

ILLINOIS POLLUTION CONTROL BOARD
April 12, 2017

BRICKYARD DISPOSAL & RECYCLING,)
INC.,)
)
Petitioner,)
)
v.) PCB 16-66
) (Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

Brickyard Disposal & Recycling, Inc. (Brickyard) applied to the Illinois Environmental Protection Agency (Agency) to modify the permit for its municipal solid waste landfill at 601 Brickyard Road, Danville, Vermilion County. The Agency rejected the permit application as incomplete and Brickyard appealed to the Board. The Board granted summary judgment for Brickyard. The Agency then appealed the Board's final determination to the Fourth District Appellate Court. Illinois Environmental Protection Agency v. PCB, No. 4-17-0144 (4th Dist. filed Feb. 24, 2017). The Agency now asks the Board to stay its November 17, 2016 final order pending appeal and Brickyard objects. The Agency also requests, and the Board grants, leave to reply to Brickyard's objection. The Board also grants the requested stay.

Brickyard contends that the Board's order is not a final order subject to appeal, and that the Board retains jurisdiction until final disposition of the underlying matter. Resp. at 2, citing Lippert v. Property Tax Appeal Board, 273 Ill. App. 3d 150, 153-54 (4th Dist. 1995). The Agency argues that the order was final because it ascertained and fixed the rights of both parties. Reply at 2, citing Town & Country Utilities, Inc. v. PCB, 225 Ill.2d 103 (2007). The Board finds its November 17, 2016 order was a final order. Filing a petition for review with the Board gives an applicant the opportunity to challenge a specific Agency decision. Here, the Agency decision at issue was whether Brickyard's landfill expansion application was incomplete. The Board's jurisdiction ended when it ruled that the application was complete and directed the Agency to perform a technical review of Brickyard's permit application. The Board therefore has taken final action. This is consistent with previous actions where Board decisions on Agency permit determinations were final Board orders for purposes of appellate review. *See, e.g., IEPA v. Jersey Sanitation Corp.*, 336 Ill.App.3d 582 (4th Dist. 2003).

Under the Board's procedural rules, a final Board order may be stayed pursuant to Illinois Supreme Court Rule 335. 35 Ill. Adm. Code 101.906(c). That rule directs a party on appeal to file an application for stay before the agency that made the final decision. 134 2d R. 335(g). The Board considers various factors when deciding whether to grant a stay, including: (1) whether a stay is necessary to secure the fruits of the appeal, (2) whether the status quo should be

preserved, (3) the respective rights of the litigants, and (4) hardship on other parties. People v. AET Environmental and EOR Energy LLC, PCB 7-95, slip op. at 4 (June 20, 2013), citing Stacke v. Bates, 138 Ill. 2d 295, 304-6 (1990).

Brickyard states that it would be harmed by the stay because it would not have the benefit of having its permit processed during the appeal period, and that no harm would come to the Agency by doing so. Resp. at 4. Brickyard further contends that the status quo can be maintained by the Agency performing a technical review of the application. *Id.* at 5. The Board disagrees with this assessment.

The Board's final order triggered a 180-day deadline for the Agency to complete its review of the permit application. A permit will be automatically issued after 180 days unless the Agency acts earlier. Mot. at 3, citing 415 ILCS 5/39(a) (2014). The current deadline for the Agency to act is May 2, 2017. Resp. Exh. 1 Att. B. Final action on the application will moot the Agency's appeal, making it impossible for the appellate court to grant relief that would return the parties to the status quo prior to the Board's final order. *Id.* at 3-4, citing People v. Johnson, 225 Ill. 2d 573, 595 (2007). A stay would not burden Brickyard because its own calculations found that, as of January 1, 2015, the landfill had a life expectancy of 16 years without use of the wedge. R47069. There is also no evidence in the record of any hardship being imposed on other parties. The factors weigh in favor of granting the stay.

For these reasons, the Board grants the Agency's motion, and stays its November 17, 2016 final order pending the appeal in Illinois Environmental Protection Agency v. PCB, No. 4-17-0144.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 12, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board