

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2007

AMERICAN BOTTOM CONSERVANCY)	
and SIERRA CLUB,)	
)	
Petitioners,)	
)	
v.)	PCB 07-84
)	(Third-Party Pollution Control Facility
CITY OF MADISON, ILLINOIS, and)	Siting Appeal)
WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Respondents.)	

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

On March 13, 2007, American Bottom Conservancy and Sierra Club (petitioners) timely filed a petition asking the Board to review a February 6, 2007 decision of the City of Madison, Illinois (City). *See* 415 ILCS 5/40.1(b) (2004); 35 Ill. Adm. Code 107.204. According to the petition, the City granted the application of Waste Management of Illinois, Inc. (WMII) to site an expansion of WMII's Milam Recycling and Disposal Facility, which is located in Fairmont City, St. Clair County. The expansion, which is called "North Milam," is to be located in the City of Madison, Madison County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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 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) (2004); 35 Ill. Adm. Code 107.

In this case, petitioners appeal on the grounds that the City's proceedings were not fundamentally fair and that the City's approval of WMII's siting application was against the manifest weight of the evidence as to several siting criteria. For the reasons below, the Board accepts the petition for hearing.

THIRD-PARTY APPEAL

Section 40.1(b) of the Act (Act) (415 ILCS 5/40.1(b) (2004)) allows third parties to appeal a local government 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. *See* 415 ILCS 5/40.1(b) (2004); 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. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2004); 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) (2004); 35 Ill. Adm. Code 107.200(b).

The petition here states that American Bottom Conservancy, a nonprofit corporation, is a "volunteer, grass-roots" membership organization based in metropolitan East St. Louis, Illinois. Petition (Pet.) at 1-2. According to the petition, American Bottom Conservancy "works to protect Illinois natural and cultural resources, with particular emphasis on wetlands and the American Bottom floodplain of the Mississippi River." *Id.* at 1. The petition asserts that American Bottom Conservancy and its members participated in the City's public hearing concerning WMII's siting application. *Id.* at 2. According to the petition, American Bottom Conservancy has members who would be negatively impacted by the proposed facility. *Id.* American Bottom Conservancy "brings this petition for review to redress its injuries and the injuries to its members." *Id.*

According to the petition, Sierra Club, a nonprofit corporation, is a membership organization, composed of more than 700,000 members nationally and more than 26,000 members in Illinois. Pet. at 2. The petition states that since its founding in 1892, Sierra Club "has been actively engaged in efforts to preserve the natural values of the Mississippi River and its adjoining floodplains." *Id.* The petition further asserts that members of "Sierra Club Kaskaskia and Piasa Palisades groups" participated in the City's public hearing concerning WMII's siting application. *Id.* According to the petition, the interests of Sierra Club and its members will be adversely affected by the proposed facility. Sierra Club "files this petition for review on its own behalf and on behalf of its members." *Id.*

The petition specifies the grounds for the appeal. According to the petition, the proceedings of the City, including the City's "pre-hearing, hearing, and post-hearing procedures, and the City's decision-making process, as well as the action of the City taken on February 6, 2007, were defective, unlawful, and not fundamentally fair." Pet. at 3. Further, the petition states that the City's approval of WMII's siting application was against the manifest weight of the evidence on several of the siting criteria of Section 39.2(a) of the Act (415 ILCS 5/39.2(a) (2004)). *Id.* at 5-6. Specifically, petitioners maintain that (1) the proposed facility is not necessary to accommodate the waste needs of the area it is intended to serve; (2) the proposed facility will not be located so that the public health, safety, and welfare will be protected; (3) the proposed facility will not be located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property; and (4) the evidence in the record is insufficient to show that the proposed facility will be located outside of the floodplain. *Id.* at 6-7.

The petition also includes a copy of the City's siting decision, as set forth in the minutes of the Madison City Council meeting of February 6, 2007. Pet. at 3; Exhibit 1 at 1. As relief, petitioners ask that the City's approval of WMII's siting application be reversed and the application denied. Pet. at 5, 7.

The petition meets the content requirements of 35 Ill. Adm. Code 107.208. Petitioners also timely filed their petition with the Board on March 13, 2007, the 35th day after the City's February 6, 2007 approval of siting.

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 this action is duplicative or frivolous. The Board accepts the petition for hearing.

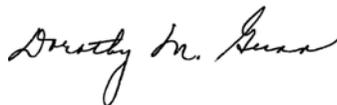
American Bottom Conservancy and Sierra Club have the burden of proof. *See* 415 ILCS 5/40.1(b) (2004); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before the City, except that, if relevant, evidence may be introduced on (1) the local government's jurisdiction over the 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(b) (2004); Land & Lakes Co. 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) (2004)), which only WMII 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, WMII "may deem the site location approved." 415 ILCS 5/40.1(a) (2004). Currently, the decision deadline is July 11, 2007, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for June 21, 2007.

CITY'S RECORD

The City 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 American Bottom Conservancy and Sierra Club are citizens' groups, they are "exempt from paying the costs of preparing and certifying the record." 415 ILCS 5/39.2(n) (2004); 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 March 15, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board