

ILLINOIS POLLUTION CONTROL BOARD
April 17, 2003

CITY OF KANKAKEE,)
)
Petitioner,)
)
v.) PCB 03-125
) (Third-Party Pollution Control Facility
) Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

MERLIN KARLOCK,)
)
Petitioner,)
)
v.) PCB 03-133
) (Third-Party Pollution Control Facility
) Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

MICHAEL WATSON,)
)
Petitioner,)
)
v.) PCB 03-134
) (Third-Party Pollution Control Facility
) Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

KEITH RUNYON,)	
)	
Petitioner,)	
)	
v.)	PCB 03-135
)	(Third-Party Pollution Control Facility
)	Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)	
BOARD OF KANKAKEE, and WASTE)	
MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondents.)	

WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 03-144
)	(Pollution Control Facility
)	Siting Appeal)
COUNTY OF KANKAKEE,)	(Consolidated)
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

The Board has two pending motions in this proceeding. The first is a motion filed on March 25, 2003, by the County of Kankakee (County) seeking to dismiss the petition for review (Mot.) of the City of Kankakee (City) filed in PCB 03-125. On March 31, 2003, the City filed a response to that motion (Resp.). On April 10, 2003, the County filed a motion for leave to file a reply to the City’s response and on April 11, 2003, the City filed a motion for leave to file a response to the reply. The County asserts in the motion for leave to file a reply that the City’s response included an erroneous statement and the response suggested that the Board does not have authority to hear the motion. Section 101.500(e) of the Board’s rules provides that the moving person shall not have the right to reply “except as permitted by the Board or the hearing officer to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). The Board finds that a reply is not necessary to prevent material prejudice; therefore, the Board denies the motion for leave to file a reply. As the Board has denied the motion for leave to file the reply, the Board will also deny the motion for leave to file a response to the reply.

The second is a motion filed by Waste Management of Illinois, Inc. (Waste Management) on March 28, 2003 (Mot.2). Waste Management seeks to sever the appeal in PCB 03-144 from these consolidated cases. On April 3, 2002, the City filed a response to the motion to sever (Resp.2). In an April 9, 2003, filing the County “joined and adopted” the arguments of Waste

Management concerning the motion to sever. The Board will deny the motion to dismiss and will grant the motion to sever. Following is a summary of the arguments presented on the motions and the Board's decision.

MOTION TO DISMISS PETITION IN PCB 03-125

The County relies on City of Elgin v. County of Cook et al., 169 Ill. 2d 53; 660 N.E.2d 875 (1995) (Elgin) for support of the County's position. The County alleges that the petition of the City should be dismissed because the Illinois Supreme Court "has acknowledged that extraterritorial challenges by third party municipalities of the approval of a landfill siting request by another local unit of government are incompatible with the purposes of the Environmental Protection Act" (Act) (415 ILCS 5/1 *et seq.* (2002)). Mot. at 2. The County asserts that Elgin "makes clear" that the Supreme Court is of the opinion that third party municipalities should not be allowed to challenge another local government's siting and if a petitioner is not "affected by" a proposed facility, that party has no standing to bring a petition. Mot. at 3-4, citing Ogle County Board v. Pollution Control Board 272 Ill. App. 3d 184, 649 N.E.2d 545 (2d Dist. 1995). The County argues that for these reasons the City's petition should be dismissed.

RESPONSE TO MOTION TO DISMISS

The City responds with four arguments. First, the City asserts that the motion is not timely filed. Resp. at 1. The City asserts that the petition was served on the County on February 20, 2003 and the filing of this motion is more than 30 days after that date. *Id.* Thus, the City argues the motion is not timely filed pursuant the Board's rules at 35 Ill. Adm. Code 101.506. *Id.*

The City's second argument cites to the Board's March 6, 2002 order and maintains that the Board has already determined that the City is a proper party. Resp. at 1-3. In that order the Board accepted the City's petition for hearing.

Third, the City argues that the City does have standing to appeal and Elgin is inapplicable to this case. Resp. at 3-5. The City asserts that Elgin involved a different factual scenario and that the Illinois Supreme Court specifically indicated that siting decisions are appealable to the Board. Resp. at 4. The City further maintains that the City participated as an objector in the proceeding before the County and no objections were raised and therefore even if the County's argument had merit the argument would be waived. Resp. at 4-5.

Finally, the City responds that the City is so located as to be adversely affected by the proposed facility. Resp. at 5-6. The City lists four different ways in which the City could be affected by the siting of the proposed facility, including potential danger to drinking water. Resp. at 5.

DISCUSSION ON MOTION TO DISMISS

The Board finds that the motion to dismiss was timely filed. Section 101.506 of the Board's rules allows for the filing of a motion attacking the sufficiency of the pleading within 30

days of service of the pleading. In this case March 24 is within 30 days as computed by Section 101.300(a) of the Board's procedural rules. The 30th day after February 20, 2003, was March 22, which was on a Saturday, and March 24 was the Monday immediately following. Section 101.300(a) states that computation of time periods runs until the close of business on the last day, "or the next business day if the last day is a Saturday . . ." 35 Ill. Adm. Code 101.300(a). Therefore, the motion was timely filed.

The Board however is not convinced that the Elgin case is controlling. A careful read of that opinion demonstrates that the Illinois Supreme Court specifically noted that if the Section 39.2 review scheme was applicable to Cook County then the "plaintiff municipalities could have appealed the Cook County siting ordinance to the Pollution Control Board." Elgin, 169 Ill. 2d 53, 68; 660 N.E.2d 875, 883. Thus, the Illinois Supreme Court does recognize that a municipality, if it meets the statutory criteria under Section 40.1 of the Act (415 ILCS 5/40.1 (2002)), may appeal to the Board a landfill siting case. The Board notes that this has been the Board practice in the past (*see County of Kankakee et al. v. City of Kankakee et al.* PCB 03-31, 03-33, 03-35 consld.) (Jan. 9, 2003)). Therefore, the motion to dismiss will be denied.

MOTION TO SEVER

Waste Management points to the Board's procedural rules at Section 101.406 to support the motion to sever. Mot.2 at 3. Section 101.406 provides in part that the Board will consolidate cases "if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudiced to any party." 35 Ill. Adm. Code 101.406. Waste Management asserts that consolidation does not "serve the interests of a convenient and expeditious determination of claims" because Waste Management's appeal is separate and distinct from the other cases. Mot.2 at 4. Further, Waste Management argues that the consolidation of the cases does materially prejudice Waste Management because of discovery deadlines and potential briefing schedules in the other cases. *Id.* For these reasons, Waste Management asks the Board to sever PCB 03-144 from the other cases.

RESPONSE TO MOTION TO SEVER

The City asserts that the facts that will be relied upon by Waste Management are the same to be considered by the Board in the City's case. Resp.2 at 2. The City also maintains that if the cases are severed, the City and other third-party petitioners will be required to attend two hearings, file two sets of discovery and two sets of briefs, while the increased effort by Waste Management is minimal. *Id.* For these reasons the City believes the cases should remain consolidated.

DISCUSSION ON MOTION TO SEVER

The Board will sever PCB 03-144 from the remaining four cases. The Board is convinced that Waste Management could be prejudiced by the consolidation of the cases as Waste Management would be both a respondent and a petitioner in these complicated cases at the same time. As to the City's argument about duplicative work by the third-party petitioners, the Board notes that the third-party petitioners are not parties to PCB 03-144 and would at most

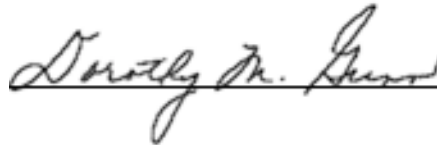
be offering public comments and filing *amicus curiae* briefs in that proceeding. See 35 Ill. Adm. Code 107.404. The motion to sever will be granted.

CONCLUSION

The Board is convinced that the City's petition is properly before the Board and the Board therefore denies the motion to dismiss. The Board also finds that Waste Management could be prejudiced by the consolidation of Waste Management's appeal with the third-party appeals. The Board therefore grants the motion to sever.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 17, 2003, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board