

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1997

CITIZENS OPPOSED TO ADDITIONAL)	
LANDFILLS and HARVEY PITT,)	
individually and as a member of Citizens)	
Opposed to Additional Landfills,)	PCB 97-29
)	(Pollution Control Facility
Petitioners,)	Siting Appeal)
)	
v.)	
)	
GREATER EGYPT REGIONAL)	
ENVIRONMENTAL COMPLEX a/k/a)	
GERE PROPERTITES, INC., and the)	
PERRY COUNTY BOARD OF)	
COMMISSIONERS,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J. Yi):

On August 9, 1996 the petitioners, Citizens Opposed to Additional Landfills ("C.O.A.L.") and Harvey Pitt, individually and as a member of C.O.A.L., pursuant to Section 40.1 of the Environmental Protection Act (Act) filed a petition for review. (415 ILCS 5/40.1(1994).) They appealed the Perry County (County) decision of July 9, 1996 granting local siting approval for a pollution control facility to the Greater Egypt Regional Environmental Complex a/k/a Gere Properties Inc. (G.E.R.E.). Petitioners requested the Board to reverse the County's decision on the grounds that the County lacked jurisdiction, that the proceeding before the County was fundamentally unfair, and that the decision of the County was against the manifest weight of the evidence concerning the challenged criteria of Section 39.2 of the Act. (415 ILCS 5/39.2 (1994).)

On December 5, 1996, for the reasons stated in the Board's opinion and order, the Board found that the County had jurisdiction to hear the application. However, we also found that the proceeding before the County was fundamentally unfair. As a result of these findings the Board did not reach the third issue concerning the manifest weight of the evidence of the challenged statutory criteria, and instead reversed and remanded the matter for further hearings consistent with our order.

On January 6, 1997, the County filed a motion for clarification of our December 5, 1996 order. The County states that the Board ordered at a minimum, that the County shall:

1. Conduct one or more public hearings to present the questions asked by the County and the answers provided or any discussions that took place between them, and allow a public comment period of at least 30 days. Provide public

notice of the hearing in accordance with the requirements of Section 39.2(d) of the Environmental Protection Act (415 ILCS 5/39.2(d)). At hearing, allow the public to respond to the questions of the County and G.E.R.E.'s responses to those questions.

2. The County board shall render a new decision based upon the record in this case which will include the information acquired during the public hearing and comment period.
3. The County board shall vote and render its decision no later than 120 days after receipt of this order.

The County states that "[u]pon reviewing said Order, it remains unclear as to which party has the burden of going forward with the evidence at the remanded hearings." (Mot. at 2.) The County requests the Board to vacate the December 5, 1996 order and enter a new order clarifying who has the burden of bringing forth evidence at the remanded hearings.

The Board grants the County's motion for clarification. The Board found based on the testimony of Chairperson Karnes that the County requested its attorney to contact G.E.R.E. after the close of the 30-day public comment period, that those contacts involved the placement of conditions on the County's approval, and that *ex parte* contacts occurred that resulted in the fundamental unfairness. The Board is remanding this matter back to the County to conduct one or more public hearings to place on the record the questions asked by the County and the answers provided by G.E.R.E., and any discussions that took place between them, and finally to allow a public comment period of at least 30 days. Specifically at such hearings the County shall ask the applicant, G.E.R.E., the same questions which it asked that were the basis of the *ex parte* contacts and G.E.R.E. shall respond with the same answers it gave to the County when those questions were originally posed. Additionally, participants may present evidence concerning the conditions that directed G.E.R.E. to: perform a feasibility study of increasing a roadway, raise the berm to fifteen (15) feet above the 100 year flood plain, develop a geotechnical study, perform measures to secure the slope stability on the west edge of the fill, take steps to address the compressibility of subsurface materials, perform monthly water sampling on the site, and require that vehicles exiting the site be cleaned before leaving; all of these concern the criteria of Section 39.2 of the Act.

CONCLUSION

The Board's order of December 5, 1996 is vacated and replaced with the following order.

ORDER

The July 9, 1996 decision of the Perry County Commissioners (county board granting siting approval) to approve G.E.R.E.'s application is hereby vacated and remanded because the proceeding below was fundamentally unfair. At a minimum, the County Board shall:

1. Conduct one or more public hearings to place on the record the questions asked by the County and the answers provided by G.E.R.E., and any discussions that took place between them, and finally to allow a public comment period of at least 30 days. Specifically at such hearings the County shall ask the applicant, G.E.R.E., the same questions which it asked that were the basis of the *ex parte* contacts and G.E.R.E. shall respond with the same answers it gave to the County when those questions were originally posed. Participants shall have the opportunity to respond to those questions and answer and to present evidence concerning the added conditions requiring to: perform a feasibility study of increasing a roadway, raise the berm to fifteen (15) feet above the 100 year flood plain, develop a geotechnical study, perform measures to secure the slope stability on the west edge of the fill, take steps to address the compressibility of subsurface materials, perform monthly water sampling on the site, and require that vehicles exiting the site be cleaned before leaving; all of these concern the criteria of Section 39.2 of the Act;
2. Provide public notice of the hearing in accordance with the requirements of Section 39.2(d) of the Environmental Protection Act (415 ILCS 5/39.2(d));
3. Render a new decision based upon the record in this case which will include the information acquired during the public hearing and comment period; and
4. Vote and render its decision no later than 120 days after receipt of this order.

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 _____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board