

ILLINOIS POLLUTION CONTROL BOARD
April 9, 1992

LAND AND LAKES COMPANY, JMC)
OPERATIONS, INC., and NBD TRUST)
COMPANY OF ILLINOIS AS TRUSTEE)
UNDER TRUST NO. 2624EG,)
)
Petitioners,)
)
v.) PCB 92-25
) (Landfill Siting Review)
VILLAGE OF ROMEOVILLE,)
)
Respondent,)
)
COUNTY OF WILL,)
)
Intervenor.)

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on respondent Village of Romeoville's (Romeoville) motion to dismiss filed February 26, 1992; petitioner Land and Lakes' response filed March 6, 1992, the County of Will's response filed March 19, 1992; the County of Will's motion to cite additional authority and Land and Lakes' objection to the motion to cite additional authority.

A brief procedural history of this case is needed to understand the instant motions. On January 15, 1991 Land and Lakes filed a petition seeking review of Romeoville's decision denying site location approval for Land and Lakes' expansion of its regional pollution control facility. On August 26, 1991 in PCB 91-7, the Board entered a final opinion and order finding that Romeoville's failure to give proper notice of the hearing in accordance with Section 39.2(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1039.2(d)) rendered its decision void resulting in site location approval. On September 27, 1991, Romeoville filed a motion for reconsideration. On December 6, 1991, the Board entered an order reversing its prior determination that proper notice had not been given to General Assembly members and remanding the case back to Romeoville for clarification as to whether Land and Lakes had met its burden of proving need for the proposed facility in accordance with Criterion 1 of Section 39.2(a)(1). (PCB 91-7.) The Board closed docket PCB 91-7 and directed Land and Lakes to file a new petition for review challenging Romeoville's decision on remand. (PCB 91-7 (January 23, 1992).) On January 8, 1992, Romeoville entered its decision on Criterion 1. On February 11, 1992, Land and Lakes filed its petition seeking review of Romeoville's January 8, 1992 siting decision under docket PCB 92-25.

Initially, the Board addresses the County of Will's motion to cite additional authority filed March 19, 1992. By its response of March 6, 1992, the County of Will joins in Romeoville's motion to dismiss. The County of Will seeks to cite Waste Management of Illinois v. PCB (1st Dist. 1990), 201 Ill. App. 3d 614, 558 N.E. 2d 1295, rev'd on other grounds, 145 Ill. 2d 345 (February 3, 1992) as additional authority for its position that Land and Lakes' petition should be dismissed. Land and Lakes objects to the County of Will's motion correctly noting that the County has failed to identify any reason why this authority was not timely cited in the initial response. The County of Will has failed to establish why it was unable to cite the Waste Management case in its response. Waste Management, a 1990 case, was certainly available at the time the County's response was filed. Absent some justification as to why citation to this authority was not possible at the time the response was filed, the Board denies the motion to cite additional authority.

The Board now addresses Romeoville's motion to dismiss. Romeoville seeks dismissal of Land and Lakes' February 11, 1992 petition for review. As noted above, the County of Will joins in the motion to dismiss. Romeoville argues that Land and Lakes' notice of appeal, filed in the appellate court on February 7, 1992, vests jurisdiction of this matter in the appellate court and deprives the Board of jurisdiction over Land and Lakes' petition for review. Land and Lakes contends that its appeal of the Board's December 6, 1991 and August 26, 1991 opinions and orders pending in the appellate court does not divest the Board of jurisdiction over the petition for review of Romeoville's 1992 decision reached after remand.

The Board will not comment upon the viability of Land and Lakes' appeal to the appellate court;¹ Land and Lakes apparently filed its notice of appeal to protect its right to review of the Board's decision in PCB 91-7. (Pet. Response at 3.) However, the Board finds that Land and Lakes' appeal does not divest the Board of jurisdiction over Land and Lakes' petition for review from Romeoville's January 8, 1992 decision on Criterion 1. The Board took final action for purposes of Section 40.1(a) of the Act² in PCB 91-7 on August 26, 1991 and, upon the motion of

¹ In Clean Quality Resources, Inc. v. PCB No. 5-91-0156 (May 6, 1991), the Board's motion to dismiss landfill siting applicant Clean Quality Resources' motion to dismiss for lack of a final and appealable order was granted.

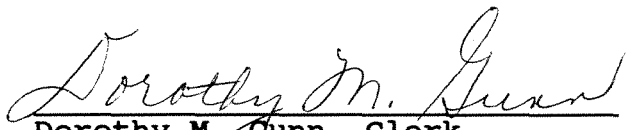
² "Final action" for purposes of Section 40.1(a) of the Act is not necessarily tantamount to a final and appealable order. Waste Management of Illinois, Inc. v. PCB (1991), 136 Ill.2d 556, 567 N.E.2d 344.

Romeoville, reconsidered that decision on December 6, 1991. These two Board opinions and orders set forth the Board's conclusions on several issues raised by Land and Lakes January 15, 1991 petition for review. The Board's December 6, 1991 opinion and order in PCB 91-7 makes clear that the sole issue before Romeoville on remand was whether Land and Lakes had met Criterion 1. The Board's January 23, 1992 order makes clear that docket PCB 91-7 was closed and that Land and Lakes needed to file a new petition for review to challenge Romeoville's decision on Criterion 1. Therefore, the instant petition for review challenges only Romeoville's 1992 decision after remand. Because the Board has not yet ruled on whether Romeoville's finding on Criterion 1 is against the manifest weight of the evidence, all arguments challenging Romeoville's finding on Criterion 1 must be raised in the instant proceeding.

Any decision made by the Board in PCB 92-25 will not affect the Board's prior decisions which are the subject of the appeal in the appellate court. Therefore, consistent with Clean Quality Resources, Inc. v. Marion County Board (April 11, 1991) (see also, Clean Quality Resources, Inc. v. Marion County Board (August 26, 1991)), the Board concludes that the notice of appeal filed in the appellate court from the Board's December 1991 decision does not divest the Board of jurisdiction over Land and Lakes' petition seeking review of Romeoville's 1992 decision on Criterion 1. Therefore, Romeoville's motion to dismiss Land and Lakes' petition for review is denied.

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 9th day of April, 1992 by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board