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Friday, May 09, 2003

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MAY 14 2003

STATE OF ILLINOIS
Pollution Control Board

Illinois Pollution Control Board
100 W. Randolph St.
Suite 11-500
Chicago, Il 60601

Attention Ms. Dorthy M. Gunn

Re: #PCB 03-210, Objection to Petition for Hearing To Contest Site Location Approval

Dear Ms. Gunn:

We are requesting dismissal of the petition submitted by the Solid Waste Agency of Northern Cook County. We ask for this dismissal based on the following two items:

Item #1 – In SWANCC's petition item #7, they quote section 107.204 of the Board's procedural rules governing siting appeals. They failed to quote the next sentence of the section, which specifically addresses the issue at hand. . " Pursuant to Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving a request for siting approval"

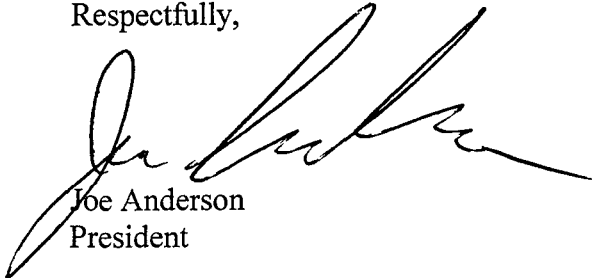
Section 39.2 of the Act states "If there is no final action by the county board or governing body of the municipality within 180 days after filing of the request for site approval the applicant may deem the request approved." Therefore, the City of DesPlaines had until February 4,2003 (180 days after the August 5,2002 application date) to approve our request, otherwise the request is deemed approved. The application was approved by default on February 4, 2003. Since the approval was by default, there was not an official written decision prepared by the City of DesPlaines.

Section 40.1(b) of the Environmental Protection Act states "applicant who participated in the public hearing conducted by the county board or governing body of the municipality may petition the board within 35 days for a hearing to contest the approval." SWANCC had 35 days to file their petition from 2/4/2003. Thirty-five days from February 4,2003 is March 11,2003. SWANCC's petition was filed on April 29, 2003, 49 days late, and is thus untimely and should be dismissed. The City of DesPlaines did approve our request on February18, 2003. This action was a mere formality since default approval occurred February 4,2002.

Item #2 – Section 40.1(b2) of the Environmental Protection Act states that the Board does not need to hear the appeal if “the petitioner is so located as to not be affected by the proposed facility.” SWANCC’s transfer station facility is located 4.5 miles away, as the crow flies, and six miles by road, from the DMS facility. We do not see how our facility could affect SWANCC’s facility, which handles mainly municipal garbage. Our facility handles only construction and demolition waste.

Based on the appeal being untimely and SWANCC not being affected by our facility, we respectfully ask, this request for appeal be denied by the Board.

Respectfully,



Joe Anderson
President

- b) Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

Section 107.204 Time for Filing Petition

A petition for review must be filed within 35 days after the local siting authority's action to approve or disapprove siting. Action means the local government's official written decision granting or denying local siting approval. Pursuant to Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving a request for siting approval.

Quoted by SWA

Section 107.206 Filing and Service Requirements

Not quoted by SWAN.

- a) Filing. The petition for review must be filed with the Clerk of the Board in accordance with the filing requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C and Section 107.208 of this Part.
- b) Service. The petition for review must be served upon all parties in accordance with the Board's service requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C.

Section 107.208 Petition Content Requirements

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must also include:

- a) A copy of the local siting authority's written decision or ordinance;
- b) A statement as to how the filing party is a proper petitioner under Section 107.200 of this Part; and
- c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence.

SUBPART C: FILING OF LOCAL RECORD

Section 107.300 Record

Pursuant to Sections 39.2 and 40.1 of the Act, the siting authority must compile a complete record of its proceedings.

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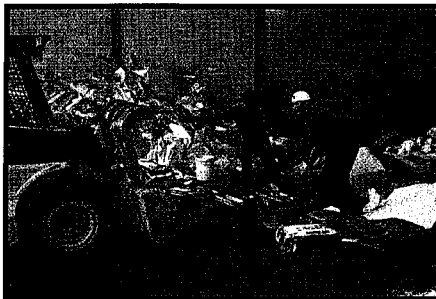


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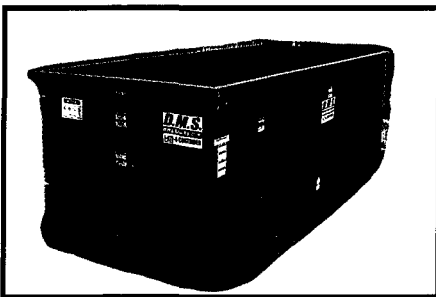


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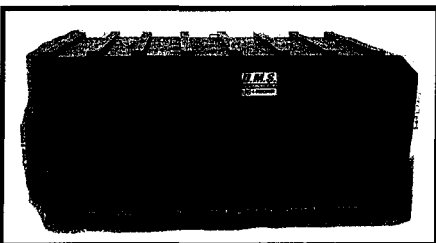
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