

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2002

COUNTY OF KANKAKEE and EDWARD D.)
SMITH, STATES ATTORNEY OF)
KANKAKEE COUNTY,)
)
Petitioner,)
)
v.)
)
THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC. and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)
)
Respondents.)

PCB 03-31
(Third-Party Pollution Control Facility
Siting Appeal)

BRYAN SANDBERG,)
)
Petitioner,)
)
v.)
)
THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC. and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)
)
Respondents.)

PCB 03-33
(Third-Party Pollution Control Facility
Siting Appeal)

WASTE MANAGEMENT OF ILLINOIS,)
INC.,)
)
Petitioner,)
)
v.)
)
THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC. and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)
)
Respondents.)

PCB 03-35
(Third-Party Pollution Control Facility
Siting Appeal)
(Consolidated)

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

On October 23, 2002, the petitioners County of Kankakee and Edward D. Smith, State's Attorney of Kankakee County (County) filed a motion for expedited decision on its accompanying motion for summary judgment and memorandum of law in support of the motion for summary judgment. The County argued that the City of Kankakee's (City) decision to approve Town and County Utilities, Inc. and Kankakee Regional Landfill, L.L.C.'s (Town & Country) application for siting of a pollution control facility should be reversed because the public hearing held to address the siting application was fundamentally unfair.¹ Mot. for S.J. at 6-9. The Board denies both of the County's motions.

PROCEDURAL HISTORY

On September 20 and 23, 2002, three separate petitions were filed requesting the Board to review an August 19, 2002 decision of the City Council of the City. In its decision, the City granted Town & Country's application to site a pollution control facility. The proposed landfill consists of approximately 400 acres located in Otto Township within the municipal boundaries of the City. All three petitioners raised common arguments including, but not limited to, that the procedures the City used to reach its siting decision were fundamentally unfair, and that the City's findings on several statutory siting criteria were not supported by the manifest weight of the evidence.

The Board accepted all three petitions for hearing and consolidated the petitions in its October 3, 2002 order. County of Kankakee v. The City of Kankakee, PCB 03-31 (Oct. 3, 2002). Subsequently, the hearing officer scheduled a hearing for November 4, 6, 7, and 8, 2002. County of Kankakee v. The City of Kankakee, PCB 03-31 (hearing officer order Oct. 11, 2002). The parties have since engaged in discovery.

On October 23, 2002, the County filed its motion for expedited decision on its motion for summary judgment and memorandum of law in support of the motion for summary judgment. As of that date, the Board's next regularly scheduled meeting was November 7, 2002, three days after the first day of the scheduled hearing. Town & Country filed a response on October 31, 2002.²

THE COUNTY'S MOTIONS

In acting on a motion for expedited review, the Board considers all statutory requirements and whether material prejudice will result from the motion being granted or denied. 35 Ill. Adm. Code 101.512(b). As a practical matter, the Board must reach a decision within 120 days after the petition's filing under Section 40.1 of the Act, or the applicant may deem the siting approved regardless of the actual decision of local government. Town & Country has not waived the statutory decision deadline in this case; therefore, the Board is statutorily required to issue a decision on the County's petition by January 18, 2003.

¹ The Board cites the County's motion for expedited decision on motion for summary judgment as "Mot. to expedite at _." The Board cites the County's memorandum of law in support of motion for summary judgment as "Mot. for S.J. at _."

² The Board cites Town & Country's response as "Resp. at _."

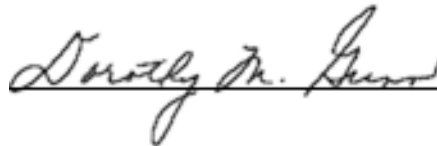
In order to meet the statutory decision deadline schedule, the hearing officer had to coordinate a very tight schedule. Since the hearing began on November 4, 2002, the County's motion for expedited decision on its motion for summary judgment is moot. Consequently, the Board denies the County's motion. The County will suffer no material prejudice as a result of the Board's decision to deny the motion for expedited decision since the County may raise the same issues at hearing and argue them in a future filing.

Although the Board need not address the merits of the County's argument on summary judgment since the motion is moot, the Board finds summary judgment unwarranted. The County is entitled to summary judgment only if there is no genuine issue of material fact and the County is entitled to judgment as a matter of law. See Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); 35 Ill. Adm. Code 101.516(b). In this circumstance, questions of material fact remain and the County is not entitled to judgment as a matter of law.

The County alleges that on the first day of the hearing before the City, at least 75 people were unable to access the hearing room because of overcrowding. Mot. for S.J. at 5. However, the County and Town & Country disagree about whether any individual was denied the opportunity to participate during the first day of the hearing. Compare Mot. for S.J. at 7 with Resp. at 3. This genuine issue of material fact alone bars summary judgment. Furthermore, the County has provided no persuasive legal authority indicating that it is entitled to judgment as a matter of law. Contrary to the County's contention, there is no "*per se*" rule indicating that the approval of a pollution control facility siting application must be reversed if a citizen is unable to participate in the hearing. See City of Columbia v. County of St. Clair, PCB 85-177, slip op. at 14 (Apr. 3, 1986). Furthermore, the Board's opinion in American Bottoms Conservancy v. Village of Fairmont City, PCB 00-200 (Oct. 19, 2000), is inapposite to the facts of this case and does not require a different result. Summary judgment is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board