

ILLINOIS POLLUTION CONTROL BOARD  
November 21, 1984

CONCERNED NEIGHBORS FOR A )  
BETTER ENVIRONMENT, )  
 )  
Petitioner, )  
 )  
v. ) PCB 84-173  
 )  
COUNTY OF ROCK ISLAND and )  
BROWNING-FERRIS INDUSTRIES OF )  
IOWA, INC., )  
 )  
Respondents. )

ORDER OF THE BOARD (by J. D. Dumelle):

This action is a third party appeal filed pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (Ill. Rev. Stat. ch. 111½, par. 1040.1(b)). The Petitioners, Concerned Neighbors For A Better Environment, an Illinois Not For Profit Corporation (CNBE), appeal the October 16, 1984 decision of the County of Rock Island (County) granting the application of Respondent, Browning-Ferris Industries of Iowa, Inc. (BFI) for approval of a new regional pollution control facility pursuant to Ill. Rev. Stat. 1983, ch. 111½, par. 1039.2. The petition states that "the proposed facility is an expansion of an existing landfill, the expansion to receive municipal waste but no special waste."

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 petitioner participated in the County's public hearing, and c) suggests that the petitioner's members may be so located as to be potentially affected by the proposed facility. Although the petition does not allege that the petitioner or its members are located so as to be affected by the facility, the Board will order that this matter proceed to hearing, at which time the petitioner will have an opportunity to establish this point.

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 County 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 Clerk of the County Board 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, and three copies of any other documents in the record shall be filed with the Board. A copy of the certificate shall be served upon the petitioner. As these requirements have not previously been applied to the County of Rock Island, 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 the phrase "in accordance with the terms of" in the context of 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 the 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 petitioner's responsibility to pursue its action, to insist that a hearing on its petition is timely scheduled, and to insure that a transcript of the hearing is timely filed with the Board in order to allow the Board to review the record and to render its decision within 120 days of the filing of the petition.

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 2<sup>nd</sup> day of November, 1984 by a vote of 5-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board