

ILLINOIS POLLUTION CONTROL BOARD
April 29, 1982

MILO AND/OR BRADEN M. LAMBERT d/b/a)
LAMBERT CONSTRUCTION CO.,)
)
) Petitioners,)
)
) v.) PCB 82-47
)
) SALINE COUNTY BOARD,)
)
) Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This is the first appeal to reach the Board pursuant to SB 172, P.A. 82-682, of the decision of a county board denying siting approval to the prospective developer of a solid waste management site. This appeal has been timely filed, in that Saline County denied its approval by written decision of March 19, 1982, and this appeal was filed with the Board April 21, 1982, the 33rd day after the decision. The filing of this appeal does however pinpoint a problem which is not specifically addressed either in SB 172, or in the Board's existing Procedural Rules.

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. Petitioner has, prudently under the circumstances, submitted as exhibits to the petition materials which he believes to comprise the "record" before the Saline County Board. These include: citizens' letters (Ex. A), the transcript of a February 2, 1982 public hearing (Ex. B), two proposed site maps presented at the hearing (Ex. C), and a copy of the County's March 19, 1982 denial letter (Ex. D).

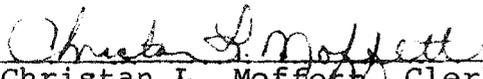
The Board does not question Petitioner's good faith effort at compiling the record before the county, particularly in light of the statutory and regulatory silence on the specifics of this issue. However, since the record before the county is of paramount importance to the Board, as well as any subsequent reviewing court, the Board cannot allow this action to proceed to hearing based on the information before it.

As the Saline 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 Saline 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).

The Board reminds the parties that SB 172 provides that "if there is no final action by the Board within 90 days, petitioner may deem the site location approved". As the Board construes this provision as allowing for waiver (or extension) of this deadline only by petitioner, delay in the filing of the "record on appeal" could prejudice respondent. Hearing may be scheduled and noticed pending the filing of the record, but it shall in no event be held until 10 days after the record has been filed with the Board.

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 29th day of April, 1982 by a vote of 50.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board