2012 IL App (4th) 120174-U

NOS. 4-12-0174, 4-12-0175, 4-12-0176, 4-12-0177, 4-12-0178, 4-12-0179, 4-12-0180, 4-12-0181, 4-12-0182, 4-12-0183, 4-12-0184, 4-12-0185, 4-12-0186, 4-12-0187, 4-12-0188, 4-12-0189, 4-12-0190, 4-12-0191, 4-12-0192, 4-12-0193, 4-12-0194, 4-12-0195, 4-12-0196, 4-12-0197, 4-12-0198, 4-12-0199, 4-12-0200, 4-12-0201 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 10, 2012
Carla Bender
4th District Appellate
Court, IL

THE BOARD OF EDUCATION OF ROXANA COMMUNITY UNIT SCHOOL DISTRICT NO. 1, Petitioner,	)	Direct Appeal of Order of the Illinois Pollution Control Board
v.	)	PCB Nos. 12-039
THE POLLUTION CONTROL BOARD, THE ENVIRONMENTAL PROTECTION AGENCY, and WRB REFINING, LLC, Respondents.	)	12-040
	)	12-065
	)	12-066
	)	12-067
	)	12-069
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	)	12-076
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	)	12-078
	)	12-079
	)	12-080
	)	12-081
	)	12-082

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justice Turner concurred in the judgment.
Justice Appleton dissented.

ORDER

¶ 1 *Held*: Because the appellate court concluded that it lacked jurisdiction, it dismissed the petitioner's claim that the Pollution Control Board erred by denying its petitions for leave to intervene in 28 separate certification proceedings pertaining to pollution control facilities.

¶ 2 In October 2010, respondent, WRB Refining, LLC (WRB), submitted 28 separate applications to the Illinois Environmental Protection Agency (Agency), seeking certification of certain systems, methods, devices, and facilities as "pollution control facilities" as defined by section 11-10 of the Property Tax Code (Code) (35 ILCS 200/11-10 (West 2010)). The Illinois Pollution Control Board (Board) later (1) denied 28 petitions for leave to intervene in those certification proceedings that were submitted by petitioner, the Board of Education of Roxana Community School District No. 1 (District), and (2) granted WRB's 28 certification requests, based, in part, on the Agency's favorable recommendation.

¶ 3 The District appeals, arguing that the Board erred by denying it the opportunity to intervene. Because we conclude that this court lacks jurisdiction, we dismiss.

¶ 4 I. BACKGROUND

¶ 5 WRB owns the Wood River Petroleum Refinery, which is located in Madison County, Illinois (County). In October 2010, as a result of substantial renovations to its refinery, WRB submitted 28 separate applications to the Agency, seeking certification of certain systems, methods, devices, and facilities as "pollution control facilities" as defined by section 11-10 of the Code (35 ILCS 200/11-10 (West 2010)). If certified, the Illinois Department of Revenue would

(1) supplant the County as the taxing authority and (2) calculate a preferential tax assessment against the 28 separate entities at 33 1/3 percent of the fair cash value of the economic productivity to WRB. 35 ILCS 200/11-5, 11-15, 11-20 (West 2010).

¶ 6 In August 2011, the Agency recommended that the Board approve two of WRB's certification requests pursuant to section 11-25 of the Code (35 ILCS 200/11-25 (West 2010)). (Insofar as the record shows, the Agency had yet to make its recommendations as to the remaining 26 certification requests.) The following month, the Board accepted the Agency's recommendations and certified the two entities at issue as pollution control facilities. Shortly thereafter, the District filed separate petitions for leave to intervene, asserting that (1) WRB's two requests failed to satisfy the certification requirements and (2) the Board's certifications would adversely affect the District by depriving it of additional tax revenues. In October 2011, the Board denied the District's petitions, concluding that they were moot because the certifications had been granted, which foreclosed any further consideration.

¶ 7 In November 2011, the District filed a motion, requesting that the Board reconsider its denials. Later that same month, the Agency recommended that the Board approve WRB's remaining 26 requests for certification as pollution control facilities. In December 2011, the District filed 26 separate petitions for leave to intervene, asserting the same arguments it posited in its previous petitions. The Agency and WRB later filed separate responses, each essentially arguing that neither the statutory nor regulatory framework granted the District authority to intervene in certification proceedings concerning pollution control facilities.

¶ 8 On January 4, 2012, the District filed a joint reply in all 28 cases, alleging that (1) it had a right to intervene; (2) the Board had authority to grant the interventions; (3) its petitions

for leave to intervene in the original two cases were not moot; (4) although it has demonstrated several reasons why certification was inappropriate, a hearing would provide "more meaningful input than a briefing"; and (5) public policy favors a "full and meaningful" review of whether the 28 entities qualify as pollution control facilities. Approximately two weeks later, the Board denied the District's motion to reconsider its September 2011 approval of WRB's certification requests. The Board also rejected the District's attempts to intervene based on the following rationale:

> "Neither the [Environmental Protection] Act [(Act)] nor the *** Code provides for intervention in the Board's tax certification proceedings. The Act does not give an appeal for decisions of the Board under the *** Code. Appeals are restricted under the *** Code at 35 ILCS 200/11-60 [West 2010)] to applicants or holders 'aggrieved by the issuance' or other action taken by the Board in tax certification. The Board accordingly reads the *** Code as creating a circumscribed proceeding with limited appeal rights."

¶ 9 In February 2012, the District filed a petition for review, claiming that it could appeal the Board's decisions directly to the appellate court under section 41(a) of the Act (415 ILCS 5/41(a) (West 2010)).

¶ 10 This appeal followed. (In March 2012, this court granted the District's motion to consolidate the 28 cases at issue.)

¶ 11 II. JURISDICTION

¶ 12 We first address the Board's argument that this court lacks jurisdiction to consider

the District's direct appeal. See *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 9, 968 N.E.2d 1178, 1181 (before addressing the merits of an appeal, the appellate court must determine whether it has jurisdiction).

¶ 13 As previously noted, the District contends that this court has jurisdiction to decide the merits of its claims under section 41(a) of the Act. In response, the Board contends that judicial review of the its decisions regarding certification of pollution control facilities is controlled by section 11-60 of the Code, which does not provide this court jurisdiction. We agree with the Board.

¶ 14 A. Judicial Review Under the Act

¶ 15 Section 41(a) of the Act, provides, as follows:

> " Judicial Review.
>
> (a) Any party to a Board hearing, any person who filed a complaint on which a hearing was denied, any person who has been denied a variance or permit under this Act, any party adversely affected by a final order or determination of the Board, and any person who participated in the public comment process under subsection (8) of Section 39.5 of this Act may obtain judicial review, by filing a petition for review within 35 days from the date that a copy of the order or other final action sought to be reviewed was served upon the party affected by the order or other final Board action complained of, under the provisions of the Administrative Review Law, as amended and the rules adopted pursuant

thereto, except that review shall be afforded directly in the Appellate Court for the District in which the cause of action arose and not in the Circuit Court." 415 ILCS 5/41(a) (West 2010).

¶ 16 B. Judicial Review Under the Code

¶ 17 Section 11-60 of the Code, provides, as follows:

"Judicial review; pollution control and low sulfur devices. Any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the finding and order of the Pollution Control Board, under the Administrative Review Law." 35 ILCS 200/11-60 (West 2010).

¶ 18 C. Judicial Review in this Case

¶ 19 As we have previously outlined, the underlying controversy in this case concerns the District's claim that the Board erred by denying it the opportunity to intervene in 28 separate proceedings that sought to certify specific entities as pollution control facilities under the Code. We need not, however, concern ourselves with the propriety of the Board's determination because, at this juncture, our primary focus is whether the General Assembly granted this court the authority to directly review such a determination.

¶ 20 The plain language of the aforementioned statutory provisions pertains to judicial review of orders issued by the Board. This common theme, coupled with the mandate that any judicial review occur in accordance with the Administrative Review Law, is where the similarity

between the two provisions end. See *Thompson v. Gordon*, 356 Ill. App. 3d 447, 455, 827 N.E.2d 983, 991 (2005) (the purpose of administrative review is to ensure the agency acted within the scope of its judicial bounds as defined by law).

¶ 21 The District claims that this court had jurisdiction under section 41(a) of the Act, which allows, in pertinent part, "any party adversely affected by a final order or determination of the Board" to bypass the circuit court and appeal that determination directly to the appellate court. 415 ILCS 5/41(a) (West 2010). In support of its position, the District relies, in part, on this court's decision in *Citizen Against the Randolph Landfill (CARL) v. Pollution Control Board*, 178 Ill. App. 3d 686, 533 N.E.2d 401 (1988).

¶ 22 In *Citizen Against the Randolph Landfill*, 178 Ill. App. 3d at 688, 533 N.E.2d at 403, this court addressed, in pertinent part, "whether a group of concerned citizens [(CARL)] had standing to intervene in a landfill siting case after a decision of the [Board] in effect reversed a county board decision which denied a request for landfill site approval." In explaining that this court had jurisdiction to review such a claim, we stated, as follows:

> "The fact the [Board] may have had no authority to allow CARL to intervene does not in itself support a holding this court has no jurisdiction to consider CARL's appeal. Generally speaking, when one improperly seeks to initiate an action before an administrative board, such as by requesting review of a decision which the board has no authority to review, the board at least has jurisdiction to enter a final order dismissing the action, and the courts have jurisdiction to review such an order. A decision that

> the courts have no jurisdiction to review final administrative agency orders entered with respect to petitions for leave to intervene in cases where the administrative agencies have no authority to allow the appellant to intervene would have the unwarranted effect of allowing such orders to stand in cases where the administrative agency erroneously allowed the appellant to intervene." *Citizens Against the Randolph Landfill*, 178 Ill. App. 3d at 692-93, 533 N.E.2d at 406.

¶ 23 We reaffirm our holding in *Citizen Against the Randolph Landfill* and note that our pronouncement was made in the context of a site-approval proceeding under the Act and not a pollution-control-facilities-certification proceeding under the Code. In this regard, section 11-60 of the Code affords "any applicant" the ability to appeal the Board's decision "under the Administrative Review Law," which means that an applicant—such as WRB—could appeal a ruling of the Board but such an appeal must originate in the circuit court and not the appellate court. See 735 ILCS 5/3-104 (West 2010) (jurisdiction to review final administrative decisions is vested in the circuit courts unless expressly stated otherwise); see also *Sola v. Roselle Police Pension Board*, 2012 IL App (2d) 100608, ¶ 19, 964 N.E.2d 175, 180 (quoting *Karfs v. City of Belleville*, 329 Ill. App. 3d 1198, 1205, 770 N.E.2d 256, 261 (2002)) (" 'Where a statute provides that the administrative decisions of an agency are subject to the Administrative Review Law, that statute is the exclusive method for the review of an administrative agency's final decision.' "). Thus, despite the District's reliance, *Citizen Against the Randolph Landfill* does not support the District's argument that this court has jurisdiction to directly review the Board's determination

with regard to certification of pollution control facilities.

¶ 24 We also find unpersuasive the District's reliance on *Reed-Custer Community Unit School District No. 255-U v. Pollution Control Board*, 232 Ill. App. 3d 571, 597 N.E.2d 802 (1992), as that case did not address whether the appellate court has jurisdiction to directly review the Board's determination with regard to certification of pollution control facilities under section 41(a) of the Act.

¶ 25 If this court were to accept the District's position that, in this case, we have jurisdiction under section 41(a) of the Act, we would be essentially disregarding the specific and narrow guidance provided by section 11-60 of the Code. In other words, permitting a party adversely affected by a final order of the Board in a pollution-control-facilities proceeding to file a direct appeal to this court would effectively render meaningless section 11-60 of the Code, which only grants applicants appeal rights under the Administrative Review Law. Such an interpretation would be contrary to the long held principle that the appellate court must construe a statute as a whole so that no part is rendered meaningless or superfluous. See *1940 LLC v. County of McHenry*, 2012 IL App (2d) 110753, ¶ 6, 971 N.E.2d 629, 631 (the appellate court construes a statute as a whole so that no part is rendered meaningless or superfluous). Moreover, such an interpretation would produce absurd results in that it could conceivably allow, at a minimum, applicants seeking a pollution-control-facilities certification to engage in forum shopping any potential appeal in either the circuit court or appellate court.

¶ 26 We find further support for our conclusion that we lack jurisdiction to consider the merits of the District's appeal in the well-settled axiom of statutory interpretation that the general must yield to the specific. See *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*,

362 Ill. App. 3d 652, 661, 840 N.E.2d 704, 713 (2005) ("If a general statutory provision and a specific statutory provision relate to the same subject, the specific provision prevails".). Here, the parties do not dispute that certification of pollution control facilities is controlled by the Code. Thus, even if the general judicial review provisions of the Act pertained to the certification of pollution control facilities, it must cede to the specific and narrow judicial review guidance contained in section 11-60 of the Code, which, by its plain language, does not grant this court jurisdiction to consider the Board's pollution-control-facility determinations on direct appeal. Accordingly, we must dismiss the District's appeal.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we dismiss this appeal for lack of jurisdiction.

¶ 29 Dismissed.

¶ 30 JUSTICE APPLETON, dissenting.

¶ 31 I respectfully dissent from the majority's decision because, in my view, section 41(a) of the Act (415 ILCS 5/41(a) (West 2010)) does give the District the right to appeal from the Board's denial of its petitions for leave to intervene. According to section 41(a), "any person who filed a complaint on which a hearing was denied" has the right to judicial review in the appellate court. *Id.*

¶ 32 We held, in *Citizens Against the Randolph Landfill*, 178 Ill. App. 3d at 692, 533 N.E.2d at 406, that filing with the Board a petition for leave to intervene "amounted to *** filing a complaint with the [Board]" and that, when the Board denied leave to intervene, it in effect denied a hearing on a complaint, making the would-be intervenor a "person who filed a complaint on which a hearing was denied," to quote section 41(a) (Ill. Rev. Stat. 1985, ch. 111 1/2, ¶ 1041(a)).

¶ 33 The majority does not gainsay that holding in *Citizens Against the Randolph Landfill*, and because all we did in that case was give the language in section 41(a) its ordinary meaning, I do not see how the holding could be gainsaid or how *stare decisis* could justifiably be overridden. Unless a statute specially defines a word, we must give the word its ordinary meaning. *Wauconda Fire Protection District v. Stonewall Orchards, LLP*, 214 Ill. 2d 417, 430, 828 N.E.2d 216, 224 (2005); *Wahlman v. C. Becker Milling Co.*, 279 Ill. 612, 622, 117 N.E. 140, 144 (1917). The Act does not specially define "complaint," and elsewhere in the Act, the legislature demonstrates an ability to say "complaints charging violations of this Act" (415 ILCS 5/5(d) (West 2010)) when the legislature means such complaints in particular. The ordinary and popularly understood meaning of "complaint" is "a statement that a situation is unsatisfactory or

unacceptable." The New Oxford American Dictionary 347 (2d ed. 2005). In this case, the District filed statements with the Board expressing dissatisfaction with the certification of WRB's systems, methods, devices, and facilities as "pollution control facilities" within the meaning of section 11-10 of the Code (35 ILCS 200/11-10 (West 2010)). These statements, in the form of petitions for leave to intervene, were "complaints," and when the Board denied leave to intervene, the District became a "person who filed a complaint on which a hearing was denied[.]" 415 ILCS 5/41(a) (West 2010).

¶ 34 But is the District a "person" within the meaning of section 41(a)? Whether the term "person," in a particular statute, includes local governmental entities is a question of legislative intent. *Office of Lake County State's Attorney v. Human Rights Comm'n*, 235 Ill. App. 3d 1036, 1042, 601 N.E.2d 1294, 1298 (1992). See also *Mueller v. Community Consolidated School District 54*, 287 Ill. App. 3d 337, 344, 678 N.E.2d 660, 665 (1997) ("Like a corporation, the defendant School District is an artificial person or legal entity created by or under the authority of the laws of this state ***."). Because local governmental entities have just as much reason to be concerned about pollution or real-estate taxes as private persons, it is reasonable to infer that the word "person," in section 41(a) of the Act, includes local governmental entities.

¶ 35 Granted, the certification of pollution-control facilities is controlled by the Code, whereas section 41(a) is part of the Act. Nevertheless, certifying a facility as a "pollution control facility" within the meaning of section 11-10 of the Code (35 ILCS 200/11-10 (West 2010)) when the facility really does not deserve that certification debases the meaning of "pollution control facility" and consequently undercuts some of the legislative purposes of the Act: "to restore, protect and enhance the quality of the environment, and to assure that adverse effects

upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b) (West 2010). The proper, meritorious certification of pollution control facilities pursuant to the Code works in tandem with the Act to achieve the legislative purposes, in section 2(b), of protecting the environment and ensuring that polluters bear the cost of their pollution instead of passing it on to others. Thus, the District's complaints, its petitions for leave to intervene, are not just about taxes. Such complaints can protect both the integrity of this state's system of taxation and the integrity of its system of environmental protection. Such complaints concern both the Code and the Act.

¶ 36 Given this intersection of the Code and the Act, I see no reason to interpret "complaint," in section 41(a), as limited to complaints charging violations of the Act—a limitation having no basis in the text of section 41(a), which refers merely to "complaints." See *In re D.D.*, 196 Ill. 2d 405, 419, 752 N.E.2d 1112, 1120 (2001) ("When the language of a statute is plain and unambiguous, courts may not read in exceptions, limitations, or other conditions."); *In re Marriage of Golden*, 2012 IL App (2d) 120513, ¶ 30, 974 N.E.2d 927, 936 ("We must enforce the statute as written and not read into it exceptions, limitations, or conditions that the language does not support."). I note that section 41(a) uses other language that, on its face, is not confined to proceedings under the Act, *e.g.*, "[a]ny party to a Board hearing" and "a final order or determination of the Board," strengthening the inference that the legislature used such general language by design. Readers are entitled to take the words of section 41(a) at face value. We ought to follow *Citizens Against the Randolph Landfill* by reviewing the Board's denial of the District's "complaints," its petitions for leave to intervene.

¶ 37 Our exercise of jurisdiction in this type of case would not be unprecedented. In

Reed-Custer, 232 Ill. App. 3d at 572, 597 N.E.2d at 803, the Board denied a petition by a school district to revoke the certification of a cooling pond as a " 'pollution control facility' " for purposes of real-estate taxation. The school district appealed directly to the appellate court pursuant to section 41 of the Act (Ill. Rev. Stat. 1987, ch. 111 1/2, ¶ 1041), which "permitt[ed] 'any party adversely affected by a final order or determination of the Board [to] obtain judicial review *** within 35 days after entry of the order.' " *Reed-Custer*, 232 Ill. App. 3d at 577, 597 N.E.2d at 806. (This language now is contained in section 41(a) (415 ILCS 5/41(a) (West 2010)).) The First District *sua sponte* examined its own jurisdiction and found it had jurisdiction under section 41, considering that the school district filed its petition for review within 35 days after the Board issued its final order. *Reed-Custer*, 232 Ill. App. 3d at 578 n.1, 597 N.E.2d at 806 n1. So, I disagree with the majority that *Reed-Custer* "did not address whether the appellate court has jurisdiction to directly review the Board's determination with regard to certification of pollution control facilities under section 41(a) of the Act." *Supra* ¶ 24. Meeting the 35-day deadline in section 41 would have been superfluous unless section 41 conferred jurisdiction on the appellate court in the event that the school district met the deadline. And we should assume that the appellate court conscientiously performed its *sua sponte* duty of examining its own jurisdiction in *Reed-Custer*, just as the appellate court conscientiously performed that duty in *Citizens Against the Randolph Landfill*. See *Johnson v. Northwestern Memorial Hospital*, 74 Ill. App. 3d 695, 697, 393 N.E.2d 712, 713 (1979) ("It is the duty of this court to consider whether it has jurisdiction to hear an appeal even though this issue was not raised by the parties.").

¶ 38 The majority does not disagree with *Citizens Against the Randolph Landfill*. Instead, the majority finds that case to be distinguishable because it was "a site-approval

proceeding under the Act and not a pollution-control-facilities-certification proceeding under the Code" (*Supra* ¶ 23) and because section 41(a) of the Act, being "general," must "cede" to the more "specific and narrow judicial review guidance" of section 11-60 of the Code (*Supra* ¶ 26).

¶ 39 It is true that if a general statute and a specific statute address the same subject matter and are in irreconcilable conflict, the general statute must yield to the specific statute unless the legislature expressed an intent to make the general statute controlling. *Stone v. Department of Employment Security Board of Review*, 151 Ill. 2d 257, 266, 602 N.E.2d 808, 811-12 (1992). The general statute yields, however, only to the extent necessary to give effect to the specific statute. If the general statute and the specific statute are only partly irreconcilable, the specific statute merely carves out an exception to the general statute instead of rendering the general statute inoperative. "It is a well settled rule of construction that where there are two provisions, one of which is general and designed to apply to cases generally and another is particular and relates only to one subject, the particular provision must prevail *and must be treated as an exception to the general provision*." (Emphasis added and internal quotation marks omitted.) *People ex rel. Fore v. Missouri Pacific R.R. Co.*, 342 Ill. 226, 228, 173 N.E. 816, 817 (1930), (quoting *Natural Products Co. v. Du Page County*, 314 Ill. 74, 80-81, 145 N.E. 298, 300 (1924)); *People ex rel. Herdman v. Rose*, 166 Ill. 422, 432-33, 47 N.E. 64, 66-67 (1897); 2B Norman J. Singer & J.D. Shambie Singer, Statutes & Statutory Construction § 51:5, at 296 (7th ed. 2007) ("Many jurisdictions understand the relationship between general and special acts in terms of an exception, or qualification.").

¶ 40 We must apply this principle of statutory construction to section 41(a) of the Act (415 ILCS 5/41(a) (West 2010)) and section 11-60 of the Code (35 ILCS 200/11-60 (West

2010)). On the one hand, section 41(a) provides that "[a]ny party to a Board hearing" or "any party adversely affected by a final order or determination of the Board" may "petition for review" in the appellate court. 415 ILCS 5/41(a) (West 2010). These "parties," so described, would include—but would not be entirely composed of—applicants for pollution-control certificates and holders of such certificates that the Board has revoked. Section 11-60 (35 ILCS 200/11-60 (West 2010)) provides, on the other hand, that these applicants and holders may appeal under the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2010)), which would entail filing a complaint in circuit court, not in the appellate court (735 ILCS 5/3-103, 3-104 (West 2010)). Hence, section 41(a) of the Act and section 11-60 of the Code are partly irreconcilable. The only consequence is that the specific statute, section 11-60, forms an exception to the general statute, section 41(a): an exception for applicants and holders. See *People ex rel. Fore*, 342 Ill. at 228, 173 N.E. at 817. We otherwise give section 41(a) its full effect.

¶ 41 Thus, I disagree with the majority that "accept[ing] the District's position that *** we have jurisdiction under section 41(a) of the Act" would "produce absurd results in that it could conceivably allow, at a minimum, applicants seeking a pollution-control-facilities certification to engage in forum shopping any potential appeal in either circuit court or appellate court." *Supra* ¶ 25 On the contrary, pursuant to the exception specifically applicable to them (35 ILCS 200/11-60 (West 2010)), applicants and holders would have to seek judicial review in circuit court, whereas others, pursuant to the more general statute (415 ILCS 5/41(a) (West 2010)), would have to seek judicial review in the appellate court. The plain, unambiguous language in *both* statutes thereby would be given effect. See *Lincoln Towers Insurance Agency v. Boozell*, 291 Ill. App. 3d 965, 972, 684 N.E.2d 900, 906 (1997) ("[W]e are required to give

effect to all of the language of any statute ***.").

¶ 42 By being faithful to the statutory language "any person who filed a complaint on which a hearing was denied" (415 ILCS 5/41(a) (West 2010))—and resisting the temptation to read into that language any qualification that is unexpressed—we would avoid an absurd result that the legislature surely never intended. See *People v. Hanna*, 207 Ill. 2d 486, 498, 800 N.E.2d 1201, 1208 (2003) ("The principle that statutory language should not be construed to produce an absurd result is a deeply rooted one."). We would avoid attributing to the legislature an intent to deny judicial review to a local governmental entity when the Board's allegedly unjustified certification of a facility as a pollution-control facility deprives the local governmental entity of a substantial portion of its tax base.

¶ 43 Section 11-10 (35 ILCS 200/11-10 (West 2010)) defines "pollution control facilit[y]" as "any system, method, construction, device or appliance appurtenant thereto, or any portion of any building or equipment, that is designed, constructed, installed or operated for the primary purpose of *** eliminating, preventing, or reducing air or water pollution[.]" I question whether the legislature intended this provision to apply to a $1.5 billion *new* refinery that is designed to produce gasoline with lower particulate emissions. It would seem that the economic decision to replace an old refinery with a new one is driven not by an altruistic concern for the environment but, rather, by the need to maintain viability in the marketplace. In other words, the refinery had to be replaced for business reasons, not for the altruistic goal of environmental quality.

¶ 44 According to the majority's interpretation, however, the District does not even get to make that argument to us. Only an applicant or holder may obtain judicial review. No other

voices may be heard. No other opinions may be accounted for. Units of local government, which may be starved of the resources necessary to accomplish their basic functions, are barred from any input and, more importantly, are deprived of any right to voice concerns about the decimation of their tax base. This interpretation of section 41(a) of the Act and section 11-60 of the Code strikes me as implausible and Kafkaesque. Actually, it is worse than Kafkaesque because at least K.'s hope is kept alive by the tantalizing messages he receives, now and then, from the inscrutable bureaucracy in the Castle. In this case, by contrast, the District simply is told to go away and nurse its wounds in silence.

¶ 45 We should not turn the District away. Instead, on the authority of section 41(a), we should reverse the Board's decision and remand this case with directions to (1) grant the District's petitions for leave to intervene and (2) conduct further proceedings on the merits. See *Citizens Against the Randolph County Landfill*, 178 Ill. App. 3d at 697, 533 N.E.2d at 409.