

ILLINOIS POLLUTION CONTROL BOARD
May 16, 1985

MARY A. SABADOSH,)
)
 Petitioner,)
)
 v.) PCB 85-71
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon a May 7, 1985 letter filed by Mary A. Sabadosh contesting the "transfer of ownership" by the Illinois Environmental Protection Agency (Agency) concerning the "111th Street Landfill Application by Waste Management from Donald Hammon." This appeal is brought "under Rule 205 (j) of the IPCB Regulations," apparently referring to the rule presently codified as 35 Ill. Adm. Code 807.205 (j), which purportedly allows "any person adversely affected by the issuance of a permit [to] petition the Board for a hearing before the Board to contest the issuance by the Agency."

While the language of the cited rule would clearly allow this appeal, the rule does not have an underlying basis in the Environmental Protection Act (Act). Under the Act third parties are allowed to bring permit appeals only if the permit which is appealed is a RCRA permit [Section 40 (b)] or if that third party was a party to a proceeding concerning a new regional pollution control facility [Section 40 (c)]. Mrs. Sabadosh's appeal does not fall under either of those sections.

Where the Board lacks statutory authority to promulgate certain rules, those rules are void [Landfill, Inc. v. PCB, 74 Ill. 2d 541, 387 N.E. 2d 258 (December, 1978)]. Therefore, to the extent that 35 Ill. Adm. Code 807.205 (j) purports to confer a right to appeal which is not authorized by statute, it is void. Proceedings in this matter must be, and hereby are, dismissed. The Board notes, however that if Mrs. Sabadosh believes that the operation of the landfill presents a threat of pollution, as her letter seems to indicate, an appropriate enforcement action could be brought before the Board.

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 16th day of May, 1985, by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board