

ILLINOIS POLLUTION CONTROL BOARD
May 9, 1991

CLEAN QUALITY RESOURCES, INC.,)
)
Petitioner,)
)
v.) PCB 91-72
) (Landfill Siting)
)
MARION COUNTY BOARD,)
)
Respondent.)

ORDER OF THE BOARD BY (M. Nardulli):

This matter comes before the Board on a May 1, 1991 "Special and Limited Appearance, Petition of Review and Objection to Supplemental Proceedings" filed by the Petitioner, Clean Quality Resources, Inc. ("CQR"). This filing was incorrectly captioned with the docket number of a prior case involving the same parties. As reflected in the caption to this order, the Clerk has assigned a new docket number to the May 1, 1991 petition for review.

HISTORY

The previous docket, PCB 90-216, was closed when the Board remanded a denial of site location suitability approval back to the Marion County Board ("MCB") for a complete final determination. (Clean Quality Resources v. Marion County Board, PCB 90-216, ___ PCB ___, February 28, 1991.) CQR appealed the Board's remand order to the Illinois Appellate Court, Fifth District, on March 11, 1991. The Board, through the Attorney General's office, moved to dismiss for lack of a final and appealable order. The appellate court granted the Board's motion to dismiss on May 6, 1991.

While the matter was pending before the appellate court, the Marion County Clerk filed with the Board on April 3, 1991, a certified copy of a Resolution containing a complete and final determination adopted by the MCB on Tuesday, March 26, 1991. The Resolution contained new findings of law under Section 39.2 of the Illinois Environmental Protection Act ("Act"). The Board informed CQR on April 11, 1991 that the prior case was closed but that CQR could appeal the new findings of the Marion County Board by filing a new petition for review with the Board pursuant to the applicable regulations. CQR's latest filing is a response to that Board Order.

SPECIAL AND LIMITED APPEARANCE

CQR's May 1, 1991 filing enters a special and limited

appearance to "preserve the issues for eventual Appellate review, and further to object to the supplemental proceedings of the Marion County Board and the review of same by" the Board. CQR contends that both the Board and the MCB are without jurisdiction or statutory authority to take these actions. CQR also states that it will not participate in any subsequent proceedings held in reference to the Resolution. Finally, CQR states that this filing should be considered as a Petition for Review to preserve CQR's rights.

PETITION FOR REVIEW

The Board hereby accepts this petition for review for hearing pursuant to Section 40.1(a) of the Environmental Protection Act ("Act") (Ill. Rev. Stat. ch. 111-1/2, par. 1040.1 (a)). Pursuant to Section 40.1(a), and no matter how CQR proceeds with this action, the Board must take final action within 120 days from the filing of the petition and the burden of proof is on the petitioner. The Board will continue to waive the filing fee for this petition for review for the reasons stated in the April 11, 1991 Order in docket PCB 90-216.

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". In the original proceedings which were the subject of PCB 90-216, Marion County verified and certified to the Board two sets of over 1500 pages of transcript, over 1900 pages of documents, and approximately 600 pages of exhibits. One set was sent to the appellate court for the appeal of PCB 90-216. The other set remained in the Board's offices. On its own motion, the Board incorporates that latter set into this proceeding.

In addition to the record incorporated by the Board, the Clerk of the Marion County is given 21 days from the date of this Order to prepare, bind and certify the record of any proceedings relating to CQR's application for site location approval which occurred after October 11, 1990. The record shall contain legible versions of all documents, transcripts, and exhibits deemed to pertain to this proceeding from October 11, 1990 forward. 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 and starting where the numbering ended in PCB 90-216. In addition to the actual documents which comprise the record, the Marion Clerk shall also prepare a document entitled "Addendum to Certificate of Record on Appeal" which shall be an addendum to the index of the PCB 90-216 record that lists the documents comprising the record for PCB 91-72 and shows the page number upon which it starts and ends. Seven copies of the certificate, seven copies of the transcript of the Marion 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). 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.

This matter is accepted for hearing. Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The 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. The Board will provide for stenographic transcription of the Board hearing in this matter. After hearing, the hearing officer shall submit an exhibit list, written schedule for submission of briefs if any and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

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. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the site location suitability applicant and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

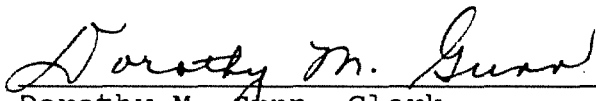
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the site location suitability applicant provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline

for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a Scheduling Order pursuant to the requirements of this Order, and to adhere to that Order until modified.

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 9th day of May, 1991, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board