

ILLINOIS POLLUTION CONTROL BOARD
June 7, 2001

AMERICAN BOTTOM CONSERVANCY,)	
EAST ST. LOUIS COMMUNITY ACTION)	
NETWORK, KATHY ANDRIA and JACK)	
NORMAN,)	
)	
Petitioners,)	
)	
v.)	PCB 01-159
)	(Pollution Control Facility
VILLAGE OF FAIRMONT CITY and)	Siting Appeal)
WASTE MANAGEMENT OF ILLINOIS,)	
INC,)	
)	
Respondents.)	

ORDER OF THE BOARD (by S.T. Lawton):

On May 24, 2001, petitioners filed an appeal pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/40.1(b) (2000)). This appeal arises from the second decision by the Village of Fairmont City (Village) to approve local siting for Waste Management of Illinois (Waste Management) of a proposed expansion of the Milam pollution control facility located in the Village of Fairmont City, St. Clair County, Illinois. Petitioners allege that the Village's approval of the expansion is against the manifest weight of evidence because the proposed facility fails to meet four of the nine criteria set forth in Section 39.2 of the Act. 415 ILCS 5/39.2 (2000). The Board finds this matter is neither frivolous nor duplicitous, and that the petitioners are located close enough to be affected by the proposed facility. Accordingly, the Board sets this matter for hearing.

The Board notes that it did not receive the petition in this matter by May 23, 2001, which is 35 days after the April 18, 2001 decision by the Village to approve the expansion of the Milam pollution control facility. Section 40.1 of the Act states that:

If the county Board or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, grants approval under Section 39.2 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of the municipality may petition the Board within 35 days for a hearing to contest the approval of the county board or the governing body of the municipality. 415 ILCS 5/40.1(b) (2000).

However, the Board's procedural rules provide that if the Clerk receives any filing "by U.S. Mail subsequent to the filing deadline, yet the postmark precedes the filing deadline, the document will be deemed filed on the postmark date, provided all filing requirements are met as set forth in Section 101.302 of this Part." 35 Ill. Adm. Code 101.300(b)(2). Since the petition was sent via U.S. Mail and postmarked on May 22, 2001, and it meets all of the filing requirements under 35 Ill. Adm. Code 101.302, the Board considers the petition to be timely filed with the Clerk.

DUPLICITOUS/FRIVOLOUS DETERMINATION

This case is before the Board pursuant to Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2000)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). Under Section 40.1(b) of the Act, the Board must determine whether this petition for a hearing to contest the local siting approval by the Village is duplicitous or frivolous. 415 ILCS 5/40.1(b) (2000). The Board's procedural rules define the terms "duplicitous" and "frivolous." 35 Ill. Adm. Code 101.202.

Allegations in the Petition are Not Frivolous

Under the Board's procedural rules, a petition is frivolous if the Board does not have the authority to grant the requested relief, or if the petition fails to state a cause of action for which the Board can grant relief. 35 Ill. Adm. Code 101.202. The Board has authority to grant the relief requested in the petition. Petitioners request the Board to "reverse the Village's siting approval, and grant such other additional relief as this Board deems fair and equitable." Pet. at 7-8.¹ The Board has the authority to grant this relief under Section 40.1(b) of the Act (415 ILCS 40.1(b) (2000)), in that it can hear a petition contesting the approval of a decision by a county board or the governing body of the municipality.

The petition also sufficiently states a cause of action for which the Board can grant relief. The petitioner in this matter alleges that the Village's decision to grant local siting of the proposed expansion of the Milam pollution control facility is against the manifest weight of evidence because the proposed facility fails to meet the first four of nine criteria under Section 39.2(a) of the Act (415 ILCS 5/39.2(a)(i), (ii), (iii), (iv) (2000)). Specifically, Waste Management failed to show the following:

1. The expansion of the Milam facility is necessary to accommodate the waste needs of the area it intends to serve;
2. The facility is so designed, located, and proposed to be operated in a manner that the public health, safety, and welfare will be protected;

¹ The Petition received by the Board on May 24, 2001, which challenges the Village's approval of the siting of the expansion at the Milam pollution control facility, will be referred to as "Pet. at ____."

3. The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property; and
4. The facility is not in the 100-year flood plain or is flood-proofed.

The Petition is Not Duplicitous

The Board's procedural rules define duplicitous as a matter before the Board that is identical or substantially similar to one brought in this or another forum. 35 Ill. Adm. Code 101.202. Neither party identified any other actions, identical or substantially similar, to this pending in this or another forum.

The Board notes that it previously heard a petition by the petitioners, which challenged the same expansion of the Milam pollution control facility. See American Bottom Conservancy, et al. v. Village of Fairmont City and Waste Management of Illinois (October 19, 2000), PCB 00-200. On October 19, 2000, the Board found that the first proceedings before the Village were fundamentally unfair, vacated the Village's earlier decision, and ordered the Village to hold a new hearing on the expansion of the Waste Management facility. *Id.* The Village held hearings on February 12, 2001, and February 19, 2001, and again approved the application for the expansion. Petitioners filed their new petition challenging this decision by the Village on the grounds that it is against the manifest weight of evidence. The Board finds that this case is not duplicitous.

CONCLUSION

The Board directs that this matter proceed to hearing as expeditiously as practicable. A hearing on the petition should be scheduled to allow the Board time to review the record and to render its decision within 120 days of the filing of the appeal. See McHenry County Defenders, Inc. v. IEPA (August 6, 1998), PCB 98-173, slip op. at 4-5. The Board has previously construed the Act as giving the person who requested the permit: (1) the right to a decision within the applicable statutory time frame (120 days), and (2) the right to waive (extend) the 120-day decision period. Waste Management, the siting applicant, is the party with the right to a decision within 120 days and is the only party with the right to waive the decision deadline.

The result is that failure of this Board to act within the 120 days would allow the siting applicant, Waste Management, to pursue an appellate court order as detailed in Section 40(a)(3) of the Act. 415 ILCS 5/40(a)(3) (2000). Unless Waste Management waives the current statutory decision deadline of September 19, 2001, this matter must be handled on or before the September 6, 2001 Board meeting.

The assigned hearing officer must set the matter for hearing in accordance with the requirements of the Act and the Board's procedural rules. It is the responsibility of the hearing

officer to guide the parties toward prompt resolution or adjudication of this matter, through whatever status calls and hearing officer orders he determines are necessary and appropriate.

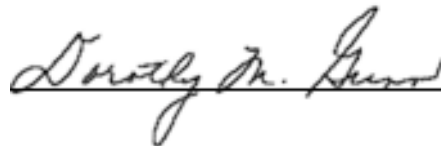
Pursuant to Section 40.1(b) of the Act, (415 ILCS 5/40.1(b) (2000)) the hearing is to be based “exclusively on the record before the county board or governing body of the municipality.” Although the Act does not specifically state who is required to file such record with the Board, the Board believes that the Village of Fairmont City must prepare and file the record on appeal.

The record shall contain legible versions of all documents, transcripts, and exhibits deemed to pertain to this proceeding from initial filing through the including final action by the local government body. The record shall also contain the originals of all documents and shall be sequentially numbered, placing the letter “C” before the number of such page. In addition to the actual documents which comprise the record, the Village of Fairmont City Clerk shall also prepare a document entitled “Certificate of Record on Appeal,” which shall be an index of the record that lists the documents comprising the record and shows the page numbers upon which they start and end. Seven copies of the certificate, seven copies of the transcript of the Village of Fairmont hearing, and three copies of any other documents in the record shall be filed with the Board; a copy of the certificate shall be served upon the petitioner. The Village of Fairmont City Clerk is given 21 days from the date of this order to “prepare, bind and certify the record on appeal.” See 155 Ill. 2d R. 324. If the record is not legible, sequentially numbered, or fails to include an appropriate index of the record, the Clerk of the Board may refuse to accept the document for filing. For further guidance in preparing and filing the record on appeal, the Village of Fairmont may refer to the Illinois Supreme Court Rules 321 through 324. See 155 Ill. 2d R. 321-324.

The Board notes that this will be the first hearing of an appeal of a local siting decision under the Board’s new procedural rules. The Board directs the Clerk to provide a copy of the new procedural rules to all parties in this matter.

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 7th day of June 2001 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board