

ILLINOIS POLLUTION CONTROL BOARD  
February 2, 1989

McLEAN COUNTY DISPOSAL )  
SERVICE, INC., )  
 )  
Petitioner, )  
 )  
v. ) PCB 88-195  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

This matter is before the Board on a motion filed by respondent the Illinois Environmental Protection Agency (Agency) on January 30, 1989. The Agency asks the Board to dismiss, or in the alternative stay, petitioner McLean County Disposal's (MCD) appeal of the Agency's denial of MCD's application for a developmental permit for a landfill. MCD filed its objections to the motion on February 2, 1989.

The Agency's motion is based upon a claim that MCD does not have local siting approval for the landfill, as is required by Sections 39(c) and 39.2 of the Environmental Protection Act (Act). (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1039(c) and 1039.2.) On January 21, 1988, the Board held that MCD had received local siting approval by operation of law. McLean County Disposal, Inc. v. McLean County Board, PCB 87-133, January 21, 1988. MCD then filed its application for a developmental permit with the Agency, who denied the permit on November 7, 1988. MCD filed this appeal of that permit denial on December 5, 1988. On December 28, 1988, the Fourth District Appellate Court vacated the Board's finding that local site approval was granted by operation of law. Citizens Against the Randolph Landfill (CARL) v. Pollution Control Board, Nos. 4-88-0247 & 4-88-0251 cons., December 28, 1988. MCD filed a petition for rehearing of that decision in the appellate court on January 17, 1989.

In support of its motion to dismiss or stay, the Agency argues that because the appellate court vacated the Board's decision, MCD does not have local siting approval, and thus, pursuant to Section 39(c), that it (the Agency) cannot issue a developmental permit to MCD. The Agency contends that until MCD obtains local siting approval the Board has no authority to order the Agency to issue a permit. The Agency maintains that any further action on the permit appeal is a waste of Board and

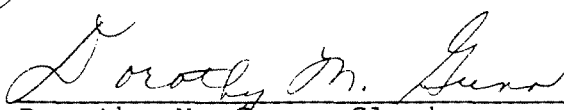
Agency resources until the issue of local siting approval is finally decided. In response, MCD notes that the appellate court's mandate has not yet issued, and thus contends that the Board's decision stands, leaving MCD with local siting approval. MCD argues that there is no basis for dismissal, and states that a stay of the proceedings would place the Board at risk of default on the statutory deadline for decision of the permit appeal. MCD states that it has not waived the 120-day decision deadline.

This motion presents a difficult case for the Board. As noted by both MCD and the Agency, MCD has not waived the 120-day decision deadline in this proceeding. Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1040(a)(2). The statutory decision date for this appeal is April 5, 1989, but the decision must be made at the March 23, 1989 Board meeting, since the first April Board meeting is April 6, 1989. It is very unlikely that the local siting approval issue will be finally decided before the decision deadline. Thus, because MCD has not waived the deadline, the Board cannot stay these proceedings. To do so would create a very real possibility that the decision deadline would be missed, resulting in issuance of the permit by operation of law. Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1040(a)(2). The Board cannot take such a risk. However, the Board agrees that proceeding with this case would be a waste of resources when it cannot grant the relief MCD is seeking: an order that the Agency issue a developmental permit. Therefore, the Agency's motion is granted, and this permit appeal is dismissed. This dismissal constitutes final action within the 120-day decision period, as required by Section 40(a)(2) of the Act.

IT IS SO ORDERED.

J. Anderson and J. Marlin dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20<sup>th</sup> day of February, 1989, by a vote of 5-2.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board