

ILLINOIS POLLUTION CONTROL BOARD

August 10, 2000

RIVERDALE RECYCLING, INC.)
and TRI-STATE DISPOSAL, INC.,)
)
Petitioners,)
)
v.) PCB 00-228
) (Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

This matter is before the Board on a July 21, 2000 motion for leave to intervene by the Village of Riverdale (Village) in an appeal of a denial of a supplemental solid waste permit. The Village asserts it has an interest in this proceeding because a Board decision regarding the supplemental permit has a direct bearing upon the health, safety and welfare of its citizens.

On August 30, 1994, Riverdale Recycling, Inc. and Tri-State Disposal, Inc. (petitioners) filed an amended siting application with the Village seeking location approval for a pollution control facility pursuant to Section 39.2 of the Environmental Protection Act (Act). 415 ILCS 5/39.2 (1998). The Village issued siting approval with conditions to petitioner on October 5, 1994.

Petitioners filed an application for a supplemental permit with the Illinois Environmental Protection Agency (Agency) on August 5, 1999. The Agency denied the application on the grounds that petitioner "did not include demonstration that local siting approval has been granted for the specific proposals in accordance with the requirements of Section 39.2" of the Act. See Petition to Appeal, Exh. A at 2. The petitioners appealed the Agency's denial of the permit to the Board. The Village petitioned to intervene in part because it did not want to rely upon the Agency to rebut petitioners' arguments about its original siting approval. See Village Pet. at 4.

The Act, by its terms, does not grant general authority to the Board to allow third-party intervention in all cases appealing an Agency decision to deny a permit. In Landfill, Inc. v. PCB, 74 Ill. 2d 541, 387 N.E.2d 258, 264 (1978), the court held that the Board's procedural rules allowing third-party complaints in a sanitary landfill permit appeals case to be void. Since the Act did not authorize the Board to entertain such challenges, the Board's procedural rules were "unauthorized administrative extensions" of its authority. *Id.* at 265. If the Board grants the Village's petition to intervene, it would essentially allow a third-party challenge to the Agency's permit denial, which the court precluded in Landfill, Inc. This rationale stands even though the Village's petition to intervene appears to be premised upon the Village's support of, rather than objection to, the Agency's denial of the supplemental permit.

The Third District has affirmed the Board's denial of a third party petition "challenging the Agency's decision to issue an NPDES permit and requesting a *de novo* evidentiary [proceeding]." Citizens Utilities Company of Illinois v. PCB, et al. 265 Ill. App. 3d 773, 775, 639 N.E.2d 1306, 1308 (3rd Dist. 1994). In Citizens Utilities, the Village of Plainfield appealed the Agency decision to grant Bolingbrook a National Pollution Discharge Elimination System (NPDES) permit for proposed discharge from a new proposed wastewater treatment plant. The case involved a different type of permit. However, the underlying holding that the Board did not have general authority to allow third-party challenges without explicit statutory authority, directly applies to this case.

After the holdings in Landfill, Inc. and Citizens Utilities, the legislature revisited the issue of third-party appeals, and has since enacted two specific sections regarding appeals of Resource Conservation and Recovery Act (RCRA) and NPDES permit denials. See 415 ILCS 40(b), (e) (1998). The legislature never granted general authority

to the Board to allow third-party appeals or interventions in other cases involving permit denials. The silence of the Illinois General Assembly after the explicit requirement for statutory authority in Landfill, Inc. and Citizens Utilities is a clear indication that the Board does not have authority under the Act to accept third-party appeals or interventions in this matter.

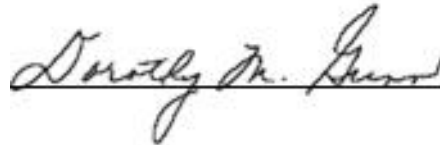
Furthermore, it is well settled that third parties cannot intervene in cases where the local governments denied siting approval, pursuant to Section 39.2 of the Act. 415 ILCS 5/39.2 (1998); Land and Lakes Company v. Village of Romeoville (September 1, 1994), PCB 94-195; see also Waste Management of Illinois, Inc. v. PCB, 160 Ill. App. 3d 434, 513 N.E.2d 592 (2d Dist. 1987). In Land and Lakes, the Forest Preserve District of Will County (Forest Preserve) filed a motion for leave to intervene with the Board asserting it had a statutory obligation to protect and preserve ecological interests in the Forest Preserve. The Forest Preserve also argued it would be affected and bound by a Board decision regarding the Agency denial of the landfill siting approval. The Board held that the Forest Preserve was a third-party objector, and denied the petition to intervene.

The Village, here, much like the Forest Preserve in Land and Lakes, petitions to intervene because the siting is similarly "an issue of critical importance to the Village." Village Pet. at 1. The Village asserts it should be a party in this matter because it has a better understanding of its original siting approval. Although the Village made the decision to approve the original siting resolution, the Agency is responsible for deciding whether petitioners' permit application is accepted or denied.

Since the Act does not grant express authority to the Board to accept third-party appeals or interventions, the motion for leave to intervene filed by the Village is denied. The Village is, however, granted leave to present its concerns to the Board by filing an *amicus curiae* brief in this matter pursuant to the schedule established by the hearing officer.

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 10th day of August 2000 by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in dark ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board