ILLINOIS POLLUTION CONTROL BOARD
December 20, 1990

ERWIN HEDIGER, HORACE FILE, SUSIE ARMBRUSTER, ARLIN WOKER, LAYTON PEDDICORD, ARLINE DAIL, BURNELL NEUMANN, LAVERLE EAKLE, LYNN SCHMOLLINGER, HOWARD PRINGLE, REID BINGHAM, AGNES PRINGLE, CRAIG WOKER, MRS. O.J. DAIL, JEANETTE TIFT, GLEN MILES BILL GOODALL, DONALD SPRADLING HOLLIE WILLMANN, CHARLES H. FUNK, CAROLYN SPRADLING, PAMELA FUNK, LOLA BROWN, JAMES DARNELL LEROY WIESE, LAMOINE BROWN, MIKE EATON, JIM STOECKLIN, BOB BOWEN, MARY BLOEMKER, DON CORE, ELDON BLOEMKER, FRANCIS RINDERER, DANNY KUHN, MRS. RALPH BAUMANN, PAMELA BRYANT, LEORA LEISHER, MR. RALPH BAUMANN, JIM ZEBB, MYRNA BRUCE, RICHARD ARMBRUSTER, JOHN LANGFORD, MRS. PEGGY DARNELL and BOND COUNTY CONCERNED CITIZENS,	)	
Petitioners,	)	
v.	)	PCB 90-163 (Landfill Siting)
D & L LANDFILL, INC., BOND COUNTY BOARD OF SUPERVISORS, COUNTY OF BOND, STATE OF ILLINOIS,	)	
Respondents.	)	

JAMES BUCHMILLER APPEARED ON BEHALD OF THE PETITIONERS.

W.A. DILLOW, III APPEARED FOR THE RESPONDENT, D & L LANDFILL, INC.

JOHN KNIGHT APPEARED FOR THE RESPONDENT, BOND COUNTY BOARD OF SUPERVISORS.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Illinois Pollution Control Board ("Board") on a third-party appeal filed August 20, 1990 pursuant to Section 40.1(b) of the Environmental Protection Act

("Act") Ill.Rev.Stat. Ch. 111½, par. 1040.1 (b). The above-named individuals and Bond County Concerned Citizens (Collectively referred to hereafter as "BCCC") appeal the decision of the Bond County Board of Supervisors ("County Board" or "Bond County") granting site location suitability approval to D & L Landfill, Inc. ("D & L") for a vertical expansion of its existing landfill.

Procedural History

D & L filed its application for landfill siting approval with Bond County on February 8, 1990. Public Hearings on D & L's application for the proposed vertical expansion and closure/post-closure were conducted by the Bond County Board on May 24 and June 14, 1990. The Bond County Board issued the decision to approve the application on July 19, 1990.

BCCC filed their petition with this Board on August 20, 1990. The matter was accepted for hearing on August 30, 1990. On September 10, 1990, D & L filed its response to the petition. On September 17, 1990 BCCC filed an amendment to the petition. On September 24, 1990 Bond County submitted a certification of record and the County Board record. On September 25, 1990, BCCC filed an amendment to the petition.

On October 19, 1990 the Board's hearing was held in Greenville, Illinois. A waiver of the decision due date until December 22, 1990 was filed on October 22, 1990. On October 23, 1990, original photographs were filed with the Board in substitution for the previously filed photocopies. The photographs comprise applicant's exhibits 12-18 and the County Board's consultant's exhibits 12-19.

Pursuant to the Board's order of October 25, 1990, on October 29, 1990, Bond County submitted a revised certification, index of exhibits, and labelled exhibits. No briefs were submitted in this matter. The record submitted by Bond County consists of the transcripts from the May 24 and June 14, 1990 public hearings; the application documents; applicant's exhibits 1-24; the certification of publication of notice; copies of letters and certified mail receipts for notice to the Illinois Environmental Protection Agency ("Agency") and legislators, BCCC exhibits 1, 2, 3, and 6; Patrick Engineering's (consultant to the County Board) exhibits 1-24; and the written decision of the County Board.

Background

The proposed facility would be a vertical expansion of a landfill now located in Bond County, Illinois, at the southwestern edge of the City of Greenville, Illinois. Bd. Tr.*

*The abbreviation, Bd. Tr., will be used to signify the transcript of the Board's October 19, 1990 hearing.

at 6. The expansion would enable D & L to continue operations at the same site where D & L has operated since 1974. This landfill "was operated under the Illinois Department of Public Health and Pet Milk and the City of Greenville" prior to D & L's acquiring its permit on May 13, 1974. Tr. ** at p. 13. The original permitted facility includes 32 acres, of which 15 acres would be used for the vertical expansion. Tr. at pp. 21, 40 and Bond County Board Ex. 2. The vertical expansion would involve a maximum height of 590 feet above main sea level, compared with present levels of 530 - 540 feet at one end of the existing trash area. Tr. at p. 26. The fill depth for the new area was stated as being 20 to 40 feet on average above the existing site. Tr. at p. 39; see also Tr. at pp. 76-77.

The proposed facility would operate daily, Monday through Saturday from 5:00 a.m. to 8:00 p.m. May 1st through August 31st and from 6:00 a.m. to 6:00 p.m. from September 1st through April 30th. Tr. at p. 37. The vertical expansion would allow approximately 308,000 cubic yards of additional waste to be delivered to the site. Tr. at p. 25; see also Tr. at pp. 123-124. Hazardous wastes would not be accepted at the facility.

Based on D & L's records indicating that 500 cubic yards per day are now delivered to the site, D & L's engineer projects that within 2 years the waste capacity gained from the vertical expansion would be fully used. Tr. at p. 26. But see also Tr. at pp. 73-74 indicating that waste volumes reported to the state were last stated at 63,087 cubic yards per year, which suggests a longer "life" for the 308,000 cubic feet of added capacity. Final closure would then take place. Closure/post-closure plans include a groundwater monitoring program and plans, construction of a berm around the entire perimeter of the site, and quarterly inspections. Tr. at pp. 17-19, p. 31, pp. 96-102, 112-120, and D & L Ex. 8. Six monitoring wells are to be installed, replacing two existing monitoring wells. Tr. at pp. 32-33, p. 117.

D & L's enigneer described the area surrounding the facility as including agricultural/farming uses to the north and west; a number of residences on the opposite side of the road and a nearby public housing project to the south; and the City of Greenville directly to the east. Tr. at pp. 21, 67-68.

Introduction

Public Act 82-682, commonly known as SB-172, is codified in Sections 3.32, 39.2 and 40.1 of the Act. It vests authority in the county board or municipal government to approve or disapprove the request for each new regional pollution control facility. These decisions may be appealed to the Pollution Control Board, whose authority to review the landfill site location decisions of

**The abbreviations, Tr. and 2 Tr., will be used to signjify the transcripts of the County Board hearings held on May 24, 1989 and June 14, 1990, respectively.

Greenville directly to the east. Tr. at pp. 21, 67-68.

Introduction

Public Act 82-682, commonly known as SB-172, is codified in Sections 3.32, 39.2 and 40.1 of the Act. It vests authority in the county board or municipal government to approve or disapprove the request for each new regional pollution control facility. These decisions may be appealed to the Pollution Control Board, whose authority to review the landfill site location decisions of local governments is found in Section 40.1 of the Act. The Board's scope of review encompasses three principal areas: (1) jurisdiction, (2) fundamental fairness of the local government's site approval procedures, and (3) the nine statutory criteria for site location suitability. Pursuant to Section 40.1(a) of the Act, the Board is to rely "exclusively on the record before the county board or the governing body of the municipality" in reviewing the decision below. However, with respect to the issue of fundamental fairness, the Illinois Supreme Court has affirmed that the Board may look beyond the record to avoid an unjust or absurd result. E&E Hauling, Inc. v. PCB, 116 Ill.App.3d 587, 594, 451 N.E.2d 555 (2d Dist. 1983), aff'd in part 107 Ill.2d 33, 481 N.E.2d 664 (1985).

Jurisdiction

Jurisdiction is not at issue in this case.

Fundamental Fairness

Section 40.1(a) of the Act requires that the county board or local governing body must employ procedures, in reaching its siting decision, which are "fundamentally fair." Due process considerations are an important aspect of fundamental fairness.

> Administrative proceedings are governed by the fundamental principles and requirements of due process of law. [Citation.] Due process is a flexible concept and requires such procedural protections as the particular situation demands. [Citation.] In an administrative hearing, due process is satisfied by procedures that are suitable for the nature of the determination to be made and that conform to the fundamental principles of justice. [Citation.] Furthermore, not all accepted requirements of due process in the trial of a case are necessary at an administrative hearing. [Citation.] *** Due process requirements are determined by balancing the weight of the individual's interest against society's interest in effective and efficient governmental operation.
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> Waste Management of Illinois, Inc. v. PCB, 175

> Ill.App.3d 1023, 1036-37, 530 N.E.2d 682 (2d Dist. 1988).

Thus, the manner in which the hearing is conducted, the opportunity to be heard, the existence of ex parte contacts, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness.

The recognized remedy for a lack of fundamental fairness is for the Board to remand to the county board to allow them an opportunity to cure this procedural deficiency. City of Rockford v. Winnebago County Board, PCB 87-92, 83 PCB 47 (November 19, 1987). This takes the siting decision back to the local authorities, who pursuant to Section 39.2(a) have been given this decisionmaking authority.

Although BCCC raised the issue of fundamental fairness in its Petition at p. 3, the Board finds that the arguments raised by BCCC are not concerned with whether the County Board conducted the proceedings below in a fundamentally fair manner, but rather, BCCC argues that the County Board should not have drawn conclusions from the evidence which resulted in approval of the application. This raises the issue that the County Board's decision was against the manifest weight of the evidence, not that the County Board's procedures or conduct was fundamentally unfair in reaching a different outcome than that sought by BCCC. The Board, therefore, will proceed to address the statutory criteria for site suitability and whether the County Board's decision on each criterion should be upheld by this Board.

Statutory Criteria

Section 39.2 of the Act presently outlines nine criteria for site suitability, each of which must be satisfied if site approval is to be granted. Waste Management of Illinois, Inc. v. PCB, 160 Ill. App. 3d. 434, 513 N.E. 2d 592 (1987). In establishing each of the criteria, the applicant's burden of proof before the local authority is the preponderance of the evidence standard. Industrial Salvage v. County of Marion, PCB 83-173, 59 PCB 233, 235, 236 (August 2, 1984). Section 39.2(a) of the Act sets forth the nine criteria as follows:

> The county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, shall approve or disapprove the request for local siting approval for each new regional pollution control facility which is subject to such review. An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance, and local siting approval shall be granted only if the proposed

facility meets the following criteria:

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

2. the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

3. the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

4. the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed;

5. the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

6. the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

7. if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release; and

8. the 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; and

9. if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

BCCC challenges the County Board's decision with respect each of the above criteria, except number 7, which only involves hazardous waste facilities. The Board is now charged with deciding whether the County Board's conclusion with respect to each contested criteria was against the manifest weight of the

evidence.

Standard of Review

As stated above, on appeal, the PCB must review each of the challenged criteria based upon the manifest weight of the evidence standard. This standard of review was recently restated in Fairview Area Citizens Taskforce v. IPCB, 144 Ill. Dec. 659, 555 N.E.2d 1178 (3d Dist. 1990) as follows:

> In Tate, the standard of review in a regional pollution control facility site-location suitability case was stated:
>
> Waste Management of Illinois, Inc. v. Pollution Control Board (1987), 160 Ill.App.3d 434 [112 Ill.Dec. 178], 513 N.E.2d 592, decided that all of the statutory criteria must be satisfied in order for approval and that the proper standard of review for the County Board's decision is whether the decision is against the manifest weight of the evidence, with the manifest weight standard being applied to each and every criterion. See also City of Rockford v. Pollution Control Board (1984), 125 Ill.App.3d 384 [80 Ill.Dec. 650], 465 N.E.2d 996.
>
> A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence (Harris v. Day 1983, 115 Ill.App.3d 762 [71 Ill.Dec. 547], 451 N.E.2d 262). The province of the hearing body is to weigh the evidence, resolve conflicts in testimony, and assess the credibility of the witnesses. A reviewing court is not in a position to reweigh the evidence, but can merely determine if the decision is against the manifest weight of the evidence. Jackson v. Board of Review of the Department of Labor (1985), 105 Ill.2d 501 [86 Ill.Dec. 500], 475 N.E.2d 879; McKey & Poague, Inc. v. Stackler (1978), 63 Ill.App.3d 142 [20 Ill.Dec. 130], 379 N.E.2d 1198.
>
> Fairview Area Citizens Taskforce v. IPCB, 555 N.E. 2d at 1184, citing Tate v. PCB, 188 Ill.App.3d 994, 544 N.E.2d 1176, 1195

Thus, the Board must affirm the decision of the local governing body unless that decision is clearly contrary to the manifest weight of the evidence, regardless of whether the local board might have reasonably reached a different conclusion. See also E&E Hauling v. PCB, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983); City of Rockford v. IPCB and Frink's Industrial Waste, 125 Ill.App.3d 384, 465 N.E.2d 996 (2d Dist. 1984); Waste Management of Illinois, Inc. v. IPCB, 22 Ill.App.3d 639, 461 N.E.2d 542 (3d Dist. 1984); Steinberg v. Petta, 139 Ill.App.3d 503, 487 N.E.2d 1064 (1st Dist. 1985); Willowbrook Motel v. PCB, 135 Ill.App.3d 343, 481 N.E.2d 1032 (1st Dist. 1985).

It should be noted that the Fairview court, citing Tate, defined the responsibilities of the hearing body in terms of weighing the evidence, resolving conflicts in testimony, and assessing the credibility of witnesses. It is not the local government's burden to disprove or refute the applicant's assertions.

The decisionmaking authority rests solely with the local government. A local government's consultant report, even if accurately characterized as urging approval, is not binding on the decisionmaker. McLean County Disposal Company, Inc. v. The County of McLean, PCB 89-108, 105 PCB 203, 207 (November 15, 1989).

The Bond County Board hired an engineer, Mr. Moose, who reviewed the D & L application and who testified at the public hearing. BCCC argues that the County Board's engineer found certain criteria were not met by D & L and that the application lacked adequate information such that the engineer could not make a favorable recommendation on certain other criteria. See Pet. at pp. 7-11 and Tr. pp. 16-36. Without addressing here each aspect of the testimony of the County Board's expert, the Board again notes that the local government is not bound by the recommendations of its experts. The testimony of the County Board's expert is, however, relevant to the Pollution Control Board's decision as to whether the local government's decision was against the manifest weight of the evidence. This Board will evaluate the testimony of the County Board's engineer in that context only.

Discussion

The issue before the Board is whether or not the decision of the Bond County Board, finding that D & L proved that the proposed facility satisfies criteria 1, 2, 3, 4, 5, 6, 8, and 9, is against the manifest weight of the evidence.

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

Pursuant to Section 39.2(a)(1) of the Act, the Bond County Board is required to review D & L's application to ensure that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. The applicant is not required to show absolute necessity in order to satisfy criterion 1. Fairview Area Citizens Taskforce v. IPCB, 555 N.E.2d at 1185, citing Tate v. Macon County Board, 544 N.E.2d 1176; Clutts v. Beasley, 185 Ill. App. 3d 543, 541 N.E.2d 844, 846 (5th Dist. 1989); A.R.F. Landfill, Inc. v. PCB, 174 Ill.App.3d 82, 528 N.E.2d 390, 396 (2d Dist. 1988); Waste Management of Illinois v. PCB, 122 Ill.App.3d 639, 461 N.E.2d 542, 546 (3d Dist. 1984). The Third District has construed "necessary" as connoting a "degree of requirement or essentiality" and not just "reasonably convenient." Waste Management of Illinois v. PCB, 461 N.E.2d at 546. The Second District adopted this construction of

"necessary" with the additional requirement that the applicant demonstrate both an urgent need for, and the reasonable convenience of, the new facility. Waste Management of Illinois, v. PCB, 530 N.E.2d 682, 689 (2d Dist. 1988); A.R.F. Landfill, Inc. v. PCB, 528 N.E.2d at 396; Waste Management of Illinois v. PCB, 463 N.E.2d 969, 976 (2d Dist. 1984).

The applicant defines the area to be served. Metropolitan Waste Systems, Inc., Spicer, Inc., et al. v IPCB, 146 Ill. Dec. 822, 558 N.E. 2nd 785 (Third Dist. 1990). D & L has discussed its service area in terms of the highly localized needs which the current facility serves, that is, primarily the needs of Bond County. This Board previously has found that this narrow approach alone does not warrant the Board's reversal of the local government's decision. Bond County Concerned Citizens, et al v. D & L Landfill, Inc., PCB 90-94, August 30, 1990.

BCCC asserts that other facilities are available to meet Bond County's disposal needs. BCCC also argues that the statutory requirement, that the facility is necessary to meet the waste needs of the area intended to be served, has not been satisfied, in part, because the applicant did not introduce evidence on other available facilities. BCCC stated at this Board's hearing that:

> "....there was simply the testimony of the engineer for the operator, Mr. Conner, that the landfill was full. He basically gave no testimony that there was....
> ....no other disposal site available.
>
> When questioned, they said that they made no study to determine what else or what other sites were available, and, therefore, nothing was in the application in that regard.
>
> No study was made as to what additional costs would be incurred with regard to putting the trash at some other site, at some other location.
>
> Bd. Tr. at p 9.

BCCC argues that another hauler would be available to haul Bond County's waste to other facilities, and that other communities using other disposal facilities were paying less than or equal to D & L's disposal charges. Pet. at p. 5, 2 Tr. at pp. 79-80. BCCC also relies on the testimony of the County Board's consultant, who pointed out that while the existing facility had no remaining life, alternatives had not been explored, and, therefore, the need for the facility could not be determined. Pet. at pp. 7-8, citing 2 Tr. at pp. 21-22.

BCCC attempted at this Board's hearing to present evidence on available facilities by reference to certain documents attached to a letter which BCCC submitted as public comments for consideration by the County Board. D & L objected to the

inclusion of those documents in the record before this Board since the attachment reportedly was submitted one day after the 30 day comment period, even though the letter itself was timely filed. Bd. Tr. at pp. 10-12. BCCC responded at hearing that the letter independently presented evidence that alternative facilities existed which would involve minimal or no additional disposal costs to Bond County. The Board finds that the statement at p. 3 of D & L's Response to Amendment to Petition that, "it appears as if counsel for the Petitioners has attempted to introduce into evidence various exhibits more than thirty (30) days after the date of the last public hearing on this matter", did not sufficiently inform this Board of the matter to which D & L objected. The Board will not construe such general statements as an objection or motion to exclude. However, the Board has considered the objection raised by D & L at this Board's hearing, and finds that the particular attachments should not be considered as part of the County Board's record to be reviewed by this Board.

D & L argues that its expert stated that D & L serves a three or four county area, that Bond County has no other landfills, that the nearest other landfill is in Litchfield, and that costs would increase to haul trash farther. Bd. Tr. at 41, citing Tr. at pp. 48, 82, 83. See also 2 Tr. at pp. 93-99. D & L also focuses on the testimony of the County Board's consultant, who observed that the current facility's capacity is depleted and that the rate of disposal had been increasing for three or four years. Bd. Tr. at pp. 41, citing 2 Tr. at p. 21.

In addition to the assertions of need by D & L, the County Board also heard the testimony of its own consultant, who testified that as a practical matter the existing facility had no remaining life. "Either they receive the vertical expansion; or, they will be forced to close by the IEPA. Right now." 2 Tr. at p. 21. The County Board also heard the continuing testimony of its consultant, in which he noted that "I don't think, in my opinion, this totally answers the need question." 2 Tr. at p. 21. As BCCC notes, the consultant stated that the application did not present alternatives or cost, but that there were no more landfills in this county. 2 Tr. at pp. 22.

After reviewing the application, hearing arguments from both D & L and BCCC, and hearing from its own consultant, Bond County concluded that the facility was necessary to accommodate the wastes needs of the area it was intended to serve. The County Board had an opportunity to consider BCCC's assertions that alternative facilities would be available at little or no additional expense to Bond County. It also had an opportunity to consider what the probable life of the proposed facility might be. Tr. at pp. 25-26, 123-124, 2 Tr. at p. 21. The County Board concluded that the proposed facility is necessary to serve the waste needs of the area, even though it might have reached a different conclusion. The Board finds that Bond County's decision on criteria 1 has support in the record and is not contrary to the manifest weight of the evidence.

Criterion 2: the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

Criterion 2 requires that the applicant demonstrate that the proposed facility is designed, located, and proposed to be operated in a manner in which the public health, safety, and welfare will be protected. The decision maker, here the County Board, has the duty to weigh the credibility of witnesses, where, as in the present case, the expert testimony of more than one witness is presented. See, Metropolitan Waste Systems, Inc., Spicer Inc., et al. v. PCB, 146 Ill. Dec. 822, 558 N.E. 2d 785 (3d Dist. 1990), ARF Landfill, Inc., v. PCB, 174 Ill. App. 3d 82, 528 N.E. 2d 390 (2d Dist. 1988).

BCCC argues that gas, leachate, and erosion problems create a potential hazard to the public health, safety, and welfare. BCCC offered Agency reports of distressed and dying trees in this connection. BCCC also raised the issue of past violations and fines paid by D & L in support of its position that the facility would not be operated consistent with criterion 2. Tr. at pp. 54, 60-67, 2 Tr. at pp. 104-105, 131-139.

In response to concerns raised about gas, D & L's engineer testifed that detection of a possible escape of methane gas was to be based only on observation of vegetation. Tr. at pp. 35-36, 79-81, 119-120. BCCC asserts that "there was no other detection method proposed or considered by them..." Bd. Tr. p. 7. BCCC argues that there is little or no vegetation to monitor, and that, therefore, the proposed detection method is inadequate. Bd. Tr. at p. 8; Tr. at 80-81. BCCC also referred to the testimony of the County Board's engineer, Mr. Moose, who found that the detection system is "not adequate." "...I don't believe that there is any gas management plan collection detection system; and, I believe that one should be part of this expanded facility." 2 Tr. at pp. 40, 64-65.

BCCC also challenges D & L's claims regarding health, safety, and welfare based on possible groundwater contamination from leachate. Pet. at p. 7-9. At hearing, BCCC stated that:

> ....the applicant, through testimony of his engineer, admited that there was leachate escaping from the site, and there had been leachate escaping from the site for some considerable years prior to this application.
>
> ***
>
> ....this is not a 10%, not a 20%, not a 50%, not a 100% excessive presence of chloride, boron, and iron contaminants in the area, but multiples of 7.4 and multiple of 24 times, and a multiples of 3.6 times.
>
> ***
>
> With regard also to the affect on the environment and safety of the public, their engineer and the only evidence that we had from the applicant, and only thing

> in the application was his admission that he made, no study, and I repeat, no study.
>
> That is his own testimony and the only testimony on behalf of the applicant with regard to the number and the location or its proximity of the homes to this site.
>
> Therefore I think it follows, the inevitable conclusion, that this is not part of the application, it is not in the application, even though by law it is required.
>
> He also admitted he did not count the ground wells at these home sites.
>
> Bd. Tr. at pp. 13-15. (See also, 2 Tr. at pp. 84-86)

BCCC points to the testimony of D & L's engineer that the extent of the present leachate problem is unknown, and that, further, D & L's application itself suggests that geologic conditions may be unfavorable for controlling the leachate problem. Tr. at p. 101, 2 Tr. at pp. 81-82. BCCC further argues that the County Board's consultant stated that the application did not present enough information on geologic formation, groundwater, wells and the containment berm to conclude that groundwater would be protected. Pet. at p. 8-9, 2 Tr. at pp. 23-41.

The County Board's consultant raised many concerns regarding contamination of area wells, the lack of a liner, the effectiveness of the berm, and the area's geology. The Board notes, however, that he also stated that "the little data that is in here (on geology) is conflicting." 2 Tr. at p. 25.

D & L's engineer discussed at length the various aspects of the proposed facility's design and operating plan, including daily cover, the design of the berm and drainage plan, erosion control, methane gas detection, and monitoring wells, to support its position that the facility would protect the public health, safety, and welfare. Tr. pp. 69-82, 95-120.

Much of BCCC's argument and the County Board's consultant's testimony is directed at monitoring, arresting, and remediating the pre-existing leachate problem. The apparent lack of a liner under the existing facility, for example, does raise concerns for the new facility, but primarily addresses a pre-existing problem. 2 Tr. at p. 27. Similarly, the erosion problems relate primarily to the existing facility. Pet. at p. 7, 2 Tr. at pp. 31-34. While the concerns expressed here may be relevant to an enforcement action, the weight of this information is diminished in the context of evaluating the design and operational aspects of the proposed facility. Additionally, "conflicting" evidence is to be resolved by the local government, and not by this Board. ARF Landfill, Inc., v. PCB, 174 Ill. App. 3d 82, 528 N.E. 2d 390 (2d Dist. 1988).

The Board finds that Bond County's decision that D & L satisfied criterion 2 was not against the manifest weight of the evidence. The statute requires that the local government review the design, location, and operational features of the proposed facility. These matters were raised before the County Board. Although the amount of detail left many questions unanswered for the County Board's consultant, the decision ultimately rested with the County Board. Furthermore, the County Board should not be required to decide against D & L on the basis of prior problems at the site when the new facility is designed to protect the public health, safety, and welfare.

Based on the record before it, including exhibits depicting location, height, side views, and monitoring wells, the Board finds that the County Board could reasonably decide that the new facility was designed, located and proposed to be operated so that the public health, safety and welfare will be protected. The possibility that another decision could also have been reached does not support reversal by the Board.

Criterion 3: the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

The applicant is required to minimize the incompatibility of the facility on the surrounding area and minimize the effect on property values. This requirement acknowledges that some effect is likely. However, the applicant is not required to choose the best possible location or to guarantee that no fluctuation in property values occurs. Clutts v. Beasley, 185 Ill. App. 3d 543, 541 N.E. 2d 844, 846 (5th Dist. 1989).

BCCC argues that about 30 residents, some of whom may reside within 1,000 feet of the site, plus those living in a nearby public housing project, would be adversely affected by D & L's alleged failure to minimize incompatibility with the character of the surrounding area and to minimize the effect on property values. Pet. at p. 11, Tr. at p. 68, 2 Tr. at pp. 82, 92. BCCC relies on the testimony of the County Board's consultant, who stated that the planned operating hours appeared excessive compared with other facilities and should be evaluated to decide whether it creates a nuisance in the surrounding area. Pet. at p. 10, 2 Tr. at p. 42. In other respects the consultant found that the application did not give sufficient information to draw a conclusion regarding this criterion. 2 Tr. at p. 41.

D & L seems to characterize the area as being much less residential in nature, making note of nearby agricultural uses, and suggesting that a number of residents live farther from the facility than BCCC indicates. Tr. at p. 21, 2 Tr. at pp. 87-91. D & L offered a letter from a local realtor opining that property values would not be adversely affected. 2 Tr. at pp. 129-130 and D & L Ex. 19. D & L also introduced evidence of a home purchased near the landfill in 1989 and of a home being built nearby. 2 Tr. at pp. 88-90.

The Board finds that the record offers limited information on the issue of minimizing incompatibility with the surrounding area and the effect on property values. The County Board clearly was presented with conflicting views and evidence. The Board finds that the County Board could find sufficient evidence in the record to conclude that the proposed vertical expansion of the existing landfill would pose only minimal impact on the surrounding area and on property values. The Board concludes that the County Board's decision with respect to criterion 3 is not against the manifest weight of the evidence.

Criterion 4: the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed.

Criterion 4 requires that the facility is located outside the boundary of the 100 year flood plain, or alternatively, that the site is flood-proofed. In its petition, BCCC raises the issue of location within the flood plain, stating, "he (the County Board's consultant) states that the existing facility was constructed in the flood plane (plain)." Pet. at p. 10, citing 2 Tr. at p. 42. BCCC has, however, neglected to direct the Board's attention to the consultant's immediately preceding sentence. "I don't believe that this, the vertical expansion is actually going to occur in the flood plain in any location." 2 Tr. at p. 42. The consultant also stated that, "I see no plans to do excessive filling or any filling in the flood plain." 2 Tr. at p. 43. D & L's engineer's testimony also indicates that the proposed facility is not within the 100 year flood plain. See Tr. at p. 50; see also discussion at Tr. at p. 92.

The Board finds that the decision of the County Board that the facility is located outside the boundary of the 100 year flood plain or that the site is flood-proofed is not against the manifest weights of the evidence.

Criterion 5: the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, and other operational accidents.

The proposed facility must minimize, but not necessarily eliminate, the possibility of danger from fire, spills or other accidents. In support of its position that this criterion was satisfied, D & L offered the following testimony of its engineer:

> Q. Does the plan of operation of this vertical expansion of this landfill, is there any danger to the surrounding area by way of fire or spills or any other operational accidents?
>
> A. Everything is done to minimize the danger with the use of essentially daily cover as one of the primary means. The containment berm that is constructed around there is another means, diversion ditches. So, there are means in place, right.

Tr. at p. 50.

These statements were supported with more extensive testimony on cover requirements, the containment berm, and the drainage systems. Tr. at pp. 22-45. D & L's engineer also stated the following in closing comments at the second County Board hearing:

> We submit that the proposed vertical expansion doesn't change the present condition. The facility is operated just as it was before. There is no greater cause for alarm for fire, spills or accidents than there ever has been at the landfill. And, we submit that there is the design as such is not shown to be hazardous to anybody's health by reason of fire, spills and hazardous material.
>
> 2 Tr. at p. 130.

The County Board's consultant commented on the lack of a separate, formal plan to minimize the danger from fire, spills, and accidents: "Based on my review of the submitted information, I did find no spill reaction plan, no accident prevention plan or fire prevention plan or protection plan." 2 Tr. at p.43-44. He further testified that there is a potential for fires or explosion from gas releases, and fires, explosions or accidents could occur. 2 Tr. at pp. 66-67, see also 2 Tr. at p. 83.

Bond County concluded that D & L carried its burden with respect to criteria 5's fire, spills, and accident issues. The Board finds that Bond County's decision has support in the record, and is not contrary to the manifest weight of the evidence. The evidence submitted for the County Board's review included extensive testimony and various exhibits, such as the application, a groundwater monitoring program, and hydrogeologic report. The Board finds that the absence of a separate document labelled as a spill reaction, accident prevention, or fire prevention plan does not warrant reversal by this Board where, as here, the record includes sufficient evidence on this criterion.

Criterion 6: the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

D & L has a statutory obligation to minimize the traffic impact of the proposed facility, but that obligation has not been construed to mean that D & L must eliminate any additional traffic impact. See, Fairview Area Citizens Taskforce v. IPCB, 144 Ill. Dec. 659, 555 N.E. 2d 1178, 1186 (3d Dist. 1990).

BCCC asserts that D & L failed to satisfy the requirement that the traffic impact be minimized because D & L's engineer simply asserted that the traffic flow would remain essentially unchanged. Bd. Tr. at p. 13. BCCC argues that since D & L's engineer testified that the cubic yards of waste would increase

from the previous 44,992 to cu. yds. per year, a plan to minimize the traffic impact should have been included, but was not. Bd. Tr. at p.13. BCCC notes that the County Board's consultant commented that a detailed traffic study was not part of the original application. Pet. at pp. 10-11, citing 2 Tr. at p. 44. BCCC's witness, Mr. Hediger (also a petitioner), testified that the roadway is not wide enough to handle the truck traffic and that the entrance is via very narrow pavement. He asserted that traffic conditions are very dangerous. 2 Tr. at pp. 83-84.

At hearing, D & L's engineer testified that the traffic flow is expected to be essentially unchanged. Tr. at p. 51. He also referred to the Illinois Department of Transportation, 1985 Survey on traffic. Average daily traffic counts ranged from 850 - 5,800 cars or trucks per day on the pertinent roadways. Tr. at p. 51.

The County Board found traffic impacts to be minimal, based on the application before it, and presumably based on the Board members' own knowledge and familiarity with local traffic conditions. See PCB 90-94, Bond County Concerned Citizens v. D & L Landfill, Inc., August 30, 1990. Based on the minimal traffic information provided in the record, the Board finds that Bond County's decision was not against the manifest weight of the evidence. As in the case of A.R.F. Landfill, Inc. v. IPCB and Lake County, 174 Ill.App.3d 82, 528 N.E.2d 390 (2d Dist. 1988), affirming the Board's decision in PCB 87-51, the local government is in the best position to weigh conflicting evidence. The Board will not substitute its judgment in such a circumstance. See also McHenry County Landfill, Inc. v. IPCB, 154 Ill.App.3d 89, 506 N.E.2d 372, 381 (2d Dist. 1987), affirming the PCB and the county board's conclusion regarding traffic.

Criterion 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.

Bond County's consultant indicated at the County hearing that Bond County has not completed a Solid Waste Management Plan, and that therefore, this criterion is not applicable. 2 Tr. at p. 44. Similarly, D & L's consultant testified that criterion 8 would not be an issue. Tr. at p. 51. This Board concludes that the County Board's decision is not against the manifest weight of the evidence with respect to the requirement that the proposed facility be consistent with the area's local Solid Waste Management Plan.

Criterion 9: if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

As was the case with criterion 8, Bond County's consultant testified at hearing that there is no regulated recharge area in the vicinity of this facility. 2 Tr. at p. 44. D & L's engineer testified the same. Tr. at p. 51. The Board finds no evidence that the facility will be located within a regulated recharge

area for which the Board would have issued applicable requirements. The Board finds that the County Board's decision is not against the manifest weight of the evidence with respect to this criterion.

Conclusion

For the above-stated reasons, the Board finds that the decision of the Bond County Board of Supervisors, Bond County, Illinois granting approval to D & L Landfill, Inc. for a regional pollution control facility pursuant to the statutory requirements of Section 39.2(a) of the Act was not against the manifest weight of the evidence.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Board hereby affirms the decision of the Bond County Board of Supervisors, County of Bond, Illinois, granting site location suitability approval for a regional pollution control facility to D & L Landfill, Inc.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111½, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member J. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of December, 1990, by a vote of 6-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board