ILLINOIS POLLUTION CONTROL BOARD November 21, 1985

MCHENRY COUNTY LANI	OFILL, INC.,)		
	Petitioner,)		
	V.)	PCB	85-192
COUNTY BOARD OF MCI	HENRY)))		
	Respondent,) \		
a nd)		
ARTHUR T. McINTOSH	& CO.,)		
	Respondent-Objector.)		

ORDER OF THE BOARD (by J. Anderson):

On October 15, 1985, the McHenry County Landfill, Inc. (Landfill) filed a petition pursuant to Section 40.1 of the Environmental Protection Act (also known as P.A. 82-682 and SB172) challenging the October 15, 1985 decision of the County Board of McHenry County, Illinois (County) denying site location suitability approval for a new regional pollution control facility. (The County's action was taken pursuant to remand of this proceeding for further proceedings pursuant to the Board's Opinion and Order in McHenry County Landfill, Inc. v. County Board of McHenry County, IL., PCB 85-56 and PCB 85-61 through PCB 85-66 (consolidated), September 20, 1985.) A cross appeal was filed by Arthur T. McIntosh and Co. on November 21, 1985.

Record Before The County Board

The Board on its own motion incorporates the record of the prior proceedings into this action. As the County has previously submitted, pursuant to the Board's Order of May 2, 1985 in the prior dockets, the record of the proceedings before it prior to the September 20, 1985 remand, the Board will not require the resubmission of multiple copies of these documents. The County Clerk is therefore directed to prepare a document entitled "Certificate of Record on Appeal" which shall list the documents comprising the record, including those documents included in the County record both before and after September 20, 1985. Certificate shall in some way indicate those documents not previously submitted to the Board. Seven copies of the certificate and three copies of any documents not previously submitted shall be filed with the Board, and a copy of the certificate shall be served upon the petitioners. These actions shall be accomplished within 21 days of the date of this Order.

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 time frame (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 petitioner's 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.

Transcription Costs

The issue of who has the burden of providing transcription in Board site location suitability appeals has been addressed in Town of Ottawa, et al. v. IPCB, et al., 129 Ill. App. 3rd, 472 N.E. 2d 150 (Third District, 1984). In that case, the Court ordered the Board to assume transcription costs (472 N.E. 2d at 155). The Supreme Court denied leave to appeal on March 14, 1985.

In cognizance of this ruling, the Board will provide for stenographic transcription of the Board hearing in this matter.

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 2/21 day of Journal , 1985 by a vote of 7-0

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board