

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1992

STEPHEN A. SMITH, d/b/a ABC)
SANITARY HAULING, JOHN APPL, d/b/a)
APPL SANITARY SERVICE, LAWRENCE)
W. BOLLER II, d/b/a AREA GARBAGE)
SERVICE, CHARLES H. MILLER, d/b/a)
C.H. MILLER SANITARY, CHRIS)
JOHNSON, d/b/a CHRIS'S SERVICE CO.,)
EDDIE L. COOK, SR., d/b/a COOK'S)
SANITARY HAULING, DON CORY, d/b/a)
CORY SANITARY HAULING, RONALD E.)
HAYDEN, d/b/a HAYDEN SANITARY SERVICE,)
GORDON FICKLIN, d/b/a ILLINI SANITARY)
SERVICE, CHRIS YAGER, d/b/a KLEAN-WAY)
DISPOSAL, GEORGE McLAUGHLIN, d/b/a)
McLAUGHLIN SANITARY, CHERYL MANUEL,)
d/b/a ROLLAWAY WASTE, RONALD W. MANUEL,)
d/b/a RON MANUEL SANITARY, RUSSELL)
SHAFFER, d/b/a SHAFFER SANITARY CO.,)
WILLIAM C. UDEN, d/b/a UDEN & SONS)
SANITARY HAULING, and WILLIS SANITARY)
HAULING, INC.,)

Petitioners,)

v.)

CITY OF CHAMPAIGN, ILLINOIS,)
INTERGOVERNMENTAL SOLID WASTE DISPOSAL)
ASSOCIATION, and)
XL DISPOSAL CORPORATION,)

Respondents.)

PCB 92-55
(Landfill Siting
Review)

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on its own motion. This case is a third-party appeal of respondent the City of Champaign's decision on a request for site location approval of a material recovery/transfer facility. Petitioners Steven A. Smith, d/b/a ABC Sanitary Hauling, et al., (collectively, petitioners), object to Champaign's failure to vote a majority decision on the merits of the application within the 180-day statutory deadline for Champaign to take final action. That deadline expired on March 15, 1992. Petitioners filed this appeal with the Board on April 15, 1992.

On April 20, 1992, respondents Intergovernmental Solid Waste Disposal Association (ISWDA) and XL Disposal Corporation

(collectively, ISWDA) filed a "cross appeal from ruling of hearing officer." In its cross appeal, ISWDA challenges a ruling by the hearing officer at the local hearings on the siting application. ISWDA objects to the local hearing officer's denial of ISWDA's request that he preclude certain testimony and evidence which ISWDA alleges is irrelevant and immaterial to the siting process. ISWDA contends that petitioners will rely upon that evidence and testimony in their appeal before this Board.

In its April 23, 1992 order accepting this case for hearing, the Board specifically reserved ruling upon who may be proper parties in this case, and stated that it would entertain any motions to dismiss improper parties. No motions to dismiss have been received. However, on its own motion, the Board finds that ISWDA's "cross-appeal" is not proper. ISWDA challenges only a hearing officer's ruling on a motion made prior to the start of the local hearings. ISWDA raises no challenges to any action or inaction by the Champaign city council. Section 40.1 of the Environmental Protection Act (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1040.1) allows for appeal in only two instances. Where the local decisionmaker (in this case, the Champaign city council) refuses to grant site approval, the applicant (here, ISWDA) may appeal. Where the local decisionmaker grants site approval, a third party other than the applicant may appeal. Section 40.1 gives this Board jurisdiction to consider appeals of actions taken by local decisionmakers. Nowhere does the statute allow the Board to consider appeals solely from local hearing officer rulings. Because ISWDA has not challenged any action (or inaction) of the local decisionmaker, the "cross-appeal" is dismissed. ISWDA may participate in this proceeding as a respondent, but not as a "cross-petitioner."

The Board notes that this case is unusual, in that Champaign did not pass a majority decision on the merits of the siting application. Therefore, one of the major issues in this proceeding is the effect of that inaction--whether the application is deemed approved. Ordinarily, a party who prevails below, whether an applicant or third-party objector, cannot appeal to this Board. (Cf. McHenry County Landfill, Inc., v. Illinois Environmental Protection Agency (2d Dist. 1987), 154 Ill.App.3d 89, 506 N.E.2d 372, 106 Ill.Dec. 665.) Thus, if it were clear in this case that the siting application had been approved, ISWDA's cross-appeal would be disallowed on those grounds. However, because the effect of Champaign's inaction is in dispute, this Board cannot say, at this point, which party prevailed at the local level. We emphasize that the Board's action in dismissing the cross-appeal is based upon ISWDA's failure to challenge any action of the Champaign city council.


Additionally, the Board notes that petitioners named J.M. Jones Company (Jones) and Duke & Associates (Duke) as respondents in this appeal. The petition states that Jones and Duke both

entered their appearance through counsel and participated in the local proceedings, but does not further identify Jones and Duke. Section 40.1(b) of the Act specifically states that the local decisionmaker and the applicant shall be named as co-respondents in a third-party appeal. Neither Jones nor Duke is named as an applicant for siting approval, and they are clearly not the local decisionmaker. Therefore, both Jones and Duke are dismissed as respondents in this case. The caption has been amended to reflect this dismissal.

IT IS SO ORDERED.

J. Marlin abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of May, 1992, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board