

ILLINOIS POLLUTION CONTROL BOARD  
July 21, 1994

LAND AND LAKES CO., JMC	)	
OPERATIONS, INC., AND NBD	)	
TRUST COMPANY OF ILLINOIS	)	
AS TRUSTEE UNDER TRUST NO.	)	
2624 EG,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 94-195
	)	(Land Siting Review)
VILLAGE OF ROMEOVILLE,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD:

This matter is before the Board on an appeal filed pursuant to paragraph (a) of Section 40.1 of the Environmental Protection Act [415 ILCS 5/40.1] on July 19, 1994 by Land and Lakes Co., JMC Operations, Inc. and NBD Trust Company of Illinois (collectively "Land & Lakes") from the decision of Village of Romeoville ("Village") denying local siting approval for the expansion of the Willow Ranch Landfill facility, located in Will County.

The cited section of the Act generally requires the Board to decide the instant petition within 120 days of filing (unless the petitioner files a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). This matter is accepted for hearing.

Prior Proceedings

This is the third time this same May 15, 1990 siting application is before the Board for review. As the petition correctly summarizes:

Following proceedings before the Village of Romeoville in 1990, proceedings in case PCB 91-7 before this Board in 1991, proceedings before the Village of Romeoville on remand from this Board's orders in case PCB 91-7 in 1992, and further proceedings before this Board in case PCB 92-25 during 1992, the Village and this Board determined that Petitioners had satisfied all siting criteria pursuant to Section 39.2 of the Act except criterion number 1 (the "need" criterion), 415 ILCS 5/39.2(a)(1).

Following appeal to the Third Judicial District of the Illinois Appellate Court in the case entitled Land and Lakes Co. v. Pollution Control Board, No. 3-92-0496, the Appellate Court remanded the matter to the Village of Romeoville for further proceedings as a result of fundamentally unfair procedures having been imposed upon Petitioners concerning the need criterion.

Following the Appellate Court's remand order this Board entered an order on December 2, 1993, remanding the matter to the Village of Romeoville for further proceedings, and indicating that any subsequent appeal of the Village's ruling would be pursuant to a new docket.

Following proceedings before the Village of Romeoville on remand, the Village Board met on June 15, 1994. (Pet., par. 2-5)

The instant appeal alternatively challenges 1) whether the Village actually rendered its decision on June 15, 2) whether these proceedings are unconstitutional, <sup>1</sup> 3) whether any Village decision was against the manifest weight of evidence, and 4) whether the Village's remand proceedings were fundamentally unfair.

The Petitioners attempt to incorporate by reference "the entirety of Board's (sic) records in PCB 91-7 and PCB 92-25, as well as the briefs and the decisions of the Appellate Court in case 3-93-0496" (Pet. par. 11). The Board notes that petitioners have failed to satisfy the requirements of 35 Ill. Adm. Code 101.106 for "Incorporation of Prior Proceedings". The Board will defer ruling on this request until the Village's time to reply pursuant to 35 Ill. Adm. Code 101.241 has elapsed.

Petitioners also:

assert the right to a review of all aspects of the actions by both this Board and the Village of Romeoville which Petitioners might oppose. Petitioners expressly reserve the right to add to their grounds for review and to address all such grounds upon the filing by the Village of Romeoville of the Record, and following a hearing on this matter by this Board. (pet., par. 10)

<sup>1</sup> Petitioners filed a separate Notice of Claim of Unconstitutionality on July 19, 1994.

In issuing this order, the Board expresses no opinion on the petitioner's ability to reserve such "rights". The Board is issuing this order today solely to avoid delay in the process of the filing of the record by the Village and the scheduling of a hearing by the Board.

#### Record Before the Village of Romeoville

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 or governing body of the municipality". The statute does not specify who is to file with the Board such record or who is to certify to the completeness or correctness of the record.

As the Village 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 Village 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 Rules 321 through 324 of the Illinois Supreme Court Rules. The record shall contain legible versions of all documents, transcripts, and exhibits deemed to pertain to this proceeding from initial filing through and including final action by the local government body. The record shall contain the originals of all documents, shall be arranged as much as possible in chronological sequence, and shall be sequentially numbered, placing the letter "C" before the number of such page. In addition to the actual documents which comprise the record, the Village Clerk shall also prepare a document entitled "Certificate of Record on Appeal" which shall be an index of the record that lists the documents comprising the record and shows the page number upon which they start and end. Seven copies of the certificate, seven copies of the transcript of the Village 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 petitioner(s). The Clerk of the Village is given 21 days from the date of this Order to "prepare, bind and certify the record on appeal" (Ill. Supreme Court, Rule 324). If the record is not legible, is not sequentially numbered, or fails to include an appropriate index of record, the Clerk of the Pollution Control Board may refuse to accept the document for filing.

### Waiver of Decision Deadline

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 person who had requested 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 the site location applicant to deem the site location approved. Pursuant to Section 105.104 of the Procedural Rules, it is each party's responsibility to pursue its action, and to insist that a hearing on the 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.

### Scheduling and Conduct of Hearing

The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline, or the decision deadline as extended by a waiver (the siting applicant may file a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). The Chief Hearing Officer shall assign a hearing officer to conduct hearings. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

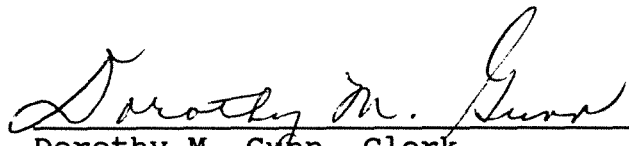
The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and

all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision deadline. Absent any future waivers of the decision deadline, the statutory decision deadline is November 16, 1994 (120 days from July 19, 1994); the Board meeting immediately preceding the due date is scheduled for (November 3, 1994).

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 21<sup>st</sup> day of July, 1994, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board