

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ATKINSON LANDFILL COMPANY)	
)	
Petitioner,)	
)	
v.)	PCB No. 12-58
)	(Permit Appeal-Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Respondent.)	

MOTION TO WITHDRAW CONTESTED ISSUE

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA" or "Agency"), by LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves the Illinois Pollution Control Board ("Board") to withdraw the contested paragraph at issue in this permit appeal. The issues described in the contested section were raised prematurely, and the subject matter raised is not relevant to the Agency's decision at this stage of its review of the permit application.

THE CONTESTED ISSUE IS NOT RIPE FOR DETERMINATION

On September 2, 2011, Petitioner submitted an application for expansion of the Atkinson Landfill, Henry County, Illinois, Log No 2011-406. On September 30, 2011, the Agency provided notice to Petitioner that the application was incomplete ("Notice"). In its Notice, Illinois EPA listed 17 areas where it believed the application was missing required information. The Notice included a suggestion that additional information could be provided within 35 days¹. However, the Notice also included the following statement ("Contested Paragraph"):

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 developmental permit to expand this landfill unless proof of the new local siting approval is provided.

¹ September 30, 2011 Notice, p.3

This paragraph is extraneous to the matters before Illinois EPA at the time it issued its September 30, 2011 determination, and was included in error. Moreover, the contested paragraph is merely advisory, and does not represent a final Agency decision. Even if Illinois EPA eventually denies Petitioner's permit on these or similar grounds, the contested paragraph is nothing more than "preliminary, investigative action" and not ripe for review by the Board at this point². To the extent that this issue has any bearing on the permit application, consideration at this point is premature, and therefore the issue is not ripe for determination.

Because the issues raised in the Contested Paragraph were inadvertently included in Illinois EPA's notice of incompleteness, Respondent requests that the Board allow it to withdraw the Contested Paragraph in its entirety. Illinois EPA reserves the right to raise these issues, if it so chooses, at the appropriate time and in the appropriate manner.

The Contested Paragraph was the sole basis for Petitioner's appeal. Therefore, if the Board grants Respondents Motion to Withdraw, this matter should be dismissed as moot.

Respectfully Submitted,

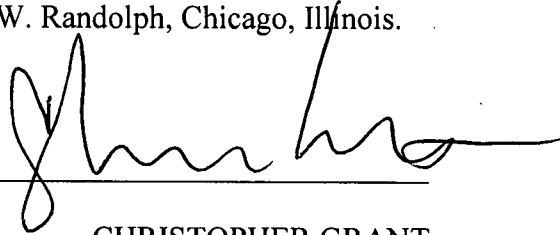
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 23d day of November, 2011, Respondent's Motion to Withdraw Contested Issue, and Notice of filing, upon the persons listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.



CHRISTOPHER GRANT

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