

ILLINOIS POLLUTION CONTROL BOARD
April 15, 1999

SIERRA CLUB, MIDEWIN TALLGRASS)
PRAIRIE ALLIANCE, AUDUBON)
COUNCIL OF ILLINOIS, and ILLINOIS)
AUDUBON SOCIETY,)
)
Petitioners,)
)
v.) PCB 99-136
) (Pollution Control Facility
) Siting Appeal)
WILL COUNTY BOARD and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

LAND AND LAKES COMPANY,)
)
Petitioner,)
)
v.) PCB 99-139
) (Pollution Control Facility
) Siting Appeal)
WILL COUNTY BOARD and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

KATHLEEN KONICKI,)
)
Petitioner,)
)
v.) PCB 99-140
) (Pollution Control Facility
) Siting Appeal)
WILL COUNTY BOARD and WASTE) (Consolidated)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
Petitioner,)	
)	
v.)	PCB 99-141
)	(Pollution Control Facility
WILL COUNTY BOARD,)	Siting Appeal)
)	
Respondent.)	

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

This matter comes before the Board on four appeals filed pursuant to Section 40.1 of the Environmental Protection Act (Act) (40 ILCS 5/40.1 (1996)) challenging a site location suitability approval for a pollution control facility granted pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (1996)). Each of the appeals challenges the March 4, 1999 decision of Will County (County) to grant siting approval, subject to conditions, for the proposed Prairie View Recycling and Disposal Facility (Prairie View RDF). The Prairie View RDF is proposed to be operated by Waste Management of Illinois, Inc. (WMII) and to be located on a portion of the old Joliet Army Ammunition Plant (Joliet Arsenal) site located in unincorporated Will County.

Three of these cases are third-party appeals which challenge the grant of the siting approval and seek remand or reversal of the siting decision. The fourth appeal is WMII's challenge of one of the conditions to the approval which it seeks to have removed.

In summary, the Board's order today accepts each of the appeals as timely filed, accepts each for hearing, and consolidates the three third-party appeals for hearing. The Board also accepts the WMII matter for hearing and orders that it also be set for hearing. Further, in this order, the Board assigns a hearing officer to handle all of these matters in a coordinated fashion to the extent practicable.

CONSOLIDATED THIRD-PARTY APPEALS: PCB 99-136, PCB 99-139, PCB 99-140

Section 40.1(b) of the Act authorizes a "third party person other than the applicant" to appeal a siting approval within 35 days of its granting provided that the person "participated in the public hearing conducted by the county board" and "is so located as to be . . . affected by the proposed facility" (415 ILCS 4/40.1(b) (1996)). Since the County reached its decision on March 4, 1999, a timely appeal is one filed on or before April 8, 1999.

PCB 99-136: Petitioners Sierra Club *et al.*

In the first appeal, filed April 6, 1999, the petitioners are the Sierra Club, the Midewin Tallgrass Prairie Alliance, the Audubon Council of Illinois, and the Illinois Audubon Society

(collectively, petitioners or Sierra Club *et al.*). The petition asserts that each of the petitioners participated in the public hearing, and that each has members who live in Will County.

Petitioners contend that the decision is against the manifest weight of the evidence, and that the proceedings were fundamentally unfair. The fundamental fairness problems alleged include: County decision based on extra-record evidence, biased officials, County inclusion of approval conditions which had not been publicly reviewed, application of erroneous legal standards, and County reliance on improper factors when approving the application.

PCB 99-139: Petitioner Land and Lakes

In the second appeal, filed April 7, 1999, the petitioner is the Land and Lakes Company (LALC). LALC asserts that its technical director William Karpas attended multiple sessions of the County hearings and participated by asking questions, and that LALC and its affiliated companies own and operate several businesses in Will County.

Petitioner contends, without additional detail, that the decision is against the manifest weight of the evidence, and that the proceedings were fundamentally unfair.

PCB 99-140: Petitioner Kathleen Konicki

In the third appeal, filed April 8, 1999, the petitioner is Kathleen Konicki. The petitioner asserts that she is an attorney who has served as a member of the Will County Board for over two years who is petitioning on her own behalf and not on behalf of the County Board. Petitioner also asserts that she participated in the public hearings as a member of the Board, and that she has resided in Will County for over 10 years.

The petition raises fundamental fairness and manifest weight issues. The fundamental fairness issues appear to be similar to those alleged in the Sierra Club petition; the manifest weight challenge relates to criterion two of Section 39.2, particularly concerning evidence of hydrogeology and geology.

Acceptance for Hearing and Consolidation

The Board finds that each of these cases has been timely filed by persons who have met the statutory requirements to file a third-party appeal. Accordingly, each appeal is accepted for hearing. Additionally, as each case involves the same issues, respondents and burden of proof, these third party appeals are hereby consolidated on the Board's own motion for reasons of administrative economy to the Board and to the parties.

APPLICANT'S APPEAL

PCB 99-141: Petitioner Waste Management

Section 40.1 (a) of the Act authorizes the siting applicant to appeal a denial of siting approval within 35 days of the County decision (415 ILCS 4/40.1 (a) 1996). In its April 8, 1999 petition for review WMII appeals only Special Condition 6 of the approval, which provides:

WMI shall close Wheatland Prairie Landfill, *i.e.* shall cease accepting waste and initiate final closure activities, no later than April 2001, or the earliest date thereafter in which Prairie View RDF is accepting waste for disposal.

WMII asserts that the condition is not reasonable or necessary to accomplish the purposes of Section 39. 2 of the Act, is not supported by the record, and has not been demonstrated to be economically reasonable or technically practicable.

Acceptance for Hearing and Coordinated Handling With Consolidated Cases

The Board finds that WMII's petition is timely filed, and accordingly accepts it for hearing. While the Board has considered consolidation of this case with the third-party appeals, the Board declines to do so at this time. The Board will, however, direct that the Clerk of the Board and the assigned hearing officer handle these cases in a coordinated fashion to the extent practicable, including for purposes of record maintenance and hearing.

HEARING, BRIEFING AND DECISION DEADLINE

The Board hearing officer assigned to all four of these cases is John Knittle, who is located in the Board's Chicago office. After consultation with the parties, Hearing Officer Knittle will schedule hearings at a Will County site at a date and time to be announced. At the close of hearing, he will enter a briefing schedule for submission of the parties' closing briefs and final remarks. Hearings in the consolidated third-party appeals and in the applicant's appeal may be held consecutively. Hearing and briefing in all cases must be scheduled and proceed to allow the Board time to review the record and to render a timely decision as required by Section 40.1 of the Act (415 ILCS 5/40.1 (1996)). Section 40.1 requires the Board to make its decision within within 120 days of the date of the filing of a petition; the statutory decision deadline can be waived pursuant to 35 Ill. Adm. Code 101.105.

Based on the April 6, 1999 filing date of the first-filed petition of the Sierra Club *et al.* PCB 99-136, this Board's decision in these cases must be made on or before August 4, 1999. The parties are advised that the hearing officer is required to schedule hearing and briefing to insure that the Board has no less than a full 30 days after arrival of the transcripts and the last brief for drafting and deliberation of its decision in this matter.

PREPARING AND FILING COUNTY RECORD

Pursuant to Section 40.1(a) of the Act (415 ILCS 5/40.1(a) (1996)), the hearing is to be based “exclusively on the record before the county board or governing body of the municipality.” The Board accordingly directs the Will County Clerk, to “prepare, bind and certify the record on appeal” (see 155 Ill. 2d R. 324) within 21 days of the date of this order, *i.e.*, on or before May 6, 1999.

The record shall contain legible versions of all documents, transcripts, and exhibits deemed to pertain to this proceeding from initial filing of the application through and including final action by the local government body. The record shall also contain the originals of all documents and shall be sequentially numbered, placing the letter “C” before the number of such page. In addition to the actual documents which comprise the record, the Will County Clerk shall also prepare a document entitled “Certificate of Record on Appeal” which shall be an index of the record that lists the documents comprising the record and shows the page numbers upon which they start and end.

Seven copies of the certificate, seven copies of the transcript of the county hearing, and three copies of any other documents in the record shall be filed with the Board; a copy of the certificate shall be served upon the petitioners in each of these four cases. For purposes of the four appeals which are the subject of this order, the County need file only one set of seven copies, using the case caption which appears on today’s order.

Finally, if the record is not legible, sequentially numbered, or fails to include an appropriate index of record, the Clerk of the Board may refuse to accept the document for filing. For further guidance in preparing and filing the record on appeal, the county may contact the Clerk of this Board as well as refer to Illinois Supreme Court Rules 321 through 324. See 155 Ill. 2d R. 321-324.

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 _____ day of _____ 1999 by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board