

ILLINOIS POLLUTION CONTROL BOARD  
September 12, 1991

EARL R. BRADD, as owner of            )  
the BRADD SANITARY LANDFILL,        )  
  )  
    Petitioner,                        )     PCB 90-173  
  )     (Permit Appeal)  
    v.                                    )  
  )  
ILLINOIS ENVIRONMENTAL                )  
PROTECTION AGENCY,                    )  
  )  
    Respondent.                         )

ORDER OF THE BOARD (by J. Anderson):

On August 29, 1991, the Illinois Environmental Protection Agency ("Agency") filed a motion asking the Board to reconsider and vacate those portions of its May 9, 1991 Opinion and Order finding that denial reasons #2 through #5 were insufficient bases for the Agency's denial of Earl R. Bradd's Affidavit for Certification of Closure for the Bradd Sanitary Landfill. The Agency also asks that the Board reconsider and vacate its July 25, 1991 Order in which it held that denial reason #1 was an insufficient basis for the Agency's denial of Mr. Bradd's Affidavit. On September 10, 1991, Mr. Bradd filed a response in opposition to the Agency's motions.

With regard to the Agency's motion to reconsider the Board's May 9, 1991 Opinion and Order, both 35 Ill. Adm. Code 101.246(a) and 101.300 provide that motions to reconsider must be filed within 35 days of the date of the order. The Agency did not file a timely motion to reconsider the Board's May 9, 1990 Opinion and Order. Rather, the Agency filed its motion 113 days after the Board issued its Opinion and Order. Moreover, the Agency did not file a response to the motion to reconsider that was filed by Mr. Bradd on June 13, 1991, although 35 Ill. Adm. Code 101.246(b) allows a party to file a response within 14 days from the filing of the motion for reconsideration. Accordingly, for the foregoing reasons, the Board hereby denies the Agency's motion for reconsideration of its May 9, 1991 Opinion and Order.

As for the Agency's motion to reconsider the Board's July 25, 1991 Order, the Agency argues that its review of Mr. Bradd's Affidavit for Certification of Closure must be performed in light of its April 6, 1989 denial of Mr. Bradd's revised groundwater monitoring program. The Agency also notes that Mr. Bradd could be subject to an enforcement action for violation of 35 Ill. Adm. Code 807.505(b) if he attempted to address the Agency's concerns regarding his groundwater monitoring program in his Affidavit for

## Certification of Closure.<sup>1</sup>

At the outset, we note that the Agency is now arguing the issue that was previously raised by Mr. Bradd in his June 13, 1991 motion to reconsider, to which, as noted above, the Agency never filed a response. Because the Agency never joined the issue at that time and because the Agency has provided no explanation for its previous inaction in this matter or given any reasons why it is filing both of these motions (except to state that it presumed that the Board would view the Agency as standing on the facts and arguments that it previously presented in this case) at this time, we will not permit the Agency to present its arguments on the same issue at this time.<sup>2</sup> If we were to allow the Agency to file a motion for reconsideration in this instance, there would be no incentive in the future for parties to proceed in a timely manner to a final resolution of their cases. Rather, parties would wait and take action only when the Board issued an adverse ruling. As a result, the enforceability of Board orders could be delayed.<sup>3</sup>

Even if this were not the case, we note that, in our July 25, 1991 Order, we ruled that the Agency should have conducted a substantive review of Mr. Bradd's Affidavit for Certification of Closure (in order to determine if he had an adequate groundwater monitoring plan at the time of closure) and that the Agency should not have cited its April 6, 1989 denial of Mr. Bradd's revised groundwater monitoring program as a reason to deny Mr. Bradd's Affidavit. As Mr. Bradd correctly points out, the Agency raises no new arguments that persuade us that this ruling was incorrect, nor has it explained how our July 25, 1991 Order affects its right to bring an enforcement action for a violation of 35 Ill. Adm. Code 807.505(b). Accordingly, based on the foregoing, the Board hereby denies the Agency's motion for reconsideration of the Board's July 25, 1991 Order.

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<sup>1</sup>35 Ill. Adm. Code 807.505(b) states, "[a]n operator of a waste management site shall not file an application to modify the closure plan less than 180 days before receipt of the final volume of waste. Failure to timely file shall not constitute a bar to consideration of such an application, but may be alleged in an enforcement action...."

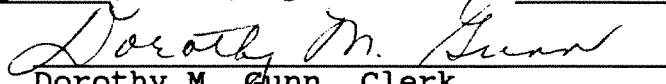
<sup>2</sup>35 Ill. Adm. Code 101.241(b) provides that, if no response is filed, a party shall be deemed to have waived its objection to the granting of the motion.

<sup>3</sup>35 Ill. Adm. Code 101.246(c) provides, "[a] timely-filed motion for reconsideration...stays the effect of the final order until final disposition of the motion."

IT IS SO ORDERED.

Board Member B. Forcade concurred.

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

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board