

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2003

LOWE TRANSFER, INC. and MARSHALL)	
LOWE,)	
)	
Petitioners,)	
)	
v.)	PCB 03-221
)	(Pollution Control Facility
COUNTY BOARD OF MCHENRY)	Siting Appeal)
COUNTY, ILLINOIS,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

The Board has pending two motions and responses in this case. First on July 28, 2003, the Village of Cary (Cary) filed a motion appealing determinations of the hearing officer (Cary's Motion) in this proceeding. Also on July 28, 2003, petitioners filed a motion *in limine*. On August 4, 2003, Cary filed a response to the motion *in limine* and on August 6, 2003, the County Board of McHenry County, Illinois (McHenry County) filed a response to the motion *in limine*. On August 5, 2003, petitioners filed a motion to strike the response filed by Cary and a request for sanctions against Cary. On August 7, 2003, Cary filed a response to the motion to strike and request for sanctions. For the reasons discussed below the Board grants the petitioners' motion to strike, but denies petitioners' motion for sanctions. In addition, the Board strikes Cary's Motion and the response to the motion to strike and request for sanctions. Finally, the Board denies the petitioners' motion *in limine*, in part.

This proceeding was initiated on June 5, 2003, when petitioners timely filed a petition asking the Board to review a May 6, 2003 decision of McHenry County. See 415 ILCS 5/40.1(a) (2002); 35 Ill. Adm. Code 107.204. McHenry County denied petitioners' application to site a pollution control facility located on U.S. Route 14 in McHenry County. On June 19, 2003, Cary filed a motion to intervene in the siting appeal. On July 10, 2003, Board denied the motion to intervene because the Environmental Protection Act (Act) and Board's rules do not authorize party status for Cary (see 415 ILCS 5/40.1 (2002) and 35 Ill. Adm. Code 107.200). However, the Board allowed Cary to file an *amicus curiae* brief.

In Cary's Motion, Cary asks that the Board reverse the hearing officer's determinations regarding: participation in or auditing of status conferences, the public comment period and the withdrawal of the record. Mot. at 6. Cary also responded to petitioners' motion *in limine*. Petitioners do not specifically ask to strike Cary's July 28, 2003 motion appealing hearing officer determinations, but petitioners do ask that Cary's response to the motion *in limine* be stricken. The Board previously ruled on June 19, 2003, that the Act does not allow Cary to be a party to this proceeding. See 415 ILCS 5/40.1 (2002). The Board's rules specify that only a party may file a motion or a response. See 35 Ill. Adm. Code 101.500(a) and (d). Therefore, the Board

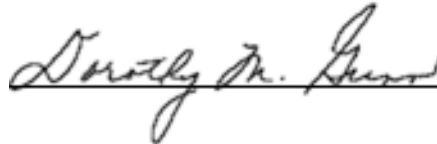
strikes Cary's Motion, Cary's response to the motion to strike and request for sanctions, and the response filed by Cary to the motion *in limine*. The Board denies petitioners' motion for sanctions.

In the motion *in limine*, petitioners seek to restrict the scope of the hearing in this matter by either precluding oral statements on the record or by limiting the time allowed for statements. motion *in limine* at 4. Further, petitioners ask that all statements be limited to the record generated by McHenry County. *Id.* In response to the motion *in limine*, McHenry County urges the Board to deny the motion *in limine* because the Board's rules encourage public participation.

The Board will deny petitioners' motion *in limine* in part. However, the Board will grant the motion *in limine* to the extent that petitioners seek to limit the time allowed for oral statements. The Board's rules clearly allow oral statements "when *time*, facilities, and concerns for a clear and concise hearing record so allow." 35 Ill. Adm. Code 101.628(a). To ensure that the hearing can be completed with a clear and concise record, the hearing officer may limit the time allowed for oral statements consistent with the provisions of 35 Ill. Adm. Code 101.628(a).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 7, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board