

ILLINOIS POLLUTION CONTROL BOARD
February 16, 1995

MADISON COUNTY CONSERVATION)
ALLIANCE,)
)
Petitioner,)
)
v.) PCB 94-390
) (3rd Party Permit Appeal-
WASTE MANAGEMENT, INC. (Chain-of) Land)
Rocks Canal on Chouteau Island),)
and ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondents.)

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board on Madison County Conservation Alliance's (Alliance) December 28, 1994 petition appealing the Illinois Environmental Protection Agency's (Agency) decision to grant a supplemental development permit to Waste Management, Inc. (WMII). WMII owns and operates a sanitary landfill facility located on Chouteau Island on the Mississippi River. The Alliance cites to Section 40(b) and (c) of the Environmental Protection Act (Act) for its authority to file a third party appeal of an Agency issuance of WMII supplemental development permit. (415 5/40 (b) and (c) (1992).) The Alliance is appealing the issuance of the permit because it feels that the recent flood of 1993 demonstrated that the landfill "...is an offense against the river". (Petition at 1.) The Alliance also alleges that the issuance of the permit and the landfill itself are violations of the Board's regulations.

On January 19, 1995 the Agency filed a motion to dismiss Alliance's third party permit appeal for lack of standing to bring the action before the Board. As of the date of this order the Board has not received a response to the Agency's motion to dismiss.¹ Pursuant to 35 Ill. Adm. Code 101.241(b) the Alliance should have filed a response to the motion within 7 days after

¹Although the Alliance and its members have not responded to the Agency's motion, the Alliance and other individual citizens filed a formal enforcement action, pursuant to Section 31(b) of the Act, against WMII. The Clerk of the Board docketed the enforcement action as PCB 95-1 on January 4, 1995. This enforcement action is based on WMII utilizing the supplemental permit issued by the Agency and is the subject of this permit appeal.

service of the motion to dismiss. Section 101.241(b) further states that "[i]f no response is filed, such participant or party shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board or the hearing officer in the decision of the motion."

The Agency argues that Section 40(b) of the Act which states in pertinent part, "[i]f the Agency grants a RCRA (Resource Conservation Recovery Act) permit for a hazardous waste disposal site, a third party, other than the permit applicant or Agency, may petition the Board within 35 days for a hearing to contest the issuance of the permit", does not give third-parties standing to appeal the Agency's issuance of a sanitary landfill permit. The Agency cites to the Appellate Court in White Fence Farm, Inc. v. Land & Lakes Co., (1981) 54 Ill.Dec. 474, 99 Ill.App.3d 244, 424 N.E.2d 1370. In that case the court ruled that Section 40 (b) of the Act, "...which outlines the Board's power to review the EPA's decisions, allows a third party to appeal the EPA's granting of a *hazardous waste disposal permit*, but not of a *sanitary landfill permit*." (Emphasis added by the court.) (Id. at 1376.) The Agency also argues Section 40(c) of the Act, which refers to appealing Agency action taken pursuant to Section 39.3 of the Act that deals with hazardous waste landfills, only allows for third party appeals of hazardous waste landfills. (415 ILCS 5/39.3 (1992).)²

The Board grants the Agency's motion to dismiss this action. The Board, as stated by the Appellate Court, was not specifically given the jurisdiction, by the legislature to hear third party permit appeals concerning sanitary landfills. Furthermore, the Supreme Court in Landfill Inc. v. The Pollution Control Board, (1978), 74 Ill. 2d 541, 25 Ill. Dec. 602, 387 N.E.2d 258, has held that "[t]here are no comparable statutory provisions for Board review on either technical grounds of the Agency's grant of a permit, thus indicating legislative intent not to provide for such a proceeding." (Id. at 264.) Although the legislature did not contemplate for third parties to appeal the Agency issuance of a sanitary landfill permit, as the courts stated in White Fence Farm and Landfill Inc., third parties can pursue an action pursuant to Section 31(b) of the Act for potential threats of pollution which may be caused by the permit holder. (White Fence Farm, Inc. v. Land & Lakes Co., (1981), 424 N.E.2d 1370 at 1377, Landfill Inc. v. The Pollution Control Board, (1978), 387 N.E.2d

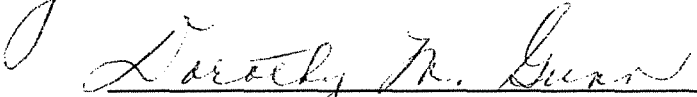
²The Agency further argues in its motion to dismiss that enforcement pursuant to Sections 31 and 31(a) of Act do not apply to the Agency. (415 ILCS 5/30 and 5/31(a) (1992).) However, the Alliance has not brought this case as an enforcement action, therefore these arguments are not applicable to the Board's decision.

258 at 264.) The docket in this matter is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill.Adm.Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of February, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board