

ILLINOIS POLLUTION CONTROL BOARD  
February 28, 1991

CLEAN QUALITY RESOURCES, INC., )  
 )  
Petitioner, )  
 )  
v. ) PCB 90-216  
 ) (Landfill Siting)  
 )  
MARION COUNTY BOARD, )  
 )  
Respondent. )

MR. WILLIAM P. CRAIN APPEARED ON BEHALF OF THE PETITIONER.

MR. ROBERT SHUFF APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD BY (M. Nardulli):

This matter comes before the Board on an appeal filed November 14, 1990 pursuant to Section 40.1 of the Environmental Protection Act ("Act") Ill. Rev. Stat. ch. 111 1/2, para. 1040.1(a), 1989. The petitioner, Clean Quality Resources ("CQR"), appeals the decision of the Marion County Board ("MCB") to deny site location suitability approval to an aqueous treatment plant. The MCB held a total of fourteen hearings over a four month period in 1990 on CQR's application for site approval. On October 11, 1990, the MCB voted unanimously to deny CQR's request for site location suitability approval on the basis that CQR did not satisfy criteria (1) and (3) of Section 39.2(a) of the Act. The MCB did not make any findings on criteria (2), (4), (5), (6), and (7). For reasons discussed below, the Board hereby remands the case to the MCB for clarification of its vote.

The Board held a hearing on January 25, 1991. CQR filed its post hearing Brief on January 31, 1991. The MCB filed its Brief on February 11, 1991. CQR's Reply Brief was filed on February 21, 1991. Various interested parties that participated in the hearings before the MCB, including the City of Centralia, James B. Wham, Daniel R. Price, and Residents for Environmental Safety ("RES") by its attorney Harold K. Pike, have filed petitions for leave to intervene or in the alternative to file amicus curiae briefs in this proceeding before the Board. CQR moved to strike these petitions. The Hearing Officer denied the motion to intervene but allowed the filing of amicus curiae briefs. The interested parties have filed amicus curiae briefs and a motion to reconsider the Hearing Officer's denial. On February 25, 1991, CQR moved to strike portions of the amicus curiae briefs filed by the interested parties.

The Board hereby upholds the Hearing Officer's decision denying leave to intervene and granting leave to file amicus

curiae briefs. This is consistent with past practice and precedent of the Board. Laidlaw Waste Systems, Inc. v. McHenry County Board, PCB 88-27, 90 PCB 135 (June 16, 1988). The Board notes that the interested parties have raised issues of jurisdiction and unconstitutionality of the statute. The Board will not address those issues at this time.

The Board denies CQR's motion to strike portions of the amicus curiae briefs. The Board is able to determine and exclude from its consideration material in these briefs which is outside the scope of the Board's review. The Board accepts the amicus curiae briefs of the interested parties to the extent those briefs address issues properly before the Board, i.e., those discussions pertaining to criteria (1) and (3) of Section 39.2(a) of the Act.

#### DISCUSSION

Pursuant to Sections 39(c) and 39.2(a) of the Act, a new regional pollution control facility is required to request and receive siting approval from the local county board before a development or construction permit is issued by the Illinois Environmental Protection Agency ("Agency"). Section 39.2(a) provides that an applicant seeking site approval must demonstrate compliance with each of the enumerated criteria of this section before the county board can grant approval. The decision of the county board is reviewable by the Board pursuant to Section 40.1 of the Act. The Board reviews a county board's decision on each of the contested criteria to determine if that decision is against the manifest weight of the evidence. In the case before the Board now, the MCB made a determination on only two of the applicable criteria. (R. at C3575-C3577.) The transcripts reveal confusion as to whether or not the MCB needed to make a determination on all the criteria. (R. at C3566-C3576.) Therefore, while not raised by the parties, the Board must address whether it is necessary to remand this case back to the MCB for clarification of its decision where a county board has made a determination on only two criteria.

In E & E Hauling, Inc. v. Pollution Control Board, 116 Ill.App.3d 586, 71 Ill.Dec. 587 451 N.E.2d 555 (2nd Dist. 1983), the court confronted the issue of whether a county board must give specific reasons for its determination for a given criteria. In determining that the county board did not have to give specific reasons, the court stated that the county board needs to "indicate which of the criteria, in its view, have or have not been met, and this will be sufficient if the record supports these conclusions so that an adequate review of the . . . decision may be made." (Emphasis added.)

In Waste Management v. Pollution Control Board, 175 Ill.App.3d 1023, 125 Ill.Dec. 524, 530 N.E.2d 682 (2nd Dist.

1988), one issue presented to the court was whether the Board erred by reviewing only one of four contested criteria. On review from the county board, the Board determined that the county board's decision on the one criterion was not against the manifest weight of the evidence and, because an applicant must satisfy each and every criteria, upheld the county board's decision without addressing any of the remaining contested criteria. On appeal, the court stated,

"[A]lthough the Act does not specifically require the PCB to review each of the challenged criteria in the event it can affirm on any one of the criteria, we believe the statutory duty to review the decision and reasons for the decision of the county board pursuant to section 40.1 requires the PCB to review and to decide whether all the challenged findings of the county board are against the manifest weight of the evidence. It is clearly more efficient for the PCB to conduct a complete review of all challenged criteria, thereby presenting a complete record in the event of an appeal."

"As a matter of judicial economy and efficiency, and in light of the PCB's role as an administrative body possessing expertise in this area, we believe the PCB has a statutory obligation under section 40.1 to conduct a complete review of all challenged statutory criteria under the Act in its initial review of an appeal from the decision of a local board." (125 Ill.Dec. at 533-534.)

The court in Waste Management found that the Board must review all contested criteria because otherwise a partial review leading to a remand order from the courts "would extend the review process and promote multiple appeals." The Board finds this same logic applicable to the county board level. The Act clearly indicates that the county board is to make the decision whether to approve or disapprove an application for siting approval based on the criteria of Section 39.2(a). At the county board level, all the applicable criteria require a finding. Remand is necessary to provide a complete decision for the Board to review, to prevent extending the review process and to conform with applicable case law.

The Board now, for purposes of review, directs the MCB to clarify its position on each of the remaining applicable criteria of Section 39.2(a) of the Act. Anything less leaves an ambiguity which the Board itself cannot clarify. By remanding this case for a complete determination on all the criteria, the Board provides instruction to the MCB and avoids future confusion and uncertainty on what is required for a final decision. Nothing in this opinion should be construed to imply that the Board requires any additional hearings on this matter.

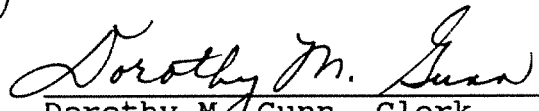
This action does not activate either Section 39.2(e) or 40.1(d) which provide for automatic approval if no final decision is made by the county board or the Board. The Second District Appellate Court has held that "the final action that a county board must take . . . need only be sufficiently final to justify an appeal to the PCB." McHenry County Landfill v. Illinois Environmental Protection Agency, 154 Ill.App.3d 89, 106 Ill.Dec. 665, 506 N.E.2d 372 (2nd Dist, 1987). In addition, in City of Rockford v. County of Winnebago, 175 Ill.App.3d 1023, 134 Ill.Dec. 244 530 N.E.2d 682 (2nd Dist. 1989) the court found that a remand order from the Board is a proper and final order within its 120-day decision period.

ORDER

The Board hereby remands this case back to the Marion County Board for a final determination on the remaining applicable criteria of Section 39.2(a).

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 28<sup>th</sup> day of February, 1991, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board