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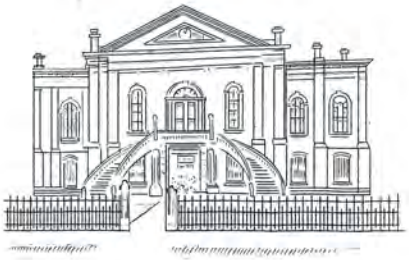

STATE OF ILLINOIS
APPELLATE COURT
FIFTH DISTRICT
14TH & MAIN STREETS
P.O. BOX 867
MT. VERNON, IL 62864-0018

August 12, 2002

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph, Suite 11-500
Chicago, IL 60606

RE: Land and Lakes Company v. Illinois Pollution Control Board, et al.
(PCB No. 99-69)
Appellate Court No: 5-00-0686

Dear Clerk:

Enclosed please find the Mandate of the Appellate Court in the above cause.

Under separate cover, the Record on Appeal is being returned to your office in the above cause. Please sign the receipt which is enclosed with the record and return the receipt to this office.

Yours very truly,

Louis E. Costa, Clerk

LEC/sp
Enclo.
cc: Stephen F. Hedinger
Charles F. Helsten
Michael P. Doyle, Assistant Attorney General
Marie E. Tipsord
Christopher Paul Tabing

STATE OF ILLINOIS, APPELLATE COURT, FIFTH DISTRICT, ss.

AT AN APPELLATE COURT, begun and held at Mt. Vernon, on the First Wednesday, in the month of January, in the year of our Lord, two thousand two, the same being the 2nd day of January in the year of our Lord, two thousand two.

Hon.	GORDON E. MAAG,	Presiding Justice.
Hon.	TERRENCE J. HOPKINS,	Justice.
Hon.	MELISSA A. CHAPMAN,	Justice.
Hon.	LOUIS E. COSTA,	Clerk.

BE IT REMEMBERED that on the 12th day of July, 2002, the final judgment of the Appellate Court was entered of record as follows:

LAND AND LAKES COMPANY, Petitioner, No. 5-00-0686 Term, 2002 v. THE POLLUTION CONTROL BOARD and THE RANDOLPH COUNTY BOARD OF COMMISSIONERS, Respondents.	)	Petition for Review of an Order of the Pollution Control Board. PCB No. 99-69

RULE 23 ORDER

It is the decision of this Court that the order on appeal be AFFIRMED, and stand in full force and effect. And it is further considered by the Court, that costs of appeal shall be taxed as provided by law.

As Clerk of the Appellate Court, Fifth District of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order of the said Appellate Court, in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, this 12th day of August, 2002.

L E Costa

Clerk of Appellate Court.

NO. 5-00-0686

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LAND AND LAKES COMPANY, Petitioner, v. THE POLLUTION CONTROL BOARD and THE RANDOLPH COUNTY BOARD OF COMMISSIONERS, Respondents.	)	Petition for Review of an Order of the Pollution Control Board. PCB No. 99-69

RULE 23 ORDER

Land and Lakes Company (Land and Lakes) filed an application seeking siting approval for a pollution-control facility in Randolph County, Illinois. The application was denied by the Randolph County Board of Commissioners (County Board). After a hearing, the Illinois Pollution Control Board affirmed the decision. Land and Lakes filed a petition for judicial review alleging that the Randolph County proceedings were fundamentally unfair and that the denial of its application was erroneous because the proposed facility met the criteria set forth in section 39.2(a)(ii) and section 39.2(a)(viii) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/39.2(a)(ii), (a)(viii) (West 1998)).

The pertinent facts follow. On April 28, 1998, Land and Lakes filed a siting application with the County Board. The application sought siting approval for a pollution-control facility in Randolph County. The application was filed pursuant to section 39.2(a) of the Act (415 ILCS 5/39.2(a) (West 1998)). The Randolph County Planning Commission (Planning Commission) conducted a public hearing on the application on July 28, 1998, and

July 29, 1998. A 30-day, written-comment period followed the hearing. Shortly after the comment period closed, the Planning Commission issued its recommendation to the County Board. In its September 21, 1998, report, the Planning Commission recommended that Land and Lakes' application be denied because the applicant did not meet the criteria set forth in section 39.2(a)(viii) of the Act. The Planning Commission found that the Solid Waste Management Plan (Plan) adopted by Randolph County contains a section, "Landfill Site Identification Criteria", which identifies exclusionary criteria, that one of the criteria excludes all areas located with 1½ miles of municipal corporate limits, and that the proposed landfill, located less than one mile from the municipal limits of the City of Sparta, was inconsistent with a provision of the Plan.

The County Board considered the record and the findings and recommendations of the Planning Commission. On October 19, 1998, the County Board issued its decision denying Land and Lakes' application on the grounds that the applicant had not met the criteria set forth in section 39.2(a)(ii) and section 39.2(a)(viii) of the Act. In regard to the criterion in section 39.2(a)(ii), the County Board found that the applicant had not shown that the proposed facility would be designed, located, and operated in such a manner to adequately protect the public health, safety, and welfare, because of concerns regarding increased traffic flow and density, excessive road deterioration, and failure to comply with the Plan. In regard to the criterion in section 39.2(a)(viii), the County Board specifically adopted the findings of the Planning Commission.

On November 23, 1998, Land and Lakes filed a petition seeking a hearing to contest the denial of its application, pursuant to section 40.1 of the Act (415 ILCS 5/40.1 (West 1998)). Land and Lakes alleged that the proceedings before the Planning Commission and the County Board were fundamentally unfair and that the decision denying its siting application was against the manifest weight of the evidence. A hearing was held before the

Pollution Control Board in May 2000.

On September 21, 2000, the Pollution Control Board affirmed the County Board's decision to deny the siting application. In its order, the Pollution Control Board found that the evidence established that constituents had contacted members of the Planning Commission and some of the County Board members outside of the comment period and outside of the record, to express support for or opposition to Land and Lakes' application. The Pollution Control Board concluded that the *ex parte* contacts were few and minor, that the contacts did not influence the ultimate decision, that the applicant was not prejudiced by the contacts, that the applicant was provided a full and complete opportunity to offer evidence in support of the application, and that the proceedings were fundamentally fair.

The Pollution Control Board also determined that the decision to deny the siting application was not against the manifest weight of the evidence. The Pollution Control Board found that traffic concerns were properly considered under section 39.2(a)(ii). The Pollution Control Board found that there was evidence in the record regarding concerns about the structural condition of the roads and excessive road deterioration and that this evidence adequately supported a finding that the applicant had not met the criterion in section 39.2(a)(ii). In regard to the criterion in section 39.2(a)(viii), the Pollution Control Board found that the evidence supported the County Board's finding that the "Landfill Site Identification Criteria" listed in Table 61 of the Plan was included in and part of the Plan approved by Randolph County. The Pollution Control Board noted that Table 61 identified exclusionary criteria, including one which excluded all areas within 1½ miles of the municipal corporate limits and that the proposed site was located within one mile of the municipal limits of the City of Sparta. The Pollution Control Board determined that the County Board's finding that the site application was inconsistent with the Plan was not against the manifest weight of the evidence. Land and Lakes petitioned for judicial review

in this court pursuant to section 41 of the Act (415 ILCS 5/41 (West 1998)).

On review, we are limited to a determination of whether the administrative agency's decision is contrary to the manifest weight of the evidence. *Concerned Adjoining Owners v. Pollution Control Board*, 288 Ill. App. 3d 565, 576, 680 N.E.2d 810, 818 (1997). The manifest-weight standard is applied in the appellate review of quasi-judicial administrative decisions. *Bevis v. Pollution Control Board*, 289 Ill. App. 3d 432, 435, 681 N.E.2d 1096, 1098 (1997). According to section 39.2(a), an applicant seeking siting approval must submit sufficient details describing the proposed facility to demonstrate compliance with all of the criteria listed therein. All of the statutory criteria must be satisfied before the approval of a siting application can be granted, and the manifest-weight-of-the-evidence standard is to be applied to each and every criterion. *Concerned Adjoining Owners*, 288 Ill. App. 3d at 576, 680 N.E.2d at 818. If one of the criteria is not met, then the decision to deny the permit must be upheld.

In this case, the County Board denied the application, based upon the applicant's failure to meet criteria in sections 39.2(a)(ii) and 39.2(a)(viii), and the Pollution Control Board affirmed. On review, Land and Lakes argues that the decision to deny its application is against the manifest weight of the evidence. In regard to the criterion in section 39.2(a)(viii), Land and Lakes admits that the proposed site for the landfill is less than 1½ miles from Sparta, but it contends that the site location is not inconsistent with the Plan adopted by Randolph County.

The Plan that was approved by Randolph County was offered into evidence. The Plan was prepared by the Southwestern Illinois Planning Commission. Chapter 9 of the Plan addresses land disposal. Chapter 9 outlines environmental impacts, public health and safety issues, energy considerations, local, state, and federal regulations, and developmental considerations. In discussing local regulation, the Plan recognizes that current Illinois

Environmental Protection Agency regulations regarding site identification allow a significant amount of local responsibility in the siting process. The Plan notes that local criteria were developed to clarify what constituted acceptable potential sites for a landfill. The local criteria are grouped into exclusionary and inclusionary criteria. The Plan expressly states, "[P]arcels or areas which contained any of the exclusionary criteria would not be included in the site identification process." The reader is directed to Table 61 for a list of the exclusionary and inclusionary local-siting criteria. One of the criteria in Table 61 states: "Exclude all areas with 1½ miles of municipal corporate limits".

In its arguments before the Pollution Control Board and on appeal, Land and Lakes has claimed that the mileage-setback factor was not a part of the Plan. Land and Lakes argues that the Plan is contained solely within Chapter 12 of the plan document. It contends that the remainder of the plan document provides background information on solid-waste-management issues but is not part of the county's waste-management plan. The Pollution Control Board was unpersuaded by this argument. The Pollution Control Board found that the plain language of the document clearly shows that the exclusionary criteria are part of the Plan. After considering the contents of the entire Plan document in light of statutory requirements regarding subjects that must be included in a solid-waste-management plan, the Pollution Control Board concluded that Randolph County adopted the entire document as its solid-waste-management plan. The Pollution Control Board's determination involved a consideration of matters within its expertise. See 415 ILCS 5/5 (West 1998). After reviewing the plan document in its entirety, we conclude that the Pollution Control Board's decision is reasonable and proper.

In this case, the evidence demonstrates that the proposed landfill site is less than 1½ miles from Sparta and that the Plan excludes all areas within 1½ miles of municipal corporate limits. There is sufficient evidence to support a finding that the proposed site is

inconsistent with the Plan. The criterion in section 39.2(a)(viii) was not met, and the application was properly denied on that basis. Given our disposition, we need not consider whether the application was properly rejected for failing to meet the criterion in section 39.2(a)(ii).

Land and Lakes also argues that the Randolph County proceedings were fundamentally unfair due to *ex parte* contacts with members of the County Board and the Planning Commission. A reviewing court will not reverse an agency's decision because of *ex parte* communications absent a showing that prejudice to the complaining party resulted from the contacts. See *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill. App. 3d 1023, 1043, 530 N.E.2d 682, 697 (1988). In this case, the Pollution Control Board found that *ex parte* communications had occurred, but it concluded that Land and Lakes had not been prejudiced by the contacts. The record supports this determination. According to the record, Land and Lakes had an opportunity to present evidence and make arguments in support of its application. The decision to deny the application was not based upon arbitrary conclusions. The application was denied because the proposed site was less than one mile from the city limits of Sparta and thereby inconsistent with Randolph County's waste-management plan. Land and Lakes has not shown that the contacts influenced the ultimate decision of the County Board. The record demonstrates that Land and Lakes was provided a full and complete hearing and that the proceedings were fundamentally fair.

Accordingly, the Pollution Control Board's order to uphold the decision to deny the application for siting approval is affirmed.

Affirmed.

MAAG, P.J., with HOPKINS and CHAPMAN, Melissa, JJ., concurring.