

ILLINOIS POLLUTION CONTROL BOARD

June 5, 1997

IN MATTER OF: )  
)  
AMENDMENTS TO LOCATION ) R97-29  
STANDARDS FOR LANDSCAPE WASTE ) (Rulemaking - Land)  
COMPOST FACILITIES, 35 ILL. ADM. )  
CODE 830.203(c) )

ORDER OF THE BOARD (by K. M. Hennessey):

On May 5, 1997, two citizens, Dr. Renuka Desai and Susan Garrett (proponents), filed a proposal to amend 35 Ill. Adm. Code 830.203(c) (proposal). Section 830.203(c) contains location standards for composting areas. On June 2, 1997, the City of Lake Forest (Lake Forest) filed a request that the Board not issue an order accepting the proposal for hearing (request), in effect, requesting that the Board dismiss the proposal and close the docket. On June 4, 1997, proponents filed two responses to the request (response).

The Board denies Lake Forest's request. The Board cannot, however, accept the proposal for hearing at this time because proponents failed to serve copies of its proposal upon various state agencies as required by the Illinois Environmental Protection Act (Act) and Board regulations. The Board grants proponents 30 days from the date of this order to cure this procedural defect.

The Board discusses the proposal, the request, and the response. The Board then discusses its conclusions.

Generally, proponents request in their proposal that the Board amend Section 830.203(c) to prohibit composting areas from being located within one-half mile of the property line of certain facilities, including schools, and to require that existing composting areas located within that setback distance be relocated. Proponents allege that the amendments are necessary because of actual and potential health threats from exposure to commercial composting operations. Proponents attached to the proposal letters from various doctors and medical organizations about the impact of composting operations on human health.

Lake Forest alleges in its request that the proposal is plainly devoid of merit and fails to meet various procedural requirements. Regarding the proposal's merit, Lake Forest alleges that the proposal contains no justification for further restricting the location of landscape waste compost facilities and that it is unnecessary based on a study undertaken to identify bioaerosol emissions from a composting facility in Lake Forest, Illinois. Regarding procedural requirements, Lake Forest alleges that the proposal does not include required information, is improperly drafted, and was not served on the Illinois Attorney General, the Illinois Environmental Protection Agency, or the Illinois Department of Natural Resources.

Proponents allege in their response that Lake Forest's arguments as to the merits of the proposal should be addressed at a regulatory hearing. Proponents state that under Section 28 of the Act, 415 ILCS 5/28 (1994), and 35 Ill. Adm. Code 102.160, the Board has authority to order a hearing despite the alleged deficiencies in the proposal. Proponents also state that they will cure any deficiencies as necessary before hearing and during the rulemaking process.

The Board cannot conclude that the proposal is plainly devoid of merit. The proposal does include the language changes sought by proponents and does provide reasons why they believe the rule change is necessary. If this matter proceeds to hearing, the merits of the proposal would be thoroughly considered during the rulemaking process. In addition, if the proposal does so proceed, the Board would encourage the City of Lake Forest, and others who may be interested, to participate in the rulemaking process so that the Board would have the benefit of a fully developed record for its decision.

The Board acknowledges that while there are some deficiencies in the form and content of the proposal, none are so material as to preclude the Board from accepting this matter for hearing. As proponents note, the Board has discretion to schedule a public hearing upon any proposal regardless of such deficiencies.

Lastly, regarding alleged deficiencies in service of the proposal, the Board acknowledges that Section 27(a) of the Act requires a proponent to file a copy of its proposal with the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources. (See 415 ILCS 5/27(a) (P.A. 89-445, eff. February 7, 1996).) The Board's rules require the filing to be made not only with these two agencies, but also with the Illinois Attorney General. (See 35 Ill. Adm. Code 102.120.) Proponents failed to deliver copies of their proposal to these agencies, and the Board believes that these agencies may be able to provide valuable information on the proposal. Nevertheless, proponents may cure this procedural defect by serving these agencies and filing proof of service with the Board. By allowing proponents to do so, the purpose of the service requirements -- providing notice to these agencies of the proposal -- would be met. Moreover, no prejudice will result to these agencies or any participant in the rulemaking process.

Thus, while the Board denies Lake Forest's request, the Board cannot accept the proposal for hearing at this time. However, the Board grants proponents 30 days from the date of this order to serve the required state agencies with a copy of their proposal and file proof of such service with the Board.

The Board also notes that the original caption of this matter incorrectly reflected that proponents also sought to amend 35 Ill. Adm. Code 811.302. The caption of this order has been amended to correct this error. All future pleadings in this matter must set forth this amended caption.

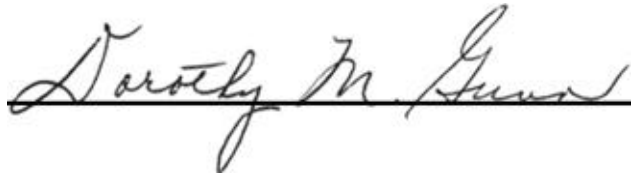
ORDER

1. The Board denies the City of Lake Forest's request that the Board not issue an order accepting this matter for hearing.
2. The Board grants proponents 30 days from the date of this order to file with the Board proof of service of the proposal upon the Illinois Environmental Protection Agency, the Illinois Department of Natural Resources, and the Illinois Attorney General.
3. All future pleadings in this matter must include the caption as amended in this order.

IT IS SO ORDERED.

Board Member 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 5th day of June, 1997, by a vote of 6-1.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board