ILLINOIS POLLUTION CONTROL BOARD
May 18, 1995

CATHY BEVIS, GLADYS SHREVE, RICK MOORE, ELEANOR TOWNS, ELEANOR MORRIS, LEONARD MORRIS, EDDIE BREEZE, LOUISE BREEZE, MARY LEE CUNNINGHAM, LYLE RUTGER, MARIE RUTGER, CHARLES WALKER, and LENORE WALKER,	)	
Petitioner,	)	
v.	)	PCB 95-128 (Landfill Siting Review)
WAYNE COUNTY BOARD,	)	
Respondent.	)	

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

This matter is before the Board on an appeal filed on April 14, 1995, pursuant to Section 40.1(b) of the Environmental Protection Act (Act) by Cathy Bevis, Gladys Shreve, Rick Moore, Eleanor Towns, Eleanor Morris, Leonard Morris, Eddie Breeze, Louise Breeze, Mary Lee Cunningham, Lyle Rutger, Marie Rutger, Charles Walker, and Lenore Walker. They appeal the March 9, 1995 decision of the Wayne County Board granting local siting approval to Daubs Landfill, Inc. (Daubs) for the regional pollution control facility located at Route 15 West, Fairfield, in Wayne County, Illinois.

On May 1, 1995, Daubs filed a Motion for Leave to Participate by Way of Special Appearance for the Limited Purpose of Challenging Jurisdiction. Also on May 1, 1995, Daubs filed its Special Appearance for the Limited Purpose of Challenging Jurisdiction.

As a preliminary matter, we note that "an objection to jurisdiction may be imposed at any time". (Concerned Boone Citizens v. M.I.G. Investments, Inc., 144 Ill.App.3d 334, 494 N.E.2d 180 (2nd Dist. 1986)). Despite filing its motion and special appearance after the 14-day response time had run, the Board grants Daubs leave to file said motion, and accepts its special appearance. Daubs contends that petitioner's appeal should be dismissed as frivolous because it failed to name Daubs as a necessary party as prescribed by Section 40.1(b) of the Act.

On May 16, 1995, petitioners filed both their Motion for Leave to File an Objection to Daub's aforementioned motion, and their Objection to said motion. Although we note that petitioner timely filed neither their motion to object nor their objection, in the interest of allowing the parties to fully present their

case, the Board hereby grants petitioner's motion and accepts their objection.

In cases filed by private citizens, the Board is required by Section 40.1(b) of the Act to enter a finding as to whether the complaint is frivolous or duplicitous. An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metals Co., PCB 73-173, 8 PCB 46 (1973)). The Appellate Court of Illinois, First District, construed a "frivolous" pleading to mean "one that is either legally or factually deficient." (Winnetkans Interested in Protecting the Environment (WIPE) v. Pollution Control Board, 13 Ill.Dec 149, 370 N.E.2d 1176 (1st Dist. 1977)). This provision aims to avoid expensive and protracted litigation on claims which cannot prevail despite factual accuracy. (Farmers Opposed to Extension of the Illinois Tollway v. Illinois State Toll Highway Auth., PCB 71-159, 2 PCB 119 (1971)).

Section 40.1(b) of the Act additionally provides:

> The county board or the governing body of the municipality and the applicant shall be named as co-respondents. (415 ILCS 5/40.1(b)(emphasis added)).

As Daubs correctly points out, due to its limited jurisdiction, the Board must strictly construe the Act where the General Assembly specifically states the requirements "shall" be followed. (Ogle County Board v. Pollution Control Board, No. 2-94-0074 (2nd Dist. April 20, 1995)). In the instant matter, petitioner failed to name an applicant in its appeal. Therefore petitioner's appeal is defective on its face.

Failure to name a necessary party also deprives the Board of having jurisdiction over the matters. (McGaughy v. Ill. Human Rights Comm'n, *available in* 1995 WL 123709 (March 23, 1995) *citing to* Environmental Control Systems v. Pollution Control Board, 258 Ill.App.3d 435, 630 N.E.2d 554 (1994)). This failure, then, creates a fatal defect in petitioner's appeal.

We do not find compelling petitioner's argument that Daubs was not named as a party because it was not an applicant. Section 40.1(b) unambiguously includes an applicant as a required party for an action appealing siting approval. Since Daubs was the recipient of the local siting approval, it should be considered the applicant in this case. Even assuming arguendo that proper procedures for siting approval were not followed by the Wayne County Board or Daubs, this action still needs siting approval applicant as a named party.

Nor are we persuaded that mentioning Daubs throughout petitioner's appeal cures the defect of omitting Daubs as a party

to the action. Again, the Board operates under special statutory jurisdiction and is limited by the language of the act conferring that jurisdiction. (McGaughy at 3.) The language in Section 40.1(b) unambiguously requires the applicant to be named as a co-respondent. The Board cannot impose any modifications to this requirement.

For these reasons, the Board finds petitioner's appeal to be frivolous in that it fails to name a necessary party as required by Section 40.1(b) of the Act, and hereby dismisses petitioner's appeal.

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 of the date of service of this order. The Rule os the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246. "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of May, 1995, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board