

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1992

CITIZENS AGAINST REGIONAL LANDFILL,)
)
 Petitioners,)
)
 v.) PCB 92-156
) (Landfill Siting)
 THE COUNTY BOARD OF WHITESIDE COUNTY)
 and WASTE MANAGEMENT OF ILLINOIS,)
 INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a Motion to Strike filed on November 10, 1992 by Waste Management of Illinois, Inc. (WMII). The motion seeks to strike Section I of the petition filed on October 21, 1992 by Citizens Against Regional Landfill (CARL), on the grounds that it is frivolous and without any factual or legal basis. CARL has not filed a response to the motion to strike.

Also before the Board is a motion by the County Board of Whiteside County (County Board) to file the record and certificate of record instanter. This motion along with the record was filed with the Board on November 23, 1992. The motion to file the record and certificate of record instanter is granted.

Section I of the petition claims that the County Board acted contrary to the manifest weight of the evidence in finding that it had jurisdiction to hold the public meeting. The petition claims a jurisdictional defect existed in that the County Board failed to establish that the required property owners were timely notified by registered mail. The petition claims that two residents were not notified. The petition also claims that the notices failed to include a proper legal description or an accurate legal description of the facility, as required by statute. Section I also asserts that the County Board failed to make available for public inspection the site approval and the supporting documents as required by Section 39.2(c) of the Environmental Protection Act (Act). (Ill. Rev. Stat. ch. 111 1/2 par. 1039.2(c).)

In its motion to strike, WMII asserts that sufficient notice was provided and the County Board determined that WMII had satisfied the notice requirements. WMII asserts that CARL's allegations attacking jurisdiction neither contain nor refer to any facts or law to support them. WMII contends that CARL is mistaken in its assertion that notice is required of all residents within 250 feet of the landmark used to provide a

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general landmark description. WMII asserts that the language of Section 39.2(b) of the Act and prior Board decisions require notification of all residents within 250 feet of the nearest lot line. (Land and Lakes Company v. Village of Romeoville, (August 26, 1991), PCB 91-7.) WMII asserts that the specific residents that CARL contends were not notified reside at least 650 feet from the lot line of the proposed facility. Attached to the motion to strike is a plat survey and an affidavit from Thomas J. Casel, a surveyor, supporting WMII's contention that the two residences are at least 650 feet from the boundary of the facility. WMII asserts that a legal description is not required in the notice. (Daubs Landfill, Inc. v. Pollution Control Board (5th Dist. 1988), 166 Ill. App. 3d 778, 520 N.E.2d 777.) WMII further asserts that CARL does not claim that the description provided in the notice failed to apprise adjacent landowners of the site location.

WMII further asserts that CARL's jurisdictional claims are neither well grounded by fact nor warranted by law. WMII contends that CARL's claims violate Illinois Supreme Court Rule 137 and requests the Board to impose sanctions against CARL. WMII requests that the Board order CARL to pay the reasonable expenses and fees incurred by WMII in preparing the motion to strike.

WMII's motion is supported by affidavit and by case law. Section 39.2(b) of the Act requires that written notice be served "on the owners of all property within 250 feet in each direction of the lot line of the subject property". Property owners can, subject to public regulations, subdivide their tract as they see fit and such subdivision will be given the construction of lots. (Lehman v. Revell (1933), 354 Ill. 262, 188 N.E.2d 531.) In Land and Lakes (August 26, 1991), PCB 91-7, the Board determined that "subject property" as used in section 39.2 of the Act was equivalent to "sanitary landfill". The notice requirements provided in section 39.2(b) require the notice to include "the location of the proposed site".

CARL has filed no response in opposition to the motion to strike. Therefore, the facts presented by WMII in the motion to strike are not disputed. 35 Ill. Adm. Code 101.241(b) provides that the failure to file a response to a motion results in waiver of objection to the motion. Consequently, CARL has waived any objection to WMII's motion to strike Count I.

WMII's motion to strike is granted. The portions of Section I alleging lack of jurisdiction due to defects in the notice requirements are hereby stricken from the petition. The Board notes that Section I of the petition also alleges that the County Board failed to make available for public inspection the application for site approval and supporting documents. WMII does not address this issue in its motion to strike. The

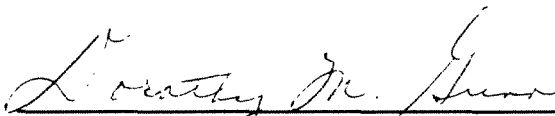
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allegation concerning the County Board's failure to provide documents for public inspection will not be stricken.

WMII has failed to show that sanctions according to Illinois Supreme Court Rule 137 are warranted in this circumstance. WMII does not contend that other Sections of the petition are frivolous or violate Rule 137. The Board declines to impose sanctions.

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 3rd day of December, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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