

ILLINOIS POLLUTION CONTROL BOARD
November 8, 1984

JANET HOESMAN AND BYRON HOESMAN,)
)
 Petitioners,)
)
 v.) PCB 84-162
)
 CITY COUNCIL OF THE CITY OF)
 URBANA, ILLINOIS, AND THE)
 CITY OF URBANA, ILLINOIS,)
)
 Respondents.)

ORDER OF THE BOARD (by J. D. Dumelle):

This action is a third party appeal filed pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (Ill. Rev. Stat. ch. 111½, par. 1040.1(b)). The Petitioners, Janet and Byron Hoesman, appeal the October 1, 1984 decision of the City Council of Urbana. The City of Urbana proposes to develop a new regional pollution control facility in the form of a sanitary landfill for disposal of nonhazardous general municipal refuse. The location of the proposed site is at 1210 East University Avenue, Urbana, Illinois and is adjacent to previously operated sanitary landfill property.

This appeal was timely filed on November 1, 1984. 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 that petitioners participated in the City Council's public hearing, and c) indicates that the petitioners' property is located adjacent to the proposed site.

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 County or who is to certify to the completeness or correctness of the record.

As the City Council of Urbana 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 Council 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 Clerk of the City Council shall also prepare a document entitled "Certificate of Record on Appeal" which shall list the documents comprising the record. Seven copies of the certificate, seven copies of the transcript, and three copies of any other documents in the record shall be filed with the Board, and a copy of the certificate shall be served upon the petitioners. As these requirements have not previously been applied to the City Council of Urbana, its 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 the applicable statutory timeframe (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., 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 120 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 120 days of the filing of the petition.

Petitioners have requested that the Respondents be directed to serve upon Petitioners a copy of the transcript and of any and all other documents or papers filed by them in this case. The Board notes that the Board's Procedural Rule at 35 Ill. Adm. Code 103.123 requires that all pleadings, motions, and notices be served personally or by First Class mail. However, the respondents are not under an obligation to serve upon petitioners a copy of the transcript of the hearing or any other documents in the record. These documents, once filed will be available to petitioners for review and copying (at their own expense) at the Board's Chicago office. They should also be available from the City of Urbana pursuant to the Illinois Freedom of Information Act.

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 8th day of November, 1984 by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board