

ILLINOIS POLLUTION CONTROL BOARD
April 21, 1994

AMERICAN TREE SERVICE, INC.,)	
an Illinois Corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 94-43
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C. A. Manning):

On February 3, 1994, American Tree Service, Inc., (American) filed an amended petition for permit review regarding its facility, located in Sangamon County. The Board directed this matter to be set for hearing on February 3, 1994. On March 28, 1994 The Val-E-Vue Improvement Association (Association) filed a motion to intervene as a respondent in this proceeding pursuant to 35 Ill. Adm. Code 103.142. It is this motion which is the subject of this order.

The Val-E-Vue subdivision is a residential subdivision located less than one mile from the Petitioner's facility in Springfield, Illinois. The Association represents itself as an Illinois Corporation, incorporated under the General Not For Profit Corporation Act on October 8, 1956. The Association opposes the issuance of a permit to American that would allow the burning of landscape waste. The Association claims that the current permit issued to American is in violation of Illinois law and that its members are detrimentally affected by American's activities.

However, the Association has not provided any legal arguments or authority in support of its request for the Board to grant the motion to intervene in the permit process that is before the Board. Rather, case law clearly provides that the Board has no authority to grant a motion to intervene in an air permit case or to even allow a third party appeal of the issuance of an air permit. (County of LaSalle v. Illinois Pollution Control Board, (August 26, 1986), 146 Ill. App. 3d 603, 497 N.E. 2d 164, 100 Ill. Dec. 284; See also Ohio Grain Company v. Illinois Environmental Protection Agency, (December 17, 1992), PCB 90-143.) In County of LaSalle the appellate court upheld the Board's ruling that the Environmental Protection Act (Act) provided no authority for the Board to allow intervention in certain permit appeals. Id. at 290. In addition, the courts have stated that there is no right for third party appeals of an

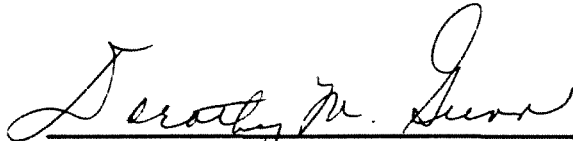
Agency issuance of permits other than where it is specifically allowed for by the Act. (Landfill Inc. v. Pollution Control Board (1978), 74 Ill. 2d 541, 387 N.E.2d 258.) In Landfill Inc. the court said that "[t]he grant of a permit does not insulate violators of the Act or give them a license to pollute; however, a citizen's statutory remedy is a new complaint against the polluter, not an action before the Board challenging the Agency's performance of its statutory duties in issuing a permit." Id. at 609.

Therefore, while the Association may be free to make its arguments in another proceeding before the Board, it can not do so in this context. Moreover the Association is not prohibited from participating in any public hearing which might be held in this matter pursuant to 35 Ill. Adm. Code Part 103. Additionally, the Board will allow the Association to file an amicus curiae brief at the close of the hearing pursuant to the briefing schedule as developed by the hearing officer.

The Board denies the motion to intervene filed on March 28, 1994 by the Association and directs this matter is to proceed to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of April, 1994, by a vote of 6-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board