

ILLINOIS POLLUTION CONTROL BOARD
January 6, 1994

WILMER BROCKMAN, JR. and)
FIRST MIDWEST BANK OF JOLIET)
AS TRUSTEE UNDER TRUST NO. 757,)
)
Petitioners,)
)
v.) PCB 93-162
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

This matter is before the Board on a number of filings in the proceeding which include a December 17, 1993, motion to supplement the Agency record in this proceeding filed by petitioners. On December 27, 1993, the Board received a filing from the Agency objecting to the motion to supplement. The Agency's filing indicated that it had been timely mailed pursuant to 35 Ill. Adm. Code 101.102. On December 22, 1993, the Board received a motion for leave to file an amicus brief, filed by Residents Against a Polluted Environment. On December 27, 1993, petitioner filed a motion in opposition to leave to file an amicus brief. Further, on January 4, 1994, the Board received a motion to strike petitioner's brief filed by the Agency.

The Board will first address the issue of supplementing the record. The petitioner asks that the Board supplement the record with a document which petitioner asserts is "referenced on page 85 of Book I of the Administrative Record as 'LPC-PA15 facility data sheets'". The petitioner argues that the document is "material to understanding references already existing in the record". The Agency objects to supplementing the record with this document arguing that it is a "selected transcription of some information supplied by the LPC-PA15 form." The Agency further states that the LPC-PA15 form is in the record on appeal at pages 174-176 of Book 1. An examination of the record indicates that the LPC-PA15 form is included in the record at pages 174-175. The two pages offered as joint exhibit 18 appear to be a compilation of the data already included in the LPC-PA15 form. Therefore, the Board will deny the motion to supplement as the information being offered is already included in the record.

The Board will next discuss the issue of allowing the leave to file the amicus. The Board's past practice has been to allow participants at the local level in landfill siting cases to participate before the Board only as amici. (Clean Quality Resources, Inc. v. Marion County Board, PCB 90-216, ___ PCB ___, (February 28, 1991); Laidlaw Waste Systems v. McHenry County

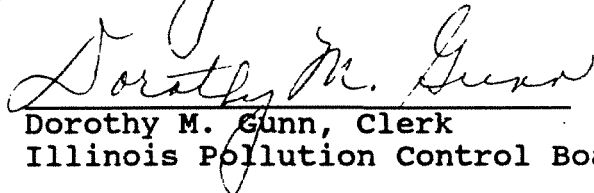
Board, 90 PCB 135 (PCB 88-27, June 16, 1988); Waste Hauling, Inc. v. Macon County Board, 129 PCB 321 (PCB 91-223, January 23, 1992).) Further, the Board has allowed the filing of an amicus brief in a permit appeal case. In CWM Chemical Services, Inc. v. IEPA, PCB 89-177, 116 PCB 19, November 8, 1990, the Board allowed the 35th District Environmental Task Force to participate as an amicus. Therefore, the Board will grant leave to file the amicus brief. The Board does note however that although the Residents Against a Polluted Environment did attend the hearing below, the representatives declined to make a statement which would be subject to cross-examination.

The Board will grant the petitioner an opportunity to reply to the amicus brief. Such reply must be received by the Board no later than January 11, 1994.

Lastly, the Board notes that the motion to strike the petitioner's brief is not ripe. Therefore, the Board will reserve ruling on that motion and take it with the case. The Board notes that the Agency's brief accompanied the motion.

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 16th day of January, 1994, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board