

ILLINOIS POLLUTION CONTROL BOARD  
March 20, 2003

NATIONAL CITY ENVIRONMENTAL,	)	
LLC, and NATIONAL CITY RECYCLING	)	
(Log No. 1999-134, Log No. 1999-146, Log	)	
No. 2002-182),	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 03-138
	)	PCB 03-139
ILLINOIS ENVIRONMENTAL	)	PCB 03-140
PROTECTION AGENCY,	)	(Permit Appeal - Land)
	)	(Consolidated)
Respondent.	)	

ORDER OF THE BOARD (by L.P. Padovan):

National City Environmental, LLC (NCE) and National City Recycling, LLC (NCR) have appealed three Illinois Environmental Protection Agency (Agency) permit denials concerning their St. Louis Auto Shredding (SLAS) facility in St. Clair County. NCE and NCR also have moved the Board to consolidate the three appeals. For the reasons below, the Board accepts the appeals and consolidates them for hearing.

**PETITIONS FOR REVIEW**

On March 5, 2003, NCE and NCR timely filed three petitions with the Board, each asking the Board to review a different permit decision of the Agency. Each of the three Agency decisions was issued and served on January 31, 2003, and in each decision the Agency denied a permit application of NCE and NCR for the SLAS facility. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.206(a). NCE is the owner, and NCR is the operator, of SLAS.<sup>1</sup> Pet. 1 at 1. The Board docketed the appeals separately as PCB 03-138, PCB 03-139, and PCB 03-140.

In the appeal docketed as PCB 03-138, the Agency denied the application of NCE and NCR to renew a permit for their solid waste management site. Pet. 1 at 1, Exh. 1 at 1. Log number 1999-134 appears on the Agency's denial letter, which states that NCE and NCR failed to prove that granting the permit would not result in violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)). Pet. 1, Exh. 1 at 1. The Agency also asserts ten

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<sup>1</sup> The Board cites the petitions as "Pet. 1 at \_," "Pet. 2 at \_," and "Pet. 3 at \_," corresponding to the petitions docketed as PCB 03-138, PCB 03-139, and PCB 03-140, respectively. The Board cites exhibits to the petitions as "Pet. \_, Exh. \_ at \_."

“specific reasons” for the denial, including issues relating to groundwater monitoring and impact assessment, financial assurance, and waste placement. Pet. 1, Exh. 1 at 1-3.

In the appeal docketed as PCB 03-139, the Agency denied the permit application of NCE and NCR to modify their groundwater monitoring program. Pet. 2 at 1, Exh. 1 at 1. Log number 1999-146 appears on the Agency’s denial letter, which again states that NCE and NCR failed to prove that granting the permit would not result in violations of the Act. Pet. 2, Exh. 1 at 1. The Agency also claims six “specific reasons” for the denial, including alleged shortcomings in addressing groundwater contaminant exceedences. Pet. 2, Exh. 1 at 1-4.

In the appeal docketed as PCB 03-140, the Agency denied another permit application of NCE and NCR to modify their groundwater monitoring program. Pet. 3 at 1, Exh. 1 at 1. Log number 2002-182 appears on this Agency denial letter, which, like the other two denial letters, states that NCE and NCR failed to prove that granting the permit would not result in violations of the Act. Pet. 3, Exh. 1 at 1. The Agency also alleges nine “specific reasons” for the denial, including purported deficiencies with background concentrations and well placement. Pet. 3, Exh. 1 at 1-5.

In each petition for review, NCE and NCR claim they demonstrated to the Agency that their requested permit would not result in a violation of the Act, and therefore the Agency abused its discretion by denying the requested permit. Pet. 1 at 1-2; Pet. 2 at 1-2; Pet. 3 at 1-2. The Board finds that each petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board therefore accepts each petition for hearing.

NCE and NCR have the burden of proof in each appeal. *See* 415 ILCS 5/40(a)(1) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency’s reasons for denying the permit, information developed after the Agency decision at issue typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *see also Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001), *aff’d sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the applicable decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only NCE and NCR may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the relevant decision deadline, NCE and NCR “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline in each of the three appeals is July 3, 2003 (the 120th day after the March 5, 2003 filing of each petition). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 19, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of each of its three determinations by April 4, 2003, which is 30 days after NCE and NCR filed the petitions. *See* 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file any of the three records, it must file a request for extension before the date on which

that record is due to be filed. *See* 35 Ill. Adm. Code 105.116. Each record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

### **MOTIONS TO CONSOLIDATE**

On March 7, 2003, NCE and NCR filed motions to consolidate the three permit appeals. NCE and NCR state that each permit denial concerns activities at the SLAS facility, that NCE and NCR are the petitioners in each case, that “the relevant facts for each Petition overlap to varying degrees,” that consolidation would not materially prejudice any party, and that the burdens of proof do not vary in the proceedings. Motions to Consolidate at 2.

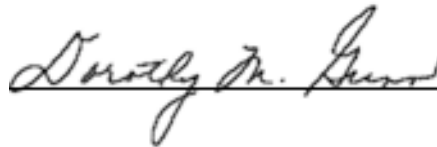
Section 101.406 of the Board procedural rules provides:

The Board will consolidate [two or more] proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

The Agency has not responded to the motions to consolidate. The Agency has 14 days from service of each motion to respond to the motion. *See* 35 Ill. Adm. Code 101.500(d). The motions were mailed to the Agency on March 7, 2003, and are presumed served four days later. *See* 35 Ill. Adm. Code 101.300(c). The 14-day response period therefore has not yet expired. Nevertheless, the Board may grant a motion within that timeframe to avoid undue delay and in “deadline driven proceedings where no waiver has been filed.” 35 Ill. Adm. Code 101.500(d). Such is the case here. The Board agrees with NCE and NCR that consolidation is appropriate and grants their motions to consolidate the three appeals. The appeals are consolidated for hearing, but not necessarily for Board decision. *See* 35 Ill. Adm. Code 101.406. Future filings must reflect the amended caption of this order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 20, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board