

ILLINOIS POLLUTION CONTROL BOARD  
June 7, 2007

ROCHELLE WASTE DISPOSAL, L.L.C., )  
)  
Petitioner, )  
)  
v. ) PCB 07-113  
) (Third-Party Pollution Control Facility  
THE CITY OF ROCHELLE, an Illinois ) Siting Appeal)  
municipal corporation, and THE ROCHELLE )  
CITY COUNCIL, )  
)  
Respondents. )

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CONCERNED CITIZENS OF OGLE )  
COUNTY, )  
)  
Petitioner, )  
)  
v. ) PCB 07-116  
) (Third-Party Pollution Control Facility  
THE CITY OF ROCHELLE, THE CITY ) Siting Appeal)  
COUNCIL OF THE CITY OF ROCHELLE, )  
and ROCHELLE WASTE DISPOSAL, L.L.C., )  
)  
Respondents. )

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

The Board received two separate third-party petitions seeking the Board's review of an April 11, 2007 decision of the City of Rochelle (the City) to grant with conditions an application to expand the Rochelle Municipal Landfill in Rochelle, Ogle County. For the reasons set forth below, the Board accepts the two petitions and on its own motion consolidates them for hearing.

**ROCHELLE WASTE DISPOSAL'S PETITION**

On May 16, 2007, Rochelle Waste Disposal, L.L.C. (RWD) timely filed a petition asking the Board to review an April 11, 2007 decision of the City. *See* 415 ILCS 5/40.1(a) (2004); 35 Ill. Adm. Code 107.204. The City granted with conditions the City's application to expand the Rochelle Municipal Landfill.

Section 40.1(b) of the Environmental Protection Act (Act) allows specified third parties to appeal a local government decision granting approval to site a pollution control facility. 415 ILCS 5/40.1(b) (2004). Third parties who participated in the local government's public hearing

and who are so located as to be affected by the proposed facility may appeal the siting decision to the Board. *Id.*; 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. 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. 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).

RWD's petition states that it is the current operator of the Rochelle Municipal Landfill and, under the terms of a host agreement executed with the City, would continue to operate an expanded facility. RWD's petition asserts that RWD was a participant in the local siting proceeding. RWD also asserts that it filed a motion to reconsider the City Council's siting approval, which the City Council denied. RWD appeals on the grounds that the final action taken by the City is contrary to the express terms of the host agreement executed between RWD and the City relating to such proposed expansion and is therefore fundamentally unfair. RWD also appeals on the grounds that Conditions 8, 13, 22, 23, 26, 28, 33, and 34 attached to the City's approval are not reasonable and necessary to accomplish the purposes of Section 39.2 of the Act (415 ILCS 5/39.2 (2004)) and are inconsistent with Board regulations. RWD attached to its petition a copy of the City's April 11, 2007 siting decision. As RWD filed that petition on May 16, 2007, it did so within 35 days of the City's decision. RWD's petition meets the content requirements of 35 Ill. Adm. Code 107.208.

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 RWD's action is duplicative or frivolous. The Board accepts RWD's third-party petition for hearing.

### **CONCERNED CITIZENS OF OGLE COUNTY'S PETITION**

Also on May 16, 2007, Concerned Citizens of Ogle County (CCOC) timely filed a petition asking the Board to review the April 11, 2007 decision of the City to grant with conditions RWD's application to expand the Rochelle Municipal Landfill. *See* 415 ILCS 5/40.1(a) (2004); 35 Ill. Adm. Code 107.204.

Section 40.1(b) of the Act allows specified third parties to appeal a local government decision granting approval to site a pollution control facility. 415 ILCS 5/40.1(b) (2004). Third parties who participated in the local government's public hearing and who are so located as to be affected by the proposed facility may appeal the siting decision to the Board. *Id.*; 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. 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. 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).

CCOC's petition states that it is a voluntary association of citizens that has been adversely affected by the City's decision. CCOC's petition further states that it participated actively in the local pollution control facility hearings by cross-examining witnesses and offering affirmative evidence in opposition to the application for siting approval. The petition specifies that CCOC appeals on the grounds that the proceedings of the Rochelle City Council were not fundamentally fair and that the City Council's findings that RWD had proven siting criteria i, ii, iii, and vi were against the manifest weight of the evidence. *See* 415 ILCS 5/39.2(a) (2004). Although CCOC states in its petition that it has attached a copy of the City's April 11, 2007 siting decision, the Board notes that the copy was not in fact included with CCOC's electronic filing of its petition. However, the Board received a copy of this document in PCB 07-113, Rochelle Waste Disposal, L.L.C. v. The City of Rochelle and the Rochelle City Council. The Board therefore regards the omission as harmless error and no basis to reject CCOC's petition. As CCOC filed that petition on May 16, 2007, it did so within 35 days of the City's decision. CCOC's petition meets the content requirements of 35 Ill. Adm. Code 107.208.

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 CCOC's action is duplicative or frivolous. The Board accepts CCOC's third-party petition for hearing.

### **CONSOLIDATION**

On its own motion, the Board consolidates these two appeals for hearing. Both petitions involve the same burden of proof and address common issues and respondents. Thus, for reasons of administrative economy, consolidation is appropriate. *See* 35 Ill. Adm. Code 101.406.

### **HEARING AND DECISION DEADLINE**

Petitioners have the burden of proof. 415 ILCS 5/40.1(a) (2004); *see also* 35 Ill. Adm. Code 107.506. The record before the City will be the exclusive basis for all hearings, except concerning issues of fundamental fairness or jurisdiction. 415 ILCS 5/40.1(b) (2004). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a) (2004)), which only the City 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, the City "may deem the site location approved." 415 ILCS 5/40.1(a) (2004). Currently, the decision deadline is September 13, 2007, the 120th day after May 16, 2007. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for September 6, 2007.

### **ADMINISTRATIVE RECORD**

The City must file the entire record of its proceedings within 21 days after the date of this order. The record must comply with the content and certification requirements of 35 Ill. Adm.

Code 107.304, 107.308. Because CCOC “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) (2004); 35 Ill. Adm. Code 107.306. However, RWD must pay to the City the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2004); 35 Ill. Adm. Code 107.306; *see also* 35 Ill. Adm. Code 107.502(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board