ILLINOIS POLLUTION CONTROL BOARD
September 23, 1993

LARRY SLATES, LONNIE SEYMOUR, JAMES KLABER, FAYE MOTT, and HOOPESTON COMMUNITY MEMORIAL HOSPITAL,	)	
Petitioners,	)	
v.	)	PCB 93-106 (Landfill Siting Review)
ILLINOIS LANDFILLS, INC,. and HOOPESTON CITY COUNCIL, on behalf of the CITY OF HOOPESTON,	)	
Respondent.	)	

DISSENTING OPINION (by R.C. Flemal):

The majority relies on Metropolitan Waste Systems, Inc. (3rd Dist. 1990, 201 Ill.App.3d 51, 558 N.E.2d 785, 787) for the proposition that the landfill applicant defines the intended service area, and from this one point finds disposition of this entire matter. However, I believe that the circumstances faced by the court in Metropolitan Waste Systems were so different that it is error to extend that decision to the circumstances found here.

In Metropolitan Waste Systems the court found that it was wrong for the local decisionmaker to redefine the area of need with the purpose of creating a basis for denial of a landfill application. I believe that the court ruled as it did to protect against such arbitrary and manipulative action by a decisionmaker.

The instant matter is distinguishable from Metropolitan Waste Systems in that here the local decisionmaker found that the landfill was locally needed. Here the local decisionmaker did not construct an arbitrary standard designed to force a particular outcome. There is no reason, therefore, to apply a principle intended to protect against arbitrariness -- particularly so where application of that principle leads to a consequence that is contrary to the intent of the statute itself.

The intent of the landfill siting statute is to give local citizens, through their elected officials, a say in the siting of a landfill. The decision includes a determination of whether there is a supported need for the landfill. The city council has here made that determination. Today's majority decision, however, voids that right of local decision. I cannot find anything in the action of the city council so flagrant as to warrant that right being voided.

The city council did answer affirmatively that there is a need for a landfill to serve Hoopeston and Vermilion County. What the city council did not do is answer the question whether there is also a need for landfill capacity for a whole list of additional counties. Do we therefore tell Hoopeston that "you may not have the landfill that you believe you need, and which you find to satisfy all of the other statutory criteria, because you have not determined a need for a landfill to serve Lake and Cook Counties? or some other subset of remote counties?" I find this absurd and so contrary to statutory intent of local decisionmaking as to be unacceptable.

There is further problem. If we accept arguendo that the majority correctly applies Metropolitan Waste Systems, I cannot accept that reversal is either called for or just.

Reversal is a very substantial consequence. The entire effort to date is lost, and pursuant to Section 39.2(m) may not even be able to be reinstituted for a two-year period. This is an enormous penalty to impose upon the city council for its error (if in fact that is what it was), yet alone upon the applicant.

Reversal would be the correct outcome if the city council had rendered its decision contrary to the manifest weight of the evidence; justice would be served by the voiding a of decision that was contrary to the evidence.

But the city council's decision was not contrary to the evidence. The council's error (if in fact that is what it was) was one of failure to render a complete decision -- not one of rendering a patently false decision. At the worst their action would seem to constitute a failure to completely exercise their statutory authority. The Act does indeed provide that failure of the local decisionmaker to make a timely decision results in a default decision (see Act at 39.2(e)). But the default is for the applicant, not against it. In any event, it should not be the applicant that is prejudiced by the error (if in fact that is what it was) of the city council.

My own preference would have been, still assuming arguendo that Metropolitan Waste Systems is indeed binding, to remand the matter to the city council for a complete decision. If it is found that the applicant did not properly establish need (with all appropriate appeals satisfied), the application justly falls on its merits. If it is found that the applicant did properly establish need (with all appropriate appeals satisfied), the application justly prevails. This course would have preserved the right of local decisionmaking, conserved society's investment in the consideration of this matter, and served the right of all interested persons to a complete adjudication.

For these reasons, I dissent.

Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 24 day of February, 1993.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board