ILLINOIS POLLUTION CONTROL BOARD October 30, 1980

ALLIANCE FOR A SAFE ENVIRONMENT, a
citizens' association, the CITY OF
CHILLICOTHE, a municipal corporation,
and JAMES CURRIER, ALVA PULLEN,
RICHARD DIEFFENBACH, MICHAEL ALDRICH,
GEORGE VON BRAUNSCHWEIG, BETTY MENOLD
and TOM DAVIS,

Petitioners,

V.
PCB 80-184
AKRON LAND CORPORATION and the
ENVIRONMENTAL PROTECTION AGENCY,

ORDER OF THE BOARD (by D. Satchell):

On October 6, 1980 Alliance for a Safe Environment, the City of Chillicothe and seven individuals filed a petition to contest the issuance by the Environmental Protection Agency (Agency) of a development permit to Akron Land Corporation (Akron) for a hazardous waste disposal site. The petition was filed pursuant to Section 40(b) of the Environmental Protection Act (Act) (H.B. 453, effective January 1, 1980). There is a proposal before the Board to amend Procedural Rule 503(a) pursuant to Section 40(b) (R80-7, Notice of Proposed Rulemaking, Illinois Register, August 22, 1980, p. 85; Proposed Rule, Second Notice, Order of October 17, 1980.) The petition falls under the existing Rule 503(a). However, this was held invalid by the Illinois Supreme Court in County of Cook, et al. v. John Sexton Contractors, et al. (April 18, 1979) based on lack of statutory authorization for the rule.

Respondents.)

Section 40(b) requires that the Board, "hear the petition in accordance with the terms of subsection (a) of this section and its procedural rules governing denial appeals." In adopting this language the legislature has expressed a specific intent that the Board follow existing Rule 503(a) and Part V of the Procedural Rules.

Section 40(b) also provides: "The Agency and the permit applicant shall be named co-respondents." Petitioners have not named Akron as a respondent and have not joined the Agency at all. There is no indication that service has been made on Akron. Due process requires that they be afforded notice. Procedural Rule 502(a)(3) provides that the method of filing and service shall be in accordance with Procedural Rules 304 and 305.

Petitioners are ordered to amend the petition to name the Agency and Akron as respondents and to provide them with service as required by the Procedural Rules. This matter will be subject to dismissal unless an amended petition showing correction of the noted deficiencies is received within fourteen days of the date of this Order.

The Board has received a letter from an attorney representing Akron and a copy of a letter to the Agency from Petitioners' attorney. Both of these request advice on legal matters. Parties should forward copies of all correspondence directed to the Board to all other parties. Since this is the first Section 40(b) petition received by the Board all these represent novel questions of law. The parties may renew their requests by way of motion after proper joinder and service.

The Petitioners should be aware that there is an issue concerning application of the ninety day decision rule of Section 40(a). The Board construes Section 40 as giving Akron a right to decision within ninety days of filing of the petition (October 6, 1980) unless Akron waives this right. It is Petitioners' responsibility to ensure that a hearing is scheduled and a transcript provided the Board in advance of any decision date. On October 16, 1980 Akron filed objections to the petition. The Board will consider these issues after proper joinder.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 3012 day of order was adopted on the 3012 day of order was adopted.

Christan L. Moffett Clerk
Illinois Pollution Control Board