

ILLINOIS POLLUTION CONTROL BOARD
November 6, 1986

RICK MOORE, LEONARD MORRIS and)
EDITH SIMPSON,)
)
Petitioners,)
)
v.) PCB 86-197
)
WAYNE COUNTY BOARD and)
DAUBS LANDFILL, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by B. Forcade):

This action is a third-party appeal filed November 6, 1986, pursuant to Section 40.1(b) of the Environmental Protection Act ("Act") (Ill.Rev.Stat. Ch. 111-1/2, par. 1040.1(b)). Petitioners appeal the decision of the Wayne County Board approving site location suitability approval.

Section 40.1(b) requires the Board to make various findings before authorizing a hearing on third-party appeals. The petition, on its face, asserts that the petitioners are located so as to be affected by the facility, and that they participated at the county's hearing. The Board does not find that this petition is duplicitious or frivolous, although the petition is very general. However, the Board cannot determine whether the action was filed within 35 days of the county's decision, which is alleged to have occurred "on or about" September 30, 1986, but which has not be provided. Given the tight timeframe for Board decision in cases such as these, the Board intends to make its determination of whether this appeal may go forward on November 20, 1986. Petitioners are directed to file an amended petition on or before November 18, 1986, which includes a dated copy of the county's decision, and the factual bases for the assertions that the county lacked jurisdiction, conducted its proceedings in a fundamentally unfair manner and made a decision against the manifest weight of the evidence. The Board orders that the parties file memoranda, not later than November 18, 1986, regarding whether this petition has been timely filed.

The balance of this Order is the standard procedural instruction issued in cases of this type. The parties are directed to note that if decision is delayed past November 20, 1986, due to their failure to timely file the required pleadings, that the Wayne County Clerk would be required to file the county record prior to any Board determination that the action may properly proceed; the Board would find any such event undesirable.

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 county 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 county 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 Section 105.102(a)(4) of the Board's Procedural Rules and to Rules 321 through 324 of the Illinois Supreme Court Rules. In addition to the actual documents which comprise the record, the County Clerk shall also prepare a document entitled "Certificate of Record on Appeal" which shall list the documents comprising the record. Seven copies of the certificate, seven copies of the transcript of the county 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 petitioner(s). The Clerk of the County is given 21 days from the date of this Order to "prepare, bind and certify the record on appeal" (Ill. Supreme Court, Rule 324).

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.

This matter is accepted for hearing. Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The 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 of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, written schedule for submission of briefs if any and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

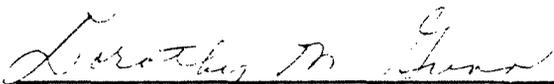
The hearing officer may extend this schedule only on a waiver of the decision deadline by the site location suitability applicant and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the site location suitability applicant provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to set a date pursuant to this Order.

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 6th day of November, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board