

ILLINOIS POLLUTION CONTROL BOARD  
September 18, 2014

VILLAGE OF FAIRMONT CITY, ILLINOIS, )  
)  
Petitioner, )  
)  
v. ) PCB 15-69  
) (Third-Party Pollution Control Facility  
VILLAGE OF CASEYVILLE, ILLINOIS, ) Siting Appeal)  
BOARD OF TRUSTEES and CASEYVILLE )  
TRANSFER STATION, L.L.C., )  
)  
Respondents. )

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

On September 8, 2014, the Village of Fairmont City (Fairmont City) timely filed a petition (Pet.) asking the Board to review an August 6, 2014, decision of the Village of Caseyville Board of Trustees (Village). *See* 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 101.300(b), 107.204. The Village granted a Caseyville Transfer Station, L.L.C. (Station) application to site a municipal solid waste transfer station on a five acre site at the southwest corner of the intersection of Bunkum Road and the Harding Ditch in Caseyville, St. Clair County. Pet. at 1.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government approves siting, certain third parties may appeal the local government's decision to the Board. *See* 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 107.

In this case, Fairmont City appeals on the grounds that the siting process and procedures used by the Village Board in making its decision were not fundamentally fair. Pet. at 2. Fairmont City also appeals on the ground that the written material and public comment presented by the Station did not establish that the Station met criteria (i), (iii), (vi), and (viii) as required by Section 39.2(a) of the Act (415 ILCS 5/39.2(a)(i), (iii), (vi), (viii) (2012)):

- (i) that the Station is necessary to accommodate the waste needs of the area it is intended to serve;
- (iii) that the Station is located to minimize incompatibility with the character of the surrounding area and the effect on the value of surrounding property;

- (vi) traffic patterns to and from the Station are designed to minimize the impact on existing traffic flows; and
- (viii) that as the Station is to be located in a county (St. Clair County) where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or Solid Waste Planning and Recycling Act, the Station is consistent with that plan. Pet. at 2-3.

Fairmont City further contends that the Village's siting approval should be reversed because the Station is located within 1,000 feet of property zoned for primarily residential uses, in violation of Section 22.14(a) of the Act. *Id.* at 3, citing 415 ILCS 5/22.14(a) (2012). For the reasons below, the Board accepts the petition and directs the Board's hearing officer to set this matter for hearing.

### **THIRD-PARTY APPEAL**

Section 40.1(b) of the Act (Act) (415 ILCS 5/40.1(b) (2012)) allows third parties to appeal a local government decision granting approval to site a pollution control facility if the third parties participated in the local government's public hearing and are so located as to be affected by the proposed facility. *See* 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 107.200(b). The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government's siting decision. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party's petition is "duplicative or frivolous," the Board will hear the petition. 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 107.200(b).

Fairmont City's petition states that it participated in the Village's public hearing and that it is so located as to be affected by the proposed facility. Pet. at 2. Fairmont City specifies the grounds for the appeal and includes a copy of the Village's siting decision. The petition meets the content requirements of 35 Ill. Adm. Code 107.208. Fairmont City also filed its petition within 35 days after the Village's approved siting.

### **HEARING AND DECISION DEADLINE**

An action before the Board is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is "a request for relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* No evidence before the Board at this time indicates that this action is duplicative or frivolous. The Board accepts Fairmont City's petition and directs the Board's hearing officer to set this matter for hearing.

Fairmont City has the burden of proof. *See* 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before the Village, except that,

if relevant, evidence may be introduced on (1) the local government's jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(b) (2012); Land & Lakes Co. v. IPCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2012)), which only the Station may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Station "may deem the site location approved." 415 ILCS 5/40.1(a) (2012). Currently, the decision deadline is January 6, 2015, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for December 18, 2014.

### **VILLAGE'S RECORD**

The Village must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. Fairmont City must pay to the Village the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2012); 35 Ill. Adm. Code 107.306.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 18, 2014, by a vote of 4-0.



---

John T. Therriault, Clerk  
Illinois Pollution Control Board