

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1985

McHENRY COUNTY LANDFILL, INC.,)
)
Petitioner,)
)
v.) PCB 85-192
)
COUNTY BOARD OF McHENRY)
COUNTY, ILLINOIS,)
)
Respondent,)
)
and)
)
ARTHUR T. McINTOSH & CO.,)
et al.)
)
Respondent-Objectors.)

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a November 15, 1985 Petition to Review and Hearing to Contest the October 15, 1985 decision of the McHenry County Board (County) filed by McHenry County Landfill, Inc. (Landfill) which denied Landfill site suitability approval for a new regional pollution control facility. The Board, on September 20, 1985 remanded PCB 85-56 (involving an earlier County Board denial of site location suitability for Landfill) to the County Board directing it to apply the proper standard of proof to Landfill's application for site suitability approval. The County Board, asserting that it in fact applied the proper standard of proof, denied Landfill's application for a second time on October 15, 1985, and it is this decision Landfill is appealing. On November 21, 1985, Objector Arthur T. McIntosh & Co. (McIntosh) filed a cross-appeal in this proceeding with a Motion to Consolidate this proceeding with the Board's earlier proceeding of PCB 85-56. Objector Village of Huntley (Huntley) also filed a Motion to Dismiss and Deny Petition for Review on November 21, 1985. On November 22, 1985, Objector Village of Lakewood (Lakewood) filed a response to Landfill's petition for review which adopts all the objections, motions, pleadings, cross-appeal and arguments of the other Objectors. Lastly, Landfill filed a response to these motions on December 2, 1985.

The Motion to Consolidate is hereby denied. In large part the motion is moot in that the Board's November 21, 1985 Order in this matter incorporated the record of the prior proceeding into this one. The scope of that incorporation was intended to include the County's record, the hearings before the Pollution Control Board and all exhibits submitted at those hearings, and

the Board's opinions and orders. Other pleadings and briefs are specifically not incorporated. To the extent that the present parties desire to reassert arguments which are included in pleadings and briefs from the earlier proceeding, these must be resubmitted. This proceeding is entirely separate and distinct from the proceeding in PCB 85-56. A petition for review of the County Board's Order of October 15, 1985 is a new action before the Board and was accordingly docketed separately. While the same piece of land and many of the same parties are involved, the substantive issues may well differ, and certainly new allegations regarding fundamental fairness have been put forth.

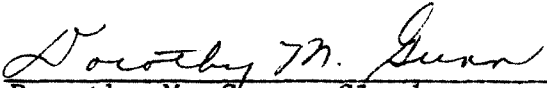
Landfill also argues that Objectors McIntosh, Lakewood and Huntley are not parties to this action since they neither were granted permission to intervene nor had the right to file cross-appeals. The Board, in McHenry County Landfill, Inc. v. McHenry County Board, IL., et al., PCB 85-56 and PCB 85-61 through PCB 85-66 (consolidated) May 30, 1985, found that denial of a cross-appeal under SB-172 would "frustrate SB-172's policy of reviewability of all local decisions and that participation at the County's hearing is the determining factor for subsequent appeal rights." The Board sees no reason to reach a contrary result in this proceeding.

The filings by Objectors McIntosh and Lakewood are allowed as cross-appeals. Huntley's Motion to Dismiss is hereby denied. Its request to Deny Petition for Review is construed as a cross-appeal and is allowed. In its response, Landfill argues that any appeal filed under Section 40.1 of the Environmental Protection Act (Act) must be filed within thirty-five days after the County Board's decision and that this requirement was not met by any Objectors. The Board does not agree. Under Section 40.1(a) of the Act, once the county board denies site-suitability approval, the applicant has thirty-five days in which to file an appeal with the Board. If the applicant waited until the last day of its thirty-five day period, it could effectively cut off any opportunity for a cross appeal to be timely filed. The Board believes that the Objectors should be afforded adequate time in which to respond to Landfill's petition for review and finds that such cross-appeals were timely filed. Given the denial of the motion to consolidate which arguably would have had the effect of bringing all of the parties in PCB 85-56 into this proceeding, and the fact that the question of when a cross-appeal can be filed before the Board is one of first impression, the Board will allow cross-appeals by parties to PCB 85-56 to be filed up to and including 10 days from the date of service of this Order upon them. This allows more time than Supreme Court Rule 303(a)(3) which allows 10 days from the date of service of the appeal. The Board believes the Supreme Court Rule to be reasonable and will in the future require filing of cross-appeals within that time frame.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 5th day of December, 1985 by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board