

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) PCB 2021-110
CTI Development, LLC v. Illinois)
Environmental Protection Agency) (Variance – Land)

To: See attached service list.

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Illinois Environmental Protection Agency's Response to CTI's Motion for Leave to File Second Amended Petition for Variance, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: October 20, 2021

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Clayton J. Ankney, #6320224
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Clayton.Ankney@Illinois.Gov

Respondent,

BY: /s/Clayton J. Ankney
Clayton J. Ankney

THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

Jennifer M. Martin
Melissa S. Brown
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, IL 62711
Jennifer.Martin@heplerbroom.com
Melissa.brown@heplerbroom.com

William J. Curtis
POLSINELLI PC
100 S. Fourth Street
St. Louis, MO 63102
wcurtis@polsinelli.com

ILLINOIS POLLUTION CONTROL BOARD
Don Brown, Clerk
Carol Webb, Hearing Officer
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, IL 60601
Don.Brown@illinois.gov
Carol.Webb@illinois.gov

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IN THE MATTER OF:)	
)	PCB 2021-110
CTI Development, LLC v. Illinois)	
Environmental Protection Agency)	(Variance – Land)
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S RESPONSE TO CTI’S MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION FOR VARIANCE

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by one of its attorneys, hereby submits its Response to CTI’s Motion for Leave to File Second Amended Petition for Variance, stating as follows:

INTRODUCTION

On September 22, 2021, the Illinois Environmental Protection Agency filed a motion to dismiss arguing CTI’s Amended Petition for Variance should be dismissed because the Board does not have the authority to grant CTI a variance permanently relieving it of its clear obligation under 35 Ill. Admin. Code. §§ 845.200(a)(4) and 845.720(b)(2) (and 22.59(b)(2) of the Act) to obtain a construction permit for closure of the West Ash Complex.

On October 6, 2021, CTI filed a response to the Agency’s motion to dismiss, arguing the relief sought was not permanent. CTI also filed its Motion for Leave to File Second Amended Petition for Variance, adding a request for relief from 845.220(e). Specifically, CTI seeks an extension of the deadline in 845.220(e), which states that owners and operators who “submitted a closure plan to the Agency before May 1, 2019, and who **completed closure before July 30, 2021 shall not be required to obtain a construction permit for closure under subsection (d).**” 845.220(e) (emphasis added); *see* Motion for Leave, p. 4. If the Board grants CTI this relief and CTI completes closure prior to the extended deadline, CTI would be exempt from the requirement that it obtain a construction permit prior to closure.

For the same reasons discussed in the Agency's September 22, 2021 Motion to Dismiss Amended Petition for Variance and the Agency's October 20, 2021 Reply to CTI's Response to Motion to Dismiss Amended Petition for Variance, the relief sought in CTI's proposed Second Amended Petition is permanent, the Board does not have the authority to grant the relief requested, and CTI's Motion for Leave to File Second Amended Petition for Variance should be denied.

ARGUMENT

CTI did not complete closure of the West Ash Complex prior to July 30, 2021. *See* Second Amended Petition, p. 2 (“The West Ash Complex is in the process of being closed.”). Therefore, the 845.220(e) exemption does not apply to the West Ash Complex and CTI must obtain a construction permit prior to closing the West Ash Complex under 35 Ill. Admin. Code. §§ 845.200(a)(4) and 845.720(b)(2) (and 22.59(b)(2) of the Act).

CTI now seeks to extend the exemption deadline by three years so that it does not have to obtain a construction permit prior to closing the West Ash Complex. CTI states this relief is temporary for “the same reasons discussed [in its Response to Motion to Dismiss] concerning the relief requested in the Amended Petition.” Motion for Leave, p. 4.

While phrased in a way that makes the relief appear to be temporary—a mere extension of a deadline—what CTI really seeks is to be permanently relieved of its obligation to obtain a construction permit prior to closure: “Per the requested relief, if closure is completed within this timeframe, CTI would not be required to obtain a construction permit for closure under Part 845 for the West Ash Complex.” Motion for Leave, p. 4. It appears CTI has no intention of using the requested extension of time to come into compliance with the construction permit requirements—instead, it intends to use the extension of time to avoid the construction permit requirement altogether.

For the same reasons discussed in the Agency's September 22, 2021 Motion to Dismiss Amended Petition for Variance and the Agency's October 20, 2021 Reply to CTI's Response to Motion to Dismiss Amended Petition for Variance, the Board does not have the authority to grant the permanent relief requested in CTI's Second Amended Petition for Variance.

CONCLUSION

The Board does not have the authority—through either the variance or adjusted standard procedure—to relieve CTI of the requirement that it obtain a construction permit to close the West Ash Complex. Because CTI's Second Amended Petition requests relief that the Board is not empowered to grant CTI's Motion for Leave to File Second Amended Petition for Variance should be denied.

Wherefore, the Agency requests the Board deny CTI's Motion for Leave to File Second Amended Petition for Variance.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent,

BY: /s/Clayton J. Ankney
Clayton J. Ankney

Dated: October 20, 2021

Clayton J. Ankney, #6320224
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Clayton.Ankney@Illinois.Gov

THIS FILING IS SUBMITTED ELECTRONICALLY

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation certify the following:

That I have served the attached **NOTICE OF FILING** and **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO CTI'S MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION FOR VARIANCE** by e-mail upon the following:

Jennifer M. Martin	Jennifer.Martin@heplerbroom.com
Melissa Brown	Melissa.brown@heplerbroom.com
William J. Curtis	wcurtis@polsinelli.com
Don Brown	Don.Brown@illinois.gov
Carol Webb	Carol.Webb@illinois.gov

That I have served the attached **NOTICE OF FILING** and **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO CTI'S MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION FOR VARIANCE** upon any other persons, if any, listed on the Service List, by placing a true copy in an envelope duly address bearing proper first-class postage in the United States mail at Springfield, Illinois on October 20, 2021.

That my e-mail address is Clayton.Ankney@Illinois.gov.

That the number of pages in the e-mail transmission is six (6).

That the e-mail transmission took place before 4:30 p.m. on the date of October 20, 2021.

/s/Clayton J. Ankney
Clayton J. Ankney