

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1982

JESSIE Q. ABBOTT, et al.,)
)
) Petitioners,)
)
) v.) PCB 82-124
)
) WASTE MANAGEMENT OF ILLINOIS, INC.)
) AND THE CITY OF EAST ST. LOUIS,)
)
) Respondents.)

ORDER OF THE BOARD (by J. Anderson):

This is a third party permit appeal filed pursuant to SB 172. Jessie Q. Abbott, Alvin Abbott, Abra Gray, Sr., Edward Powell, John C. Griffin, James Blevins and Scott Randolph (Abbott et al.) are appealing the grant by the City of East St. Louis (City) for approval of the site location of a proposed regional sanitary landfill to be located in the City (and accepting waste generated outside the City's boundaries) pursuant to the City's joint application with Waste Management of Illinois, Inc. (Waste Management). This appeal of the City's September 7, 1982 decision was timely filed. 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 in Paragraph 6(c) that petitioner participated in the August 17, 1982 public hearing, and c) recites that the petitioners "own homes and reside in the area near the site location".

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 ...municipality". The statute does not specify who is to file with the Board the record before the City, or who is to certify to the completeness or correctness of the record.

As the City of East St. Louis 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 City 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 City 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. The City 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 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 90 days, and b) the right to waive (extend) the decision permit (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 a like manner, with the result that failure of the Board to act in 90 days would allow respondents to deem the site location approved. Pursuant to Procedural Rule 504, it is petitioner's responsibility to pursue this action to insist that a hearing on its petition is timely scheduled and a transcript of that hearing is timely filed with the Board in order to allow the Board to review the record and to render its decision within 90 days of the filing of the petition.

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 14th day of October, 1982 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board