

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2003

ROCHELLE WASTE DISPOSAL, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	PCB 03-218
)	(Pollution Control Facility
CITY COUNCIL OF THE CITY OF)	Siting Appeal)
ROCHELLE, ILLINOIS,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

On May 21, 2003, Rochelle Waste Disposal, L.L.C. (Rochelle Waste Disposal) timely filed a petition asking the Board to review an April 24, 2003 decision (as allegedly reconsidered on April 28, 2003) of the City Council of the City of Rochelle, Illinois (City of Rochelle). City of Rochelle's decision denied Rochelle Waste Disposal's proposed siting of a pollution control facility: lateral and vertical expansion of the Rochelle Municipal Landfill No. 2 at 6513 South Mulford Road, Rochelle, Ogle County. For the reasons below, the Board accepts Rochelle Waste Disposal's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), 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 proposed 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 denies siting or approves siting with conditions, the siting applicant may appeal the local government's decision to the Board. *See* 415 ILCS 5/39(c), 40.1(a) (2002); 35 Ill. Adm. Code 107.

In this case, the City of Rochelle denied Rochelle Waste Disposal's application for lateral and vertical expansion of the Rochelle Municipal Landfill No. 2. Rochelle Waste Disposal appeals on the grounds that (1) the procedures used by City of Rochelle to reach its siting decision were not fundamentally fair; and (2) the City of Rochelle's decision was against the manifest weight of the evidence as to criteria (i), (ii), (iii), (vi), and (ix). As to the remaining criteria, Rochelle Waste Disposal also seeks to challenge special conditions that the City of Rochelle included as part of its finding of compliance with these remaining criteria. Rochelle Waste Disposal's petition meets the content requirements of 35 Ill. Adm. Code 107.208.

The Board accepts the petition for hearing. Rochelle Waste Disposal has the burden of proof. 415 ILCS 5/40.1(a) (2002); *see also* 35 Ill. Adm. Code 105.506. Hearings will be based exclusively on the record before City of Rochelle. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the local government's reasons for its decision,

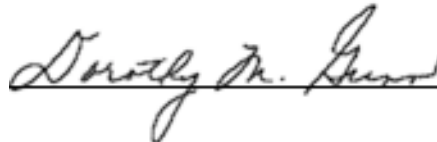
information developed after the local government's decision typically is not admitted at hearing or considered by the Board. However, if relevant, evidence may be introduced on (1) the local government's jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(a) (2002); Land & Lakes v. PCB, 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) (2002)), which only Rochelle Waste Disposal may extend by waiver. *See* 35 Ill. Adm. Code 107.504; 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Rochelle Waste Disposal "may deem the site location approved." 415 ILCS 5/40.1(a) (2002). Currently, the decision deadline is September 18, 2003 (the 120th day after May 21, 2003). *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for September 18, 2003.

City of Rochelle 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. Rochelle Waste Disposal must pay to City of Rochelle the cost of preparing and certifying the record. *See* 415 ILCS 5/39.2(n) (2002); 35 Ill. Adm. Code 107.306, 107.502(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 5, 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