

ILLINOIS POLLUTION CONTROL BOARD
December 6, 1989

METROPOLITAN WASTE)
SYSTEMS, INC., SPICER, INC.)
and SPICER PROPERTIES, INC.,)
)
Petitioners,) PCB 89-121
) (Landfill Siting
v.) Review)
CITY OF MARSEILLES,)
Respondent.)
)

SUPPLEMENTAL OPINION (by J.D. Dumelle, B. Forcade, and R. C. Flemal):

On December 6, 1989, the Board adopted an Opinion and Order affirming the July 26, 1989 decision of the City of Marseilles ("City") denying siting location suitability approval for a new regional pollution control facility to Metropolitan Waste Systems Inc. ("Applicants"). The portion of the Board's Opinion relating to Criterion No. 1 states:

Six members of the Board were present at the December 6, 1989 meeting at which decision in this matter was statutorily required to be made. Section 5 of the Act provides that "4 votes shall be required for any final determination by the Board." The draft Opinion discussed at the meeting failed to pass, the Board being "deadlocked" at a 3-3 vote. As a statutory majority of 4 votes could not be mustered for any written Opinion, there is no Opinion of the Board as to the criterion 1 issue in this case.

We wish to supplement the record with our views on Criterion No. 1.

The "draft Opinion" mentioned in the quoted language above contains approximately four pages of discussion on Criterion No. 1. We agree with the majority of that discussion. However, there was one paragraph with which we disagreed. That paragraph would have reversed a Board precedent in Fairview Area Citizens Task Force v. Village of Fairview, PCB 89-33. In this supplemental opinion we first support the validity of that case, and how it would apply to the facts of this case. We are also reproducing that portion of the discussion under Criterion No. 1 contained in the draft Opinion with which we agree.

CRITERION NO. 1

We find that the City's determination the Applicants failed to establish that the proposed facility is not necessary to accommodate the waste needs of the intended service area is not against the manifest weight of evidence. While Haas testified that existing facilities had only a 4-1/2 year life expectancy, he also stated that, when considered individually, the Grundy County facility had a remaining life of 7.7 years, DuPage County had a remaining life of approximately 9 years, Kane County had a remaining life of 6.5 years and LaSalle County had a remaining life of 7 years. (R-2 at 490-93.) Haas further agreed that if LaSalle and Grundy Counties were combined as a service region, and excess disposal capacity of 4 million cubic yards would exist over the next 25 years. (R-1 at 2409.) The evidence regarding the remaining life of existing facilities could reasonable lead the City to conclude that the instant facility is not necessary. Moreover, the evidence also suggests that, absent the inclusion of Cook County in the intended service area, the instant facility is not "needed". The City has the authority to determine whether a proposed service area is acceptable or unacceptable. (Fairview Area Citizens Task Force v. Village of Fairview, PCB 89-33.) By finding that criterion 1 was not satisfied, the City has effectively rejected Applicants' proposed service area.¹ Merely because there is evidence which, if accepted, would have supported a contrary conclusion, does not mean that we will substitute our judgement for that of the City. We will not disturb the City's finding that Applicants failed to meet the requirements of criterion 1.

Section 39.2(a)(1) of the Act requires the City to review Applicants' request for site approval to ensure that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1039.2(a)(1).) We must determine whether the City's finding that Applicants failed to established "need" as set forth in the Act is against the manifest weight of the evidence.

The proposed service area for the facility is composed of the Counties of LaSalle, Grundy, Kendall, Will, DuPage, Kane, McHenry, Cook and Lake. (R-2 at 427; App. Ex. 4 at 3.) The facility is designed to accept solid waste for period of 25 years and has a design capacity of 55,000,000 cubic air yards. (R-2 at 429; App. Ex. 6 at 20, 30.)

Dr. Charles Haas, an environmental engineer, testified that, in his opinion, the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. (R-2 at 425-504; App. Ex. 4.) According to Haas, 734,000,000 cubic yards

¹We note, however that the City's statement "the possibility of more convenient sites being developed" is improper speculation and not a proper basis for negating "need". (See, Tate v. PCB, No. 4-89-0061, slip op. at 51 (4th Dist. Sept. 28, 1989).

of solid waste will be generated within the proposed service area during the intended service life of the facility. (R-2 at 429.) As of March 31, 1989, the existing disposal capacity of solid waste facilities within the proposed service area was 146,000,000 cubic yards. (R-2 at 431-32.) At current disposal rates, Haas stated that the existing disposal capacity within the proposed service area will be exhausted in approximately 4 1/2 years. (R-2 at 431-32.) According to Haas, therefore, the solid waste generated in the service area will exceed existing disposal capacity by 570,000,000 cubic yards over the 25-year design life of the proposed facility. (R-2 at 433.) Haas then considered the cumulative effects of recycling, composting, and incineration, if actively pursued² and concluded that solid waste generated within the proposed service area would exceed existing disposal capacity by 242,000,000 cubic yards. (R-2 at 433-34.)

Haas further testified that he knew that a new pollution control facility to be located in Bartlett, Cook County, had received site location approval. (R-2 at 434.) This facility has a projected waste capacity of 40 million cubic yards. (Id.) Haas also stated that he was aware that the Gallatin National Facility, which would serve Cook, McHenry, Lake, Kane and DuPage Counties, with a design capacity of 15.8 million cubic yards has received site location approval. (R-2 at 435.) Haas opined that, should these facilities become operational, his opinion that the instant facility was needed would not change. (R-2 at 436-37.)

Lastly, Haas testified that, in his opinion, the proposed facility is reasonably convenient to accommodate the waste needs of the intended service area. (R-2 at 437.) Haas based this opinion on the "convenience and accessibility of the proposed site to the waste generation patterns of the service area via both road and rail transportation." (Id.)

Cross-examination of Haas focused on his consideration of alternative waste facilities and their impact on his conclusion that the proposed facility is "needed" within the meaning of criterion 1. Haas admitted that the specific site of the proposed facility was not determinative of need and that his position would be the same if the facility were proposed at a different location as long as the size, design lifetime and proposed service area were the same. (R-2 at 2420; R-2 at 495.)

When questioned about his calculation that the disposal capacity of the existing facilities would be exhausted within 4 1/2 years, Haas stated that this finding was based upon the assumption that a volume equivalent to all the waste generated within that area will be disposed of in that area. (R-2 at

²Dr. Haas applied a 50% reduction in volume resulting from recycling, composting and incineration. However, he opined that a 25% reduction rate was more realistic. (R-2 at 432, 452.)

489.) Upon cross-examination, Haas noted that waste generated in a specific area is not always deposited within that same area. (R-2 at 490-93.) Haas recognized that in actuality a county may be disposing of more waste than it is actually generating. (R-2 at 490.) Therefore, when the amount of waste disposed of at a particular facility is divided into the remaining life expectancy of that facility, the remaining life of the facilities located in LaSalle, Grundy, Will, DuPage, Kane and Lake exceeds the 4 1/2-year expectancy asserted by Haas. (R-2 at 431-32) (R-2 at 490-94; App. Ex. 5.) Additionally, Haas stated that his calculations were upon the assumption that, during the expected design life of the existing facilities, no new facilities would be permitted³ and no existing facilities would be expanded. (R-2 at 492.)

Although at the 1988 hearings Haas recognized that the inclusion of Cook County in the intended service area provides a "dominant deficit" in disposal capacity (R-1 at 2401), he stated at the 1989 hearings that the exclusion of Cook County from the intended service area would not alter his opinion that the proposed facility is necessary. (R-2 at 497, 501-02.)

On cross-examination, Haas was questioned about the convenience of the instant facility. (R-2 at 458-514.) However, Haas did not make a determination as to the cost of transporting waste to the proposed facility nor did he inquire into the costs of disposal to the individual generator. (R-2 at 459-61.) Haas also stated that he did not know whether Applicants had any contracts with any waste haulers or generators in Cook County to dispose of their waste at the proposed facility. (R-2 at 503.)

The City found that the proposed facility is not necessary to accommodate the waste needs of the area it is intended to serve. In its decision, the City stated that although it found a need in northern Illinois for additional waste disposal facilities, the criterion is not satisfied because: "(1) the record does not show any urgent need for a landfill; and/or (2) the Applicant has not shown a reasonable means to serve any demand for landfill capacity from Cook or Lake Counties at this landfill, given distance, lack of contractual commitment of customers, uncertainties of transportation and the possibility of other, more reasonable and convenient sites being developed." Applicants argue that both of these findings are contrary to the manifest weight of the evidence.

In reviewing this Board's decisions regarding site location approval, the Appellate Court of Illinois has held that an applicant need not show absolute necessity in order to satisfy criterion 1. (Clutts v. Beasley, 541 N.E.2d 844, 846 (5th Dist. 1989); A.R.F. Landfill v. PCB, 174 Ill. App. 3d 82, 528 N.E.2d

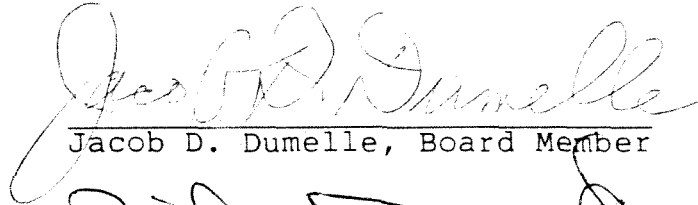
³Subsequent to Haas' testimony, the Agency granted the Bartlett facility, which is located within the intended service area of the instant facility, an operating permit.

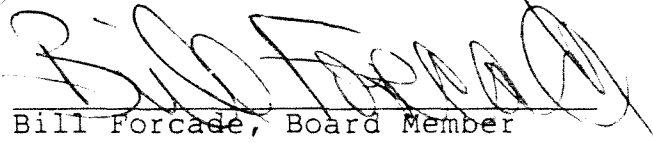
390, 396 (2nd Dist. 1988); WMI v. IPCB, 122 Ill. App. 3d 639, 461 N.E.2d 542, 546 (3d Dist. 1984).) The Third District has construed "necessary" as connoting a "degree of requirement or essentiality" and held that the applicant must show that the facility is "reasonably required by the waste needs of the area intended to be served, taking into consideration the waste production of the area and the waste disposal capabilities, along with any other relevant factors." (WMI v. IPCB, 461 N.E.2d at 546.) The Second District has adopted this construction of "necessary" with the additional requirement that the applicant must demonstrate both an urgent need for, and the reasonable convenience of, the new facility. (Waste Management v. PCB, 175 Ill. App. 3d 1023, 530 N.E.2d 682, 689 (2d Dist. 1988); A.R.F. Landfill v. PCB, 528 N.E.2d at 396; WMI v. PCB, 463 N.E.2d at 976.) Given these interpretations of "necessity" the Board cannot say that the City's reliance upon the term "urgent" is in error.


We note that there was no evidence or testimony relating to criterion 1 offered in opposition to the evidence and testimony of Applicants. In Waste Management of Illinois v. Village of Bensenville, PCB 89-28 at 8 (August 10, 1989), the Board noted that Section 39.2 of the Act does not impose a duty upon any person other than the applicant to present evidence with respect to an application for site location approval. Thus, the lack of evidence on a certain criterion is not, in and of itself, grounds for reversal of the local decision making body's decision on that criterion. Even where all of the evidence submitted is that of the applicant, the local decision making body may still withhold its approval. (Id. at 9.) "Reasons for denial may include, but are not limited to, a local decision making body's finding that the applicant has not met its burden of proof on any or all of the criteria or that the applicant's proof is not credible." (Id.)

We believe that the City's determination that Applicants failed to establish that the proposed facility is not necessary to accommodate the waste needs of the intended service area is not against the manifest weight of evidence. While Haas testified that existing facilities had only a 4 1/2 year life expectancy, he also stated that, when considered individually, the Grundy County facility had a remaining life of 7.7 years, DuPage County had a remaining life of approximately 9 years, Kane County had a remaining life of 6.5 years and LaSalle County had a remaining life of 7 years. (R-2 at 490-93.) Haas further agreed that if LaSalle and Grundy Counties were combined as a service region, an excess disposal capacity of 4 million cubic yards would exist over the next 25 years. (R-1 at 2409.) The evidence regarding the remaining life of existing facilities could reasonably lead the City to conclude that the instant facility is not necessary. We will not disturb the City's decision that Applicants failed to meet the requirements of criterion 1.

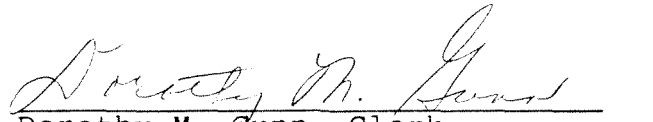
For these additional reasons, we voted to uphold the City's decision.


Jacob D. Dumelle, Board Member


Bill Forcade, Board Member


Ronald C. Flemal, Board Member

I, Dorothy M. Gunn, do hereby certify that the above Supplemental Opinion was filed on the 14th day of January, 1990.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board