

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1993

LEONARD CARMICHAEL,)
)
 Petitioner,)
)
 v.) PCB 93-114
) (Landfill Siting Review)
 BROWNING-FERRIS INDUSTRIES)
 OF ILLINOIS, INC. AND OGLE)
 COUNTY BOARD, FOR AND ON)
 BEHALF OF THE COUNTY OF OGLE,)
 STATE OF ILLINOIS)
)
 Respondents.)

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on a petition for review filed by Leonard Carmichael, pursuant to Section 40.1(b) of the Environmental Protection Act (Act). (415 ICLS 5/40.1(b) (1992).) The petition for review seeks the Board's review of the County of Ogle's May 10, 1994 siting approval of the expansion of Browning-Ferris Industries' (BFI) regional pollution control facility pursuant to Section 39.2 of the Act. (415 ICLS 5/39.2 (1992).) As explained in detail below, the respondents, BFI and Ogle County Board (Ogle County), filed separate motions to dismiss the petition for review. For the reasons stated below, the Board denies those motions.

The petitioner filed his petition pursuant to Section 40.1(b) which provides, in relevant part:

If the county board or the governing body of the municipality as determined by paragraph (c) of Section 39 of this Act, grants approval under Section 39.2 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of municipality may petition the Board within 35 days for a hearing to contest the approval of the county board or governing body of the municipality. Unless the Board determines that such petition is duplicitous or frivolous, or that the petitioner is so located as to not be affected by the proposed facility, the Board shall hear the petition...

* * *

On June 14, 1993 Leonard Carmichael mailed this petition for review of a landfill determination made by Ogle County pursuant

to Section 39.2 of the Act. On July 8, 1993, BFI filed a motion to dismiss or strike, or alternatively, to strike certain portions of the petition for failure to state a cause of action. On July 2, 1993, Ogle County filed a Motion Directed at the Petition requesting the Board to dismiss the petition. In addition, Ogle County filed a motion regarding standing and jurisdiction on July 27, 1993, requesting the Board to dismiss for lack of jurisdiction or grant summary judgment on the issue of standing.

The respondents both claim that the petition was not timely filed within 35 days after Ogle County's approval of the siting as set forth above. Section 101.102(d) of the Board's procedural rules state that the time of filing is to be construed to be the time of mailing if a petition is received by the Board after the due date. The Ogle County decision was made on May 10, 1993 and therefore the "due date" was June 14, 1993. The petitioner mailed his petition for review on June 14, 1993. It was received in the Board's Chicago office on June 16, 1993. Based upon the Board's procedural rules, therefore, the petition for review was timely filed on June 14, 1993, and the Board finds no merit to the timeliness arguments raised by respondents.

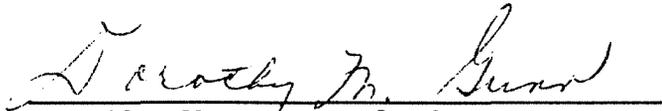
Ogle County argues that the Board lacks jurisdiction to hear the matter because the petitioner lacks standing to file the petition for review based upon the proviso in Section 40.1(b) that the Board may dismiss a petition when the petitioner is "so located as to not be affected by the proposed facility." Section 40.1(b) states preliminary requirements for a petitioner to file pursuant to this section. The Board has addressed this issue of standing in two previous Board decisions. (Worthen v. Village of Roxana, November 29, 1990, PCB 90-137.) In Valessares v. The County Board of Kane County, (July 16, 1987), PCB 87-36, 79 PCB 106, 118, the Board found that a person who lived 5-6 miles from the landfill met this criteria and stated: "The Board is unable to determine how facilities located over 30 miles away would "affect" the need criteria, while a resident located over 5-6 miles away would not be "affected" by the need criteria." In reading Carmichael's deposition taken on July 14, 1993, we find sufficient facts that Carmichael is so located as to be affected by the proposed landfill. Carmichael lives approximately 10 miles from the facility and has business interests in the service area. (Discovery Deposition of Leonard Carmichael pages 24-32.)

Alternatively, BFI moves the Board to strike portions of the petition for review for failure to state a cause of action, while Ogle County argues that petitioner fails to allege any harm resulting from the Ogle County decision-making process and moves the Board to strike certain paragraphs of the Petition for Review and dismiss. The respondents, in making their arguments for dismissal, state that the proceedings were fundamentally fair, or that petitioner was not prejudiced by the proceedings.

Respondent's arguments raise questions of law and fact which are best decided after the hearing process. Accordingly, the Board denies the motions. Hearing in this matter shall proceed on August 19 as scheduled.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of August, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board