

ILLINOIS POLLUTION CONTROL BOARD
December 6, 1984

BOARD OF TRUSTEES OF CASNER TOWNSHIP,)
JEFFERSON COUNTY, ILLINOIS; CITIZENS)
AGAINST WOODLAWN AREA LANDFILLS;)
CYNTHIA CARPENTER; ERNEST CARPENTER;)
HATTIE HALL; BYRON KIRKLAND; PATRICIA)
KIRKLAND; PEG O'DANIELL; RONALD)
O'DANIELL; DENNIS SHROYER; and)
PATRICIA SHROYER,)

Petitioners,)

v.)

PCB 84-175

COUNTY OF JEFFERSON and SOUTHERN)
ILLINOIS LANDFILL, INC.,)

Respondents.)

JOHN PRIOR,)

Petitioner,)

v.)

PCB 84-176
(Consolidated)

COUNTY OF JEFFERSON and SOUTHERN)
ILLINOIS LANDFILL, INC.,)

Respondents.)

ORDER OF THE BOARD (by J. D. Dumelle):

The action captioned PCB 84-175 is a third party appeal filed pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (Ill. Rev. Stat. ch. 111½, par. 1040.1(b)). The petition states that Southern Illinois Landfill, Inc. proposes to develop a new regional pollution control facility for disposal of municipal and non-hazardous special waste. The location of the proposed site is said to be within the confines of Casner Township. The action captioned PCB 84-176 involves the same site and same subject matter. Therefore, on its own motion, the Board hereby consolidates these actions.

The petition alleges that on or about the 11th day of July, respondent Southern Illinois Landfill, Inc. filed an application for approval of a new regional pollution control facility with respondent County of Jefferson, pursuant to Section 39.2 of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1983, ch. 111½, par. 1039.2). The petition further alleges that no action was taken on the application within 120 days of its filing. Section 39.2(e) provides that the applicant may deem its request approved if there is no final action by the county board within 120 days after the filing of the request for site approval. Although captioned as an appeal from a decision granting site approval, this is actually an appeal from the statutory consequence of the County's inaction, i.e. the fact that "the applicant may deem the request approved."

Section 39.2(e) provides that the applicant may deem the request approved immediately following the local siting body's 120 day decision period, in this case November 8, 1984. The Board construes the 35 day time for appeal as running from this same date. Therefore, the Board finds that this petition was timely filed on November 29, 1984.

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. Therefore, the Board finds that hearing should be scheduled as quickly as possible; however, no hearing shall be held prior to January 10, 1985.

This petition presents the question whether the Board has jurisdiction to hear an appeal from a deemed approved request. As this is the first instance in which this question has been presented, the Board requests that the parties to this proceeding address the following legal questions in briefs:

- 1) Does Section 40.1(b) convey jurisdiction on the Board to review an approval granted by operation of law?
- 2) What is the proper scope of the hearing to be held by the Board in this situation (e.g. is the hearing to be restricted to oral argument, or may evidence not before the County be introduced)? and
- 3) What is the standard of review to be utilized by the Board?

Initial briefs shall be filed on or before December 21, 1984 and responsive briefs shall be filed no later than January 4, 1985, to enable the Board to rule on this question prior to hearing.

The Board anticipates ruling on this jurisdictional question on January 10, 1984.

In order for the Board to proceed on the jurisdictional question, and to proceed toward hearing, a copy of the record before the County must be filed. SB 172 (P.A. 82-0682), 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 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 (P.A. 82-0682), 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 Clerk of the County 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 petitioners. As these requirements have not previously been applied to the County of Jefferson, 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 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 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(b) in like manner, with the result that failure of the 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 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 120 days of the filing of the petition.

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 December, 1984 by a vote of 6-0.

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