

ILLINOIS POLLUTION CONTROL BOARD
April 17, 2003

SOLID WASTE AGENCY OF NORTHERN)
COOK COUNTY,)
)
Petitioner,)
)
v.) PCB 03-161
) (Pollution Control Facility
) Siting Appeal)
CITY OF DES PLAINES, ILLINOIS,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On March 24, 2003, Solid Waste Agency of Northern Cook County (SWANCC) timely filed a petition asking the Board to review a February 18, 2003 decision of the City of Des Plaines (Des Plaines). *See* 415 ILCS 5/40.1(a) (2002); 35 Ill. Adm. Code 107.204. Des Plaines approved Disposal Management System's application to site a 200 ft. by 200 ft. waste transfer facility at 101-103 Sell Road in the City of Des Plaines. On April 2, 2003, SWANCC filed a motion for leave to file an amended complaint adding Disposal Management System (DMS) as a respondent. On April 16, 2003, Des Plaines filed a motion to dismiss and to oppose SWANCC's motion for leave. Also on April 16, 2003, DMS filed a comment in support of Des Plaines motion to dismiss.

Section 40.1(a) of the Environmental Protection Act (Act) (415 ILCS 5/40.1(a) (2002)) authorizes SWANCC's appeal to the Board as a third party under Section 107.200(b) of the Board's rules. 35 Ill. Adm. Code 107.200(b). Section 40.1(b) of the Act and Section 107.202(a)(2) of the Board rules, however, require that a petition for review name the siting applicant as a respondent. 415 ILCS 5/40.1(b); 35 Ill. Adm. Code 107.202(a)(2). Here, DMS is the siting applicant, yet DMS was not named as a respondent in SWANCC's original petition.

The Act and Board rules also require a petition for review to be filed within 35 days after the local siting authority's action to approve or deny siting. 415 ILCS 5/40.2(a); 35 Ill. Adm. Code 107.204. Additionally, the Board on its own motion may dismiss any petition that is untimely filed or does not name all necessary parties. 35 Ill. Adm. Code 107.502.

Here, Des Plaines approved siting of the DMS facility, without conditions, on February 18, 2003. Pet. Exhibit 3, at 7. The 35-day period in which to file a petition for review expired on March 25, 2003. Because SWANCC failed to timely name DMS, the siting applicant, as a respondent within the 35-day deadline for filing a sufficient appeal, SWANCC's petition fails to meet the Board's content requirements. Accordingly, the Board lacks jurisdiction to hear this appeal. Bevis v. Wayne County Board, PCB 95-128 (May 18, 1995), *aff'd sub nom. Bevis v. PCB*, 289 Ill. App. 3d 432; 681 N.E.2d 1096 (5th Dist. 1997); *see also* ESG Watts, Inc. v. PCB,

191 Ill. 2d 26, 727 N.E.2d 1022 (2000) (failure of a party seeking administrative review to name all statutorily required parties is a fatal omission).

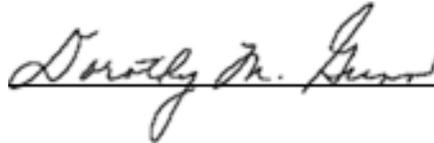
Because the Board lacks jurisdiction over this proceeding based on the face of SWANCC's petition, the Board denies Des Plaines' motion to dismiss as moot.

Accordingly, the Board denies SWANCC's motion for leave to amend, denies Des Plaines' motion to dismiss, dismisses this action, and closes the docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 17, 2003, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board