

ILLINOIS POLLUTION CONTROL BOARD
September 9, 1999

WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
 Petitioner,)
)
 v.) PCB 99-141
) (Pollution Control Facility
 WILL COUNTY BOARD,) Siting Appeal)
)
 Respondent.)

DONALD J. MORAN, OF PEDERSEN & HOUP, APPEARED ON BEHALF OF PETITIONER; and

CHARLES F. HELSTEN, OF HINSHAW & CULBERTSON, AND CHRISTINE G. ZEMAN, OF HODGE & DWYER, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter concerns a waste disposal company's appeal of a county board's decision to place a certain condition on its approval of the waste disposal company's application to site a new landfill. Specifically, Waste Management of Illinois, Inc. (WMII) appeals the March 4, 1999 decision of the Will County Board to condition its siting approval of the proposed Prairie View Recycling and Disposal Facility (Prairie View) on WMII closing the Wheatland Prairie Landfill (Wheatland).

For reasons set forth below, the Board finds that the Will County Board's decision to impose this condition has no support in the record and is against the manifest weight of the evidence. Accordingly, the Board will strike this condition from the Will County Board's siting approval.

OVERVIEW

Under Section 39.2 of the Environmental Protection Act (Act), 415 ILCS 5/39.2 (1998), applicable units of local government approve or disapprove requests to site new pollution control facilities, including new landfills. When a local siting authority approves a siting request, Section 39.2(e) of the Act allows the local siting authority to "impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board." 415 ILCS 5/39.2(e) (1998). Siting applicants may appeal the decisions of local siting authorities to the Board. See 415 ILCS 5/40.1(a) (1998).

On March 4, 1999, the Will County Board approved WMII's application to site Prairie View on part of the former Joliet Army Ammunition Plant in Will County, Illinois, subject to 57 conditions. C9388-C9399. ¹ On April 8, 1999, WMII appealed only the sixth condition (Condition Six) of the siting approval, which provides:

WMI shall close Wheatland Prairie Landfill, i.e. ., shall cease accepting waste and initiate final closure activities, no later than April 1, 2001, or the earliest date thereafter in which Prairie View RDF [Recycling and Disposal Facility] is accepting waste for disposal. C9393.

WMII asks the Board to strike this condition.

PROCEDURAL MATTERS

¹ Pages in the record of the siting request proceedings before the Will County Board are cited as "C_."

Board Hearing Officer John Knittle held a hearing in this matter on June 4, 1999. Members of the public attended the hearing and provided comments. WMII filed a posthearing brief on July 16, 1999. The Will County Board filed a response brief on July 27, 1999, and WMII filed a reply brief on August 4, 1999.² Additionally, on June 16, 1999, Anthony C. Truppa, Wheatland Township Trustee, and James W. Glasgow, State's Attorney of Will County, each filed public comments.

On August 24, 1999, the Will County Board moved the Board to strike certain facts from WMII's reply brief (Motion). WMII filed a response on August 27, 1999, in which it opposes the Motion. The Will County Board alleges that certain factual assertions and correspondence in WMII's reply brief are not in the Will County Board's record of this proceeding and therefore must be stricken. Motion at 2-3.

When, as here, neither the fundamental fairness of the local siting authority's procedures nor the jurisdiction of the local siting authority is at issue, Section 40.1(a) of the Act, 415 ILCS 5/40.1(a) (1998), requires the Board to decide a siting appeal based exclusively on the record before the local siting authority. See Madison County Conservation Alliance v. Madison County (April 11, 1991), PCB 90-239, slip op. at 2-4 (requirement of Section 40.1(a) that the Board rely exclusively on the record before the local siting authority does not apply with respect to issues of fundamental fairness or jurisdiction). The Board's decision in this case, set forth below, is based exclusively on the record before the Will County Board. Accordingly, the Board denies the Motion as moot. See Laidlaw Waste Systems, Inc. v. McHenry County Board (June 16, 1988), PCB 88-27, slip op. at 3 (Board denied motion to strike factual assertions in a brief that allegedly were not in the record, noting that "the Board is able to determine and exclude from its consideration material cited in briefs which is outside the record and not of the type which the Board may take official notice.").

DISCUSSION

Section 39.2(e) of the Act provides in pertinent part:

In granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board. 415 ILCS 5/39.2(e) (1998).

The parties dispute whether Condition Six, *i.e.*, closing Wheatland, is "reasonable and necessary to accomplish the purposes" of Section 39.2. Those purposes include the siting criteria of Section 39.2(a). See County of Lake v. Pollution Control Board, 120 Ill. App. 3d 89, 98-99, 457 N.E.2d 1309, 1315 (2d Dist. 1983). Two of the siting criteria are at issue here:

[T]he facility is necessary to accommodate the waste needs of the area it is intended to serve[.]

* * *

[I]f the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan[.] 415 ILCS 5/39.2(a)(i), (viii) (1998).

The Will County Board maintains that Condition Six is needed for Prairie View to be both (1) "necessary to accommodate the waste needs of the area it is intended to serve" and (2) "consistent with" Will County's solid waste management plan.³ Resp. Br. at 4, 6-8, 12-13. WMII argues that Condition Six is not necessary to accomplish

² WMII's first posthearing brief is cited as "Pet. Br. at _;" the Will County Board's response brief is cited as " Resp. Br. at _;" and WMII's reply brief is cited as "Reply Br. at _."

³ Will County adopted a solid waste management plan in 1991 and updated it in 1996. C4868-C4955.

these purposes and asserts that there are no facts in the record to support this condition. Pet. Br. at 6; Reply Br. at 7-9.

When the issue is whether a condition is necessary to accomplish the purpose of a Section 39.2(a) siting criterion, the Board must determine whether the local government's decision to impose the condition is against the manifest weight of the evidence. See County of Lake, 120 Ill. App. 3d at 101-102, 457 N.E.2d at 1317-1318. The Board will address the two siting criteria in turn.

Necessary to Accommodate the Waste Needs of the Intended Service Area

The Will County Board asserts that the portion of WMII's siting application that addresses the Section 39.2(a)(i) criterion, prepared by WMII's consultant, Sheryl Smith (Smith), and Smith's testimony support the Will County Board's conclusion that Condition Six, *i.e.*, closing Wheatland, is needed to make Prairie View necessary to accommodate the waste needs of the intended service area. Resp. Br. at 7-8, 12.

The Will County Board states that Smith determined that Prairie View is necessary to accommodate the intended service area's waste needs based on her calculation that there would be a shortage in the service area's disposal capacity if Prairie View is not built. Resp. Br. at 7-8; C55, C5322. Specifically, Smith estimated a disposal capacity shortage of approximately 24,234,599 to 30,563,019 tons without Prairie View. C55, C112-13, C5321-22. Smith based this estimated shortage on projections of the disposal capacities of various landfills, including Wheatland, over the 23-year period during which Prairie View would operate. C111-13, C156-57, C5318-21. Smith determined Wheatland's remaining disposal capacity based on its 1997 gate receipts. C156-57. Based on this projection of Wheatland's remaining disposal capacity, Smith estimated that Wheatland's closure would begin in April 2001. *Id.*

WMII does not dispute any of these figures, but argues that Prairie View is necessary to meet the waste needs of the intended service area regardless of when Wheatland closes. Reply Br. at 5. Accordingly, WMII concludes that "there is no purpose of the need criterion that is served by requiring the closure of Wheatland as a condition of approving Prairie View" *Id.*

Initially, the Board notes that defining Prairie View's intended service area is essential to determining whether closing Wheatland is needed to render Prairie View "necessary to accommodate the waste needs of the area it is intended to serve." 415 ILCS 5/39.2(a)(i) (1998). The applicant defines the intended service area. See Metropolitan Waste Systems, Inc. v. Pollution Control Board, 201 Ill. App. 3d 51, 55, 558 N.E.2d 785, 787 (3d Dist. 1990). WMII's application defines Prairie View's intended service area as follows:

[Prairie View] intends to receive waste from both a primary and secondary service area. The primary service area, the Will County service area consists of two components, Tier I and Tier II. The secondary service area (Tier III), is for the disposal of total waste generated in nine counties in Northeast Illinois.

Tier I is defined as MW [municipal waste] and industrial waste (called total waste) generated by the 24 townships and 35 municipalities that are fully or partly within Will County (Will County service area), as identified in the Will County Solid Waste Plan Update. Tier II is defined as JAAP [Joliet Army Ammunition Plant] restoration and clean-up waste required to be disposed of by the Federal Law 1998. Tier III is total waste generated by communities and townships located in Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, and McHenry Counties. C51, C51 n.1.

The Will County Board does not dispute that this is the intended service area. In fact, the ordinance in which the Will County Board conditionally approves WMII's application contains the following condition under the heading "Criterion I—Need": "The service area shall be limited to the Will County service area and the secondary service area as defined in the Application." C9393.

The Board notes that Smith not only calculated a disposal capacity shortage for the intended service area if Prairie View is not built, but also if Prairie View is built. Specifically:

Even with the entire capacity of [Prairie View], there will still be a shortfall of capacity in the service area.

* * *

Even with the siting approval and permitting of [Prairie View], there will be an additional capacity shortfall approximately between 4,234,599 to 10,563,019 tons. C55, C112.

Thus, even if Wheatland and Prairie View are used to their respective capacities, there still will be a shortage in disposal capacity for the intended service area. The record contains no contrary evidence. The Board therefore finds that Condition Six, *i.e.*, closing Wheatland, is not needed to make Prairie View necessary to meet the waste needs of the intended service area. The Will County Board's decision to impose Condition Six is against the manifest weight of the evidence.

Consistency With the Will County Solid Waste Management Plan

The Will County Board asserts that Wheatland must close for Prairie View to be consistent with the Will County solid waste management plan and that, accordingly, Condition Six is necessary to accomplish the purpose of the Section 39.2(a)(viii) criterion. Resp. Br. at 4, 6. The Will County Board argues that the plan requires that there be only one operating landfill in Will County, which will be adequate to meet the disposal needs of all of Will County and those parts of municipalities in Will County that are in other counties. *Id.* at 6. The Will County Board also argues that the plan requires that an interim disposal facility, *i.e.*, Wheatland, be used only until Prairie View is operational. *Id.*

The Board notes, however, that the portions of the plan to which the Will County Board cites do not support its positions. The plan does not state that there can be only one operating landfill in Will County. Rather, it merely provides that "the County will develop, with the private sector, a sanitary landfill." C4912. In fact, the plan makes clear that it does not preclude other landfills: "[N]othing shall prevent the siting of an expansion of an existing facility or a new facility in Will County if it can be demonstrated that the nine criteria [of the Act] have been met." C4898.

The plan does anticipate that the new landfill, *i.e.*, Prairie View, will be adequate to meet all Will County disposal needs. C4898, C4912. However, this objective reflects the plan's projection that all existing facilities, including Wheatland, will have reached their permitted capacities by the time Prairie View becomes operational (C4899-901); it does not reflect any mandate in the plan that Will County have only one operating landfill.

Finally, the plan does not state that any interim disposal facility must commence closure when Prairie View begins to accept waste. The plan merely addresses Will County's needs with respect to disposal capacity for "solid waste generated prior to [Prairie View] being opened . . ." C4912. In addressing these "interim disposal capacity needs," the plan states simply that private contractors proposing to build the new landfill "must also provide an interim disposal facility to provide capacity for disposal beginning January 1996 until the new final disposal facility is operational (expected in 1999)." C4913. To require, as the plan does, that such an interim facility have disposal capacity available until Prairie View is operational is not to require that the interim facility, regardless of its remaining disposal capacity, close when Prairie View becomes operational.

The Board therefore finds that Condition Six, *i.e.*, closing Wheatland, is not needed to make Prairie View consistent with the Will County solid waste management plan. The record contains no evidence to support this condition. The Will County Board's decision to impose Condition Six is against the manifest weight of the evidence.

CONCLUSION

The Board finds that Condition Six, *i.e.*, closing Wheatland, is not needed to make Prairie View either (1) necessary to meet the waste needs of its intended service area or (2) consistent with Will County's solid waste management plan. While the Board recognizes that Section 39.2(e) of the Act authorizes local siting authorities to impose conditions on siting approval that are reasonable and necessary to accomplish the purposes of Section 39.2 and not inconsistent with Board regulations, the record in this case contains no evidence to support Condition Six.

The Will County Board's decision to impose Condition Six is against the manifest weight of the evidence. The Board therefore will strike Condition Six. See County of Lake, 120 Ill. App. 3d at 101-102, 457 N.E.2d at 1317-1318.⁴

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

⁴ In light of the Board's conclusion, the Board need not discuss the other grounds that WMII asserts for striking Condition Six.

ORDER

The Board strikes Condition Six of the Will County Board's March 4, 1999 decision to conditionally approve the application of Waste Management of Illinois, Inc., to site the Prairie View Recycling and Disposal Facility.

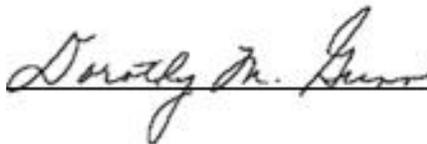
IT IS SO ORDERED.

Board Member G.T. Girard abstained.

Board Member R.C. Flemal dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 9th day of September 1999 by a vote of 4-1.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board