

ILLINOIS POLLUTION CONTROL BOARD
July 7, 2016

WILL COUNTY,)
)
Petitioner,)
)
v.) PCB 16-54
) (Third-Party Pollution Control Facility
VILLAGE OF ROCKDALE, BOARD OF) Siting Appeal)
TRUSTEES OF VILLAGE OF ROCKDALE)
and ENVIRONMENTAL RECYCLING AND)
DISPOSAL SERVICES, INC.,)
)
Respondents.)

WASTE MANAGEMENT OF ILLINOIS,)
INC.,)
)
Petitioner,)
)
v.) PCB 16-56
) (Third-Party Pollution Control Facility
VILLAGE OF ROCKDALE, BOARD OF) Siting Appeal)
TRUSTEES OF VILLAGE OF ROCKDALE) (Consolidated)
and ENVIRONMENTAL RECYCLING AND)
DISPOSAL SERVICES, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by D. Glosser):

On April 21, 2016, the Board affirmed the Village of Rockdale's (Village) decision approving Environmental Recycling and Disposal Services, Inc.'s (ERDS) application to site the Moen Transfer Station. The Board found that the Village's decision that the application as submitted, and subject to the conditions imposed, met the nine statutory criterion of Section 39.2(a) of the Environmental Protection Act (Act) (415 ILCS 5/39.2(a) (2014)) was not against the manifest weight of the evidence. In so finding, the Board was unpersuaded by the arguments of petitioners, Will County and Waste Management of Illinois (WMI).

Today the Board rules on motions to reconsider filed by Will County (Mot.) and WMI (WMI Mot.). ERDS and the Village filed responses in opposition to the motions.

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm.

Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 92-156 (Mar. 11, 1993), the Board observed that “the intended purpose of a motion for reconsideration is to bring to the court’s attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court’s previous application of the existing law.” Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board will grant the motion to reconsider its April 21, 2016 opinion and order to address the assertions by WMI and Will County that the Board erroneously applied the manifest weight of the evidence standard. The Board disagrees with those assertions.

Will County argues that the Board ignored Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 866 N.E.2d 227 (2007), which Will County claims is “the law of the state regarding” the Board’s role on review of a local siting authority decision. Mot. at 3. Will County claims that the Board relied on cases decided before Town & Country in the Board’s discussion on standard of review.

Will County overstates the relevance of Town & Country in this instance and misconstrues the language of the court. In Town & Country, the Illinois Supreme Court ruled that upon appeal of a decision by the Board, where the Board reviewed a local siting authority’s decision, the courts must review the *Board’s* decision. The courts do not review the local siting authority’s decision; rather, the courts must decide if the Board’s decision was against the manifest weight of the evidence. 225 Ill. 2d at 123, 866 N.E.2d at 239. Indeed, the Illinois Supreme Court stated:

The central issue in this case is whether we must apply the manifest weight of the evidence standard of review to the City’s decision or to that of the Board. We believe the standard of review should apply to the Board’s decision and reverse the decision of the appellate court. 225 Ill. 2d at 106, 866 N.E.2d at 229.

In response to arguments that the courts should review the local authority’s decision rather than the Board’s, the court found that to “accord the Board no meaningful role in the process yet still require its participation would lack sense.” 225 Ill. 2d at 123, 866 N.E.2d at 239. The court continued that the fact that the Board is reviewing the local authority’s record and not developing its own record does not render the Board’s technical expertise irrelevant, and the Board applies that expertise in examining the record “to determine whether the record supported the local authority’s conclusions.” *Id.*

In Town & Country, the Illinois Supreme Court left undisturbed prior court decisions requiring the Board to apply the manifest weight of the evidence standard in reviewing a local siting decision. Therefore, Will County’s reliance on Town & Country is misplaced.

Both Will County and WMI agree that the Board does not reweigh the evidence, and they are correct. Merely because the Board might reach a different conclusion is not sufficient to overturn the local authority’s decision. City of Rockford v. PCB, 125 Ill. App. 3d 384, 465 N.E.2d 996 (2nd Dist. 1984). In this instance, the Board reviewed the evidence, as is clear from the Board’s review of the facts relevant to the arguments of the parties. See Will County and

Waste Management of Illinois v. Village of Rockdale et al. PCB 16-54/56 (consld.) slip op. at 7-18 (Apr. 21, 2016). The Board applied its technical expertise and found those facts did support the Village's decision. Therefore, the Board affirmed that decision of the Village granting siting approval. The Board's analysis also makes clear that the Board carefully reviewed the evidence to reach its conclusion. *See generally id.* slip op at 29-40.

The Board grants Will County's and WMI's reconsideration motions for the limited purpose of addressing petitioners' arguments that the Board misapplied the manifest weight of the evidence standard. On reconsideration, the Board finds that it properly applied the manifest weight of the evidence standard in affirming the Village's decision siting ERDS's transfer station. The Board affirms its April 21, 2016 opinion and order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2014); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 7, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board