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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB 26 2004

SALINE COUNTY LANDFILL, INC.,)
)
PETITIONER,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
RESPONDENT.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 04-117
(PERMIT APPEAL)

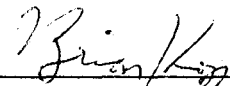
NOTICE OF FILING

John Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Rod Wolf
Saline County State's Attorney
10 E. Poplar
Harrisburg, Illinois 62946

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Ave. East
PO Box 19274
Springfield, Illinois 62794-9274

Please take notice that I have today filed with the Hearing Officer Petitioner's motion to compel, and certificate of service, on behalf of Saline County Landfill, Inc., copies of which are herewith served upon you.



Brian E. Konzen, Esq.
Lueders, Robertson, Konzen LLC
1939 Delmar, P.O. Box 735
Granite City, Illinois 62040
Phone: (618) 876-8500
ARDC No.: 06187626

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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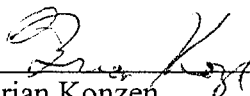
CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached motion to compel by first class mailing upon the following persons by depositing same in a US Post Office box at 5:00 PM in Granite City, IL, with first class postage fully prepaid and the envelopes addressed to the following persons, on this 23rd day of February, 2004.

John Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Ave. East
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Rod Wolf
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Harrisburg, Illinois 62946



Brian Konzen

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB 26 2004

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MOTION TO COMPEL DIRECTED TO RESPONDENT,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Comes now the Petitioner, and moves the Hearing Officer enter an Order compelling Respondent, the IEPA (Agency), to serve complete and responsive answers to discovery served January 20, 21, and 28, 2004, all per 35 Illinois Administrative Code 101.616.

1. Agency has not responded to interrogatories served January 21, 2004. Agency's answers were due February 19, 2004, per 35 Illinois Administrative Code 101.620(b).

2. Respondent's answers to requests to admit no. 4, 5, 18, and 19, attached, are not responsive. The requests concern the position taken by the Agency up until December 5, 2003, and the Agency's change in position on that date. The Agency's answer to no. 4 states only that the December 5 permit denial "is not based on the interpretation described in Ms. Munie's" attached letter of March 12. The Agency's answer to no.5 references solely "Ms. Munie's understanding". Further, the objection of "legal conclusion" to 4, 5, 18, and 19, is invalid.

Requests no. 4, 5, 18, and 19 do not seek legal conclusions, but an admission of the Agency's historic position. These requests to admit are important because Petitioner pleads the permit denial is irreconcilable and inconsistent with, Agency's historic position on local siting. See par. 5 of the petition for review of permit denial, filed January 7, 2004.

The Agency does not have a right to be evasive or non-responsive in discovery concerning a change in its historic position, particularly where, as here, the Agency told its historic position on local siting to the Petitioner during the application process. The Agency should be compelled to state whether it has changed its position by issuing the December 5, 2003 permit denial. Its position is discoverable per 35 Illinois Administrative Code 101.616(a).

3. Respondent's answer to request to admit no. 11 is not responsive. Respondent's answer neither admits nor denies any part of the request, and therefore does not comply with 35 Illinois Administrative Code 101.618(f).

Request no. 11 again asks the Agency's historic position, concerning a specifically identified local siting. The request seeks the Agency's historic position, not a legal conclusion as to whether the local siting is valid. Therefore the objection that the request seeks a legal conclusion, lacks merit. Further, it is not a proper objection to state in response to the request that the words used in the request are not defined in the law, nor does the objection make request no. 11 vague. On the contrary, request no. 11 clearly identifies the specific Agency log no., application, and local siting. 35 Illinois Administrative Code 101.618 and Supreme Court Rules do not require requests be limited to words defined in law or elsewhere. Those authorities do require a responsive answer that either admits, or denies the parts of the request that in good faith the responsive party cannot admit. Further, the Agency response that the referenced document "speaks for itself" is not a valid objection to a request to admit, nor a response answer to a request for the Agency's historic position. Requests to admit may cite specific documents; see for example, 35 Illinois Administrative Code 101.618(e).

4. Respondent's answer to request to admit no. 13, a denial, is improper and not in compliance with Supreme Court Rules or 35 Illinois Administrative Code 101.618(f). The stated rationale for the denial should be stricken as not based in fact or law. No lawful authority for the

rationale stated in support of the denial is cited.

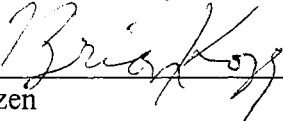
5. Respondent's answer to request to admit no. 14 is not responsive. The request seeks to confirm Petitioner withdrew its expansion application from IEPA log no. 2001-362, after the Agency recommended to Petitioner that Petitioner so withdraw its expansion application. The Agency's answer neither admits nor denies the Agency's representatives made such a recommendation, and therefore does not comply with 35 Illinois Administrative Code 101.618(f).

6. Respondent's answer to request to admit no. 15 is non-responsive. The answer does not admit or deny. The arguments made above concerning the Agency's failure to answer request to admit no. 11 apply to the Agency's failure to answer no. 15, and are not repeated here for brevity's sake.

7. This motion is timely. The attached responses to requests to admit were not formally served until on or about February 19, 2004. The interrogatory answers were due that date. Phone conferences with Respondent's Counsel took place February 19 and 20, as described in IL.S.Ct. Rule 201(k), but the parties were unable to reach an accommodation.

Therefore, Petitioner requests an Order be entered by the Hearing Officer directing the Respondent to answer Petitioner's interrogatories before the scheduled deposition of Joyce Munie on February 27, 2004. Petitioner further requests an Order be entered directing Respondent comply with 35 Illinois Administrative Code 101.618(f), by serving a sworn statement admitting the requests, or denying specifically the matters of which admission is requested, or setting forth in detail legitimate reasons why the party cannot truthfully admit or deny those matters. Petitioner requests that the Order state that if objections are served, the remainder of the request must be answered, and that any denial must fairly address the substance of the requested admission. Petitioner requests the

Order direct Respondent to answer with a good faith admission or denial, all parts of requests to admit 4, 5, 18, 19, 11, 13, 14, and 15, all before the hearing date of March 3, 2004. Petitioner further prays all objections of Respondent to those stated requests to admit, be denied, again before the hearing date of March 3, 2004.



Brian Konzen
Lueders, Robertson and Konzen, LLC
1939 Delmar, PO Box 735
Granite City, IL 62040
618-876-8500

44981

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SALINE COUNTY LANDFILL, INC.,)
)
 PETITIONER,)
)
 v.) No. PCB 04-117
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 RESPONDENT.)

PETITIONER'S FIRST SET OF INTERROGATORIES

Comes now Saline County Landfill, Inc., Petitioner, and hereby serves the following interrogatories upon the Illinois Environmental Protection Agency (IEPA). Per 35 Illinois Administrative Code 101.620, Petitioner requests Respondent answer the following within 28 days of service, the answers signed by the person making them, under oath.

As used in these interrogatories, the following definitions apply.

“Local siting” refers to the approval of an expanded or new landfill by a host municipality or county per the process described in 415 ILCS 5/39.2.

“Identify” means state the name, employer (specifying the administrative agency, section, bureau, and department, if the employer is the State of Illinois), work address, and job title, of all the persons referenced or described in that interrogatory.

“Air space”, refers to the three-dimensional volume or area at a landfill which has been permitted for development or operation, by the IEPA, for disposal of solid waste.

“Permit application” refers to an application to the IEPA seeking a permit to develop, construct, or operate, an expansion of a landfill or a new landfill.

“Developmental permit” refers to a permit issued by the IEPA for the construction of the

liner, leachate collection system, gas collection system, cap, or other environmental safeguards or facilities, associated with a new landfill or an expansion of an existing landfill.

1. Identify all persons who participated in the decision to issue the permit denial dated December 5, 2003, in IEPA log no. 2003-113.

2. For each person identified in your answer to interrogatory no. 1, above, list in detail the activities performed by that specific person to so participate in the decision to ~~issue the permit denial,~~ (i.e., recommended or directed a change in the IEPA's historic interpretation of 415 ILCS 5/39.2(f), drafted the language of the written permit denial, determined the reason stated for the permit denial, etc.).

3. For each person identified or referenced in your answers to interrogatories no. 1 and 2, above, state all the dates on which each person performed the activities you detailed.

4. Identify all persons having knowledge of any of the facts stated in the language underlined in the attached letter dated March 12, 2003.

5. Identify all persons having knowledge of statements made by employees and representatives of the IEPA's Bureau of Land, that a landfill's local siting approval expires in 3 years

only if a permit application has not been submitted to the IEPA during that 3-year period. Your answer should include the identity of each person told the local siting had not expired for the landfill represented by that person, though local siting was granted over three years beforehand.

6. List by name and site number each landfill in the State of Illinois that since 1996, received a developmental permit from the IEPA over three years after that landfill received local siting approval for some or all of the air space referenced in that developmental permit.

7. List by name and site number each landfill in the State of Illinois that, since 1996, received both a notice of denial of a permit application and a developmental permit from the IEPA, over three years after that landfill received local siting approval for some or all of the air space

referenced in that developmental permit. Limit your answer to landfills that received a denial of a permit application, followed by a developmental permit.

8. List each landfill in Illinois for which the IEPA denied a permit application since 1996, based in whole or in part on justification stated by the IEPA that local siting had expired. Limit your answer to landfills that had submitted to the IEPA an application for developmental permit within three years of receiving local siting approval. For each landfill listed, state the IEPA log number for which the IEPA denied the permit application, and the date of the notice of permit denial.

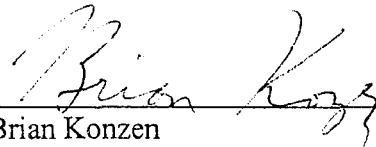
9. State whether the permit application in IEPA log no. 2003-113 was complete, except for the possibility local siting had expired.

If your answer is in the negative, explain how the permit application was incomplete. That is, state in detail all documents missing from the permit application, and detail all manners in which the application failed to demonstrate compliance with the Illinois Environmental Protection Act, and with all statutes and regulations of the State of Illinois.

10. State whether December 5, 2003, was the first time the IEPA denied an application for developmental permit based on the justification that local siting had expired, where the applicant had submitted to the IEPA a complete application for developmental permit within three years after local siting was granted for some or all of the air space approved at that local siting.

11. Identify all persons who answered, or assisted in answering, these interrogatories.

BY:

A handwritten signature in cursive script, appearing to read "Brian Konzen", written over a horizontal line.

Brian Konzen
Lueders, Robertson, Konzen LLC
P. O. Box 735, Granite City, IL 62040
618-876-8500

44667



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/524-3300

March 12, 2003

Stephen F. Hedinger
1225 South Sixth Street
Springfield, Illinois 62703

Re: 1658080001 -- Saline County
Saline County Landfill
Log Nos. 1999-381 and 2001-362
Permit File

Dear Mr. Hedinger:

This is in response to your letter, dated December 12, 2002, concerning the above-referenced landfill and the permit applications for it, designated by the Illinois EPA as Log Nos. 1999-381 and 2001-362. In your letter, you identify yourself as the Special Assistant State's Attorney for Saline County and you indicate that you do not understand what Saline County Landfill, Inc. (SCLI) is requesting in Log No. 2001-362. You also express your opinion regarding the current validity of the 1996 local siting approval granted by the Saline County Board.

First, I want to thank you for bringing this matter to my attention and giving me an opportunity to provide clarification. This response letter gives background information on the 1996 local siting approval and on Log No. 1999-381. It also explains what is being requested in Log No. 2001-362 and presents our view on the viability of the Saline County Board's local siting approval.

Background

On November 21, 1996, the Saline County Board granted local siting approval for a lateral expansion of this landfill. The application for siting approval specified that there would be a 50-foot separation berm between the existing waste footprint (Unit 1) and the lateral expansion footprint (Unit 2). The application for siting approval also specified that the separation berm was to be constructed of clean soil and indicated that the purpose of the berm was to isolate the waste from Unit 1 and Unit 2.

On October 8, 1999, SCLI submitted a permit application (Log No. 1999-381) to us requesting a development permit for a lateral expansion. As originally proposed in Log No. 1999-381, the lateral expansion was consistent with local siting approval. However, the original application had several technical and regulatory problems related to the

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BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

Hedinger Law Office
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separation berm ---- particularly with regard to groundwater monitoring and groundwater modeling. SCLI was made aware of these problems by way of draft denial letters.

On August 30, 2000, SCLI submitted an addendum to Log No. 1999-381 proposing a redesign of the lateral expansion that eliminated the separation berm. This addendum cured the previously identified problems associated with the berm but the proposed redesign was not, in our opinion, consistent with the 1996 local siting. Upon being informed that due to this inconsistency we felt that we could not approve the redesign, SCLI asked us to deny Log No. 1999-381 so they could appeal our decision to the Illinois Pollution Control Board.

On January 4, 2002, we denied Log No. 1999-381 solely because the proposed lateral expansion, without the separation berm, was not consistent with the 1996 local siting. SCLI appealed this denial and on May 16, 2002, the Illinois Pollution Control Board affirmed our decision.

Log No. 2001-362

On September 24, 2001, SCLI submitted Log No. 2001-362. This application requested renewal of Permit No. 1996-147-LFM and was timely filed pursuant to 35 Ill. Adm. Code 813.301.

On January 24, 2002, SCLI submitted an addendum to Log No. 2001-362 that made the same proposal (i.e., a lateral expansion without a separation barrier) that had been denied in the final action taken on Log No. 1999-381. The January 24, 2002 addendum was flawed in several respects and on February 7, 2003, SCLI submitted another addendum withdrawing the request for a lateral expansion. Thus, now once again, Log No. 2001-362 only requests renewal of SCLI's 813 permit.

Status of 1996 Local Siting Approval

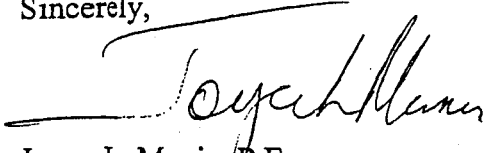
At the end of your letter, you argue that SCLI's 1996 local siting approval has lapsed. The Illinois EPA has not come to the same conclusion. Instead, we have interpreted Section 39.2(f) of the Illinois Environmental Protection Act to mean that a landfill's local siting approval expires within 3 years of being granted only if an application for a development permit has not been made during that 3-year period. This interpretation has consistently been employed in answering questions from potential operators and in reviewing permit applications.

SCLI made application for a lateral expansion (Log No. 1999-381) within 3 years of obtaining local siting approval and although that application was denied and the Illinois Pollution Control Board has affirmed its denial, the 1996 local siting approval remains

via. Accordingly, if SCLI were to submit a permit application for a lateral expansion, that was consistent with the 1996 local siting approval and that met all the regulatory requirements, the Illinois EPA would be obligated to approve it.

If you have any questions regarding this letter, please contact Chris Liebman at 217/524-3294 or Christine Roque at 217/524-3299.

Sincerely,



Joyce L. Munie, P.E.
Manager, Permit Section
Bureau of Land

CSL

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

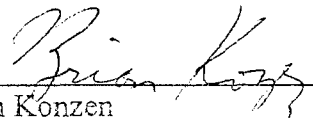
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 v.) No. PCB 04-117
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 PROTECTION AGENCY,)
)
 RESPONDENT.)

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached first set of interrogatories by first class mailing upon the following persons by depositing same in a US Post Office Box in Granite City, IL, with first class postage fully prepaid and the envelopes addressed to the following persons, on January 21st, 2004.

John Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
600 South Second Street, Suite 402
Springfield, Illinois 62704



Brian Konzen

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

| | | |
|-------------------------------|---|-----------------|
| SALINE COUNTY LANDFILL, INC., |) | |
| Petitioner, |) | |
| v. |) | PCB No. 04-117 |
| ILLINOIS ENVIRONMENTAL |) | (Permit Appeal) |
| PROTECTION AGENCY, |) | |
| Respondent. |) | |

RESPONSE TO PETITIONER'S FIRST REQUEST FOR ADMISSION OF FACTS

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to the Illinois Pollution Control Board ("Board") Rules at 35 Ill. Adm. Code 101.616 and 101.618, hereby responds to the First Set of Requests to Admit propounded by the Petitioner, Saline County Landfill, Inc. ("SCLI").

Request No. 1:

The sole justification for permit denial is the Agency's allegation in its December 5, 2003 permit denial letter, that the local siting provided in Petitioner's application had expired.

Answer:

The Illinois EPA objects to this request on the bases that it calls for a legal conclusion and that the December 5, 2003 letter speaks for itself. Without waiving that objection, the Illinois EPA admits that the December 5, 2003 permit denial letter states in part, "The application did not provide proof of local siting approval pursuant to Section 39(c) of the Act. The siting provided in the application expired." The Illinois EPA further admits that no other reason is given for the denial of permit.

Request No. 2:

The underlined language in the attached May 16, 2002 Opinion of the Illinois Pollution Control Board, cause PCB 02-108, accurately describes the permit application filed by Petitioner in IEPA log no. 2003-113.

Answer:

The Illinois EPA objects to this request on the bases that it is ambiguous and vague. The underlined language referenced by this Request does not attempt to describe all aspects of the permit application in question. Without waiving that objection, the Illinois EPA admits that the specific statement made in the underlined language is not inaccurate.

Request No. 3:

The attached letter dated March 12, 2003, was signed by Joyce L. Munie, P.E., in her official capacity as Manager, Permit Section, Bureau of Land, of the IEPA.

Answer:

The Illinois EPA admits this request.

Request No. 4:

The underlined language in the attached letter dated March 12, 2003, signed by Joyce Munie, accurately describes the position taken by the IEPA in interpreting 415 ILCS 5/39.2(f), until on or about December 5, 2003.

Answer:

The Illinois EPA objects to this request on the basis that it calls for a legal conclusion. Without waiving that objection, the Illinois EPA admits that the final decision issued by the Illinois EPA on December 5, 2003 is not based on the interpretation described in Ms. Munie's March 12, 2003 letter.

Request No. 5:

The underlined language in the attached letter dated March 12, 2003, signed by Joyce Munie, accurately describes the position taken by the IEPA in interpreting 415 ILCS 5/39.2(f), from 1994, until on or about December 5, 2003.

Answer:

The Illinois EPA objects to this request on the basis that it calls for a legal conclusion. Without waiving this objection, the Illinois EPA admits that the underlined language describes Ms. Munie's understanding of Section 39.2(f) of the Illinois Environmental Protection Act ("Act") during the time period described.

Request No. 6:

The interpretation of 415 ILCS 5/39.2(f) described in the underlined language in the attached letter dated March 12, 2003, signed by Joyce Munie, was communicated in substance to the Petitioner by representatives of the IEPA in discussions or conferences regarding IEPA log no. 2003-113.

Answer:

The Illinois EPA objects to this request on the bases that it is overly broad, ambiguous and vague. No dates of any discussions or conferences alluded to are provided, nor are any representatives of either the Petitioner or the Illinois EPA as referenced in the request. Without waiving that objection, the Illinois EPA admits that on at least one occasion prior to receiving a legal interpretation regarding Section 39.2(f) of the Act from the Illinois Attorney General's Office, Joyce Munie conveyed her interpretation of Section 39.2(f) of the Act at consultants retained by the Petitioner in conjunction with the preparation of the permit application at issue.

Request No. 7:

The IEPA was ready to issue an expansion permit to Petitioner in IEPA log no. 2003-113, until on or about December 3, 2003.

Answer:

The Illinois EPA objects to this request on the bases that that it is ambiguous and misleading. Until the Illinois EPA issues a final decision on a permit application, as was done in this instance on December 5, 2003, the Illinois EPA is "ready" to either approve, deny or approve with modifications a permit application.

Request No. 8:

The IEPA issued an expansion permit to Petitioner on or about December 31, 1996, log no. 1996-147.

Answer:

The Illinois EPA objects to this request on the basis that it is vague, in that the term "expansion permit" is not one defined in the Illinois Environmental Protection Act or underlying regulations. Without waiving this objection, the Illinois EPA admits that on or about December 31, 1996, a permit was issued in response to Permit Log No. 1996-147.

Request No. 9:

The expansion permit issued to Petitioner on or about December 31, 1996, log no. 1996-147, permitted vertical expansion of the Saline County Landfill into part of the same air space for which the Saline County Board granted local siting approval on November 21, 1996.

Answer:

The Illinois EPA objects to this request on the basis that it is vague, in that the term "expansion permit" is not one defined in the Illinois Environmental Protection Act or underlying

regulations. Without waiving this objection, the Illinois EPA admits that a permit was issued on or about December 31, 1996, in response to Permit Log No. 1996-147. Among other things, the permit authorized vertical expansion as described in this request.

Request No. 10:

Petitioner has had one or more applications for expansion of the Saline County Landfill on file with and pending before the IEPA almost continuously since late October, 1999.

Answer:

The Illinois EPA objects to this request on the basis that it is vague. Without waiving this objection, the Illinois EPA admits that since October 1999, the Petitioner has had at least one application awaiting final decision by the Illinois EPA except for two periods, lasting approximately two weeks and two months, respectively.

Request No. 11:

When the IEPA denied Petitioner's permit expansion application in IEPA log no. 1999-381, on January 4, 2002, the IEPA did not take the position that Petitioner's November 21, 1996 local siting had expired.

Answer:

The Illinois EPA objects to this request on the bases that it calls for a legal conclusion and is vague. The permit denial dated January 4, 2002, speaks for itself. Further, the term "permit expansion application" is not one defined in the Illinois Environmental Protection Act or underlying regulations.

Request No. 12:

The Petitioner's application for expansion in IEPA log no. 1999-381, referenced and included the same November 21, 1996 local siting approval as included in Petitioner's application for expansion in IEPA log no. 2003-113.

Answer:

The Illinois EPA objects to this request on the basis that it is vague. The phrase "application for expansion" is vague, as an "expansion permit" is not a term defined in the Illinois Environmental Protection Act or underlying regulations admits this request. Without waiving this objection, the Illinois EPA admits that Permit Log No. 1999-381 referenced and included the same November 21, 1996 local siting approval as including in Permit Log No. 2003-113.

Request No. 13:

The permit denial dated December 5, 2003, is not based on any concerns of the IEPA that the proposed expansion is unsafe or dangerous to the public health or to the environment.

Answer:

The Illinois EPA denies this request. The permit was denied based on a violation of the Act, and any violation of the Act should be considered a potential cause of an unsafe or dangerous condition to the public health and environment.

Request No. 14:

Petitioner withdrew its expansion application from IEPA log no. 2001-362, promptly after representatives of the IEPA recommended to Petitioner that Petitioner so withdraw its expansion application from that log no.

Answer:

The Illinois EPA objects to this request on the basis that it is vague. There is no identification made of any relevant representatives of either the Illinois EPA or the Petitioner, and no dates or time line is provided, nor is there a description of what is meant by an expansion application. Without waiving this objection, the Illinois EPA admits that the Petitioner withdrew a development permit application in Permit Log No. 2001-362 following discussions with representatives of the Illinois EPA.

Request No. 15:

The IEPA denied Petitioner's application for expansion in IEPA log no. 1999-381 solely because the IEPA found the proposed lateral expansion, without the separation berm, was not consistent with the 1996 local siting approval.

Answer:

The Illinois EPA objects to this request on the basis that it is vague, in that it includes terminology not defined in the Act or underlying regulations. Further, the Illinois EPA's referenced decision speaks for itself.

Request No. 16:

The application for expansion in IEPA log no. 2003-113, is consistent with the November 21, 1996 local siting approval.

Answer:

The Illinois EPA objects to this request on the basis that it calls for a legal conclusion.

Request No. 17:

The permit denial dated December 5, 2003, is not based on any concerns of the IEPA that the proposed expansion will violate any regulations promulgated by the Illinois Pollution Control Board.

Answer:

The Illinois EPA objects to this request on the basis that it is vague. Without waiving this objection, the Illinois EPA admits that the specific reason for denial of the permit does not include reference to any regulations promulgated by the Illinois Pollution Control Board.

Request No. 18:

The permit denial dated December 5, 2003, is based solely on an interpretation of 415 ILCS 5.39.2(f) that the IEPA has not previously taken on any matter of public record, before December 5, 2003.

Answer:

The Illinois EPA objects to this request on the basis that it calls for a legal conclusion.

Request No. 19:

The permit denial dated December 5, 2003, is based solely on an interpretation of 415 ILCS 5/39.2(f) that is contrary to the interpretation of 415 ILCS 5/39.2(f) previously communicated by the IEPA to permit applicants.

Answer:

The Illinois EPA objects to this request on the basis that it calls for a legal conclusion. Without waiving this objection, the Illinois EPA refers the Petitioner to the answer to Request No. 4.

Request No. 20:

The permit application submitted in IEPA log no. 2003-113 is consistent with the local siting.

Answer:

The Illinois EPA objects to this request on the basis that it calls for a legal conclusion.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: February 18, 2004



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLACCOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/524-3300

March 12, 2003

Stephen F. Hedinger
1225 South Sixth Street
Springfield, Illinois 62703

Hedinger Law Office

MAR 13 2003

RECEIVED

Re: 1658080001 -- Saline County
Saline County Landfill
Log Nos. 1999-381 and 2001-362
Permit File

Dear Mr. Hedinger:

This is in response to your letter, dated December 12, 2002, concerning the above-referenced landfill and the permit applications for it, designated by the Illinois EPA as Log Nos. 1999-381 and 2001-362. In your letter, you identify yourself as the Special Assistant State's Attorney for Saline County and you indicate that you do not understand what Saline County Landfill, Inc. (SCLI) is requesting in Log No. 2001-362. You also express your opinion regarding the current validity of the 1996 local siting approval granted by the Saline County Board.

First, I want to thank you for bringing this matter to my attention and giving me an opportunity to provide clarification. This response letter gives background information on the 1996 local siting approval and on Log No. 1999-381. It also explains what is being requested in Log No. 2001-362 and presents our view on the viability of the Saline County Board's local siting approval.

Background

On November 21, 1996, the Saline County Board granted local siting approval for a lateral expansion of this landfill. The application for siting approval specified that there would be a 50-foot separation berm between the existing waste footprint (Unit 1) and the lateral expansion footprint (Unit 2). The application for siting approval also specified that the separation berm was to be constructed of clean soil and indicated that the purpose of the berm was to isolate the waste from Unit 1 and Unit 2.

On October 8, 1999, SCLI submitted a permit application (Log No. 1999-381) to us requesting a development permit for a lateral expansion. As originally proposed in Log No. 1999-381, the lateral expansion was consistent with local siting approval. However, the original application had several technical and regulatory problems related to the

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ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892
DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

separation berm ---- particularly with regard to groundwater monitoring and groundwater modeling. SCLI was made aware of these problems by way of draft denial letters.

On August 30, 2000, SCLI submitted an addendum to Log No. 1999-381 proposing a redesign of the lateral expansion that eliminated the separation berm. This addendum cured the previously identified problems associated with the berm but the proposed redesign was not, in our opinion, consistent with the 1996 local siting. Upon being informed that due to this inconsistency we felt that we could not approve the redesign, SCLI asked us to deny Log No. 1999-381 so they could appeal our decision to the Illinois Pollution Control Board.

On January 4, 2002, we denied Log No. 1999-381 solely because the proposed lateral expansion, without the separation berm, was not consistent with the 1996 local siting. SCLI appealed this denial and on May 16, 2002, the Illinois Pollution Control Board affirmed our decision.

Log No. 2001-362

On September 24, 2001, SCLI submitted Log No. 2001-362. This application requested renewal of Permit No. 1996-147-LFM and was timely filed pursuant to 35 Ill. Adm. Code 813.301.

On January 24, 2002, SCLI submitted an addendum to Log No. 2001-362 that made the same proposal (i.e., a lateral expansion without a separation barrier) that had been denied in the final action taken on Log No. 1999-381. The January 24, 2002 addendum was flawed in several respects and on February 7, 2003, SCLI submitted another addendum withdrawing the request for a lateral expansion. Thus, now once again, Log No. 2001-362 only requests renewal of SCLI's 813 permit.

Status of 1996 Local Siting Approval

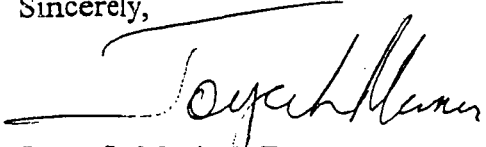
At the end of your letter, you argue that SCLI's 1996 local siting approval has lapsed. The Illinois EPA has not come to the same conclusion. Instead, we have interpreted Section 39.2(f) of the Illinois Environmental Protection Act to mean that a landfill's local siting approval expires within 3 years of being granted only if an application for a development permit has not been made during that 3-year period. This interpretation has consistently been employed in answering questions from potential operators and in reviewing permit applications.

SCLI made application for a lateral expansion (Log No. 1999-381) within 3 years of obtaining local siting approval and although that application was denied and the Illinois Pollution Control Board has affirmed its denial, the 1996 local siting approval remains

viable. Accordingly, if SCLI were to submit a permit application for a lateral expansion, that was consistent with the 1996 local siting approval and that met all the regulatory requirements, the Illinois EPA would be obligated to approve it.

If you have any questions regarding this letter, please contact Chris Liebman at 217/524-3294 or Christine Roque at 217/524-3299.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joyce L. Munie".

Joyce L. Munie, P.E.
Manager, Permit Section
Bureau of Land

CSL

JLM:CMR:bjh\032991.doc