

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, PEDERSEN & HOUP, P.C., APPEARED ON BEHALF OF PETITIONER; and

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

DISSENTING OPINION (by R.C. Flegal):

I respectfully dissent from today's decision. I believe that the record shows that Condition Six is indeed needed to make WMII's proposal for Prairie View Landfill consistent with landfill siting Criteria One and Eight. For that reason, I believe the Board should have affirmed the Will County Board's decision to conditionally approve WMII's proposal for the Prairie View Landfill.

A local siting authority is authorized and required by Section 39.2 of the Act to grant approval of a landfill siting proposal only if the proposed landfill complies with all of the statutory siting criteria. If the local siting authority finds that one or more of the criteria is not met, it must either deny approval outright, or grant a conditional approval in which the attached conditions cause the criteria to be met.

In the case at hand the Will County Board found that, absent Condition Six, neither Criterion One nor Criterion Eight would have been met. The majority finds that the record contains insufficient evidence for the Will County Board to have made this finding. I disagree. I find ample such evidence.

Criterion Eight requires that the local siting authority evaluate whether any proposed landfill is consistent with the area's solid waste management plan. The purpose of Criterion Eight, I believe, is to allow knowledgeable local authorities say in whether the public good, as expressed in the locally-adopted solid waste management plan, is met in any new landfill proposal. With this as prelude, I find the Will County Board's decision with respect to Criterion Eight to be particularly compelling.

Will County has not only developed a solid waste management plan, but that plan was adopted by the very same Will County Board that found that Condition Six is "reasonable and necessary" for Criterion Eight to have been met. I believe that it is contrary to the purposes of Section 39.2 of the Act for this Board to upset that local decision absent a compelling case to the contrary.

I find no such compelling case. Rather, I find that the Will County Board's solid waste management plan plainly contemplates that the Joliet Arsenal landfill will be the master and sole landfill to be operated in Will County, and that the whole plan is conceived to work towards that end. C4912. There is accordingly a clear nexus between the content of the Will County Board's solid waste management plan and the Will County Board's finding that simultaneous operation of both the Prairie View and Wheatland Landfills is inconsistent with the solid waste management plan.

The Will County solid waste management plan also plainly specifies that the private contractor for the Prairie View Landfill is to provide an “interim” facility for disposal of Will County waste during the developmental stages of the Prairie View Landfill. Wheatland has clearly played that role. The parties dispute, however, whether Wheatland ever was officially declared the interim facility, and if so, whether as “interim” facility Wheatland would be required to close upon the opening of Prairie View Landfill. These arguments strike me as wholly semantic, in which case I believe we must give deference to the intent of the plan as expressed by its authors, the Will County Board.

For these collective reasons, I believe that the Will County Board’s decision to condition grant of WMII’s Prairie View Landfill proposal with Condition Six is compelled by the presence of Criterion Eight, that the Will County Board’s decision is certainly not against the manifest weight of the evidence, and that accordingly this Board should have upheld the Will County Board’s decision.

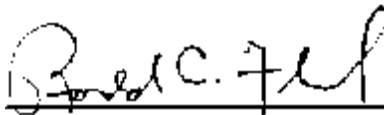
I believe also that the Will County Board has made a convincing case that its decision to impose Condition Six is reasonable and necessary to accomplish the purpose embodied in Criterion One. The Will County Board clearly believed that the need for Prairie View, as proposed and argued for by WMII in its application, was premised on the imminent closure of Wheatland.¹ This is plainly evident in the summary of this matter given to the Will County Board at the meeting at which it adopted Condition Six:

There has been one other critical issue raised with respect to need and that is a comment about the Wheatland Prairie landfill. Looking at the record the need analysis that Waste Management used is premised on the closure of Wheatland Prairie Landfill in April 2001. That date is the date that they say it is expected to be filled - to reach its capacity. However, both the need analysis of Waste Management as well as our plan update suggest that the need is here because of the closure of that landfill, at its expected life of April 2001. In addition the waste analysis of Waste Management talks in terms of “replacement” – that the landfill proposed here is to replace the two landfills that are presently closing. So in response to that which was initiated in the first set of comments to the Siting Committee, one of the things I have done is to add or modify, the conditions of the Waste Staff to include a requirement that the Wheatland Prairie Landfill close by April 2001. C9376.

At the same meeting where this review of the purpose of Condition Six was presented, the Will County Board voted to grant siting approval contingent upon the presence of Condition Six. I believe this to be clear indication that the Will County Board members considered the evidence in the record regarding the nexus between need for Prairie View Landfill and a simultaneously open Wheatland Landfill.

For this reason I also believe that the Will County Board’s decision to condition grant of WMII’s Prairie View Landfill proposal with Condition Six is not against the manifest weight of the evidence.

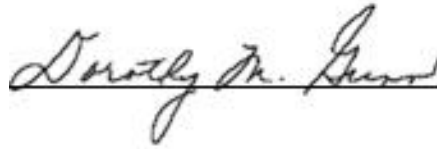
I accordingly dissent.



Ronald C. Flemal
Board Member

¹ WMII’s witness, Sheryl Smith, filed her Prairie View Recycling and Disposal Need Report (report), as part of WMII’s application. C57-123. In her report Smith stated that Prairie View Landfill is needed “due to a capacity shortfall in the service area . . . based upon Wheatland having a capacity of 1,059,133 tons as of January 2000, and a closure date of April 2001.” C156-157. Further, Smith stated that Prairie View is necessary to replace Wheatland, “which will be closed by April of 2001.” Resp. Br. at 8.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissent was filed on the 14th day of September 1999.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board