

ILLINOIS POLLUTION CONTROL BOARD
June 10, 1982

VILLAGE OF HANOVER PARK,)
)
) Petitioner,)
)
) v.) PCB 82-69
)
) The County Board of Du Page, the)
) Du Page County Forest Preserve)
) Commission, and E & E Hauling, Inc.)
)
) Respondents.)

ORDER OF THE BOARD (by J. Anderson):

This is the first third party appeal filed pursuant to SB 172, P.A. 82-682. The Village of Hanover Park is appealing the grant by the County Board of Du Page County of site location approval for expansion of the existing Mallard Lake landfill located in unincorporated Du Page County to applicants Du Page County Forest Preserve Commission and E & E Hauling, Inc. This appeal of the County's April 27, 1982 decision was timely filed on the 35th day thereafter. As required by Section 40.1(b) of the Act, the Board finds that this matter should proceed to hearing, as the petition is a) not duplicitous or frivolous, b) recites that the Village participated in the February 11, 1982 public hearing, and c) recites that the Village is located adjacent to and would be affected by the facility expansion. In order to set this action on a proper course from its initiation, the Board on its own motion will address three issues: 1) the designation of the appropriate parties, 2) the filing of the record on appeal, and 3) the interpretation of the 90 day decision deadline.

Section 40.1(b) of the Act provides that in these third party appeals the "county board...and the applicant shall be named as co-respondents". This is acknowledged in the first paragraph of the petition which states that petitioner contests the "decision of the respondent COUNTY BOARD OF DU PAGE, approving the joint application of the co-respondents, DU PAGE COUNTY FOREST PRESERVE COMMISSION and E & E HAULING, INC." However, in addition the Village has brought into this action as respondents the 23 individuals who, collectively, comprise the Du Page County Board as well as the Du Page County Forest Preserve Commission.

Section 40.1 empowers the Board to determine, considering criteria enunciated in the statute, whether a county board's collective decision should be affirmed or reversed. As the Act

gives the Board no authority to provide a remedy for actions taken by the individual members of the County Board, these individuals have been improperly joined in their capacity as county board members.

These individuals are also referred to as "applicants" for permission to expand the landfill. Yet, the application to the Illinois Environmental Protection Agency for a permit to expand and modify this permit (Ex. A to the petition) in no way indicates any involvement of these 23 individuals in the application as individuals. The Forest Preserve District of Du Page County is named as the owner of the land involved, and E & E Hauling, Inc. is named as the permit applicant. No individual, as opposed to official, interest of the 23 named persons in this land is evidenced or indicated in the petition.

For these reasons, the 23 individuals named in the petition, and captioned as "decisionmakers" and "applicants" in this action are dismissed. Petitioner should note that the Board is mindful that one of the key points in this action is whether these individuals' actions in their dual capacities as county board members and forest preserve district commissioners involves "an illegal and irretrievable conflict of interest," and whether the procedures here involved were "fundamentally unfair" (Pet. at p. 8-9). These issues are ones which may and should appropriately be raised at hearing; joinder of these individuals as party respondents is inappropriate before the Board, which can provide relief only from decisions and actions of the entities referred to in Section 40.1(b).

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 Du Page 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 Du Page 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 Rule 502(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 Board Clerk shall also prepare a document entitled "Certificate of Record on Appeal" which shall list the documents comprising the record. Two copies of the certificate and 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 stated, the County Board 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, Oct. 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 respondents to deem the site location approved. Pursuant to Procedural Rule 504, it is petitioner's responsibility to pursue this action to insist that a hearing on its petition is timely scheduled and a transcript of that 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 10th day of June, 1982 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board