

ILLINOIS POLLUTION CONTROL BOARD
August 21, 1985

CONCERNED NEIGHBORS FOR A)
BETTER ENVIRONMENT AND)
WILLIAM SCAVARDA,)
)
Petitioners,)
)
v.) PCB 85-124
)
COUNTY OF ROCK ISLAND, AND)
BROWNING FERRIS INDUSTRIES)
OF IOWA, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by J. Anderson):

This action is a third party appeal filed August 20, 1985, 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 July 16, 1985, decision of the Rock Island County Board granting site location suitability approval to Browning Ferris Industries of Iowa, Inc. for a vertical expansion of an existing facility located in an unincorporated area of the county.

Section 40.1(b) of the Act requires that the Board hear a petition "unless the Board determines that such petition is duplicitous or frivolous, or that the petitioner is so located as to not be affected by the proposed facility." The Board cannot at this time make a determination that the petition fails to meet these criteria, as it is alleged that at each of the petitioners participated at hearing and "are situated so as to be affected by" the proposed facility. This matter, then, is authorized for hearing.

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." The statute does not specify who is to file with the Board the record before the County or who is to certify to the completeness or correctness of the record.

As the Rock Island County Board 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's 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 Rock Island County Board 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 90 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 respondent who had received 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 respondent to deem the site location approved. Pursuant to Section 105.104 of the Procedural Rules, it is each petitioners' responsibility to pursue its action, and to insist that a hearing on its 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.

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 3rd day of August, 1985 by a vote of 7-5.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board