

ILLINOIS POLLUTION CONTROL BOARD  
November 17, 1988

CITY OF ROCKFORD, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 88-107  
 )  
 WINNEBAGO COUNTY BOARD, )  
 )  
 Respondent. )

SUPPLEMENTAL STATEMENT (by B. Forcade, J.D. Dumelle & R. Flemal):

The majority opinion expresses the views of a majority of the Board. In addition, we have reached an agreement as to what would constitute an appropriate outcome for the "need" criterion.

The Act provides in significant part as follows:

The county board of the county ... shall approve the site location suitability of a new regional pollution control facility only if the facility meets the following criteria:

1. the facility is necessary to accommodate the waste needs of the area it is intended to serve ....

Ill. Rev. Stat. ch. 1039.2(a) (1988)

A facility is "necessary" if it is "reasonably required by the waste needs of the area intended to be served, taking into consideration the waste production of the area and the waste disposal capabilities, along with any other relevant factors." Waste Management of Illinois, Inc. v. PCB, 122 Ill. App. 3d 639, 645, 461 N.E.2d 542, 546 (3d Dist. 1984); see Waste Management of Illinois, 123 Ill. App. 3d at 1084, 463 N.E.2d at 976; E & E Hauling, Inc. v. PCB, 116 Ill. App. 3d 586, 609, 451 N.E.2d 555, 573 (2d Dist. 1983), aff'd, 107 Ill. 2d 33, 481 N.E.2d 664 (1985). "Need" is largely contingent on the remaining life of existing landfill capacity in relation to the time necessary to develop new capacity.

We cannot substitute our judgment as to which existing landfill life and additional capacity development times are most reasonable; the sole issue is whether Rockford has shown that the Winnebago County Board's determination that existing capacity is sufficient to meet local need is not supported by the "clearly evident, plain and indisputable weight of the evidence" in the

Winnebago County record. We conclude that the Winnebago County record could reasonably support a range of conclusions with regard to the existing landfill life available to receive Winnebago County wastes and the time necessary to open additional capacity to receive those wastes.

The county record could support a conclusion that anywhere from about six to twelve years of life remain for existing landfills in the area. One Rockford witness, Clarence D. Beatty, of Camp, Dresser & McKee, concluded that 10 to 12 years of landfill capacity existed in four landfills as of February 1983. Rockford Ex. 2, p. 1-5; County R. 50-51. Another Rockford witness, William A. McCann, a real-estate appraiser, concluded that the sole operating landfill in Winnebago County,\* Pagel Pit, had an estimated remaining life of only one to three years as of January, 1986, but two landfills located outside the county had remaining lives of up to 10 years. The Browning-Ferris Industries ("BFI") landfill in Ogle County had a remaining life of 10 years, and the AAA Disposal Landfill (i.e., the Bonus Landfill) in Boone County had a remaining life of two years and an available expansion area that could extend its life by 10 years. Rockford Ex. 38, p. 14; County R. 499-500. In Mr. McCann's estimation, this 10 year capacity was insufficient. Rockford Ex. 38, p. 15; County R. 501-02. Another Rockford witness, Robert M. Robinson of Burns & McDonnell, testified that about six to eight years of capacity existed in the Pagel Pit, the BFI, and Bonus landfills for disposal of area wastes. County R. 202-03. Lower or higher estimates of remaining capacity are possible.

The record indicates that Pagel Pit could continue in operation for anywhere from one to five years. Rockford Ex. 3 (five years); Rockford Ex. 16, p. 1-3 (five years); Rockford Ex. 38, p. 13 (one to three years); County R. 30 & 203 (five years); County R. 964 (three to five years if extended, otherwise until 1987); R. 1088-89 & 93 (four to five years with a newly-opened cell, for an estimated closure time of Summer, 1991). Rockford wastes currently go to Pagel Pit. County R. 81 & 1092. In the absence of a new landfill, Rockford and Winnebago County wastes would necessarily go to existing landfills outside the county. The estimates for the continued life of the BFI landfill in Ogle County vary like those for Pagel Pit, between six and 15 years. Rockford Ex. 3 (15 plus years, or 12 years if accepting all Winnebago County wastes); Rockford Ex. 16, p. 1-2 (12 years at

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\* Two landfills exist in Winnebago County, but one, the South Main landfill in Rockford, accepts only non-putrescible, dry wastes, such as construction rubble, debris, etc. Rockford Ex. 38, p. 11; County R. 30 & 962. This landfill is not considered as existing capacity for the purposes of this proceeding.

current rate of fill); Rockford Ex. 38 (10 years); Rockford Ex. 75, pp. W-11 & R-18 (19 years from 1981); County R. 963-64 (10 to 15 years at current rate of fill, but 6 years if accepting all area wastes). The estimated remaining life of the Bonus Landfill ranges up to about 15 years with a permitted expansion. Rockford Ex. 3; County R./ 31 & 34; see Rockford Ex. 16, p. I-2 (two years, with an available area for expansion by 10 years); County R. 963 & 965-66 (a vertical expansion adds one or two years). The estimates did not consider the County Farm Landfill in Boone County, which had an anticipated life of over six years, because it accepts only about 25 percent of its wastes from outside Boone County, only a portion of which is from Winnebago County. County R. 1151 & 1154; see Rockford Ex. 77; County R. 54.

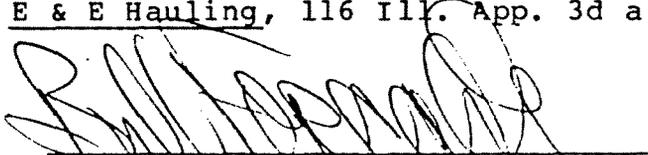
Need is also largely contingent on the time necessary to bring additional capacity into existence. Mr. McCann testified that 10 years is a short time for landfill planning, but the record is unclear what activities he considered in this estimate. County R. 499-500 & 502. He testified that it takes two to three years to begin operations after siting and permitting activities are complete.\* County R. 502-03. Other estimates indicate that the time necessary to site, design, permit, and commence operations is between four and six years. Rockford Ex. 77 (five years); County R. 203 (four to six years); County R. 282 (five to six years). Thus, the time necessary to develop new landfill capacity could lie between four and six years based on this record

We conclude that although the low-end estimates of existing capacity are very close to the high-end estimates of the time necessary to add capacity, Rockford has failed to prove these are the necessary conclusions from the county record. The Winnebago

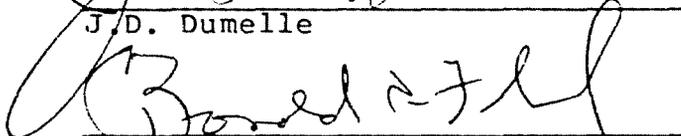
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\* The Section 39.2 county board site approval process requires a minimum 14-day pre-request public notice and provides for a 180-day deadline for a final county board determination. Ill. Rev. Stat. ch. 111 1/2, par. 1039.2(b) & (e) (1988). The Section 39.3 permitting process requires a preliminary Agency determination within 90 days, a public hearing within 180 days of the preliminary determination, and a final determination within 60 days of completion of the public hearing. Section 1039.3(c)(1), (e) & (f). The administrative siting and permitting process could therefore reasonably require about one and a half years. The maximum time for this process is about three and a half years if no appeals occur. See Section 1039.2(f). Appeals of county board decisions to this Board add about four to five months. See Section 1040.1(a). Similar appeals of Agency permit decisions require a similar time. See Section 1040(a) & (c). There is no similar time limitation on subsequent appeals to the appellate courts. See Section 1041(a).

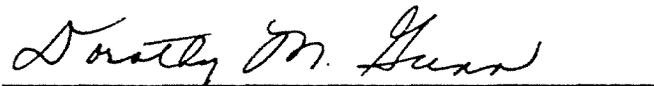
County record could also support a conclusion that existing capacity is sufficient for 12 years and only four years are necessary to bring additional capacity into operation. It is immaterial whether or not we would adopt low-end estimates of capacity and high-end estimates of the time needed for adding capacity. The Winnebago County decision as to need is not against the manifest weight of the evidence. Further, prior cases have held that an existing landfill capacity of ten years supports a conclusion that a determination that there is no need is not against the manifest weight of the evidence. See Waste Management of Illinois, 123 Ill. App. 3d at 1086-88, 463 N.E.2d at 977-979; Waste Management of Illinois, 122 Ill. App. 3d at 644-45 & 461 N.E.2d at 544-45; E & E Hauling, 116 Ill. App. 3d at 608-09; 451 N.E.2d at 572-73.

  
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Bill S. Forcade

  
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J.D. Dumelle

  
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R. Flemal

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Statement was submitted on the 1<sup>st</sup> day of December, 1988.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board