

ILLINOIS POLLUTION CONTROL BOARD  
June 4, 1992

LAND AND LAKES COMPANY, )  
JMC OPERATIONS, INC., AND )  
NBD TRUST COMPANY OF ILLINOIS )  
AS TRUSTEE UNDER TRUST NO. 2624EG, )  
 )  
Petitioners, )  
 )  
v. )  
 )  
VILLAGE OF ROMEOVILLE, )  
 )  
Respondent, )  
 )  
COUNTY OF WILL, AND PEOPLE )  
OF THE STATE OF ILLINOIS, )  
 )  
Intervenors. )

PCB 92-25  
(Landfill Siting)

DISSENTING OPINION (by J. Anderson):

I would have concluded that the Village's decision that found against Land and Lakes on Criterion #1 was against the manifest weight of the evidence. A review of the record does not support the notion that the Village could have reasonably reached its conclusion that Land and Lakes failed to meet its burden of establishing that the facility is necessary to accommodate the waste needs of the service area.


The sole basis of support in the record for the Village's decision was an analysis of need confined only to Will County provided by the solid waste director for the county. Because it utilized Will County alone as the proposed service area, Will County's analysis of need is not indicative of whether Land and Lakes' facility is needed. The applicant proposed a larger area. Apart from the problem of other flaws in that analysis, an assessment of need based on a totally different service area than that proposed by the applicant is not a useful indicator of need.

The Board cautioned in its December 6, 1991 Opinion remanding this case back to the Village that it cannot redefine the service area; rather, it is the area defined by the applicant that the decisionmaker must consider. (Metropolitan Waste

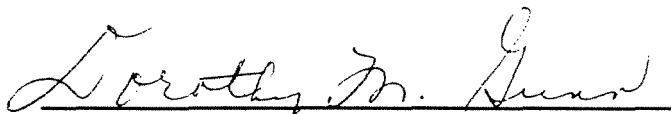
Systems, Inc. v. IPCB (3d Dist. 1990), 558 N.E.2d at 787).<sup>1</sup>  
Here, the record after remand does not indicate that the Village attempted directly to redefine the service area. However, the decisionmaker should not be able to by indirection redefine the service area by relying on evidence that ignored part of the applicant's service area.

I believe that, overall, Will County's evidence rebutting Land and Lakes' evidence addressing Criterion #1 is so seriously flawed that the Village could not have reasonably relied on it in determining that Land and Lakes failed to meet its burden on Criterion 1. In the absence of credible rebuttal evidence on the issue of need or a showing that Land and Lakes' assessment of need is materially flawed, the Village's finding that the applicant failed to meet its burden of establishing need is against the manifest weight of the evidence. (Industrial Fuels & Resources/Illinois Inc. v. IPCB (1st Dist. March 19, 1992P, No. 1-91-0144 slip op. at 19.))

It is for these reasons that I respectfully dissent.

  
Joan G. Anderson, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 27<sup>th</sup> day of June, 1992.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> While the Village's decision prior to remand was unclear, what was clear - and a cause of concern - in the transcribed record of negotiations before that first decision was the Village's insistence that Land and Lakes confine its service area solely to Will County, which Land and Lakes declined to commit to. Also of interest: see Fort Gratiot Sanitary Landfill Inc. v. Michigan DNR, US SupCt. No. 91-636, 6/1/92, where the Supreme Court recently found that a Michigan law that allows each county in the state to prohibit landfills from receiving solid waste from outside the county violates the U.S. Constitution.

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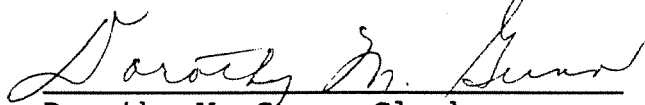
DYNAMIC HYDRA-BLASTING, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 92-30
	)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by B. Forcade):

On May 26, 1992 Dynamic Hydra-Blasting, Inc., filed a motion to dismiss. The motion is granted and this matter is dismissed.

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 4th day of June, 1992, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board