

ILLINOIS POLLUTION CONTROL BOARD
February 20, 2003

VILLAGE OF SOUTH ELGIN,)
)
 Complainant,)
)
 v.) PCB 03-106
) (Citizens Enforcement - Land)
 WASTE MANAGEMENT OF ILLINOIS,)
 INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On January 16, 2003, the Village of South Elgin (Elgin) filed a complaint (Comp.) against Waste Management of Illinois Inc. (Waste Management) asking the Board to enforce two special conditions of a landfill siting approval granted to Waste Management by the Kane County Board on September 13, 1988, and incorporated by reference into Waste Management's permit¹ for expansion of the Woodland site (Woodland III permit). Two days earlier, on January 14, 2003, Waste Management filed a petition for review of the Kane County Board's decision to deny Waste Management's request for siting approval of a proposed waste transfer facility (Woodland Transfer Facility). *See Waste Management of Illinois, Inc. v. County Board of Kane County*, PCB 03-104. In its petition for review, Waste Management claims: (i) the siting process and procedures the Kane County Board used in reaching the decision were fundamentally unfair; and (ii) Kane County's denial of siting approval, and the finding that certain statutory criteria were not met, were against the manifest weight of the evidence.

On January 16, 2003, along with the enforcement action, Elgin filed a motion to consolidate this action with Waste Management's petition for review. On January 31, 2003, Waste Management filed an objection to Elgin's motion to consolidate.

The Board denies Elgin's motion to consolidate because the two actions involve different burdens of proof that prohibit consolidation of the two proceedings. Waste Management had 30 days after it received service of the complaint to file a motion alleging this complaint is duplicative or frivolous (35 Ill. Adm. Code 103.212(b)). Waste Management filed a motion to dismiss this complaint as frivolous on February 18, 2003. The Board has not yet made this determination nor accepted this complaint for hearing.

BACKGROUND

¹ Issued by the Illinois Environmental Protection Agency

The Woodland Landfill site is 213 acres and was established as a pollution control facility in 1976. Initially, the Illinois Environmental Protection Agency (Agency) permitted the use of 55 acres for landfill (Woodland I). In 1982, the Agency permitted 48 more acres (Woodland II).

In 1988, Waste Management applied to extend the life of the landfill for an additional 15 years by working the area between Woodland I and II (Woodland III application). The Kane County Board adopted Resolution 88-155 approving, with conditions, the Woodland III application. One of the conditions required that the site be developed as a passive recreation park once it was full and closed.

In June 2002, Waste Management applied for approval to site a transfer facility on the Woodland site. This time the Kane County Board denied Waste Management's application. As noted above, Waste Management filed a petition with the Board to contest the siting denial on January 14, 2003.

BURDEN OF PROOF

Section 101.406 of the Board's procedural rules provides that "the Board will not consolidate proceedings where the burdens of proof vary." 35 Ill. Adm. Code 101.406. In an enforcement action, the complainant must prove that the respondent violated the Act or the rules, regulations, permits or terms and conditions by a preponderance of the evidence. People v. Fosnock, PCB 41-1, slip op. at 19 (Sept. 15, 1994). A proposition is proved by a preponderance of the evidence when it is more probably true than not. Nelson v. Kane County Forest Preserve, PCB 94-244 (July 18, 1996). Alternatively, a petitioner challenging a local siting denial must show, based only on the evidence in the record, that the local authority's findings were against the manifest weight of the evidence. CDT Landfill Corp. v. City of Joliet, PCB 98-60, slip op. at 9-10 (March 5, 1998). A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. *Id.* at 10.

Waste Management argues that its petition for review and Elgin's enforcement action are governed by differing burdens of proof and, therefore, consolidation under Section 101.406 of the Board's procedural rules would be improper. The Board finds the burdens of proof regarding petitions for review and enforcement actions are clearly different.

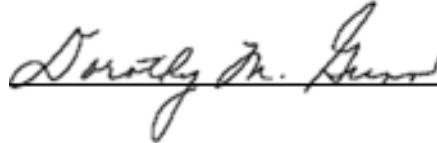
Waste Management also contends that enforcement actions and petitions for review are governed by fundamentally different procedural rules thereby making consolidation of the petition for review proceeding with the enforcement action impracticable and inconvenient. The Board agrees with Waste Management that because the Board must issue a decision on petitions for review within 120 days whereas enforcement actions have no decision deadline, the differing procedural rules make consolidation impractical and inconvenient.

CONCLUSION

The Board denies Elgin's motion to consolidate this proceeding with Waste Management's petition for review, PCB 03-104.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 20, 2003, by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board