

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1976

PALOS CONSERVATION COMMITTEE,)
ED R. MICLLEF, WILBUR W. MARTIN,)
MERVYN C. PHILLIPS, THE LIEUTENANT)
JOSEPH P. KENNEDY SCHOOL FOR)
EXCEPTIONAL CHILDREN, THE HOLY FAMILY)
VILLA, THE SOUTH COOK COUNTY GIRL)
SCOUTS, INC.,)
Complainants,)
and)
PEOPLE OF THE STATE OF ILLINOIS,)
Intervenor-Complainant,)
v.)
LANDFILL, INC., WASTE MANAGEMENT OF)
ILLINOIS, INC., and the ILLINOIS)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondents.)

PCB 76-191

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

Pursuant to an Interim Order entered August 5, 1976, this matter is before the Board for decision on several Motions filed by Respondents. All parties have submitted extensive briefs on those Motions under a schedule set up in that Interim Order, as modified in a further Interim Order entered September 15, 1976. In addition, we now decide a Motion to Strike certain pleadings, filed by Intervenor-Complainant People of the State of Illinois ("People") on August 26, 1976.

The arguments raised and briefed by the parties in support of or in opposition to the various Motions are complex and present several questions worthy of Board consideration. For clarity, the outstanding Motions are listed:

1. Motion for Judgement on the Pleadings or in the Alternative, Motion for Summary Judgement, filed by Respondent Environmental Protection Agency ("Agency") on July 30, 1976.

2. Motion to Limit the Scope of Review, filed by Respondents Landfill, Inc., and Waste Management of Illinois (hereinafter, collectively, "Landfill") on August 2, 1976.

3. Motion to Strike Record, filed by the People on August 26, 1976, asking that the Agency's "Record for Complaint for Permit Review," filed July 30, 1976, be stricken.

The Complaint in this matter, filed July 9, 1976, alleges in essence that on July 2, 1976 the Agency wrongfully -- in violation of the Illinois Environmental Protection Act ("Act") and this Board's Regulations thereunder -- issued Landfill a development permit for a sanitary landfill site in Palos Township, Cook County, Illinois, and that Landfill's operations under that permit will cause environmental harm. Complainants allege that Landfill began site preparation activities on or about July 6, 1976, although it is agreed that any further activities on the site have ceased during the pendency of this case. The relief asked is revocation of the permit.

The parties agree in their pleadings that the Agency's permit issuance followed two days of hearings held by the Agency, and the Agency's receipt of considerable written submissions from both the original Complainants herein (Palos Conservation Committee, et al., hereinafter, collectively, "Palos") and Landfill. Several previous permit applications by Landfill had been denied by the Agency, and this Board ruled on a limited aspect of the sufficiency of one such application last year in Landfill, Inc., v. EPA, PCB 75-440, 20 PCB _____ (February 11, 1976).

DISCUSSION

All of the Motions here for decision have certain issues of law in common. We shall first discuss those issues generally and then apply our findings on those issues to the individual Motions.

I. TYPE OF CASE

Respondents argue, for both Judgement on the Pleadings and a limitation of the scope of this Board's review, that this case constitutes a "permit review" under Procedural Rule 503. Respondents cite Soil Enrichment Materials Corp. v. EPA, PCB 72-364, 5 PCB 715 (1972) (Preliminary Order) ("SEMCO"), to support their contention that the Board in this case is limited to a review of the permit application "record" compiled by the Agency. Without looking beyond the materials available to the Agency in that "record," Respondents claim, the Board can determine in a "permit review" whether,

1. That "record" contained sufficient information to support the permit issuance by the Agency; and
2. That "record" does support the Agency's decision to issue the permit.

Respondents argue that the Board need not, and in a "permit review" may not, go beyond these factors in deciding the case.

Complainants, on the other hand, claim that this is an enforcement case, and that they must be permitted at a hearing to introduce whatever evidence is necessary (whether or not included in the "record" filed by the Agency) to prove the violations alleged in their enforcement Complaint.

It was this Board's intent that our "review" of permit situations, where the allegedly aggrieved party is not a permit applicant, be handled under the provisions of §30 et seq. of the Act and Rules 300 et seq. of our Procedural Rules. Although the change to Procedural Rule 503 is in effect, that change does not affect our finding that this case is of an enforcement nature. Complainants have chosen to pursue the matter as an enforcement case, and we agree that this is not only allowed, but required as the only appropriate forum created under the Act.

II. NECESSITY OF A HEARING

The Board's Interim Order of August 5, 1976 specifically directed the parties to discuss as an issue the authority of this Board to enter a summary judgement, or a judgement on the pleadings. The facts of this case would preclude the entry of such a judgement, irrespective of whether the matter is considered an enforcement case, or a "permit review."

On the pleadings before us, we cannot say -- as a matter of law -- that the Agency's "record" is adequate to support the permit. Nor, even assuming the truth of all pleadings before us, including the Agency "record," can we say that there are no contested issues of fact. Whether the "record" before the Agency was insufficient, as a matter of law, to support the permit, is not before us.

Complainants plead the existence of facts not in the Agency's "record" which are necessary to the decision on Landfill's permit. Complainants also plead that the manner in which those facts are weighed by the Agency was incorrect; it is also claimed that the Record to date fails to adequately show the manner in which the Agency weighed various facts and policies. Without ruling on the correctness of these contentions, we find that a hearing is necessary to allow proofs concerning them to be introduced by Complainants, within the normal enforcement framework.

There is no requirement, in the Act or our Rules, that any person or member of the public participate in the Agency's permit evaluation process or that hearings be held at all by the Agency. The fact that the Agency has allowed such participation cannot now limit further challenge to the facts and processes used in that evaluation.

The Agency's election to hold a hearing on this matter is laudable. Public input into the environmental decision-making process is a cornerstone of the Act. The theories urged by the Agency and Landfill, however, are not sufficient to guarantee such input, and we decline to interpret the Act or our Regulations in any manner which might limit such public participation. The Act and our Regulations provide for due process guarantees and full public participation in enforcement hearings before the Board.

III. LIMITATIONS OF SCOPE OF REVIEW

Respondents argue at great length, for essentially the same reasons and citing generally the same authorities as were argued on the issue of the necessity of a hearing, that the Board must severely limit the scope of its review of the permit issuance process. For the same reasons discussed above, we hold the contrary. An enforcement hearing, limited only insofar as any other enforcement case is limited, provides the only assured and adequate forum for Complainants here or in similar cases. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971); cf. R73-11 & 12, 14 PCB 661, 665 (Dec. 5, 1974).

CONCLUSIONS

Respondents' Motions for Summary Judgement or in the Alternative Judgement on the Pleadings and to Limit the Scope of Review must be denied.


Inasmuch as we determine that the amendments to the Board's Procedural Rules which accompanied adoption of the NPDES Regulations are effective now, the Agency's filing of its "record" was required. Such filing and acceptance by the Board does not, however, speak to that "record's" evidentiary weight; that weight is governed by normal evidentiary rules under Part III of Chapter I: Procedural Rules. The People's Motion is denied.

This matter shall be set for hearing.

IT IS SO ORDERED.

Mr. James Young dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Opinion and Order were adopted on the 14th day of October, 1976, by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board