

ILLINOIS POLLUTION CONTROL BOARD
December 1, 2022

COUNTRYSIDE DISPOSAL LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 23-56
)	(Pollution Control Facility
FAYETTE COUNTY,)	Siting Appeal)
)	
Respondent.)	

ORDER OF THE BOARD (by B. F. Currie):

On November 14, 2022, Countryside Disposal LLC (petitioner) timely filed a petition asking the Board to review an October 11, 2022 decision of Fayette County. Fayette County’s decision concerns petitioner’s proposed siting of a pollution control facility at 1575 Highway 185, Brownstown, Fayette County. For the reasons below, the Board accepts the petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the proposed facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government denies siting or approves siting with conditions, the siting applicant may appeal the local government’s decision to the Board. *See* 415 ILCS 5/39(c), 40.1(a) (2020); 35 Ill. Adm. Code 107.

In this case, Fayette County denied petitioner’s application to site the pollution control facility. Petitioner appeals on the grounds that Fayette County failed to issue a decision “in writing, confirming a public hearing was held with testimony from at least one witness presented by the applicant, specifying the reasons for the decision” as required by Section 39.2(e) of the Act. (415 ILCS 5/39.2(e) (2020)). As a result, petitioner argues that the application is approved by operation of law. Pet. at 2. Petitioner’s petition meets the content requirements of 35 Ill. Adm. Code 107.208.

The Board accepts the petition for hearing. Petitioner has the burden of proof. 415 ILCS 5/40.1(a) (2020); *see also* 35 Ill. Adm. Code 105.506. Hearings will be based exclusively on the record before Fayette County. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the local government’s reasons for its decision, information developed after the local government’s decision typically is not admitted at hearing or considered by the Board. However, if relevant, evidence may be introduced on: (1) the local government’s jurisdiction over the siting application, and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(a) (2020); Land & Lakes v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 107.400.

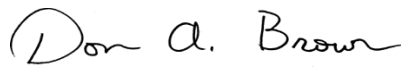
Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a) (2020)), which only petitioner may extend by waiver (*see* 35 Ill. Adm. Code 107.504; 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the petitioner "may deem the site location approved." 415 ILCS 5/40.1(a) (2020). Currently, the decision deadline is March 14, 2023, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for March 2, 2023.

Fayette County must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 107.304, 107.308. In addition, Fayette County must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(C), 107.302.¹

Petitioner must pay to Fayette County the cost of preparing and certifying the record. *See* 415 ILCS 5/39.2(n) (2020); 35 Ill. Adm. Code 107.306, 107.502(b).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 1, 2022, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.