

ILLINOIS POLLUTION CONTROL BOARD
May 2, 1985

MCHENRY COUNTY LANDFILL, INC.,)
)
 Petitioner,)
)
 v.) PCB 85-56
)
COUNTY BOARD OF MCHENRY COUNTY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This action is an appeal filed April 23, 1985 pursuant to Section 40.1(a) of the Environmental Protection Act (Act) (Ill. Rev. Stat. ch. 111 1/2 par. 1040.1(a)). McHenry County Landfill, Inc. (the Landfill) appealed the March 20, 1985 denial of the McHenry County Board of the Landfill's application for site location suitability approval pursuant to PA 82-682 (SB 172) for a new sanitary landfill.

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 McHenry 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. As these requirements have not previously been applied to the McHenry County Board, its Clerk 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.

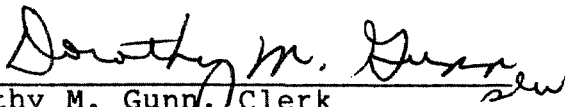
The Board has construed identical "in accordance with the terms of" language contained in Section 40(b) of the Act concerning third-party appeals of the grant of hazardous waste landfill permits as giving the respondent who had received the permit a) the right to a decision within the applicable statutory timeframe (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(a) 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's 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.

Finally, the Board anticipates entry of an Order concerning who must pay the costs of transcription of the hearing to be held by this Board in this matter at the Board's May 16 meeting.

IT IS SO ORDERED.

J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20 day of May, 1985 by a vote of 4-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board