

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ATKINSON LANDFILL COMPANY)	
)	
Petitioner)	
)	
v.)	PCB _____
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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 today electronically filed with the Office of the Clerk of the Pollution Control Board, **Appearance of Joshua More and Petition for Review of Determination of Incompleteness**, copies of which are herewith served upon you.

ATKINSON LANDFILL COMPANY,



 By: Joshua More

Dated: August 2, 2012
 Joshua More
 SCHIFF HARDIN LLP
 233 South Wacker Drive
 Suite 6600
 Chicago, Illinois 60606
 Tel: 312-258-5500
 Email: jmore@schiffhardin.com

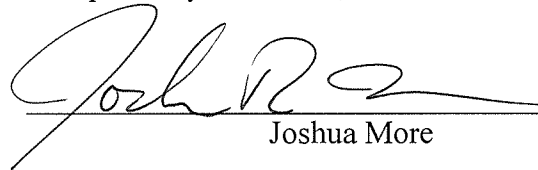
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APPEARANCE

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

Respectfully submitted,



Joshua More

Dated: August 2, 2012

Joshua More
SCHIFF HARDIN, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
312-258-5500

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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”) July 6, 2012 denial of a landfill development permit application submitted on September 2, 2011 (“Permit Denial”). This petition does not encompass a review of the entire Permit Denial, but rather only a review of IEPA’s determination that it is barred from issuing 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 Permit Denial on or about July 6, 2012. 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 July 6, 2012 the IEPA issued a denial of permit 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. 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 expired. See attached denial of permit.

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 Permit Denial that local siting was set to expire on September 4, 2011 and that Petitioner made application to IEPA on September 2, 2011. The local siting, therefore, has not expired.

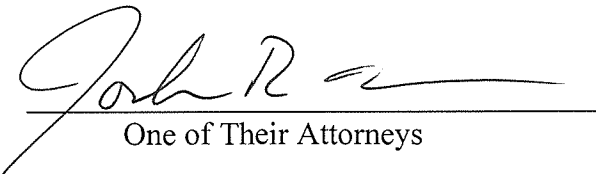
8. IEPA's determination that an incomplete permit application is as if no application had ever been made for purposes of satisfying Section 39.2(f) of the Act is unjustified, arbitrary, capricious, and unlawful.

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: August 2, 2012

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


CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 2nd day of August, 2012, I have served electronically the attached, **Appearance of Joshua More 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

and electronically and by first class mail, postage affixed, upon:

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


By: _____ Joshua More

Dated: August 2, 2012

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