ILLINOIS POLLUTION CONTROL BOARD
June 19, 1997

RESIDENTS AGAINST A POLLUTED ENVIRONMENT and THE EDMUND B. THORNTON FOUNDATION,	)	
Petitioners,	)	
v.	)	PCB 97-139
	)	(Pollution Control Facility Siting Appeal)
COUNTY OF LASALLE and LANDCOMP CORPORATION,	)	
Respondents.	)	

GEORGE MUELLER, HOFFMAN, MUELLER, CREEDON, APPEARED ON BEHALF OF PETITIONERS;

ROBERT M. ESHBACH, SPECIAL ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF RESPONDENT COUNTY OF LASALLE;

JAMES I. RUBIN AND KEVIN J. O'BRIEN, BUTLER, RUBIN, SALTARELLI & BOYD, APPEARED ON BEHALF OF RESPONDENT LANDCOMP CORPORATION.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a petition for review filed by Residents Against a Polluted Environment (Residents) and The Edmund B. Thornton Foundation (collectively petitioners or Residents) on February 19, 1997. Petitioners seek review of a January 17, 1997 decision of the LaSalle County Board (LaSalle or County Board) which granted site location suitability approval to LandComp Corporation (LandComp) for the construction of a new pollution control facility. The proposed pollution control facility in this case is a municipal solid waste landfill. Petitioners filed their appeal pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/40.1(b) (1997)). This is the second appeal to the Board concerning this proposed landfill. The first appeal was Residents Against a Polluted Environment, *et al*. v. County of LaSalle, (September 19, 1996) PCB 96-243.

Prior to that appeal, LandComp filed its Siting Application for the construction of a new municipal solid waste landfill with the County Board on November 1, 1995. The proposed facility would encompass 185 acres, with an approximately 101.5 acre landfill footprint. (County Board Hearing Transcript (CH) at 67.)[1] The site for the proposed landfill is

[1] The transcripts from the County siting hearings will be cited as CH at ___, the transcript from the first Board hearing will be cited as PCB at ___, the transcript from the second Board

approximately one mile west of Ottawa, Illinois in LaSalle County. It is directly northwest of the States Land Improvement No. 2 Landfill. (Vol. II Sec. 3 p. 3-1.) The proposed landfill would provide 5,700,000 tons of disposal capacity, which is projected to meet the disposal needs of LaSalle County for a minimum of 25 years. (Vol. I Sec. 1 p. 1-1.) The proposed "primary" service area is LaSalle County, and the surrounding nine counties of DeKalb, Kendall, Grundy, Woodford, Marshall, Putnam, Livingston, Bureau, and Lee. (Vol. I Sec. 1 p. 1-2 to 1-4.) Additionally, if the primary service area does not generate a minimum of 140,000 tons of waste annually, the service area would be expanded to include additional counties in northern Illinois. (Vol. I Sec. 1 p. 1-4.) Such expansion would be subject to the approval of the County Board.

The first set of public hearings prior to the PCB 96-243 appeal were held before the LaSalle County Siting Hearing Committee (Siting Committee) from February 1, 1996 through March 6, 1996 before Hearing Officer Allan Schoenberger. The Siting Committee consisted of five members of the County Board, with two additional members as alternates. At the conclusion of the hearings, Hearing Officer Schoenberger prepared a 101-page recommendation, recommending that the Application be granted. On April 25, 1996, the Siting Committee issued its unanimous recommendation that the Application be granted, subject to 26 conditions. That same day, the full County Board approved the Application subject to the recommended conditions, adopting in their entirety the recommendations and findings of the Siting Committee. Petitioners then appealed the siting approval to the Board. (See PCB 96-243.)

In PCB 96-243, the Board found that the procedures before the County Board did not comport with due process standards of fundamental fairness. The Board found two instances in PCB 96-243 that made the proceedings fundamentally unfair. The first was that LaSalle did not make volume VII of LandComp's Application available for public inspection, pursuant to Section 39.2(c) of the Act, and that its unavailability rendered the proceedings fundamentally unfair. Second, the Board found that the report prepared by the County's consulting engineers, Camp, Dresser, and McKee (CDM), evidenced an extensive dialogue, which took place outside the record, between CDM and the applicant's consultant, Patrick Engineering. The Board found that because LaSalle's Solid Waste Director was privy to these discussions, and because the discussions constituted *ex parte* contacts, which prejudiced petitioners and other public participants, that these contacts rendered the proceedings fundamentally unfair. Thus, the Board vacated LaSalle's siting decision and remanded the case to the County Board.

On remand, the Board ordered the County Board to deposit and make available to the public at the county clerk's office a copy of LandComp's entire siting application, including volume VII, and a copy of the CDM Report dated February 1996. The Board also ordered the County Board to conduct one or more public hearings, and allow a public comment period of at least 30 days, on the Application, including volume VII, and the CDM report. Finally, the County Board was ordered to vote and render a new decision no later than 120 days after the

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hearing will be cited as PCB2 at __, and LandComp's Siting Application will be cited as Vol.__ Sec.__ p.__.

date of the Board's order based upon the record, including the information acquired during the public hearing and comment period upon remand. (PCB 96-243 at 22 and 23.)

As ordered, the County Board held public hearings from December 4, 1996 through December 12, 1996 before Hearing Officer Allan Schoenberger. (CH at 06735.) These hearings were limited to volume VII of LandComp's Application and the CDM report. After the siting hearings and after the conclusion of the public comment period, the Siting Committee voted 3 to 2 to recommend that the full County Board decline to grant siting to LandComp. However, on January 17, 1997, the LaSalle County Board rejected the Siting Committee's recommendation and granted siting approval subject to the 26 original conditions by a 15 to 11 vote. (CH at 06733, 06735 and 06756.) That siting approval is the subject of this appeal. The Board's hearing in this matter was held on April 22, 1997 in Ottawa, Illinois, before chief Hearing Officer Michael Wallace.

In this appeal, Residents challenge the siting decision as being (1) premised on proceedings which were fundamentally unfair on several grounds, and (2) against the manifest weight of the evidence on three of the nine statutory criteria. The three criteria being challenged by Residents are: 1) the need criterion of Section 39.2(a)(1) of the Act; 2) the health safety and welfare criterion of Section 39.2(a)(2) of the Act; and 3) consisting with the local solid waste plan pursuant to Section 39.2(a)(8) of the Act. (415 ILCS 5/39.2(a)(1), (2), and (8) (1997.)) In PCB 96-243, the Residents' had also challenged the County Board's siting approval decision on several of the siting criteria at Section 39.2 of the Act. (PCB 96-243 at 3.) Because the remand was based upon a finding that a portion of the siting process had been fundamentally unfair, we did not review any of the nine criteria found at Section 39.2 of the Act. In this case, we consider both types of challenges: the fundamental fairness of the proceeding upon remand and the siting criteria challenges raised by Residents. For the reasons explained below, we find that the procedures before the County Board did comport with due process standards of fundamental fairness and that the decisions of the County Board on the three challenged siting criteria are not against the manifest weight of the evidence.

ELEMENTS OF REVIEW

At the local level, the siting process is governed by Section 39.2 of the Act. Section 39.2 of the Act provides that local authorities are to consider as many as nine criteria when reviewing an application for siting approval. Section 39.2(g) of the Act provides that the siting approval procedures, criteria, and appeal procedures provided for in Section 39.2 shall be the exclusive siting procedures for new pollution control facilities. (415 ILCS 5/39.2 and 39.2(g) (1997).) However, the local siting authority may develop its own siting procedures, so long as those procedures are consistent with the Act and supplement, rather than supplant, those requirements. (See Waste Management of Illinois v. Pollution Control Board, 175 Ill. App. 3d 1023, 530 N.E.2d 682, 692-693 (2d Dist. 1988).)

Section 40.1 of the Act requires the Board to review the proceeding before the local siting authority to assure fundamental fairness. In E & E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 451 N.E.2d 555 (2d Dist. 1983), *aff'd in part*, 107 Ill. 2d 33,

481 N.E.2d 664 (1985), the appellate court found that although citizens before a local decision-maker are not entitled to a fair hearing by constitutional guarantees of due process, procedures at the local level must comport with due process standards of fundamental fairness. The court held that standards of adjudicative due process must be applied. (See also, Industrial Fuels & Resources v. Pollution Control Board, 227 Ill. App. 3d 533, 592 N.E.2d 148 (4th Dist. 1992); and Tate v. Pollution Control Board, 188 Ill.App.3d 994, 544 N.E.2d 1176 (4th Dist. 1989).) Due process requirements are determined by balancing the weight of the individual's interest against society's interest in effective and efficient governmental operation. (Waste Management, 175 Ill. App.3d 1023, 530 N.E.2d 682 (2d Dist. 1988).) The manner in which the hearing is conducted, the opportunity to be heard, the existence of *ex parte* contacts, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. (Hediger v. D & L Landfill, Inc., (December 20, 1990), PCB 90-163, 117 PCB 117, 121.)

Upon appeal, the Board may also review a local authority's decision on the nine statutory criteria. In so doing, the Board must determine whether the local decision is against the manifest weight of the evidence. (McLean County Disposal, Inc. v. County of McLean, 207 Ill.App.3d 477, 482, 566 N.E.2d 26, 29 (4th Dist. 1991); Waste Management of Illinois, Inc. v. Pollution Control Board, 160 Ill.App.3d 434, 513 N.E.2d 592 (2d Dist. 1987); and E & E Hauling, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983), *aff'd in part*, 107 Ill. 2d 33, 481 N.E.2d 664 (1985).)

RESIDENTS' CHALLENGES UNSUPPORTED ON THE RECORD

Residents allege in their petition seven items which are not addressed in their post hearing brief. We note that only one of these seven allegations challenged statutory siting criteria in addition to the three criteria addressed at pages 16-28 of this opinion, and that only one of the other allegations was addressed by Residents at the Board's hearing. We find that Residents failed to support their burden of proof concerning any of the seven allegations. Although Residents did not provide any argument or support concerning these seven issues, they are listed below for purposes of the record.

First, Residents allege that LandComp failed to meet criteria 3, 5, and 7 of Section 39.2(a) of the Act. (415 ILCS 5/39.2(a)(3), (5), and (7) (1997).)

Second, Residents allege that the County Board's decision was based upon criteria which it had no authority to consider. Residents did not identify the criteria to which they refer in their brief or at hearing.

Third, Residents allege that the County Board failed to timely accept documents and public comments in a timely fashion, but that the same were not made a part of the record. We note that this allegation was addressed PCB 96-243, wherein the Board found that such failure was cured and had not rendered that proceeding to be fundamentally unfair. In this case, Residents have not cited any new failures by the County Board to timely receive documents.

Fourth, Residents allege that the County Board siting resolution of January 17, 1997 was adopted at an illegally and improperly convened meeting. Although Residents questioned witnesses at the Board's hearing about the timing of the that meeting, they did not further develop this issue or make any arguments to the Board.

Fifth, Residents allege that the County Board failed to consider and adopt the proposed findings of fact submitted by petitioners. Again, Residents did not present any argument or support concerning this allegation.

Sixth, Residents allege that the siting resolution of January 17, 1997 makes insufficient findings of fact to support siting approval. We note the written resolution clearly states that the County Board believes that all the criteria have been met.

Seventh, Residents contend that the conditions as imposed in the siting approval usurp the right of the Illinois Environmental Protection Agency to impose its own conditions during the permitting process, and therefore the County Board's conditions operate as a denial of the Application. We note that the Act allows the imposition of conditions by the local siting authority, and the appellate courts have upheld a local decisionmaker's authority to impose conditions when granting siting approval. (415 ILCS 5/39.2(e) (1997).) Residents did not provide any argument or support for their allegation that the County Board's conditions in this case defeat the siting approval granted by the County Board.

In summary, the Board has reviewed these allegations and the record before us and finds that none are supported by that record. Residents have failed to support their burden of proof concerning each. Therefore, the Board finds that none of these allegations support a finding that the proceeding upon remand was fundamentally unfair or that the County Board's decisions on the siting criteria should be reversed.

ISSUES OF FUNDAMENTAL FAIRNESS

Section 40.1 of the Act requires the Board to review the proceedings before the local decisionmaker to assure fundamental fairness. As stated earlier, the manner in which the hearing is conducted, the opportunity to be heard, the existence of *ex parte* contacts, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. (See, Hediger v. D & L Landfill, Inc., (December 20, 1990), PCB 90-163.)

Residents raised four arguments asserting that the County Board was predisposed in favor of the application. First, they seek to reassert the contents of their pre-hearing motions concerning the County's Solid Waste Plan (Plan) and other pre-siting agreements. Second, they assert the County had a contractual relationship with the applicant prior to the filing of the Application, which created inherent bias. Third, Residents argue that the Plan requires public participation in the siting process, which they were denied. Fourth, Residents argue that certain County Board members were pre-disposed, causing the process to be fundamentally unfair. (LandComp makes the same argument concerning one County Board member.)

Finally, Residents argue that the County Board's hearing officer was biased, causing the process to be fundamentally unfair.

The Board has examined each of these arguments as set out below. We find that none of these allegations renders the siting proceedings fundamentally unfair.

Exclusion of Pre-Application Evidence

In their post-hearing brief, Residents again support their allegation that the County Board was predisposed in favor of granting LandComp's application by re-alleging the arguments which they have made before the County Board's hearing officer, twice before the Board in PCB 96-243 and in a motion for clarification filed in this case prior to the Board's hearing. The substance of Residents' argument is that the manner in which LaSalle and LandComp entered into the vendor agreement indicates that LandComp exercised undue influence over the County Board. Residents allege that this undue influence disqualified the County Board from hearing the siting application and rendered any such proceedings before the County Board fundamentally unfair.

Residents further allege that the proceedings were fundamentally unfair because the County Board hearing officer refused to allow testimony at the siting proceeding concerning the adoption of the Plan, and thereby prevented Residents from establishing the County Board's pre-decisional bias. (Residents Br. at 26.) Residents assert that the County Board hearing officer's error was compounded by the Board order granting LandComp's motion *in limine* on July 18, 1996, and the Board's opinion and order concerning LaSalle's motion to strike in PCB 96-243 on September 19, 1996, and finally by the Board's ruling on Residents' motion to clarify in this case on April 17, 1997. (Residents Br. at 26.) These motions contained allegations that LandComp improperly influenced and dictated the development of the Plan, the conditions for siting approval, and procedural rules for the County Board's siting proceedings.

LandComp asserts that the Board's orders of July 18, 1996, September 19, 1996, and April 17, 1997 were correct because the Board refused to consider LandComp's participation in legislative processes before the County Board prior to the filing of the siting application. (LandComp Br. at 38-39.) LandComp also asserts that the Board's hearing officer in PCB 96-243 correctly relied on the Board's July 18, 1996 order in refusing to allow testimony concerning the LaSalle's selection of a preferred vendor and adoption of the Host Agreement. (LandComp Br. at 39.) Finally, LandComp asserts that Residents failed to make the necessary offers of proof to preserve their claim that evidence was improperly excluded. (LandComp Br. at 40.)

LaSalle asserts that Residents' allegations concern alleged events which occurred years before LandComp filed its application. (County Br. at 22.) LaSalle argues Section 40.1 addresses only the fundamental fairness of the siting hearing and procedures employed therein, and that the Board is therefore without jurisdiction to review the alleged events. As to Residents' allegations which concern the siting proceedings, LaSalle cites Southwest Energy v.

Pollution Control Board, 275 Ill. App. 3d 84, 655 N.E.2d 304 (4th Dist. 1995) (an appeal concerning the proposed Havana facility), and the 1992 amendment to Section 39.2 of the Act, asserting that the fact that a county board member has publicly expressed an opinion does not preclude that member from participating in the proceedings, and that local siting authorities are not held to the same standards as judicial bodies. (County Br. at 23.) LaSalle argues further that even if a disqualifying bias or prejudice is found, the Rule of Necessity requires that the County Board act as the siting authority.

We affirm the rulings in our July 18, 1996, September 19, 1996, and April 17, 1997 orders that allegations concerning the adoption of the Plan are not proper for Board to consider in a pollution control facility siting appeal pursuant to Section 40.1 of the Act. We further affirm the Board's prior ruling in PCB 96-243 that contacts between the applicant and the siting authority prior to the filing of the siting application do not constitute impermissible *ex parte* contacts. (PCB 96-243 at 16.) As we ruled in each order entered in PCB 96-243, there is no authority for applying *ex parte* restrictions concerning pollution control facility siting prior to the filing of an application for siting approval. (PCB 96-243 (September 19, 1996) at 15 and 16.)

Those holdings are best summarized in our final opinion and order in that case. (PCB 96-243 (September 19, 1996) at 15-16.) We held that because evidence of these contacts is not relevant to the siting criteria and is not indicative of impermissible pre-decisional bias of the siting authority, we find that the County Hearing Officer's failure to allow testimony concerning these allegations did not render the proceedings fundamentally unfair. Similarly, the contacts between the applicant and the County Board prior to the filing of the Application are irrelevant to the question of whether the siting proceedings themselves were conducted in a fundamentally fair manner. (PCB 96-243 at 16.)

Relationship Between LandComp and LaSalle

Host Agreement. Residents next re-allege that LandComp's status as the exclusive vendor for LaSalle and the Host Agreement between LaSalle and LandComp created inherent bias which rendered the siting proceedings fundamentally unfair. Residents point out that the Board has recognized the concept of inherent bias in Concerned Citizens for a Better Environment v. City of Havana, (May 16, 1994), PCB 94-99. (Residents Br. at 29.) They assert that LaSalle had a great deal invested in LandComp and has a "clear and obvious" motive to grant LandComp's siting application. Residents assert that the relationship between LandComp and LaSalle is much more complex than those encountered in prior cases involving annexation agreements. (Residents Br. at 30.)

LandComp responds that the Board and the appellate courts have repeatedly rejected the assertion that the existence of a host agreement indicates predisposition or bias on the part of the siting authority. (LandComp Br. at 37.) LandComp repeats the rule that administrative officials are presumed to be objective. (LandComp Br. at 37.) LandComp also argues that the Board has already found in PCB 96-243 that there was no bias. (LandComp Br. at 37.)

LaSalle responds that the issue of inherent bias concerning the Host Agreement is very much the same as that found in prior cases involving pre-annexation agreements. LaSalle asserts that the appellate court has addressed this issue in Fairview v. PCB, 198 Ill.App.3d 541, 546, 555 N.E.2d 1178, 1181 (3d Dist. 1990) and has held that such an agreement does not create bias. (County Br. at 25.)

Residents have not alleged anything new since the Board addressed these issues in PCB 96-243. The Board therefore affirms its prior decision. We find that the Host Agreement and the exclusive vendor relationship did not render the proceeding fundamentally unfair. (PCB 96-243 at 16 and 17.)

Attempt to Re-negotiate Rate Structure. Residents assert that *ex parte* contacts between LaSalle and LandComp rendered the proceedings fundamentally unfair. In support, Residents again argue that employees of LaSalle impermissibly attempted to re-negotiate the rate structure in the Host Agreement with LandComp while the Application was pending. (Residents Br. at 30-31.)

LandComp argues that this issue was already decided by the Board in PCB 96-243. (LandComp Br. at 38.) LaSalle does not argue anything new, but simply reiterates its arguments stated in PCB 96-243. (County Br. at 26.)

We find that the Residents have not presented any new evidence or arguments supporting this allegation. We uphold our prior ruling that the attempt by LaSalle employees to re-negotiate the rate agreement constituted improper *ex parte* contacts, but did not unfairly prejudice the proceedings. (PCB 96-243 at 16-17.)

Lack of Public Participation

Residents argue that LandComp failed to show that the proposed facility was consistent with the Solid Waste Plan. Residents' argument is two-fold. First, Residents argue that the facility is not consistent with the Plan, and therefore the siting criteria at Section 39.2(a)(8) was not met. This argument is addressed under the Siting Criteria portion of the opinion. (*supra*, at pp. 26-28) Second, Residents argue that the public participation portions of the Plan were not followed, and therefore the siting proceeding was fundamentally unfair. Our discussion here is limited to the fundamental fairness issues alleged in Residents' brief.

In that context, the substance of Residents' argument that public participation provisions of the Plan were not followed is substantially similar to the arguments made about the bias of the hearing officer and the inherent bias of the County Board. (Residents Br. at 24-25.) LaSalle counters that the public was involved in the siting process and that the applicant cannot be held responsible for the extent to which the public does or does not participate. (County Br. at 19.) LaSalle also argues that Section 39.2(a)(8) of the Act requires only that the proposed facility be consistent with the Plan, not that the siting procedures be consistent with the Plan. (County Br. at 19.) Its fellow respondent, LandComp, contends that how the Plan was adopted is not within the Board's scope of review, and points out that the Board has already ruled on this issue in its PCB 96-243 July 18, 1996 order. (LandComp Br. at 33.)

LandComp is correct. In PCB 96-243, the Board affirmed its July 18, 1996 order that Residents' allegation concerning the adoption of the Plan are not proper for Board consideration in a Section 40.1 siting appeal. (PCB 96-243 at 15 and 16.)

We find that nothing presented by Residents persuades us to overrule our prior decisions. We note that Residents participated at hearing and that neither the hearing officer's rulings nor the County Board prevented them from participating fully in the local siting process. We find nothing in the record to indicate that the proceedings were fundamentally unfair because public participation was afforded Residents.

Disqualification of Five County Board Members

In the context of a fundamental fairness challenge, both Residents and LandComp argue in favor of disqualifying certain County Board members (Members) and reducing the vote total in support of or against siting approval. Residents argue that four County Board members in favor of siting should be disqualified and that the vote in favor of siting should be reduced from 15 to 11.[2] LandComp argues that one County Board member who voted against siting should be disqualified and that the vote against siting should be reduced from 11 to 10. We will address Residents' arguments first.

Residents argue that four of the County Board members in favor of the siting application should be disqualified.[3] They first contend that Member Patricia Cogdal should be disqualified because she owns a garbage hauling business and because she "voted on the landfill the way her deceased husband would have wanted her to vote." (Residents Br. at 31.) Residents next contend that Member Donald Jordan was not familiar with the evidence, did not avail himself of the entire record, and misunderstood the burden of proof and should therefore be disqualified. (Residents Br. 32-33.) Residents also allege that the County Board Chairman told Member Tom Mowinski that he should vote in favor of the siting application because if he did not, the state would site a landfill. (Residents Br. at 33.) Finally, Residents argue that Member Glenn Garretson did not read the entire record and therefore should be disqualified.

Residents argue that the closeness of the vote and the fact that the County Board rejected the Siting Committee recommendation should persuade the Board to examine whether the votes of County Board members were based upon the evidence. (Residents Br. at 34.)

In response, LandComp contends that under E & E Hauling, the County Board members are presumed to act fairly. (LandComp Br. at 42 citing E & E Hauling, Inc. v. Pollution Control Board, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983), *aff'd in part* (1985) 107 Ill.2d 33, 481 N.E.2d 664).) LandComp also cites City of Rockford v. County of Winnebago, 186 Ill.App.3d 303, 313, 542 N.E.2d 423, (2d Dist. 1989); Waste Management

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[2] One of the County Board members challenged by Residents, did not vote. Therefore, Resident's mathematics is incorrect.

[3] *Id*

of Illinois v. PCB, 175 Ill.App.3d 1023, 1044, 530 N.E.2d 682, (2d Dist. 1988); and Turlek v. Village of Summit, (May 5, 1994) PCB 94-19, 94-21, and 94-22 (consolidated) and argues that the well-settled rule is that county board members need not review the entire record so long as it is available to them. (LandComp Br. at 43.)

LandComp contends that the testimony of Member Jordan shows that he believed when he voted in favor of siting that all the criteria had been met. LandComp also argues that Member Garretson relied upon the evidence in the record when making his vote. (LandComp Br. at 43-44.) Additionally, LandComp argues that Member Cogdal's business does not present a disqualifying conflict of interest. (LandComp at 45.) LaSalle's arguments against disqualifying the County Board members are very similar to LandComp's. (County Br. At 27-31). LandComp also seeks to disqualify Board Member Koban who voted against siting because of her involvement with the objectors and because of *ex parte* contacts with the objectors. (LandComp Br. at 46-47.)

For the reasons stated below, the Board rejects the arguments made by Residents and LandComp, respectively, seeking to disqualify County Board members on the grounds that their actions rendered the siting proceedings fundamentally unfair.

County Board Member Patricia Cogdal. Residents argue that Member Patricia Cogdal was biased in favor of the siting application because she owns Starved Rock Sanitation, a hauling business that dumps at the applicant's existing facility. In support of their argument, Residents point to the fact that Member Cogdal was advised by the LaSalle County State's attorney to abstain on the siting vote. Residents summarize Member Cogdal's testimony as showing that she would prefer a convenient landfill and that she would like to stay in business because she has a son to raise. They also contend that Member Cogdal voted in favor of the siting because that was the way her husband would have wanted her to vote. (Residents Br. at 31.)

LandComp argues that Member Cogdal testified that she based her decision on the evidence presented at the siting hearings. LandComp states that no conflict of interest exists because if there were no landfill in LaSalle County, Member Cogdal would be in the same position of her competitors and would have to haul waste to another location. LandComp cites several Board cases in support of the proposition that even county board members who performed services for and were paid by the applicant cannot be disqualified absent additional evidence. LandComp argues that because Member Cogdal was not employed by or paid by the applicant, the Board should not find disqualifying bias in this case. LaSalle makes arguments similar to LandComp's, but also adds that Member Cogdal was only a customer at LandComp's current facility, as are most waste haulers in LaSalle County.

Member Cogdal testified that she was a County Board member during both siting hearings and in both siting decisions voted in favor of siting the new facility. (CH at 6755 and PCB2 at 13 and 23.) Member Cogdal also testified that her husband used to own the hauling business, which she now owns and that the business currently dumps at the applicant's existing facility. (PCB2 at 13-14.) On direct examination by Residents, Member Cogdal admitted that

she would prefer the new landfill to be closer to her business for economic reasons, and that her husband would have wanted her to vote in favor of the application. (PCB2 at 18-19.) However, Member Cogdal also testified that she voted based upon the evidence presented during the siting hearings. (PCB2 at 24.)

There is a presumption that administrative officials are objective and capable of fairly judging a particular controversy. (Waste Management, 175 Ill.App. 3d 1023, 1040, 530 N.E.2d 682, 695 (2d Dist. 1988); and Citizens for a Better Environment v. Pollution Control Board, 152 Ill.App.3d 105, 111, 504 N.E.2d 166, 171 (1st Dist. 1987.) In Waste Management, the appellate court stated:

> Moreover, the fact that an administrative official has taken a public position or expressed strong views on an issue before the administrative agency does not overcome the presumption. Where, as here, an administrative body operates in an adjudicatory capacity, bias or prejudice may only be shown if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it.

175 Ill.App.3d 1023, 1040, 530 N.E.2d 695. Furthermore, Section 39.2(d), as amended in 1992, provides in relevant part:

> The fact that a member of the County Board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue.

(415 ILCS 5/39.2(d) (1997).)

We find no evidence in the record which overcomes the presumption of objectivity regarding Member Cogdal. Member Cogdal testified that she voted in favor of siting based upon the evidence presented. Member Cogdal's testimony clearly shows that, although she may have expressed an opinion on the siting, she based her decision upon the information in the record. Therefore, the Board finds that neither Member Cogdal's vote nor her ownership of the hauling operation created a conflict of interest which made her participation in the siting proceeding fundamentally unfair.

In Slates *et al*. v. Illinois Landfills, Inc., and Hoopeston City Council, (September 23, 1993) PCB No. 93-106 (*rev'd* on other grounds Illinois Landfills, Inc. v. PCB, slip op. No. 4-94-0041 (4th Dist December 4, 1994) (unpublished rule 23 order)), the Board found that an alderman who was contractually employed by the applicant prior to the siting application did not have a conflict of interest which required that he be disqualified. (Slates, at 15.) Additionally, in our decision in Board of Trustees of Casner Township v. County of Jefferson, (April 4, 1985), PCB 84-175 and PCB 84-176 (consolidated), the Board held that excavating activities performed by a county board member at the site of the proposed facility, during the

pendency of the request for site approval, did not reach the level of a disqualifying conflict of interest. (Casner Township, at 10-11.)

County Board Member Donald Jordan. Residents argue that Member Donald Jordan did not avail himself of the record and that he was not familiar with the evidence. They also argue that Member Jordan misunderstood the burden of proof. In support, they contend that Member Jordan told the press that he voted in favor of the landfill siting because, "most of the criteria were met." (Residents Br. at 33.) LandComp and LaSalle argue that the record shows that Member Jordan believed that all the criteria were met when he voted.

Member Jordan testified that he was elected to the County Board after the first siting decision was made. He testified that on remand, he read summaries of the first siting hearing but probably did not read all of the original transcripts. (PCB2 at 43 and 56.) There was some confusion as to whether the documents he read were summaries or transcripts. (PCB2 at 43 and 54.) Member Jordan testified that he only attended one evening siting meeting and that he never heard any of the testimony. (PCB2 at 53.) Member Jordan also testified that he talked to the press after the vote. He did not remember specifically stating that most of the criteria were met, but did remember that at the time of the conversation he was plowing snow on a busy night while talking on a portable phone. (PCB2 at 44.) Member Jordan also testified that he believed all the nine siting criteria were met. (PCB2 at 44.)

In City of Rockford v. County of Winnebago, 186 Ill.App.3d. 303, 542 N.E.2d 423 (2d Dist. 1989), the appellate court stated "whether the board members availed themselves of the record is not an issue relevant to this case, as there is no such requirement that they do so." (Rockford, 186 Ill.App.3d at 312, 542 N.E.2d at 430.) Similarly, in Waste Management of Illinois, Inc. v. PCB, 123 Ill.App.3d 1075, 463 N.E.2d 969 (2d Dist. 1984) the court stated that the entire county board need not be present at the hearings as long as the record is available for board member review. (Waste Management, 123 Ill.App.3d at 1080-1081, 463 N.E.2d at 974.) Under controlling case law, the fact that Member Jordan was not present for most of the siting hearings is not enough to disqualify him or to make the proceedings fundamentally unfair. As for the issue of telling the press that "most of the criteria were met," Member Jordan testified that he does not fully remember the entire statement he made because it was a busy night and he was talking to the press on his cellular phone while plowing snow. Even assuming that the statement was an exact quote, Member Jordan testified that he believed at the time of the vote that all the nine siting criteria were met. Therefore, the Board does not find anything in the record that demonstrates Member Jordan's action rendered the siting proceeding fundamentally unfair.

County Board Member Tom Mowinski. Residents argue that Member Tom Mowinski demonstrates an inherent bias on behalf of LaSalle and the County Board chairman in favor of the applicant. (Residents Br. at 33.) They premise this argument on the allegation that Member Mowinski was told by the County Board chairman that if he did not vote in favor of the siting application, the state would come in and site a landfill. (Residents Br. at 33.) Member Mowinski did not vote on the application. (PCB2 at 65.) The Board finds that since Member Mowinski did not vote on the siting application challenged in this proceeding, there is

no issue as to whether his actions caused the proceeding to be fundamentally unfair. Therefore, we will not further address whether Member Mowinski should be disqualified.

Residents' make a general allegation that county board members other than Member Mowinski were similarly "misinformed regarding the law or the consequences of the denial of the Application." (Residents Br. At 33.) The record does not support the Residents' general allegation that other County Board members were misinformed. Residents offer no evidence in support this general allegation. The record only shows that Member Mowinski testified that the County Board chairman did not tell him the state would site the landfill, and the chairman testified to that as well. (PCB2 at 65-68; 118.) Therefore, the Board finds that Residents have failed to sustain their burden of proof concerning their general allegation.

County Board Member Glenn Garretson. Residents argue that Member Glenn Garretson read only the condensed version of the record and, if this was the hearing officer report, it was biased on behalf of the applicant. Residents next urge the Board to reject the case law standing for the proposition that local decision-makers need not necessarily read the entire record as long as it is available to them. In support, Residents argue that a decision based upon the evidence is a requirement of any adjudicatory process and what distinguishes it from a political process. Residents argue that because the County Board rejected the Siting Committee's Report and because the vote was so close, the Board should distinguish this case from prior legal precedents. (Residents Br. at 34.)

LandComp argues that the record shows that Member Garretson's actions were proper and that there was no showing of bias or conflict on his part. LaSalle argues that Member Garretson did not base his vote on the hearing officer's summary and that he believed the criteria were met. LaSalle also contends that Member Garretson relied on the minority report and a little of his own common sense when making his decision. LaSalle contends that Section 39.2 of the Act only requires a county board member to indicate which criteria are met, but does not require a detailed inquiry into the county board member's mental processes. (County Br. at 31.)

Member Garretson testified that he was not present for most of the siting hearings and only present for part of the siting hearings he attended. (PCB2 at 86-87.) He stated that he read some of the transcripts and the "condensed" version. Garretson also stated that he had all of the transcripts in his possession. (PCB2 at 87-88.) Member Garretson testified that his mind was not made up and that he was not even sure on the day he voted how he would vote. (PCB2 at 90.) Member Garretson also stated he believed the criteria were met. (PCB2 at 89.)

For the same reasons discussed above concerning Member Jordan, there is no requirement that Member Garretson attend all the hearings or read all the information in the record in order to be qualified to vote on the siting application. The Board finds no reason to overrule its precedents and the appellate case law on this issue.

County Board Member Andree Marie Koban. LandComp argues that if any of the County Board members should be disqualified, it is Member Andree Marie Koban.

LandComp cites several examples in its brief which show that Member Koban had contact with the objectors and that she was opposed to the facility being built. (LandComp Br. at 46.)

Member Koban testified that she was opposed to the landfill and that she ran in the 1994 election on that platform. (PCB2 at 164-165.) Member Koban also testified that she was on the board of directors for Residents Against a Polluted Environment in 1992. (PCB2 at 165.) Member Koban also stated that she has made contributions to that objectors' group; attended a meeting of the Residents' group in November of 1996; and that she had conversations with Mr. Markwalter (the group's current president) after the Board remanded the case for a second set of siting hearings.

First, the Board notes that there is nothing improper with Member Koban taking a position on the siting application. As stated before, Section 39.2(d) of the Act specifically allows her to do so. (415 ILCS 5/39.2(d) (1997).) As for the contacts, even if we were to find that the constituted *ex parte* contacts, the applicant cannot allege that the proceedings were fundamentally unfair because the applicant prevailed at the siting hearing. In Waste Management, the court said, "although personal *ex parte* communications to county board members in their adjudicative role are improper, there must be a showing that the complaining party suffered prejudice from these contacts" (Waste Management Inc., 175 Ill.App.3d 1023, 1043, 530 N.E.2d 682, 698 (2d Dist. 1988).) Since LandComp clearly did not suffer any prejudice from the actions of Member Koban, we will not reach the question of whether her meeting and conversations with one of the petitioners constitutes an *ex parte* contact.

Bias of the County Board Hearing Officer

In their final argument concerning fundamental fairness of the siting proceeding, Residents allege that the hearing officer demonstrated consistent and thorough bias against the objectors and in favor of the applicant. Residents assert that this bias was demonstrated at hearing, and in the hearing officer's report to the Siting Committee. For the most part, Residents restate arguments from the first set of hearings upon which the Board has already ruled in PCB 96-243.

LandComp urges the Board to affirm its earlier order. (LandComp Br. at 35.) We will do so for the purpose of clarity. We affirm our earlier decision in PCB 96-243 finding that neither the hearing officer's actions nor his report demonstrated bias. Also, we affirm our earlier decision that the hearing officer's decisions to limit questions on issues involving the Plan and economic issues did not demonstrate bias. (PCB 96-243 at 20.)

Residents allege anew that the hearing officer demonstrated bias at the county hearings held subsequent to the Board's remand. (Residents Br. at 46.) Residents allege that the hearing officer limited their questioning of Mr. DeGroot about his and LandComp's financial status. Residents again argue that although financial status is not one of the nine criteria, the County still has a right to consider economic status of the applicant as part of its legislative inquiry. (Residents Br. at 47.)

In response, LandComp argues that the Residents were allowed to question Mr. DeGroot regarding financial matters and volume VII at the remand hearings. (LandComp Br. at 35.) Additionally, LandComp argues that even when the County Board hearing officer properly sustained an objection regarding relevance of questions about LandComp's financial status, the Residents were allowed to continue questioning Mr. DeGroot through an offer of proof. (LandComp Br. at 35.) Finally, LandComp argues that the hearing officer's rulings were proper and did not demonstrate bias because the applicant's financial status is not one of the siting criteria. (LandComp Br. at 37.)

In County of Lake v. Pollution Control Board, 120 Ill.App.3d 89, 457 N.E.2d 1309 (2d Dist. 1983), the appellate court affirmed the ruling of the Board striking a condition imposed by the siting authority which required the siting applicant to provide a bond as proof of financial responsibility. The court held that the Board properly struck the condition because Section 39.2 does not authorize the County to require financial responsibility. The court stated:

> Financial responsibility is not part of the . . . criteria to be considered in granting approval. It is only indirectly related to [criterion] (v) but not sufficiently to find that it is implied.

(Id. at 1317 and 102.)

The Board also addressed the question of an objector's right to present evidence on the issue of financial assurance in T.O.T.A.L. and Concerned Adjoining Owners v. City of Salem, Roger Kinney, City Manager and Roger Freidricks, PCB 96-79 and PCB 96-82 (consolidated) (March 7, 1996) (*aff'd* in Slip Op. No. 5-96-0244 (Ill. Ct. App. 5th Dist, June 2, 1997)). In the local siting hearing, objectors to the proposed expansion of a city-owned landfill sought to examine the city manager on the issues of economics and profitability, where the city manager was acting as the applicant for siting approval on behalf of the city. The hearing officer in the local siting proceeding denied their attempts to call the city manager as an adverse witness. Finding that the hearing officer's actions did not render the proceedings fundamentally unfair, the Board stated:

> While the Board understands TOTAL's arguments that economics are connected to the ability of the landfill expansion to be operated in a manner to meet the criteria concerning public health, safety and welfare in Section 39.2(a) of the Act, the exact language of the criterion states ". . . the facility is so designed, located and proposed to be operated . . ." and does not require that the local siting authority determine the solvency of the applicant. The issue of financial assurance of the applicant is addressed at the permitting stage before the Illinois Environmental Protection Agency..

(PCB 96-79 and PCB 96-82 (consolidated), at 16-17.)

Since the County Board is not required to determine the solvency under the Act, we find that the hearing officer's ruling limiting questions about the financial status of the applicant was proper. We find that the hearing officer's limitation of cross-examination

regarding economic issues does not demonstrate bias. Accordingly, we find that none of these actions rendered the siting proceeding fundamentally unfair.

SITING CRITERIA

When reviewing a local decision on the nine criteria found in Section 39.2(a) of the Act, this Board must determine whether the local decision is against the manifest weight of the evidence. (McLean County Disposal, Inc. v. County of McLean, 207 Ill.App.3d 477, 480, 566 N.E.2d 26, 29 (4th Dist. 1991); Waste Management of Illinois, Inc. v. Pollution Control Board,160 Ill.App.3d 434, 513 N.E.2d 592, (2d Dist. 1987); and E & E Hauling, Inc. v. Pollution Control Board, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983), *aff'd in part* (1985) 107 Ill.2d 33, 481 N.E.2d 664.) A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. (Harris v. Day, 115 Ill.App.3d 762, 769, 451 N.E.2d 262, 265 (4th Dist. 1983).)

The Board, on review, is not to reweigh the evidence and where there is conflicting evidence, the Board is not free to reverse merely because the lower tribunal credits one group of witnesses and does not credit the other. (Fairview Area Citizens Task force v. Pollution Control Board, 198 Ill.App.3d 541, 550, 555 N.E.2d 1178, 1184 (3d Dist. 1990); Tate v. Pollution Control Board, 188 Ill.App.3d 994, 1021, 544 N.E.2d 1176, 1195 (4th Dist. 1989); and Waste Management of Illinois, Inc. v. Pollution Control Board, 187 Ill.App.3d 79, 81, 543 N.E.2d 505, 507 (2d Dist. 1989).) Merely because the local government could have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the local government's findings. (File v. D & L Landfill, Inc., (August 30, 1990), PCB 90-94, *aff'd* File v. D & L Landfill, Inc., 219 Ill.App.3d 897, 579 N.E.2d 1228 (5th Dist. 1991) (File).)

The Need Criterion at Section 39.2(a)(1)

Section 39.2(a) of the Act provides that the applicant must demonstrate compliance with nine criteria set out therein. If the pollution control facility meets the criteria, the county board must grant local siting approval. Section 39.2(a)(1) of the Act sets forth the first of the nine siting criteria. It provides in pertinent part, that: "the facility is necessary to accommodate the waste needs of the area it is intended to serve." (415 ILCS 5/39.2(a)(1) (1997).)

With respect to this criterion, the Residents argue that neither the proposed service area nor LaSalle County needs the facility and that LandComp failed to satisfy its burden of proof concerning this criterion. (Residents Br. at 6.) Residents state that in order to show need an applicant must only use the state annual report on disposal capacity to show that the service area in question is in "imminent danger of exhausting disposal capacity." (Residents Br. at 5.) Additionally, Residents argue that the only expert on the issue of need presented by LandComp was Mr. Walter Willis, of Patrick Engineering. Patrick Engineering is the firm that prepared LandComp's application for siting approval. Residents argue that no independent expert was provided, and further argue that on cross-examination, Mr. Willis testified that he had not

considered incineration or out-of-state facilities when calculating the remaining disposal capacity, even though Residents allege that some incinerators receive waste from the proposed service area. (Residents Br. at 6.) Residents argue that the record shows that new capacity is coming on line in Illinois and that in LandComp's proposed primary service area, capacity is higher than it has ever been. (Residents Br. at 6.) Finally, Residents argue that the lack of need for the facility is evidenced by LandComp's designation of a secondary service area. (Residents Br. at 6.)

In response, LandComp argues that Mr. Willis testified that the only public permitted landfill currently operating in LaSalle is scheduled to close in 1997. (LandComp Br. at 31 siting CH at 2133.) LandComp also argues that Mr. Willis's testimony showed that there are approximately four and a half years of total waste capacity remaining in the secondary service area proposed by LandComp. (LandComp Br. at 31 citing CH at 2146, 2178.) LandComp states that although the landfill capacity in the proposed service area may have doubled, the rate of waste disposal in this same area has nearly tripled. (LandComp Br. at 31 siting App. Vol. I, Fig 1-9.) LandComp also points out that the Residents did not call any witnesses to rebut Willis' testimony. LandComp argues that Mr. Willis did not have to consider sited, but not permitted, facilities in his analysis of remaining capacity and yet the Application for siting approval did analyze sites within a 50-mile radius of the proposed facility, including out-of-state facilities. (LandComp Br. at 32.)

LandComp contends that the out-of-state facilities have a shorter life expectancy than the landfills within Illinois. (LandComp Br. at 32.) LandComp also states that there is only one incinerator in the area and that it is in Chicago and only accepts waste from the City of Chicago. LandComp points out that the Robbins facility is under construction but had not yet received its operating permit. (LandComp Br. at 32 citing CH at 2178 and 2179.) Finally, LandComp argues that the inclusion of a secondary service area is not relevant to whether or not the facility is needed because it is the applicant alone who defines the service area. (LandComp Br. at 32.)

LaSalle's arguments are similar in substance to those of LandComp. (County Br. at 5-10.) However, LaSalle also notes that both Siting Committees, including the second committee which recommended against siting approval, found that the applicant had established need. (County Br. at 10.)

The Application submitted by LandComp defines the service area as an initial service area and a secondary service area. (App. Vol. I, Sec. 1.0.) The initial or primary service area consists of 10 counties: LaSalle, Putnam, Grundy, Marshall, DeKalb, Lee, Bureau, Kendall, Woodford, and Livingston (CH 2132). The secondary service area is defined as Illinois EPA Regions I-IV. (App. Vol. I, Sec. 1.0 p. 1-3-1-4 and CH at 2132.) In the Application, LandComp proposed that it only be permitted to accept waste from the secondary service area with County Board approval. However, the Host Agreement states that the County cannot unreasonably delay or withhold approval to accept waste from the secondary service area if the landfill cannot attract at least 140,000 tons of waste annually from the primary service area. (App. Vol. I, Sec. 1.0 p. 1-4.)

At the County Board hearings, Mr. Willis testified that in computing disposal capacity for landfills within the 50 mile radius required by LaSalle, he analyzed the data from the Illinois EPA report about available disposal capacity for Illinois facilities. For the contiguous states of Iowa, Wisconsin, and Indiana, he analyzed similar reports and corresponded with their regulatory agencies. (CH at 2136-21368.) Mr. Willis also testified that he calculated the volume of waste which will be produced in the initial service area and, after taking into account future recycling goals for the ten counties in the service area, he found that it will be approximately 400,000 tons per year initially and approximately 345,000 tons per year in the year 2021. (CH at 2140-2143.) By comparing these two calculations, Mr. Willis testified that he came to the conclusion that there will not be sufficient capacity in the primary service area in 25 years. (CH at 2143.) He testified that there is approximately 4½ years of disposal capacity left in the primary service area and approximately 5½ years of disposal capacity in the secondary service area. (CH at 2143-2144) Based upon his investigation, Mr. Willis testified that it was his opinion that the landfill is needed to meet the disposal needs of the primary and secondary service areas. (CH at 2147-2148.)

In its Application, Volume I Section 1, LandComp gave a history of landfills in the primary service area showing that the number of operating landfills in the area has declined from 23 to 7 during the late 1980's to 1990's. (Vol. I. Sec. 1 p. 1-9.) LandComp also states that the existing landfills located in the primary service area are expected to reach capacity by the year 2000 or 2001. (Vol. I. Sec. 1 p. 1-23. See also, p. 1-32 and 1-36) Additionally, LandComp estimates that approximately 10,313,000 tons of waste will need to be disposed within a 25 year period. This number was reached by multiplying disposal rates by population projections from the Illinois Bureau of the Budget. (Vol. I. Sec. 1 p. 1-30.) LandComp also included a rate that took in to account diversion goals in County Solid Waste Management Plans in the service area which call for increased recycling. The LandComp estimate for waste which will need to be disposed in a 25 year period under this scenario was about 8,847,903 tons. (Vol. I. Sec. 1 p. 1-30.) LandComp states in its Application that it will provide disposal capacity to LaSalle County for at least 25 years. (Vol. I. Sec. 1 p. 1-41.)

Again, Section 39.2(a)(1) of the Act provides that local siting approval shall only be granted if "the facility is necessary to accommodate the waste needs of the area it is intended to serve". In order to meet this statutory provision, an applicant for siting approval need not show absolute necessity. (Clutts v.Beasley, 185 Ill.App.3d 543, 546-547, 541 N.E.2d 844, 846 (5th Dist. 1989); A.R.F. Landfill v. Pollution Control Board, 174 Ill.App.3d 82, 91, 528 N.E.2d 390, 396 (2d Dist. 1988); and Waste Management, Inc., 122 Ill.App.3d 639, 644, 461 N.E.2d 542, 546.) The Third District has construed "necessary" as connoting a "degree of requirement or essentially." (*Id*. at 546.) The Second District has adopted this construction of "necessary," with the additional requirement that the applicant demonstrate both an urgent need for and the reasonable convenience of the new facility. (Waste Management, Inc., 175 Ill.App.3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988); and A.R.F. Landfill, 174 Ill.App.3d 82, 91, 528 N.E.2d 390, 396; Waste Management of Illinois, Inc. v. Pollution Control Board, 123 Ill.App.3d 1075, 1084, 463 N.E.2d 969, 976 (2d Dist. 1984).) The First District has stated that these differing terms merely evince the use of different phraseology

rather than advancing substantively different definitions of need. (Industrial Fuels & Resources/Illinois, Inc. v. Pollution Control Board, 227 Ill.App.3d 533, 545, 592 N.E.2d 148, 156 (1st Dist. 1992).)

After a careful review of the record, the Board finds that the evidence is not sufficient to reverse the County Board's decision on the need criterion. The Board does not find that the fact that Mr. Willis did not address potential incineration facilities in his calculations sufficient evidence to overturn the County Board's decision as being against the manifest weight. LandComp, in its Application and through the testimony of Mr. Willis, demonstrated that the facility is necessary. Contrary to Residents' argument, the fact that no other expert besides Mr. Willis was presented, does not negate the fact that his testimony specifically addressed the need criterion or that sufficient evidence was presented for the County Board to find that the need criterion had been met. Additionally, the Board notes that in Hediger v. D. and L. Landfill Inc., (December 20, 1990) PCB 90-163, local siting approval based upon this criterion was affirmed even where opponents presented evidence of landfill capacity outside of the proposed service area. In this case, the testimony of Mr. Willis, the Application, and the record provide sufficient evidence of need. The Board concludes that the County Board's decision is not against the manifest weight of the evidence.

Health, Safety and Welfare Criterion at Section 39.2(a)(2)

Section 39.2(a)(2) of the Act requires the applicant to demonstrate and the local siting authority to find that, "the facility is so designed, located, and proposed to be operated that the public health, safety and welfare will be protected." (415 ILCS 5/39.2(a)(2) (1997).) In its siting approval, the County Board found that the facility was designed, located, and proposed to be operated so as to protect the public health, safety, and welfare. (CH at 7583.) In reviewing this decision, the Board must apply the manifest weight of the evidence standard. We are mindful that in Clutts v. Beasley, 185 Ill.App3d 543, 547, 541 N.E.2d 844, 846 (5th Dist. 1989), the court stated that this criterion is not a guarantee against contamination.

There are three basic areas of disagreement between the parties relating to the issue of whether the facility is so designed as to protect the health safety and welfare of the public. The areas of dispute are: (1) the hydrogeological characterization of the site; (2) the design of the facility; and (3) the credibility of the witnesses.

We have reviewed the record in this case and determined that all the information argued by the parties was presented to the County Board as part of the record before it when it granted siting approval. The decision-making authority rests solely with the local government. The local government, in this case the LaSalle County Board, may give lesser or greater weight to whichever witnesses or evidence it chooses. Since all the information was before the County Board, the credibility of the witnesses is of critical concern. In File, 219 Ill.App.3d. 897, 907, 579 N.E.2d 1228, 1236 (5th Dist. 1991), the appellate court stated that the decision as to whether the criterion is met is purely a matter of assessing credibility of expert witnesses. After reviewing the arguments made by the parties about the credibility of the witnesses, we find that the County Board was justified in crediting the information contained in the

Application and the testimony offered by the applicant's witnesses. The County Board made a reasonable judgment and an opposite result is not clearly evident, plain, or indisputable. Therefore, we find that the County Board's decision that the facility was designed, located, and proposed to be operated so as to protect the public health, safety, and welfare was not against the manifest weight of the evidence.

For the record, we have set forth in detail the arguments about each of the three issues made by each of the parties. Although the credibility of the witnesses is the critical issue since all the technical information was before the County Board when it made its decision, we will begin this summary with the two technical challenges: the hydrogeological characterization of the site and the overall design of the proposed facility. We defer our discussion about the witnesses' credibility because without these two summaries, the context of the credibility argument is more difficult to understand.

The overall design of the facility is critical to understanding the technical summaries. As described in LandComp's Application, the proposed facility is designed to rely upon three liners. The first liner consists of a 60-mil high density polyethylene (HDPE) geomembrane liner which will be installed above the second liner. The second liner proposed is a recompacted clay liner that is, at a minimum, 5 feet thick with a maximum hydraulic conductivity of $1x10^{-7}$ cm/sec. and a plasticity index of greater than or equal to 5. The final liner proposed is the *in situ* shale which will be under the recompacted clay liner and have an average thickness across the site of 13 feet. (Vol. I Sec. 2.5 p.27-30.) The proposed design of the landfill also calls for a leachate drainage and collection system, a stormwater control system, a groundwater and gas monitoring system, and a composite final cover system. (*Id*. at p.1.)

Hydrogeological Characterization of the Site

LandComp performed a hydrogeological characterization of the site where the landfill is to be located. After reviewing historical geological information in that area, LandComp performed 3 tests to determine the bulk permeability. First, LandComp performed 7 packer tests to help them decide where to perform slug tests, which are more precise. LandComp then proceeded to perform 6 slug tests in the lower shale, 5 falling head tests and 1 rising head test. Afterwards, LandComp collected 29 soil borings and sent them to a lab to be used in triaxial hydraulic conductivity tests.

First, Residents dispute LandComp's hydrogeological characterization of the *in situ* shale which will be used as the third liner. Residents claim that the shale is fractured and that the bulk permeability of the underlying shale is higher than that estimated by LandComp. (Residents Br. at 7.) Next, Residents dispute the test methods used, and the interpretations of those test results having to do with the permeability of the *in situ* shale. Residents' concern about the third liner, *i.e.*, the *in situ* liner, appears to be due to a "major" aquifer being located below the proposed landfill. Residents are concerned that since the site is underlain by shale and sandstone, contamination of the aquifer is more likely. They contend that although LandComp relies upon the shale and sandstone to give protection to the aquifer, LandComp

did not compensate for the "extensive fracturing" found in the shale throughout the site. (Residents Br. at 7.) Finally, Residents challenge the computer model Patrick Engineering used to interpret the data collected.

Shale Formation is Highly Fractured and Permeable. Residents argue that the fractured (sometimes described as weathered) areas in the shale, that were identified in the boring logs of Patrick Engineering were not selected for testing, and therefore the test results give a false sense of security. Residents contend that Patrick Engineering used soil borings so that the permeability of the shale would be in the range of $1x10^{-9}$ cm/sec, which is lower than the permeability required for recompacted clay liners. Residents disagree with these numbers. (Residents Br. at 7.) Instead, Residents believe that the *in situ* shale has a higher permeability, perhaps as high as $1x10^{-6}$ cm/sec range. (Residents Br. at 9.) Residents contend that it is inappropriate to use a laboratory or matrix permeability test to measure the bulk permeability of a fractured unit. They argue that the applicant relied upon the laboratory test results from shale samples to extrapolate the permeability of the entire shale unit. Thus, Residents contend that the applicant did not really measure the bulk permeability of the shale. (Residents Br. at 7-8.)

Residents also argue that the type of shale underlying the proposed site allows water to move through the *in situ* material. Residents argue that their expert witnesses, Mr. Charles Norris and Mr. David Hendron, supported the conclusion that the bulk permeability of the shale is controlled by the fracture or secondary structure flow, and that this conclusion was not rebutted by LandComp. Residents also contend that their expert witnesses, Messrs. Norris and Hendron, testified that the soil borings taken by Patrick Engineering show that Residents' conclusions about the shale being fractured is correct and that the underlying shale is subject to the chemical effects of penetrating groundwater. Based on this evidence, the Residents argue that LandComp is wrong to interpret the test results as demonstrating that the underlying shale is a tight, impermeable material. (Residents Br. at 8.)

Residents argue that the testimony of their witnesses supports Residents' belief that the underlying shale at the site is likely to have high permeability. They further contend that Patrick Engineering's groundwater impact assessment models show an environment which does not exist. Residents argue that the models are wrong because they assume no horizontal flow in the upper units or the sandstone and because they are based upon unreasonable and unverifiable assumptions about the low permeability of the shale. (Residents Br. at 13.)

In response to Resident's arguments about the permeability of the site, LandComp argues that it performed detailed testing which addressed all of the geological materials found beneath the site. LandComp states that it performed packer, slug, and laboratory tests of the soil and rock which would be excavated and for the shale which will remain under the liner for the site. LandComp also states that the packer test was used to obtain a "rough" idea of horizontal conductivity to find locations for taking the slug tests. In turn, the slug tests found an average horizontal conductivity of $2.08x10^{-8}$ cm/sec with the highest test being $4.19x10^{-8}$ cm/sec. LandComp argues that the slug tests captured the secondary features of the shale such as weathering and partings within the tested zones. LandComp also argues that its triaxial

hydraulic conductivity tests to measure vertical conductivity, which included tests on the lower shale and samples containing fissures and weathered zones, showed that the conductivity of the lower shale was 2.7 $x10^{-9}$ cm/sec. LandComp believes that all of its testing shows that the underlying shale is highly impermeable. (LandComp Br. at 12-13.)

In sum, LandComp argues that the evidence demonstrates the County Board's decision was not against the manifest weight of the evidence, and that the evidence shows that the shale which would be left under the liner is highly impermeable and would retard the movement of any groundwater which might escape the leachate collection system. (LandComp Br. at 17.)

Test Methods. Residents also argue that the packer tests done by Patrick Engineering should have been included in the computations for the permeability of the shale. Residents contend that the packer test show that the shale has a permeability of greater than $1x10^{-7}$ cm/sec. (Residents Br. at 10.) Residents believe LandComp's explanation for not including the packer tests is weak. LandComp explained that it did not include the packer test results, although they demonstrated high permeability, because these results were possibly caused by leakage around the packers. Residents argue that this explanation is only a guess by Patrick Engineering, which cannot be substantiated. (*Id*.)

Residents next attack LandComp's reliance upon the slug tests to establish the low permeability of the shale. Residents dispute Patrick Engineering's methodologies and interpretations of the six slug tests performed over the 185 acre site. Residents argue that their experts showed that the shale contains swelling clays and that Patrick Engineering's well completion and development methodology, which involved flushing the borings with fresh water, caused swelling in the shale. They contend that the flushing reduced the measured permeability in the area of the swelling. Residents contend that this problem was then made worse because Patrick Engineering used the falling head, instead of rising head, methodology in five of the six tests. Residents argue that although Patrick used ASTM standards, that sometimes the acceptable practice is not necessarily the best practice. More specifically, Residents argue that because two of the six tests showed data in a curvilinear pattern, which would indicate a fast initial response that slowed over time, that these "anomalous" test results warranted looking beyond the general procedures, *i.e.*, the ASTM procedures followed by Patrick Engineering. (Residents Br. at 10-11.) Finally, Residents argue that LandComp left out soil borings from its Application because they showed intact vertical fractures. Residents contend that the borings show that the fractures were not a result of the drilling process for the testing, but instead show that there is a low permeability secondary flow system in the shale.

Beginning with the packer test, LandComp argues that all the test results for the packer test are found in the record, along with an explanation about why leakage sometimes occurs when this procedure is used. LandComp also contends that packer tests alone are not enough data and that the more precise slug tests are what provides evidence for LandComp's conclusions about horizontal permeability. LandComp argues that it did not disregard the less accurate packer tests but, instead used them to find out where the slug tests should be run. LandComp goes on to state that the packer test which their engineer suspected of leaking at B-13, showed a result of $7.3x10^{-4}$ cm/sec., and was followed up with a slug test showing a value

of $3.19x10^{-8}$ cm/sec. LandComp disagrees with Mr. Hendron's belief that the packer test was inconsistent with the Rock Quality Designation (RQD) for that area. LandComp argues that the RQD shows consistency with the slug test at boring B13 and that Patrick Engineering's explanation that the packer test was suspect is consistent with the evidence. (LandComp Br. at 14. See also, County Br. at 13.)

LandComp also disagrees with Residents' contention that the slug tests were compromised when potable water was used to flush the boring wells after completion of drilling. LandComp argues that Residents' contention that the water caused the shale to swell and seal off the wells leading to a reduced measure of permeability is incorrect. LandComp argues that the Board should discount Mr. Norris' testimony because he could not cite any theory or literature that would support this contention that potable water can seal the wells and reduce permeability. In fact, LandComp contends, the ASTM standards do not make any reference to using what they deem formation water (water which is in chemical balance with the shale) in connection with the slug tests. (LandComp Br. at 15 See also, County Br. at 14.)

Continuing with its argument that the tests were done correctly, LandComp also argues that Illinois Environmental Protection Agency's instructions for permitting landfills do not call for the use of rising head tests, but instead permit the applicant to use either falling or rising head tests. LandComp contends that because of conditions at the site, the falling head test was appropriate. LandComp also points out that it performed a rising head test in the shale and that it showed the second lowest conductivity, *i.e.*, $5.7x10^{-9}$ cm/sec, of all the slug tests performed in the lower shale which would remain below the man-made liner. (LandComp Br. at 16; County Br. at 14.)

Use of Computer Model. Residents also attack the interpretation of the data collected by Patrick Engineering. They cite Patrick's decision to override the computer program which generated the data results to do a "visual match" on the data points for two of the slug tests. They argue that the visual match ignored the early data points with a fast response and higher permeability. (Residents Br. at 12.)

LandComp disagrees with the Residents argument that the slug tests should be plotted by a computer match. LandComp argues that the manual for the model calls for a visual match for setting the slope of the line and plotting the data points. LandComp also justifies Patrick Engineering's decision to throw out the early data, which showed movement of the water out of the slug test piezometer, because the anomalies relating to draining the sand pack or developed zone around the well can be eliminated by ignoring the early data points and using the second straight line portion of the data plot for calculation of hydraulic conductivity. (LandComp Br. at 16.)

Design of the Facility

Residents next argue that the facility's design is inadequate as to leachate generation and collection, and as to the suitability of the *in situ* materials which will be used to construct a recompacted clay liner. (Residents Br. at 7.) Residents contend that "a number of important

and necessary design elements were simply lacking." Residents' concern about the lack of information stems from their argument that the needed information relates to LandComp's plan to eliminate leachate. Residents argue that without more information about the design elements, the viability of LandComp's design, particularly with regard to the leachate collection system, is dependent upon LandComp's representations. (Resident's Br. at 13-14.)

Residents are also concerned that the Application did not contain information regarding berm construction, construction sequencing, or a waste placement plan. Residents argue that the Application and its accompanying information should contain information on storm water diversion, intermediate berms, and temporary access roads. Residents point to the testimony of Mr. Hendron, a vice president of a company who designs and builds landfills, that these types of design details are details that he would expect to see in a complete and thorough application. (Residents Br. at 13 citing CH at 1354 and CH at 2923.)

In response to Residents' arguments about the design of the proposed landfill, LandComp argues that it has addressed the design issues brought up by Residents. LandComp contends that the Application contains a detailed construction sequencing plan and a leachate management system. (LandComp Br. at 18, citing Vol. I Sec. 2.5.23 and 2.9.)

Residents next argue that the leachate generation modeling done by LandComp used assumptions relating to the slope, shape, and cover of the facility which were "unrelated to actual construction and operations and not supported by any realistic expectation." Residents argue that the model made assumptions which were not included in the Application and that LandComp misunderstood field capacity. (Residents Br. at 14.) Specifically, Residents argue that LandComp's projections for field capacity assumed that the waste would reach 100% saturation before generating leachate and that there would be no channeling of water through the waste. Residents claim Mr. Hendron's testimony showed that there would be pockets of dry waste juxtaposed to pockets of water in the landfill as opposed to the water soaking into the waste throughout the landfill until the waste was saturated. Residents argue that for projecting leachate generation, field capacity is only relevant to approximately 5 to 10% of the total waste. Residents argue that one could expect as much as 1,200 gallons of leachate generation per day during initial phases and 300 to 600 gallons per day with intermediate daily cover, in contrast to LandComp's leachate generation model which predicts no leachate generation. (Residents Br. at 14-15.)

LandComp explains that its leachate infiltration modeling was done using the HELP model which predicts long-term leachate generation. LandComp contends that USEPA has approved the HELP model and that Patrick Engineering ran the model in accordance with the requirements found at 35 Ill. Adm. Code 811.307. LandComp contends that the HELP model was not used to predict leachate in the initial phase of operations even though it is in this context that Residents "take issue with the application." LandComp argues that the model's purpose is to predict leachate for post-closure and to assist in designing the cap for closure. (LandComp Br. at 19, See also County Br. at 16.)

LandComp disagrees with Mr. Hendron's testimony and Residents' contention that in the early stages of operations significant volumes of leachate will be generated. LandComp argues that on cross-examination, it became clear that Mr. Hendron's "speculation" was inconsistent with a study published by his own employer which demonstrated an initial leachate generation rate of 363 gallons per acre per day (gpad), which would decline to 106 gpad within four months, 20 gpad by the end of the first year and 10 gpad by the end of the second year of landfill operation. (Residents Br. at 19; County Br. at 16.)

LaSalle argues that although leachate generation predictions varied, the size of the open area of operations and the operating factors will influence the actual amount of leachate which is generated. In any case, LaSalle points to the testimony by Mr. Andy Inman of Patrick Engineering that there will be five days of leachate storage capacity and additional leachate storage tanks if needed. LaSalle also points out that Condition O of the County Board's resolution requires review on an annual basis of the leachate generation at the site and an increase as necessary of the storage tank capacity. (County Br. at 17; CH at 07586.)

Residents are not convinced that LandComp will be able to provide a suitable recompacted clay liner. They argue that no test liner has been built and that there may not be enough suitable till to build the liner. They are also concerned that the Tiskilwa Till material, which LandComp proposes to use, is not plastic enough and will be extremely difficult to recompact to meet the required minimum standard for the liner. Residents believe that because most of the Tiskilwa Till is not sufficiently liquid or plastic, there will not be enough material on site to build the liner to the required standards. (Residents Br. at 15.)

As for liner construction, LandComp argues that Mr. Hendron's testimony was not persuasive. LandComp contends that on cross-examination, Mr. Hendron admitted that his firm, GeoSyntnec, had recently proposed to build a liner out of soils with a plasticity index of only 4, and that the lowest plasticity index at the LandComp site in the Tiskilwa Till was 7, making it "better than the material Hendron's own firm proposed for its own facility." (LandComp Br. at 20.) LandComp also argues that the application included laboratory tests of the actual materials to be used for the liner and that the test established that the Tiskilwa Till could be compacted to a conductivity of less than $1x10^{-7}$ cm/sec. LandComp also contends that the Tiskilwa Till and residual shale will be available for constructing the liner. (LandComp Br. at 20.) Finally, LaSalle contends that the models run by Patrick Engineering show that the design is more than adequate to protect groundwater quality. (County Br. at 18.)

Credibility of Witnesses

Residents final argument focuses on which witnesses are more credible. They argue that Mr. Devin Moose of Patrick Engineering was lying and that, "he is not a truthful individual, and that very little, if anything, he says ought to be believed." (Residents Br. at 15.) They also contend that Mr. Moose acted as an advocate for the proposal instead of a disinterested expert. (*Id*.) Residents then cite what they contend are many examples of Mr. Moose being "inconsistent" when testifying. (Residents Br. at 16-17.) They also argue that Andy Inman of Patrick Engineering was not qualified to draft LandComp's responses to the

CDM report. They contend that their witness, Mr. Hendron, better answered CDM's concerns about site characterization. (Residents Br. at 18-19.)

Residents argue that Patrick Engineering's responses to CDM's report were "unresponsive, argumentative, or simply double-talk." Residents argue that CDM brought up valid concerns, but did not get answers for its concerns. Residents urge the Board to believe their witness Mr. Norris, who addressed some of CDM's concerns in his testimony, over Patrick Engineering. (Residents Br. at 20-21.) Residents also urge the Board to look at the CDM report as another document which disputes the information provided by Patrick Engineering and LaSalle. (Residents Br. at 22.) They believe that the CDM report backs up their contention that the groundwater impact assessment was incorrect and that the design of the leachate generation and collection system was of major concern. (Residents Br. at 24.)

LandComp disagrees with Residents' argument that CDM's questions to Patrick Engineering support Residents' technical criticisms of the application. LandComp contends that CDM used its questions as a "tool" to understand the application and was satisfied with the responses that it received. LandComp argues that most of the responses to CDM's questions were attempts to direct CDM to the material already in the application. (LandComp Br. at 21-22.)

LandComp argues that CDM was satisfied with Patrick Engineering's answers, but more importantly that the County Board was satisfied after it had all the evidence before it. (LandComp Br. at 22.) LandComp points out inconsistencies with the testimony of the Residents' witnesses concerning the groundwater impact analysis, alternative calculations for the conductivity of shale, and the leachate generation model. (LandComp Br. at 23-28.) LandComp also points to the Siting Committee's Minority Report after the remand hearings which stated that it did not, "find much credibility in the statements of Mr. Norris and Mr. Hendron." (LandComp Br. at 28.)

LandComp also challenges the credibility of some of the Residents' witnesses. For example, it challenges Mr. Hendron's testimony about the shale conductivity by pointing out that he estimated the vertical conductivity of the shale by sticking his head in a street manhole over a mile from the site. LandComp argues that Mr. Hendron did not know if the water in the manhole originated from a nearby shale outcrop, and whether that outcrop came from the same formation beneath the site. (LandComp at 17; County Br. at 14.)

Consistency with County Solid Waste Management Plan at Section 39.2(a)(8)

Section 39.2(a)(8) of the Act requires the applicant to demonstrate and the local siting authority to find, that the facility is consistent with the plan "if the facility is to be located in a county where the county board has adopted a solid waste management plan… ." (415 ILCS 5/39.2(a)(8) 1997.) LaSalle has adopted such a plan. In its siting approval, the County Board found that the facility was consistent with that plan. (CH at 06744 and 06754-06756.)

Residents state that the Plan sets out a process to be followed in, "creating site selection standards, identifying a vendor and ultimately approving a site." (Residents Br. at 24.) They

then argue that this process was not followed and that LandComp only demonstrated at hearing that its Application was consistent with the Host Agreement; it did not demonstrate it to be consistent with the Plan. (Residents Br. at 24.) Residents also disagree with the testimony of Mr.Phil Kowolski who testified to the consistency of the Siting Application and Plan. (Residents Br. at 24.) Residents' further contend that the Section 6.2 of the Plan requires public involvement in the siting process, and that opportunity to do so was not afforded Residents.

LandComp and LaSalle argue that the proposed facility is consistent with the Plan and the Host Agreement. (LandComp Br. at 33 and LaSalle Br. at 19 and 21.) LaSalle also argues that consistency with the Host Agreement was one of the elements a facility must meet under the Plan. (County Br. at 21-22.) LaSalle argues that the public was involved in the siting process and that LandComp cannot be held responsible for the extent to which the public does or does not participate. (County Br. at 19.) Finally, LaSalle argues that Section 39.2(a)(8) only requires that the proposed facility be consistent with the Plan, not that the siting procedures be consistent with the Plan. (County Br. at 19.)

LaSalle is correct that Section 39.2(a)(8) requires only that the facility be consistent with the Plan. Whether the hearing procedures were consistent with those in the Plan is more properly addressed under the issue of fundamental fairness. We have already done so. The following discussion is therefore limited to whether the proposed facility is consistent with the Plan.

The Plan was adopted by the County Board in 1991 and amended in February of 1993 (Vol. II Sec. 8 p.8-1.) The Plan calls for a privately held landfill to be operated in the County contingent upon meeting the conditions set out in the Host Agreement (Plan at Section 5.1.6). According to the Plan, the facility should provide the LaSalle with disposal capacity for a 20 year period. Among other things, the Plan calls for an increase in municipal waste reduction and municipal and industrial recycling. The Plan also calls for the continued landfilling of waste (which is not reduced or recycled) at a landfill which meets or exceeds the Board's regulations and proposed Subtitle D RCRA regulations. The Plan also prohibits the new facility from accepting hazardous waste or more than 200,000 tons per year of municipal waste or non-hazardous special waste. Additionally, the facility must meet the siting criteria.

Mr. Philip Kowalski from Patrick Engineering testified that the Plan had two major components: a waste diversion component and a waste disposal component. (CH at 1920.) He testified that LandComp committed through the Host Agreement to process recyclables and landscape waste to the extent that other private sector businesses were not providing those services, thereby helping to reach the diversion goals set by the Plan. (CH at 1921.) He also testified that the landfill will provide LaSalle with capacity for non-hazardous special waste and municipal waste generated within LaSalle for 20 years (CH at 1925), and that the facility will not accept more than 200,000 tons of waste per year (CH at 1925). Mr. Kowalski concluded that the proposed landfill would meet both the diversion and disposal components of the Plan as amended.

Mr. Kowalski also testified that the proposed landfill was consistent with the Plan in other ways. He testified that the proposed landfill was not going to accept hazardous waste (CH at 1923-1924, 1932); that LandComp provided an indemnification agreement to LaSalle which was set out in the Application and was a part of the Host Agreement (CH at 1928); that the proposed landfill will not accept special waste streams from outside LaSalle without first obtaining approval from LaSalle (CH 1928-1929); that the tipping fees of the landfill are comparable to landfills in the service area, and that out-of-county users are charged the same of the in county users (CH at 1925); that the Host Agreement signed by LaSalle and LandComp sets up an oversight commission to review the landfill's operation (CH at 1930-31); and that LandComp and LaSalle have negotiated a host fee which will be paid to LaSalle County (CH at 1930-31).

In addition to Mr. Kowalski's testimony, Mr. Devon Moose from Patrick Engineering also testified as to the consistency between the proposal and the Plan. Mr. Moose's testimony addressed the technical questions in the Plan such as for example whether the proposed facility would meet applicable regulatory Board standards and whether the proposed facility would meet each of the nine siting criteria set out in the Act. (See CH 501 *et seq.*, 1083 *et seq.*, 1244 *et seq.*, and 1585 *et seq.)*

We have reviewed the record and do not find evidence to support Residents' allegations. Under the manifest weight of the evidence standard, the Board can only reverse the County Board's finding that the proposed facility is consistent with the requirements of the Plan if an opposite result is clearly evident, plain, or indisputable. Therefore, we uphold the County Board's decision on this criterion.

CONCLUSION

By statute, siting approval of pollution control facilities is granted by local governments; judicial authorities only review those siting decisions. We have twice reviewed the siting approvals granted by the LaSalle County Board concerning the municipal solid waste landfill proposed by LandComp. In the first appeal, we found that the siting proceeding below was fundamentally unfair for two of the reasons raised by petitioners at that time. The matter was remanded to the LaSalle County Board with an order instructing it how to cure the errors which caused its first siting approval to be the result of a fundamentally unfair proceeding. Accordingly, the Board did not reach the siting criteria challenges made by petitioners at that time.

On remand, the LaSalle County Board conducted another siting proceeding to comply with the Board's order, and at its conclusion the County Board again granted siting approval of the facility proposed by LandComp. Petitioners again challenged that siting approval on grounds that the proceeding was fundamentally unfair and that three of the siting criteria found at Section 39.2(a) of the Act were not satisfied. In two of their three challenges that the siting proceeding was fundamentally unfair, petitioners restate their arguments made in the first appeal. We again have considered the record, and we reaffirm our decisions in PCB 96-243, as they pertain to those two challenges: (1) the relationship between LandComp and LaSalle

County, and (2) that the County Board's Hearing Officer was biased. Petitioner's third challenge is that some of the County Board members acted in a manner which renders the second siting proceeding fundamentally unfair. We have carefully reviewed the record on this point, and find that the County Board members exercised their decisionmaking authority in accordance with the Act and judicial precedent.

As for petitioners' challenges concerning the siting criteria, we are bound by the standard of review imposed upon us by the courts. (E & E Hauling, Inc. v. Pollution Control Board, 116 Ill.App.73d 586, 594, 451 N.E.2d 555 (2d Dist. 1983), *aff'd in part*, 107 Ill. 2d 33, 481 N.E.2d 664 (1985).) We must apply the manifest weight standard when reviewing siting criteria challenges, which means that we may not substitute our own decision for the County Board's. The manifest weight standard requires that we affirm the County Board's decision unless an opposite result is clearly evident, plain, and indisputable. Therefore, we must affirm the County Board's decision unless review on the record before it clearly shows that the County Board erred. Even if the evidence shows that another decision could have been reached by the County Board, we may not substitute that decision for the County Board's. The record in this case contains no evidence of clear error by the County Board concerning the three siting criteria challenges. Therefore, we must affirm the LaSalle County Board's decision.

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

ORDER

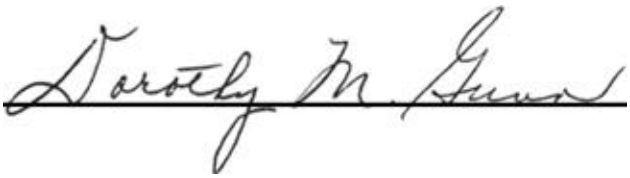
For the foregoing reasons the Board affirms the January 17, 1997, decision of LaSalle County Board granted siting approval to LandComp Corporation.

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurred.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1997)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (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 19th day of June, 1997, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board