

ILLINOIS POLLUTION CONTROL BOARD
February 19, 2004

SALINE COUNTY LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 04-117
)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

The Board today will rule on two outstanding motions in this permit appeal. First, on January 28, 2004, Saline County filed a motion to intervene (Mot.I.) in this permit appeal proceeding. On February 13, 2004, petitioner filed a response to the motion to intervene (Pet. Resp.). The second motion pending concerns a request by the petitioner, Saline County Landfill, Inc., to hold the hearing in this matter in Sangamon County (Mot.HH.)¹. On February 10, 2004, the Illinois Environmental Protection Agency (Agency) filed a response to that motion (Ag.Resp.). For the reasons discussed below the Board grants the motion to intervene but denies the request to hold the hearing in Sangamon County.

Motion to Intervene

Saline County seeks intervention in this proceeding because the issue underlying the appeal is whether or not siting has been granted by Saline County for the area covered by the permit application. Mot.I. at 1. Saline County is represented by the State's Attorney for Saline County, a constitutional officer possessing the authority to represent the interests of the people of Saline County to ensure a healthful environment. *Id.* Saline County is seeking intervention to protect the interests of the citizens of Saline County and if intervention is not allowed, Saline County asserts material prejudice to the citizens of the county will result. Mot.I. at 2. Saline County asserts that this request to intervene is consistent with prior precedent and cites several cases in support including Pioneer Processing, Inc. v. IEPA, 102 Ill. 2d 199, 464 N.E.2d 238 (1984) and Saline County Landfill, Inc. v. IEPA PCB 02-108 (Apr. 18, 2002).

Petitioner objects to allowing Saline County to intervene and argues that unlimited participation in the proceedings is not necessary to protect the interests of the citizens of Saline County. Pet. Resp. at 2. Petitioner alternatively argues that if the motion to intervene is allowed, the participation of Saline County be limited pursuant to 35 Ill. Adm. Code 101.402(e). *Id.*

¹ The Board notes that the filing indicates the motion is filed with the hearing officer. However, the hearing officer set this matter for hearing in Saline County after discussion with the parties on February 4, 2004. Therefore, the Board will address this motion.

Specifically, petitioner asks that Saline County: (1) be barred from serving discovery, interrogatories, and requests to admit; (2) abide by all hearing officer orders issued; (3) not control any decision deadline; and (4) not be allowed to raise any issues that were raised or might have been raised at an earlier stage of the proceedings. Pet. Resp. at 2-3.

The Agency has not filed a response to the motion to intervene. Therefore, pursuant to 35 Ill. Adm. Code 101.500(d), any objections to the Board granting the motion by the Agency are waived

The Board has reviewed the cases cited by Saline County and agrees that Saline County may intervene in this matter. The Board finds that the citizens of Saline County may be materially prejudiced. Therefore, the Board grants the motion to intervene. However, the Board understands the concerns of the petitioner in this matter and therefore pursuant to 35 Ill. Adm. Code 101.402(e) will limit Saline County's participation. Specifically, Saline County must abide by all prior Board and hearing officer orders including decisions by the hearing officer regarding discovery and the setting of the hearing.

MOTION TO HOLD HEARING

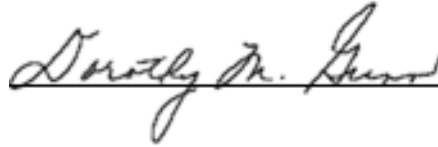
Petitioner argues that the Board's procedural rules do not require that the hearing be held in Saline County and that the potential witnesses for the hearing are all located in Sangamon County. Mot.HH. at 1-2. The hearing can be completed in one day in Sangamon County instead of multiple days in Saline County. *Id.* Thus, argues the petitioner, convenience of all "known potential witnesses", the attorneys for both parties, and the Board "call for an order" to hold the hearing in Sangamon County. *Id.* Finally, petitioner points out that in a prior permit appeal involving the same parties, the hearing was held in Sangamon County. *Id.*, citing Saline County Landfill, Inc. v. IEPA PCB 02-108 (Apr. 18, 2002).

The Agency concurs in the request to hold the hearing in Sangamon County to allow the Board and the Agency to "conserve administrative resources." Ag.Resp. at 1.

The Board agrees that the express provisions of the procedural rules do not require that a hearing be held in the county where the facility is located. However, the Board's procedural rule at 35 Ill. Adm. Code 101.600 relied on by petitioner is a part of the Board's general procedures governing hearings for all types of Board proceedings. In most permit appeal proceedings, the hearing is held in the county where the facility is located. The Board is not bound by the prior decision in PCB 02-108 to allow the hearing to take place in Sangamon County. At this time, the Board finds that to ensure a full airing of issues in this case, the hearing must be held in Saline County. Therefore, the motion 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 February 19, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board