

ILLINOIS POLLUTION CONTROL BOARD

January 9, 2025

WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 25-9, 25-10
)	(Permit Appeal - RCRA)
ILLINOIS ENVIRONMENTAL)	(Consolidated)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A. Tin):

On December 4, 2024, Waste Management of Illinois, Inc. (WMI) timely filed petitions asking the Board to review permit determinations of the Illinois Environmental Protection Agency (Agency) on July 29, 2024, and July 30, 2024 (Pet.). *See* 415 ILCS 5/40(a)(1) (2022); 35 Ill. Adm. Code 101.300(b), 105.206. The determinations addressed the post-closure care period and financial assurance requirements for WMI's closed hazardous waste management units at the Laraway Recycling and Disposal Facility located at 21233 West Laraway Road in Joliet, Will County. Additionally, WMI requested that the Board find that the automatic stay provision of the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/10-65 (2022)) applies to the Agency's determinations and also moved to consolidate these two appeals with one another. On December 19, 2024, the Board accepted the petitions for hearing but reserved ruling on a stay and on consolidation to allow the Agency's response time to run. The Agency has not responded to either request.

For the reasons below, the Board grants the unopposed motions to consolidate and also finds that a stay applies to the contested Agency determinations.

MOTIONS TO CONSOLIDATE

In both PCB 25-9 and PCB 25-10, WMI's petition for review included a motion to consolidate the two appeals with one another. The Board's procedural rules address consolidation by providing that

[t]he Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for 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 in which the burdens of proof vary. 35 Ill. Adm. Code 101.406.

The parties are the same in the two cases, and both appeals challenge Agency determinations regarding the permit for WMI's Laraway Recycling and Disposal Facility. WMI asserts that "the Agency's stated purpose of the July 30th Final Decision is to inform WMI of 'Illinois EPA's post-closure care evaluation and determination' for the permit with conditions issued in the July 29th permit modification." Pet. at 26. The two appeals do not have different burdens of proof. While both appeals are subject to a decision deadline of April 3, 2025, the hearing officer on January 2, 2025, conducted status conferences at which WMI stated that within seven days it would extend or waive the decision deadline in the two cases. *See* 415 ILCS 5/40(a)(2) (2022); 35 Ill. Adm. Code 105.114. In the same order, the hearing officer granted the Agency's unopposed motion to extend the deadline to file the administrative records to March 4, 2025.

WMI assert that "[i]t is in the interest of convenient, expeditious, and complete determination of claims" to consolidate the two pending Board proceedings PCB 25-9 and 25-10. Pet. at 25-26, citing 35 Ill. Adm. Code 101.406; *see Clinton Landfill, Inc. v. IEPA*, PCB 15-60, 15-76, 15-111, 15-113, 15-166, 15-194, 15-195, 15-207, 16-34, 16-59 (consol.), slip op. at 2-3 (Nov. 5, 2015). It argues that consolidation "would merely combine identical proceedings with out causing material prejudice." Pet. at 26. As noted above, the Agency did not respond to the motion to consolidate. *See* 35 Ill. Adm. Code 101.500(d).

For the reasons above, the Board finds that consolidating the appeals for the purpose of hearing is in the interest of convenient, expeditious, and complete determination of the two appeals. The Board also finds that consolidation would not cause material prejudice to either party, and the Board grants WMI's motion to consolidate PCB 25-9 and PCB 25-10 with one another for purposes of hearing. Future filings must reflect the amended caption of this order.

REQUEST FOR FINDING ON STAY

Section 10-65(b) of the IAPA provide in its entirety that, "[w]hen a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court." 5 ILCS 100/10-65(b) (2022). WMI asserts that "an agency decision is stayed in its entirety during an appeal when an Agency decision on a permit references activity of a continuing nature." Pet. at 25, citing *RCH Newco II, LLC v. IEPA*, PCB 24-66, slip op. at 2-3 (Aug. 22, 2024).

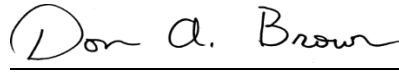
WMI argues that its ongoing activity providing post-closure care and its applications for permit modification justify a stay, "preventing the new financial assurance requirements from taking effect until the appeal concludes." Pet. at 25.

As noted above, the Agency has not responded to WMI's request for a finding on a stay. *See* 35 Ill. Adm. Code 101.500(d). Based on the record before it today and the absence of any Agency opposition, the Board finds that the automatic stay provision of the IAPA applies. Accordingly, IEPA's July 29, 2024 and July 30, 2024 determinations, the subjects of these appeals, are stayed. *See* 5 ILCS 100/10-65(b) (2022). In reaching this conclusion, the Board "makes no finding on the merits of the permit appeal" *Kincaid Generation, L.L.C. v. IEPA*,

PCB 15-203, slip op. at 2 (July 23, 2015), *citing* Motor Oils Refining v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 9, 2025, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a solid horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board