

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LANDFILL 33, LTD.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 20-18
)	(Land - Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on June 3, 2020, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois Respondent's Response to Petitioner's Motion to Supplement Record, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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Attorney General of the State of Illinois

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Dated: June 3, 2020

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**RESPONDENT'S RESPONSE TO
PETITIONER'S MOTION TO SUPPLEMENT RECORD**

Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), hereby responds to Petitioner Landfill 33, Ltd.'s ("Landfill 33" or "Petitioner") "motion to supplement the administrative record with the disputed exhibits." Pet. Reply at 2. Section 101.500 provides that motions may be filed at any time unless otherwise specifically provided and, within 14 days, a party may file a response to the motion. 35 Ill. Adm. Code 101.500(c-d).

Respondent requests that the Board deny Petitioner's motion to supplement the record. As Respondent argued within its motion for summary judgment and response to Petitioner's motion for summary judgment, in reviewing a permit application, the Agency is limited to what is presented by the applicant, and, in reviewing the denial of a permit, the sole question before the Board is whether the application *as submitted to the Agency* demonstrates that the facility will not cause a violation of the Act. *Illinois Env'tl. Prot. Agency v. Illinois Pollution Control Bd.*, 118 Ill. App. 3d 772, 780 (1st Dist. 1983) (emphasis in original). Therefore, Petitioner cannot, through its Petition for Review or its Motion for Summary Judgment, Response, and Reply, introduce and rely upon materials that were not in front of the Agency in making the September 6, 2019 permitting decision. Nor can the Board consider any extra-record materials in reviewing the

Agency's September 6, 2019 permitting decision. Regardless of the effect of the documents Petitioner is seeking to introduce, the introduction is improper.

“It is well-settled that the Agency record in a permit appeal consists only of the information which the Agency considered or should have considered in making its permitting decision.” *American Waste Processing, Ltd. v. Illinois Env'tl. Prot. Agency*, PCB 91-38 (Oct. 1, 1992), slip op. at 1. *See also* 35 Ill. Adm. Code 105.212(b) (setting forth required contents of record). Petitioner has not even attempted to argue that its extra-record materials meet this standard. Furthermore, Petitioner had ample time to seek to introduce any additional documents into the record by agreement, or through stipulated facts, but did not do so. The parties' cross-motions for summary judgments should be decided based on the record as it stood when those motions were filed—in other words, the record prepared and filed by the Agency on December 5, 2019 pursuant to Section 105.116. Therefore, Respondent requests that the Board deny Petitioner's motion to supplement the record.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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Date: June 3, 2020

CERTIFICATE OF SERVICE

I hereby certify that I did on June 3, 2020, cause to be served by electronic mail, a true and correct copy of the following instruments entitled NOTICE OF FILING and RESPONDENT'S RESPONSE TO PETITIONER'S MOTION TO SUPPLEMENT RECORD upon the persons listed on the Service List.

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