ILLINOIS POLLUTION CONTROL BOARD
March 26, 1992

STAUNTON LANDFILL, INC.,	)	
	)	
Petitioner,	)	PCB 91-95
	)	(Permit Appeal)
vs.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

FRED C. PRILLAMAN, MOHAN, ALEWELT & PRILLAMAN, APPEARED ON BEHALF OF PETITIONER.

TODD RETTIG, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

On June 14, 1991, Staunton Landfill, Inc. (Staunton) filed a petition for review pursuant to Section 40 of the Environmental Protection Act (Act). (Ill. Rev. Stat. 1991, ch. 111½, par. 1040.) Staunton seeks review of an Illinois Environmental Protection Agency (Agency) denial of its application for permit transfer and modification for a non-hazardous waste landfill.

A hearing was held in this matter on December 5, 1991, in Carlinville, Illinois. No members of the public attended. The parties presented no evidence at this hearing, save for the entering of a supplement to the Agency record as an exhibit. The supplement was later filed with the Board on December 16, 1991.

At hearing, the parties elected to stand on their briefs for determination of this case. A briefing schedule was set by the hearing officer. Staunton failed to file its brief. The Agency submitted its brief according to the schedule.

FACTS

The facility is a sanitary landfill located in Staunton, Macoupin County, Illinois, permitted to accept non-hazardous wastes and operating under permit No. 1974-58-OP 9. The site was initially permitted for development in 1974. In 1981, the original permit was transferred to Charles Westoff. On February 19, 1991, Staunton submitted to the Agency a permit application

to transfer ownership and operations[1], and to modify the development and operation of the site. (Agency Br. at 1-2; Pet. at 1-2; Rec. at 000030[2].) On May 10, 1991, the Agency denied the application for permit transfer and modification. Staunton brought this appeal of the Agency's determination. Staunton requests that the Board require the Agency to grant the permit or require the Agency to perform further technical review of the application.

Framework section was deleted as it is not needed for the decision rendered.

DISCUSSION

At the onset, the Board finds that there are elements of this case that are substantially similar to another case recently decided by the Board, D & B Refuse Service v. IEPA (October 24, 1991), PCB 89-106. The Board in that case, among other matters, addressed the problem presented when a petitioner in a permit appeal does not present evidence at hearing or file a brief on its behalf. The Board stated at page 4:

> Because the Board's review in a permit appeal is limited to whether the Agency correctly determined that the application package as submitted by the applicant demonstrates compliance, we do not agree with the Agency's contention that the failure to present evidence at hearing and file a post-hearing brief constitutes a failure to meet the applicant's burden of proof.[2] However, "[the Board] is not simply a depository in which the [applicant] may dump the burden of argument and research." (Williams v. Danley Lumber Co., 472 N.E.2d 586, 587 (2d Dist. 1984).) The appellate court has stated that "[a]n appellant may not make a point merely by stating it without presenting arguments in support of it" such that the court may deem waived any issue which has not been adequately presented to the court. (In re Application of Anderson, 516 N.E.2d 860, 863 (2d Dist. 1987).) The court has also refused to consider arguments where appellant's brief fails to reference those portions of the record supporting reversal. (Mielke v. Condell Memorial Hospital, 463 N.E.2d 216 (2d Dist. 1984).) Although the Board rejects the Agency's contention that D & B has failed to meet its burden, an applicant who

---

[1] The application was received by the Agency on February 22, 1991.

[2] Citations are as follows: Agency Brief as Ag. Br. at XXX; Staunton's petition for review as Pet. at XXX; and Agency Record as Rec. at XXX.

does not participate at hearing and fails to file a post-hearing brief risks waiver of arguments in its appeal to the Board.

---

[2] Particularly where, as here, the applicant has presented a minimal argument in its petition for review.

The Board applies this analysis to the case before it, and proceeds with its discussion of the issues.

It is well established that the Agency's denial statement frames the issues on review before the Board. (Ill. Rev. Stat. 1991, ch 111½, par. 1039(a); Centralia Environmental Services v. IEPA (October 25, 1990), PCB 90-189, 115 PCB 389, 396.) "In a permit appeal review before the Board, the burden of proof is on the applicant to demonstrate that the reasons for denial detailed by the Agency in its 39(a) denial statement are inadequate to support a finding that permit issuance will cause a violation of the Act or regulations." (Id., citing, Technical Services Co., v. IEPA (November 5, 1981), PCB 81-105, 44 PCB 41, 42.)

Denial Reason #1

The first denial reason given by the Agency states that two modifications sought by Staunton place the facility within the definition of a new regional pollution control facility (new RPCF). The modifications are: (1) to expand vertically to 639 MSL from 628 MSL, 11 feet over permitted boundaries (Rec. at 000111); and (2) to accept special waste for the first time (Rec. at 000048-53; Pet. at 2). According to section 39(c) of the Act, the Agency may not grant a permit for a new RPCF unless the applicant provides proof to the Agency that local siting approval has been obtained from a county or municipality where the facility is located through the process provided in section 39.2[3]. It is undisputed that the site, with the proposed modifications, has never received local siting approval.

Staunton denies that the modifications meet the definition of new RPCF without presenting any facts in support of its claim. (Pet. at 3.) This type of assertion without supporting argument constitutes waiver of the issue. Even if it does not, it is clear that the proposed expansion and the proposed acceptance of special waste for the first time constitute a new RPCF and therefore require local siting approval.

Vertical expansion has been found to create a new RPCF, and, therefore, to require local siting approval. (M.I.G. Investments

---

[3] Such proceeding is commonly referred to as an SB 172 proceeding.

v. IEPA (1988), 523 N.E. 2d 1, 119 Ill. Dec. 533.) The modification to accept special waste where none has been previously permitted, and vertical expansion also meet the definition of new RPCF found at Section 3.32(b) of the Act:

> A [new RPCF] is:
>
> * * *
>
> 2. the area of expansion beyond the boundary of a currently permitted regional pollution control facility; or
>
> 3. a permitted regional pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.

The application proposes modifications that fall within the definition of a new RPCF, and the applicant did not submit proof of local siting approval pursuant to Section 39.2 of the Act to the Agency. Therefore the Agency is correct, and the Board so finds, that Section 39(c) of the Act precludes the Agency from granting the permit. In the same manner, the Board is precluded from ordering the Agency to grant the permit even if Staunton were to prevail on the merits as regards the other reasons given by the Agency for denial. Absent proof by Staunton that it has received siting approval, the application is fundamentally deficient, and must be denied as a matter of law.

The Board's finding on Denial Reason #1 is dispositive of this case. We note that, even if Staunton were to receive siting approval and file a new permit application with the Agency, neither Staunton nor the Agency, respectively, are bound by the content of, or action on, this permit application.

We also alert Staunton that the Board's new landfill regulations became effective on September 18, 1990. (See In the Matter of: Development, Operating and Reporting Requirements for Non-Hazardous Waste Landfills, R88-7, August 17, 1990.) Those regulations provide that only an existing landfill that begins closure within two years of the effective date of the regulations, i.e. by September 18, 1992, falls under the provisions of Part 807, the provisions referenced as applicable in this case. If Staunton intends to stay open beyond the September 18, 1992 deadline, Staunton must comply with more stringent Part 811 requirements referenced in the "transition" provisions of Part 814 of the Board's new landfill regulations. (Land and Lakes Company v. IEPA, January 23, 1992, PCB 91-215).

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

For the foregoing reasons, the Board affirms the denial of Staunton Landfill, Inc.'s permit application by the Illinois Environmental Protection Agency.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991 ch. 111½ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 26th day of March, 1992, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board