

ILLINOIS POLLUTION CONTROL BOARD  
March 25, 1993

C.O.A.L. (CITIZENS OPPOSED TO )  
ADDITIONAL LANDFILLS), )  
 )  
Petitioner, )  
 )  
v. ) PCB 92-131  
 ) (Landfill Siting Review)  
LAIDLAW WASTE SYSTEMS, INC., )  
and THE PERRY COUNTY BOARD )  
OF COMMISSIONERS, )  
 )  
Respondents. )

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on C.O.A.L.'s March 1, 1993 motion for reconsideration (35 Ill. Adm. Code 101.300) of the Board's January 21, 1993 decision affirming the Perry County Board of Commissioner's (County) granting of siting approval to Laidlaw waste Systems, Inc. (Laidlaw). On March 12, 1993, Laidlaw filed its response.

C.O.A.L. raises several arguments in support of reconsideration all relating to the Board's conclusion that the County had jurisdiction over Laidlaw's application. First, C.O.A.L. contends that the Board erred in finding that Laidlaw was not required to serve Matilda Poiter with notice under Section 39.2(b) of the Environmental Protection Act (Act). (415 ILCS 5/39.2(b) (1992).) The Board found that there was no evidence introduced indicating that Poiter's name appeared on the authentic tax records and, hence, C.O.A.L. failed to establish the that the jurisdictional notice requirement of Section 39.2(b) of the Act applied to Poiter. (PCB 92-131 at 6-7.) C.O.A.L. now asserts that Poiter, "as an owner of property within the subject area ... was entitled as a matter of law to notice of the proposed siting application, irrespective of whether the property interest appeared in ... the 'authentic tax records' for Perry County." According to C.O.A.L., the Board erred in not addressing a distinction between owners of property within the boundaries of the subject property and those owning property within 250 feet of the lot line of the subject property. (415 ILCS 5/39.2(b) (1992).) C.O.A.L. argues that owners within the boundaries of the subject property are entitled to notice regardless of whether their names appear on the authentic tax records.

The Board notes that C.O.A.L.'s interpretation of Section 39.2(b) that owners of property within the boundaries of the subject property must receive notice regardless of whether their

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names appear on authentic tax records is raised for the first time in its motion for reconsideration. A review of C.O.A.L.'s post-hearing brief shows that the jurisdictional arguments raised were based upon the contention that, as an owner of property within 250 feet of the lot line of the subject property, Poiter should have received notice of the application. (C.O.A.L.'s Brief at 1, 3.) The Board finds that C.O.A.L. may not raise such an issue for the first time on reconsideration. While C.O.A.L. continues to assert that jurisdictional issues may be raised at any time, the Board again notes that C.O.A.L. had the opportunity to address its jurisdictional challenges at the Board's October 27, 1992 hearing. C.O.A.L. does not contend that, for the first time at this stage in the proceeding, it has discovered a jurisdictional defect and new evidence in support that defect. Rather, C.O.A.L. attempts to raise a new statutory construction argument in support of a previously raised jurisdictional challenge. For this reason alone, the Board denies reconsideration of its finding that laidlaw was not required to give notice to Poiter pursuant to Section 39.2(b) of the Act.

In spite of the above conclusion that C.O.A.L. has waived this argument, the Board will address the merits of C.O.A.L.'s statutory construction argument. Section 39.2(b) provides that an applicant must serve notice "on owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which the facility is to be located." (415 ILCS 5/39.2(b) (1992).) Contrary to C.O.A.L.'s assertion, Section 39.2(b) makes no distinction between owners of property within the subject area and owners within 250 feet for purposes of identifying who must receive notice. Section 39.2(b) defines "owners" as those persons or entities which appear on the county's authentic tax records regardless of whether they own property within the subject area or within 250 feet of the lot line of the area. Because the record fails to establish that Poiter's name appeared on the "authentic tax records", the Board affirms its ruling that no jurisdictional defect is presented by Laidlaw's failure to give Poiter notice.

The Board has considered the remaining arguments raised by C.O.A.L. in support of its contention that Poiter was entitled to notice. The Board finds that C.O.A.L.'s argument regarding which party had the burden of proof to establish jurisdiction was adequately addressed by the Board in reaching its determination that Poiter was not entitled to notice under Section 39.2(b) of the Act. (PCB 92-131 at 4-7.) Having reached this conclusion, and finding that C.O.A.L. has waived its new statutory construction argument, the Board declines C.O.A.L.'s request for a rehearing on the issue of whether Poiter was entitled to notice.

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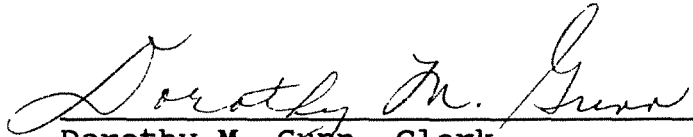
Lastly, C.O.A.L. contends that the Board should reconsider its finding that William Walker was not entitled to notice under Section 39.2(b) of the Act as an owner of property within 250 feet of the lot line of the subject property. The Board finds no support in C.O.A.L.'s motion for reconsideration for altering its determination that there was no evidence presented establishing that Walker owned property within 250 feet of the lot line of the subject property.

Upon granting reconsideration, the Board has reviewed the briefs and its opinion and order of January 21, 1993 and declines to reconsider its determination finding that the County had jurisdiction and affirming the County's grant of siting approval to Laidlaw.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Casteneda v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437; Strube v. IPCB, No. 3-92-0468, slip op. at 4-5 (March 15, 1993) .)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25<sup>th</sup> day of March, 1993 by a vote of 6-0 .

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board