

ILLINOIS POLLUTION CONTROL BOARD

August 21, 2003

UNITED DISPOSAL OF BRADLEY, INC.,	)	
and MUNICIPAL TRUST & SAVINGS	)	
BANK as trustee under Trust 0799,	)	
	)	
Petitioners,	)	PCB 03-235
	)	(Permit Appeal - Land)
v.	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by N.J. Melas):

On June 19, 2003, United Disposal of Bradley, Inc., and Municipal Trust & Savings Bank, as Trustee under Trust 0799 (petitioners), timely filed a petition asking the Board to review a May 15, 2003 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(a). On June 26, 2003, Ms. Barbara Wheeler filed a public comment in this matter. On July 10, 2003, petitioners filed a motion to strike Ms. Wheeler's comment. There has been no response to this motion, but the Agency filed the administrative record in this proceeding on August 14, 2003. For the reasons set forth below, the Board grants petitioners' motion to strike in part and denies the motion in part.

Ms. Wheeler attached several documents to her public comment including a notice of violation letter sent by the Kankakee County Health Department (KCHD) addressed to Mr. Mike Watson of United Disposal of Bradley, dated March 3, 2003. The remaining documents are identical to those attached to the petitioners' petition as Exhibit B. The remaining documents were part of the Agency's administrative record. Petitioners have not waived the hearing in this matter and the decision deadline is November 26, 2003.

Petitioners move to strike Ms. Wheeler's public comment, including all attachments, on the grounds that it contains evidence not present in the record and because the Board is limited to the record on appeal. Petitioners state that the Environmental Protection Act limits the Board's review to the "record compiled in the Agency proceeding." Mot. at 1; citing 415 ILCS 5/40(c). The petitioners state that Section 101.628(c)(2) of the Board procedural rules specifically limits the scope of public comments to arguments or comments "based on the evidence contained in the record." Mot. at 1; citing 35 Ill. Adm. Code 101.628(c)(2). Finally, petitioners cite to Board precedent for the principle that public comments submitted after hearing must present arguments or comments based on evidence contained in the record. Mot. at 1; citing American Bottom Conservancy, et al. v. Village of Fairmont City, et al., PCB 01-159 at 15 (Oct. 18, 2001).

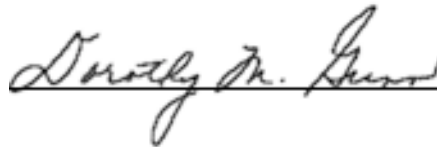
Although the petition in American Bottom is an appeal of a local siting approval, and the petition here is an appeal of a permit denial, the principle remains the same. As with reviews of local siting approvals, the Board must base hearings in permit appeals exclusively on the Agency record, and any public comments submitted in permit appeals must present arguments or comments based on evidence contained in the record. 35 Ill. Adm. Code 101.628(c)(2); 105.214(a).

The Board accepts all of Ms. Wheeler's public comment except the notice of violation letter sent to United Disposal of Bradley by the KCHD on March 3, 2003, and any references to that letter. Ms. Wheeler's letter contains her opinions and comments regarding the petitioners' facility in Bradley. The Board accepts Ms. Wheeler's letter excluding any references to the letter from KCHD to United Disposal of Bradley. Additionally, all of the documents except the March 3, 2003 letter from the KCHD were submitted both as Exhibit B of the petitioners' original petition as well as part of the Agency's administrative record. The Board accepts all of the attached documents except the March 3, 2003 letter from the KCHD.

The Board finds that the only new evidence not found in the record before the Board is the March 3, 2003 letter from the KCHD to United Disposal of Bradley. Accordingly, the Board grants the petitioners' motion to strike only as to the KCHD letter and any references to that document contained in Ms. Wheeler's letter. The Board denies the petitioners' motion to strike the rest of Ms. Wheeler's public comment.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 21, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board