

ILLINOIS POLLUTION CONTROL BOARD
October 3, 2002

COUNTY OF KANKAKEE and EDWARD D.)
SMITH, STATES ATTORNEY OF)
KANKAKEE COUNTY,)

Petitioners,)

v.)

THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC. and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)

Respondents.)

PCB 03-31
(Third-Party Pollution Control Facility
Siting Appeal)

BRYAN SANDBERG,)

Petitioner,)

v.)

THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC. and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)

Respondents.)

PCB 03-33
(Third-Party Pollution Control Facility
Siting Appeal)

WASTE MANAGEMENT OF ILLINOIS,)
INC.,)

Petitioner,)

v.)

THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC. and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)

Respondents.)

PCB 03-35
(Third-Party Pollution Control Facility
Siting Appeal)
(Consolidated)

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

The Board has received three separate petitions requesting the Board to review an August 19, 2002, decision of the City Council of the City of Kankakee (City). In its decision, the City granted the application of Town & Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C. (Town & Country) to site a pollution control facility. The proposed facility, a landfill, consists of approximately 400 acres located in Otto Township within the municipal boundaries of the City of Kankakee.

The County of Kankakee and Edward D. Smith, States Attorney of Kankakee County (the County); Byron Sandberg (Sandberg); and Waste Management of Illinois, Inc. (Waste Management), in case numbers PCB 03-31, PCB 03-33, and PCB 03-35 respectively, appeal on common grounds. All three petitioners argue that the procedures the City used to reach its siting decision were fundamentally unfair, and that the City's findings on several statutory siting criteria were not supported by the manifest weight of the evidence. Each petitioner contends, for example, that the manifest weight of the evidence does not show that the proposed landfill is designed, located, and proposed to be operated so as to protect public health, safety, and welfare. *See* 415 ILCS 5/39.2(a)(ii) (2000) *as amended* by P.A. 92-0574, eff. June 26, 2002. Additionally, the County argues that the City lacked jurisdiction over Town & Country's application.

For the reasons set forth below, the Board accepts all three petitions and consolidates them for hearing. The Board addresses procedural issues before turning to the petitions.

PROCEDURAL ISSUES

Concurrent with his petition for review of the City's decision, Sandberg requested that the Board waive the filing fee. The Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2000)) states that "[a]ny person who files a petition to contest a decision of the . . . governing body of the municipality shall pay a filing fee." 415 ILCS 5/40.1(c) (2000 *as amended* by P.A. 92-0574, eff. June 26, 2002). The Act requires a \$75 filing fee to contest a local siting decision. *See* 415 ILCS 5/7.5 (2000). The Board cannot waive the mandatory filing fee and consequently denies Sandberg's request for waiver.

Also, the Board notes that Sandberg is the only named petitioner in docket PCB 03-33. Seven other citizens signed Sandberg's petition; however, those citizens are not parties to this siting appeal. The remaining signatories may participate in this proceeding through public comment and any other means prescribed in the Board's procedural rules. *See* 35 Ill. Adm. Code 107.404.

Finally, nothing in Sandberg's petition indicates that he is an attorney, yet he refers to himself as the "[c]ontact person" for the signatories. Sandberg Petition at 2. To be clear, because Sandberg is not an attorney, he is allowed to represent only himself. Under Illinois law, an individual who is not an attorney, may not represent any other individuals or entities before the Board. *See* 35 Ill. Adm. Code 101.400(a); *see also* Sierra Club v. City of Wood River, PCB 98-43, slip op. at 2 (Oct. 2, 1997).

THIRD-PARTY APPEALS

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002) allows certain third parties to appeal a local government decision granting approval to site a pollution control facility. Third parties who participated in the local government's public hearing and who are so located as to be affected by the proposed facility may appeal the siting decision to the Board. 415 ILCS 5/40.1(b) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 107.200(b). The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government's siting decision. 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. 415 ILCS 5/40.1(b) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party's petition is "duplicative or frivolous," the Board will hear the petition. 415 ILCS 5/40.1(b) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 107.200(b).

All three petitioners state that they appeared and participated in the City's public hearing. The petitioners specify the grounds for the appeal and include a copy of the City's siting decision. Each petition meets the content requirements of 35 Ill. Adm. Code 107.208. In addition, the County filed its petition on September 20, 2002, while Sandberg and Waste Management filed their petitions on September 23, 2002. Therefore, each petitioner filed its petition within 35 days after the City's August 19, 2002 decision.

HEARING AND DECISION DEADLINE

An action before the Board is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is "a request for relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* No evidence before the Board indicates that any of the three actions are duplicative or frivolous. The Board accepts the third-party petitions for hearing.

On its own motion, the Board consolidates all three appeals for hearing. Each petition involves the same burden of proof and addresses common issues and respondents. Thus, for reasons of administrative economy, consolidation is appropriate. *See Sierra Club v. Will County Bd.*, PCB 99-136, 99-139, 99-140, 99-141 (consol.), slip op. at 3 (Apr. 15, 1999).

Petitioners have the burden of proof. 415 ILCS 5/40.1(b) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002; *see also* 35 Ill. Adm. Code 107.506. The record before the City will be the exclusive basis for all hearings except when considering issues of fundamental fairness or jurisdiction. 415 ILCS 5/40.1(b) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002), which only Town & Country may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Town & Country "may deem the site location approved." 415 ILCS 5/40.1(a) (2000) *as amended by* P.A.

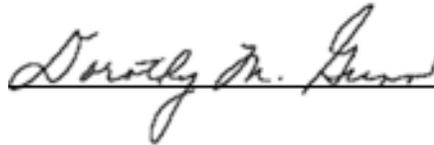
92-0574, eff. June 26, 2003. Currently, the decision deadline is January 18, 2003, for the County's petition (the 120th day after September 20, 2002) and January 21, 2003, for Sandberg's and Waste Management's petitions (the 120th day after September 23, 2003). *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before either decision deadline is currently scheduled for January 9, 2003.

THE CITY'S RECORD

The City must file the entire record of its proceedings within 21 days after the date of this order. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. Because Sandberg is an individual citizen, he is "exempt from paying the costs of preparing and certifying the record." 415 ILCS 5/39.2(n) (2000); 35 Ill. Adm. Code 107.306. However, the County and Waste Management must pay to the City the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 107.306.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 3, 2002, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board