

ILLINOIS POLLUTION CONTROL BOARD

October 2, 2003

BYRON SANDBERG,)	
)	
Petitioner,)	
)	
v.	)	PCB 04-33
	)	(Third-Party Pollution Control Facility
THE CITY OF KANKAKEE, ILLINOIS	)	Siting Appeal)
CITY COUNCIL, TOWN AND COUNTRY)	
UTILITIES, INC., and KANKAKEE)	
REGIONAL LANDFILL, L.L.C.,)	
)	
Respondents.)	

WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Petitioner,	)	PCB 04-34
	)	(Third-Party Pollution Control Facility
v.	)	Siting Appeal)
)	
THE CITY OF KANKAKEE, ILLINOIS)	
CITY COUNCIL, TOWN AND COUNTRY)	
UTILITIES, INC., and KANKAKEE)	
REGIONAL LANDFILL, L.L.C.,)	
)	
Respondents.)	

COUNTY OF KANKAKEE, ILLINOIS, and)	
EDWARD D. SMITH, KANKAKEE)	
COUNTY STATE'S ATTORNEY,)	
	)	PCB 04-35
Petitioners,	)	(Third-Party Pollution Control Facility
	)	Siting Appeal)
v.	)	(Consolidated)
)	
THE CITY OF KANKAKEE, ILLINOIS)	
CITY COUNCIL, TOWN AND COUNTRY)	
UTILITIES, INC., and KAKAKEE)	
REGIONAL LANDFILL, L.L.C.,)	
)	
Respondents.)	

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

The Board received three separate petitions requesting the Board to review an August 19, 2003 decision of the City Council of the City of Kankakee (City) to grant siting approval for a landfill. In its decision, the City granted the application of Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C. (Town & Country) to site a pollution control facility, to be called the Kankakee Regional Landfill (facility). The facility is a 400-acre site to be located in Otto Township within the City's limits, will receive 3,500 tons of waste per day, and provide disposal capacity for at least 30 years.

The Board reversed the City's decision to grant siting approval for the same facility in prior appeals. County of Kankakee and Edward D. Smith, States Attorney of Kankakee County v. City of Kankakee, Illinois, The City of Kankakee, Illinois City Council, Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C.; Byron Sandberg v. City of Kankakee, Illinois, et al.; and Waste Management of Illinois v. City of Kankakee, Illinois, et al., PCB 03-31, 03-33, 03-35 (consol.), (Jan. 9, 2003). In that proceeding, the Board reversed the City's decision as against the manifest weight of the evidence on one of nine criteria a local siting authority must consider when deciding whether to grant siting to a pollution control facility.

Byron Sandberg, Waste Management of Illinois, Inc. (Waste Management), and the County of Kankakee and Edward D. Smith, States Attorney of Kankakee County (the County), in petitions docketed as PCB 04-33, 04-34, and 04-35, respectively, all appeal on the grounds that the City's decision on siting criteria was against the manifest weight of the evidence. Further, petitioners Waste Management and the County argue the City lacked jurisdiction due to Town & Country providing defective notice. The County appeals on two additional grounds: (1) the procedures the City used to reach its siting decision were fundamentally unfair due to bias and *ex parte* contacts; and (2) the City's decision should be reversed because Town & Country failed to submit a complete siting application.

For the reasons set forth below, the Board accepts the petitions and consolidates them for hearing.

THIRD PARTY APPEALS

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2002)) allows certain third parties to appeal a local government decision granting approval to site a pollution control facility. Third parties who participated in the local government's public hearing and who are so located as to be affected by the proposed facility may appeal the siting decision to the Board. 415 ILCS 5/40.1(b) (2002); 35 Ill. Adm. Code 107.200(b). The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government's siting decision. 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. 415 ILCS 5/40.1(b) (2002); 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party's petition is "duplicative or frivolous," the Board will hear the petition. 415 ILCS 5/40.1(b) (2002); 35 Ill. Adm. Code 107.200(b).

All three petitioners state that they appeared and participated in the City's public hearing. The petitioners specify the grounds for the appeal and include a copy of the City's siting decision. Each petition meets the content requirements of 35 Ill. Adm. Code 107.208. Mr. Sandberg filed his petition on September 18, 2003, and Waste Management and the County filed their petitions on September 22, 2003. Therefore, each petitioner filed its petition within 35 days after the City's August 19, 2003 decision.

HEARING AND DECISION DEADLINE

An action before the Board is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is "a request for relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* No evidence before the Board indicates that any of the three actions are duplicative or frivolous. The Board accepts the third-party petitions for hearing.

On its own motion, the Board consolidates all three appeals for hearing. Each petition involves the same burden of proof and addresses common issues and respondents. Thus, for reasons of administrative economy, consolidation is appropriate. See Sierra Club v. Will County Bd., PCB 99-136, 99-139, 99-140, 99-141 (consol.), slip op. at 3 (Apr. 15, 1999).

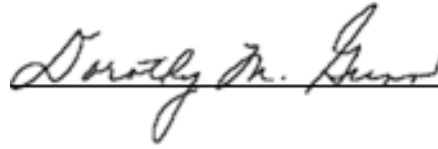
Petitioners have the burden of proof. 415 ILCS 5/40.1(b) (2002); *see also* 35 Ill. Adm. Code 107.506. The record before the City will be the exclusive basis for all hearings except concerning issues of fundamental fairness or jurisdiction. 415 ILCS 5/40.1(b) (2002). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (see 415 ILCS 5/40.1(a), (b) (2002), which only Town & Country may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Town & Country "may deem the site location approved." 415 ILCS 5/40.1(a) (2002). Currently, the decision deadline is January 16, 2004 for Mr. Sandberg's petition (the 120th day after September 18, 2003), and January 20, 2004, for Waste Management and the County's petitions (the 120th day after September 22, 2003). *See* 35 Ill. Adm. Code 107.504. The Board will treat the consolidated cases as due for decision at the earlier date: January 16, 2004. The Board meeting immediately before January 16, 2003 is currently scheduled for January 8, 2004.

THE CITY'S RECORD

The City must file the entire record of its proceedings within 21 days after the date of this order. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. Because Mr. Sandberg is an individual citizen, he is "exempt from paying the costs of preparing and certifying the record." 415 ILCS 5/39.2(n) (2002); 35 Ill. Adm. Code 107.306. However, the County and Waste Management must pay to the City the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2002); 35 Ill. Adm. Code 107.306.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 2, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board