

ILLINOIS POLLUTION CONTROL BOARD
October 10, 1991

RICHARD WORTHEN, CLARENCE BOHM,)
HARRY PARKER, GEORGE ARNOLD,)
CHARLES CRISWELL, THOMAS GIBSON,)
CITY OF EDWARDSVILLE, CITY OF)
TROY, VILLAGE OF MARYVILLE,)
VILLAGE OF GLEN CARBON,)
SAVE ALL FARMLAND AND)
ENVIRONMENTAL RESOURCES, and)
MADISON COUNTY CONSERVATION)
ALLIANCE,)

Petitioners,)

v.)

VILLAGE OF ROXANA and)
LAIDLAW WASTE SYSTEMS (MADISON),)
INC.)

Respondents.)

PCB 91-106
(Landfill Siting
Review)

DISSENTING OPINION (by J.D. Dumelle):

There are three main issues in this case on which I dissent from the majority.

The first issue was that of fundamental fairness. Landfill siting cases usually produce high citizen participation and comment. It is inherent in such a proceeding that citizens must be given ample time in which to voice their concerns if fairness is to exist.

Ample time was not given in the instant case. The applicants had the better part of three full days in which to put on their case (with cross-examination by the opponents, of course) but the public had less than an hour to voice its concerns.

The hearings for the applicant were on April 8, 10, and 11 and generated 650 pages of transcript. The public comment hearing on April 15 had citizens limited to five minutes each. Only 37 pages of transcript were then generated. That hearing ran from 7:10 p.m. until 8:03 p.m. or 53 minutes in all. The limiting of public comments to five minutes each was obviously fundamentally unfair.

The second issue was that of Criterion No. 1 relating to the need for the landfill. The Appellate Court has given this Board guidance in judging this Criterion.

In a recently received opinion the Appellate Court stated:

With respect to the requirement of showing

that the new landfill is necessary to accommodate the waste needs of the area it is intended to serve, the applicant need not show absolute necessity. However, the applicant must demonstrate an urgent need for the new facility as well as the reasonable convenience of establishing a new or expanding an existing landfill. (Waste Management of Illinois v. Pollution Control Board (1988), 175 Ill.App.3d 1023, 1031, 530 N.E.2d 682, 689). (Emphasis added).

Horace File, et al. v. D & L Landfill, Inc., Bond County Board of Supervisors and Illinois Pollution Control Board, No. 5-90-0630, Slip. Op. at 14-15 (5th Dist., Oct. 3, 1991).

Note the key phrase of "urgent need". Some 25 years of capacity in Madison County (R.112) and 41 years of capacity in St. Clair County are said to exist. How then is "urgent need" satisfied?

The applicant in this proceeding has limited its service area to Madison, St. Clair, and Monroe counties. (Note: Monroe County's solid waste output is said to be quite small compared to the other two counties.) Since it has limited its service area the applicant then must show an "urgent need" in spite of existing capacity. To argue that the importation of refuse from the St. Louis area or elsewhere (New Jersey and New York perhaps?) makes the landfill urgently needed is to destroy any meaning to the Criterion. Any applicant anywhere can raise the specter of refuse imports to satisfy Criterion No. 1. The General Assembly meant the need criterion to be met as reasonable people would evaluate it.

The third issue is one of extreme importance to Illinois and is one of first impression. It is that of Criterion No. 8 (Section 39.2 of the Environmental Protection Act) relating to county solid waste management plans. It reads:

...local siting approval shall be granted only if the proposed facility meets the following criteria:

8. if the facility is to be located in a county where the county board has adopted a solid waste management plan, the facility is consistent with that plan.

There are obviously two elements to the determination of adherence to Criterion No. 8. One element is the adoption by the Madison County (where Roxana is located) of a solid waste management plan. The second element is consistency of the facility with the plan.

In this proceeding, Roxana, in its May 20, 1991 adopted

report of Hearing Committee stated in "h":

The drafts of the Madison County Solid Waste Management Plan, as presented by the evidence, documents and testimony, are considered as if such plan is in full force and effect; the facility is consistent with such plan. (p.3)

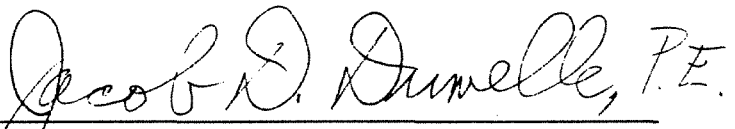
Since the decision maker, the Village of Roxana, has deemed the Madison County solid waste management plan to be in full force and effect there is no issue on this point. Roxana has asked to be judged on this Criterion on the second point only, namely, the consistency issue.

The testimony of Michael Coulson, who worked on the solid waste management plan as manager of environmental planning for the East-West Gateway Coordinating Council, is exactly on point. His testimony, repeated several times, is that the plan's intent was that no new landfills be sited for a three year period. See the April 11, 1991 hearing R. 558-617 but especially R. 562-564, R. 576-577, and R. 591-593. The language of the landfill prohibition is on p. 78 of Exhibit 82. The third paragraph on this page is the operative language and must be read with Mr. Coulson's testimony in mind.

The General Assembly has required solid waste management plans from all of Illinois' 102 counties. In its wisdom it has required that proposed new landfills or any other facilities be consistent with those plans. Obviously a new landfill, as here proposed, does not square with a 3-year ban on all new landfills.

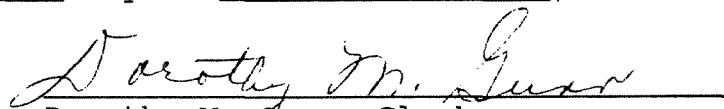
If solid waste planning is to mean anything in Illinois it must be followed once a county has enacted such a plan. To allow this landfill in the face of the plan's ban is to render all solid waste plans required to be devised by 102 counties capable of being breached at any time by any village or city. The plan requirement in the statute then becomes meaningless. The General Assembly would have enacted a nullity and this is not a reasonable construction.

For these reasons, I dissent.



Jacob D. Dumelle, P.E.
Board Member & Former Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the 16th day of October, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board