

ILLINOIS POLLUTION CONTROL BOARD

June 16, 2005

WASTE MANAGEMENT OF ILLINOIS,	)	
INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 04-186
	)	(Pollution Control Facility
COUNTY BOARD OF KANKAKEE	)	Siting Appeal)
COUNTY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On June 10, 2005, the parties filed a stipulation and joint motion for remand (Mot.). The parties ask that this pollution control facility siting appeal be remanded to the Kankakee County Board for “continuing consideration” of the siting application. Mot. at 2. The Kankakee County Board adopted a resolution asking Waste Management of Illinois, Inc. (Waste Management) to seek a remand because Waste Management had submitted a stipulation to the Kankakee County Board. *Id.* The Kankakee County Board believed that Kankakee County Board lacked the authority to consider the stipulation while this appeal was pending. *Id.* The parties “agree” that remand to the Kankakee County Board for further consideration is “the most appropriate course of action” with respect to this appeal. *Id.* The parties state that the Board has the authority to remand this proceeding based on Caterpillar Tractor Company v. IEPA, PCB 83-58 (Mar. 7, 1985). For the reasons explained below, the Board disagrees with the parties, and denies the joint motion for remand.

First, Caterpillar involved an air permit appeal in which the parties asked that the proceeding be remanded to the Illinois Environmental Protection Agency (Agency) “for reconsideration” of the permit. Caterpillar, PCB 83-58 (Mar. 7, 1985). The Board finds that Caterpillar does not support remand in this proceeding. The Board notes that Caterpillar was arguably overruled by a decision in the Appellate Court, Reichold Chemicals, Inc. v. PCB, 204 Ill. App. 3d 674, 561 N.E.2d 1343 (3rd Dist. 1990). In Reichold, the court found that the Agency had no authority to reconsider or modify earlier decisions on permits. Reichold, 561 N.E.2d at 1345. Thus, under Reichold, the Board could not remand a permit appeal to the Agency for reconsideration; rather, the Board would be required to render a decision that could allow for remand to the Agency under the appropriate circumstances.

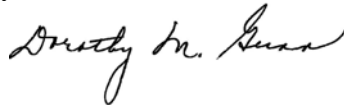
Second, Caterpillar involved a permit appeal while the instant case is a pollution control facility siting appeal. Both proceedings are authorized by the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), however, there are material differences in the two types of proceedings. If a pollution control siting application is denied (as in the instant case) for failing to meet the criteria in Section 39.2 of the Act (415 ILCS 5/39.2 (2002)), an applicant may not file a new application for siting within two years that is substantially the same (*see* 415 ILCS

5/39.2(m) (2002)). There are no such limits on a permit application. Also, when Caterpillar was decided by the Board, there was no authority to allow third parties to appeal the decisions by the Agency on air permits. Third parties may appeal the decision of the governing body in pollution control facility siting proceedings (*see* 415 ILCS 5/40.1(b) (2002)). The statutory differences between permit appeals and pollution control facility siting cases do not justify automatic application of case law from one type of case to another. Even if Reichold did not overrule Caterpillar, the Board finds that Caterpillar does not support remand in this proceeding.

The parties have not cited any other authority that supports remanding a pollution control facility siting proceeding without the Board deciding the merits of the case. Further, the Board has found no authority to support remanding this proceeding to the Kankakee County Board. The Board has also received a number of public comments that oppose remand of this matter and support the Kankakee County Board's decision to deny siting approval. *See e.g.* PC 24, 26, 28. The Board finds that there is no statutory or case law basis for remand in this case and, therefore, denies the motion to remand.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 16, 2005, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board