

ILLINOIS POLLUTION CONTROL BOARD  
January 29, 1985

BOARD OF TRUSTEES OF CASNER TOWNSHIP, )  
JEFFERSON COUNTY, ILLINOIS; CITIZENS )  
AGAINST WOODLAWN AREA LANDFILLS; )  
CYNTHIA CARPENTER; ERNEST CARPENTER; )  
HATTIE HALL; PEG O'DANIELL; RONALD )  
O'DANIELL; DENNIS SHROYER; and )  
PATRICIA SHROYER, )  
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 )  
Petitioners, )  
 )  
v. ) PCB 84-175  
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 )  
COUNTY OF JEFFERSON and SOUTHERN )  
ILLINOIS LANDFILL, INC., )  
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Respondents. )  
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JOHN PRIOR, )  
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Petitioner, )  
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 )  
v. ) PCB 84-176  
 ) (Consolidated)  
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COUNTY OF JEFFERSON and SOUTHERN )  
ILLINOIS LANDFILL, INC., )  
 )  
 )  
Respondents. )

ORDER OF THE BOARD (by B. Forcade):

On November 29, 1984, the Board of Trustees of Casner Township, Jefferson County, Illinois; Citizens Against Woodlawn Area Landfills; Cynthia Carpenter; Ernest Carpenter; Hattie Hall; Byron Kirkland; Patricia Kirkland; Peg O'Daniell; Ronald O'Daniell; Dennis Shroyer; and Patricia Shroyer ("Casner Township") filed PCB 84-175, an appeal of proceedings of the County of Jefferson ("Jefferson") respecting an application for site location suitability approval for a regional pollution control facility by Southern Illinois Landfill, Inc. ("Southern"). On December 3, 1984, a similar appeal was filed, as PCB 84-176, by John Prior. In a December 6, 1984 Order, the Board consolidated the two cases and authorized hearing.

On January 24, 1985, Casner Township filed an Interlocutory Appeal of Ruling of Hearing Officer. The ruling appealed is a letter from the hearing officer that hearing will be February 6, 1985, and that it is petitioner's responsibility to retain a court reporter pursuant to the Board's Interim Order of December 6, 1984. Casner Township asserts that this ruling violates

Town of Ottawa, et al. v. IPCB, et al, \_\_\_ Ill. App. 3d \_\_\_ (Third District, No. 3-84-0158, slip opinion at 8) (hereinafter "Ottawa"). The Board will accept this interlocutory appeal. As the next regularly scheduled Board meeting is February 7, 1985, after the scheduled hearing, the Board addresses this issue at today's special Board meeting. Notice of the special meeting was posted and circulated on January 25, 1985. The Board has made every effort, by phone and by mail, to inform the parties of this meeting.

As a general matter Board regulations provide that Petitioners in contested case matters shall provide for stenographic transcription of hearings. This applies to variance petitions (35 Ill. Adm. Code 104.202), permit appeals (Section 105.104), and various hearings pursuant to specific rules (Sections 106.106, 106.203, and 106.306). Generally, the Board assumes the obligation to provide stenographic transcription in regulatory matters (Section 102.164) and enforcement cases (Section 103.221). Since the Board's procedural rules pre-date the site location suitability appeal process, there is no set of specific procedural rules applicable. However, by analogy, the Board has placed the burden of providing stenographic transcription on petitioners.

The issue of who has the burden of providing transcription in Board site location suitability appeals was first addressed by the Illinois Courts in 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 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.

Accordingly, we affirm the decision of the Pollution Control Board, but order the Board to reimburse the municipalities for the fee of the reporter.

That Opinion was issued on November 30, 1984, one day after Casner Township's appeal in this matter. However, the mandate in Ottawa has not issued.

On November 30, 1984 the Third District rendered its Slip Opinion in Ottawa. As the Board was only a nominal party in the Ottawa appeal, the Board by the Illinois Attorney General, filed

with the Third District on December 21, 1984, a Motion for Leave to Intervene, Motion to file a Petition for Rehearing Instanter, and a Petition for Rehearing. On January 7, 1985 the Third District granted the motions but on January 8, 1985 denied the Petition for Rehearing. On January 10, 1985, the Board filed an Affidavit of Intent to Seek Review in the Illinois Supreme Court and Motion for Stay of Order. The Board has requested the Attorney General to seek review in the Supreme Court and to request expedited consideration. As of today the Mandate in Ottawa has not issued from the Third District.

Because of the unique circumstances surrounding the burden of providing transcription issue and the fact that additional judicial guidance is expected shortly, the Board will construe Casner Township's Interlocutory Appeal as a petition for the Board to provide transcription, similar to that provided by Section 104.202(b):

- b) Upon petition and good cause shown, the Board may assume the cost of stenographic transcript of the hearing provided, however, that such petition shall have been filed with and granted by the Board prior to the hearing.

The Board construes the possible invalidity, under Ottawa, of requiring Petitioners to provide stenographic transcription as good cause shown, as well as the need, because of the statutory deadline for decision, not to further prolong this issue, and will grant the petition.

The Board will provide for stenographic transcription of the proceedings in this matter.

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 29<sup>th</sup> day of January, 1985 by a vote of 5-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board