

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2015

CLINTON LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 16-034
)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On July 23, 2015, Clinton Landfill Inc. (CLI) timely filed a petition (Pet.) asking the Board to review a July 13, 2015 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns CLI's landfill No. 3 (the landfill) located in Clinton, DeWitt County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), the Agency is the permitting authority, responsible for administering Illinois' regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2014); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency issued Permit Modification No. 55 to the landfill. Modification No. 55 contains the same language as Modification No. 47, which is on appeal in Clinton Landfill Inc. v. IEPA, PCB 15-60.¹ CLI appeals Modification No. 55 on the grounds that the permit modification made in Modification No. 47, and reiterated in Modification No. 55, is arbitrary, capricious, unreasonable, unlawful, and beyond the regulatory authority of the Agency. CLI's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. CLI has the burden of proof. 415 ILCS 5/40(a)(1) (2014); *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 or conditionally granting the permit, information developed after the Agency's decision 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); Community Landfill Co. & City of Morris v. IEPA, PCB 01-

¹This appeal also relates to Clinton Landfill Inc. v. IEPA, PCB 15-76, 15-111, 15-113, 15-166, 15-194, 15-195, and 15-207, which are all consolidated with PCB 15-60. CLI states that it will file a motion to consolidate this appeal with those cases. Pet. at 2.


170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2014)), which only CLI may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, CLI “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2014). The decision deadline is November 20, 2015, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for November 19, 2015.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 24, 2015, which is the first business day following the 30th day after the Board received CLI’s petition. *See* 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 6, 2015, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with the first name "John" and last name "Therriault" clearly legible.

John T. Therriault, Clerk
Illinois Pollution Control Board