

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2010

STOP THE MEGA-DUMP,)	
)	
Petitioner,)	
)	
v.)	PCB 10-103
)	(Third-Party Pollution Control Facility
COUNTY BOARD OF DEKALB COUNTY,)	Siting Appeal)
ILLINOIS and WASTE MANAGEMENT OF)	
ILLINOIS, INC.,)	
)	
)	
Respondents.)	

WASTE MANAGEMENT OF ILLINOIS,)	
INC.)	
)	
Petitioner,)	
)	PCB 10-104
v.)	(Pollution Control Facility Siting Appeal)
)	(Consolidated)
DEKALB COUNTY BOARD,)	
)	
Respondent.)	

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

On June 11, 2010 and June 14, 2010, Stop the Mega-Dump (SMD) and Waste Management of Illinois, Inc. (WMI), respectively, filed separate petitions asking the Board to review a May 10, 2010 landfill siting decision of the DeKalb County Board (DeKalb County). *See* 415 ILCS 5/40.1(a), (b) (2008); 35 Ill. Adm. Code 101.300(b). Specifically, DeKalb County granted siting approval, with conditions, for WMI's proposed expansion of the company's pollution control facility, the DeKalb County Landfill, located northeast of the intersection of Somonauk and Gurler Roads in unincorporated DeKalb County. In their respective petitions, SMD contests the approval of the siting expansion (SMD Pet.) and WMI contests a condition placed on the siting approval (WMI Pet.). For the reasons below, the Board accepts the petitions for hearing and consolidates the cases.

LEGAL FRAMEWORK

Under Section 39(c) of the Environmental Protection Act (Act) (415 ILCS 5/39(c) (2008)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting

approval for the proposed 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 denies siting or approves siting with conditions, the siting applicant may appeal the local government's decision to the Board. *See* 415 ILCS 5/39(c), 39.2, 40.1(a) (2008); 35 Ill. Adm. Code 107.2(a).

In addition, if the local government approves siting, certain third parties may appeal the decision to the Board. *See* 415 ILCS 5/39.2, 40.1(b); 35 Ill. Adm. Code 107.2(b). Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2008)) allows third parties to appeal a decision granting approval to site a pollution control facility if the third parties participated in the local government's public hearing and are so located as to be affected by the proposed facility. 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 107.200(b). 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) (2008); 35 Ill. Adm. Code 107.200(b).

Whether filed by the siting applicant or a third party, petitions for review must be filed within 35 days after the date of the local siting authority's decision. 415 ILCS 5/40.1(a), (b) (2008); 35 Ill. Adm. Code 107.204.

SMD PETITION

SMD represents that it is a "citizens' group" that "formed for the purpose of participating in and contesting the [WMI's siting] application." SMD Pet. at 1. SMD states that the group is comprised of citizens who reside in DeKalb County, including citizens who reside in close proximity to the landfill. *Id.* SMD asserts that its members are so located as to be affected by the proposed facility. *Id.* at 1-2. SMD further asserts that the group participated actively in the local siting hearing, including by way of presenting evidence. *Id.* at 2. SMD appeals on the grounds that the siting procedures used by DeKalb County were not fundamentally fair; DeKalb County's decision on siting criteria i, ii, iii, v, and vi was against the manifest weight of the evidence; and the siting conditions imposed on WMI regarding criterion ii are improperly "vague and indefinite." *Id.* at 2-5. SMD's petition meets the content requirements of 35 Ill. Adm. Code 107.208. SMD also filed its petition on June 11, 2010, within 35 days after DeKalb County's May 10, 2010 siting approval. SMD Pet., Exh. at 11.

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 SMD's third-party appeal is duplicative or frivolous. The Board accepts the SMD's petition for hearing.

WMI PETITION

WMI asserts that one of the conditions that DeKalb County placed on the approval of WMI's application for siting expansion, Condition No. 32, imposes various requirements on WMI with respect to the shoulders and embankments of Somonauk Road. WMI Pet. at 2. WMI

appeals on the grounds that the condition is not reasonable or necessary to accomplish the purposes of Section 39.2 of the Act (415 ILCS 5/39.2 (2008)) and is inconsistent with Board regulations. *Id.* In addition, WMI maintains that the condition is not supported by the record and has not been demonstrated to be either technically practicable or economically reasonable. *Id.* at 2-3. WMI also filed its petition on June 14, 2010, within 35 days after DeKalb County's May 10, 2010 siting approval. WMI Pet., Exh. at 11. The Board accepts WMI's petition for hearing.

CONSOLIDATION

On its own motion, and for the reasons below, the Board consolidates these two siting appeals for purposes of hearing and decision. The Board recognizes that the "burdens of proof vary" in the two appeals. 35 Ill. Adm. Code 101.406. However, the Board will be applying the same standard of review, namely, the manifest weight of the evidence standard, when the Board considers DeKalb County's imposition of the contested condition and DeKalb County's determinations that the contested criteria were satisfied. In addition, WMI represents that the contested condition was imposed with respect to criterion vi (WMI Pet. at 2), which is one of the criteria contested by SMD (SMD Pet. at 4). Moreover, the two appeals share the same local siting record and have overlapping parties. Under these circumstances, the Board finds that consolidation is "in the interest of convenient, expeditious, and complete determination of claims, and . . . would not cause material prejudice to any party." 35 Ill. Adm. Code 101.406.

HEARING AND DECISION DEADLINE

SMD and WMI bear their respective burdens of proof. 415 ILCS 5/40.1(a), (b) (2008). Hearings will be based exclusively on the record before DeKalb County. Accordingly, though the Board hearing affords petitioners the opportunity to challenge the local government's reasons for its decision, information developed after the local government's decision typically is not admitted at hearing or considered by the Board. However, if relevant, evidence may be introduced on (1) the local government's jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(a), (b) (2008); Land & Lakes v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3rd Dist. 2000).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2008)), which only WMI may extend by waiver. *See* 35 Ill. Adm. Code 107.504; 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, WMI "may deem the site location approved." 415 ILCS 5/40.1(a) (2008). Currently, the decision deadline is October 9, 2010, for SMD's third-party petition (the 120th day after the June 11, 2010 receipt), and October 12, 2010, for WMI's petition (the 120th day after June 14, 2010 receipt). *See* 35 Ill. Adm. Code 107.504. The Board will treat the consolidated cases as due for decision on the earlier date: October 9, 2010. The Board meeting immediately before October 9, 2010, is currently scheduled for October 7, 2010.

DEKALB COUNTY RECORD

DeKalb County must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. Because SMD “is a citizens’ group that participated in the siting proceeding and is so located as to be affected by the proposed facility,” it is “exempt from paying the costs of preparing and certifying the record.” 415 ILCS 5/39.2(n) (2008); 35 Ill. Adm. Code 107.306. However, WMI must pay to DeKalb County the cost of preparing and certifying the record. *See* 415 ILCS 5/39.2(n) (2008); 35 Ill. Adm. Code 107.306, 107.502(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 17, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board