ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

SOLVENT SYSTEMS INTERNATIONAL,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 94-179
	)	(Siting Review)
VILLAGE OF HAMPSHIRE,	)	
	)	
Respondent.	)	

MICHAEL F. KUKLA APPEARED ON BEHALF OF PETITIONER, and

MARK SCHUSTER, of MEYERS, SCHUSTER & PITCHER, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a petition for review, filed by Solvent Systems International, Inc. (Solvent Systems) on June 21, 1994. Solvent Systems seeks review, pursuant to Section 40.1 of the Environmental Protection Act (Act) (415 ILCS 5/40.1 (1992)), of one condition imposed by the Village of Hampshire as part of the Village's decision approving site location of a non-hazardous waste transfer station. The Board held a public hearing on the petition on September 2, 1994, in Hampshire. No members of the public attended that hearing.

The Board's responsibility in this matter arises from Section 40.1 of the Act. The Board is charged, by the Act, with a broad range of adjudicatory duties. Among these is adjudication of contested decisions made pursuant to the local siting provision for new regional pollution control facilities, set forth in Section 39.2 of the Act. More generally, the Board's functions are based on the series of checks and balances integral to Illinois' environmental system: the Board has responsibility for rulemaking and principal adjudicatory functions, while the Board's sister agency, the Illinois Environmental Protection Agency (Agency) is responsible for carrying out the principal administrative duties, inspections, and permitting. The Agency does not have a statutorily-prescribed role in the local siting approval process under Sections 39.2 and 40.1, but makes decisions on permit applications submitted if local siting approval is granted and upheld.

BACKGROUND

Solvent Systems operates a hazardous waste transfer station located within the Village. As part of its operations, it

receives oil filters. The filters are crushed and the steel is then shipped to a recycling center. The used oil is stored for transport to a recycling facility. The non-hazardous operations constitute 5% of Solvent Systems' business. It is the non-hazardous operations that are the subject of Solvent Systems' application for siting approval. (**ADD CITES.**)

Solvent Systems filed its application for siting approval with the Village on November 19, 1993. The Village held public hearings on that application on March 9, 10, and 21, 1994. On May 20, 1994, the Village granted siting approval, subject to nine conditions. (C1-C15.) Solvent Systems agrees to eight of the nine conditions, but challenges the imposition of Condition six. That condition states:

> The company shall pay to the Village to reimburse it for the costs of the hearing, including its consultations with Terracon Environmental Systems, Inc., engineers, in the amount of $3,120.35 and Seyforth, Shaw, Fairweather, & Geraldson, attorneys in the amount of $17,369.40; and Meyers, Schuster & Pitcher P.C. in the amount of $5,031.75.
>
> (C12.)

STATUTORY FRAMEWORK

At the local level, the siting process is governed by Section 39.2 of the Act. Section 39.2(a) provides that local authorities are to consider as many as nine criteria when reviewing an application for siting approval. These statutory criteria are the only issues which can be considered when ruling on an application for siting approval. Only if the local body finds that all criteria are satisfied can siting approval be granted. In this case, the Village found that all of the criteria have been met. (C2-C5.) Therefore, there are no issues regarding the criteria before the Board in this case.

Additionally, the Board is authorized to review the areas of jurisdiction and fundamental fairness. Section 40.1 of the Act requires the Board to review the procedures used at the local level to determine whether those procedures were fundamentally fair. (E & E Hauling, 451 N.E.2d at 562.) Solvent Systems has not raised any issues relating to either jurisdiction or fundamental fairness. Based on the record, the Board finds that the procedures at the local level were fundamentally fair.

DISCUSSION

The only issue in this case is whether the Village has the authority to impose a condition requiring the payment of expenses incurred during the siting process.

Section 39.2(e) of the Act states that "[i]n granting approval for a site the ... governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board." (415 ILCS 5/39.2(e) (1992).) Section 39.2(k) provides that a "governing body of a municipality may charge applicants for siting review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by the ... municipality in the siting review process." (415 ILCS 5/39.2(k) (1992).)

Solvent Systems does not challenge the Village's authority to assess fees, but alleges that the Village cannot do so as a condition to siting approval. Solvent Systems admits that it is clear that the Village has the authority to be reimbursed for its expenses, but contends that in the absence of an ordinance requiring an application fee, the Village's sole remedy is to file suit in circuit court to insure payment for its expenses. Solvent Systems cites Christian County Landfill, Inc. v. Christian County Board (October 18, 1989), 104 PCB 369, PCB 89-92, for the proposition that conditions imposed by local decisionmakers must be reasonably related to the nine criteria set forth in Section 39.2(a), and argues that the reimbursement of legal and engineering fees is not related to those criteria.

Additionally, Solvent Systems maintains that because the Board's review is limited to the record before the local decisionmaker, which cannot be supplemented, it is foreclosed from challenging the reasonableness of the fees imposed by the Village. Solvent Systems states that there is no testimony in the record as to the fees imposed, and that the Village simply imposed the fees after the record was closed. Thus, Solvent Systems argues that the unilateral imposition of fees, when the applicant does not have the right to question the amount, is a violation of due process. Solvent Systems believes that the fundamental fairness hearing before the Board, as provided by Section 40.1, is not the appropriate forum in which to challenge the reasonableness of the fees.

In response, the Village contends that condition six is completely justified and authorized by law. The Village notes that Section 39.2(k) provides for it to charge a reasonable fee to cover its costs, and states that instead of charging Solvent Systems a fee when the petition was filed, it assessed the exact legal and engineering costs incurred in the review process. The Village further maintains that since Section 39.2(k) specifically provides for recovery of costs, the imposition of a condition regarding those costs is clearly within the requirement of Section 39.2(e) that conditions must be reasonable and necessary to accomplish the purposes of Section 39.2. The Village also contends that nothing in Section 39.2 requires it to collect a fee in advance, contrary to Solvent Systems' claim. Finally, the

Village states that it does have an ordinance requiring that any applicant for development shall reimburse the Village for its costs.

After considering the parties' arguments, the Board finds that condition six, requiring payment of legal and engineering fees, is reasonable and necessary to accomplish the purposes of Section 39.2, and therefore allowable under Section 39.2(e). Subsection (e) specifically allows the imposition of conditions if reasonable and necessary to accomplish the purposes of Section 39.2, and subsection (k) specifically allows a local decisionmaker to charge applicants a fee to cover the decisionmaker's expenses. We believe that the plain language of those two subsections results in a conclusion that a condition requiring the payment of actual expenses is authorized by Section 39.2(e). We find nothing in Section 39.2 that requires a local decisionmaker to charge an application fee "upfront".

Although Solvent Systems cites the Board's decision in Christian County Landfill for the proposition that conditions must be reasonably related to the nine criteria in Section 39.2(a), we believe that that decision is properly read more broadly. Only once in that fifteen page opinion did the Board use the phrase "conditions must relate to the Section 39.2(a) criteria." In the rest of the opinion, the Board repeatedly restates the statutory language, that conditions must be reasonable and necessary to accomplish the purposes of Section 39.2. The Board cannot narrow the statutory provisions. Those provisions specifically allow for conditions necessary to accomplish the purposes of the section, without limiting the inquiry to the nine criteria of subsection (a). Therefore, we reject any interpretation of Christian County Landfill that limits conditions to those related to the criteria in subsection (a).

In sum, we find that the Village had the authority to impose condition six, requiring the payment of legal and engineering expenses incurred during the local siting process.[1]

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board hereby upholds the Village of Hampshire's imposition of condition six to its May 20, 1994 grant of siting approval to Solvent Systems, Inc.

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[1] We note that Solvent Systems specifically did not challenge the reasonableness of the fees. (Reply Br. at 4.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of December, 1994, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board