

ILLINOIS POLLUTION CONTROL BOARD

January 22, 2004

BYRON SANDBERG,)	
)	
Petitioner,)	
)	
v.	)	PCB 04-33
	)	(Third-Party Pollution Control Facility
	)	Siting Appeal)
THE CITY OF KANKAKEE, ILLINOIS)	
CITY COUNCIL, TOWN AND COUNTRY)	
UTILITIES, INC., and KANKAKEE)	
REGIONAL LANDFILL, L.L.C.,)	
)	
Respondents.)	

WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Petitioner,)	
)	
v.	)	PCB 04-34
	)	(Third-Party Pollution Control Facility
	)	Siting Appeal)
THE CITY OF KANKAKEE, ILLINOIS)	
CITY COUNCIL, TOWN AND COUNTRY)	
UTILITIES, INC., and KANKAKEE)	
REGIONAL LANDFILL, L.L.C.,)	
)	
Respondents.)	

COUNTY OF KANKAKEE, ILLINOIS, and)	
EDWARD D. SMITH, KANKAKEE)	
COUNTY STATE'S ATTORNEY,)	
)	
Petitioners,)	
)	
v.	)	PCB 04-35
	)	(Third-Party Pollution Control Facility
	)	Siting Appeal)
	)	(Consolidated)
THE CITY OF KANKAKEE, ILLINOIS)	
CITY COUNCIL, TOWN AND COUNTRY)	
UTILITIES, INC., and KANKAKEE)	
REGIONAL LANDFILL, L.L.C.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by N.J. Melas):

Today's order addresses a statement of costs filed by the respondent, City of Kankakee (City), on December 9, 2003, and a response filed by petitioner, Waste Management of Illinois, Inc. (Waste Management), on December 15, 2003. The City replied on January 12, 2004. As discussed below, the Board orders petitioners Waste Management and the County of Kankakee, Illinois and Edward D. Smith, Kankakee County State's Attorney (County) to pay the costs the City incurred in preparing, certifying, and delivering the record to the Board, excluding the costs of preparing the original transcript of the local siting hearing and two extra copies of the transcript, by February 1, 2004.

Today the Board also addresses an outstanding matter in this proceeding, specifically, the City's October 23, 2003 motion to waive the necessity of filing approximately 1,700 pounds of rock core samples with the Board. The Board again defers ruling on the City's motion and orders the City to complete the record by February 1, 2004, by providing either: (1) citation to physical and quantitative descriptions of the rock core samples in the record; or (2) the actual rock core samples.

STATEMENT OF COSTS**The City's Request**

The City's statement of costs requests that the Board order petitioners, Waste Management and the County, to reimburse the City for preparing and certifying the record in these consolidated appeals. The City requests reimbursement for the cost of preparing the original transcripts of the public hearing, nine copies of the transcripts, the application and exhibits, binding, numbering the pages of the record, and delivery of the record to Chicago.

Waste Management's Response

Waste Management argues the costs of the original transcripts of the public hearing, nine copies of the transcripts, and delivery of the record to Chicago are not reimbursable to the City. Waste Management notes that Section 107.304(c) of the Board's procedural rules provides that only seven copies of the transcript and one original and nine copies of other documents must be filed. Waste Management asserts Section 107.304(c) does not require the original transcripts. Additionally, Waste Management argues that nothing in the Board rules requires the petitioner to reimburse the respondents for transportation or delivery costs of the record. Waste Management agrees that itself and the County may be required to pay the necessary and reasonable costs of preparing the record, including nine copies of the application and exhibits, seven copies of the transcripts, binding materials, and the cost of numbering pages.

The City's Reply

In reply, the City argues if this matter is appealed beyond the Board, the Illinois Appellate Court will require the City to file the original transcripts. Additionally, the City argues that the costs of transporting the record to Chicago is a reasonable cost and is reimbursable.

Board Analysis

As a preliminary matter, the Environmental Protection Act (Act) provides, and the parties agree, that petitioner Byron Sandberg need not reimburse the City for preparing and certifying the record to the Board. 415 ILCS 5/39.2(n); *see also* 35 Ill. Adm. Code 107.306. Individual citizens are exempt from paying these costs. County of Kankakee, et al. v. City of Kankakee, et al., PCB 03-31, 03-33, 03-35 (Oct. 3, 2002).

The Act and Board procedural rules provide that in any review proceeding of a local siting authority decision made pursuant to the Act, the petitioner must pay the costs of preparing and certifying the record on appeal. The purpose of Section 39.2(n) of the Act and Section 107.306 of the Board's procedural rules is to require the petitioner to reimburse the local siting authority for costs it would not otherwise incur but for the petitioner filing the appeal with the Board.

Section 39.2 of the Act provides that "the petitioner in the review proceeding shall pay to the county or municipality the cost of preparing and certifying the record of proceedings." 415 ILCS 5/39.2(n) (2002). Similarly, Section 107.306 of the Board's procedural rules provide that "the petitioner must pay the costs of preparing and certifying the record to the Board." 35 Ill. Adm. Code 107.306. Subpart C of the Board's procedural rules governing petitions to review pollution control facility siting decisions also explains what the record must contain, what the local siting authority must file with the Board, and how to prepare and certify the record. 35 Ill. Adm. Code 107.300 *et seq.* Specifically, Section 107.304(c) provides that the Board requires seven copies of the transcript and one original and nine copies of all other documents in the record. 35 Ill. Adm. Code 107.304(c).

The parties disagree about who must pay the costs of preparing the original transcripts of the public hearing. The Board finds the petitioners need not pay this fee. Fundamental fairness requires the local hearing transcript to be available to the public. American Bottom Conservancy, et al. v. Village of Fairmont City and Waste Management of Illinois, Inc., PCB 00-200, slip op. at 43 (Oct. 19, 2000); *citing* SPILL v. City of Madison, PCB 96-91 (Mar. 21, 1996). In addition, the Act provides that the local siting authority must have all documents pertaining to the proposed facility available for public inspection (415 ILCS 39.2(c)), and that the local siting authority may charge the applicant for reasonable and necessary costs incurred in the siting review process (415 ILCS 39.2(k)). The Board finds that the Act and Board precedent require the City to have the original transcripts available to the public during the local siting review process and that transcription of the local hearings may be a cost reimbursable by the applicant, Town & Country.

Waste Management argues the Board's procedural rules require that it reimburse the City for only seven, rather than nine, copies of the transcripts. The Board finds that the petitioners need not reimburse for the extra transcript copies. Preparation and certification of the record in accordance with the Act and Board's procedural rules does not include two extra copies of the transcripts.

Finally, Waste Management argues that it need not reimburse for record delivery costs to Chicago. Since the City would not otherwise incur these costs but for the petitioners' filing of these consolidated appeals, the petitioners must reimburse the City for these costs.

MOTION TO WAIVE NECESSITY OF FILING ROCK CORE SAMPLES

On October 23, 2003, the City filed a motion to waive the necessity of filing approximately 1,700 pounds of rock core samples, part of local siting review record, with the Board. On November 6, 2003, the Board deferred ruling on the motion until the City provided a citation to the Board's procedural rules from which it seeks a waiver, and citation to the record where the rock core samples are defined or described. To date, the City has not responded to the Board's November 6, 2003 order. Today the Board orders the City to provide the requested information by February 1, 2004. Failure to do so or file the entire record by the date directed by the Board may subject the City to sanctions in accordance with Section 101.800 of the Board's procedural rules. 35 Ill. Adm. Code 107.302; 35 Ill. Adm. Code 101.800.

SUMMARY

The Board orders petitioners Waste Management and the County to pay the costs of preparing seven copies of the transcript and one original and nine copies of all other documents in the record with the Board. The Board also orders Waste Management and the County to reimburse the City for binding and numbering the pages of the record on appeal, as well as for delivery of the record to the Board.

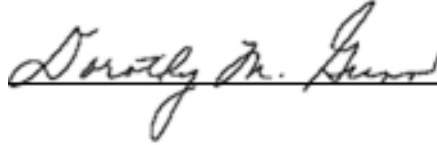
The sanction for failure to reimburse the City for preparing and certifying the record to the Board includes dismissal of this siting appeal. 415 ILCS 5/39.2(n); 735 ILCS 5/3-109. The Board orders the City to recalculate the statement of costs in accordance with this order and provide the new statement to petitioners Waste Management and the County, on or before January 27, 2004. The Board orders Waste Management and the County to pay the costs of preparing and certifying the record on appeal by February 1, 2004. The Board will impose the appropriate sanction for non-payment upon a motion by the City.

Finally, the Board orders the City to provide the Board with a citation to the Board's procedural rules from which it seeks a waiver, and citation to the record where the rock core samples are defined or described. Alternatively, the City may file the 1,700 pounds of rock core samples with the Board. Failure to complete the record by February 1, 2004, will subject the City to sanctions pursuant to Section 101.800 of the Board's procedural rules. 35 Ill. Adm. Code 101.800. The Board defers ruling on the motion at this time.

To avoid undue delay, the Board directs the Clerk to serve the parties with this order today via facsimile, in addition to providing the standard service by mail.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 22, 2004, 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