

ILLINOIS POLLUTION CONTROL BOARD
August 7, 1997

ESG WATTS, INC., an Iowa corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 98-2
)	(Pollution Control Facility Siting
SANGAMON COUNTY, ILLINOIS,)	Appeal)
)	
Respondent.)	

ORDER OF THE BOARD (by K.M. Hennessey):

This matter is before the Board on an appeal filed on July 3, 1997, by ESG Watts, Inc. (petitioner), an Iowa corporation, pursuant to Section 40.1(a) of the Environmental Protection Act (Act) (415 ILCS 5/40.1(a) (1996)). According to the petition, petitioner appeals the decision of the Sangamon County Board denying local siting approval for 500,000 cubic yards of overfill, including both waste and cover soil, present at petitioner's closed Sangamon Valley Landfill. The Board noted in its July 10, 1997 order that, absent waiver of the decision deadline, the decision deadline for this case pursuant to Section 40.1(a) of the Act was October 31, 1997 (120 days from the July 3, 1997 date on which the petition was filed).

On July 18, 1997, petitioner filed a waiver of the decision deadline from October 31, 1997, to June 30, 1998, pursuant to 35 Ill. Adm. Code 101.105. On August 4, 1997, Sangamon County (respondent) filed a "Response to Decision Deadline Waiver," requesting that the Board not allow the decision deadline to be extended beyond October 31, 1997. On August 6, 1997, petitioner filed a "Motion for Leave to File," along with an attached "Reply and Motion to Strike Sangamon County's Response to Decision Deadline Waiver."

The Board addresses the substance of respondent's filing in this order and denies respondent the relief it requests. In the interest of expeditious resolution of this action, the Board denies petitioner's motion for leave to file.

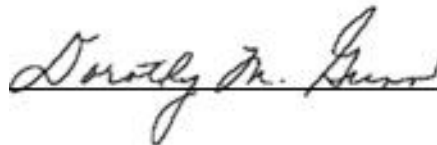
In its waiver, petitioner states that additional time is required for the parties to engage in discussions or, alternatively, any necessary discovery. Respondent's filing states that respondent has declined to engage in discussions with petitioner and that discovery should be denied or limited to prevent undue delay. In its filing, respondent also asserts that delaying the decision "further delays enforcement of the order entered by the Circuit Court for the Seventh Judicial District, Sangamon County, Illinois, in 91-CH-242 in which ESG Watts, Inc. was ordered to take remedial action at the Sangamon Valley Landfill to remedy violations of the Act." Response to Decision Deadline Waiver at 1-2.

Petitioner, as the siting applicant, has the right to extend the Section 40.1(a) decision deadline. *Cf. Alliance for a Safe Environment v. Akron Land Corp.* (October 30, 1980), PCB 80-184, slip op. at 2 (applicant who was issued permit by Illinois Environmental Protection Agency for hazardous waste disposal site could waive decision deadline in appeal brought by third parties). Furthermore, given that respondent failed to provide the Board with a copy of the circuit court order that it claims will be affected by the waiver, the Board cannot consider that order. The Board therefore allows petitioner to exercise its right as the siting applicant to waive the decision deadline. The Board notes, however, that it is not bound to use the full length of the extended decision period in reaching its decision.

Pursuant to the waiver, the new decision deadline is June 30, 1998. The Board instructs the hearing officer in this matter to ensure that no undue delay occurs. In addition, the Board notes that its July 10, 1997 order required respondent to file the record in this matter by no later than July 31, 1997. The Board has not received the record or any motion to delay its filing. Respondent must immediately file the record pursuant to the Board's July 10, 1997 order or immediately file a motion to delay the record's filing for the Board's consideration.

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 7th day of August 1997, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board