

ILLINOIS POLLUTION CONTROL BOARD
January 20, 1994

MICHAEL TURLEK, LILLIAN)
SMEJKAL and JOHN LATHROP,)
)
Petitioners,)
)
v.) PCB 94-19
) (Land Siting Review)
VILLAGE OF SUMMIT and)
WEST SUBURBAN RECYCLING)
AND ENERGY CENTER, INC.,)
)
Respondents.)

KAY KULAGA AND ALICE ZEMAN,)
)
Petitioners,)
)
v.) PCB 94-21
) (Land Siting Review)
)
VILLAGE OF SUMMIT and)
WEST SUBURBAN RECYCLING)
AND ENERGY CENTER, INC.,)
)
Respondents.)

CITIZENS FOR A BETTER)
ENVIRONMENT, PATRICIA J.)
BARTLEMAN, NANCI KATZ)
and MICHELLE SCHMITS,)
)
Petitioners,)
)
v.) PCB 94-22
) (Land Siting Review)
) (Consolidated)
VILLAGE OF SUMMIT and)
WEST SUBURBAN RECYCLING)
AND ENERGY CENTER, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by M. McFawn):

This matter comes before the Board on three third party petitions for review filed pursuant Section 40.1(b) of the

Environmental Protection Act (Act) (415 ILCS 5/40.1(b)(1992)), of the December 6, 1993 decision of the Village of Summit (Village) granting site location suitability approval for construction of a new regional pollution control facility to West Suburban Recycling and Energy Center, Inc. (WSRC). This case involves proceedings held by the Village following Board remand of an August 5, 1992 application for the purpose of curing procedural fundamental unfairness in prior proceedings. Zeman et al. v. Village of Summit and West Suburban Recycling and Energy Center, Inc. and Quilty v. Board of Trustees and Mayor of the Village of Summit and West Suburban Recycling and Energy Center, Inc., PCB 92-174 and PCB 92-177 (consolidated) (February 25, 1993), appeal dismissed, No. 1-93-1070 (1st Dist. June 14, 1993).

The Petitions

The first petition (PCB 94-19) was filed by Michael Turlek, Lillian Smejkal, and John Lathrop on January 7, 1994. This petition asserts that the Village lacked jurisdiction to render its December 6, 1993 decision, on the grounds that the June 8, 1993 application it was considering was improperly filed during the pendency of the August 5, 1992 application remanded in the consolidated cases PCB 92-174 and PCB 92-177. The petition recites that each petitioner lives in "immediate proximity" to the proposed site and that each participated in the hearing below. This petition does not contain a copy of the Village's decision.

The second petition (PCB 94-21) was filed by Kay Kulaga and Alice Zeman on January 10, 1994. This petition challenges the fundamental fairness of the Village's procedures. The petition recites that each petitioner lives in proximity to the proposed site and that each participated in the hearing below. Petitioner Zeman has not signed the petition or otherwise entered an appearance as required by 35 Ill. Adm. Code 101.107(a). This petition also does not contain a copy of the Village's decision.

The third petition (PCB 94-22) was filed by Citizens for a Better Environment, Patricia J. Bartelman, Nanci Katz and Michelle Schmits on January 10, 1994. The petition recites that each petitioner resides within approximately 5 miles of the facility (one residing 1/2 mile therefrom), that each participated in the hearing below and that each is a member of CBE. This petition asserts that the Village's decision should be reversed on the grounds that the floodproofing and need criteria of Section 39.2 (415 ILCS 5/39.2(a)(4) & (1)) were not met. This petition refers to the Village's decision as Ordinance No. 93-0-30, but does not provide a copy.

Within the meaning of Section 40.1(b) of the Act, it appears that none of the petitions is duplicitous or frivolous, that all petitioners participated at the Village hearing and are located

so as to be affected by the facility. This matter is accordingly accepted for hearing.

As is the Board's usual practice with multiple petitions challenging a single local siting decision, the Board on its own motion consolidates these actions into one case. All petitions are deficient for failure to provide a copy of the Village's decision. If an amended petition curing this deficiency is not filed within 14 days of the date of this order, this matter will be subject to dismissal. The filing of an amended petition will restart the Board's decision timeclock, although the Board will look to the petitions' original filing dates in making any determination as to the timeliness of the filing of the appeal pursuant to Section 40.1.

Additionally, Petitioner Zeman is directed to file an appearance in person or by counsel as required by 35 Ill. Adm. Code 101.107(a) within 14 days of the date of this order. If petitioner Zeman fails to do so, her name will be stricken as a petitioner in this action. (See Doruff et al. v. Bloomingdale Elementary School District 13 et al., PCB 93-204 (January 6, 1994).)

Record Before the County Board

P.A. 82-682, also known as SB-172, as codified in Section 40.1(a) of the Act, provides that the hearing before the Board is to "be based exclusively on the record before the county board or governing body of the municipality". The statute does not specify who is to file with the Board such record or who is to certify to the completeness or correctness of the record.

As the Village of Summit alone can verify and certify what exactly is the entire record before it, in the interest of protecting the rights of all parties to this action, and in order to satisfy the intention of SB-172, the Board believes that the Village of Summit must be the party to prepare and file the record on appeal. The Board suggests that guidance in so doing can be had by reference to Rules 321 through 324 of the Illinois Supreme Court Rules. The record shall contain legible versions of all documents, transcripts, and exhibits deemed to pertain to this proceeding from initial filing through and including final action by the local government body. The record shall contain the originals of all documents, shall be arranged as much as possible in chronological sequence, and shall be sequentially numbered, placing the letter "C" before the number of such page. In addition to the actual documents which comprise the record, the Village of Summit Clerk shall also prepare a document entitled "Certificate of Record on Appeal" which shall be an index of the record that lists the documents comprising the record and shows the page number upon which they start and end. Seven copies of the certificate, seven copies of the transcript

of the Village of Summit hearing and three copies of any other documents in the record shall be filed with the Board, and a copy of the certificate shall be served upon the petitioners. The Clerk of the Village of Summit is given 21 days from the date of this Order to "prepare, bind and certify the record on appeal" (Ill. Supreme Court, Rule 324). If the record is not legible, is not sequentially numbered, or fails to include an appropriate index of record, the Clerk of the Pollution Control Board may refuse to accept the document for filing.

Waiver of Decision Deadline

Section 40.1(a) provides that if there is no final action by the Board within 120 days, "petitioner" may deem the site location approved.

The Board has construed identical "in accordance with the terms of" language contained in Section 40(b) of the Act concerning third-party appeals of the grant of hazardous waste landfill permits as giving the person who had requested the permit a) the right to a decision within the applicable statutory time frame (now 120 days), and b) the right to waive (extend) the decision period (Alliance for a Safe Environment, et al. v. Akron Land Corp. et al., PCB 80-184, October 30, 1980). The Board therefore construes Section 40.1(b) in like manner, with the result that failure of this Board to act in 120 days would allow the site location applicant to deem the site location approved. Pursuant to Section 105.104 of the Procedural Rules, it is each party's responsibility to pursue its action, and to insist that a hearing on the petition is timely scheduled in order to allow the Board to review the record and to render its decision within 120 days of the filing of the petition.

Transcription Costs

The issue of who has the burden of providing transcription in Board site location suitability appeals has been addressed in Town of Ottawa, et al. v. IPCB, et al., 129 Ill. App. 3rd, 472 N.E.2d 150 (Third District, 1984). In that case, the Court ordered the Board to assume transcription costs (472 N.E.2d at 155). The Supreme Court denied leave to appeal on March 14, 1985. In cognizance of this ruling, the Board will provide for stenographic transcription of the Board hearing in this matter.

Hearing Procedures

The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline or the waiver provisions of 35 Ill. Adm. Code 101.105. The Chief Hearing Officer shall assign a hearing officer to conduct hearings. The Clerk of the Board

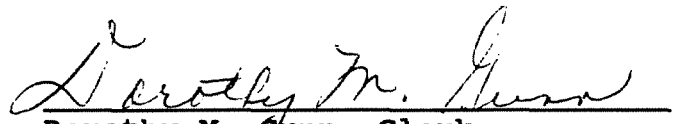
shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision deadline. In this case, pursuant to Section 40.1 (b) of the Act, the statutory decision deadline is May 7, 1994¹; therefore, the decision due date is May 5, 1994.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after attempting to do so, the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the above schedule. The hearing officer and the parties are encouraged to expedite this proceeding to the extent possible.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 20th day of January, 1994, by a vote of 7-6.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ The decision deadline is calculated using the filing date of the earliest filed case, PCB 94-19, but, as earlier stated, will be recalculated on the date of filing of an amended petition containing the Village's written decision.