

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LANDFILL 33, LTD.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 20-18
)	(Land - Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on April 17, 2020, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois Notice of Filing, Respondent's Motion for Summary Judgment and Certificate of Service, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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Dated: April 17, 2020

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RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), under Section 101.516 of the Board regulations, 35 Ill. Adm. Code 101.516, hereby moves for summary judgment against Petitioner, Landfill 33, LTD., and in favor of Respondent.

INTRODUCTION

Petitioner Landfill 33, LTD. ("Landfill 33" or "Facility") seeks to increase the waste disposal capacity of its landfill through expansion beyond the current boundaries of the Facility. The Agency found the development permit application submitted on April 5, 2019 incomplete because Landfill 33 failed to provide proof to the Illinois EPA that the proposed expansion of existing boundaries of the Facility had been reviewed in accordance with the requirements specified in Section 39.2 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39.2 (2018). In support of its application, Landfill 33 submitted a local siting approval obtained on February 21, 2000, wherein the Effingham County Board in existence at that time approved a September 27, 1999 request for vertical expansion "as proposed" by Landfill 33. In 1999, Landfill 33 had proposed an expansion for an approximate 1.2 million additional cubic yards of waste, with maps that delineated boundaries to the landfill. Two decades later, the current development permit application seeks to expand the final disposal capacity beyond its permitted

boundaries, exceed the permitted volume capacity for the landfill, and increase the lifespan of the Facility as proposed in 1999. An expansion beyond a permitted boundary triggers a requirement for new local siting under Section 39(c). Therefore, without proof that the necessary procedures under Section 39(c) were followed for Landfill 33's newly proposed expansion, the permit application was appropriately deemed incomplete by the Agency.

FACTS

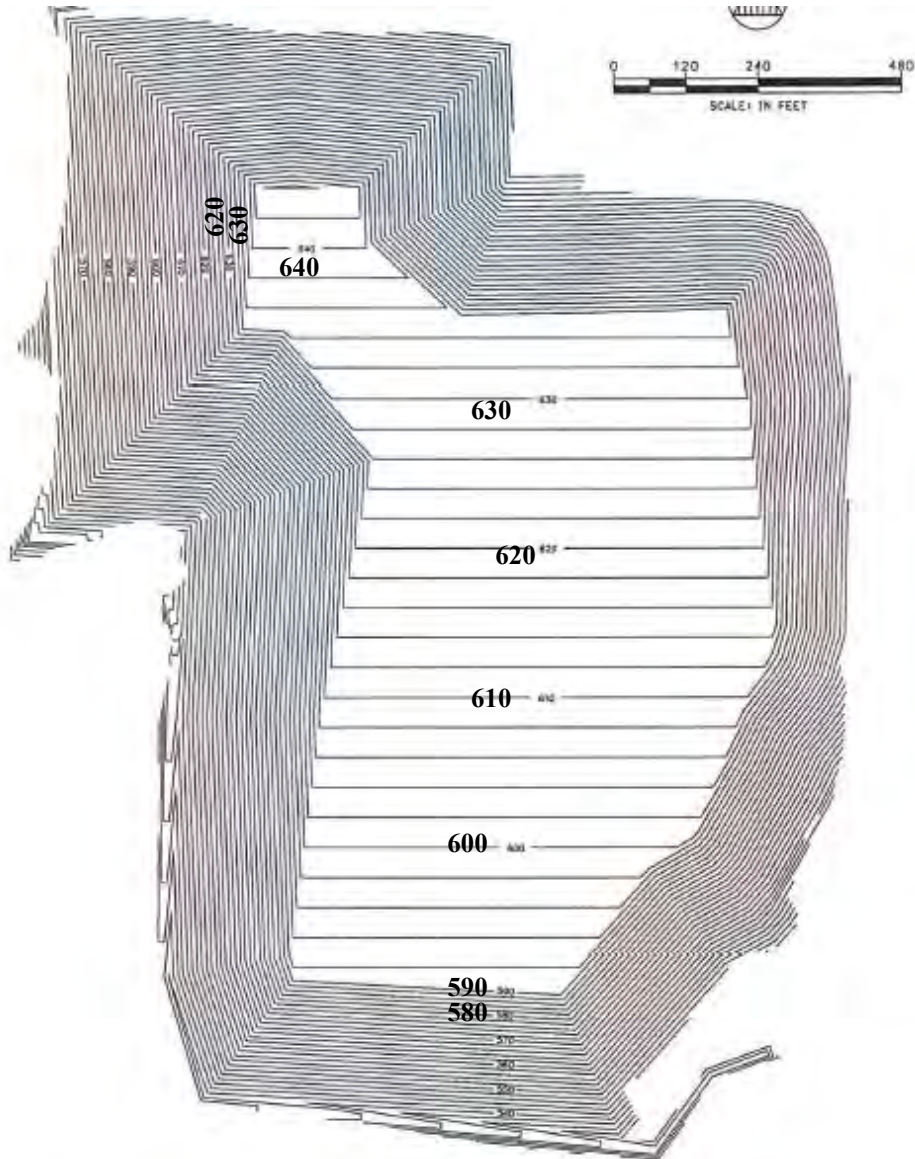
Landfill 33 owns, in part, and operates, pursuant to a permit issued by Illinois EPA, a municipal solid waste landfill located in Effingham County. On April 5, 2019, Landfill 33 applied for a development permit to modify the landfill. R1-1825. Included within the application was a certificate of siting approval form, with an Effingham County Board resolution, dated February 21, 2000, for local approval of a 1999 application by Landfill 33, and an Andrews Engineering letter to Landfill 33 dated March 7, 2018. R26-38. The form stated that the Effingham County Board had approved Landfill 33's proposed modification on November 19, 2018, but did not include any documentation regarding this purported approval, nor any documentation of what was presented to the Effingham County Board in 1999. R26.

On February 21, 2000, the Effingham County Board, following a public hearing, passed a resolution that included findings of fact regarding how an expansion proposed by Landfill 33 in 1999 impacted the Section 39.2 factors. R29. In its March 7, 2018 letter, Andrews Engineering opined that the Effingham County Board resolution from February 21, 2000 imposed no conditions related to waste volume, final contours, or a maximum elevation for expansion of the landfill. R31. Further, Andrews Engineering contended, approximately 1.2 million cubic yards of airspace had been approved during the siting process in 2000, but that was not meant to be an absolute limit. R32. The permit issued by the Agency for that expansion approved final contours

and a waste volume of 1.16 million cubic yards. R1841.

Several revised plan drawings submitted in the permit application submitted on April 5, 2019 depicted the desired new expansion. R33-38.

Figure A: Existing Permitted Final Cover Grades (R33)(emphasis added)




 ANDREWS ENGINEERING, INC. 3300 GINGER CREEK DRIVE SPRINGFIELD, ILLINOIS 62711-7233 PH (217) 787-2334 FAX (217) 787-9495 PONTIAC, IL • LOMBARD, IL • INDIANAPOLIS, IN • WARRENTON, OR PROFESSIONAL DESIGN ENGINEERING AND LAND SURVEYING PERM #184-001541 APPROVED BY: DWM DESIGNED BY: DWM DRAWN BY: MPH	EXISTING PERMITTED FINAL COVER GRADES	DATE: FEBRUARY 2018
	PLANS PREPARED FOR LANDFILL 33, LTD. EFFINGHAM COUNTY, ILLINOIS	PROJECT ID: 180130/2008
		SHEET NUMBER: EX-1

Figure B: The expansion sought on April 5, 2019 (R34)(emphasis added)

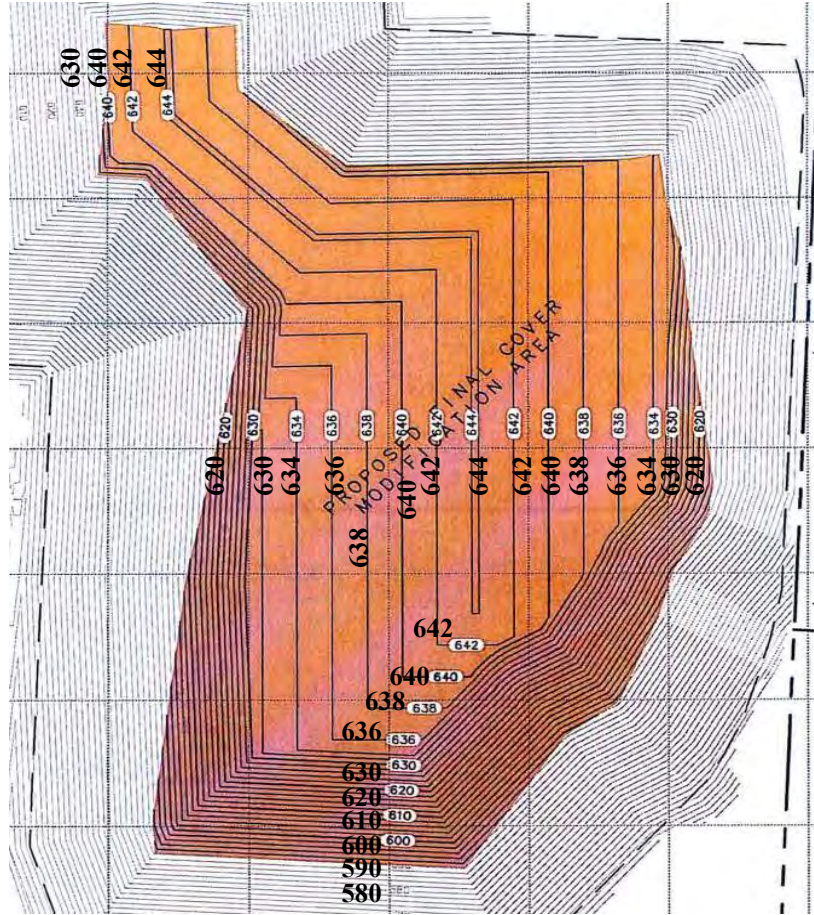


Figure C: The expansion sought on April 5, 2019 (R35)

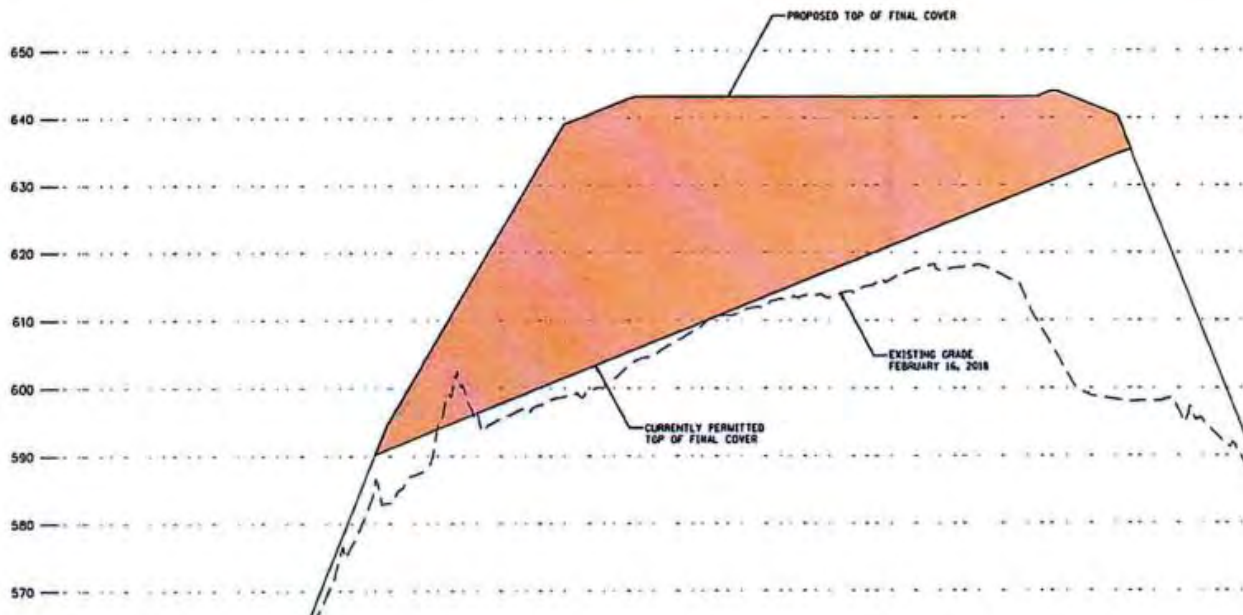


Figure D: The expansion sought on April 5, 2019 (R37)

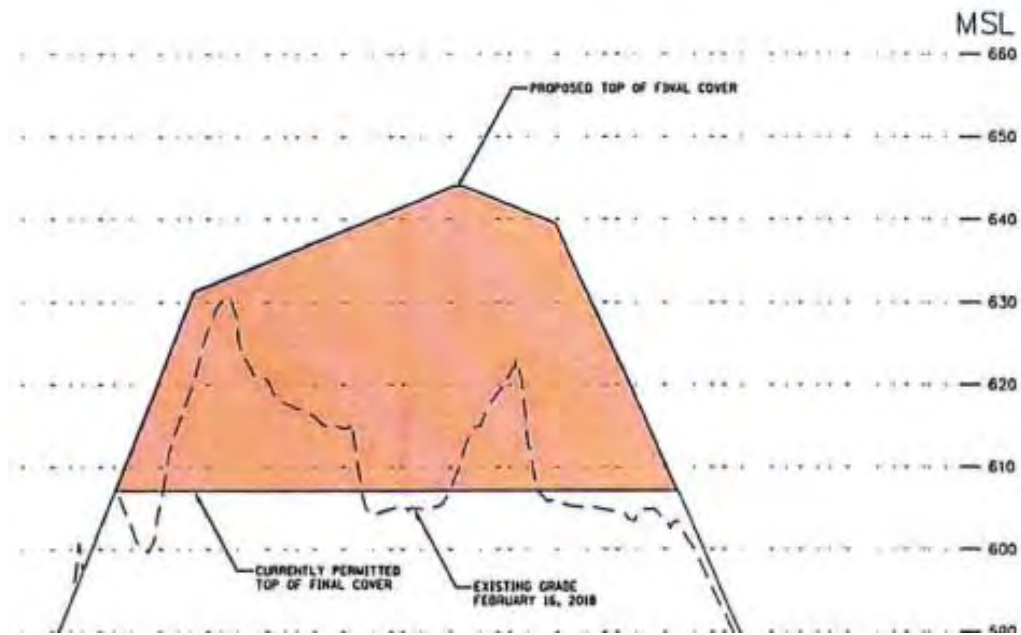
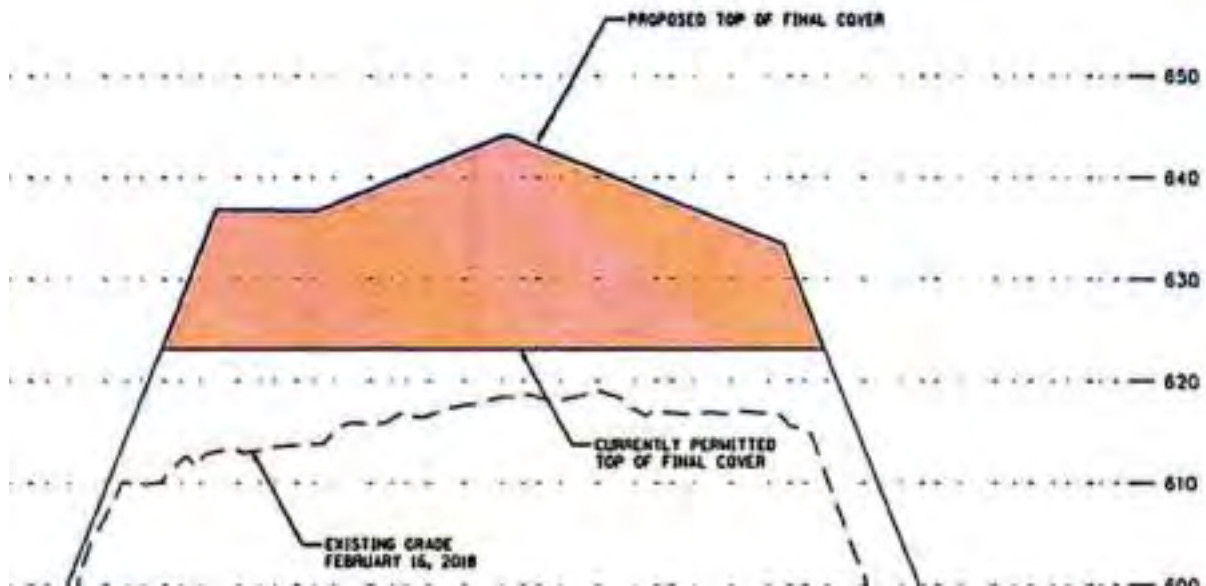


Figure E: The expansion sought on April 5, 2019 (R38)



On May 3, 2019, following review of the submitted documentation for completeness, Illinois EPA sent a letter to Landfill 33 determining that the application was incomplete. R1833-1836. In the letter, Illinois EPA explained that the application proposed increasing the waste

disposal capacity by approximately 420,650 cubic yards by vertically increasing the landfill. R1833. The proposed increase in the waste disposal capacity and associated extension of the operating life of the landfill was not shown to comply with the siting criteria set forth in Section 39.2 of the Act, and further resulted in an expansion beyond the currently permitted boundary. *Id.* Thus, proof was required that the location had been approved by the appropriate unit of local government pursuant to Section 39.2. R1834. Further, Illinois EPA explained that the certificate of siting approval referencing an approval by the Effingham County Board on November 19, 2018 did not comply with the format and procedure outlined in Section 39.2 of the Act. *Id.*

On June 7, 2019, Landfill 33 submitted additional information including an Effingham County Board “Resolution” Dated November 19, 2018. R1877-1896. Landfill 33 stated that the proposed “final cover modification” had been provided to and discussed with the Effingham County Board on November 14, 2018, and, in the opinion of the County Board, the proposed final cover modification is “consistent with the previous Siting Approval, so long as the final maximum elevation of 644 MSL [feet above mean sea level] is not exceeded.” R1878. Therefore, Landfill 33 asserted that it was not required to meet the criteria of Section 39.2(a)(i) through (ix) of the Act, since the proposed application was “consistent with” the previous siting approval. *Id.*

On July 5, 2019, after reviewing documentation submitted by Landfill 33 regarding the completeness of its application, Illinois EPA sent a letter to Landfill 33 stating that the application was still incomplete. R. 1829-1832. Illinois EPA explained that the copy of the Effingham County Board Resolution dated November 19, 2018 did not satisfy the local siting review requirements because, based on Landfill 33’s own application, the local siting request dated September 27, 1999 had sought a vertical expansion of the Facility to a total capacity of

approximately 1.2 million cubic yards of waste, and had included a map of proposed landfill final contours. R1829-1830. The changes in the proposed development would once more vertically increase permitted contours and increase the landfill's disposal capacity by approximately 483,000 cubic yards. R1830. Illinois EPA explained that the materials submitted did not demonstrate that the proposed vertical waste disposal boundaries and increased disposal capacity had been approved by the Effingham County Board. *Id.* Further, Illinois EPA stated that the application did not show that the procedures and process of Section 39.2 of the Act, including public notice, inspection and comment, and public hearing requirements were followed in rendering a determination on the requested siting approval. *Id.*

On August 7, 2019, Landfill 33 submitted additional information including an affidavit from Leon Gobczynski, former chairman of the Effingham County Board in 2000. R1897-1902. Landfill 33 responded that the "application for siting approval simply requested a vertical expansion with approximate cubic waste yardage, and included a map which only included proposed general/conceptual final contours. Moreover, the map contained in the siting application specifically notes that the contours may be refined/revised." R1898. Further, Landfill 33 contended that Mr. Gobczynski's affidavit indicated that Landfill 33's proposed modification was consistent in all respects with the action taken by the Effingham County Board in early 2000, and that the Effingham County Board had not imposed any vertical boundary limitations upon the siting approval granted. *Id.* Additionally, Landfill 33 stated that the siting process followed was approved by Illinois EPA with Modification 9 (issued June 28, 2002) and was consistent in all respects with the requirements that existed at that time. R1898-1899.

On September 6, 2019, after reviewing documentation submitted by Landfill 33 regarding the completeness of its application, Illinois EPA sent a letter to Landfill 33

determining that the application remained incomplete. R1826-1828. Illinois EPA explained that Mr. Gobiczynski's affidavit and other information did not change Illinois EPA's earlier determinations that, pursuant to Section 3.330(b)(2) of the Act, the area of expansion beyond the boundary of a currently permitted pollution control facility is a new pollution control facility subject to additional local siting approval that complies with requirements of Section 39.2 of the Act. R1826-1827.

BURDEN OF PROOF ON APPEAL

Under the Act, the petitioner bears the burden of proof when appealing a permit decision. 415 ILCS 5/40(a)(1); 35 Ill. Adm. Code 105.112(a). For purposes of review, rejection of a permit application is treated as a permit denial. *See Atkinson Landfill Co. v. Illinois Env'tl. Prot. Agency*, PCB 13-8 (June 20, 2013). "The sole question before the Board in a review of the Agency's denial of a permit is whether the petitioner can prove that the application *as submitted to the Agency* demonstrates that the facility will not cause a violation of the Act." *Illinois Env'tl. Prot. Agency v. Illinois Pollution Control Bd.*, 118 Ill. App. 3d 772, 780 (1st Dist. 1983) (emphasis in original). The petitioner may therefore only rely on information in the record to meet its burden; not information brought forth after the fact. *Alton Packaging Corp. v. Illinois Pollution Control Bd.*, 162 Ill. App. 3d 731, 738 (5th Dist. 1987).

Here, the Agency's incompleteness letters and determinations identified one provision of the Act and Board regulations that was not satisfied by Landfill 33's request to develop an expanded boundary. The burden of proof on Landfill 33 is to prove that issuance of a permit would not violate the cited provision, using only the administrative record. In other words, Landfill 33 must use its permit application to disprove a violation of the provision. Failure to disprove a violation of the provision is dispositive. Likewise, affirmative proof of a violation is

fatal.

STANDARD OF REVIEW

Summary judgment in a permit appeal is appropriate when the record demonstrates no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.156(b); *see Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483 (1998). A respondent moving for summary judgment bears the initial burden of producing evidence that either (1) affirmatively negates an element of petitioner's case on appeal, or (2) demonstrates the petitioner is unable to prove an element of its case. *See Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360, 368 (1st Dist. 2006) (discussing defendant's burden for summary judgment). If a respondent meets its burden of production, the burden shifts to the petitioner to come forward with specific evidence in the record creating a genuine issue of fact to defeat summary judgment. *Loschen v. Grist Mill Confections, Inc.*, PCB 97-174 (Sept. 18, 1997) (quoting *Estate of Sewart*, 236 Ill. App. 3d 1, 7-8 (1st Dist. 1992)).

Here, the Agency was unable to review the development permit application because Landfill failed to provide proof of local siting for its expansion. Section 39(c) provides that "no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the [affected] county . . . in accordance with Section 39.2 of [the] Act." 415 ILCS 5/39(c) (2018). Landfill 33 must prove that the record shows that issuance of a permit would not violate Section 39(c)'s prohibition on issuing permits without proof of siting approval. Therefore, Landfill 33 must ultimately prove that its application provides proof that the County Board, following review and compliance with Section 39.2, approved its requested expansion.

For summary judgment, the Agency must (1) prove as a matter of law that Landfill 33 does not have the kind of siting approval required, or (2) demonstrate that the record lacks sufficient proof of siting approval for Landfill 33 to carry its burden. In the absence of a genuine issue of material fact, either showing warrants summary judgment.

ARGUMENT

The Agency is entitled to summary judgment because Landfill 33 seeks a development permit to expand its landfill, and thereby alter the nature and scope of the Facility, without proof of siting review that includes the new boundaries of waste disposal. First, Landfill 33 seeks to expand the vertical boundary (and thereby increase the lateral boundary along the top of the landfill), increase the disposal capacity of its landfill, and, pending a technical review that has not been completed due to lack of siting, requests changes that may require a re-design of the shape and leachate systems of the landfill, due to more gas and leachate generated. Second, Landfill 33 did not secure siting approval for the proposed expansion as required by law. Finally, Landfill 33's reliance on prior siting approval is inadequate because the prior siting approval was based on what was proposed at the time by Landfill 33, including a specific volume and topographical maps that differ from the current proposed expansion. Although Landfill 33 has secured the current Effingham County Board's opinion that the current proposal is consistent with the prior siting approval made twenty years ago, this finding of consistency is of no legal significance under the Act, because the finding contains no review of the impact of the proposed expansion on the required factors in Section 39(c). Moreover, the necessary procedures under Sections 39(c) and 39.2, including presenting the proposed expansion to the public through public notice, inspection and comment, and holding a public hearing prior to siting approval, were not followed or were not submitted to the Agency as part of the current application.

Landfill 33 cannot prove it submitted adequate siting approval to the Agency as required for its proposed expansion. Therefore, the Agency is entitled to summary judgment.

I. Landfill 33 is a permitted pollution control facility seeking to expand its boundaries and increase its disposal capacity.

Under the Act, a municipal solid waste landfill like Landfill 33's is a "pollution control facility." 415 ILCS 5/3.330(a). Expanding such a facility creates a "new pollution control facility," defined as "the area of expansion beyond the boundary of a currently permitted pollution control facility." 415 ILCS 5/3.330(b)(2). "The legislature amended the Act in 1981 to give local governmental authorities a voice in landfill decisions that affect them . . . by investing them with the right to assess not merely the location of proposed landfills, but also the impact of alterations in the scope and nature of previously permitted landfill facilities." *M.I.G Investments, Inc. v. Illinois Env'tl. Prot. Agency*, 122 Ill. 2d 392, 400 (1988). Thus, the Agency is prohibited from issuing a permit for the development of an expansion unless, pursuant to Section 39(c) of the Act, the developer proves the area of expansion beyond the boundaries of that currently permitted pollution control facility has siting approval from the relevant local government in accordance with the location suitability criteria set forth in Section 39.2. *See* 415 ILCS 5/39(c). This involves the county board approving (or denying) an expansion request after an analysis of facts required to be presented pursuant to Section 39.2, including through written notice to owners of property in the subject area; filing a copy of the request with the county board and allowing for public comments; and at least one public hearing. *See* 415 ILCS 5/39.2.

Local siting must be contemporaneous with any development, as local siting approval expires at the end of three calendar years from the date it was granted, unless within that period the applicant has made application to the Agency for a permit to develop the site. *See* 415 ILCS 5/39.2(f). If local siting is conducted and application for development occurs within three years,

by the plain language of Section 3.330(b)(2), a subsequent request for development that expands beyond the boundaries of the existing facility requires local siting pursuant to Section 39.2. 415 ILCS 5/3.330(b)(2).

The boundary of a “currently permitted” facility is defined by the Agency permit. As expressly held by the Illinois Supreme Court, and followed in numerous decisions thereafter, “the provisions of section 39.2 of the Act are to be applied in a proposal to increase vertically the waste disposal capacity of a landfill beyond the limits set out in the initial permit issued by the Agency.” *M.I.G. Investments, Inc. v. Illinois Env'tl. Prot. Agency*, 122 Ill. 2d 392, 401 (1988); *see also Bi-State Disposal Inc. v. Illinois Env'tl. Prot. Agency*, 203 Ill. App. 3d 1023, 1024-26 (5th Dist. 1990) (reviewing the Agency’s permits to determine whether a proposal exceeds currently permitted boundary). Recently, the Board and Fourth District held that the boundary of a “currently permitted” facility may be additionally defined by the local county board through the process of obtaining siting approval. *See Illinois Env'tl. Prot. Agency v. Illinois Pollution Control Bd.*, 2018 Ill. App. 4th 170144, ¶ 42 (ascertaining the boundary of the facility from two places in the record – the Agency’s permit and the County Board’s siting approval). However, Section 3.330(b)(2) plainly applies to a request to expand beyond the boundary of a currently permitted pollution control facility. *See* 415 ILCS 5/3.330(b)(2). Finally, the boundaries of a landfill include both lateral and vertical boundaries, as an expansion to either increases the landfill’s capacity to accept and dispose of waste, which impacts the criteria in Section 39.2(a). *M.I.G. Investments*, 122 Ill. 2d at 401.

In 2000, the Effingham County Board approved a request for siting approval with findings of fact that considered the Section 39.2 factors based on the expansion “*as proposed* by Landfill 33 LTD.” R29 (emphasis added). In the current permit application submitted to the

Agency, Landfill 33 has not submitted any documents showing what it had “proposed” to the Board in 1999. In any event, though, Landfill 33’s siting application, approved by the Effingham County Board “as proposed,” led to the boundaries included in the Agency’s current permit, seen in Figure A. As seen in Figure A, this includes the permitted vertical boundaries of 590, 600, 610, 620, 630, and 640 MSL at various locations, with a gradual increase between those heights. Additionally, based on the letter submitted by Andrews Engineering to Landfill 33 on March 7, 2018, the local siting request submitted to the Effingham County Board on September 27, 1999 proposed a vertical expansion that included an approximate additional 1.2 million cubic yards of waste, and 1.16 million cubic yards ultimately became the permitted waste disposal capacity. R31.

Landfill 33 now asks the Agency in 2020 to add waste all along the top of the Facility, sharply increasing the vertical boundaries to 600, 610, 620, 630, 636, 638, 640, and 642 MSL, at the same point where the previous map only went up to 600 - 610 MSL, and further extending the 644 MSL along the entire top of the landfill, expanding waste outside of current lateral boundaries. This is a significant height increase beyond the currently permitted boundaries outlined in the map contemporaneously submitted following the local siting review conducted in 1999. *Compare* Figure A with Figures B through E. Additionally, the amount of waste to be added within the requested expansion, allowing for 1.6 cubic million yards of waste, is over a third more waste than was approved during the prior local siting process. This significant expansion of waste disposal capacity beyond the current boundaries established by Petitioner’s own application two decades ago, and approved as such by the Agency, requires local siting review and analysis of the Section 39.2 factors.

II. Landfill 33 improperly attempts to avoid required local siting approval by using the highest elevation on one corner of a map allegedly approved through prior local siting as a blank check to fill in the entire top of the landfill laterally and up to that vertical height.

The Illinois Supreme Court has explicitly held that a volumetric expansion of a landfill beyond a lateral or vertical boundary requires siting approval. *M.I.G. Investments, Inc. v. Illinois Env'tl. Prot. Agency*, 122 Ill. 2d 392, 400 (1988). “It is clear that the legislature intended to invest local governments with the right to assess not merely the location of proposed landfills, but also the impact of alterations in the scope and nature of previously permitted landfill facilities.” *Id.* Landfill 33 requested and received local siting approval for a proposed expansion of 1.2 million cubic yards of waste. Twenty years later, Landfill 33 now seeks to expand that to a total of 1.6 million cubic yards of waste through raising the vertical boundary and drastically expanding the lateral boundaries across the top of the landfill, without analyzing the impacts of the expansion in accordance with Section 39.2

M.I.G. Investments is directly on-point and controlling. *See id.* at 401 (“[T]he provisions of section 39.2 of the Act are to be applied in a proposal to increase vertically the waste disposal capacity of a landfill beyond the limits set out in the initial permit issued by the Agency.”). Landfill 33’s proposed volumetric expansion beyond vertical boundaries requires new siting approval. *See also Bi-State Disposal Inc. v. Illinois Env'tl. Prot. Agency*, 203 Ill. App. 3d 1023, 1027 (5th Dist. 1990) (increasing the capacity of the landfill to accept and dispose of waste impacts the criteria local governmental authorities consider in assessing the propriety of establishing a new regional pollution control facility).

By contrast, this case is distinguishable from earlier cases where new siting approval has not been required for landfill modifications. In *Waste Management, Inc.*, for example, the operator proposed to reconfigure the final contours of the landfill, but in a way that would **not**

increase the landfill's total capacity or operating life. *Waste Management, Inc. v. Illinois EPA*, PCB 94-153, slip op. at 3 (July 21, 1994). The prior local siting approvals the landfill received did not establish specific final design contours, and the operator proposed final design contours that caused some areas to be higher and some lower than the permitted design approved by the Agency. *Id.* However, the Board noted that the new design led to a decrease in overall waste capacity of the facility. *Id.* at 3-4. Thus, because there was no increase in landfill capacity or life, and in fact the modifications decreased the landfill's capacity and life, the Board did not find the contour modifications to be an expansion requiring local siting under the Act based on the specific facts in that case. *Id.* at 6-7.

If Landfill 33 were seeking to move the 644 MSL maximum height to a different location along the top of the landfill, and decrease height in another area of the landfill, leading to an overall decrease in the disposal capacity and decreased life of the landfill, the facts would match *Waste Management*. In contrast, Landfill 33 solely seeks to increase the waste disposal capacity of the Facility, by 483,000 cubic yards, leading to an increased life of the Facility, and solely through an expansion of currently permitted vertical and lateral boundaries. The expansion sought throughout the entire top of the landfill is therefore a new pollution control facility by the Act's definition in Section 3.330(b)(2). As such, the new expansion beyond existing permitted boundaries requires new consideration of its impact on the criteria set out in Section 39.2(a), including the danger to the surrounding area from fire, spills, or other operational accidents and overall impact on the surrounding community.

In *Brickyard Disposal*, the dispute centered, in part, on filling in a wedge between "Units I and II" of a landfill. See *Brickyard Disposal v. Illinois Env'tl. Prot. Agency*, PCB 16-66, slip op. at 2-3 (Nov. 17, 2016). Brickyard had received siting approval from the local county board in

1992 with a map that included Units I and II immediately next to each other, with no clean fill in the wedge. *Id.* at 6. During development of the landfill, Brickyard sought a modification of Unit II that led to a wedge of clean fill between Units I and II. *Id.* at 3. In 2015, Brickyard sought to modify development again and fill the wedge with waste instead of clean fill. *Id.* The Board found that removing the wedge and using the space for disposal, despite a more recent modification to the permit that included the wedge of clean fill, could not be considered to extend waste beyond boundaries set by the county board, as the Board found that the county board had originally approved the landfill with the wedge containing waste. *Id.*

Unlike in *Brickyard*, where the original permit allowed for waste disposal in the disputed area, the vertical area above Landfill 33 has never been permitted or sited to accept the waste the Facility now seeks to add. Additionally, unlike in *Brickyard*, where the county board had previously conducted local siting review based on a proposed map depicting the wedge area as containing waste, here Landfill 33 proposed, and the Effingham County Board approved, an expansion including maps delineating vertical and lateral boundaries and an approximate waste disposal capacity significantly less than the currently proposed expansion. *See* R31; Figure A. The volumetric expansion beyond the vertical and lateral boundaries requires new siting approval pursuant to Section 39.2.

III. The Act requires public notice, inspection and comment, a public hearing, and analysis of the impact of the proposal on the factors outlined in Section 39.2 before the Agency may consider a permit application to expand waste capacity beyond vertical and lateral boundaries.

Section 39.2(g) of the Act provides that: “The siting approval procedures, criteria and appeal process provided for in this Act . . . shall be the exclusive siting procedures and rules and appeal procedures for facilities subject to such procedures.” 415 ILCS 5/39.2(g). In order to satisfy the requirements for local siting of a landfill expansion under the Act, then, a local

government cannot simply review an older siting approval and pass a resolution opining on its scope. Instead, the local government is required to approve or deny the expansion in accordance with Section 39.2 of the Act. *See* 415 ILCS 5/39(c). Section 39.2 provides that the county board shall approve or disapprove the request for local siting, and an applicant shall submit sufficient details describing the proposed facility and evidence to demonstrate compliance. *See* 415 ILCS 5/39.2(a). Local siting approval shall be granted **only if** the proposed facility meets certain criteria, including that the facility is necessary, the facility is designed to be operated so that public health, safety and welfare is protected, the plan is designed to minimize danger to surrounding area from fire, spills, or other operational accidents, and the traffic patterns are designed to minimize impact on existing flows. *Id.*

Section 39.2 states that, no later than 14 days before submitting the request for approval to the county board, the applicant must provide written notice to owners of property within the subject area, file a copy of the request including the substance of the proposal and allow for written comment, and hold at least one public hearing. *See* 415 ILCS 5/39.2 (b), (c), and (d). Decisions of the county board must be in writing, confirming a public hearing was held, and specify the reasons for the decision in conformance with subsection (a) of Section 39.2. 415 ILCS 5/39(e). The process in Section 39.2 protects the rights of third parties, as third parties who participate in public hearings before the county board may petition the Pollution Control Board for review of a petition's approval. *See E & E Hauling, Inc. v. Pollution Control Bd.*, 107 Ill. 2d 33, 41 (1985).

Landfill 33's proposed change in gradation and height of the landfill, as well as the additional waste capacity depicted on the maps in Figures B through E, is a significant expansion that impacts the criteria set out in Section 39.2. The Agency has determined so, pursuant to its

mandate to review the proof of siting approval prior to issuing a development permit for expansions of boundaries of such facilities. When asked to provide proof of local siting approval, Petitioner presented an affidavit of a single Board member, twenty years ago, and searched his recollection of matters to ascertain whether he (or that Board and all the commenters and public officials and others in 1999) would find them “consistent.” The basis for this conclusion is vaguely referenced in the conclusory affidavit.

None of the various materials presented by Landfill 33 constitute a legally valid local siting approval. The General Assembly, in enacting Section 39.2, was specific in what is required for local siting approval. It is not enough that a county board chairman from 2000 has stated the current permit application is consistent with the previous local siting approval. Nor is it enough that the Effingham County Board passed a resolution finding the currently proposed expansion to be consistent with the prior approval. That is merely speculation as to what the Effingham County Board **would have done** in 2000, if it had been presented with Landfill 33’s currently proposed expansion. What is necessary is that Landfill 33 provide evidence that the Effingham County Board actually has approved the currently proposed expansion after compliance with the siting process required by Section 39.2. Landfill 33 has not submitted such an approval to the Agency. Instead, Landfill 33 seeks to cut out the necessary procedure in Section 39.2, that is, public notice, inspection and comment, and a public hearing. *See* ILCS 5/39.2(b)-(d).

Moreover, Landfill 33 has not and cannot establish that the Effingham County Board’s 2000 resolution—approving an expansion “as proposed” in 1999 by Landfill 33—is sufficient to support Landfill 33’s currently proposed expansion. R.28. Landfill 33 did not submit the siting request it submitted to the Effingham County Board in 1999 as part of its current application. Landfill 33 did provide several maps, though, including Figure A, that depicts the “currently

permitted boundaries,” in addition to Figures B through E that depict the proposed expansion, highlighting in orange the areas where new waste would be placed, outside of the currently permitted boundaries. As the applicant, it is Landfill 33’s burden to produce documents or hearing records to show local siting was conducted. Landfill 33 has failed to produce documents to support the notion that the current expansion and waste capacity increase was part of its 1999 application or considered on February 21, 2000, or presented as part of the public notice, inspection and comment, and public hearing conducted prior to February 21, 2000. Therefore, the Agency is legally obligated to find the permit application incomplete.

Without proof of current siting approval, and without proof of sufficient prior approval, Landfill 33 cannot carry its burden on appeal. Moreover, Section 39(c) prohibits the Agency from issuing the development permit requested. The material facts underlying this conclusion are not susceptible to genuine disagreement. The Agency is therefore entitled to summary judgment as a matter of law, and the facts relevant to this determination are not in dispute. Respondent, the Illinois Environmental Protection Agency, requests the Board enter a final order granting summary judgment against Petitioner, Landfill 33, Ltd., and in favor of the Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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Date: April 17, 2020

CERTIFICATE OF SERVICE

I hereby certify that I did on April 17, 2020, cause to be served by electronic mail, a true and correct copy of the following instruments entitled NOTICE OF FILING, RESPONDENT'S MOTION FOR SUMMARY JUDGMENT and CERTIFICATE OF SERVICE upon:

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