes technical aspects of the wedge redesign including liner system and leachate collection. Brickyard calculates that the redesign will increase waste volume over the current design by 1,010,000 cubic yards, and life expectancy of the landfill by approximately 5 years. Stip. at 3.

The Agency determined that this permit application was incomplete and informed Brickyard of the deficiencies in a September 24, 2015 letter. Stip. at 3. Brickyard responded to the letter by providing additional information. *Id*. at 4. However, in its November 25, 2015 final determination letter, the Agency maintained the same two reasons for finding Brickyard's application incomplete. *Id.* The Agency states that, first, filling the wedge area is an expansion constituting a "new pollution control facility" and Brickyard did not submit a local siting approval for the new facility. R47531. Second, Brickyard did not submit a new GIA required for the expansion. *Id.*

DISCUSSION

Brickyard moves for summary judgment on both of the Agency's grounds for determining that the permit application was incomplete: no new local siting approval for disposing waste in the wedge area, which is a "new pollution control facility"; and no new GIA for disposal in the wedge area. The Agency moves for summary judgment only on the first ground.

Below, the Board sets forth the applicable legal background and addresses procedural challenges by each party. The Board then explains that waste disposal in the wedge area is not a

"new pollution control facility" requiring new local siting approval. Lastly, the Board explains that the previously submitted GIA and GIA evaluation in the application complete Brickyard's application.

Summary Judgment Standard

Summary judgment is appropriate when the record, including pleadings, shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b). This is the same standard used in trial court proceedings in Illinois. IEPA and Village of New Lenox v. PCB, 386 Ill. App. 3d 375, 391 (3rd Dist. 2008). As noted by the Agency, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. Agency Resp. at 13; Continental Casualty Co. v. Coregis Insurance Co., 316 Ill. App. 3d 1052, 1062 (1st Dist. 2000) The Board therefore considers the pleadings and reviews the permit record to determine whether there is a genuine issue as to any material fact.

Burden of Proof in Permit Appeal

This case is an appeal brought under Section 40 of the Environmental Protection Act (Act) (415 ILCS 5/40 (2014)). In these cases, the petitioner must prove that operating its facility pursuant to the requested permit would not violate the Act or Board regulations. Browning-Ferris Industries of Illinois, Inc. v. PCB, 179 Ill. App. 3d 598 (2nd Dist. 1989). The burden of proof is on the petitioner. 415 ILCS 5/40(a)(1) (2014). This case is not a traditional permit appeal, however, in that the Agency has rejected Brickyard's application as incomplete before determining its technical merits. Atkinson Landfill Company v. IEPA, PCB 13-8, slip op. at 10 (June 20, 2013). Therefore, if Brickyard proves that a complete application has been made, the Board will remand the application to the Agency for a technical determination. *See id*. at 12.

Sufficiency of Agency Denial Letter

If the Agency denies a permit under Section 39(a) of the Act, the Agency must set forth detailed statements as to why the application was denied. 415 ILCS 5/39(a) (2014). Brickyard contends that the Agency's decision letter is devoid of any specific reason why issuing the permit would violate the Act. Brickyard Mot. at 10, 13; Brickyard Resp. at 8.

The Board finds the Agency's determination letter complies with Section 39(a). As for the first denial ground, the letter states that the proposed landfill modification meets the Act's definition of a "new pollution control facility" at 415 ILCS 5/3.330(b)(2) (2014) because it includes an expansion beyond the boundaries of the currently permitted facility. R47531. Siting approval therefore is required by Section 39(c) of the Act. *Id.* As for the second denial ground, the letter states that a new GIA is required by 35 Ill. Adm. Code 811.317(a)(1) representing the landfill's redesign, including minimum design standards for slope configuration, cover, liner, and leachate drainage and collection system. *Id.* The letter continues that this GIA requires a revised contaminant transport model of groundwater flow under the expansion, pursuant to 35 Ill. Adm.

Code 811.317(c)(1). *Id.* The letter's denial grounds specify the provisions of the Act and regulations that would be violated if the requested permit were issued, and the Agency's reasons.

Summary Judgment Burden

The Agency contends that by not pointing to any document in the record to support its facts, Brickyard has not met its burden for summary judgment. Agency Resp. at 1, 6. In doing so, Brickyard shifted the burden to the Board, which it cannot do. *Id.* at 7, citing Concerned Citizens of Williamson County v. Bill Kibler Dev. Corp., PCB 92-204 (April 8, 1993). The Agency further argues that it is not required to present any genuine issue of material fact because Brickyard has not met its initial burden. Agency Resp. at 11, citing City of Quincy v. IEPA, PCB 08-86, slip op. at 23 (June 17, 2010). The Agency concludes that it is still entitled to summary judgment because any conflict between material facts is "purely illusory." Agency Resp. at 12.

The Board disagrees with the Agency's procedural assessment of Brickyard's motion for summary judgment, and finds that Brickyard adequately cites the record to support its motion. Further, the parties stipulated to a joint statement of facts. The Board finds no genuine issue of material fact and that the parties' dispute is over questions of how the Act and Board regulations apply to undisputed facts. The Board therefore decides the legal questions presented, *i.e.*, whether Brickyard's proposed redesign requires new local siting approval and a new GIA.

Siting Approval

Section 39(c) of the Act provides that a local siting authority, in this case the Vermilion County Board, must approve the location of a new pollution control facility before the Agency can issue a permit for the facility. 415 ILCS 5/39(c) (2014). When assessing a permit application, the Agency must determine whether the permit applicant obtained local siting approval for the proposed facility. *See* Atkinson Landfill Company v. IEPA, PCB 13-8, slip op. at 8 (June 20, 2013). Here, the Agency determined that filling the wedge area with waste is an expansion constituting a "new pollution control facility" and Brickyard did not submit proof of local siting approval for the new facility. Brickyard argues that new local siting approval is unnecessary because it does not seek to permit a new pollution control facility. Brickyard Mot. at 13. The question before the Board, therefore, is whether Brickyard is correct that the Agency erred in stating the permit application is incomplete for lack of siting. After fully briefing this question before the Board, the parties agree that summary judgment is appropriate. Brickyard Reply at 2; Agency Reply at 2.

The Agency makes three arguments to support its decision that without new siting approval, Brickyard's permit application is incomplete. Agency Mot. at 10. First, Brickyard did not acquire local siting approval. *Id.* at 11. Second, the 1992 local siting approval is invalid because Brickyard failed to comply with notice requirements. *Id.* at 18. Third, the 1992 siting approval is not broad enough to cover filling the wedge with waste. *Id.* at 20.

"New Pollution Control Facility"

The Act's definition of "new pollution control facility" includes new facilities as well as expansions of existing facilities. 415 ILCS 5/3.330(b) (2014). Quoting the definition, the parties dispute whether the wedge is an "expansion beyond the boundary of a currently permitted facility." 415 ILCS 5/3.330(b)(2) (2014). Brickyard is a currently permitted facility having received its first permit in 1972 and subsequent permit modifications. The Agency determined that because the current permit allows only clean fill in the wedge area, Brickyard's proposal to fill the wedge with waste creates a "new pollution control facility" requiring local siting approval. Agency Mot. at 5-6. Brickyard contends it received that approval in 1992 when the Vermilion County Board granted siting for a 40-foot increase in height over 90 acres of the landfill. Brickyard Resp. at 15.

Illinois courts and the Board previously interpreted whether an expansion at an existing landfill goes beyond the boundary of the permitted facility so as to be a "new pollution control facility." The parties argue over the applicability of three decisions, two by the courts (M.I.G. and Bi-State) and one by the Board (Waste Management). These decisions turn primarily on answering two questions: (1) does the landfill's expansion go beyond established boundaries; and (2) are the boundaries set by permit or local siting approval?

In M.I.G. Investments, Inc. v. IEPA, the Illinois Supreme Court held that increasing a landfill's height beyond permitted boundaries was an expansion. 122 Ill. 2d 392, 400 (1988). The Court rejected the argument that "boundary" means only the lateral extent or surface measurement of the landfill and not the height of the landfill. *Id.* at 399-400. The Court noted that the vertical expansion would increase the landfill's capacity, which might impact the surrounding community and should go through local siting. *Id.* at 401.

In Bi-State Disposal Inc. v. IEPA, a mine cut bisecting a landfill initially was permitted by the Agency to be filled with waste. 203 Ill. App. 3d 1023, 1025 (5th Dist. 1990). In a subsequent permit, the mine cut was removed from use, narrowing the boundary of the landfill. *Id.* The operator later sought to modify the permit to fill the mine cut with waste. *Id.* Citing M.I.G. Investments, the Appellate Court found that re-opening the mine cut would expand the permitted boundaries and therefore required local siting approval as a new pollution control facility. *Id.* at 1028. The court also observed that re-opening the mine cut would increase landfill capacity. *Id.* at 1027.

The General Assembly amended the Act in 1981 to give county and municipal governments the authority to decide whether to grant requests to locate pollution control facilities within their areas. P.A. 82–682 (eff. Nov. 12, 1981). In M.I.G. and Bi-State, there were no siting approvals establishing boundaries. In each of those cases, the expansion extended beyond the boundaries of the permit, triggering local siting review for the first time. Here, the Vermilion County Board approved siting for the landfill in 1992. Stip. at 2. The siting proposal did not include a wedge area separating Units 1 and 2. Rather, topographical maps showed Units 1 and 2 next to each other. *Id.* The County Board approved a 21-acre lateral and 50-foot vertical expansion of permitted landfill boundaries. *Id.* The Board finds that filling the wedge with waste would not extend waste beyond the boundaries set by the County Board.

The facts of Waste Management of Illinois, Inc. v. IEPA are more like this case than M.I.G. or Bi-State. In Waste Management, a county board approved siting with maximum elevation and lateral boundaries, but without setting three-dimensional contours for the landfill mound. PCB 94-153, slip op. at 3 (July 21, 1994). A subsequent Agency permit set these contours. *Id.* The operator later proposed to reconfigure the contours, higher in some areas, lower in others. All of the reconfigured contours would be within the local siting approval's boundaries, but some of them would extend beyond the permit's contours. *Id.* As in this case, the Agency argued that its permitted boundaries controlled. *Id.* at 4. The Board found, however, that new local siting approval was not required. Because the redesign fell within boundaries set by the local siting authority, there was no expansion. *Id*. at 6.

The Agency emphasizes that, with Brickyard's permit application, waste volume and landfill life expectancy both will increase. Agency Resp. at 9; Agency Reply at 3-4. However, there can be no "new pollution control facility" under Section 3.330(b)(2) absent an expansion beyond the boundary of the currently permitted facility. The courts in M.I.G. and Bi-State stressed how the redesign would impact siting criteria, as further support for requiring initial local siting approval, but only after finding that there was an expansion beyond the applicable boundary. Likewise, the Board in Waste Management stressed how the redesign would not impact siting criteria, as further support for not requiring additional local siting approval, but only after the Board found that no expansion went beyond the applicable boundary.

The Board's decision in Saline County Landfill, Inc. v. IEPA, PCB 02-108 (May 16, 2002), is also of no aid to the Agency. The applicant there sought a development permit for a landfill expansion differing from the landfill expansion that received local siting approval. Specifically, the local government approved siting for a landfill expansion that included a berm of clean soil separating the expansion from an old waste unit. Saline County, PCB 02-108, slip op. at 4-5. Before the Agency, however, the applicant requested a permit without a separation berm. *Id.* at 6. The Board found it significant that the berm was designed to allow the earlier detection of contaminants from, and closure of, the old waste unit. *Id.* at 16. The Board affirmed the Agency's permit denial for lack of siting approval to build the expansion without the berm required by the local government. *Id.* at 19. The facts in this case do not fit that scenario.

The Agency contends that nothing in Section 3.330(b)(2) limits the term "boundary" to the external dimensions of the landfill. Agency Reply at 9. Limiting expansions to only those that expand property boundaries or final heights would, according to the Agency, give siting authorities no voice in alterations that impact the scope and nature of a facility. *Id.* at 8. Here, however, removing the wedge requirement from the permit poses no inconsistency with the Vermilion County Board's siting approval. As noted by Brickyard, the volumetric capacity of the landfill was defined by the County by the dimension of the landform, not by cubic yards of waste. Brickyard Reply at 11. The Board agrees with the Agency that this does not give Brickyard a "blank check" from the County Board. Agency Reply at 10-11. However, a waste-free wedge was never required by the County. The County would have had no reason to expect anything but waste to be in what only later the Agency would delineate as a non-waste wedge.

There is no sense in asking that the County now apply the siting criteria to having waste in the wedge area. It already did that in 1992.

The Agency states that Brickyard's 1995 permit directly addresses the wedge area, requiring that a "separate berm shall be maintained" between Unit 1 and Unit 2. Agency Resp. at 10. Thus, disposing waste in the wedge area falls outside of the permitted waste boundaries. *Id.* According to the Agency, Section 3.330(b)(2) of the Act refers to a "permitted" facility boundary instead of a "sited" facility boundary because the Agency's expertise is necessary in determining whether a facility constitutes a "new pollution control facility." *Id.* at 18; Agency Reply at 5. The Act's definition of "new pollution control facility" refers to an expansion beyond "the boundary of a currently permitted facility," not "the currently permitted boundary." 415 ILCS 5/3.330(b)(2) (2014). The waste-free wedge resulted from the Agency's permitting, not the Vermilion County Board's siting approval. The boundaries set by the County encompass a waste-filled wedge. The Agency cannot through a permit condition retroactively narrow the siting boundaries approved by the County Board. Because filling the wedge with waste would not expand the landfill beyond the boundaries already approved by the County, the Board finds that Brickyard does not propose a "new pollution control facility" and therefore is not required to seek new local siting approval.

Notice of 1992 Siting Application

The Agency argues that Brickyard cannot rely on the 1992 siting approval by the Vermilion County Board because Brickyard, in 1991, failed to comply with public notice requirements, invalidating the County Board's approval. Agency Mot. at 18. Brickyard contends that this argument was not part of the Agency's incompleteness determination. Brickyard Reply at 4. The Agency responds that this argument is an alternative argument demonstrating why Brickyard's siting approval was deficient. Agency Reply at 13.

Section 39(a)(iv) of the Act requires the Agency to give specific reasons why the permit would violate the Act or regulations. 415 ILCS 5/39(a)(iv) (2014). The determination letter contains these specific reasons that frame the scope of the appeal. Chicago Coke Co. v. IEPA, PCB 10-75, slip op. at 8 (Dec. 20, 2012). The Illinois Supreme Court has held that, in denying a permit, the Agency must specify reasons for the denial. EPA v. PCB, 86 Ill. 2d 390, 405 (1981). The Agency is precluded from raising any reason before the Board that was not a part of the denial. *Id.* The argument that the Vermilion County Board's siting approval is invalid because of a notice violation is not in the determination letter, and the record on the Agency's determination provides no support for this position. The Agency therefore cannot raise this notice argument now.

Even if the Board considers this argument, the Agency would not prevail. Section 39.2(b) of the Act requires an applicant for local siting approval to prepare a notice identifying aspects of the application including the date when the request will be submitted. 415 ILCS 5/39.2(b) (2014). This notice must be published in a newspaper before the siting request is filed with the local siting authority. *Id.* In the Agency's view, Brickyard's newspaper publication stated that the request would be submitted on September 20, 1991, but in fact the application was

submitted on September 18, 1991. Agency Mot. at 19. Therefore, the 1992 siting approval is invalid because the request was not submitted on the date stated in the newspaper notice. *Id.*

Any third-party appeal of the Vermilion County Board's siting decision was required to have been filed within 35 days after the February 11, 1992 approval. Neither the County nor the Agency, nor any other party, challenged Brickyard's notice. Even if the Board had jurisdiction to entertain a challenge to siting granted almost 25 years ago, the Board finds that the County Board's siting approval was not invalid because of improper notice. The date on Brickyard's cover letter is not necessarily the date that the siting request was submitted to the County. The application does not otherwise include any date stamp. While Brickyard states in its petition that the siting application was submitted on September 18, 1991, no document in the record informs us that the request was received on that date. Further, the Agency, in issuing Brickyard's 1994 permit and subsequent permits, accepted the local siting approval. The Board finds that the 1992 siting approval is not invalid due to improper notice.

Scope of 1992 Siting Approval

The Agency argues that, in 1992, the Vermilion County Board approved siting to vertically expand the landfill from 675 feet above sea level to 715 feet, but that this approval does not include the portion of the wedge falling below 675 feet. Agency Mot. at 20-22. This lower portion of the wedge, therefore, is not within the scope of the 1992 siting approval. *Id.*

The Agency's determination letter did not specify, as a denial ground, the lower portion of the wedge being beyond the scope of the 1992 siting approval. The Agency therefore cannot argue this now. *See* EPA v. PCB, 86 Ill. 2d at 405. However, if the Board were to consider this argument, it would fail.

Brickyard's local siting request sought approval for a volumetric expansion. Specifically, Brickyard's siting request sought a 40-foot vertical increase, raising the final height from 675 feet to 715 feet above sea level. Stip. at 2. The landfill was already in place at the time of Brickyard's siting request, and the local siting decision approved an expansion of the existing permitted landfill boundaries. As discussed above, the 1992 siting approval did not require that clean fill be placed in the wedge area. The County knew nothing of a non-waste wedge and did not exclude the lower portion of one from its siting approval. Because the lower portion of the wedge falls within the boundaries of the 1992 siting approval, Brickyard is not required to seek new local siting approval.

Board Finding

The Board finds that the waste-filled wedge is not a "new pollution control facility" and therefore new local siting approval is not required. Accordingly, the Agency erred in denying Brickyard's permit application as incomplete for lack of new siting approval.

Groundwater Impact Assessment

The Agency's second ground for denying the application as incomplete was that Brickyard did not provide a new or updated GIA, including approved contaminant transport modeling. R47531. The Agency's denial letter cites 35 Ill. Adm. Code 811.317(a)(1), (c)(1) to support this ground. Section 811.317 generally requires a landfill operator to assess impacts of leachate seeping from the unit. Subsection (a)(1) requires the operator to estimate the amount of seepage. Subsection (c)(1) addresses the supporting documents required for the contaminant transport model. Brickyard asserts that a new GIA is not required because it already performed one for Unit 2. Brickyard Mot. at 20-21. Filling the wedge with waste would continue to develop Unit 2 and is covered by the prior GIA. *Id.*

It is undisputed that Brickyard applied for a permit modification that would allow approximately one million extra cubic yards of waste. Stip. At 3. The Board's rules define a "new unit" as one whose maximum design capacity is increased after September 18, 1990. 35 Ill. Adm. Code 810.103. The Board agrees with the Agency that Brickyard's application seeks to increase Unit 2's maximum design capacity by approximately one million cubic yards. Therefore, Brickyard proposes a "new unit." Agency Resp. at 14-15. Having found that increasing Unit 2's maximum design capacity would create a "new unit," the Board need not decide whether filling the wedge with waste would also constitute a "lateral expansion." *See* 35 Ill. Adm. Code 810.103, 814.302(e)(3).

A "new unit" at an existing facility is subject to 35 Ill. Adm. Code 814, which requires compliance with 35 Ill. Adm. Code 811. *See* 35 Ill. Adm. Code 810.103 ("Board note" to "new unit" definition). As noted above, Sections 811.317(a)(1) and (c)(1) require new units to have a GIA, including contaminant transport modeling. The Board agrees with the Agency that Brickyard is subject to these requirements. Brickyard's permit application does not include a GIA, but rather includes a GIA Evaluation. R47137. Brickyard summarizes in its application that Hydrologic Evaluation of Landfill Performance (HELP) modeling showed no buildup of leachate head on the proposed slope, and that that leachate head in Unit 2 would not be affected by adding municipal solid waste to the proposed wedge. R47003. Based on the HELP modeling, Brickyard proposed that there would be no impact on groundwater as a result of filling the wedge with waste, and that no change in the design and operation of the liner and leachate collection system was required. R47137, R47145. As a result, it was not necessary to revise the previously submitted GIA already in the Agency's possession. R47002-3.

The Agency contends that a genuine issue of material fact exists because the parties dispute whether the GIA is sufficient to accommodate filling the wedge with waste. Agency Reply at 24, fn. 6. The Agency determination letter merely states that a new or updated GIA, with approved contaminant transport model, is required for the application to be complete. The Agency makes no determination as to the technical sufficiency of the prior GIA or GIA Evaluation in the application. The Board finds that the Agency erred in determining that the application was incomplete without a new GIA. Brickyard's previously submitted GIA for Unit 2, which includes a contaminant transport model, together with the GIA Evaluation in the application, completes this requirement. It is therefore time for the Agency to review Brickyard's GIA and GIA Evaluation, including HELP modeling, and determine if it is

technically sufficient. The Board makes no determination at this time on the technical sufficiency of Brickyard's application.

CONCLUSION

The Agency denied Brickyard's permit application on two grounds: lack of local siting approval for a "new pollution control facility"; and lack of a GIA with an approved contaminant transport model. On the siting ground, both Brickyard and the Agency moved for summary judgment. On the GIA ground, Brickyard moved for summary judgment; the Agency did not but opposed Brickyard's motion.

The Act does not require Brickyard to obtain new local siting approval. Because the wedge area does not extend beyond the boundaries of the Vermilion County Board's 1992 siting approval, it is not a new pollution control facility. The Board finds that there are no genuine issues of material fact on the siting ground and that Brickyard is entitled to judgment as a matter of law. Accordingly, the Board grants Brickyard's motion for summary judgement and denies the Agency's motion on this ground.

Brickyard's proposal would create a "new unit" because of the uncontested fact that filling the wedge with waste would require increasing Unit 2's maximum design capacity. The operator of a new unit must perform a GIA. Finding no genuine issue of material fact on this ground, the Board concludes that Brickyard's GIA Evaluation and existing GIA complete Brickyard's permit application. The Board grants Brickyard's motion for summary judgment on this ground, and directs the Agency to review the technical merits of Brickyard's application.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2014); see also 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statue, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; see also 35 Ill. Adm. Code 101.902, 102.700, and 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 17, 2016, by a vote of 5-0.

John T. Therriault, Clerk
Illinois Pollution Control Board