

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2012

MARTIN MAGGIO,)	
)	
Petitioner,)	
)	
v.)	PCB 13-10
)	(Third-Party Pollution Control Facility
COUNTY OF WINNEBAGO,)	Siting Appeal)
WINNEBAGO COUNTY BOARD, and)	
WINNEBAGO LANDFILL COMPANY,)	
LLC,)	
)	
Respondents.)	

ORDER OF THE BOARD (by T. A. Holbrook):

On August 15, 2012, Martin Maggio (petitioner) timely filed a petition (Pet.) asking the Board to review a July 12, 2012 decision of the Winnebago County Board (County Board). *See* 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 101.300(b), 107.204. The County Board granted an application filed by Winnebago Landfill Company (WLC) to site a pollution control facility expansion at WLC's facility located north of Edson Road and west of U.S. Interstate 39 in southern Winnebago County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanded 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) (2010); 35 Ill. Adm. Code 107.

In this case, petitioner appeals on the grounds that the County Board did not have proper jurisdiction to conduct public hearings on WLC's application due to failure to serve notice, and that the proceedings were not fundamentally fair. 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) (2010)) 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) (2010); 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) (2010); 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) (2010); 35 Ill. Adm. Code 107.200(b).

Petitioner's petition states that he participated in the County Board's public hearing, and that he is so located as to be affected by the proposed facility. Petitioner specifies the grounds for the appeal. In addition, petitioner attached "[a] true and correct copy of the minutes of the July 12 2012 County Board meeting, with attached Hearing Officer's Report and Recommendation." Pet. at 2. Petitioner reports that he "is not in possession of the formal resolution that is the subject of the foregoing County Board minutes, and will supplement the record of this case when said resolution becomes available." *Id.* The Board's procedural rules provide that the petition must include "[a] copy of the local siting authority's written decision or ordinance" (35 Ill. Adm. Code 107.208(a)). However, the Board concludes that the intent of the procedural rule has been satisfied, as the Board has a basis to determine that the County Board made a siting determination and that the petition was timely filed. *See* Pet., Exh. A at 5 (motion to approve amended resolution adopting proposed findings and order on application for siting approved by roll call vote). Furthermore, the County Board is required to submit a copy of its resolution as an element of its record on appeal. 35 Ill. Adm. Code 107.304(h). The petition meets the content requirements of 35 Ill. Adm. Code 107.208. In addition, petitioner filed its petition within 35 days after the County Board approved siting.

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 now before the Board indicates that this action is duplicative or frivolous. The Board accepts petitioner's petition for hearing.

HEARING AND DECISION DEADLINE

Petitioner has the burden of proof. *See* 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before Winnebago, 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) (2010); Land & Lakes v. IPCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d 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) (2010)), which only WLC 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, WLC "may deem the site location approved." 415 ILCS 5/40.1(a) (2010). Currently, the decision deadline is December 13, 2012, 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 December 13, 2012.

WINNEBAGO COUNTY BOARD'S RECORD

Winnebago 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 (Record Contents), 107.308 (Certification of Record). Because petitioner is an individual citizen, he is “exempt from paying the costs of preparing and certifying the record.” 415 ILCS 5/39.2(n) (2010); 35 Ill. Adm. Code 107.306.

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 August 23, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board