

ILLINOIS POLLUTION CONTROL BOARD  
November 7, 2002

LANDFILL 33, LTD., )  
Petitioner, )  
 )  
v. ) PCB 03-43  
 ) (Third-Party Pollution Control Facility  
EFFINGHAM COUNTY BOARD and ) Siting Appeal  
SUTTER SANITATION SERVICES, )  
 )  
Respondents. )

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STOCK & CO., )  
Petitioner, )  
 )  
v. ) PCB 03-52  
 ) (Third-Party Pollution Control Facility  
EFFINGHAM COUNTY BOARD and ) Siting Appeal  
SUTTER SANITATION SERVICES, ) (Consolidated)  
 )  
Respondents. )

ORDER OF THE BOARD (by T.E. Johnson):

On October 10, 2002, Landfill 33, Ltd. (Landfill 33) filed a petition requesting the Board to review a September 19, 2002 decision of Effingham County Board (County Board) that granted Sutter Sanitation Services' (Sutter) application to site a pollution control facility (a solid waste transfer station) in an unincorporated area of Effingham County. On October 21, 2002, Stock & Co. (Stock) filed a petition requesting the Board review the same County Board decision, and Landfill 33 filed an amended petition.

Landfill 33's amended petition was filed as a result of an October 17, 2002 Board order finding that its initial petition did not meet the content requirements of 35 Ill. Adm. Code 107.208 because it failed to state that Landfill 33 is so located as to be affected by the proposed facility.

Landfill 33 and Stock appeal on common grounds. Both petitioners argue that the procedures the County Board used to reach its siting decision were fundamentally unfair, and that its findings on several statutory siting criteria were not supported by the manifest weight of the evidence. Each petitioner contends, for example, that Sutter's decision that the proposed facility is necessary to accommodate the waste needs of the intended service area; is designed,

located, and proposed to be operated so as to protect public health, safety, and welfare; has an operational plan that will minimize the danger from fire, spills, or other operational accidents to the surrounding area; or is consistent with the solid waste management plan of the county was against the manifest weight of the evidence. *See* 415 ILCS 5/39.2(a)(i),(ii)(v),(viii) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. Additionally, Stock argues that the decision the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effects on the value of the surrounding property is against the manifest weight of the evidence. *See* 415 ILCS 5/39.2(a)(iii) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002.

For the reasons set forth below, the Board accepts Stock's petition and Landfill 33's amended petition and consolidates them for hearing. The Board addresses procedural issues before turning to the petitions.

### **THIRD-PARTY APPEALS**

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2000), *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), *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), *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), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 107.200(b).

Both petitioners state that they appeared and participated in the County Board's public hearing. The petitioners specify the grounds for the appeal and include a copy of the siting decision. Each petition meets the content requirements of 35 Ill. Adm. Code 107.208. The petitioners each filed its petition on October 21, 2002. Therefore, each petitioner filed its petition within 35 days after the September 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 either of the actions are duplicative or frivolous. The Board accepts the third-party petitions for hearing.

On its own motion, the Board consolidates the two 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).

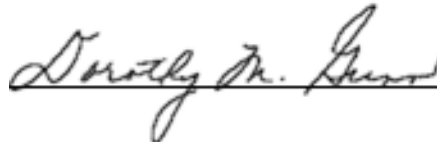
Petitioners have the burden of proof. 415 ILCS 5/40.1(b) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; *see also* 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before the County Board. 415 ILCS 5/40.1(b) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002), which only Sutter 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, Sutter “may deem the site location approved.” 415 ILCS 5/40.1(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. Currently, the decision deadline is February 18, 2003, for both petitions (the 120th day after October 21, 2002). *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for February 6, 2003.

### **THE COUNTY BOARD’S RECORD**

The County Board 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. Neither petitioner is an individual citizen or citizen’s group pursuant and must pay to the County Board the cost of preparing and certifying the record. *See* 415 ILCS 5/39.2(n) (2000), *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 November 7, 2002, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board