

ILLINOIS POLLUTION CONTROL BOARD
June 2, 1988

RICK MOORE, ELEANOR MORRIS and)
LEONARD MORRIS,)
)
Petitioners,)
)
v.) PCB 88-24
)
WAYNE COUNTY BOARD and DAUBS)
LANDFILL, INC.,)
)
Respondents.)

THOMAS L. KILBRIDE (KLOCKAU, McCARTHY, ELLISON, & MARQUIS, P.C.),
APPEARED ON BEHALF OF PETITIONERS;

C. STEPHEN SWOFFORD, STATE'S ATTORNEY, APPEARED ON BEHALF OF THE
WAYNE COUNTY BOARD; and

THOMAS J. IMMEL (IMMEL, ZELLE, OGREN, McCLAIN, GERMERAAD &
COSTELLO), APPEARED ON BEHALF OF DAUBS LANDFILL, INC.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a January 25, 1988
petition for review filed by Rick Moore, Eleanor Morris, and
Leonard Morris (petitioners). Petitioners seek review of the
decision of the Wayne County Board granting site approval of
Daubs Landfill Inc.'s proposed regional pollution control
facility.

This is an appeal of the second of two site approvals by the
Wayne County Board of Daubs' proposed facility. Daubs originally
filed a request for site approval on April 8, 1986, and after
public hearings on that request, the Wayne County Board granted
site approval on September 30, 1986. Three citizens, including
two of the three petitioners in this case, appealed that approval
to this Board. (That appeal, docketed as PCB 86-197, will be
referred to as Daubs 1, while the instant case will be referred
to as Daubs 2.) This Board subsequently vacated the County
Board's siting approval in Daubs 1 on grounds of defective
notice. Moore v. Wayne County Board, PCB 86-197 (February 19,
1987). Daubs appealed that decision, and the Fifth District
Appellate Court reversed the Board's decision and remanded the
case. Daubs Landfill, Inc. v. Pollution Control
Board, Ill. App. 3d, 117 Ill. Dec. 626, 520
N.E.2d 977 (5th Dist. 1988). Today the Board considered the

remaining issues in Daubs 1, and upheld the County Board's grant of site approval. Moore v. Wayne County Board, PCB 86-197 (June 2, 1988).

While Daubs 1 was pending in the appellate court, Daubs filed a second request for site approval with the Wayne County Board. That petition, filed July 8, 1987, is the basis for the instant case (Daubs 2). The Wayne County Board held public hearings on the request on November 9, 10, and 18, 1987, and granted site approval on December 22, 1987. Petitioners filed their petition for review with this Board on January 25, 1988. A public hearing on the petition for review was held in Fairfield, Illinois on March 25, 1988. A public hearing on the petition for review was held in Fairfield, Illinois on March 25, 1988.

This case presents a question of first impression, because it is a review of the approval of a site where an earlier approval has been upheld. Petitioners and Daubs agree that both Daubs 1 and Daubs 2 involve the identical site and facility which through a quirk has been approved twice by the Wayne County Board. As previously noted, today the Board upheld the County Board's approval of the site in Daubs 1. Thus, Daubs Landfill Inc. has received the required local siting approval for the proposed facility and is able to apply to the Agency for permits, regardless of the outcome of this siting approval appeal in Daubs 2. Even if the Board reversed the County Board's approval in Daubs 2, the applicant still has the local siting approval upheld in Daubs 1. Because there is no relief available to petitioners, the Board finds that this case is moot and will dismiss the appeal. See Illinois Bell Telephone Co. v. Illinois Commerce Commission, 67 Ill. App. 3d 616, 385 N.E.2d 159 (4th Dist. 1979); Union Electric Co. v. Illinois Commerce Commission, 48 Ill. App. 3d 967, 363 N.E.2d 424 (4th Dist. 1977). This dismissal constitutes final action by the Board for purposes of Section 40.1 of the Act.

This Opinion constitutes the Board's findings of facts and conclusions of law.

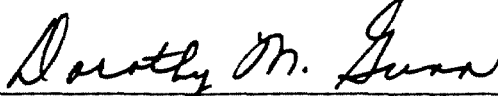
ORDER

The appeal of the Wayne County Board's December 22, 1987 decision granting site approval to Daubs Landfill Inc. is dismissed as moot.

IT IS SO ORDERED.

B. Forcade abstained, and J. Anderson concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 2nd day of June, 1988, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board