

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1983

INDUSTRIAL SALVAGE, INC.,)
)
 Petitioner,)
)
 v.)
)
COUNTY BOARD OF MARION COUNTY,)
)
 Respondent.)

PCB 83-173

ORDER OF THE BOARD (by J. Anderson):

This appeal was filed November 21, 1983 pursuant to SB 172, P.A. 82-682. Industrial Salvage, Inc. (Industrial) is appealing the November 8, 1983 decision of the County Board of Marion County denying its site location suitability approval for a new regional pollution control facility. As Industrial inadvertently failed to include a copy of the County's decision, the Board has no details on the proposed facility.

Industrials's request for an order making the County a respondent is denied as unnecessary, as the County has been made a respondent by statute. The request that the County be ordered to answer the petition is also denied. Board practice in the analogous area of Agency permit denial appeals is not to require an answer, relying instead on the respondent party's final briefing of the matter.

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 Marion 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. Three copies of the certificate and three of the record shall be filed with the Board, and a copy of the


certificate shall be served upon the petitioner. As these requirements have not previously been applied to the County of Marion, 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(b) provides that the petition shall be heard "in accordance with the terms of" Section 40.1(a). 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 90 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 the Board to act in 90 days would allow respondent to deem the site location approved. Pursuant to Section 105.104 of the Procedural Rules, it is each petitioner's responsibility to pursue its action, to insist that a hearing on its petition is timely scheduled, and to insure that a transcript of the hearing is timely filed with the Board in order to allow the Board to review the record and to render its decision within 90 days of the filing of the petition.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1st day of December, 1983 by a vote of 7-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board