

ILLINOIS POLLUTION CONTROL BOARD
September 12, 1991

D & B REFUSE SERVICE, INC.,)
)
 Petitioner,)
)
v.)
)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

PCB 89-106
(Permit Appeal)

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on the August 19, 1991 filing of petitioner's motion to file closing argument instanter and motion to strike. On August 27, 1991, respondent filed its response to petitioner's motion to strike.

The Board hereby grants petitioner's motion to file closing arguments instanter. Petitioner also moves to strike Exhibits 1 through 66 and Exhibit 74 from the Agency's record on the basis that these documents predate petitioner's filing of its closure/post-closure plan which is the subject of this appeal. Petitioner asserts that the Agency record is restricted to the application, relevant correspondence and the denial. (35 Ill. Ad. Code 105.102(a)(4).)

The Agency responds that section 105.104(a)(4) provides the minimum of what must be included in the Agency record and that it may also include information upon which it relied in reaching its determination. The Agency has included an affidavit of the permit reviewer assigned to this case which attests that he relied upon the disputed exhibits in reviewing petitioner's closure/post-closure plan.

Given that the Agency states that it relied upon these exhibits in reaching its determination, the Board denies petitioner's motion to strike these exhibits from the record. However, the Board makes no finding at this stage in the proceeding as to whether these exhibits were properly relied upon by the Agency.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 12th day of September 1991 by a vote of 7-0


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board