

ILLINOIS POLLUTION CONTROL BOARD
November 4, 2004

JOHN F. NOCITA,)	
)	
Petitioner,)	
)	
v.)	PCB 05-67
)	(Third-Party Pollution Control Facility
APPLICATION OF GREENWOOD)	Siting Appeal)
TRANSFER, L.L.C. FOR TRANSFER)	
STATION LOCAL SITING APPROVAL IN)	
VILLAGE OF MAYWOOD, ILLINOIS,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

For the reasons provided in this order, the Board on its own motion dismisses the “Petition for Review/Appeal to Contest Siting of the Greenwood, LLC Transfer Station in Maywood, IL” (Pet.) filed by petitioner John F. Nocita. The petition fails to name as respondent all parties required to be named by the Environmental Protection Act (Act) (415 ILCS 5/40.1(b) (2002)) and by the Board’s procedural rules (35 Ill. Adm. Code 107.202(a)(2)). Also, the petition fails to specify any of the statutory grounds for the appeal, as required by the Board’s rules. 35 Ill. Adm. Code 107.208(c). Because the petition does not meet these requirements, the Board dismisses this appeal, consistently with well-settled appellate precedent. *See* 35 Ill. Adm. Code 107.502(a)(2) and (a)(3).

In this order, the Board first describes the procedural history of this case before providing the statutory provisions governing this appeal. The Board then analyzes these provisions and the petition before reaching its decision to dismiss this appeal on its own motion.

PROCEDURAL HISTORY

On October 13, 2004, John F. Nocita filed a petition asking the Board to review a September 9, 2004 decision of the Village of Maywood (Maywood), Cook County. Maywood granted the application of Greenwood Transfer, LLC (Greenwood) to site a pollution control facility at 1201 Greenwood Avenue in the Village. Nocita appeals on the ground that Maywood’s siting approval does not comply with an 800-foot setback requirement contained in Section 22.14 of the Act (415 ILCS 5/22.14 (2002)). Nocita’s petition does not specifically allege that the village’s procedures were fundamentally unfair, and he does not specifically state that any of the village’s findings on particular statutory criteria are against the manifest weight of the evidence. *See* Pet. at 1-2.

In an October 18, 2004 filing, Mr. Nocita stated the mailing address at which he wished to receive notices and other matters pertaining to this case, as Mr. Nocita did not include this information in his initial filing.

STATUTORY AND REGULATORY FRAMEWORK

Before the Illinois Environmental Protection Agency (Agency) can issue a permit to develop or construct a new pollution control facility such as a waste transfer station, the permit applicant must obtain siting approval for the facility from the appropriate local government, in this case the Village Board of Maywood. 415 ILCS 5/39.2(a) (2002). Section 39.2 of the Act (415 ILCS 5/39.2 (2002)) provides the process through which the local government must decide, based on nine statutory criteria, whether to approve or disapprove a request to site a new pollution control facility.

To receive siting approval, the applicant must demonstrate to the local government that the proposed facility meets all nine criteria. *See* 415 ILCS 5/39.2(a)(i)-(ix) (2002). If the local government denies or conditionally grants siting, the applicant may appeal the decision to the Board. *See* 415 ILCS 5/40.1(a) (2002). If the local government approves siting, certain third parties may appeal the local government's decision to the Board. 415 ILCS 5/40.1(b) (2002); 35 Ill. Adm. Code 107.200(b).

Before accepting any petition for a hearing, the Board determines whether such petition is "duplicative or frivolous," and whether the petitioner participated in the local siting hearing and is so located as to be affected by the proposed facility. 415 ILCS 5/40.1(b) (2002). A petition is duplicative if "the matter is substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. A petition is frivolous if it requests "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.* The petition for review must, among other things, specify the grounds for appeal and name specified parties. 415 ILCS 5/40.1(b) (2002); 35 Ill. Adm. Code 107.202(a)(2), 107.208(c).

The Board's procedural rules provide:

Section 107.202 Parties

- a) In a petition to review a local government's decision concerning a new pollution control facility, the following are parties to the proceeding:
 - 1) The petitioner or petitioners are the persons described in Section 107.200 of this Part. If there is more than one petitioner, they must be referred to as co-petitioners; and
 - 2) The unit(s) of local government whose decision is being reviewed *must be named* the respondent(s). In an appeal pursuant to Section 107.200(b), the siting applicant *must also be named* as a respondent. 35 Ill. Adm. Code 107.202(a) (emphasis added).

Section 107.208 Petition Content Requirements

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition *must also include*:

* * *

- c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence. 35 Ill. Adm. Code 107.208(c) (emphasis added).

Section 107.502 Dismissal of Petition

- a) The Board on its own motion or motion by any party, may dismiss any petition that:
- * * *
- 2) fails to name all parties as required by Section 39.2 [and Section 40.1(b)] of the Act;
- 3) fails to include the required fee and all information as required by Section 107.208 of this Part 35 Ill. Adm. Code 107.502(a).

BOARD ANALYSIS AND RULING

Section 40.1(b) of the Act requires that, in a petition to contest siting approval by a municipality, “the governing body of the municipality and the applicant shall be named as co-respondents.” 415 ILCS 40.1(b) (2002). The Board’s procedural rules contain a virtually identical requirement. *See* 35 Ill Adm. Code 107.202(a)(2). “[T]he Board operates under special statutory jurisdiction and is limited by the language of the act conferring that jurisdiction.” Bevis, et al. v. Wayne County Board, PCB 95-128, slip op. at 4 (May 18, 1995) (citation omitted). Consequently, the Board cannot disregard or modify the requirement that the applicant and the siting authority be named in the petition as co-respondents. *See id.* In this case, the Village of Maywood plainly granted an application from Greenwood for local siting approval (Pet., Exh. A), yet the petition does not name either the Village Board of Maywood or Greenwood as a respondent. Pet. at 1 (naming “Application”).

The Illinois courts have specifically held that any petition for review must be filed within 35 days. Failure to name a necessary party deprives the Board of jurisdiction over a siting appeal. Bevis, et al. at 3-4, citing McGaughey v. Ill. Human Rights Comm’n., 649 N.E.2d 404, 410 (1995). Mentioning the Maywood Village Clerk and Greenwood throughout the petition and its exhibits fails to cure this defect. Bevis, et al. at 4. It is also insufficient to serve the Maywood Village Clerk and Greenwood with a copy of the petition without naming them both as co-respondents. Bevis, et al. v. IPCB and Wayne County Board, 289 Ill. App. 3d 432, 438, 681 N.E.2d 1096, 1100 (5th Dist 1997). This fatal defect alone requires dismissal of the petition

for review. McHenry County Defender, Inc. v. IEPA and the City of Woodstock, PCB 98-173, slip op at 4 (Aug. 6, 1998), citing McGaughey at 410.

But, the petition has another major deficiency. Section 107.208 of the Board's procedural rules provides the content requirements for a petition to review a pollution control facility siting decision. *See* 35 Ill. Adm. Code 107.208. Such a petition must include, *inter alia*, specification of the grounds for the appeal. Gere Properties, Inc. v. Jackson County Board and Southern Illinois Regional Landfill, Inc., PCB 02-201, slip op. at 12 (Sept. 5, 2002); 35 Ill. Adm. Code 107.208(c). Specifically, the petition must state *all* of the grounds for the appeal, including which of the Act's Section 39.2(a) siting criteria petitioner believes were decided by the Village of Maywood contrary to the manifest weight of the evidence. Batavia, Illinois Residents Opposed to Siting of Waste Transfer Station v. Onyx Waste Services Midwest, Inc. and City of Batavia, PCB 05-1, slip op. at 3 (July 22, 2004) (emphasis added); *see* 415 ILCS 5/39.2(a) (2002). A petitioner cannot wait to some later date to address and contest the nine criteria. Batavia, Illinois Residents at 3.

The petitioner appeals on the ground that Maywood's siting approval does not comply with an 800-foot setback requirement contained in Section 22.14 of the Act (415 ILCS 5/22.14 (2002)). Pet. at 1. Specifically, as it applies here, that section states that in Cook County a garbage transfer station "which is located in an industrial area of 10 or more contiguous acres may be located within 1000 feet but no closer than 800 feet from the nearest property zoned for primarily residential uses." 415 ILCS 5/22.14(a)(2002). Section 39.2(g) of the Act provides that its "siting approval procedures, criteria, and appeal procedures" exclusively govern these actions. 415 ILCS 5/39.2(g)(2002). That section further provides that "[l]ocal zoning or other local land use requirements shall not be applicable to such siting decisions." *Id.* Section 22.14's requirements are clearly to be considered by the Agency before issuing a permit, and those requirements arguably could be considered by a unit of local government in its consideration of criterion 39.2(a)(iii). *See, e.g., Sutter Sanitation and LaVonne Haker v. IEPA*, PCB 04-187, slip op. at 6-9, 16-19 (Sept. 16, 2004). But here, at no point in his petition does Mr. Nocita state that the Village's siting approval was against the manifest weight of the evidence on any of the nine Section 39.2(a) criteria. *See* Pet. at 1-2. In addition, he states that "when this appeal is granted, I will be in position to further address my objections" Pet. at 2. This failure to state any grounds under Sections 39.2(a) and 40.1(b) for an appeal violates the Act's and the Board's petition content requirements.

The Board's procedural rules permit the Board on its own motion to dismiss any complaint that fails to name all parties as required by Section 39.2 of the Act. 35 Ill. Adm. Code 107.502(a)(2). Those regulations also permit the Board on its own motion to dismiss any petition that fails to include all information as required by Section 107.208 (Petition Content Requirements). 35 Ill. Adm. Code 107.502(a)(3). As the Board has above found that the petitioner failed to name the Maywood Village Board and Greenwood as co-respondents and also failed to provide sufficient specification of the grounds for the appeal, the Board on its own motion dismisses this petition for review. *See* 35 Ill. Adm. Code 107.502(a).

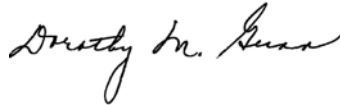
CONCLUSION

After carefully reviewing the petition and the applicable statutory and regulatory provisions, the Board finds that it lacks jurisdiction under the Act to hear this appeal. The petitioner has not named the correct and necessary parties and thus has failed to comply with Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2002)) and with Section 107.202(a)(2) of the Board's regulations (35 Ill. Adm. Code 107.202(a)(2)). The Board also finds that the petitioner has not satisfied the petition content requirements in Section 107.208 of the Board's regulations. 35 Ill. Adm. Code 107.208. These statutory requirements are very strict and specific, and the Board has no discretion to waive or modify them if they are not met. In this case, the petitioner has not met them, and the Board dismisses this petition for review.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 4, 2002, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board