

ILLINOIS POLLUTION CONTROL BOARD
June 8, 2000

AMERICAN BOTTOM CONSERVANCY,)	
EAST ST. LOUIS COMMUNITY ACTION)	
NETWORK, KATHY ANDRIA, and JACK)	
NORMAN,)	
)	
Petitioners,)	
)	
v.)	PCB 00-200
)	(Pollution Control Facility
VILLAGE OF FAIRMONT CITY and)	Siting Appeal)
WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by C.A. Manning):

On May 24, 2000, petitioners filed an appeal pursuant to Section 40.1 of the Environmental Protection Act (Act) (415 ILCS 5/40.1 (1998)). This appeal arises from the decision of the Village of Fairmont City which approved local siting for Waste Management of Illinois of a proposed expansion of the Milam pollution control facility located in the Village of Fairmont City, St. Clair County, Illinois. The Board sets this matter for hearing.

In the instant petition, petitioners challenge the Village of Fairmont City's decision on grounds of lack of jurisdiction, fundamental unfairness, and failure to provide a complete copy of the application. Section 103.123(a) of the Board's procedural rules, which implements Section 31(d) of the Act (415 ILCS 5/31(d) (1998)), provides that the Board determine whether this matter is duplicitous or frivolous. This section further states that if the complaint is duplicitous or frivolous, the Board shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68. 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 Metal. Co. (May 17, 1973), PCB 73-173.

There is no evidence before the Board to indicate this matter is identical or substantially similar to any matter brought in another forum, nor is there any evidence that the Board cannot grant the relief requested. There is also no evidence before the Board to suggest that the petitioners are so located as to not be affected by the proposed facility. The petition indicates that the petitioners participated in the previous public hearing pursuant to the requirements of

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (1998)). At this time, therefore, the Board finds that the petition is neither duplicitous or frivolous, that the petitioners participated in the public hearing conducted by the Village of Fairmont City, and that the petitioners are or may be so located as to be affected by the proposed facility. Accordingly, this matter shall proceed to hearing.

While the matter may properly proceed to hearing as both Kathy Andria and Jack Norman, as individuals, have standing to bring the action, there is an additional issue which must be addressed concerning representation of the American Bottom Conservancy (ABC) and the East St. Louis Community Action Network (ESLCAN) by Kathy Andria and Jack Norman. The petition relates that the American Bottom Conservancy and the East St. Louis Community Action Network are both not-for-profit public corporations incorporated in the state of Illinois (Pet. at 2). Kathy Andria and Jack Norman are described as directors of the ABC. Kathy Andria is also identified as the chairperson for ESLCAN.¹ Neither Kathy Andria nor Jack Norman are identified as being an attorney.

Although the Board's current procedural rules would allow ABC and ESLCAN to be represented by a non-attorney (see 35 Ill. Adm. Code 101.107(a)(2)), the Board recently held that these rules violated the provisions of the Attorney Act (705 ILCS 205/1 (1996)) and the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 (1996)). See In the Matter of: Petition of Recycle Technologies, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 720.131(c) (July 10, 1997), AS 97-9 (hereinafter RTI). Specifically, the Board found that a non-attorney could not represent a corporation in an adjusted standard proceeding without violating both the Attorney Act and the Corporation Practice of Law Prohibition Act. The Board has also held that the rationale employed to find that a non-attorney was prohibited from representing a corporation in an adjusted standard proceeding applies equally to the situation presented in this matter. See Sierra Club and Jim Bensman v. City of Wood River and Norton Environmental (October 2, 1997), PCB 93-43 (hereinafter Bensman). Accordingly, ABC and ESLCAN must be represented by an attorney.

Rather than dismissing ABC and ESLCAN from the action immediately as some case law would suggest, the Board finds that special circumstances of the type also found in RTI and Bensman apply here. Consistent with RTI and Bensman, the Board grants ABC and ESLCAN 30 days in which to retain an attorney and for that attorney to file an amended petition in this case on ABC's and ESLCAN's behalf. If an amended petition and attorney's appearance are not filed on or before July 8, 2000, ABC and ESLCAN will be dismissed from this action.

Pursuant to Section 40.1(b) of Act, the hearing is to be based "exclusively on the record before the county board or governing body of the municipality." Although the Act does not specifically state who is required to file such record with the Board, the Board believes that the Village of Fairmont City must prepare and file the record on appeal.

¹ Although the petition also identifies Jack Norman as the chairperson of the Kaskaskia Group of the Sierra Club and its Conservation Chair, and states that he is authorized to "represent the Sierra Club before the Board," The Sierra Club has not been named as a party. Pet. at 3.

The record shall contain legible versions of all documents, transcripts, and exhibits deemed to pertain to this proceeding from initial filing through the including final action by the local government body. The record shall also contain the originals of all documents and shall be sequentially numbered, placing the letter "C" before the number of such page. In addition to the actual documents which comprise the record, the Village of Fairmont City Clerk shall also prepare a document entitled "Certificate of Record on Appeal" which shall be an index of the record that lists the documents comprising the record and shows the page numbers upon which they start and end. Seven copies of the certificate, seven copies of the transcript of Village of Fairmont City hearing, and three copies of any other documents in the record shall be filed with the Board; a copy of the certificate shall be served upon the petitioner. The Village of Fairmont City Clerk is given 21 days from the date of this order to "prepare, bind and certify the record on appeal." See 155 Ill. 2d R. 324. If the record is not legible, sequentially numbered, or fails to include an appropriate index of record, the Clerk of the Board may refuse to accept the document for filing. For further guidance in preparing and filing the record on appeal, the Village of Fairmont City may refer to the Illinois Supreme Court Rules 321 through 324. See 155 Ill. 2d R. 321-324.

Section 40.1(a) of the Act provides that if there is no final action by the Board within 120 days, "petitioner may deem the site location approved." Section 40.1(b) of the Act, under which this action is brought, states only that "the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals."

The Board has construed identical "in accordance with the terms of" language contained in Section 40.1(b) of the Act concerning third-party appeals of the grant of hazardous waste landfill permits as giving the person who had requested the permit: (a) the right to a decision within the applicable statutory timeframe (now 120 days), and (b) the right to waive the decision period. See Alliance for a Safe Environment v. Akron Land Corp. (October 30, 1980), PCB 80-184. The Board therefore construes Section 40.1(b) in like manner, with the result that failure of this Board to act in 120 days would allow the site location applicant to deem the site location approved.

A hearing on the petition should be timely scheduled in order to allow the Board time to review the record and to render its decision within 120 days of the filing of the appeal. Petitioner may, however, waive the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105. Absent any future waivers of the statutory decision deadline, the statutory decision deadline is September 21, 2000. This matter will be handled at the Board meeting preceding that date.

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 June 2000 by a vote of 7-0.

Dorothy M. Gunn

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Dorothy M. Gunn, Clerk
Illinois Pollution Control Board