

ILLINOIS POLLUTION CONTROL BOARD
July 22, 2004

BATAVIA, ILLINOIS RESIDENTS)	
OPPOSED TO SITING OF WASTE)	
TRANSFER STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 05-1
)	(Third-Party Pollution Control Facility
ONYX WASTE SERVICES MIDWEST, INC.))	Siting Appeal)
and CITY OF BATAVIA, ILLINOIS,)	
)	
Respondents.)	

ORDER OF THE BOARD (by A.S. Moore):

This order finds that petitioner has filed a timely appeal of a pollution control facility siting decision. As discussed below, however, the Board will not accept the case for hearing unless an amended petition is filed by August 23, 2004, that cures the deficiencies noted in this order.

On July 12, 2004, petitioner, an organization called “Batavia, Illinois Residents Opposed to Siting of Waste Transfer Station,” timely filed a petition asking the Board to review a pollution control facility siting decision made by the City Council of the City of Batavia (City). See 415 ILCS 5/40.1(b) (2002); 35 Ill. Adm. Code 101.300(b), 107.204. The petition was filed by one Batavia resident, Janis Rosauer, who is not identified as an attorney, and includes a list of over 200 signatures of Batavia residents supporting the petition. In the City’s June 7, 2004 decision, the City granted Onyx Waste Services Midwest, Inc.’s application to site a waste transfer station in the City of Batavia, Kane County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, such as a waste transfer station, the permit applicant must obtain siting approval for the facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government approves siting, certain third parties may appeal the local government’s decision to the Board. See 415 ILCS 5/40.1(b) (2002); 35 Ill. Adm. Code 107.

Here, petitioner appeals the City’s siting approval on the ground that the City’s procedures for reaching the decision were not fundamentally fair. Petition at 3. The petition also states that “[w]hen this appeal is granted, we are ready to further address and contest the nine criteria ONYX was to fulfill.” *Id.* Petitioner filed the petition within 35 days after the City’s action to approve siting. See 35 Ill. Adm. Code 107.204. However, the Board cannot accept the petition for hearing at this time. The Board’s procedural rules at Part 107 (35 Ill. Adm. Code

107) set forth what petitions for review of siting decisions must contain. This petition does not meet the Part 107 requirements.

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2002)) allows third parties to appeal a local government's siting approval *if* the third parties participated in the local government's public hearing and are so located as to be affected by the proposed facility. *See* 35 Ill. Adm. Code 107.200(b), 107.208(b). In this case, the petition does not address these statutory prerequisites for third-party standing to bring a siting appeal. Moreover, a petition must state all of the grounds for appeal. *See* 35 Ill. Adm. Code 107.208(c). Petitioner states that the City's proceeding was not fundamentally fair. However, petitioner cannot wait until later to "address and contest the nine criteria." Petition at 3. The petition must identify which of the Act's Section 39.2(a) siting criteria (415 ILCS 5/39.2(a) (2002)) petitioner believes were decided by the City contrary to the manifest weight of the evidence. For these reasons, the petition's contents are deficient.¹

Finally, though an individual may represent himself or herself, a non-attorney cannot represent an organization or other persons in an adjudicatory proceeding before the Board. *See* 35 Ill. Adm. Code 101.400(a), 107.200(b). Therefore, a person who is not an attorney cannot file a pollution control facility siting appeal on behalf of an organization or others. As noted, the petition here was filed by Janis Rosauer, who is not identified as an attorney, and includes a list of Batavia resident signatures supporting the petition. The organization identified as petitioner in this case would have to be represented by an attorney.

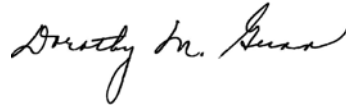
Accordingly, if Ms. Rosauer participated in the local hearing and is so located as to be affected by the proposed facility, she can represent herself or be represented by an attorney. However, the amended petition must reflect her as the sole petitioner. If "Batavia, Illinois Residents Opposed to Siting of Waste Transfer Station" participated in the local hearing under that name and is so located as to be affected by the proposed facility, the amended petition would need to be filed by an attorney.

The Board grants Ms. Rosauer leave to file an amended petition by August 23, 2004, that cures the identified deficiencies. The amended petition must be filed either (1) by an attorney on behalf of the organization or on behalf of Ms. Rosauer, or (2) by Ms. Rosauer solely on her own behalf. Failure to properly and timely file an amended petition will subject this appeal to dismissal. The filing of an amended petition will restart the 120-day period for the Board to decide the appeal. *See* 415 ILCS 5/40.1(a), (b) (2002); 35 Ill. Adm. Code 101.308, 107.504.

¹ A petition must include a copy of the local siting authority's written decision. *See* 35 Ill. Adm. Code 107.208(a). Attached to the petition is the "City of Batavia City Council Results for June 7, 2004," which describes the siting decision, including the vote on each Section 39.2(a) siting criterion. The attachment in turn refers to siting conditions set forth in Resolution 04-27-R, but the petition does not include the resolution. The Board would expect the resolution to be part of the local siting authority's record to be filed with the Board if an appeal is accepted for hearing. For this reason, the Board will not require the amended petition to include a copy of the resolution.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 22, 2004, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board