

ILLINOIS POLLUTION CONTROL BOARD
October 17, 1996

SENATOR WILLIAM SHAW, RONNIE)
LEWIS, and JUDITH EVANS,)
)
Petitioners,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY, BOARD OF)
TRUSTEES OF THE VILLAGE OF)
DOLTON, ILLINOIS, LAND AND LAKES,)
and MAYOR DONALD HART,)
)
Respondents.)

PCB 97-68
(Landfill Siting Review)

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on an appeal filed pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/40.1 (1994)) on October 8, 1996 by Senator William Shaw, Ronnie Lewis, and Judith Evans (petitioners) from the September 3, 1996 decision of the Village of Dolton, Illinois (Village) granting local siting approval to Land and Lakes Company for the pollution control facility located in Cook County.

The cited section of the Act requires the Board to hear the instant petition if it has been filed by a third party other than the applicant if the party participated in the public hearing conducted by the county board or municipal governing body which granted siting approval, unless it determines that the petition is duplicitous or frivolous, or that the petitioner is so located as to not be affected by the proposed facility. An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum (Brandle v. Ropp, PCB 85-68, 64 PCB 263 (1985)). An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board (Citizens for a Better Environment v. Reynolds Metals Co., PCB 73-173, 8 PCB 46 (1973)).

This petition is deficient in various respects:

1. The petition does not allege that the petitioners participated at the local hearing held by the Village. The Board accordingly cannot make the finding required by section 40.1(b) of the Act that the petitioners participated at the hearing and are so located as to be affected by the facility. Unless both points are alleged in the petition, the Board cannot find that petitioners have standing to appeal.
2. The petition fails to contain a copy of the resolution, ordinance, or other official writing which memorializes the Village's September 3, 1996 decision. Without

this document, the Board cannot determine whether the appeal was in fact filed within 35 days as required by Section 40.1. (The Board must dismiss late appeals.)

If an amended petition curing these deficiencies is not filed within 14 days of the date of this order, this petition is subject to dismissal. The filing of an amended petition curing these deficiencies will restart the Board's decision timeclock, as we do not construe the time as starting to count down until we have received a complete petition. However, the Board will look to the petition's original filing date in making any determinations as to the timeliness of the filing of the appeal pursuant to Section 40.1.

As explained in more detail below, once the decision timeclock begins to run after the filing of a complete petition, this case is one in which the siting applicant, and not the petitioners control the 120-day decision timeclock. (See Waiver of the Decision Deadline below.) In the meantime, the Board will direct the Village to begin preparing its record, and will assign this case to a hearing officer prior to making the Section 40.1(b) finding regarding standing, so that at least the process of scheduling a hearing can begin. If the Board later finds that petitioners do not have standing to sue under Section 40.1, the hearing obviously need not go forward.

RECORD BEFORE THE VILLAGE OF DOLTON

P.A. 82-682, also known as 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 county board or the governing body of the municipality." The statute does not specify who is to file with the Board such record or who is to certify to the completeness or the correctness of the record.

As the Village 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 Village 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 Rules 321 through 324 of the Illinois Supreme Court Rules. (107 Ill. 2d R. 321-324.) The record shall contain legible versions of all documents, transcripts, and exhibits deemed to pertain to this proceeding from initial filing through and including final action by the local government body. The record shall contain the originals of all documents, shall be arranged as much as possible in chronological sequence, and shall be sequentially numbered, placing the letter "C" before the number of each page. In addition to the actual documents which comprise the record, the Village Clerk shall also prepare a document entitled Certificate of Record on Appeal which shall be an index of the record that lists the documents comprising the record and shows the page number upon which they start and end. The original and nine copies of the certificate shall be filed with the Board, and a copy of the certificate shall be served upon the petitioners. The original and nine copies of the transcript of the local hearing and the original and three copies of any other documents in the record shall be filed with the Board. The Clerk of the Village is given 21 days from the date of this order to "prepare, bind and certify the record on appeal" (107 Ill. 2d R. 324.) If the record is not legible, sequentially

numbered, or fails to include an appropriate index of record, the Clerk of the Pollution Control Board may refuse to accept the document for filing.

WAIVER OF THE DECISION DEADLINE

Section 40.1(a) provides that if there is no final action by the Board within 120 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 person who had requested 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. (October 30, 1980), PCB 80-184. 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 the site location applicant to deem the site location approved. Pursuant to Section 105.104 of the Board’s Procedural Rules, it is each party’s responsibility to pursue its action, and to insist that a hearing on the 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 Illinois 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.

SCHEDULING AND CONDUCT OF THE HEARING

The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline, or the decision deadline as extended by waiver (the siting applicant may file a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). The Board will assign a hearing officer to conduct hearings consistent with this order, and the Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision

deadline. Absent any future waivers of the decision deadline, the statutory decision deadline is now February 5, 1997 (120 days from October 8, 1996); the Board meeting immediately preceding the decision deadline is scheduled for January 23, 1997.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the _____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board