

ILLINOIS POLLUTION CONTROL BOARD
April 8, 1993

ST. CLAIR COUNTY,)
)
Petitioner,)
)
v.) PCB 93-51
) (Landfill Siting Review)
VILLAGE OF SAUGET,)
VILLAGE OF SAUGET PRESIDENT)
and BOARD OF TRUSTEES, and G.J.)
LEASING COMPANY, INC., a)
corporation d/b/a CAHOKIA)
MARINE SERVICE,)
)
Respondents.)

ORDER OF THE BOARD (by J. Theodore Meyer):

This case is before the Board on two matters. On March 24, 1993, respondent G.J. Leasing Company, Inc., d/b/a Cahokia Marine Service (G.J. Leasing) filed a motion to dismiss petitioner St. Clair County's (County) petition for review. On April 1, 1993, the County filed its response in opposition to the motion to dismiss, and a motion for leave to amend its petition for review. Additionally, on March 29, 1993, the Board received a letter from the village attorney for respondent the Village of Sauget (Sauget). We have construed this letter as a motion for extension of time to file the record.

We will first address Sauget's motion for extension of time to file the record. Sauget states that it knew nothing about the Board's March 11, 1993 order, setting this case for hearing and ordering Sauget to file its record within 21 days, until March 26, 1993. Sauget states that it found out about the Board order accidentally, from counsel for Sauget's co-respondent. Sauget then states that it reads the order to require that the record must be filed within 21 days, "which would be May [sic] 1, 1993." Sauget contends that is impossible, because the village attorney must be in Chicago on March [sic] 29 and 30, and because the record must be reproduced by a professional copier, which may take some time. Sauget states that it might be able to file the record by "Monday, the 10th of May [sic]", and that the hearing in this case is set for May 11.

Initially, the Board notes that we sent the March 11 order to Ms. Betty Long Wilson, Clerk of the Village of Sauget, and that the return receipt indicates that the order was delivered on March 15, 1993. As to the substance of the letter, we are confused by the conflicting dates. However, we construe the letter as a motion for an extension of time to file the record.

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Pursuant to the March 11 order, the record was due on April 1, 1993. We will extend Sauget's time to file the record until April 19, 1993. We note that the hearing in this case is scheduled for May 7, 1993.

As noted above, G.J. Leasing filed a motion to dismiss the petition for review. G.J. Leasing points to Section 40.1(b) of the Environmental Protection Act (Act), which provides that a third party may appeal a local decision granting site approval if that third party "participated in the public hearing conducted by the ... governing body of the municipality." (415 ILCS 5/40.1(b) (1992).)¹ G. J. Leasing argues that the County's petition for review is deficient in two respects: first, that the petition fails to allege that it participated in the local hearing, and second, even if the petition is amended, the transcript of the hearing shows that no one represented the County at that local hearing. G. J. Leasing notes that Frank Boyne, a member of the County Board, was present at hearing, but argues that Mr. Boyne appeared in his individual capacity and not for the County Board.

The County filed a response in opposition to the motion to dismiss, and asks for leave to amend its petition. The County contends that it is apparent from the local hearing transcript that the County was present at that hearing and did participate through Mr. Boyne. The County maintains that in light of these facts, and in light of the Board's prevailing practice regarding the amending of pleadings, the only proper remedy for the County's failure to explicitly allege participation is not dismissal but leave to amend the petition.

The Board grants the County's motion for leave to amend its petition for review. An amended petition shall be filed within 7 days of this order.² Thus, we are left with one issue: whether Mr. Boyne's participation in the hearing held by Sauget is sufficient to satisfy the requirement that the County participated in the local hearing.

After reviewing the arguments of the parties and the exhibits submitted in support of those arguments, the Board finds that Mr. Boyne did appear on behalf of the County. At that local hearing, Mr. Boyne stated:

¹ The Act was formerly codified at Ill.Rev.Stat. 1991, ch. 111½, par. 1001 et seq.

² Unlike our practice in most other decision deadline cases, the filing of this amended petition will not restart the time for decision. That is because it is the applicant for site approval who controls the 120-day decision deadline, not the County.


I'm only speaking as a member of the Board, not for the County Board there. I have a letter and I want to submit it to you, and I have a letter from John Baricevic their County Board Chairman.

(Motion to dismiss, Appendix A, at 48 (emphasis added).)

The County contends that Mr. Boyne's statement that he was not speaking for the County Board was an attempt to communicate that the County Board itself had not yet taken a position on the application for siting approval. We find that although Mr. Boyne's statement is somewhat ambiguous, he was appearing in his capacity as a County Board member. (Motion to dismiss, Appendix A, at 48-49.) Mr. Boyne submitted a letter from the County Board Chairman, as well as making a statement on his own behalf. Because Mr. Boyne appeared in his capacity as a County Board member, the County did participate at hearing, and has satisfied Section 40.1(b).³ G.J. Leasing's motion to dismiss is denied. This case will proceed to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 8th day of April, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

³ The Board notes that in Land & Lakes Co. v. Village of Romeoville (February 7, 1991), 118 PCB 281, PCB 91-7, we allowed a state's attorney to intervene on behalf of a county, although intervention is not ordinarily allowed in regional pollution control facility siting reviews.