## ILLINOIS POLLUTION CONTROL BOARD May 1, 1980

VILLAGE OF HILLSIDE, a Municipal Corporation, SAVE THE TOWNSHIP OF PROVISO, INC., a Not-for-profit Illinois Corporation,

Complainants,

PCB 80-60

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JOHN SEXTON SAND & GRAVEL CORP., an Illinois Corporation, BROWNING-FERRIS INDUSTRIES OF ILLINOIS, INC., an Illinois Corporation, and CONGRESS DEVELOPMENT COMPANY, an Unknown Corporation,

V.

Respondents.

ORDER OF THE BOARD (by Board Member Goodman):

Respondents' April 15, 1980 Motion to Dismiss is granted in part as follows:

This complex complaint concerns Respondents' legal standing to obtain transfer of development permits.

## COUNT I

On August 14, 1979 the Agency allegedly approved Respondents' May 9, 1979 application for transfer of permits held by Commonwealth Edison. On August 15, 1979 the Agency allegedly approved Respondents' May 9, 1979 application for modification of other permits.

Application for these permits was allegedly made before Edison petitioned the Illinois Commerce Commission to allow sale of the facility to Respondents pursuant to Section 27 of the Public Utility Act, Ill.Rev.Stat., ch. 111-2/3 (1977). Also alleged is Respondent's continued development activities at the site from March 1, 1979 through December 3, 1979.

The complaint alleges violations of Solid Waste Rule 205(d) because Respondents did not submit sufficient evidence with the May 9, 1979 applications either that Edison had authority to sign as transferor or that Respondents had authority to sign as operators. Therefore, the permits are alleged to be void under law. Respondents'

continued develpment activity is alleged to be illegal because the Respondents are neither owners nor operators of the site, and because Edison, the owner, had no authority to allow the transfer.

There are several questions of fact presented by this complaint. There is no factual allegation that Respondents were not in fact operators on May 9, 1979 other than that inferable from the fact that the TCC had not yet approved Edison's contract of sale to Respondents. However, on October 19, 1978 the Agency allegedly notified Respondents that the transfers granted that August would be effective upon the date the sale to Respondents took effect.

Because whether or not the contract of sale was consummated prior to Respondents ability to assume status as operators is not wholly a question of law, the motion to dismiss Count I is denied as to all named respondents.

## COUNT II

This count alleges that because Respondents had known, since August 14, 1979, that the Agency never had adopted permit transfer procedures pursuant to Solid Waste Rules 211 and 213, that they had no standing to receive and accept the transfers. This count is dismissed inasmuch as knowledge of transfer procedures is not an element of legal standing to apply for or receive such transfers.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the day of 1980 by a vote of 5-0

> Clerk Christan L. Moff#tt, Illinois Pollution Control Board