

ILLINOIS POLLUTION CONTROL BOARD
September 27, 1990

INDUSTRIAL FUELS & RESOURCES/ ILLINOIS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 90-53
)	(Landfill Siting Review)
CITY COUNCIL OF THE CITY OF HARVEY,)	
)	
Respondent.)	

SUPPLEMENTAL OPINION (by J. Theodore Meyer):

This supplemental opinion will explain my votes in this matter. I dissented from the majority order upholding the City of Harvey's (Harvey) decision denying site location approval for a new regional pollution control facility. As set forth below, I believe that Harvey's determination was against the manifest weight of the evidence. However, I concurred in the majority opinion in this matter. My concurrence was based upon two considerations.


First, I concurred in the opinion because I agree with the majority's conclusion that it is the applicant who defines the intended service area, not the local decision-making body. I believe that units of local government should have some control over what types of facilities are located in their jurisdiction. However, to allow local decision-making bodies to redefine the intended service area would, in effect, require the applicant to read the minds of the local decisionmakers, so that the applicant could anticipate what service area is acceptable to those decisionmakers. It must be remembered that the applicant bears the burden of showing that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(1).) It would be almost impossible for an applicant to properly prepare his application and supporting witnesses if the intended service area is a "moving target".

Second, I concurred so as to raise the question of whether a majority of the Board must vote in support of the opinion for that opinion to be sufficient to support the Board's decision. This Board has had at least one experience in a siting case where there was no majority in support of the opinion as it related to one criterion, although a majority believed that the local decision-making body's decision on that criterion should be upheld. Members of the Board then issued supplemental opinions on that criterion. (Metropolitan Waste Systems, Inc. v. City of Marseilles, PCB 89-

121, December 6, 1989.) There is a difference of opinion as to whether there must be at least four Board members voting in support of an opinion; or whether it is sufficient that at least four Board members vote in support of the outcome of the case, and explain their reasons in concurrences or supplemental opinions. I ask the appellate court to address this issue.

As I stated above, I dissented from the majority's order in this case because I believe that Harvey's decision denying site approval was against the manifest weight of the evidence. The majority notes that only the testimony presented by Industrial was sworn; neither the statements of Harvey's retained consultant nor the statements made by several members of the public were sworn. The majority concludes that those unsworn statements "may be admitted as public comments, and not as testimony, and their probative weight is thereby reduced accordingly." (Majority opinion at page 10.) Therefore, the only testimony in the record is in support of Industrial's application. I do not see how the majority can uphold Harvey's determination after stating (correctly, I believe) that the only statements against the application are public comments, with reduced probative weight. Additionally, I object to allowing Harvey to rely on the concerns of its retained consultant, when some of those concerns were answered by Industrial's supplemental information, and when the consultant ultimately recommended approval of the application, with conditions. I do not believe that a local decision-making body must always accept the conclusions of its expert, but I do object to the way that Harvey and the majority used bits and pieces of the consultant's report to support Harvey's decision, while ignoring the consultant's conclusion. In sum, I do not believe that there is sufficient evidence in this record to support Harvey's decision.

For these reasons, I dissented from the majority order, but concurred in the majority opinion.



 J. Theodore Meyer
 Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Opinion was filed on the _____ day of _____, 1990.

 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board