

## **In Disjointed Opinion, IL Appellate Court Affirms Grant of Petition to Delist Residue as Hazardous Waste**

By: Dave Scriven-Young, Attorney at Peckar & Abramson, P.C.

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The Appellate Court of Illinois, Third District, recently issued an opinion in *Sierra Club v. Illinois Pollution Control Board, Case No. 3-09-0120*, which concerned Peoria Disposal Company's ("PDC") permit to operate a waste stabilization facility near Peoria, Illinois, for the storage and treatment of hazardous and nonhazardous waste. PDC filed a petition with the Illinois Pollution Control Board to delist residue resulting from the treatment of electric arc furnace dust ("EAFD") as a hazardous waste for disposal purposes, after the EAFD is treated and stabilized.

The Pollution Control Board issued an order granting PDC's petition, subject to several conditions. Two groups, Sierra Club and Peoria Families Against Toxic Waste, filed an appeal seeking reversal of the Board's order, arguing that the Board erred in (1) failing to consider the factors set forth in the relevant statute, (2) not requiring PDC to address future permit modifications; (3) finding that local citing approval was not required; and (4) not requiring reopener language. PDC and the Board argued that the opposition groups did not have standing to appeal the Board's order.

Each appellate court justice on the three-justice panel came to a different conclusion concerning this appeal:

(1) Justice Lytton (delivering the "opinion of the court") found that the opposition groups had standing because they were persons "adversely affected or threatened" by the delisting. However, Justice Lytton affirmed the Board's order on the merits of the case, finding that the Board properly granted PDC's petition.

(2) Justice Carter specially concurred in the judgment, reasoning that the opposition groups did not have standing to bring the appeal.

(3) Justice Wright concurred in part and dissented in part, reasoning that the opposition groups did have standing, but concluding that the Board's decision was arbitrary and capricious because the Board did not make required factual findings.

The opinions of Justices Lytton and Carter combined to dismiss the appeal. However, it will be interesting to see what will happen with the standing issue if this case gets decided by the Illinois Supreme Court.

Stay tuned to the Illinois Environmental Law Blog for more news and developments.