

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ATKINSON LANDFILL COMPANY

Petitioner

v.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

RECEIVED  
CLERK'S OFFICE

OCT 21 2011

STATE OF ILLINOIS  
Pollution Control Board

PCB 12-58  
(Permit Appeal)

ORIGINAL

NOTICE OF FILING

TO:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have electronically filed with the Office of the Clerk of the Pollution Control Board, **Appearances of Joshua More, Renee Cipriano, and Amy Antonioli and Petition for Review of Determination of Incompleteness**, copies of which are herewith served upon you.

ATKINSON LANDFILL COMPANY,

Amy Antonioli  
By: Amy Antonioli

Dated: October 21, 2011  
Amy Antonioli  
SCHIFF HARDIN LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, Illinois 60606  
Tel: 312-258-5500  
Email: [aanтониолли@schiffhardin.com](mailto:aanтониолли@schiffhardin.com)

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CLERK'S OFFICE

OCT 21 2011

STATE OF ILLINOIS  
Pollution Control Board

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 21<sup>st</sup> day of October, 2011, I have served electronically the attached, **Appearances of Joshua More, Renee Cipriano, and Amy Antonioli and Petition for Review of Determination of Incompleteness**, upon the following persons:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

ORIGINAL

  
By: Amy Antonioli

Dated: October 21, 2011

Amy Antonioli  
SCHIFF HARDIN LLP  
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ATKINSON LANDFILL COMPANY )  
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 Petitioner )  
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 v. )  
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 )  
 Respondent. )

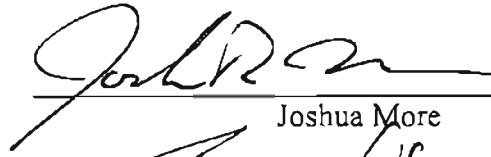
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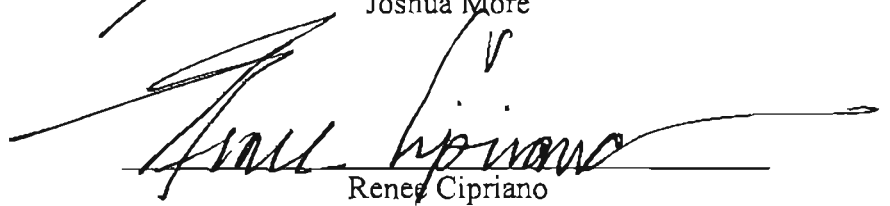
2 ORIGINAL

APPEARANCE

The undersigned attorneys hereby file appearances in this proceeding on behalf of  
ATKINSON LANDFILL COMPANY.

Respectfully submitted,

  
 \_\_\_\_\_  
 Joshua More

  
 \_\_\_\_\_  
 Renee Cipriano

  
 \_\_\_\_\_  
 Amy Antonioli

Dated: October 21, 2011

Joshua More  
 Renee Cipriano  
 Amy Antonioli  
 SCHIFF HARDIN, LLP  
 233 South Wacker Drive, Suite 6600  
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PCB 12-58  
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PETITION FOR REVIEW OF DETERMINATION OF INCOMPLETENESS

NOW COMES Petitioner, Atkinson Landfill Company ("Petitioner"), pursuant to Section 40 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/40) and 35 Ill. Adm. Code § 105.200 *et seq.*, to contest the Illinois Environmental Protection Agency's ("IEPA") September 30, 2011 determination that a landfill development permit application was incomplete ("Incompleteness Determination"). This petition does not encompass a review of the entire Incompleteness Determination, but rather only a review of IEPA's determination that it is barred from granting a development permit unless proof of new local siting approval is provided to IEPA. An appeal must be filed within 35 days after the date of service of IEPA's final decision. Petitioner received the IEPA's Incompleteness Determination on October 3, 2011. Pursuant to Section 40(a)(1) of the Act and 35 Ill. Adm. Code § 105.206(a), this Petition is timely filed with the Illinois Pollution Control Board ("Board").

In support of its Petition, Petitioner states as follows:

I. BACKGROUND

1. Petitioner owns and operates a landfill in Atkinson Illinois. The facility was originally permitted as Henry County Landfill #2 on September 22, 1980, permit 1980-33-DE.

On January 16, 2004, IEPA issued a permit authorizing the expansion of the landfill to include a 125.8-acre area.

2. On March 6, 2006, the Atkinson Landfill Company submitted an application to the Village of Atkinson seeking authorization to expand the existing landfill both horizontally and vertically.

3. On August 28, 2006, the Village of Atkinson passed and approved a resolution granting with conditions the siting approval request to increase the permitted landfill area.

3. On September 28, 2006, the Atkinson Landfill Company filed a petition with the Illinois Pollution Control Board (PCB 2007-020) challenging certain conditions imposed by the Village of Atkinson in the local siting approval. The local siting approval appeal process was concluded on September 4, 2008.

4. On September 2, 2011, Petitioner submitted an application to IEPA for a development permit to expand the existing permitted landfill area consistent with the local siting approval.

5. On September 30, 2011, the IEPA issued an Incompleteness Determination pursuant to 35 Ill. Adm. Code § 813.103(b) finding, among other things, that the local siting approval for the proposed landfill extension expired on September 4, 2011. Due to the expiration of the local siting approval, IEPA stated it would be barred from granting a development permit to expand the landfill unless proof of new local siting approval is provided.

## II. STANDARD OF REVIEW

5. Pursuant to 35 Ill. Adm. Code § 813.103(b), IEPA's notification that an application is incomplete may be treated as a denial of the application for the purposes of review pursuant to Section 813.106.

6. Petitioner appeals IEPA's decision only on the validity of the local siting approval. In an appeal of a permit denial, the standard of review the Board must apply is whether granting the permit would not violate the Illinois Environmental Protection Act ("Act") or Board regulations. 415 ILCS 5/39(a). For this specific appeal, the Board must determine whether, barring any other omission, IEPA could grant the permit under the existing local siting approval without violating the Act or Board regulations. 415 ILCS 5/40(a)(1).

## III. ISSUE ON APPEAL

6. One of the justifications for the permit denial is the IEPA's determination that since the application was incomplete, the application for purposes of meeting Section 39.2(f) of the Illinois Environmental Protection Act has not been made and as such the local siting approval has expired. See attached Incompleteness Determination.

7. The IEPA's conclusion the local siting expired is erroneous and must be reversed because:

A. The only manner provided by statute by which local siting could expire, would be for Petitioner to fail to apply to IEPA for a permit to develop the landfill within three years of the date the Village of Atkinson granted local siting or the conclusion of an appeal. 415 ILCS 5/39.2(f). On September 2, 2011, within the three years allowed by 415 ILCS 5/39.2(f), Petitioner timely made application to the IEPA for a permit to expand the landfill.

B. The IEPA admitted in the Incompleteness Determination that local siting was set to expire on September 4, 2011 and that Petitioner made application to IEPA on September 2, 2011. See attached Incompleteness Determination. The local siting, therefore, has not expired.

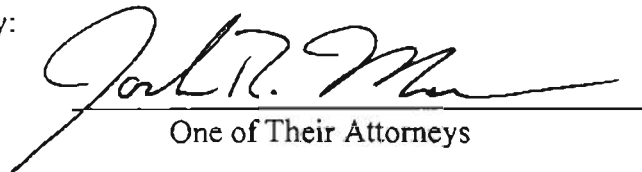
8. IEPA's reliance on 35 Ill. Adm. Code § 813.103(b) to support its determination that an incomplete permit application is as if no application had ever been made for purposes of satisfying Section 39.2(f) of the Act is unjustified, arbitrary, capricious, and unlawful.

WHEREFORE, for the reasons set forth above, Petitioner requests that the Board find that Petitioner's September 2, 2011 application to develop a landfill tolls the expiration of the Village of Atkinson's siting approval in accordance with 415 ILCS 39.2(f). The Petitioner also requests such other and further relief as the Illinois Pollution Control Board deems fair, just and equitable, within the powers of the Board enumerated in 415 ILCS 5/5 and 5/40.

Respectfully submitted,

Atkinson Landfill Company

by:

  
One of Their Attorneys

Dated: October 21, 2011

Renee Cipriano  
Joshua R. More  
Amy Antonioli  
SCHIFF HARDIN, LLP  
233 South Wacker Drive  
Chicago, Illinois 60606  
(312) 258-5500



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829  
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

217/524-3300

September 30, 2011

Certified Mail

7009 2820 0001 7489 7772

Atkinson Landfill Company  
Attn: Mr. Branko Vardijan  
221 North Washtenaw  
Atkinson, Illinois 61235

Re: 0730200003 -- Henry County  
Atkinson Landfill  
Log No. 2011-406  
Permit Landfill 811 File  
Permit DOI

Dear Mr. Vardijan:

Pursuant to 35 Ill. Adm. Code 813.103(b), the Illinois Environmental Protection Agency has reviewed, for purposes of completeness only, the application referenced above, dated September 2, 2011 and received September 2, 2011. This review has revealed that the application does not contain the information required by the referenced sections of 35 Ill. Adm. Code, Parts 811 through 814 and therefore is incomplete. This determination of incompleteness is based on the omission of the following items:

1. The LPC-PA8 form is not signed and notarized.
2. Prior Conduct Certification of the Chief Operator was not included. -- 812.113.
3. Section 3. Description of this Permit Request was not completed on the General Application for Permit form LPC-PA1.
4. In Section V of form LPC-PA2, the location in the application for the information submitted was not stated in accordance with the instructions.
5. Geologic Cross Sections which include stratigraphic interpretation of boring log data and show trench invert and limits of zone of attenuation – 812.314(c) and 811.315(e)(1)(C).
6. Potentiometric/groundwater flow maps which include the field information as data points derived from four consecutive quarters of monitoring including background monitoring well BW-1 – 812.314(h), 811.315(d)(1)(F), 811.315(d)(2)(D) and 811.315(e)(1)(H).
7. Description of Applicable Groundwater Quality Standards including specific numerical values for each constituent- 812.314(h), 812.317(1) and 811.315(e)(1)(H).

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200



8. Site Map showing Zone of Attenuation – 812.317(a).
9. Location and depth of all monitoring points installed in all strata down to bottom of uppermost aquifer – 812.317(c).
10. Network of monitoring wells as close as practical to the waste boundary and a minimum of One Zone of Attenuation well – 811.318(b)(3).
11. Well locations justified by hypothetical liner failure and contaminant plume dimensions – 811.318(a) and 811.318(b).
12. Criteria for choosing constituents to be monitored – 811.319(a)(2).
13. List of parameters to be tested including organics – 812.317(e), 811.319(a)(2) and 811.319(a)(3).
14. Description of laboratory analysis, procedures, QAQC and error tolerance – 812.317(j) and 811.318(e)(3).
15. Description of statistical analysis methods and techniques 812.317(k), 812.317(m) and 811.320(e)
16. Remedial Action Contingency – 811.319(d).
17. The applicant did not submit a Groundwater Impact Assessment (GIA) for the proposed vertical and horizontal expansion of the Atkinson Landfill (0730200003). In order to meet completeness requirements, the facility must submit a GIA that addresses the following regulatory requirements:

O. Results of the Groundwater Impact Assessment (GIA)

- O1 Vendor Authorized Copy of the Contaminant Transport Model and Users Documentation of the Model – 812.316(a) and 811.317(c)(1):
- O2 Tabulated Summary of Values Used for the GIA Parameters – 812.316(b):
- O3 Sensitivity Analysis of GIA Parameters and Predictions -- 812.316(c) and 811.317(c)(5):
- O4 Concentration vs. Time and distance Profiles – 812.316(d), 812.316(e), 812.317(f) and 811.317(b):
- O5 Documentation showing Model Reliability – 812.316(f), 811.317(c)(2), 811.317(c)(3) and 811.317(b):

- O6 Documentation demonstrating Validity of Parameters and Assumptions of GIA – 812.316(g), 811.317(c)(4), 811.317(c)(6), 811.317(c)(7) and 811.317(c)(8):
- O7 Justification of Leachate Characterization in Accordance with the Instructions – 812.317(a)(2):
- O8 Assessment of the Uncertainty of model Parameters and Assumptions – 812.316(f), 812.316(g) and 811.317(c):
- O9 Maximum Allowable Predicted Concentrations – 811.318(c):
- O10 Evaluation showing GIA Results – 812.316(h) and 811.317(b):
- O11 Model Results for All Leachate constituents (Surrogate Modeling) – 811.317(b):

Please note the local siting approval for the proposed expansion, obtained on August 28, 2006, appears to have expired on September 4, 2011, per Section 39.2(f) of the Environmental Protection Act (the Act). The application, submitted on September 2, 2011, has been found to be incomplete and, therefore, in accordance with 35 IAC 813.103(b), the application will be considered to have been filed on the day additional information making it complete is received by the Illinois EPA. Since the local siting approval, obtained on August 28, 2006, seems to have expired, the Agency would appear to be barred, by Section 39(c) of the Act, from granting a development permit to expand this landfill unless proof of new local siting approval is provided.

In the 35 days following the date of this letter, you may take either of the actions described below:

1. You may submit to the Illinois EPA additional information addressing the deficiencies identified.
2. Within 35 days after the date of mailing of the Illinois EPA's final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

The additional information addressing the deficiencies identified in this letter shall be submitted to the Illinois EPA within 35 days from the date of the letter.

Failure to actively pursue approval under 35 Ill. Adm. Code Part 814 may result in the determination that this facility is no longer considered timely filed and the operating rights under the existing permits will end upon notification of that determination.

If you take neither of the courses of action described above within 35 days, the Illinois EPA shall consider the application not to have been filed. In this case, to reapply you will need to submit a new permit application in its entirety.

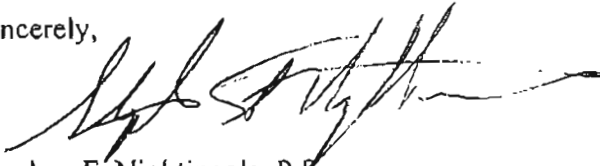
If you do submit additional information within 35 days, the Illinois EPA shall review it for completeness in conjunction with the current application. Assuming that with the additional information the application is complete, the application will be considered to have been filed on the day that the additional information was received by the Illinois EPA. Please be aware that any additional information should:

1. be in a format which allows incorporation of the new information into the appropriate sections of the current application;
2. include a cross-reference indicating where in the new information each deficiency, identified above, has been addressed;
3. have the date of the revision on each page and on each drawing;
4. include an original and at least three copies; and
5. be submitted to the address below.

Illinois Environmental Protection Agency  
Bureau of Land -- #33  
Permit Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

If you have any questions regarding this letter, please contact Greg Morris of my staff at 217/782-5174 or Brett Bersche at 217/558-4718.

Sincerely,



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

*NEM BTB.*  
SFN:GEM:bjh\11951s.doc  
*CSL TBM*

cc: Brian J. Horvath, P.E., Weaver Boos Consultants