

ILLINOIS POLLUTION CONTROL BOARD  
April 30, 1987

PETER VELASSARES and )  
EDWARD F. HEIL, )  
 )  
Petitioners, )  
 )  
RICHARD L. COOPER, PETER )  
COOPER and TOBEY COOPER, )  
 )  
Intervenors, )  
 )  
v. ) PCB 87-36  
 )  
THE COUNTY BOARD OF KANE )  
COUNTY, ILLINOIS, and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )  
 )  
Respondents. )

ORDER OF THE BOARD (by B. Forcade):

On April 7, 1987, Waste Management of Illinois, Inc. ("WMI") filed a motion to dismiss petitioners Peter Valessares ("Valessares") and Edward F. Heil ("Heil"). Petitioners responded on April 15, 1987. The Board, by Order dated April 16, 1987, set a briefing schedule on the issues raised in the motion and response. WMI, Heil and Valessares all filed briefs on April 27, 1987.

WMI argues that Heil did not participate in the county level proceedings in a manner that confers standing to appeal under Section 40.1(b) of the Environmental Protection Act ("Act"), as Heil did not participate in the county level hearing. Additionally, WMI contends that Heil's post-hearing written filing was not a true written comment on the appropriateness of the proposed WMI site. Heil responds that he participated in the manner prescribed in Section 39.2(c) of the Act and in accordance with the procedures suggested by the Kane County hearing officer at the hearing. Heil also states that his post-hearing written public comment was docketed and incorporated as part of the record of proceedings before the Kane County Board.


WMI's motion to dismiss against Valessares contends that Valessares has no standing to appeal because he is so located as to not be affected by the proposed facility. WMI speculates that Valessares cannot make the requisite factual showing that will convey standing. Valessares responds that he is a resident of Kane County and will be affected economically by the proposal. Additionally, Valessares contends that all Kane County citizens

are affected by the alleged lack of fundamental fairness in the hearing process.

WMI's motion to dismiss Heil and Valessares is denied. It is apparent from the motions and briefs that the issues raised involve mixed questions of law and fact. While the parties provided a limited stipulation of facts in order to dispose of these issues, the factual record before the Board is presently inadequate. The issue of Heil's participation is in factual dispute regarding both degree and effect and could be intertwined with the fundamental fairness of the hearing procedure, in light of the hearing officer's statements on "participation" (R. 6, 7, 123, 124). The issue regarding the effect of the proposed facility on Valessares is almost exclusively factual. WMI speculates as to Valessares ability to make a requisite factual showing. These factual issues should be addressed at the scheduled Pollution Control Board hearing. WMI is at liberty to renew its motion to dismiss after an opportunity to develop a sufficient factual record has been afforded.

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 30<sup>th</sup> day of April, 1987, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board