

ILLINOIS POLLUTION CONTROL BOARD
May 18, 1984

TOWN OF ST. CHARLES,)	
)	
Petitioner,)	
)	
v.)	PCB 83-228
)	
KANE COUNTY BOARD AND)	
ELGIN SANITARY DISTRICT,)	
)	
Respondent.)	
-----)	
CITY OF AURORA,)	
)	
Petitioner,)	
)	
v.)	PCB 83-229
)	
KANE COUNTY BOARD AND)	
ELGIN SANITARY DISTRICT,)	
)	
Respondents.)	
-----)	
KANE COUNTY DEFENDERS, INC.,)	
ET AL.)	
)	
Petitioners,)	
)	
v.)	PCB 83-230
)	
KANE COUNTY BOARD AND)	
ELGIN SANITARY DISTRICT,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a motion entitled "Motion to Vacate or Modify Order or For Rehearing" timely filed by Petitioners on April 25, 1984. This will be considered as a motion for reconsideration. Approximately 7 days after the motion was filed, a Board assistant received a call from a secretary to one of respondents' attorneys stating that the attorney handling the response was on vacation. All such matters are properly handled by written motion. The response was filed May 14, 1984 past the 14 day deadline of 35 Ill. Adm. Code 103.240.

The Board frowns upon late filings. An explanation and motion to file the response instanter should have been provided. Although the response was late and the procedure followed was irregular, the Board will accept the response when, as here, the late filing does not interfere with the deliberative processes of the Board. The Board has considered all of the arguments presented by the petitioner but will only consider some of them.

The first contention of the petitioner is that the Board applied an incorrect standard for ex parte contacts. Petitioner alleges that the controlling standard was enunciated by the Illinois Supreme Court in Pioneer Processing, Inc., et al. v. Pollution Control Board, et al., Docket No. 58083, 58238, 58239, consolidated (March 23, 1984), 2 days after the Board's decision in this matter, PCB 83-228, 229, and 230 (March 21, 1984). Petitioner's argument assumes that the Kane County Board is an agency under the Administrative Procedure Act (APA) Ill. Rev. Stat. 1983, ch. 127, par. 1001 et seq., which it is not. The definition of agency in Section 1003.01 of the APA specifically excludes local units of government. Additionally, Section 39.2(f) of the Environmental Protection Act, Ill. Rev. Stat. 1983, ch. 111½, par. 1039.2(f) provides that its procedures control in the siting approval process. The issue in Pioneer was whether the contested case provisions of the APA applied to Illinois Environmental Protection Agency (Agency) hazardous waste permit appeal hearings. Pioneer was a permit appeal, not an SB 172 case. The state action in Pioneer is lacking in the present SB 172 situation.

Second, petitioner claims that the Board should have considered whether the cumulative effect of ex parte contacts constituted an irrevocable taint on the decision-maker's process with resulting undue prejudice as to petitioner. The Board has already considered this issue at page 17 in PCB 83-228, 229, 230 (March 21, 1984). There are no new arguments as to this issue to merit reconsideration.

Third, and once again, petitioner requests an opportunity to delve into the mental processes of the Kane County Board members as to ex parte contacts. As stated before, although fundamental fairness demands some inquiry into ex parte contacts, this inquiry is limited. Integrity of the decision-making process requires that the ex parte inquiry not extend into the mental processes of the decision-maker.

Fourth, petitioner claims that the Board made findings of fact and law which have no basis in the record. The main contention was that although the Board found that there was public knowledge of the site before notice publication, that the record did not support such a conclusion. The possible use of the quarry site was publicly known before formal notice publication.

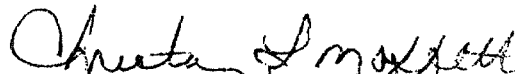
Fifth, the other claims of petitioner are not supported by the record and are attempts to introduce new issues into this proceeding.

The petitioner has failed to provide the Board with sufficient evidence to warrant reconsideration. Therefore, the Board hereby denies the Motion to Vacate or Modify Order or for Rehearing.

IT IS SO ORDERED.

Board Member J. D. Dumelle dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 18th day of May, 1984 by a vote of 5-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board