

ILLINOIS POLLUTION CONTROL BOARD
June 4, 2015

CLINTON LANDFILL, INC.)	
)	
Petitioner,)	
)	
v.)	PCB 15-60, PCB 15-76,
)	PCB 15-111, PCB 15-113,
ILLINOIS ENVIRONMENTAL)	PCB 15-166, PCB 15-194,
PROTECTION AGENCY,)	PCB 15-195
)	(Permit Appeal - Land)
Respondent.)	(Consolidated)

ORDER OF THE BOARD (by C.K. Zalewski):

On May 4 and May 5, 2015, Clinton Landfill Inc. (CLI) timely filed petitions asking the Board to review two determinations of the Illinois Environmental Protection Agency (Agency or IEPA) made on April 10 and April 16, 2015. *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The determinations concern CLI's landfill No. 3 located in Clinton, DeWitt County. *See Clinton Landfill, Inc. v. IEPA*, PCB 15-60, 15-76, 15-111, 15-113, 15-166 (consol.) (Jan. 22, 2015) (Clinton Landfill). On May 28, 2015, CLI and the Agency filed joint motions to consolidate PCB 15-194 and PCB 15-195 with PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, and PCB 15-166 along with joint motions to designate the records of both PCB 15-194 and PCB 15-195 (Mot.).¹ Also on May 28, 2015, CLI filed a joint motion to extend the stay in which CLI expresses an intention to file a decision deadline waiver to November 6, 2015 (Mot. Stay) in Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166 (consol.). In orders dated May 22, 2015, the Board accepted CLI's petition for hearing in PCB 15-194 and PCB 15-195. *See Clinton Landfill, Inc. v. IEPA*, PCB 15-194 (May 22, 2015), and Clinton Landfill, Inc. v. IEPA, PCB 15-195 (May 22, 2015). For the reasons below, the Board grants the joint motions to consolidate, designates the record, and grants the joint motion to stay.

JOINT MOTION TO CONSOLIDATE

On August 28, 2014 and October 7, 2014, CLI timely filed petitions for review of permit determinations made by the Agency on July 31, 2014 and September 17, 2014. The Board accepted those petitions for review in orders dated September 4, 2014 and October 16, 2014 and consolidated the cases in a Board order dated November 20, 2014.

On December 18, 2014 and December 19, 2014, CLI timely filed petitions for review of similar permit determinations made by the Agency on November 26, 2014 and December 16, 2014. The Board accepted those petitions for review in orders dated January 8, 2015. On

¹ In each instance cited, one document filed with the Board contains both the motion to consolidate and the motion to designate the record. These joint motions are substantially the same and will therefore be cited as a singular document where the specific case number is irrelevant.

January 6, 2015, the parties filed joint motions to consolidate in Clinton Landfill, Inc. v. IEPA, PCB 15-111 and Clinton Landfill, Inc. v. IEPA, PCB 15-113, asking the Board to consolidate the review of the Agency's November 26, 2014 and December 16, 2014 determinations with CLI's prior filings, docketed as Clinton Landfill, Inc. v. IEPA, PCB 15-60, PCB 15-76 (consol.). See 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The Board consolidated the cases in a Board order dated January 22, 2015. See Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113 (Jan. 22, 2015) (consol.). On March 11, 2015, the parties filed a joint motion to consolidate PCB 15-166 with the already consolidated docket and to designate the record regarding PCB 15-166. On April 2, 2015, the Board consolidated PCB 15-166 with the already consolidated cases and designated the record in the consolidated cases as the record in PCB 15-166. Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166 (April 2, 2015). On May 28, 2015, the parties filed joint motions to consolidate PCB 15-194 and PCB 15-195 with the already consolidated docket and to designate the records in PCB 15-194 and PCB 15-195. In the joint motions, the parties state that "precisely the same issues are being reviewed in these cases." Mot. at 2.

The Board's procedural rules allow for consolidating proceedings. Section 101.406 of those rules provides:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the 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 parties are the same in Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166 (consol.), PCB 15-194 and PCB 15-195. The cases are permit appeals challenging permit determinations made by the Agency and are related to CLI's permit for its Clinton, DeWitt County site. Further, the cases concern the same provisions of CLI's permit, modified in Permit Modification No. 47 to Permit No. 2005-070-LF, but reiterated in Permit Modifications 48, 49, 50, 51, 52, and 53. CLI's burden of proof is the same in these cases. No apparent prejudice to either party would result from consolidation.

The Board notes that CLI filed a decision deadline waiver to November 6, 2015 for the already consolidated cases on May 28, 2015. No corresponding waiver has been filed for PCB 15-194 and PCB 15-195. The decision deadline for those cases, however, is October 15, 2015, more than 90 days beyond June 30, 2015 when the requested stay would be lifted. The Board finds that the current deadline waivers are adequate for the requested stay. However, any additional motions for stay must be accompanied by a deadline waiver. There is a regular open meeting of the Board scheduled for October 15, 2015 which is the earlier of the two relevant decision deadlines.

For the reasons stated above, the Board finds that consolidating the permit appeals for purposes of hearing is in the interest of convenient, expeditious, and complete determinations of

the claims. The Board also finds that such consolidation would not cause material prejudice to either party, and therefore the Board grants the parties' joint motions to consolidate PCB 15-194 and PCB 15-195 with the already consolidated Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166 (consol.) for hearing and decision. Future filings must reflect the amended caption of this order.

JOINT MOTION TO DESIGNATE THE RECORD

With the May 28, 2015 motions to consolidate in PCB 15-194 and PCB 15-195, the parties also included motions to designate the records stating, "CLI and the Agency have agreed that the Administrative Record filed in PCB 15-060, as supplemented to date and in the future, should stand as the Administrative Record relative to the instant case." Mot. at 3. The parties agreed that the record should be supplemented to include modification numbers 52 and 53. *Id.* The Board grants the parties' motions to designate the records.

JOINT MOTION TO EXTEND STAY

In the May 28, 2015 joint motion to extend the stay, the parties state that they continue to conduct settlement negotiations which, if successfully concluded, would most likely result in CLI's dismissal of the cases. Mot. Stay at 1. They continue that, "[b]y June 30, 2015, the parties reasonably anticipate that settlement negotiations will most likely have concluded, either successfully or not." *Id.* at 2. Further, the parties state that "CLI and the Agency request that the Board (1) rules on the Joint Motions to Consolidate filed in PCB 15-194 and PCB 15-195, and (2) if the motions are granted, that PCB 15-194 and PCB 15-195 thereafter be stayed along with" Clinton Landfill, PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166 (consol.). *Id.*

Section 101.514(a) of the Board's procedural rules provides:

Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. 35 Ill. Adm. Code 101.514(a).

In addition, the Board's rules demand that the parties file a status report at the close of any stay granted by the Board. 35 Ill. Adm. Code 101.514(b).

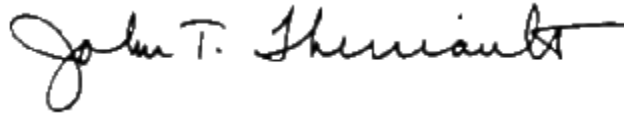
Because the Board's April 2, 2015 order was clear that the stay granted on that date would be lifted on April 30, 2015, the Board construes the parties' joint motion to extend the stay as a motion for stay. However, CLI and the Agency have indicated that they are engaged in settlement discussions that may lead to dismissal of the consolidated cases. The parties have also waived the decision deadline to accommodate the requested stay in the already consolidated docket. Therefore, the Board grants the joint motion to stay the cases consolidated, above. The stay will be lifted on June 30, 2015, at which time the parties must provide the Board with a status.

CONCLUSION

For the reasons set forth above, the parties' joint motion to consolidate is granted and future filings must reflect the amended caption of this order. The Board grants the parties' joint motion to designate the record filed in Clinton Landfill, Inc. v. IEPA, PCB 15-60, as the administrative record for the consolidated docket. Finally, the Board grants the joint motion to stay the consolidated cases until June 30, 2015, at which time the parties must file a status report.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 4, 2015 by a vote of 5 to 0.



John T. Therriault, Clerk
Illinois Pollution Control Board