

ILLINOIS POLLUTION CONTROL BOARD
March 22, 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):

On February 7, 1985, the Board entered an Order directing the Sangamon County Clerk to prepare a "Certificate of Record on Appeal", and to file within 21 days seven copies of that certificate, seven copies of the transcript of the County's SB 172 (P.A. 82-682) hearing, and three copies of any other document contained in the County record. The Board also noted that the Board would pay for stenographic transcription of the Board hearing to be held in this matter.

On March 5, 1985, the State's Attorney for Sangamon County sent a letter to the Board in response to this Order, stating a) that based on the Order, the County expected the Board to pay for the transcript of the County's hearing and b) that the County would file only one copy of the Certificate of Record, one copy of the transcript, and one copy of the record, with the apparent exception of some of the exhibits which will not be copied "except upon request and payment by either party".

As an initial matter, due to the County's good faith attempt to comply with procedures which are obviously new and confusing to it, the Board on its own motion excuses lack of timely compliance with its initial order. This Order is being entered to clarify the reasons for the requirements of the Board's initial order.

First, the Board believes that it is the responsibility of the County, and not the Board or any party to this action, to pay the costs of transcription of the hearing at the County level. The Board initially made this holding in Browning-Ferris Industries, Inc. v. Lake County Board of Supervisors, PCB 82-101, January 27, 1983. In that case the Board struck a proviso of Lake County's approval resolution which would have required BFI to reimburse the County for all notice publication, court reporter and transcription costs of the county board's hearings. The Board found that it could not "construe the silence of Section 39.2 [and Section 40.1 requiring the county to provide a transcribed record] as authorizing the county to assess

even actual cost fees" to an applicant. (Although the County appealed other aspects of the Board's order, it acquiesced in this determination.)

The validity of this approach is underscored by the analysis used by the Third District Appellate Court in the 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 [Section 32] 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 Cty Police & Corrections Merit Bd. (1st Dist. 1976), 42 Ill. App. 3d 1044, 356 N.E. 2d 1079."

By analogy, then, Sections 39.2 and 40.1 do not convey authority on the County to refuse to pay for the transcript of its hearing.

As to costs for reproduction of the balance of the items in the County's record, including oversize exhibits, Section 39.2 similarly requires the County to consider and maintain various documents, including the application, public comments, and presumably any exhibits produced at the public hearing which are part of the County's Section 39(d) "record sufficient to form the basis of appeal". The Board believes that costs for reproduction of these materials also lie with the County.

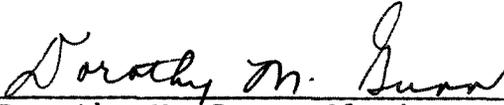
The Board notes that, in its February 7 Order, it has requested more than a single copy of the record, as has been its practice since the very first appeal of this type. The multiple copy request is based on the experience of the Board, in the 14 odd cases of this type which have come to decision, that the record of proceedings at the Board level is rarely complete until a very short time before the expiration of the Board's decision deadline. The Board has seven members, two of whom historically are not based in Chicago. The multiple copies are requested so that all members have an opportunity to review them. In particular, the County hearing transcripts are often lengthy and hence difficult for Board Members to share (and in the usual course of affairs multiple copies have already been prepared for a County. This is because its own Board Members can lawfully vote on applications only if they have been present at the hearings or if transcriptions thereof have been available to them for consideration prior to the vote.)

In summary, the Board will order the County, within 21 days and at its own expense, to make the multiple filings required in the Board's Order of February 7, 1985. As to oversized exhibits, the Board will entertain a motion for relief from the three copies order, provided that at least one copy is submitted to the Board, the motion is filed within 10 days of the date of this Order, and the motion details the reasons (e.g. expense, difficulties of copying) underlying the request. In the event of non-compliance with this order, the Board will itself make additional copies for which it will bill the County.

Finally, the Board does not wish entry of this explanatory Order to be construed as authorizing delay in the scheduling of hearing in this matter, as 53 of the 120 days allowed for decision in this matter have elapsed. (The Board notes that its initial Order erroneously listed November 1, 1984 as the filing date of this action, rather than the actual date of January 28, 1985 due to mechanical error.)

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 22nd day of March, 1985 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board