

ILLINOIS POLLUTION CONTROL BOARD  
November 26, 1984

WASTE MANAGEMENT, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 84-45
	)	PCB 84-61
ILLINOIS ENVIRONMENTAL	)	PCB 84-68
PROTECTION AGENCY,	)	Consolidated
	)	
Respondent.	)	

CONCURRING OPINION (by J. D. Dumelle):

In determining the issue of whether third parties should have the right to intervene in this permit appeal proceeding, the majority frames the ultimate question as "whether the citizens by right may initiate or participate in the anticipated appeal of this case." That is not the question before the Board, however. Rather, the question is whether the citizens may be allowed to intervene in a permit appeal which has already been initiated before the Board. I feel that they should.

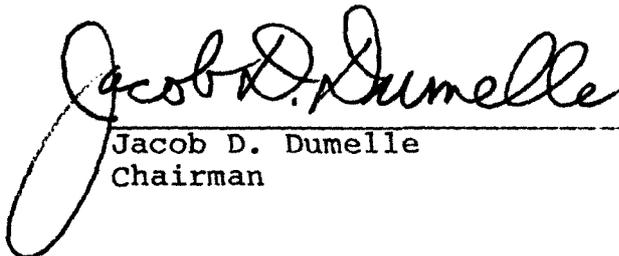
The majority relies heavily on Landfill, Inc. v. PCB, 74 Ill. 2d 541, 387 N.E. 2d 258 (1978). The thrust of that case, however, is that the Board cannot enlarge its jurisdiction beyond that which is granted by its enabling act, and since the Environmental Protection Act (Act) does not provide for third party appeals of permits which have been granted, the Board cannot allow such appeals by rule. In the instant case, the permit was denied, not granted, and was properly appealed by the applicant and certain citizens request intervention. Landfill, Inc. is, therefore, certainly not dispositive.

The majority also bases its decision on the lack of specific language in the Act allowing intervention in permit appeals, noting that the Act specifically allows intervention in RCRA permit appeals and landfill site location suitability appeals, but not for other permits. What the majority ignores, however, is that intervention is also not specifically allowed in any enforcement actions (except where the use of a community sewer or water facility is at issue). The Board has always allowed intervention, if timely, in enforcement cases

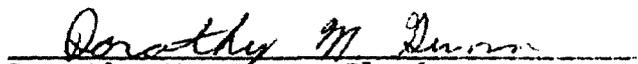
Thus, the majority's arguments against intervention are less than compelling and there are good reasons to reach the opposite result. First, one of the hallmarks of the Act is that it grants liberal public participation rights. Second, as the majority notes, the Board "has been liberal in its allowance of intervention rights, in fact having previously allowed intervention in the

case of a permit granted for development of a sanitary landfill," and that is not the only such case. Third, 35 Ill. Adm. Code 105.102(a)(6) and 103.142 of the Board's procedural rules establish a right of intervention in permit appeal proceedings.

I believe that the Board should continue to be liberal in its allowance of intervention rights and should not cut off such rights unless there are strong reasons to do so. I see no such strong reasons in this case.

  
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Jacob D. Dumelle  
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 30<sup>th</sup> day of November, 1984.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board