No. 124241

IN THE
SUPREME COURT OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Petitioner, v. ILLINOIS POLLUTION CONTROL BOARD and BRICKYARD DISPOSAL & RECYCLING, INC., Respondents.	)	Petition for Leave to Appeal from an Opinion of the Appellate Court of Illinois, Fourth Judicial District, No. 4-17-0144 There Heard on Administrative Review of an Order of the Illinois Pollution Control Board, No. 16-66.

PETITION FOR LEAVE TO APPEAL

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PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois Supreme Court Rule 315, the Illinois Environmental Protection Agency (Agency) petitions for leave to appeal from a decision of the Illinois Appellate Court, Fourth Judicial District. At issue is section 39(c) of the Environmental Protection Act, 415 ILCS 5/39(c) (2016). It provides, with exceptions not relevant here, that the Agency shall not issue a permit for the development of a "new pollution control facility" unless the applicant submits proof that the location of the facility has been approved by the local government. A "new pollution control facility" is defined by section 3.330(b) of the Act as (1) a facility that is initially permitted for development or construction after July 1, 1981, (2) an area of expansion beyond the boundary of a currently permitted pollution control facility, or (3) a permitted facility seeking to process, for the first time, special or hazardous waste. 415 ILCS 5/3.330(b) (2016).

Brickyard Disposal and Recycling, Inc. filed a permit application with the Agency to place approximately 1 million additional cubic yards of waste into a wedge-shaped area of its Vermilion County landfill facility that was not permitted to accept waste. The change was designed to extend the operational life of the Brickyard facility by six years. This area, which the parties have referred to as "the wedge," was once permitted to accept waste, but the former permit was modified by Brickyard to establish the wedge as a buffer between two of its waste units. Brickyard argued that because the former permit had

allowed waste to be placed into this area, and because Vermilion County had formerly granted approval to place waste at the site up to a height of 715 feet above sea level, there was no need for Brickyard to secure new local approval because the wedge did not exceed that height.

The Agency rejected Brickyard's application as incomplete because the proposed expansion would create a new pollution control facility within the meaning of section 3.330(b)(2) for which Brickyard had not secured local approval from the Vermilion County Board. This expansion would constitute a new pollution control facility because Brickyard was proposing to place waste into an area beyond the facility's currently permitted waste boundary, adding waste volume to the facility, and extending its operational life. The Agency concluded that because this change would affect the local government's interests, approval from the Vermilion County Board was required before the Agency could process the application.

On review, the Illinois Pollution Control Board (Board) reversed. It held that the expansion proposed by Brickyard did not create a new pollution control facility because the Vermilion County Board would have had no reason to expect the proposed expansion area — *i.e.*, the volume created by filling the wedge — would remain free of waste when it initially approved allowing waste to be deposited throughout the site below 715 feet. The Agency sought direct administrative review in the appellate court.

On review, the appellate court affirmed. It held that the plain language of section 3.330(b) of the Act applies only to "facility" expansions, and not to expansion of the currently permitted waste boundaries. The court stated that when "the General Assembly said 'pollution control facility,' it meant the entire facility and not boundaries of 'waste collection.'" A10, ¶ 33. The court distinguished *M.I.G. Investments, Inc. v. Environmental Protection Agency*, 122 Ill. 2d 392 (1988), in which this Court held that local government approval was required to alter the scope of a previously permitted facility, limiting that holding to permit applications that seek to expand a landfill vertically. *Id.* at ¶ 34. The court also stated that it was not bound to follow *Bi-State Disposal, Inc. v. Environmental Protection Agency*, 203 Ill. App. 3d 1023 (5th Dist. 1990), in which the Fifth District held that local government approval was required to modify a landfill to reopen an interior "mine cut." A12, ¶¶ 36-38. According to the appellate court, *Bi-State* had "misconstrued the significance of the term 'currently permitted'" in section 3.330(b)(2) to allow it to "examine permits regarding waste collection that were issued after boundaries of the facility were set." *Id.* Brickyard's facility boundaries were set, the court concluded, because the wedge space was contained both within Brickyard's initial development permit and the Vermilion County Board's prior siting approval, allowing waste to be placed to a height of up to 715 feet. *Id.* "There is no statutory language indicating local siting approval is necessary for the inner workings of an operating pollution control facility." A14, ¶ 41.

STATEMENT REGARDING JUDGMENT AND REHEARING

The appellate court issued its decision on October 29, 2018. A1-A16. No party sought rehearing. This Court granted the Agency leave to file its petition for leave to appeal on or before March 18, 2019.

POINTS RELIED UPON IN SEEKING REVIEW

Whether a permit application filed with the Illinois Environmental Protection Agency seeking to add waste volume to an existing pollution control facility creates a "new pollution control facility" under section 39(c) of the Act, and therefore must contain proof from the current local government that the proposed expansion has been considered and approved.

STATEMENT OF FACTS

The Statutory Framework

In Illinois, all waste permitting is governed by Title X of the Act, 415 ILCS 5/39 to 40 (2016). The Act requires applicants seeking new or modified permits to apply to the Agency for approval. 415 ILCS 5/39(a) (2016). In November 1981, the General Assembly amended the Act to require local siting review and approval as a precondition to the Agency issuing any permit that establishes a "new pollution control facility." Pub. Act 82-682 (eff. Nov. 12, 1981); 415 ILCS 5/39(c) (2016); *see* 415 ILCS 5/39.2 (2016). Local siting approval for a new pollution control facility was not statutorily required prior to November 1981. A new pollution control facility is defined to include "the area of expansion beyond the boundary of a currently permitted pollution control facility." 415 ILCS 5/3.330(b) (2016).

Since the Act's 1981 amendment, the relevant unit of local government where the new pollution control facility is to be located is recognized as having "concurrent jurisdiction" with the Agency in approving such changes, subject to the criteria set out in section 39.2 of the Act. *Town & Country Utils., Inc. v. Ill. Pollution Control Bd.*, 225 Ill. 2d 103, 108 (2007); *City of Elgin v. Cty. of Cook*, 169 Ill. 2d 53, 64 (1995); *see* 415 ILCS 5/39.2(c) (2016). Section 39.2 provides that a local siting application shall be granted by the local unit of government for the creation of a new pollution control facility only if the

proposed facility meets nine discrete criteria affecting local interests. 415 ILCS 5/39.2(a) (2016). That section requires the local siting authority to hold a public hearing and issue a written decision assessing those criteria in relation to the proposed change. 415 ILCS 5/39.2(d), (e) (2016).

Under section 39 of the Act, the applicant's failure to include with its permit application necessary information, including documentation of local siting approval, is grounds for the Agency to deny the permit request. *See* 415 ILCS 5/39(a)(iii) (2016). Absent proof that an applicant has received necessary local siting approval, the tendered application is "fundamentally deficient, and must be denied as a matter of law." *Staunton Landfill, Inc. v. Ill. Envt'l Prot. Agency*, PCB 91-95, p. 4 (Mar. 26, 1992) (https://bit.ly/2HqhKlr (last visited Mar. 11, 2019)).

Under the Board's regulations, an Agency decision refusing to grant a permit application because it is incomplete is treated as a "final permit decision," 35 Ill. Admin. Code §§ 105.200, 105.204, 105.206, 105.212(b)(3), and thus triggers the applicant's statutory right to seek Board review, 415 ILCS 5/4, 5, 40(a)(1) (2016). *See Atkinson Landfill Co. v. Ill. Envt'l Prot. Agency*, PCB 13-8 (Aug. 9, 2012) (https://bit.ly/2TC4Zec (last visited Mar. 11, 2019)). Final Board orders are then subject to direct administrative review in the appellate court pursuant to section 41(a) of the Act. 415 ILCS 5/41(a) (2016); *see* PCB R. 342; Ill. Sup. Ct. R. 335.

Brickyard's Permit History

Brickyard operates a municipal solid-waste landfill in Vermilion County. PCB R. 246. In June 1981, the Agency issued a permit for the development of the landfill facility under a single "landform" with a maximum height of 675 feet above sea level. PCB R. 131, 247; EPA R. 6535.

In 1987, the Agency issued a permit allowing the site to be divided into southern and northern units, which were designated, respectively, as "Unit 1" and "Unit 2." PCB R. 247; EPA R. 6521. This permit affirmed the final elevation contours and waste boundaries set out in the 1981 permit. PCB R. 247; EPA R. 6522. Because the change did not expand the facility and create a new pollution control facility or otherwise implicate the requirements of section 39.2 of the Act, Brickyard did not need to seek local siting approval for this proposed change.

In September 1991, Brickyard submitted a written application to the county for local citing approval. PCB R. 247; EPA R. 47211-28. The request sought a "volumetric expansion of the existing landfill." PBC R. 247; EPA R. 47215. The public notice of the request stated that Brickyard was seeking an expansion that would consist of a lateral expansion of approximately 21 acres and a 40-foot vertical expansion over a portion of the currently permitted facility. PCB R. 247; EPA R. 47411. A visual depiction of the requested expansion areas was included in the request as Figure 1. PCB R. 247; EPA R.

47218 (Figure 1); *see* EPA R. 47355. The vertical expansion was generally described in the real estate analysis of the siting application as calling for "a forty foot (40') vertical increase in height of the existing facility over a 90-acre portion of the total 293-acre facility." PCB R. 247. The proposal raised the ceiling of the facility from 675 to 715 feet above sea level. *Id.*

In 1992, following the approval of local siting by the county for the lateral and vertical expansions Brickyard had requested, PCB R. 173-74; EPA R. 47498-99, the Agency granted Brickyard a permit for the expansion vertically over Units 1 and 2 from a height of 675 to 715 feet, and laterally to include the additional 21 acres within Unit 2, consistent with the permit application and the county's local siting approval. *See* PCB 247-48. The 1992 expansion was intended to allow the landfill to operate for at least 20 additional years. EPA R. 47227.

In 1995, the Agency issued an additional permit, approving further modifications requested by Brickyard in an application for significant modification. PCB R. 248; EPA R. 4296; *see* EPA R. 46986. This design incorporated a 50-foot-wide area of inert material between Unit 1 and Unit 2, creating a vertical "wedge" as an undeveloped area of the site that would not be filled with waste. *Id.*; *see* R. 4312-13. This wedge was designed to physically separate the waste contained within the two units, allowing them to

be regulated under different standards.[1] *Id.*; EPA R. 5119. As part of the modification, Brickyard proposed lowering the landfill's "base grades," modifying the excavation slopes, and reducing the thickness of the final cover. PCB R. 126-27; EPA R. 5140, 5253. Brickyard asked for these changes so that it could be "compensated" for the loss of an estimated 900,000 cubic yards of fill space for waste caused by implementing the wedge design. *Id.*; *see* EPA R. C5255. An Agency employee reviewing the permit files from the early 1990s concluded that these modifications were made as a *quid pro quo* for installing the wedge. *See* EPA R. 46989 ("Obviously, the volumetric capacity of the wedge fill was traded for lower base grades in Unit 2.").

Also in 1995, Unit 1 ceased accepting waste. *See* EPA R. 46995. Unit 2 continued to operate. *Id.*

In August 2015, Brickyard tendered to the Agency the permit-modification request at issue here. PCB R. 248; EPA R. 46993-47200. This proposal sought to eliminate the wedge design, and keep Unit 1 and Unit 2 divided only by using a thinner "separation layer and liner system." EPA R. 46997. According to Brickyard's application, replacing the inert-material design with this layer of "geocomposite" would be environmentally superior to the current site design. *Id*. The space saved would also create room for

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[1] Unit 1 of the landfill is currently regulated pursuant to 35 Ill. Admin. Code Part 814.D; Unit 2 is regulated pursuant to 35 Ill. Admin. Code Part 814.C. PCB R. 248. Creating two units allowed Brickyard to close Unit 1 under the less stringent regulation.

approximately one million additional cubic yards of waste to be disposed in the wedge space. PCB R. 248; EPA R. 46999, 47069. This would allow the facility to further extend its operational life beyond the 20 years Brickyard had previously achieved with the prior modification. *Id.*

As part of the application, Brickyard's engineering consultants created design drawings showing both an overhead and cross-sectional view of the property, as of 2014. EPA R. 47197-98. The overhead view documents the currently permitted boundaries for Units 1 and 2. *See* EPA R. 47197. The cross-section illustrates the facility's vertical waste boundaries (establishing the waste pile's permitted floor and ceiling), as well as the filled and unfilled space left in Unit 2, as it existed in 2014. *See* EPA R. 47198.

In September 2015, the Agency sent a letter to Brickyard stating that the application was incomplete for, among other reasons, lack of local siting approval from the county. PCB R. 248. In October 2015, Brickyard responded by submitting a supplemental application. PCB R. 249; EPA R. 47204-47530. Included was its 1991 siting request to the county to expand the landfill above 675 feet and the lateral expansion of Unit 2, EPA R. 47212-28, the 1992 county siting approval resolution approving that change, EPA R. 47498-99, and a 1992 certification form signed by the then-chairman of the county board, EPA R. 47501. These were the only documents submitted by Brickyard regarding local siting requests and approval with its application. Brickyard argued that its

supplemental application was complete because it was not seeking to expand the "facility boundary," and that the landform design approved by the county in 1992 was "retained permanently" by Brickyard. EPA R. 47209.

After considering Brickyard's original and supplemental materials, the Agency determined that its application was still not complete because it requested an expansion of the site creating a "new pollution control facility" under the Act. PCB R. 4; EPA R. 47531. Missing from the application was the statutorily required proof that Brickyard had secured from the county siting approval for removing the wedge and filling its space with waste. *Id*. The Agency issued a final decision pursuant to a written Incompleteness Determination. PCB R. 248-249; EPA R. 47531-32.

The Proceedings Before the Board

Brickyard sought review of the Agency's Incompleteness Determination from the Board. PCB R. 10-16; *see* 35 Ill. Admin. Code § 813.106. The parties filed cross-motions for summary judgment regarding whether Brickyard had proposed a new pollution control facility requiring proof of local siting by the county, as well as supporting briefs. PCB R. 69-92 (Brickyard); 93-181 (Agency); 187-217 (Agency response); 219-37 (Brickyard response); 255-70 (Brickyard reply); 273-99 (Agency reply). The parties subsequently agreed to certain stipulated facts. PCB R. 245-50.

In support of summary judgment, Brickyard argued to the Board that siting by the county had already occurred in 1992, consistent with its proposed permit application: "The documents presented in the permit application at issue definitively establish that Vermilion County approved a landfill design that is completely consistent with the instant application: one large landform, with waste placement inside the entirety of the landform." PCB R. 83. The Agency countered that removing the wedge design and filling it with waste would create a "new pollution control facility" under section 3.330(b) of the Act, requiring that the permit application include proof that the county had approved that volumetric expansion plan — but that Brickyard's application did not include such proof. PCB R. 187-218.

The Board issued an order granting summary judgment to Brickyard and denying the Agency's summary judgment motion. PCB R. 310. The Board determined that Brickyard's application was not incomplete because filling the wedge with waste did not render its operation a new pollution control facility that required new local siting approval. PCB R. 300, 302-03, 307-08, 310. In evaluating whether the proposed expansion constituted a new pollution control facility under the Act, the Board stated that the conclusion rests on whether the expansion goes beyond established boundaries and whether the boundaries are set by Agency permit or local siting approval. PCB R. 305.

The Board did not root its decision as to whether Brickyard sought a new pollution control facility on the currently permitted waste boundaries as established by the Agency. *Id.*; *cf.* PCB R. 306 (noting "there can be no 'NPCF' under section 3.330(b)(2) absent an expansion beyond the boundary of the currently permitted facility"). Instead, the Board specified that "filling the wedge with waste would not extend waste beyond the boundaries set by the County Board," PCB R. 305, making that the applicable boundary. It reasoned that the county had not set any volumetric limits by cubic yards or required a waste-free wedge area within the facility when it initially approved the site. PCB R. 306. According to the Board, no new proof of local siting approval was necessary because "[t]he boundaries set by the County [in 1992] encompass[ed] a waste-filled wedge," PCB R. 307, and "the County would have no reason to expect anything but waste to be in what only later the Agency would delineate as a non-waste wedge," PCB R. 306. The Board concluded: "filling the wedge with waste would not expand the landfill beyond the boundaries already approved by the County." PCB R. 307.

The Board ordered the Agency to proceed with its technical permit review but pointed out that it was not ordering the Agency to approve the permit application: "The Board makes no determination at this time on the technical sufficiency of Brickyard's application." PCB R. 310. The Agency moved for reconsideration. PCB R. 313-28. The Board denied that motion.

PCB R. 338-42. As to the new pollution control facility issue, the Board stated: "Taking the Agency's argument to its conclusion, the Agency would have the County consider whether to approve siting for waste disposal in the middle of an existing landfill under a 40-foot waste layer it already approved in 1992. This cannot be what the General Assembly intended." PCB R. 342.

The Board subsequently granted the Agency's motion to stay its permit review of Brickyard's application pending a decision on direct administrative review. *See* PCB 16-66 (Order, Apr. 12, 2017) (https://bit.ly/2JfLNia) (last visited Mar. 11, 2019)).

The Proceedings in the Appellate Court

On direct review, the appellate court affirmed the Board's decision. It stated that the parties' dispute centered on the meaning of the language in section 3.330 of the Act, "expansion beyond the boundary of a currently permitted pollution control facility." 415 ILCS 5/3.330(b)(2) (2016). A8, ¶ 28. The appellate court noted that, although Brickyard's application sought to expand the currently permitted waste boundaries at the site, it would not expand boundaries beyond those of its existing "facility," a term which the court construed as including Brickyard's entire operation. A9-A10, ¶ 33. "To read the plain language as the Agency suggests would be to change the clear intent of the General Assembly, which we will not do." *Id.*

The appellate court distinguished *M.I.G.* by noting that the boundaries at issue there were vertical, not lateral. A10-A11, ¶ 34. With regard to *Bi-State*, the appellate court concluded that it was "not bound to follow" the Fifth District because it had "misconstrued the significance of the term 'currently permitted'" to allow the Agency to examine "permits regarding waste collection that were issued after boundaries of the facility were set." A12, ¶ 38. According to the appellate court, section 3.330(b)(2) of the Act used the words "currently permitted" merely to differentiate it from the facilities governed by section 3.330(b)(1), *i.e.*, facilities that were not yet operating at the time of the permit application. *Id.* The court added that *Bi-State* was also distinguishable "on its facts" because that facility had never received local governmental siting, meaning that the Agency could only look to the facility's permits to ascertain the applicable boundaries. A13, ¶ 39.

ARGUMENT

I. This Court Should Grant Review Because of the Public Importance of the Issue Presented, and Because the Appellate Court's Decision is Inconsistent with this Court's Holding in *M.I.G.*

Since 2009, permit modifications statewide have resulted in the addition of approximately 200 million cubic yards of additional waste capacity, an increase representing approximately 20% of the State's total current available landfill volume. Ill. Envt'l Prot. Agency, ILLINOIS LANDFILL DISPOSAL CAPACITY REPORT, p. 2 (July 2018) (https://bit.ly/2QWFhAk (visited Mar. 18, 2019)). Despite this capacity growth, the State's landfills currently have a cumulative life expectancy of just 20 years. *Id.* The need to expand existing landfills will therefore continue to put pressure on operators as they attempt to deal with the ongoing problem of diminishing space.

Until the appellate court's decision in *Brickyard*, it was well established that, except for municipalities with very large populations,[2] the General Assembly intended local governments to play an important role in overseeing changes to the scope and nature of landfill facilities whenever those changes affect certain local interests. Where a permit application would create a "new pollution control facility," the Act requires local governments to consider, for example, whether the facility is necessary to accommodate the waste needs of

[2] The Act provides that local government siting does not apply "to any existing or new pollution control facility located within the corporate limits of a municipality with a population of over 1,000,000." 415 ILCS 5/39.2 (2016).

the area it is intended to serve, whether the facility design minimizes the danger to the surrounding area from fire, spills, or other operational accidents, or whether traffic patterns to or from the facility are designed as to minimize the impact on existing traffic flow. 415 ILCS 5/39.2(a) (2016). The Agency has acted as the gatekeeper of this process by reviewing permit applications and determining whether the operator's proposal would affect local interests, thus requiring local governmental approval. *See*, *e.g.*, *City of Waukegan v. Ill. E.P.A.*, 339 Ill. App. 3d 963, 976 (2d Dist. 2003). That role is necessary because there is no mechanism provided by the Act that otherwise triggers local siting review.

Assessing whether local governmental approval is needed requires the Agency to exercise its experience and expertise because it is not just the characteristics of the physical location of the facility that can trigger local siting review. As this Court has recognized, "it is clear that the legislature intended to invest local governments with the right to assess not merely the location of proposed landfills, but also the impact of alterations in the scope and nature of previously permitted landfill facilities." *M.I.G.*, 122 Ill. 2d at 400. Because permit applications are complicated, the "Agency's expertise is a necessary part of determining whether a facility constitutes a 'new pollution control facility.'" *City of Waukegan*, 339 Ill. App. 3d at 976.

But when a request to modify a permit seeks to increase the facility's cumulative waste volume, the Agency's task is clear. That is because this Court has held that any change affecting a facility's permitted waste volume, "however small," affects its scope and nature, and thus triggers the local government's interest in reviewing the proposed change to the facility. *M.I.G.*, 122 Ill. 2d at 401. It is only after local siting is granted that the Agency may issue a permit. 415 ILCS 5/39(c) (2016) ("no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the [unit of local government]").

The appellate court's decision in this case has thrown that basic understanding of the landfill expansion process into question. The appellate court here held that whether a proposed modification creates a "new pollution control facility" requiring local siting approval should not be judged by whether the modification impacts local interests or would affect the scope and nature of the existing facility as compared to the waste boundaries that are "currently permitted." 415 ILCS 5/3.330(b)(2) (2016). Instead, the court held that the controlling question is whether the modification will extend the overall boundaries of the existing "facility" beyond their current limits. A10, ¶ 33. In this case, the court also looked to the Vermilion County proceedings from 1992 as establishing the facility's vertical boundaries. *See* A15, ¶ 45. The

appellate court's holding is inconsistent not only with the plain language of the Act, which looks to the contours of the "currently permitted" facility, 415 ILCS 5/3.330(b)(2) (2016), but also with this Court's decision in *M.I.G.,* which recognized that *any* volumetric expansion of the waste beyond the facility's current permit, whether vertically or laterally, and "however small," affects local interests and triggers local governmental review. 122 Ill. 2d at 401.

The appellate court's holding also sows confusion regarding the local siting process. Under the Act, the local government's role is to approve changes proposed by an operator that will affect local interests. Under the appellate court's holding, however, the initial approval of a site by local government without conditions amounts to a waiver of further review, allowing the operator to make any further changes it wishes, so long as it stays within the confines of what the local government *initially* approved – even if those changes expand the site beyond what is "*currently* permitted," 415 ILCS 5/3.330(b)(2) (2016) (emphasis added).

In this case, for example, Brickyard argued that the landform design approved by the county in 1992 creates boundaries that are "retained permanently," *i.e.*, not subject to the county's further consideration. EPA R. 47209. Brickyard contends that Vermilion County forever forfeited any say in what happens within those boundaries, even if Brickyard proposes, decades later, to make changes to the scope and nature of the facility, even if those

changes affect the County's interests set out in section 39.2. The appellate court appears to have agreed, holding that there is no statutory language indicating local siting approval is necessary for the "inner workings" of an operating pollution control facility. A14, ¶ 41.

The appellate court's determination is in direct conflict with this Court's holding that local siting approval is necessary for "alterations in the scope and nature of previously permitted landfill facilities." *M.I.G.*, 122 Ill. 2d at 400. For, as this case illustrates where Brickyard has proposed continuing its operations for an additional five years beyond what it presented to the Vermilion County Board in 1992, the expansion of a landfill's permitted volume, either beyond the facility's boundaries or within them, necessary affects the operation's *scope*.

Because the appellate court's holding in *Brickyard* conflicts with this Court's decision in *M.I.G.*, and because it creates confusion as to the Agency's role in assessing the requirements of permit modifications and the local government's role approving siting requests, this Court should grant this petition. Without review, the process by which Illinois landfills may be expanded under the Act will remain unclear throughout the State.

II. This Court Also Should Grant Review Because the Fourth District's Opinion Creates an Acknowledged Conflict with the Fifth District's Opinion in *Bi-State*.

In addition, review should be allowed because the appellate court's

opinion creates an acknowledged split with the Fifth District. A12, ¶ 38. The Fifth District in *Bi-State* held that an "expansion" creating a "new pollution control facility" occurs not just when currently permitted facility boundaries are moved vertically or laterally outward, but also when an operator expands waste laterally inward, into an unpermitted area of the facility. 203 Ill. App. 3d at 1025, 1027. Consistent with *M.I.G.*, *Bi-State* looked to the "permit granting the plaintiff the right to operate its landfill" as establishing the relevant boundary for the determining whether a new pollution control facility will be created. *M.I.G.*, 122 Ill. 2d at 400; *see Bi-State*, 203 Ill. App. 3d at 1027 (referring to the relevant boundary as provided by permit "as of the present time.").

Although the facilities in both *M.I.G.* and *Bi-State* had not previously been subject to local siting approval, neither case suggested that a prior siting decision was relevant to the "scope and nature" analysis. There is nothing in either decision indicating that a local siting approval from, as in this case, years before, could control future proposed modifications to the Agency's permit. Such a holding is untenable because it would allow, as here, a large amount of waste capacity to be added to a landfill, extending its useful life by many years beyond what the prior local government would have anticipated.

On the contrary, looking to local government records that relate to a *former* facility expansion conflicts with the plain language of the Act that

provides that expansions beyond the "boundary of a *currently permitted*" pollution control facility is the correct boundary to consider. 415 ILCS 5/3.330(b)(2) (2016) (emphasis added). The Agency, which oversees the permit modification process statewide, is unclear how to harmonize the appellate court's new analysis with this Court's longstanding "scope and nature" analysis employed by both *M.I.G.* and *Bi-State*. This Court should therefore grant the Agency's petition to resolve this important question of law, as well as to resolve the conflict between the appellate court's decisions issued by the Fourth and Fifth Districts, as well as the Fourth District's conflict with this Court's prior decision in *M.I.G.*

CONCLUSION

For these reasons, the Illinois Environmental Protection Agency requests that this petition for leave to appeal be granted pursuant to Illinois Supreme Court Rule 315.

Respectfully submitted,

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March 18, 2019

CERTIFICATE OF COMPLIANCE

I certify that this petition conforms to the requirements of Rule 315(d) and Rule 341(a). The length of this petition, excluding the words containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the petition under Rule 342(a), is 4,994 words.

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APPENDIX

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2018 IL App (4th) 170144

NO. 4-17-0144

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 29, 2018
Carla Bender
4th District Appellate
Court, IL

THE ILLINOIS ENVIORNMENTAL PROTECTION AGENCY, Petitioner, v. THE ILLINOIS POLLUTION CONTROL BOARD and BRICKYARD DISPOSAL & RECYCLING, INC., Respondents.	))))))))	Direct Review of the Illinois Pollution Control Board PCB No. 16-66

JUSTICE KNECHT delivered the judgment of the court, with opinion
Presiding Justice Harris and Justice Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 Respondent, Brickyard Disposal & Recycling, Inc. (Brickyard), filed a permit application with petitioner, the Illinois Environmental Protection Agency (Agency), seeking to modify the design of its Vermilion County landfill to allow a "wedge" area to be filled with municipal solid waste as opposed to inert material. The Agency denied the petition as incomplete, finding Brickyard failed to obtain local governmental approval for the proposed expansion under section 39(c) of the Environmental Protection Act (Act) (415 ILCS 5/39(c) (West 2014)) and failed to include a new or updated groundwater impact assessment (GIA).

¶ 2 Brickyard appealed the Agency's decision to the Illinois Pollution Control Board (Board). Before the Board, both parties filed summary judgment motions. The Board granted

Brickyard's motions, finding local governmental approval was not required as Brickyard was not seeking to expand the boundaries of its pollution control facility and determining Brickyard's GIA was not incomplete. The Board ordered the Agency to consider the technical merits of Brickyard's application.

¶ 3 The Agency petitioned this court for direct administrative review, arguing the Board erroneously found Brickyard's request to fill the wedge area is not a request for a "new pollution control facility" that requires local siting review. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Brickyard owns and operates a landfill in Vermilion County, Illinois. In June 1981, the Agency issued to Brickyard a development permit for construction of a landfill facility. The Agency authorized the development of a 293-acre site with waste disposal occurring on 152 acres under a single landform with a height not to exceed 675 feet.

¶ 6 At the time Brickyard acquired its development permit, the Agency had the task of approving the site of pollution control facilities. As of November 1981, the Act was amended to provide for the siting review of "new pollution control facilities" to be performed by local governmental authorities. See Pub. Act 82-682, § 1 (eff. Nov. 12, 1981) (amending 415 ILCS 5/39).

¶ 7 In April 1987, the Agency issued a supplemental permit to divide the landfill into two units. Unit 1 consisted of the southern portion of the facility. Unit 2 constituted the northern portion. The permit affirmed the final elevation contours and the waste boundaries set forth in the June 1981 development permit.

¶ 8 In September 1991, Brickyard filed a "Request for Site Approval for a Regional

Pollution Control Facility" with the Vermilion County Board. Brickyard sought local siting approval for "the volumetric expansion of the existing landfill." In the public notice of the request, Brickyard stated it was seeking an expansion consisting of a lateral expansion of approximately 21 acres and a 40-foot vertical expansion in height "over a 90-acre portion of the total 293-acre facility." The drawings included a profile of the proposed vertical expansion that depicted an expansion across a single landform to a height of 715 feet.

¶ 9 In February 1992, the Vermilion County Board approved Brickyard's request for an expansion of the vertical and lateral boundaries. The county board approved "a lateral and vertical expansion of permitted landfill boundaries, within existing property boundaries." In October 1992, the Agency issued a supplemental permit, approving the "revised final contours within the approval granted by the Vermilion County Board" and final contours for unit 1 consistent with a drawing submitted with the permit application.

¶ 10 In May 1995, the Agency issued a permit for units 1 and 2 of the facility. The stipulated facts present show a condition of the permit was that a "separate berm shall be maintained between Unit I and Unit II which will allow independent groundwater monitoring." The parties refer to this berm as the "wedge."

¶ 11 On August 31, 2015, Brickyard filed a permit application, seeking to modify the permit to allow disposal of municipal waste in the wedge between unit 1 and unit 2. Brickyard made the following statement in its application:

> "The total waste volume of the Brickyard Disposal and Recycling Landfill will be increased by approximately 1,010,000 yd.^{3} thereby providing a total Unit 2 waste volume of 15,210,000

> yd.^{3} fill capacity as opposed to the currently permitted 14,200,000 yd.^{3} capacity. The documented estimated remaining life expectancy of Brickyard Disposal and Recycling Landfill is 16 years per the January 1, 2015[,] Annual Landfill Capacity Certification. With the addition of 1,010,000 yd. 3 of waste capacity in the 'Zone A' Fill Area the life expectancy of the landfill increases to approximately 21 years."

¶ 12 The Agency, by a letter later dated September 24, 2015, informed Brickyard its application was incomplete due to lack of local siting approval under section 39(c) of the Act (415 ILCS 5/39(c) (West 2014)) and the absence of a new GIA.

¶ 13 On October 30, 2015, Brickyard responded to the Agency's letter by submitting a supplemental application. In November 2015, the Agency concluded Brickyard had not corrected the errors of its initial filing and issued a final incompleteness determination. The Agency did not consider the technical merits of the permit application. Brickyard appealed to the Board.

¶ 14 Brickyard filed a timely petition to the Board, seeking review of the Agency's permit determination. The Agency moved for summary judgment on its determination that Brickyard, by law, was required to provide local siting approval for its proposed expansion. Brickyard filed two motions for summary judgment, arguing its application was complete, as local siting approval was not required. Brickyard disputed the Agency's finding that it was creating a new pollution control facility, arguing it was not seeking an expansion beyond the boundaries of its current facility. Brickyard further maintained it need not provide a new GIA.

¶ 15 The Board issued its opinion and order in November 2016. The Board granted

summary judgment to Brickyard on both grounds, finding the proposal to fill the wedge area with waste does not require new local siting approval as it is not a "new pollution control facility." The Board concluded "a waste-free wedge was never required by the County" and 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." The Board further found Brickyard's GIA complete. The Board directed the Agency to perform a technical review of Brickyard's permit application.

¶ 16 On the Agency's motion for reconsideration, the Board affirmed its holding. The Board further observed the following: "Taking the Agency's argument to its conclusion, the Agency would have the County consider whether to approve siting for waste disposal in the middle of an existing landfill under a 40-foot waste layer it already approved in 1992. This cannot be what the General Assembly intended." The Board denied the motion to reconsider.

¶ 17 The Agency seeks direct review of the Board's decision.

¶ 18 II. ANALYSIS

¶ 19 A. Standard of Review

¶ 20 This appeal arises from an order of summary judgment on Brickyard's behalf. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Orr v. Fourth Episcopal District African Methodist Episcopal Church*, 2018 IL App (4th) 170469, ¶ 60, ___ N.E.3d ___. We review orders of summary judgment *de novo*. *Id.* ¶ 61.

¶ 21 The question underlying the motion of summary judgment is a matter of statutory construction. Matters of statutory interpretation are questions of law, which we review *de novo*.

Farris v. Industrial Comm'n, 357 Ill. App. 3d 525, 527-28, 829 N.E.2d 372, 374 (2005). In cases presenting questions of law arising from a decision by the Board, the Board's findings are not binding on the appellate court. *Village of Fox River Grove v. Pollution Control Board*, 299 Ill. App. 3d 869, 877, 702 N.E.2d 656, 662 (1998).

¶ 22 B. Applicable Law

¶ 23 The purpose of the Act is "to establish a unified, state-wide program supplemented by private remedies, to restore, protect[,] and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b) (West 2014). The Act authorizes the establishment of the Agency. *Id.* § 4(a). Among the roles of the Agency is its task to issue permits to applicants upon proof the "facility *** will not cause a violation of this Act or of regulations hereunder." *Id.* § 39(a). The Act further authorizes the Agency to impose conditions that are necessary to accomplish the purposes of the Act. *Id.*

¶ 24 Before November 1981, the Agency was generally entrusted with approving permits for the development of landfill facilities. *M.I.G. Investments, Inc. v. Environmental Protection Agency*, 122 Ill. 2d 392, 398, 523 N.E.2d 1, 3 (1988). As of November 1981, however, the Act was amended to provide "county and municipal governments a limited degree of control over new solid waste disposal sites within their boundaries." *Id.* (citing Pub. Act 82-682 (eff. Nov. 12, 1981)). Local authorities were so authorized to avoid placing "a regional authority (the Agency) in a position to impose its approval of a landfill site on an objecting local authority." (Internal quotation marks omitted.) *Id.* (quoting *E&E Hauling, Inc. v. Pollution Control Board*, 107 Ill. 2d 33, 42, 481 N.E.2d 664, 668 (1985)).

¶ 25 Under the amended statute, local county boards "shall approve or disapprove the request for local siting approval" upon consideration of statutory criteria. 415 ILCS 5/39.2(a) (West 2014). If the proposed facility establishes the statutory criteria, "local siting approval shall be granted." *Id.* The enumerated criteria include "the facility is necessary to accommodate the waste needs of the area it is intended to serve" (*id.* § 39.2(a)(i)); "the facility is located so as to minimize incompatibility with the character of the surrounding area" (*id.* § 39.2(a)(iii)); and "the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents" (*id.* § 39.2(a)(v)).

¶ 26 Local siting approval is not required for all permits. Local governmental authority is required, however, for the development or construction of "a new pollution control facility." *Id.* § 39(c). Section 39(c) mandates:

> "[N]o permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area[ ] in which the facility is to be located in accordance with Section 39.2 of this Act." *Id.*

¶ 27 A "new pollution control facility" includes existing facilities that seek to alter their boundaries and facilities that seek to introduce special or hazardous waste:

> "(b) A new pollution control facility is:
>
> (1) a pollution control facility initially permitted for development or construction after July 1, 1981; or

(2) the area of expansion beyond the boundary of a currently permitted pollution control facility; or

(3) a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste." *Id.* § 3.330(b).

¶ 28 The dispute in this case centers on the meaning of the language in subsection (b)(2) of the "expansion beyond the boundary of a currently permitted pollution control facility" (*id.* § 3.330(b)(2)). The Agency maintains Brickyard's permit application falls squarely within this definition, and therefore, local siting approval is required. Brickyard disputes this interpretation, asserting the request to expand into the wedge is an expansion within the boundaries of its facility.

¶ 29 C. The Meaning of Section 3.330(b)(2)

¶ 30 Our fundamental task in construing a statute is to ascertain and give effect to the intent of the legislature. *M.I.G. Investments*, 122 Ill. 2d at 397. In performing this task, we should consider the statute's language as well as the reason for the law, the evils to be remedied, and the purposes to be obtained. *Id.* at 397-98. We read the statute as a whole and consider all relevant parts, giving, if possible, each word, clause, and sentence a reasonable meaning. *Farris*, 357 Ill. App. 3d at 528. When the statutory language is clear and unambiguous, "it will be given effect without resort to other tools of construction." *Segers v. Industrial Comm'n*, 191 Ill. 2d 421, 431, 732 N.E.2d 488, 494 (2000).

¶ 31 The Agency contends because section 3.330(b)(2) refers to a "currently permitted" facility boundary, the proposed design change must be evaluated to determine

whether it expands "beyond the *currently permitted waste boundaries* as set by the Agency[—]not the 'currently sited' boundaries." (Emphasis in original.) In support, the Agency relies on *M.I.G. Investments* as establishing a change to a "volumetric boundary" of waste necessitates local siting. The Agency emphasizes the change sought by Brickyard would surpass the "volumetric boundary" and increase the site's waste volume by 1 million cubic yards and proposes a "new pollution control facility" that affects the " 'scope and nature' of Brickyard's landfill, implicating local interests and triggering county review."

¶ 32 Brickyard disputes this interpretation of section 3.330(b)(2), asserting the Agency is inserting words into the statute that do not exist. Brickyard contends the "boundaries" of the "facility" is not the same as boundaries of waste collection. Brickyard further argues *M.I.G. Investments* is distinguishable as the Illinois Supreme Court in that case considered the landfill operator's argument that it need not seek local siting approval for an expansion beyond a vertical boundary and no vertical boundary expansion is requested here. Brickyard further maintains, when the Vermilion County Board provided local site approval of the vertical and lateral expansion of the facility in 1992, it had no reason to believe anything but waste would be in the area. Brickyard argues new local siting approval is not required.

¶ 33 We agree with Brickyard that the Agency's interpretation adds words into the statute. Section 3.330(b)(2) plainly applies to a request to expand "beyond the boundary of a currently permitted *pollution control facility*," not "currently permitted waste boundaries." (Emphasis added.) 415 ILCS 5/3.330(b)(2) (West 2014). The regulations establish a "pollution control facility" is more than waste-collection units. Section 810.103 of Title 35 of the Illinois Administrative Code defines "facility" as "a site and all equipment and fixtures on a site used to

treat, store[,] or dispose of solid or special wastes." 35 Ill. Adm. Code 810.103 (2005). The Code continues:

> "A facility consists of an entire solid or special waste treatment, storage, or disposal operations. All structures used in connection with or to facilitate the waste disposal operation will be considered a part of the facility. A facility may include but is not limited to, one or more solid waste disposal units, buildings, treatment systems, processing and storage operations, and monitoring stations." *Id.*

To read the plain language as the Agency suggests would be to change the clear intent of the General Assembly, which we will not do. See *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 15, 72 N.E.3d 333 ("No rule of construction authorizes us to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions *** the legislature did not include."). When the General Assembly said "pollution control facility," it meant the entire facility and not boundaries of "waste collection."

¶ 34 Contrary to the State's argument, *M.I.G. Investments* does not establish a "volumetric boundary" or trigger local siting review for changes in waste volume within boundaries of existing landfills. In *M.I.G. Investments*, the court considered the landfill operator's argument that it need not obtain siting approval for an expansion beyond a vertical boundary. *M.I.G. Investments*, 122 Ill. 2d at 397 ("The question we address here is *** whether it was the legislature's intent to include vertical expansions of existing 'regional pollution control facilities' within the definition of a 'new' facility ***."). The language used by the court in

M.I.G. Investments regarding a volumetric expansion and a change in the "scope" of the landfill were used to address the argument that local siting was not necessary to expand beyond a "vertical" boundary. *Id.* at 400-01. The court reasoned the General Assembly intended not simply lateral boundaries but also vertical boundaries, as an expansion of the vertical boundary would have an effect on the volume and change the local landscape. See *id.* at 401. It does not follow from the court's analysis that changes in volume without expanding beyond a vertical boundary triggers local siting under section 39(c).

¶ 35 The Agency also argues the statute's "currently permitted" language indicates the General Assembly intended the boundaries to be determined by looking at the current waste-collection permits issued by the Agency. In support of this interpretation, the Agency relies heavily on the Fifth District's decision in *Bi-State Disposal, Inc. v. Environmental Protection Agency*, 203 Ill. App. 3d 1023, 561 N.E.2d 423 (1990).

¶ 36 In *Bi-State Disposal*, the Fifth District considered an appeal from the Board's finding "that a proposed modification of the landfill in question constitutes a new regional pollution control facility, and that petitioner must seek local site location suitability approval." *Id.* at 1024. The previous site operator received a permit to develop the site at issue in September 1975. *Id.* An operating permit was issued in March 1978. According to the operating permit, the 40-acre site would be developed in two phases, the second of which was to include filling a mine cut that bisected the site with "nonputrescible waste." *Id.* at 1024-25. In 1982, the operating permit was transferred to the petitioner. Petitioner, at that time, proposed a modification to the facility, which eliminated the use of the mine cut. *Id.* at 1025. The Agency accordingly issued a supplemental permit. *Id.* In 1989, the petitioner sought to reopen the mine cut for use. *Id.*

¶ 37 The landfill operator in *Bi-State Disposal* argued the language of "beyond the boundary of a currently permitted" facility should be interpreted to mean a "facility for which a permit was held on July 1, 1981." (Internal quotation marks omitted.) *Id.* The Agency and the Board suggested the time to ascertain the "boundary of a currently permitted" facility is "as of the present time." (Internal quotation marks omitted.) *Id.* The Fifth District agreed the Agency and the Board's argument finding "currently" to mean the present date. *Id.* at 1027. The court then examined the permit issued by the Agency and found the boundary did not include the mine cut and local siting approval was required. *Id.* at 1027-28.

¶ 38 We reject the Agency's conclusion that the holding in *Bi-State Disposal* means this court must examine the Agency's permits regarding *waste collection* to determine the boundaries of the "currently permitted pollution control facility." Initially, we note *Bi-State Disposal* is a decision by the Appellate Court, Fifth District, that we are not bound to follow. We find the court in *Bi-State Disposal* misconstrued the significance of the term "currently permitted" to allow it to examine permits regarding waste collection that were issued after boundaries of the facility were set. While we agree the legislature intended to examine the "boundar[ies]" of the facility as a whole as they exist at the time a request for expansion is made, we find the "currently permitted" language in section 3.330(b)(2) has no hidden meaning other than to differentiate a "new pollution control facility" under section 3.330(b)(1) from a "new pollution control facility" under section 3.330(b)(2). When we interpret a statute, we are to read the statute as a whole. *Farris*, 357 Ill. App. 3d at 528. Section 3.330(b)(1) defines a "new pollution control facility" as one that has been given a developmental or construction permit and is thus not yet operating. See 415 ILCS 5/3.330(b)(1) (West 2014). Section 3.330(b)(2) is one

that is "currently permitted" as a "pollution control facility," meaning it is operating. *Id.* § 3.330(b)(2); see generally *M.I.G. Investments*, 122 Ill. 2d at 401 (referring to the landfill for which the operator sought an expansion of the vertical boundary as "an existing landfill facility"). The plain language shows "currently permitted" simply means the pollution control facility has advanced beyond the development stage of section 3.330(b)(1) and is operating.

¶ 39 Moreover, *Bi-State Disposal* is distinguishable on its facts. It involved siting completed before November 1981, when the Agency had the role of determining appropriate siting. No local siting had been undertaken, meaning the only source to ascertain the "boundaries" were permits issued by the Agency.

¶ 40 The Agency further contends the source for a boundaries determination should not be "local siting approval" but the boundaries should be ascertained by examining the permits it issued regarding waste collection: "local siting approval does not equal the permitted boundaries of a pollution control facility." The key flaw in this argument is the General Assembly did not use the term "permitted boundaries." Such an interpretation of section 3.330(b)(2) violates the "last antecedent" canon of statutory interpretation. According to this canon,

> "relative or qualifying words, phrases, or clauses are applied to the words or phrases or clauses immediately preceding them and are not construed as extending to or including other words, phrases, or clauses more remote, unless the intent of the legislature, as disclosed by the context and the reading of the entire statute, requires such an extension or inclusion." (Internal quotation marks omitted.) *Department of Transportation v. Singh*, 393 Ill. App. 3d 458, 465, 914

N.E.2d 511, 517 (2009) (quoting *In re E.B.*, 231 Ill. 2d 459, 467, 899 N.E.2d 218, 223 (2008)).

The statute says "boundar[ies]" of a "currently permitted pollution control facility" not "permitted boundaries." 415 ILCS 5/3.330(b)(2) (West 2014).

¶ 41 We see no indication from examination of the Act that the General Assembly intended to invoke the long and expensive process of local siting review each time the Agency restricted waste boundaries and the landfill operators sought to remove or expand those waste boundaries within an existing pollution control facility. By enacting section 39(c), the General Assembly intended local governmental authorities have a say in the location of the pollution control facility and not have such a decision imposed upon them. *M.I.G. Investments*, 122 Ill. 2d at 393, 398. That the General Assembly was not concerned with internal waste boundaries when enacting the requirement for local siting approval is further evidenced by the language of section 39(c) itself. According to section 39(c), "no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the *location of the facility* has been approved by the County Board." (Emphasis added.) 415 ILCS 5/39(c) (West 2014). There is no statutory language indicating local siting approval is necessary for the inner workings of an operating pollution control facility.

¶ 42 The General Assembly, when it said a "new pollution control facility" includes "the area of expansion beyond the boundary of a currently permitted pollution control facility" (*id.* § 3.30(b)(2)), meant "the area of expansion beyond the boundary of a currently permitted pollution control facility." In this case, the boundary of the facility is ascertained from two places in the record: the Agency's siting and developmental permit of June 1981, before local siting

requirements were enacted, and the Vermilion County Board's 1992 siting approval. These establish the wedge is within those boundaries and thus not "area of expansion beyond the boundary." Brickyard's application does not seek a "new pollution control facility." New local siting under section 39(c) is therefore not required.

¶ 43 D. The Sufficiency of Vermilion County's 1992 Siting Approval

¶ 44 The Agency argues "Brickyard could not satisfy the Act's requirement of proof of new local siting approval for its proposed expansion with county materials from the 1990s." The Agency contends the materials submitted by Brickyard in 1991's siting request to expand the landfill from 675 feet to 715 feet and for a lateral expansion do not serve as siting approval for any portion of the facility below 675 feet. The Agency concludes the largest part of the wedge Brickyard seeks to fill with waste was not approved by the Vermilion County Board.

¶ 45 Our finding above that new local siting approval is not required renders this argument irrelevant. Nevertheless, to the extent this argument may apply to the boundaries determination, we note the materials are not deficient in that regard. Because the development permit for Brickyard's landfill was issued before November 1981, the initial siting and the approval of the facility's boundaries were provided by the Agency. See *M.I.G. Investments*, 122 Ill. 2d at 398 (explaining the transition of the role of siting from the Agency to local governmental authorities). In 1992, when presented with a request to expand the vertical and lateral boundaries of the landfill, the Vermilion County Board provided local siting review and approved "a lateral and vertical expansion of permitted landfill boundaries, within existing property boundaries." The boundaries of the facility were properly sited.

¶ 46 E. The Groundwater Impact Assessment Finding

¶ 47 In addition to seeking an affirmation of the Board's order regarding local siting approval, Brickyard asks this court to affirm the Board's decision finding Brickyard's application presented adequate information regarding the existing GIA.

¶ 48 We decline Brickyard's invitation. In its petition for administrative review, the Agency asked for a review of the Board's determination Brickyard's application was complete. The Agency did not specify the GIA. On appeal, the Agency made no challenge to the Board's finding regarding the GIA, forfeiting any argument the Board erred on that ground. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). We thus need not examine the correctness of that determination. The Board's decision regarding the completeness of the GIA stands.

¶ 49 III. CONCLUSION

¶ 50 We affirm the Board's decision.

¶ 51 Affirmed.

CERTIFICATE OF FILING AND SERVICE

I certify that on March 18, 2019, I electronically filed the foregoing **Petition for Leave to Appeal** with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are not registered service contacts on the Odyssey eFileIL system, and thus were served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by those participants on March 18, 2019.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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