

ILLINOIS POLLUTION CONTROL BOARD

May 2, 2002

CITY OF WAUKEGAN, RICHARD H.	)	
HYDE, MAYOR, JOHN BALEN, SAM	)	
CUNNINGHAM, J.A. "TONY"	)	
FIGUEROA, FRANK HARRIS, JR.,	)	
PATRICK R. NEEDHAM , JOHN	)	
RICKERD and LAWRENCE TENPAS,	)	
members of the WAUKEGAN CITY	)	
COUNCIL,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 02-173
	)	(Permit Appeal – Land, Air)
ILLINOIS ENVIROMENTAL	)	
PROTECTION AGENCY and NORTH	)	
SHORE SANITARY DISTRICT,	)	
	)	
Respondents.	)	

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

On April 15, 2002, petitioners filed a permit appeal with the Board. The permits being appealed are land and air permits issued on March 11, 2002, by the Illinois Environmental Protection Agency (Agency) to the North Shore Sanitary District (District). The petitioners state in the cover letter: “[c]andidly, Petitioners do not believe that the Board has jurisdiction over this matter and that this is properly the subject of the pending Lake County [circuit court] Action.” Pet. Letter at 1. The petitioners go on to state that the respondents have argued in Lake County Circuit Court that the Board does have authority to hear this matter pursuant to Section 31(d) of the Environmental Protection Act (Act) (415 ILCS 5/31(d) (2000)). Pet. Letter at 2. Finally, the petitioners ask the Board to stay this proceeding and “defer to the concurrent jurisdiction of the Circuit Court of Lake County.” Pet. Letter at 3.

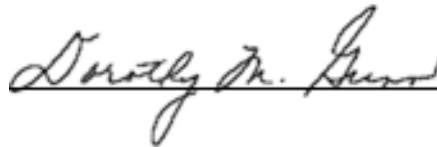
The Board declines the petitioners’ request to stay this proceeding. The Board is not authorized to hear permit appeals under the Act (415 ILCS 5/1 *et seq* (2000) for the permits issued in this case filed by a person other than the applicant. *See Landfill, Inc. v. PCB*, 74 Ill. 2d 541, 387 N.E.2d 258 (1978). The Board has been authorized to hear third-party permit appeals under Section 40(b) and (e) of the Act (National Pollutant Discharge Elimination System Permits and Resource Conservation and Recovery Act permits, respectively) (415 ILCS 5/40(b) and (e) (2000)). The permits at issue in this proceeding do not fall into either of those categories. Therefore, the Board is not authorized to hear this case as a permit appeal.

The Board is authorized by Section 31(d) of the Act (415 ILCS 5/31(d) (2000)) to hear cases where “any person” alleges that there have been violations of the Act. Under that authority, the Board may revoke permits issued by the Agency. *See People v. ESG Watts Inc.*, PCB 96-107 (Feb. 5, 1998). The Appellate Court has ruled that for alleged violations of the Act, complainants must exhaust administrative remedies under the Act before proceeding in Circuit Court. *See Decatur Auto Auction v. Macon County*, 255 Ill. App. 3d 679, 627 N.E.2d 1129 (4th Dist. 1993). The petitioners may therefore file an enforcement action before the Board if the petitioners believe that such an action is appropriate.

The Board dismisses this permit appeal and the docket is closed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 2, 2002, 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