

ILLINOIS POLLUTION CONTROL BOARD  
February 7, 1985

GEORGE HAMMONS AND RUTH HAMMONS, )  
 )  
 Petitioners, )  
 )  
 v. ) PCB 85-13  
 )  
 SANGAMON COUNTY BOARD AND )  
 M. BUERKETT, INC., )  
 )  
 Respondents. )

ORDER OF THE BOARD (by J. Anderson):

This action is a third party appeal filed pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (Ill. Rev. Stat. ch. 111 1/2 par. 1040.1(b)). The Petitioners, George and Ruth Hammons appeal the January 4, 1985 decision of the Sangamon County Board granting site location suitability approval for a vertical expansion of the Buerkett Landfill, Shale Road, Springfield.

This appeal was timely filed on November 1, 1984. As required by Section 40.1(b) of the Act, the Board finds that this matter should proceed to hearing, as the petition a) is not duplicitous or frivolous, b) indicates that petitioners participated in the County's public hearing, and c) indicates that the petitioners' property is located adjacent to the proposed site.

The Board notes that there is some confusion in this petition concerning the identities of the proper parties to this action. Pursuant to Sections 40.1(a, b) of the Act, the party respondents in this action are the Sangamon County Board and M. Buerkett, Inc., applicant for expansion at the Buerkett Landfill. The Health, Safety, and Zoning Committee of the County Board is not a proper party.

The certificate of service provided by the Hammons does not indicate that they have made service of this appeal on the County or the applicant as required by Section 103.122 and 103.123 of the Board's Procedural Rules. Since it is unclear whether any defects in service would serve to stay the running of the Board's 120 day decision deadline in this matter, the Board will not delay in ordering the filing of the record in this matter. The Clerk of the Board is therefore directed to serve the County and M. Buerkett, Inc. with copies of the appeal in addition to copies of this Order.

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 Sangamon 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 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 County Clerk 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's 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 Sangamon County Board, 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 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 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 this 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 petitioners' responsibility to pursue its action, and to insist that a hearing on its 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.

As a general matter Board regulations provide that Petitioners in contested case matters shall provide for stenographic transcription of hearings required by statute to be held by the Board. This applies to variance petitions (35 Ill. Adm. Code 104.202), permit appeals (Section 105.104), and various hearings pursuant to specific rules (Sections 106.106, 106.203, and 106.306). Generally, the Board assumes the obligation to

provide stenographic transcription in regulatory matters Section 102.164) and enforcement cases (Section 103.221). Since the Board's procedural rules pre-date the site location suitability appeal process, there is no set of specific procedural rules applicable. However, by analogy, the Board has placed the burden of providing stenographic transcription on petitioners.

The issue of who has the burden of providing transcription in Board site location suitability appeals was first addressed by the Illinois Courts in Town of Ottawa, et al. v. IPCB, et al., \_\_\_\_\_ Ill. App. 3rd \_\_\_\_\_ (Third District, No. 3-84-0158, slip opinion at 8) (hereinafter "Ottawa"). There the Court stated (Slip Opinion at 8-9):

Finally, we agree with the municipalities that the Pollution Control Board should bear the expense of the report of the proceedings before its hearing officer. The relevant portion of the Environmental Protection Act mandates stenographic recording of proceedings before the Board. Since no specific statutory language places the burden of providing transcription on the seeker of review, the Board is without authority to refuse to pay for the transcript of the record proceedings. (Zurek v. Cook County Police & Corrections Merit Bd. (1st Dist. 1976) 42 Ill. App. 3d 1044, 356 N.E. 2d 1079.

Accordingly, we affirm the decision of the Pollution Control Board, but order the Board to reimburse the municipalities for the fee of the reporter.

That Opinion was issued on November 30, 1984; however, as of today the mandate in Ottawa has not issued from the Third District. As the Board was only a nominal party in the Ottawa appeal, the Board by the Illinois Attorney General filed with the Third District on December 21, 1984, a Motion for Leave to Intervene, Motion to file a Petition for Rehearing Instantly, and a Petition for Rehearing. On January 7, 1985 the Third District granted the motions but on January 8, 1985 denied the Petition for Rehearing. On January 10, 1985, the Board filed an Affidavit of Intent to Seek Review in the Illinois Supreme Court and Motion for Stay of Order. The Board has requested the Attorney General to seek review in the Supreme Court and to request expedited consideration.

Because of the unique circumstances surrounding the burden of providing transcription issue and the fact that additional judicial guidance is expected shortly, the Board will construe this appeal as containing a petition for the Board to provide transcription, similar to that provided by Section 104.1202(b):

- b) Upon petition and good cause shown, the Board may assume the cost of stenographic transcript

of the hearing provided, however, that such petition shall have been filed with and granted by the Board prior to the hearing.

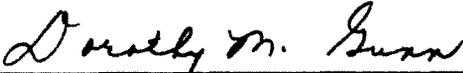
The Board construes the possible invalidity, under Ottawa, of requiring Petitioners to provide stenographic transcription as good cause shown, as well as the need, because of the statutory deadline for decision, not to further prolong this issue, and will grant the petition.

The Board will provide for stenographic transcription of the proceedings in this matter.

IT IS SO ORDERED.

Board Member J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 7<sup>th</sup> day of February, 1985 by a vote of 4-1.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board