

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1992

ALICE ZEMAN, TONY BERLIN,	)	
RICHARD ZILKA, MICHAEL	)	
TURLEK, KEVIN GREENE,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 92-174
	)	(Landfill Siting)
VILLAGE OF SUMMIT AND	)	(Consolidated with
WEST SUBURBAN RECYCLING	)	PCB 92- 177)
AND ENERGY CENTER, INC.,	)	
	)	
Respondents.	)	

DONNA QUILTY,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 92-177
BOARD OF TRUSTEES AND	)	(Landfill Siting)
MAYOR OF THE VILLAGE OF	)	(Consolidated with
SUMMIT AND WEST SUBURBAN	)	PCB 92-174)
RECYCLING & ENERGY CENTER,	)	
INC.,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by J. Anderson):

On December 8, 1992, respondent Village of Summit (Village) filed a Motion to Reconsider the Board's Order of November 19, 1992. The petitioner, Alice Zeman, et al., (petitioner) filed a response on December 15, 1992.

Also, on December 4, 1992, respondent West Suburban Recycling and Energy Center, Inc. (WSREC) filed a Motion to Dismiss petitioner Donna Quilty (Quilty). On December 11, 1992, Quilty filed a reply. On December 15, 1992, respondent WSREC filed a motion for leave to file a reply and a reply. There is an issue of the timeliness of the motion to dismiss. The Board intends to rule on the motion to dismiss because a jurisdictional question is involved, and grants WSREC leave to file a reply.

Village's Motion to Reconsider.

The Board grants the Village's motion to reconsider. For the reasons expressed below, upon reconsideration, the Board affirms its November 19, 1992 Order.

0138-0151

The Board's November 19th Order accepted for hearing a third party consolidated "SB 172" appeal of a siting approval by the Village. Among other things in the Order, the Board required that the Village, within 21 days, prepare and file the record on appeal, including the submittal of seven copies of the transcript of the Village hearing and three copies of any other documents.

The Village asserts that it is not required to so prepare and certify the record of the proceeding "until it is paid to do so by the petitioner". (Motion at 2). The Village cites to Section 39.2(n) of the Environmental Protection Act (Act), which provides in pertinent part:

...the petitioner in the review proceeding shall pay to the county or municipality the cost of preparing and certifying the record of proceedings.

The Village sent an estimated bill of \$5000 to the petitioner.

In reply, the petitioner cites to other language in Section 39.2(n) of the Act which, the reply notes, is not cited in the Village's motion. (Resp. at 2). The language provides:

In the event the Petitioner is a citizens' group that participated in the siting proceeding and is so located as to be affected by the proposed facility, such petitioner shall be exempt from paying the costs of preparing and certifying the record.

The petitioners assert that they are citizens who reside in the Village or in close proximity to the affected site, or actively participate in solid waste issues, and thus are directly affected by the facility. They assert that they are entitled to a fee exemption, and claim that if the requested costs are imposed it would force them to abandon their petition. They also assert that the Board hearing has already been scheduled and, if the record is not timely filed prior to hearing, they will be denied a fair hearing for lack of opportunity to review the record. They state the Board is acting within its discretion in its imposing the record requirements. (Pet. reply).

The Board finds that the petitioners clearly constitute a citizens' group as envisioned in the statute, and thus are not required to pay the fee. The legislative intent is clear.

On June 22, 1989, Senator Doris Karpiel sponsored an amendment on 3rd reading to House Bill 98 to exempt citizens' groups from the fee payment at issue here. Prior to the vote on the bill, Senator Karpiel stated in pertinent part:

0138-0152

And if you will bear with me, I have told the Pollution Control Board that I would read into the record the meaning of "citizens groups." It means a group of individual citizens that have joined together to participate in a regional pollution control facility siting hearing. This group may be a voluntary association that is formed on an ad hoc basis that may or may not have a name or bylaws. It also can be a group that has incorporated. It cannot be a husband and wife or a family. It does not include the -- local Chamber of Commerce, labor organizations, or township board of trustees. It also does not include persons owning or operating a nearby competing landfill facility, or units of local governments acting alone. It has to be a true citizens group, such as the Citizens Against the Bartlett Bale Fill in my district.

State of Illinois 86th General Assembly Regular Session
Senate Transcript, 52nd legislative day, June 22, 1989.

The Bill passed with 55 - 0, with 1 present, and became P.A. 86-959. (Ibid).

The Board also finds that, even if the petitioners had not been exempt from the fee, the Village has no authority to fail to respond to a Board order because of a fee dispute flowing from a provision in Section 39.2. We point out to the Village that it is Section 40.1, not Section 39.2, of the Act, that governs petitions for hearing before the Board, as is repeatedly stated in the Board's November 19th order. We also emphasize that if a third party, or an applicant for that matter, files an appeal pursuant to Section 40.1, that person has a right to be heard. In that Section 40.1 provides that the hearing be based exclusively on the record before the county or municipality, we have held in every SB172 appeal, both before and after the fee provisions were added to the statute, that it is the county or municipality that must prepare and file the record.

The Village also asserts that there is no requirement in the Act that it "file multiple copies of the record of proceedings and that such record is to be compiled in accordance with Supreme Court Rules". The Village argues that, while the Board refers to Supreme Court Rules for preparing of the record, Section 39.2(n) of the Act refers to the Code of Civil Procedure. (R. 1,2).

Section 39.2(n) states in pertinent part:

Should the petitioner in the review proceeding fail to make payment, the provisions of Section 3-109 of the Code of Civil Procedure, as now or hereafter amended, shall apply.

This provision is clearly irrelevant, given our finding that the citizens 'group fee' exemption applies in this case.

The Village states that if the Village is paid to prepare a record it will make multiple copies "in compliance with the Board order". (Motion at 4,5). However, the Village also states that if the Illinois Supreme Court can function with only one copy, so can the Board "which uses a hearing officer". (Motion at 5).

We first note that, whatever the point is for the Village's last comment,¹ we remind the Village that the members of this full time Board and its professional staff must review the record after holding a hearing and take final action within a 120 day time frame. In this case the Village itself has by its actions foreshortened even that time frame. We also note that the Board's procedural rules require an original and 10 copies (see 35 Ill. Adm. Code 101.103(b)). This order reduces that number, in recognition of the volume of materials involved in these records.

In any event, it is this Board's authority and responsibility to interpret the statute so as to give effect to the appeal process in a manner that assures that its hearing and deliberative process are not compromised.

Upon reconsideration, the Board affirms its November 19, 1992 Order.

We note that the Village never filed a motion for extension of time to file the record. Failure to file the record on or before January 4, 1993 will subject the Village to sanctions pursuant to 35 Ill. Adm. Code 101.280.

WSREC's Motion to Dismiss Petitioner Quilty.

For the reasons expressed below, the Board denies WSREC's motion to dismiss.

In support of its motion, WSREC asserts that Quilty has no standing to appeal because she did not participate in the Village's hearing.

There is no dispute that Quilty was physically in attendance at the Village's hearing, and that she did not otherwise participate. (WSREC Reply at 3; Quilty Reply at 4 (unnumbered)). Quilty argues in part that the Village's procedures prevented her

¹ The Board notes that the hearing officer is not the decisionmaker and issues no recommendations or findings in this matter.

from actively participating and that the fundamental fairness of the procedures are an issue on appeal.

Section 40.1(b) of the Act requires that a person seeking to appeal as a third party be one "who participated in the public hearing conducted by the county board or governing body of the municipality."

The Act does not define what is meant by "participated".

WSREC argues that if the legislature had intended "attendance" to constitute "participation", it would have said so. (Motion at 3). The Board notes that one could just as easily argue that if the legislature had intended "testify or question" to constitute participation, it would have said so. WSREC also argues that mere attendance would make it difficult if not impossible to ascertain whether any given petitioner satisfies the "participated" requirement, given the potential for "ingress and egress through multiple doors of a high school auditorium." (Motion at 3). One could just as easily respond that the hearing process would be overwhelmed if everyone who wanted to be part of a citizen appeal had to be allowed to testify or ask questions, no matter how repetitious. Alternatively, if, in the interests of maintaining an orderly process for example, the decisionmaker would not allow all such persons to speak or ask questions, would this not prejudice their right to appeal?

The Board has already dealt with what constitutes "participated" in two prior SB 172 appeals, and in each case the Board has held that attendance satisfies the requirement. (Board of Trustees of Casner Township et al. and John Prior v. County of Jefferson (April 4, 1985) PCB 84-175, 84-176 consolidated; Peter Valessares et al. v. The County Board of Kane County et al. (July 16, 1987) PCB 87-36).

In Casner, the Board stated:

...the question is whether this "mere" attendance is sufficient. The Board believes that it is. One of the clear purposes of the county level hearing requirement in the SB 172 process is to encourage public participation in siting decisions. Allowing public access to environmental proceedings and the (sic) encouraging citizen participation are some of the fundamental policies of the Act. To require some higher level of "participation" for a third party appeal would discourage that clear policy. (Casner) at 6).

In Valessares, the Board first quoted Black's Law Dictionary, which defines "participate" in pertinent part as:

0138-0155

PARTICIPATE. To receive or have a part or share of; to partake of; experience in common with others; to have or enjoy a part or share in common with others; partake; as to "participate" in a discussion. To take a part in; as to participate in joys or sorrows. (citations omitted). (Black's Law Dictionary, 1275 (4th ed. 1968)).

The Board then stated:

This definition, especially the "experience in common with others", is sufficiently broad to cover those individuals who take the time and effort to attend the public hearing and listen to the testimony, even if they do not ask questions or make statements on the record. For these reasons the Board holds that personal attendance at a county board hearing is adequate participation to meet this element of standing.

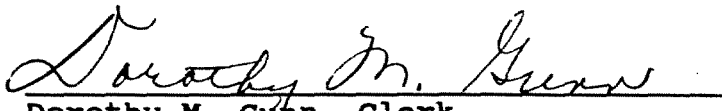
(Valessares at 6).

The Board thus construes the "participated" requirement as satisfied for purposes of Donna Quilty's standing to appeal. She has shown that she physically appeared at the hearing.

The Board denies WSREC's motion to dismiss.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 17th of December, 1992 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board