

STATE OF ILLINOIS

3-08-0030

Peoria Disposal Company v. Illinois
Pollution Control Board



APPELLATE COURT

THIRD DISTRICT

OTTAWA

At a term of the Appellate Court, begun and held at
Ottawa, on the 1st Day of January in the year of our Lord
Two thousand nine, within and for the Third District of
Illinois:

Present -

HONORABLE MARY K. O'BRIEN, Presiding Justice X

HONORABLE WILLIAM E. HOLDRIDGE, Justice

HONORABLE ROBERT L. CARTER, Justice

HONORABLE DANIEL L. SCHMIDT, Justice

HONORABLE VICKI R. WRIGHT, Justice X

HONORABLE TOM M. LYTTON, Justice X

HONORABLE MARY W. McDADE, Justice

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on

January 20, 2009 the Order of the Court was filed
in the Clerk's Office of said Court, in the words and figures
following viz:

No. 3--08--0030

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2009

PEORIA DISPOSAL COMPANY,)	
)	
Petitioner-Appellant,)	On Direct Appeal from the
)	Decision of the Illinois Pollution
)	Control Board
v.)	
)	No. PCB 08-25
ILLINOIS POLLUTION CONTROL)	(Pollution Control Board Permit
BOARD and ILLINOIS ENVIRONMENTAL)	Appeal)
PROTECTION AGENCY,)	
)	
Respondents-Appellees.)	

ORDER

On January 5, 2007, appellant, Peoria Disposal Company (PDC), filed an application with the Illinois Environmental Protection Agency (IEPA) requesting a modification of the disposal company's existing permit originally issued by the IEPA's Bureau of Land on November 4, 1987. On August 30, 2007, IEPA denied PDC's application for a modification of the permit because PDC's application for modification did not include proof of local siting approval as required by Section 39.2 of the Illinois Environmental Protection Act (Act). PDC appealed IEPA's decision to deny the modification of its permit to the Illinois Pollution Control Board (Board). The Board affirmed the decision of IEPA on January 10, 2008. PDC appeals that final decision of the Board

to this court, naming IEPA and the Board as appellees (collectively “Appellees”), pursuant to section 41 of the Illinois Environmental Protection Act (the Act) (415 ILCS 5/41 (West 2006)) and Illinois Supreme Court Rule 335 (134 Ill.2d R. 335).

FACTS

In 1987, IEPA granted Peoria Disposal Company (PDC) a hazardous waste permit to operate a Waste Stabilization Facility (WSF) and landfill in Peoria County. IEPA issued this permit pursuant to part B of the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. § 6901 *et seq.* (2000)) as adopted by the Board in 35 Ill. Adm. Code 720 *et seq.* (West 2006). PDC began waste stabilization operations pursuant to the permit in 1989. In 1995, PDC filed an application with the United States Environmental Protection Agency (USEPA) to modify the permit for the existing Waste Stabilization Facility (WSF) from a waste pile to a waste containment building unit. USEPA granted the modification of the permit.

In 2006 PDC filed an application with the Peoria County Clerk asking the local siting authority, the Peoria County Board (the County), to grant siting approval for the disposal company to expand their existing hazardous landfill operation vertically 44 feet above the currently permitted 32.4 acre landfill in addition to a 8.2 acre horizontal expansion beyond the boundaries of the original 32.4 acres. PDC contended the area of planned expansion would be used as a residual waste landfill (RWL). The proposed RWL would provide space for approximately 2.4 million tons of the disposal of hazardous waste resulting from PDC’s hazardous waste stabilizing process.

On May 3, 2006, the County denied PDC’s application for siting approval to expand their landfill to allow for 2.4 million tons of additional waste disposal space. PDC requested the Illinois

Pollution Control Board (the Board) to review the County's denial of siting approval for the proposed expansion. The Board upheld the County's denial of the application. PDC filed a direct appeal to this court challenging the Board's decision upholding the County's denial of siting approval, which was still unresolved at the time the parties filed their briefs in this pending appeal. The Board's decision regarding the siting approval for a new landfill is not the subject of this appeal.¹

However, while the siting approval issue was still on appeal before this court, on January 5, 2007, PDC filed an application with the Illinois Environmental Protection Agency (IEPA) to modify the existing permit for their current WSF landfill located in Peoria County. This request for a modification asked IEPA to grant PDC the right to operate a proposed, expanded residual waste landfill in the exact same location utilizing the precise vertical and horizontal expanded dimensions previously denied for siting approval by the County, and affirmed by the Board.

IEPA denied PDC's 2007 application to modify their existing permit. In the IEPA denial letter to PDC, IEPA stated the request for modification was "not justified for the following reason":

"Section 39(c) of the [Act] prohibits Illinois EPA from granting a permit for the development of a new pollution control facility unless the applicant submits proof to [IEPA] that the location of the facility has been approved by the County Board of the county if in an unincorporated area *** in which the

¹ This court confirmed the decision of the Board denying the siting approval in *Peoria Disposal Company v. Illinois Pollution Control Bd.*, __ Ill. App. 3d __, 896 N. E. 2d 460 (2008) filed on October 7, 2008.

facility is to be located in accordance with Section 39.2 of the Act. Changes included in the subject submittal constitute creation of a new pollution control facility as defined in Section 3.330(b)(2) of the Act because the changes result in an increase of waste elevation, horizontal extent, and total disposal capacity over the previously approved RCRA Part B permit.

PDC's proposed 'Residual Waste Landfill' would not qualify for the exclusion from the definition of 'pollution control facility' at Section 3.330(a)(3) of the Act because the treatment residues from PDC's treatment operations do not constitute 'wastes generated by such persons own activities' for purposes of the exclusion. The treatment residues are derived from wastes that were initially generated by off-site generators and, for purposes of the exclusion, are not generated and managed exclusively at facilities owned, controlled or operated by PDC.

Because of the deficiency discussed above no technical review was conducted on the application."

As a result of this IEPA decision, PDC requested the Board to review the denial of the disposal company's application for modification. The Board conducted the hearing on PDC's appeal of IEPA's denial of the permit modification on November 6, 2007. The parties presented a joint "Stipulated Statement of Facts." Counsel for IEPA agreed that the disputed issue for the Board's review involved statutory interpretation.

In opening statements at that hearing, PDC's attorney argued that IEPA denied the modification of the permit because PDC did not receive local siting approval from the County to

expand its landfill under Section 39 of the Illinois Environmental Protection Act (the Act) (415 ILCS 5/39 (West 2006)). PDC contended that IEPA did not correctly interpret the statute because section 39 of the Act applied only to *new* pollution control facilities as defined by that statute. PDC stated that it requested modification to its existing landfill and it was not a *new* pollution control facility. During the opening statement, PDC detailed a portion of the Act which listed exemptions to the siting approval requirement for a “pollution control facility.” 415 ILCS 3/3.330 (West 2006). Relying on case law, counsel for PDC argued that PDC fell within the statutory exemption since the proposed expansion was for storage of wastes generated by PDC’s processing activities. Therefore, PDC argued it was exempt under the statute defining “pollution control facility” obviating the need for siting approval from the local siting authority as a prerequisite for IEPA to grant the modified permit. 415 ILCS 5/39 (West 2006).

IEPA disputed PDC’s interpretation that their waste stabilization and disposal operation fell within the statutory exemption of a pollution control facility which did not require local siting approval under Section 39 of the Act. Counsel for IEPA stated that, although there was an agreed stipulation of the facts relevant to this case, there was a significant difference of opinion regarding the application of the stipulated facts to the applicable law. IEPA argued that PDC was not the “generator” of the waste product resulting from the operation of its waste stabilization facility (WSF) and, therefore, did not qualify under the pollution control facility exemption. During this hearing, PDC and IEPA each presented a separate witness to testify to the relevant facts supporting each party’s position.

PDC called Mr. Ron L. Edwards (Edwards), vice president of development and operations of PDC’s landfills. He testified that he had more than 24 years of experience in the management

of hazardous and solid waste. He stated he was a member of the National Solid Waste Management Association and that he was a member and past chairman of the Landfill Technical Committee. While on that committee, he said he and other committee members, including IEPA employees and experts from the waste management industry, were involved in reviewing the language from the federal rules and laws concerning waste management and drafting the proposals which were eventually adopted into the existing Illinois administrative rules and statutes.

Edwards testified that, as a PDC employee, he was currently responsible for landfill development and operations as well as environmental compliance. He stated that he supervised the preparation of PDC's application for modification of the permit at issue and certified the accuracy of that application. He said the reason PDC applied for the permit modification was to develop a specific landfill area for disposal of waste residues that were generated by PDC's on-site treatment plant. Edwards described the location of the existing waste stabilization plant and landfill from a photograph which also showed the "adjacent and contiguous" location of the proposed expanded residual waste landfill. He explained that IEPA issued the original hazardous waste "RCRA Part B Permit" in 1987 which included the possible development of the "area C landfill," the subject of the current application. He said the waste stabilization facility (WSF) was also proposed in the 1987 permit. According to Edwards, the original hazardous waste landfill allowed by this permit was constructed in 1988 and began operating in 1989.

As to the new modification, Edwards stated that only those materials treated in the PDC waste stabilization facility would be deposited in the proposed expanded landfill. He explained that the current PDC plant and landfill involved two types of waste requiring disposal. He

described the first type as waste that is delivered to PDC's treatment plant for processing prior to disposal and the other type is "direct disposal" waste which includes "waste that already achieve[d] the standards that can be directly deposited into the disposal unit" without any processing by PDC. Upon further questioning, Edwards testified that, under the proposed application, PDC would not be allowed to directly deposit untreated hazardous waste into this expanded landfill but would only be allowed to deposit the waste subjected to PDC's on-site treatment processes into this proposed residual waste landfill.

Edwards testified regarding the current hazardous waste management treatment process being conducted at the site under PDC's existing permit. He explained that incoming hazardous waste materials from customers are "dumped into receiving bays" at the building. These materials are commingled with other waste materials coming into the plant from other customers. The materials are moved to a mixing chamber where reagents are added. Specifically, Edwards said PDC adds cement, ferrous sulfate, fly ash and water as reagents which cause an exothermic or heat-producing chain reaction that occurs in a chamber. This reaction renders a larger mass of hazardous waste material that is very stable, has a greater load-bearing capacity, and is a very cohesive material. He said that the volume of processed waste is increased by 40 to 50% from the volume originally brought into the plant by customers. He further explained at this hearing that the original waste product coming into the plant, before treatment, is basically sludge and dust. After treatment, the residual waste physically changes into a more solid, clay-like consistency.

Edwards then explained that three chemical changes occur during the treatment process: a pH adjustment; a change from metal ions to hydroxides to limit the leachability of the metal itself; and the addition of a pozzolanic or cementitious material which have silicates present to bind

around the metals and limit leachability. He stated that the process used by PDC is the “best demonstrative available technology process that’s designated by the EPA under the regulations.” According to Edwards, this increased volume of post-treatment waste is the only waste PDC proposes to dump into the proposed expansion area of the landfill.

Edwards told the hearing officer that the original wastes brought in by customers are “restricted wastes” which means they do not meet the “health base risk standards” to allow for lawful land disposal without treatment. He further explained that, after PDC treats these restricted wastes, the treatment residues “achieve the health base risk standards, and they are legally allowed to be land disposed.”

Edwards concluded that PDC is the “generator” of the after-treatment waste because IEPA previously acknowledged PDC as the generator of the waste by requiring PDC to prepare documentation called “waste locator logs” pursuant to the existing RCRA permit issued in 1987. These logs document the location of the deposit of specific hazardous wastes into the landfill as prepared by PDC since 1989 and identify PDC as the “generator” of the treatment residue waste documented in these logs. Edwards also testified PDC prepared and filed annual reports with IEPA listing PDC as the “generator” of this treated waste.

IEPA presented Mark Crites (Crites) to testify at this hearing. Crites stated, since 1990, he has been employed by IEPA in the Bureau of Land permit section. As such, he stated he reviews hazardous waste permits and handles issues associated with hazardous waste generation, disposal and treatment. Crites testified that he has a degree in mechanical engineering.

Crites said he reviewed PDC’s “class 3 permit modification request to expand the facility.” He testified that he did not conduct a full technical review of PDC’s application because it

became clear at the onset that there were questions regarding whether siting approval would be necessary for this type of application. The application was then sent to IEPA's legal counsel who determined that siting approval was necessary prior to considering the modification of the existing permit. Upon questioning, Crites stated he was familiar with section 39(h) of the Act which pertained to requiring prior permit approval for the disposal of certain types of waste. 415 ILCS 39(h) (West 2006). He said, around 1995, IEPA changed their procedures for issuing "waste stream authorization" or permits for disposal of certain types of wastes. Prior to 1995, companies would have to submit separate applications for each individual waste stream which would be reviewed on a case-by-case basis and IEPA then issued individual permits for each waste stream. After 1995, Crites explained, the individual waste streams were all incorporated into one permit and "this process of approving waste streams became sort of a semi-automatic procedure."

During this hearing, IEPA's attorney asked Crites about his knowledge of an unrelated permit issued to Northwestern Steel and Wire facility referenced in PDC's application. He said he had knowledge of that permit but siting was not a question in that case because the manufacturing business originally created the waste as a by-product of its manufacturing process conducted at that facility, then treated that waste and disposed of its treated waste at the facility, and it clearly fell under the statutory exemption as the generator of the waste. Crites testified he also had some general knowledge about another unrelated permit issued to the "Envirite facility," but he was not directly involved in that permit process. Crites reviewed the issue generally because PDC's application referred to the Envirite permit. Crites testified that his understanding of that issue was that Envirite applied for a permit for a new landfill cell at a facility near Harvey, located in

Livingston County, Illinois, to place the wastes that they stabilized at their own facility into that new landfill. In that case, IEPA did not require siting approval prior to granting that permit. Crites stated the decision to grant the Envirite permit, issued in the early 1990's, was consistent with the way IEPA viewed siting at that time. Crites went on to testify that he did not believe IEPA would approve that permit now based upon the way IEPA views the current siting laws. Upon being questioned to further explain why he did not believe the Envirite permit would be issued now, Crites further stated, "I don't think that flow of consideration was given to the value of the local control that the legislature decided was necessary for siting, you know, a commercial operation, a waste disposal operation."

On cross examination by PDC's attorney, Crites stated he could not dispute Edwards' testimony that 40% of the material that becomes residual waste results from reagents added at the PDC facility to incoming hazardous waste. Therefore, Crites agreed PDC generated 40% of the residual waste containing the reagents. He testified that PDC may qualify as a generator of waste if PDC placed only the reagents into the proposed expansion under the exemption listed in section 3.330(a)(3) of the Act (415 ILCS 3/3.330(a)(3) (West 2006)). However, Crites pointed out Edwards testified that, after treatment, the processed-but-expanded waste materials could not be separated out from the original smaller volume of hazardous waste originally produced by PDC's customers.

Following the testimony of Edwards and Crites, the Board opened the floor for public comments at the hearing. The Board also set a written public comment deadline for December 3, 2007.

On January 10, 2008, the Board issued its 32-page opinion and order (order) affirming

IEPA's denial of PDC's application for modification of its existing hazardous waste permit. In that order, the Board found that PDC's proposed RWL (residual waste landfill) fell within the definition of a "pollution control facility" and, as a result, PDC's application for the modification to its existing permit required proof of local siting approval

PDC filed an appeal with this court to review that final order of the Board pursuant to Section 41 of the Illinois Environmental Protection Act (the Act) (415 ILCS 5/41 (West 2006)) and Illinois Supreme Court Rule 335 (172 Ill. 2d R. 335).

ANALYSIS

I. Standard of Review

The parties dispute the standard of review applicable to the instant case. PDC argues that the decision of the Board is not binding on the appellate court and this court must review the question *de novo*. *Waste Management of Illinois, Inc. v. Illinois Pollution Control Bd.*, 356 Ill. App. 3d 229, 231-32 (2005); *ESG Watts, Inc. v. Illinois Pollution Control Bd.*, 191 Ill. 2d 26, 29 (2000). IEPA submits the Board's factual findings are entitled to great deference and should be affirmed unless those findings were against the manifest weight of the evidence. 415 ILCS 5/41(b) (West 1006). Additionally, IEPA argues that this appeal involves mixed questions of fact and law requires a "clearly erroneous" standard of review. *Cinkus v. Village of Stickney et al.*, 228 Ill. 2d 200, 211 (2008).

In *Cinkus*, citing *City of Belvidere v. Illinois State Labor Relations Bd.*, 181 Ill. 2d 191 (1998), our supreme court identified three types of questions a court may encounter when reviewing an administrative agency's decision. The three categories identified by our supreme court include questions of fact, questions of law, and mixed questions of fact and law. *Cinkus*,

228 Ill. 2d at 210. Consequently, "[t]he applicable standard of review depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." *Cinkus*, 228 Ill. 2d at 210.

In the instant case, the parties prepared an agreed stipulation of facts. This case involves the application of the statutory language to those undisputed facts thereby creating an issue of statutory interpretation for our review. Therefore, this court must review the question *de novo*. *City of Belvidere*, 181 Ill. 2d at 205; see also *Waste Management*, 356 Ill. App. 3d at 231-32; *ESG Watts, Inc.*, 191 Ill. 2d at 29; *Envirite Corp. v. Illinois Environmental Protection Agency*, 158 Ill.2d 210, 214 (1994).

2. Statutory Construction of Sections of the Act

The parties agreed in their stipulation of facts that PDC's existing RCRA Part B permit, originally issued in 1987, authorized PDC to operate a hazardous waste stabilization facility (WSF) and landfill. However, the Board's carefully written order recognized, "the parties disagree strenuously" when interpreting a limited statutory exemption from the definition of a pollution control facility for the disposal of "wastes generated by such person's own activities."

Based on an analysis of existing case law, the Board rejected PDC's contention that IEPA could issue PDC a modified permit for hazardous waste disposal in this case without prior siting approval. The Board considered the decision in *People ex rel. Madigan v. Dixon-Marquette Cement, Inc.*, 343 Ill. App. 3d 163, 166 (2003) which discussed earlier applications of the exemption provisions explained in *Reynolds Metal Co. v. Illinois Pollution Control Bd.*, 108 Ill. App. 3d 156 (1982) and *Pielet Brothers Trading, Inc. v. Pollution Control Bd.*, 110 Ill. App. 3d 752, 757 (1982). The Board concluded that this line of cases revealed the intent of the legislature

was to “exempt minor amounts of refuse which could be disposed of without environmental harm on the site where it was generated” when enacting a similar exemption in section 21(d)(1) of the Act. 415 ILCS 5/21(d)(1)(West 2002)); *Pielet Brothers*, 110 Ill. App. 3d at 757; *Reynolds Metal*, 108 Ill. App. 3d at 160. Therefore, the Board denied PDC’ s request to issue the modified permit.

The parties agree this case involves an interpretation of section 39(c) of the Act. In pertinent parts, Section 39(c) states as follows:

“No permit for the development or construction of a *new pollution control facility* may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area *** in which the facility is to be located in accordance with Section 39.2 of this Act. (Emphasis added.)” 415 ILCS 5/39(c) (West 2006).

This section specifically bars IEPA from granting a permit for the development or construction of a new pollution control facility unless the applicant submits proof that the location of the facility has been approved by the local siting authority. 415 ILCS 5/39(c) (West 2006).

To avoid this result, PDC argues the proposed expanded region beyond the boundaries of the existing site should *not* be viewed as a pollution control facility according to the exemption contained in the Act. 415 ILCS 5/3.330(a)(3)(West 2006). First, we examine the definition of a pollution control facility before considering the language PDC relies on to suggest that the vertical and horizontal expansion of the boundaries of their existing disposal site falls within the statutory exemption applicable to pollution control facilities.

The Act provides as follows:

“(a) ‘Pollution control facility’ is any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator.” (415 ILCS 5/3.330(a)(West 2006).

Next, we examine the statutory language of the exemption. Exemptions from the definition of a “pollution control facility” include:

“(3) [S]ites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes *generated* by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person. (Emphasis added.)” 415 ILCS 5/3.330(a)(3) (West 2006).

PDC asserts that the desired physical expansion of the boundaries of the current disposal site would not fall within the statutory definition of a pollution control facility because PDC only requested a modification of the permit to dispose of their own waste in the regions subject to the parameter expansion. In other words, PDC claims the waste they receive from others became PDC’s very own self-generated waste as a result of their waste treatment process. According to PDC, this treated waste is the only waste to be deposited in the expanded areas of the landfill, thus triggering the exemption to siting approval before permit modification.

In support of their argument, PDC relies on the fact that IEPA tacitly approved PDC’s past course of record keeping that identified PDC as the generator of its own hazardous waste.

According to PDC, the existing RCRA permits require PDC to maintain waste locator logs which document the location of all of the hazardous waste placed into the existing landfill. In this required documentation, PDC has listed itself as the generator of the after-treatment residual stabilized waste placed in the existing landfill.

Next, PDC submits that IEPA previously acknowledged that PDC was the generator of the treated waste from the WSF and deposited into the existing permitted landfill because IEPA issued additional supplemental or modified permits to PDC after 1989. In support of this argument, PDC claims that the prior annual reports submitted by PDC to IEPA identified PDC as “the sole generator of the treated residue from the WSF.” Additionally, PDC points out that the “Uniform Waste Manifests,” prepared and maintained by PDC, also identified PDC as the “generator” of the residual waste from the processing that occurs at their treatment facility.

According to PDC, IEPA has not previously questioned or rejected PDC’s designation as the generator of that hazardous waste following the treatment process. PDC asks this court to rely on past “Hazardous Waste Location Logs” completed by the company as a basis for the determination that the proposed expansion does not qualify a pollution control facility for purposes of this requested amended permit. This circular logic ignores the fact that PDC described their own operation as the “Peoria Disposal Landfill Facility” on the same hazardous waste locator logs. PDC’s terminology asserted landfill status which is defined under the Act as a pollution control facility.

Finally, PDC further argues they are exempt from the statutory definition of a pollution control facility because our supreme court determined that PDC generated their own residual hazardous waste in the decision issued by the court in *Envirite Corporation v. Illinois*

Environmental Protection Agency, 158 Ill. 2d 210. We conclude PDC's reliance on *Envirite* is misplaced because our supreme court issued the opinion in *Envirite* expressly limiting the definition of "generator" in that case to the context of the recently amended section 39(h) of the Act. In fact, the *Envirite* court specifically noted as follows:

"The amendment to section 39(h) of the Act added the last quoted sentence ('For purposes of this subsection ***'). The amendment expressly provides that only the last hazardous waste treater, in this case Peoria Disposal, is the 'generator' for purposes of section 39(h)." *Envirite*, 158 Ill. 2d at 216.

To understand the context of the guidance provided by the court in *Envirite*, it is helpful to review the provisions of section 39(h) of the Act which are distinctly different from section 39(c) that is at issue in this case. Section 39(h) provides in part as follows:

"(h) A hazardous waste stream may not be deposited in a permitted hazardous waste site unless specific authorization is obtained from the Agency by the generator and disposal site owner and operator for the deposit of that specific hazardous waste stream. The Agency may grant specific authorization for disposal of hazardous waste streams only after the generator has reasonably demonstrated that, considering technological feasibility and economic reasonableness, the hazardous waste cannot be reasonably recycled for reuse, nor incinerated or chemically, physically or biologically treated so as to neutralize the hazardous waste and render it nonhazardous. *** *For purposes of this subsection (h), the term 'generator' has the meaning given in Section 3.205 of this Act, unless: (1) the hazardous waste is treated, incinerated, or*

partially recycled for reuse prior to disposal, in which case the last person who treats, incinerates, or partially recycles the hazardous waste prior to disposal is the generator; or (2) the hazardous waste is from a response action, in which case the person performing the response action is the generator. This subsection (h) does not apply to any hazardous waste that is restricted from land disposal under 35 Ill. Adm. Code 728. (Emphasis added.)” 415 ILCS 5/39(h) (West 2006).

The *Envirite* court noted that the Act defined a “[g]enerator” as “any person whose act or process produces waste” (415 ILCS 5/3.12 (West 1992)), but determined that the definition of “generator” detailed in section 39(h) of the Act (415 ILCS 39(h) (West 1992)) applied to the facts at issue in that case. *Envirite*, 158 Ill. 2d at 215. This perspective is still consistent with the definitions of generator now found at section 3.205 of this Act (415 ILCS 5/3.205 (West 2006)) and section 39(h) of the Act (415 ILCS 39(h) (West 2006)).

The facts of *Envirite* reveal that the Envirite Corporation in Cook County and PDC were both pollution control facilities that had been granted permits by the USEPA to handle hazardous wastes. *Envirite*, 158 Ill. 2d at 212. Envirite filed a complaint claiming PDC violated the Act by depositing hazardous wastes provided from an outside customer who generated the waste but did not possess their own section 39(h) authorization to *dispose* of their own hazardous waste. *Envirite*, 158 Ill. 2d at 213. Our supreme court determined that the Pollution Control Board properly found that PDC’s *customers* did not need their own separate section 39(h) permits to deliver their untreated hazardous waste for disposal in PDC’s landfill because PDC could be properly considered to be the “generator” for purposes of the disposal of a post-treatment waste

stream under the language of section 39(h) alone. The supreme court focused on the fact that PDC fell within the definition of generator under section 39(h) because PDC treated the waste, last in time, prior to disposal into the company's permitted hazardous waste landfill. *Envirite*, 158 Ill. 2d at 217. Specifically the court pronounced that the Act provides that only "the last person who treats *** the hazardous waste prior to disposal is the generator" for purposes of section 39(h) (415 ILCS 5/39(h) (West 2006)). *Envirite*, 158 Ill. 2d at 215-16.

In contrast to their position in this appeal, PDC did not claim to be exempt from siting requirements in *Envirite*, and actually relied on their status as a properly permitted hazardous waste treatment facility and landfill to provide an exemption for their clients from disposal permits. *Envirite*, 158 Ill. 2d at 217. Thus, PDC argued that its customers could rely on PDC's permit as a hazardous waste treatment and disposal site as a basis to deliver their hazardous waste stream to PDC for purposes of PDC's treatment and disposal on site. *Envirite*, 158 Ill. 2d at 217.

In *Envirite*, our supreme court was not called upon to determine whether PDC was the "generator" of hazardous waste *for purposes of section 39(c) of the Act* (415 ILCS 5/39(c) (West 2006)) at issue in this appeal. Nonetheless, PDC claims we should ignore the definition of generator as one who "produces" waste under section 3.205 of the Act (415 ILCS 5/3.205 (West 2006)) and substitute the definition of generator as limited to section 39(h) in our *de novo* review of the language of section 39(c) of the Act. 415 ILCS 5/39(c) (West 2006). We decline to do so.

When interpreting statutory language, it is well established:

"The cardinal rule of statutory construction, to which all other rules of construction are subordinate, is that the true intent and meaning of the

legislature must be ascertained and given effect. The language used in a statute is the primary source for determining this intent, and where that language is certain and unambiguous, the proper function of the courts is to enforce the statute as enacted.” *United States Steel Corp. v. Illinois Pollution Control Bd.*, 64 Ill. App. 3d 34, 43 (1978). See also *Van Milligen v. Department of Employment Security*, 373 Ill. App. 3d 532, 538 (2007); *Envirite*, 158 Ill 2d at 216.

Rather than relying on distinguishable case law, we focus on the precise language selected by our lawmakers that is applicable to the instant permit modification. Separate statutes that relate to the same subject are considered *in pari materia* and should be construed together as though they are one statute even if they were enacted at different times. *United States Steel*, 64 Ill. App. 3d at 42. Legislative intent should be ascertained from a consideration of the Act as a whole; its nature, its object, and the consequences that would result from construing it one way or the other. *Van Milligen*, 373 Ill. App. 3d at 538, citing *Read v. Sheahan*, 359 Ill.App.3d 89, 92 (2005).

In this case, we focus on the language of the Act defining the term “generator” as “any person whose act or process produces waste.” 415 ILCS 5/3.205 (West 2006). The definition of a generator of waste pursuant to section 3.203 of the Act (415 ILCS 5/3.205 (West 2006)) *must* be read in conjunction with the definition of a pollution control facility found in section 3.330 of the Act (415 ILCS 5/3.330(a)(3)(West 2006)).

Reading these provisions together, we conclude PDC must originally *produce* the hazardous waste, to be disposed in the areas beyond the parameters of the current properly

permitted landfill, in order for the proposed expansion to be potentially considered exempt from the definition of a pollution control facility under the Act. Here, PDC is in the business of treatment and disposal, not production that originally creates or produces the hazardous waste requiring on-site disposal.

We reject PDC's contention that their proposed expanded operation does not qualify as a pollution control facility. To be exempt, PDC must produce the hazardous waste as a result of a process unrelated to the treatment and disposal of the entire waste stream originally generated and then delivered to PDC by outside sources. We conclude the expanded operation qualifies as a pollution control facility under the Act.

We next turn to the language of the statute to determine whether the modification to the permit, if granted by IEPA, would create a "new" pollution control facility. Section 3.330(b)(2) defines a "new pollution control facility" as follows:

"(b) A new pollution control facility is:

(2) the area of expansion beyond the boundary of a currently permitted pollution control facility." 415 ILCS 5/3.330(b)(2) (West 2006).

PDC sought a permit that would allow for an additional 2.4 million tons of waste disposal space. The horizontal expansion of this facility by 8.2 acres and the 44-foot vertical expansion beyond the boundaries of the original permit would allow PDC to accommodate 2.4 million tons of new waste. We conclude that PDC's proposed expansion qualifies as a new "pollution control facility" situated beyond the boundaries of the currently permitted landfill under the Act. 415 ILCS 5/3.330(a) (West 2006)

Accordingly, we conclude IEPA and the Board correctly determined that PDC must demonstrate proof of local siting approval before PDC could receive a permit modifying its existing permit to expand the horizontal and vertical boundaries of the existing landfill. See 415 ILCS 5/39(c) (West 2006).

CONCLUSION

The decision of the Board to uphold IEPA's denial of PDC's application to modify its existing RCRA permit is confirmed.

Order confirmed.

WRIGHT, J., with LYTTON, J., concurring, and O'BRIEN, PJ., special concurring.

