

ILLINOIS POLLUTION CONTROL BOARD  
October 1, 1987

A.R.F. LANDFILL, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 87-51  
 )  
 LAKE COUNTY, )  
 )  
 Respondent. )

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority opinion adopted in this matter.

MOTION FOR SANCTIONS

I disagree with the majority's disposition of Petitioner's motion for sanctions. The majority properly states that each and every member of the County Board clearly violated the Hearing Officer's order, and notes the Hearing Officer's critical role in proceedings before this Board. However, the majority then moves to a discussion of whether the interrogatories at issue were proper. After concluding that many of the questions were improper, the majority abruptly states that the motion for sanctions is denied. In my mind, there is little connection between the properness of the interrogatories and the disposition of the motion. Rather, the issue is whether the violation of the Hearing Officer's order warrants sanctions.

35 Ill. Adm. Code 107.101(c) provides that if a party unreasonably refuses to comply with any order issued pursuant to the Board's regulations, the Board may impose such sanctions as are just. I am very concerned that the majority, in denying sanctions, has failed to support the Hearing Officer, and has, in effect, told parties to future proceedings that they may ignore Hearing Officer orders if they feel that there is any chance that the subject of the order might be found improper. The Hearing Officer is a vital participant in Board's proceedings, and his authority must be upheld. There has been no finding that the Hearing Officer's order itself was improper. I also note that although the majority states that Petitioner's motion fails to allege how it was prejudiced by Respondent's failure to comply, Petitioner alleges that the failure to respond hampered its preparation for the June 24 hearing, and that its decision whether to depose certain County Board members was dependent upon information requested in the interrogatories (Emergency Motion for Sanctions at 1,4). Given Respondent's blatant and

unexplained violation of the Hearing Officer's order, I would grant the motion for sanctions and bar Respondent from filing any pleading or raising any issue relating to the questions asked in the interrogatories. 35 Ill. Adm. Code 107.101(c); Environmental Protection Agency v. Popp, PCB 79-215 (October 30, 1980); Environmental Protection Agency v. Allaert Rendering, Inc., PCB 76-80 (September 6, 1979); Environmental Protection Agency v. City of Oregon, PCB 78-37 (April 27, 1978).

#### Criterion No. 1

I also disagree with the majority's decision on criterion one - whether the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. There was no evidence presented which rebutted Mr. Thorsen's testimony that Lake County needs more landfill space: even Mr. Luedtke, called by the objectors, admitted that additional space is necessary (R. January 28, 1987, p. 44). The fact that the Lake County Joint Action Solid Waste Planning Agency (SWAC) feels that the proposed landfill would hurt its ability to implement a solid waste management plan is not relevant to the landfill siting process. (I note that the Illinois General Assembly has recently amended Section 39.2 to require that a proposed facility be consistent with any solid waste management plan a county may have adopted. However, that amendment was recently amendatorily vetoed. Regardless of whether the General Assembly accepts the veto or overrides it, that amendment was not effective at the time the instant case was before the County Board. Additionally, the amendment requires consistency with any plan which may have been adopted, and Lake County has not yet actually adopted such a plan (R. January 28, 1987, pp. 29-30, 34-35).) I also do not consider the fact that Mr. Thorsen apparently considered only Lake County landfill facilities in his analysis to be a fatal flaw. Given the current feeling about new landfills and the increasing problem of finding sufficient disposal space, I feel that it is only prudent to plan to dispose of a county's waste in that county. It is impossible to know what restrictions will be placed on "outside" waste at the landfill facilities in the surrounding area, including Wisconsin, at the time Lake County's landfill capacity is exhausted. Therefore, I would reverse the County Board's finding on criterion one.

#### Criterion No. 2

My dissent from the majority opinion on criterion two - whether the proposed facility is so designed, located, and proposed to be operated as to protect the public health, safety, and welfare - arises from the belief that Section 39.2 does not empower the county to consider technical aspects of landfill design.

Section 2(b) of the Environmental Protection Act (Act) specifically states that the Act's purpose is "to establish a unified, state-wide program, supplemented by private remedies to restore, protect, and enhance the quality of the environment . . ." (emphasis added.) (Ill. Rev. Stat. 1985, ch. 111<sup>1</sup>/<sub>2</sub>, par. 1002(b)). It is impossible to achieve such a unified, state-wide plan if each unit of local government is allowed to consider whatever technical factors it chooses. Technical aspects are beyond local government's expertise, and are the province of the Illinois Environmental Protection Agency (Agency) and the Board. I recognize that the courts have held that local governments may consider technical aspects of landfill design (see, eg., Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, No. 87-0029 (2d Dist., September 11, 1987); McHenry County Landfill v. Illinois Environmental Protection Agency, 154 Ill. App. 3d 89, 506 N.E. 2d 372 (2d Dist. 1987)), but I must respectfully disagree.

We must recognize the many political problems associated with voting "yes" for a proposed facility. One of government's functions is to provide for waste disposal, and there can be no question that this an essential function. However, the waste disposal issue is a victim of the "not in my backyard" syndrome. It has been said that everybody wants their garbage picked up, but nobody wants it put down. A recent Agency report states that the average life of remaining landfill space in Illinois is only 5.3 years. This figure illustrates the necessity of dealing with the waste disposal issue immediately. It is apparent that localities are not going to solve the problem. I must point out that Rockford, the city which was involved in the first court case over landfill siting, is once again struggling to provide for waste disposal, and has an appeal of a siting denial pending before the Board. See O'Connor v. City of Rockford, 52 Ill. 2d 360, 288 N.E.2d 432 (1972); City of Rockford v. Winnebago County Board, PCB 87-92. I also note that the instant case involves an expansion of an existing landfill which apparently has not been the subject of any formal complaints about design, location, or operation. If a new landfill cannot be sited next to an existing landfill, where can it be located? Given the political realities of the local landfill siting approval process, it is imperative that the Agency retain its authority over technical aspects of landfill design if we are to deal with the waste disposal issue. As things stand now, the localities and the Board are siting (or not siting) regional pollution control facilities. The Agency should be involved, as the legislature intended, by participating in the permitting process. Ill. Rev. Stat. 1985, ch. 111<sup>1</sup>/<sub>2</sub>, par. 1039.

Because I believe that local governments are not authorized to consider technical details of landfill design, I feel that Petitioner presented sufficient evidence that the proposed facility would protect the public health, safety, and welfare.

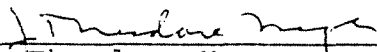
The concerns over potential sand lenses, gas vents, liner, etc., are best addressed by the Agency in its permitting process and by Board regulations. I would reverse the County Board's decision on criterion two.

Criterion No. 6

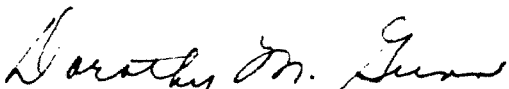
Finally, I disagree with the majority's disposition of criteria six - whether the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows. Petitioner's witness, Mr. Salzman, is associated with Barton-Aschman Associates, Inc., one of the premier traffic engineering firms in the country, and his credentials far outweigh those of the objectors' witness. Mr. Salzman testified that this is generally a state-of-the art proposal. (R. January 26, 1987, p. 109.) Objectors' witness admitted that driver error was a major portion of his concern (R. February 4, 1987, p. 184), a factor which is beyond Petitioner's control. I again point out that the proposed landfill is an expansion of an existing landfill which has not been the subject of formal complaints about traffic problems. I would reverse the County Board's decision on criterion six.

Conclusion

For those reasons, I must dissent from the majority opinion. I would reverse the County Board's denial of landfill siting approval.

  
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J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 22<sup>nd</sup> day of October, 1987.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board