

ILLINOIS POLLUTION CONTROL BOARD
November 18, 1983

WATTS TRUCKING SERVICE, INC.,)
)
) Petitioner,)
)
) v.) PCB 83-167
)
) CITY OF ROCK ISLAND,)
)
) Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This appeal was filed November 15, 1983 pursuant to P.A. 82-682. Watt's Trucking Service, Inc. is appealing the October 13, 1983 decision of the City of Rock Island denying its site location suitability approval for a new regional pollution control facility Watt's proposes to locate at the intersection of 2nd Street and 6th Avenue in the City. The proposed facility would detoxify and neutralize various hazardous, and special, non-hazardous liquid industrial wastes.

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." 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 Rock Island 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 Section 105.102(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. As these requirements have not previously been applied to the City of Rock Island, 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).

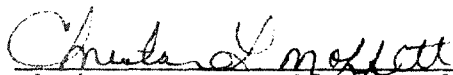
Section 40.1(b) provides that the petition shall be heard "in accordance with the terms of" Section 40.1(a). Section 40.1(a) provides that if there is no final action by the Board within 90 days, petitioner may deem the site location approved.

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 period (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 like manner, with the result that failure of the Board to act in 90 days would allow respondent to deem the site location approved. Pursuant to Section 105.104 of the Procedural Rules, it is each petitioner's responsibility to pursue its action, to insist that a hearing on its petition is timely scheduled, and to insure that a transcript of the 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.

Board Members W. Forcade and J. Marlin abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 18th day of November, 1983 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board