

ILLINOIS POLLUTION CONTROL BOARD  
July 16, 1987

WASTE MANAGEMENT OF ILLINOIS, )  
INC., a Delaware Corporation, )  
 )  
Petitioners, )  
 )  
v. ) PCB 87-75  
 )  
LAKE COUNTY BOARD, )  
 )  
Respondent. )

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

On June 16, 1987, A.R.F. Landfill Corporation ("A.R.F.") filed its Appearance in this matter. In response, the Board on June 25, 1987, entered an Order in this docket expressing its confusion regarding the purpose of A.R.F.'s Appearance. The Board at that time requested that A.R.F. inform the Board as to A.R.F.'s purpose in appearing, and as to the authority of the Board to permit it to appear in this proceeding.

A.R.F. filed a memorandum in support of its appearance on July 10, 1987. A.R.F. contends that it is "entitled to participate in this appeal as a matter of right" under Section 40.1 of the Environmental Protection Act ("Act") and 35 Ill. Adm. Code 103.142.

A.R.F. correctly points out that it has been a longstanding Board practice to allow third parties the opportunity to appear and/or participate at Board hearings held pursuant to Section 40.1(a) of the Act. The hearings mandated by that section are public hearings at which any person may appear and participate, subject to that section's prohibition against presentation of new or additional evidence. To this extent, A.R.F.'s filing of a formal appearance is unnecessary.

However, A.R.F.'s July 10, 1987, memorandum indicates that A.R.F. is interested in participating in this proceeding to a more complete extent than simply appearing at hearing. A.R.F. states that in addition to appearing at, and participating in the hearing, it also wishes to receive pleadings, participate in discovery, and file a post-hearing brief. The right to participate in these latter activities is generally reserved for persons who have status as parties. A.R.F. cannot be afforded these privileges, because, for the following reasons, it does not have and cannot obtain intervenor status in this proceeding.

Sections 40.1 of the Act establishes procedures pertaining to the appeals of decisions made by county boards or

municipalities on requests for the siting of new regional pollution control facilities. Section 40.1(a) enumerates the process to be followed during the appeal of cases in which site location suitability was denied; Section 40.1(b) outlines the processes applicable to appeals of cases where site location suitability was approved. Only Section 40.1(b) explicitly provides the right of appeal to a third party other than the applicant. The case at bar involves a county board's refusal to grant site approval; therefore the provisions of Section 40.1(a) control in this instance.

A.R.F. specifically points out that it is not at this time attempting to become a party by asserting a cross-claim against the Petitioner. Nevertheless, A.R.F. has stated its desire to participate fully in this matter, in fact to a level virtually identical to that of a party. Since the Illinois Appellate Court has recently held that the Act does not provide for a third-party appeal where a county board refuses to grant site approval, and that where the Board allowed persons other than the applicant to cross-appeal, the Board improperly permitted such persons to become parties (McHenry County Landfill, Inc. v. The Illinois Pollution Control Board, 154 Ill. App. 3d 89 (1987)), the Board finds that A.R.F. may not be provided the rights which would be commensurate with party status.

For the aforementioned reasons, A.R.F. may not participate in discovery or file a post-hearing brief. Similarly, the Board will not direct the parties in this matter to file copies of pleadings with A.R.F. A.R.F. may appear and participate at hearing, pursuant to the limitations of Sections 40.1(a), 32, and 33(a) of the Act. To this limited extent, A.R.F.'s appearance is accepted.

A.R.F. additionally argues that its right to appear and participate in this matter is permitted by 35 Ill. Adm. Code 103.142. The Board notes that where the provision of the Act and the Board's procedural rules are in conflict, the provisions of the Act must take precedence. The Board is powerless to expand its authority beyond that which the legislature has expressly granted to it. Landfill, Inc. v. Pollution Control Board, 74 Ill. 2d 541, 557-558 (1978). As the legislature specifically refrained from providing the right of third-party appeals in cases such as the case at bar, a Board procedural rule cannot be relied on to provide such.

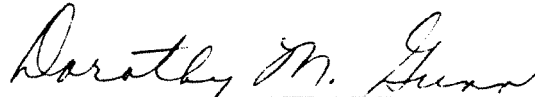
The Board further notes its acknowledgement of A.R.F.'s interest in participating in this matter for the purposes of "ensuring the health and safety of its property and its employees". The Board appreciates the importance of these interests, and believes that this Order allows A.R.F. to protect them within the confines allowed by the Act.

Finally, on July 14, 1987, Respondent Lake County Board filed a motion to strike Petitioner's proposed interrogatories to Lake County Board members. That motion is referred to the Hearing Officer for decision.

IT IS SO ORDERED.

J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 16<sup>th</sup> day of July, 1987, by a vote of 5-1.



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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board