ILLINOIS POLLUTION CONTROL BOARD
April 7, 1983

WASTE MANAGEMENT OF ILLINOIS, INC. Petitioner, v. COUNTY BOARD OF WILL COUNTY, Respondents, and BOARD OF TRUSTEES OF JOLIET TOWNSHIP, VILLAGE OF CHANNAHON, LESLEY R. MARR, NORMA T. ROURKE, GISELA TOPOLSKI, AND MARTHA C. LEMBCKE, Intervenors.	)	PCB 82-141

RICHARD V. HOUPT AND DONALD J. MORAN (PEDERSEN & HOUPT) AND THOMAS WILSON (HERSCHBACK, TRACY, JOHNSON, BERTANI & WILSON) APPEARED ON BEHALF OF PETITIONER;

SCOTT NEMANICH & STEVEN PRODEHL, ASSISTANT STATE'S ATTORNEYS, APPEARED ON BEHALF OF RESPONDENT;

JAMES YOHO APPEARED ON BEHALF OF THE INTERVENOR BOARD OF TRUSTEES OF JOLIET TOWNSHIP;

MAYOR STEVE RITOFF PRESENTED COMMENTS ON BEHALF OF THE INTERVENOR VILLAGE OF CHANNAHON; AND

THE INDIVIDUAL INTERVENORS APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Pollution Control Board (Board) on the December 13, 1982 appeal of Waste Management of Illinois, Inc. (Waste Management) of the December 2, 1982 decision of the County Board of Will County (County or County Board) to deny regional pollution control facility site location approval pursuant to SB 172, now §39.2 of the Act. The facility in question is a proposed 110 acre expansion of the ESL Landfill located in Section 31, Joliet Township. The ESL landfill (itself 110 acres) currently receives and co-disposes of general, special, and hazardous wastes, and Waste Management proposes to accept the same type of wastes for co-disposal at the expanded site.

Pursuant to the Board's Order of December 16, 1982, Will County filed its record in this matter on December 30. The Board held its hearing on this appeal on January 27, 1983 in Joliet. The hearing officer granted intervenor's status to the following entities and persons, in response to petitions for leave filed or various dates in January, 1983: the Board of Trustees of Joliet Township, the Village of Channahon, Lesley R. Marr, Norma T.Rourke, Gisela Topolski, and Martha C. Lembcke. Briefs were submitted by the parties and all intervenors, pursuant to a briefing schedule established at hearing, and as amended for the County only in the Board's Order of February 24, 1983, the last brief being filed March 16, 1983. On March 17, Waste Management filed a motion to clarify the record. Several responses in opposition were received between March 22 and April 6, 1983. (This motion will be discussed below.) Finally, on March 24 Waste Management waived the decision date to and including April 21, 1983.

PROCEDURAL REVIEW

In the briefs, no party has explicitly requested Board review of the evidentiary and other rulings of the hearing officer who conducted the hearing at the County level, or of the hearing officer who conducted the hearing at the Board level, although some citizen intervenors have arguably done so by the nature of their arguments. As Section 40.1(a) charges the Board to consider the fundamental fairness of the procedures used by the County, the Board will on its own motion address several aspects of both the County and Board record.

Contents of the County Record

The first matter deserving of comment by the Board is the issue of what should have been included in the County's record. The County conducted 17 hearings on this matter, held on various dates between October 4 and November 15, 1982, which comprise 2833 pages of transcript, accompanied by some 123 exhibits.*

*The Board notes that in the certification of the record, certain exhibits were listed as missing. A list of missing exhibits was also presented at the Board's hearing (Rec. Ex. 1). The Board notes that exhibits A-88 and A-89 were in fact tendered, although A-90 was not. It is not surprising that the County did not notice these two exhibits, as the record the Board received was two unbound boxes of paper, organized in no way discernible to the Board. In the future, records submitted in this condition may not be accepted by the Board.

The Board also notes that the certification indicates that two hearings were held November 8, 1982, one in the morning and one in the evening. Examination of the sole November 8 transcript presented, as well as the preceding November 4 transcript, indicates that only one hearing was held and that the transcript is complete.

The hearings were conducted by a hearing officer retained by the County for this purpose, and were at all times attended by a quorum of the County Board Members who had been designated as the Landfill Advisory Committee (Committee).

The Committee met November 18, 1982, which meeting was adjourned as 3 hearing transcripts had not been received. At the November 22, 1982 meeting, the result of the voting of the six members of the Committee present recommended to the County Board that the County Board find that all but the first two criteria had been satisfied. These criteria concern the "need" for the facility, and whether the facility is designed, located and proposed to be operated so that public health, safety, and welfare will be protected. A draft resolution was adopted by the Committee and transmitted to the full County Board on November 24, 1982.

The draft resolution was presented to the County Board at a special meeting held on December 2, 1982. As the Committee had split 3-3 on the issue of whether criteria #1 had been met, its chairman also presented her recommendations as to conditions to be imposed in the event that the County Board found that all six criteria had been satisfied. The draft resolution forwarded by the Committee was adopted by a vote of 17-5, with 3 County Board members voting "present".

The County's record, as certified and filed with the Board December 30, 1982, did not contain minutes/transcripts of the Committee and County Board meetings. These minutes were admitted by the Board's Hearing Officer on February 10, 1983, in response to Waste Management's motion to supplement as presented at the Board's January 27 hearing (Rec. Ex. 2 Attach. A-C).

In his written Order the Hearing Officer noted that the Board had overruled the admission of meeting transcripts in Waste Management of Illinois, Inc. v. Lake County Board, PCB 82-119 (December 30, 1982, p.4).* The Hearing Officer however, admitted this material on the representation by Waste Management that in the interests of fundamental fairness review of these transcripts by the Board was necessary.

The Board finds that this evidence was properly admitted based on this representation. In reviewing this material, the Board finds no indicia of fundamental unfairness. The Board notes that one County Board Member commented that "You know, I

*In so doing, the Board found that:

"The meeting to adopt the written decision is not a part of the Section 39.2 hearing process. Therefore, unless the comments offered by individual County Board members prior to the adoption of the written decision reveal 'fundamental unfairness' in the hearing or decision-making process, they are immaterial."

know, and the Board Members and so do the public know how many stacks of transcripts have not even been picked up, ..." (Rec. Ex. 2, Attach C., p. 19). However, as no further information has been presented on this point, in a case where 3 County Board members voted only as "present", no holding can be made that the County's decision was made in an unfair manner.

The motion to supplement requested admission of a proposal made by Waste Management to the County Board to settle this appeal upon certain conditions (Rec. Ex. 2, Attach. D) and a recitation of the manner in which the settlement proposal was handled by the County (Rec. Ex. 2, ¶4-7), which was properly excluded in the Hearing Officer's February 10, 1983 ruling. Settlement proposals in and of themselves are totally irrelevant to the issue of the correctness of the County's decision or the fairness of the procedures used in reaching it.

In reviewing the hearing transcript, the Board noted a controversy concerning the right of persons opposing the application to cross-examine other persons opposing the application (e.g. County Rec. 1874, 2514). In the course of those discussions, reference was made to and quotation made of procedural rules on this point. However, the only procedural rules submitted to the Board were those contained in the County's Amended Resolution 82-191 of July 28, 1982 which in "Section II Procedures" provides in ¶9 only that "the right of cross-examination shall be guaranteed and time limits for direct and cross-examination shall not be arbitrarily imposed."

Any procedural rules adopted by a County should be submitted to the Board on appeal to insure adequate review. The additional rules referenced in the transcript have not been supplied to the Board, although the substance of some of them was discussed in the course of the hearing (e.g. p. 12-14). (The Board cautions the County that, while this error is harmless in this case, it should not be repeated.) On the substantive issue, the Board believes that the County's hearing officer's literal interpretation of the rule he was quoting was incorrect. However, viewing the record as a whole and noting the latitude given to citizens in cross-examination generally, the Board does not believe that failure to allow cross-examination of the witnesses presented by Joliet Township to have been a fatal procedural flaw under the facts of this case.

Finally, the Board notes with approval the handling by the County of the problem raised by, in the hearing officer's words, the "deplorable, illicit" delivery to some or all of the County Board members of extra-record materials admitted by one County Board member to be prejudicial to the applicant's case. The decision to enter these materials into the record (County Rec. 2230-2256, Ex. CBI-5), and to ventilate the issue, as well as the nature of the hearing officer's instructions at the close of hearing, were well designed to prevent fundamental fairness problems.

Status of Intervenors

The briefs of the citizen intervenors raise two points for consideration. The first is an objection to their failure to receive copies of Waste Management's January 27 motion to supplement. They quite rightly argue that, once granted intervenor's status, copies of the motion should have been served upon them to allow them to present arguments to the hearing officer in response thereto.

The second concerns the scope of the subject matter legitimately to be addressed by an intervenor in an appeal by an applicant of the county's decision to deny site location suitability approval. In their briefs, as well as arguing the correctness of the County's decision that the first two criteria had not been satisfied, some intervenors argued the incorrectness of the County's finding that the other four criteria had been satisfied. (The contents of the County's decision will be discussed later in this Opinion.)

Section 40.1(a) of the Act provides that only an applicant may appeal county denial of approval, in contrast to Section 40.1(b) which provides that grant of approval may be appealed by a third party. What the intervenors have in essence attempted to do is to cross-appeal those elements of the County's decision which amount to a grant.

It can be argued that to permit this sort of action furthers the intention of P.A. 82-682, since if the Board were to overrule the County's findings on the criteria which serve as the basis for denial, the approval would be granted without Board review of the remaining criteria. However, as the maxim states, an intervenor must "take the case as he finds it", and the issues on appeal at the time these intervenors entered into this action concerned only criteria #1 and #2. Absent additional specific legislative authorization for a cross-appeal of the additional criteria, or of a legislative mandate that the Board review a County decision as to all criteria once any person has challenged a decision on one of them, the Board cannot provide for expansion of statutory appeal rights, Landfill, Inc. v. PCB, 74 Ill.2d 541, 387 N.E.2d 258 (1978). The Board on its own motion therefore strikes the portions of its hearing record and the citizen intervenor's briefs which concern criteria #3 through #6.

Waste Management Motion to Clarify

Waste Management has moved for leave to "clarify" this record by introduction of some 67 pages of documents concerning groundwater monitoring and monitoring test results (many of which are dated after the date of the County decision). The asserted need for clarification is premised on a March 2, 1983 television broadcast of the 10:00 p.m. news on Channel 5-NBC Television. The substance of the broadcast was an inquiry into the character and environmental effects of the existing ESL landfill, and much

of it concerned the community fears of and anger about possible groundwater contamination resulting from the site. During the course of the segment, on-camera comments by Jacob Dumelle of this Board concerning the purpose of monitoring wells were interposed between comments by the news reporter and an interview with an intervenor in this action.

Waste Management alleges that the record must be "clarified" with its documentary evidence "to assuage the taint of potential prejudice [to or on the part of Board Members] which may have resulted to these proceedings, and to put at rest the public fears and apprehensions that were undoubtedly made more acute as a result of foregoing (sic) television broadcast" (Motion at p. 3).

Intervenors Marr, Topolski, Lembcke, Rourke and the Village of Channahon* essentially argue that this evidence is irrelevant, and that acceptance of it by the Board would violate Section 40.1(a) of the Act which provides that "no new or additional evidence in support of or in opposition to any ...decision of the ...county board ...shall be heard by the Board".

The Board agrees with the intervenors, and hereby denies the motion. The Board notes that site location suitability approval appeals are often the subject of publicity prior to (as well as after) the Board's decision, which publicity is routinely disregarded.

THE COUNTY'S DECISION: CRITERION #2

In its 4-page Resolution 82-151, the County made specific findings on each of the criteria contained in Section 39.2(a) of the Act.** The determinations that the criteria of Section 39.2(a)

*Four of the responses in opposition were filed late (County Board, April 5; Rourke, April 4; Channahon, March 30; Lembcke, April 6). However, the late filing has not served to delay decision in this case, nor has any prejudice been shown. Therefore, the Board has accepted those responses and considered them as though timely filed.

**These six criteria are: "1. The facility is necessary to accommodate the waste needs of the area it is intended to serve; 2. the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected; 3. the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property; 4. the facility is located outside the boundary of the 100 year flood plain as determined by the Illinois Department of Transportation, or the site is flood-proofed to meet the standards and requirements of the Illinois Department of Transportation and is approved by that Department; 5. the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents; and 6. the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. "

3-6 had been satisfied were brief, and merit no discussion. The Board will address first Criterion #2, since it is not dispositive of this case.

In finding that Waste Management had not adequately demonstrated that the criterion #2 was satisfied, the County listed 10 points of objection. These were derived in large part from the 29 findings contained in the Draft Staff Findings and Evaluation Report (County Rec. Ex. S1, p. 1-4). One such objection deals with the possible "adverse impact" on the site if a breach would occur in a nearby Olin Corporation tailings pound (Res. 82-151, #2(a), p. 2). Regarding the concern as to whether the site berms are sufficient to hold back a wash from a rupture in the Olin tailing pond, the Board finds that this is a technical issue related to the design of the landfill and is a matter for Agency review for the reasons stated below. The Board also notes that the County Staff testimony indicated that, if this is a problem, it could be easily resolved (County Hearing Rec. 2739).

As to the rest, in his testimony explaining the report, John R. Gallagher, Jr., Director of Development, agreed that the objections could be summarized as relating to the geology, soils, hydrogeology, and underground water of the site (County Hearing Rec. p. 2727).

More specifically, the County's ultimate conclusion was that,

> "Given the hydrogeology of the proposed landfill expansion site, and the admission by the applicant of ultimate cell failure or leakage, and the inability of the applicant to provide reasonably positive assurance against the ultimate contamination of the Silurian Dolomite aquifer, the proposed expansion site appears to be unsuitable for landfill purposes" (Id., #2(j), p. 2-3).

Waste Management argues that the basis for the County's negative decision concerning this criteria involve the "highly technical" issues of landfill design, hydrogeology, etc. which the Board has previously found to remain within the jurisdiction of the Illinois Environmental Protection Agency (Waste Management of Illlinois, Inc. v. Tazewell County, PCB 82-55, Aug. 5, 1982, p. 10, and Browning Ferris Industries of Illinois, Inc. v. Lake County, PCB 82-101, Dec. 2, 1982, p. 7-10). The County and the intervenors in response request the Board to reconsider these earlier decisions.

Joliet Township argues that the language of Section 39.2 of the Act is "clear and unambiguous", and that no resort should be made to determine legislative intent. The County additionally argues that, since Waste Management was aware of the Tazewell decision at the time of the Will County hearings, and still chose to present "technical" evidence concerning hydrogeology and

the like, that the County Board should be allowed to review the data and give it "whatever weight it deems proper". Both arguments are rejected for the reasons stated in the cited pages of Browning-Ferris, supra. Further, actions taken by Waste Management at the County Board hearings cannot act to enlarge the statutory jurisdiction of the County Board. Nor is there any inherent statutory limitation on the scope of a presentation in describing a site.

Browning-Ferris spoke of the need for distinct differentiation of review responsibilities between the Agency and local authorities to prevent chaos and to avoid disruption of a unified state-wide program in the factual context of an application for a site proposing to accept special non-hazardous wastes. Here, where Waste Management is also proposing to accept hazardous wastes, the logic of the Board's prior conclusion is even more inescapable. The technical questions are more complex, the potential for environmental harm is greater, and federal regulations underlay the State's hazardous waste program.

Disposal of hazardous wastes is federally regulated pursuant to Sections 3001-3005 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§6921-6925, and regulations promulgated pursuant thereto by the United States Environmental Protection Agency (USEPA). The Illinois General Assembly, in P.A. 82-380 [as codified in Sections 20(a)(4-9) and 22.4 of the Act] determined that:

> "it is in the interest of the people of the State of Illinois to authorize ...a hazardous waste management program [equivalent to the federal program] and secure federal approval thereof, and thereby to avoid the existence of duplicative, overlapping or conflicting state and federal programs;" [§20(a)(8), emphasis added].

The Board notes that it is in the process of adopting regulations "identical in substance" to the RCRA regulations. Phase I (Interim) Authorization has been received and Phase II (Permitting) Authorization is in progress. Those regulations establish a pervasive scheme of hazardous waste site permitting, management, and oversight. As part of that regulatory scheme certain requirements are placed upon the permitting authority regarding the review process, public notice, and hearings. In order to obtain and retain authorization for the State to administer the RCRA program, state law must reflect those requirements.

If Section 39.2 of the Act were to be construed as conferring jurisfiction on local governments over the "highly technical" issues of landfill design concurrently with the Agency, a question arises as to whether both the Agency and the local government must comply with those RCRA mandates as part of the

State's permitting authority. This is particularly troublesome if the local authority imposes technical conditions which could act to bind the Agency in its permitting decision. The difficulty in insuring such compliance by all local authorities in the State with the RCRA requirements is enormous.

Another possible conflict with RCRA arises pursuant to 40 CFR 123.4(b) of RCRA which requires that "if more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities". That provision, as well as the overall structure of the RCRA program and the State's environmental program, demonstrates the intent that the State have a uniform, statewide program of hazardous waste management. That purpose is defeated by an interpretation of Section 39.2 of the Act which allows the hundreds of local authorities to independently review technical criteria. These local authorities have no statewide jurisdiction, while the aquifers and waters of the State which would be impacted can affect large areas of the State.

For all these reasons, among others, the Board reaffirms its holding that the local authorities do not have the power to consider the "highly technical" aspects of landfill design and hydrogeology.

THE COUNTY'S DECISION: CRITERION #1

The County found that the proposed expansion had not been demonstrated to be "necessary to accommodate the waste needs of the area it is intended to serve" (County Res. 82-151, p. 1). These reasons are:

> "a) The applicant has not demonstrated that the proposed expansion site is necessary to receive a waste which is not now permitted for disposal in Will County, especially one which is generated in Will County, or which requires special handling that cannot be met at existing sites, or that such expansion is necessary to meet contractual obligations projected to continue beyond the anticipated life of the current site.
>
> b) In view of the fact that the proposed expansion site is anticipated to receive the same wastes as the existing site, the applicant has failed to provide a specific list of the wastes received, quantities by type received, sources of each type of waste received by manufacturer and location, analysis of wastes received, treatment processes of facilities generating water and wastewater sludges, and the disposal procedures for each type of waste received.
>
> c) The applicant has indicated that the facility is not intended to serve a growing population or business need.

d) Data provided by the applicant, with regard to municipal/sanitary and non-hazardous special waste landfill disposal site inventory does not establish the need for additional such landfill disposal capacity in Will County for more than the next ten (10) years.

e) Data provided by the applicant, with regard to hazardous special waste landfill disposal site inventory does not establish the need for additional such landfill disposal capacity in Will County for more than the next five (5) years."

As with Criterion #2, the County relied heavily on the County Staff evaluation report in expressing these reasons.* Generally, staff re-analyzed Waste Management's data rather than generating new data, but reached different conclusions challenging the applicant's use of its data. In order to focus the discussion on the County's reasons, a general summary of the approach used by Waste Management in presentation is in order.

WASTE MANAGEMENT'S PRESENTATION

Area intended to be served. The applicant delineated the intended service areas by reflecting the areas presently served by the existing site, and then, generally, focused on the percent estimated to come from Will County. For this purpose the applicant divided the waste into four categories:**

1. Municipal or general refuse. The applicant listed the towns served by the haulers with whom they had contracts (See esp. County Ex. A-10), stating that over 90% was generated in Will County, and particularly from the urban Joliet area (County Hearing Rec. 88).

*Regarding Criteria #1, the County resolution quoted almost verbatim the staff findings (3), (4), (6), (7) and (8). Significantly, the County did not include the staff findings (1), (2) and (5).

**The Board notes that Section 3(ff) of the Act, which defines special wastes, includes hazardous waste as a subcategory of special waste, while Section 3(x) refers to special and hazardous waste as separate and distinct cate-gories. This difference understandably caused some "category" confusion in the record, especially where the term "special" waste was used without further clarification.

The Board also notes that, when the Agency permits a site to handle special non-hazardous or hazardous waste, the site can accept such wastes only by way of a supplemental permit for each waste stream.

2. Special hazardous and non-hazardous bulk liquid waste (not containerized). The applicant stated that 100% came from within Will County (Id. p. 193, Ex. A-16).

3. Special hazardous and non-hazardous solid waste and sludge receipts (not containerized). The applicant stated that 84% was generated in Will County, particularly from Joliet, plus additional outlying areas in Cook, Grundy and Kane Counties (Id. p. 19, Ex. A-16).

4. Containerized hazardous and non-hazardous waste. The applicant stated that 9%, 31% and 63% of this waste was generated within a 15, 30 and 50 mile radius respectively of the ESL site, with the remainder coming from greater distances that included other states (Id. 199, Ex. A-15).

Other available sites

1. Hazardous waste disposal facilities. Within a 50 mile radius of the ESL site, the applicant listed two hazardous waste landfills and, between a 50 and 100 mile radius, 10 additional sites (Esp. Ex. 1-15). All together, the applicant listed 23 sites in Illinois, Michigan, Indiana, Ohio and Wisconsin.

2. General/municipal refuse and/or special non-hazardous waste sites. The applicant focused particularly on four presently active sites in Will County, one of which (Land and Lakes) had an "experimental" permit and another of which (Carlstrom) purportedly did not accept general/municipal refuse. A fifth site, the Hamman site in Wheatland Township, has recently received a development permit, but was not included in the applicant's analysis (Id. p. 1566, Ex. A-14). (Other sites were listed in the six county area, but neither the applicant nor the County "rested their cases" on these sites.)

Site	Nature of Waste
Barrett	Municipal and some non-hazardous special (Id. p. 1566, Ex. A-82, A-83)
Sexton	Municipal and non-hazardous special
Land and Lakes	Municipal only
Carlstrom	(see note below)*

*The record is not clear as to what Carlstrom is permitted to receive. Conflicting testimony and statements are that the landfill accepts only industrial solid and special waste by supplemental permit (Id. p. 1566); none of the ESL municipal waste could go to Carlstrom (Id. p. 1573); Carlstrom accepts industrial, (footnote continued on next page)

Special non-hazardous and/or hazardous waste sites were noted by the applicant as existing in 12 "collar and second collar" counties plus the Rockford SMSA.** Of these areas, all but one (McHenry) have sites receiving non-hazardous special Waste and four (Cook, Iroquois, Lake, and Rockford SMSA) have sites receiving hazardous waste.

Remaining Useful Life and Capacity. The applicant addressed remaining useful life and capacity in relation to its own site for the full range of wastes, assuming a steady rate of use. Depending upon the categories of waste accepted, the remaining life of the ESL site was estimated to be between 4.5 and 7 years.

The applicant also addressed useful life and capacity regarding municipal and non-hazardous special wastes primarily with regard to other sites in Will County. Regarding hazardous waste, the applicant's data primarily emphasized the useful life and capacity of its present site and whether Will County is taking care of its "fair share".

THE ISSUES

Both the Petitioner and the Respondent argued in their briefs that the other side had improperly addressed the waste needs of the area intended to be served. The applicant argued that the County addressed the waste needs within Will County rather than the total area the expansion is intended to serve. The County argued that the applicant focused only on Will County facilities and, in the case of hazardous waste, never defined the area to be served.

In addressing this criterion in Lake County, supra, the Board noted that:

(footnote continued from last page)
non-putrescible, non-garbage waste (Id. p. 176); Carlstrom accepts municipal waste (Pet. Br. p. 6, Res. Br. p. 3, Ex. S-1, Encl. 1). Additionally, the Waste Management application includes an Illinois Waste Facilities Inventory table (application, pp. 56, 57) that states that the Carlstrom landfill accepts only industrial trash and industrial special waste from a single trucking company. However, the table also inaccurately states that the Sexton landfill can accept hazardous waste and the Land and Lakes special non-hazardous, which raises questions as to its overall accuracy.

**Standard Metropolitan Statistical Area, a term multi-county used by the Bureau of the Census, U.S. Department of Commerce.

> "Because ...[an application involves] a regional facility, the county cannot ignore the scope of the area to be served. For example, if the site is intended to serve, to a significant degree, a community or industry outside its boundaries, but within the intended area, the county must consider it. However, the statute also says a facility must be necessary to accommodate the waste needs of the area it is intended to serve. It does not say 'convenient'" (Id. at 8).

In reviewing this record, the Board is prompted to add that the statute does not say a municipality or county considering the suitability of a site located within its boundaries must provide for disposal of its "fair share" of all the wastes which it generates.* Waste Management's attempt in this record to interject into the County's consideration of its statutory obligation what may be considered a "moral obligation" certainly contributed to any misfocus on this criterion by the County and its staff. Nevertheless, the Board finds that some of the reasons given by the County are sufficient despite its overly restrictive consideration, in part, of the area intended to be served.

Regarding the municipal/special waste, the Board finds that the manner in which the County addressed the ESL and other available sites in the area intended to be served (in terms of receipts, capacity, remaining life, capacity and location) more than adequately buttresses its rejection of Waste Management's arguments. The applicant can hardly complain that the County failed to include sites that the applicant itself failed to include. The County's analysis (Encl. 1) projected an 11.1 year remaining life for the sites, but reduced that to 10 years in a footnote on a hypothetical assumption that the ESL site would be dedicated solely to hazardous waste.

In its analysis, the County Staff listed the same sites and projected the same remaining life as did the applicant with two important differences. It assumed an 18-year remaining life for the Land and Lakes site, rather than the projected 1 year experimental permit life utilized by the applicant. Additionally, the County listed the Hamman site, although it did not use a capacity or remaining life figure for this site in its projections.

The applicant insisted that the Land and Lake landfill was operating under a one-year experimental permit and, thus, argued that projecting a remaining life of 18 years is premature (Ex.

*Note that the SB 172 process also applies to waste storage, disposal, incinerator and transfer sites as well as to sanitary landfills.

A-81, R. 1566, Pet. Br. p. 6, Reply Br. p. 6).* On the other hand, the County included an 18-year remaining life for Land and Lakes in making its determination that 10 years of overall landfill capacity remain for the disposal of "municipal/ sanitary and non-hazardous special wastes in Will County" (County Ex. S-1, Encl. 1, Resp. Br. p. 3).

The Board concurs with the County's inclusion of the Land and Lakes site in its analysis. Since the Land and Lakes site had been issued a developmental permit as well as an experimental permit to operate by the Agency, the County could have a reasonable expectation that the Land and Lakes site would operate for its projected 18-year life.

Since the Hamman site also had been issued a developmental permit, the County could also have had a reasonable expectation of its 18-year projected life, and thus included this site also, although it did not do so.** The Board also wishes to note that the SB 172 expansion application for the Barrett site, that was only pending before the City of Joliet (thus obviously lacking an Agency developmental permit), does not constitute a "reasonable" expectation of a life longer than that listed.

Waste Management argued that the Sexton site would not be an acceptable alternative to the ESL site, particularly for the Joliet urban area because of its 30-mile distance. Even if such an argument were accepted, the availability of the other sites would not make "necessary" the expansion of the ESL site to receive such waste. And, as noted before, the applicant also failed to demonstrate that other sites outside the County were not available.

Regarding the economics of going to other sites, the County staff (and presumably the County Board) did not dispute the applicant's assessment that, from an economic standpoint, it is preferable to have disposal sites in proximity to the population in industrial areas (County Hearing Rec. 2721). While not controlling, the economics of greater hauling distances can be germaine

*However, the applicant, appeared at other times to waffle on this issue. When questioning the County staff witness, the applicant twice appeared to assume that the Land and Lakes site would be open for municipal refuse after the existing ESL site closed down (County Hearing Rec. 2719-2721). Also, on the applicant's Ex. A-81, it listed an 18-year remaining life, noting the experimental permit only in a footnote.

**The Board notes that the Land and Lakes site was issued a full operational permit by the Agency (See PCB 81-48) and the Hamman site has received a court-ordered developmental permit (Harry Mathers, et al. v. IPCB, et al., Case No. 81-741 (consolidated with 81-740), Third Dist., June 28, 1982, leave to appeal denied).

to criterion #1. In this case, however, the Board finds that the economics question was not developed fully enough by the applicant to challenge the County Board's determination that the site was not "necessary".

The applicant focused on the remaining life, capacity and proximity of only some of the potential alternate sites, and only generally on the potential for greater hauling costs. However, the applicant did not evaluate what the potential impact would be on those who actually paid for garbage pick-up. Even if an increased economic burden were assumed, (especially in the Joliet area if the ESL site were able to accept municipal waste only for five more years) the applicant's arguments were generalized and incomplete. For example, the applicant failed to describe the potential economic tradeoffs regarding the service areas of other sites within and without the county that might be available to those within the ESL service area.

Regarding hazardous waste disposal needs, the earlier noted misfocus by the County on the "fair share" concept became especially troublesome since the area intended to be served extended far beyond the boundaries of the County. Again, however, the Board notes that it was not the County's responsibility to demonstrate need; it was the applicant's, and the Board finds that it failed to do so. While the Board feels the applicant satisfactorily delineated the area intended to be served (which naturally become less precise as the service area grows in scope), the applicant failed to present any satisfactory waste "needs" information about the intended service area with which the County could deal.

The applicant's demonstrations of remaining life and capacity at its own existing site begged the question as to whether other available sites, even those confined to the urban area of north-eastern Illinois, could "pickup the slack" upon its closing.

In addressing capacity and projected need, the applicant specifically testified that it rejected the use of pertinent USEPA studies and a report to the Illinois General Assembly because "assumptions were made which I felt were not valid; and it was my preference to utilize actual gate receipts [of the ESL site] to determine capacities and projected needs for those capacities for purposes of this hearing" (County Hearing Rec. 203). While the Board cannot comment on the value of studies not made part of this record, the use of ESL gate receipts was hardly an acceptable substitute. Nor did the applicant demonstrate that other sites could not handle its waste streams (Id. p. 188, Ex. A-15).* And,

*While the applicant stated that it was aware that some facilities accept a narrow range of hazardous waste, only one near Janesville, Wisconsin was specifically named (Ex. A-15, County Hearing Rec. 188, 189).

as discussed earlier, its attempt to demonstrate that Will County, as a net exporter of hazardous waste, should for this reason have the ESL site within the County also failed to properly address criterion #1.

Additionally, the applicant failed to explain why it focused primarily on sites only within a 50-mile radius from its site rather than, say, a 100-mile radius. Indeed, the applicant noted that its own site received wastes from an area considerably beyond 50 miles (see supra, p. 10-11). The County had no real data to evaluate the potential service areas of alternate sites, and apart from its fair share arguments (see supra, p. 12-13) the applicant primarily analyzed the need to expand the present ESL site in order for the site to continue serving its ESL customers. It is not the intent of SB 172 that an applicant has a right to expand a site in order to stay in business.

Due to the restrictive evidence presented by Waste Management, it is understandable that the staff, in reanalyzing the data presented by the applicant (with the addition of some figures of its own from the Commerce Department), focused excessively on the capacity in Will County to address needs of wastes generated in Will County (County Hearing Rec. p. 2670). However, the Board notes that the County had some recognition of this "restricted focus" problem, in that it did not list in its reasons for denial Nos. 1 and 5 of the Staff analysis, which focused solely on the Will County situation. The Board additionally notes that the County also rejected No. 2 of the Staff analysis, which addressed the applicant's failure to include disposal options other than landfilling.

Regarding the Staff testimony that the need for a hazardous waste site was a "close call", such testimony was founded not only on an overly restrictive analysis, as discussed earlier and as indicated in its Enclosure #2, but also on an incorrect assumption that the use of the site as designed for the various categories of waste was a "package deal" (Id. p. 2669). The applicant itself noted, for example, that municipal waste might be disposed of in the below ground containerized space area if it ran out of above ground space (Id. p. 1563). In any event, the ultimate specific uses of the new site, as well as its final design, would be determined by the Agency through its permit and supplemental permit system.

The Board also finds that much of the County's supporting reason #1(b) contains informational requirements that go beyond that necessary to reach a determination on criterion #1. However, the Board concurs in the thrust of the reason insofar as it reflects the applicant's failure to show the degree of impact on ESL's present customers (who comprise the primary "area" to be served by the expansion) should the site close.

Additionally, there is little detailed discussion in the record regarding the County's inclusion of finding #1(c), other than one brief remark that it reflected the applicant's assertions (Id. p. 2702).* However, the Board sees no problem with its inclusion. The Board also notes that the arguments in this record regarding the time needed to get a permit and start operating a new facility become largely unpersuasive when, as in this case, the question of what alternate sites exist, and for how long, in the area intended to be served has not been acceptably addressed by the applicant.

The Board accordingly finds that the County's determination and its supporting reasons, except as otherwise noted in this opinion, regarding the hazardous waste "needs" issue should be upheld.

In summary, the Board sustains the determination of the Will County Board that Waste Management of Illinois, Inc. failed to demonstrate that the proposed expansion of the existing ESL landfill in Joliet Township satisfies the criterion of Section 39.2(a)(1) of the Environmental Protection Act, but reverses the determination as to the criterion of Section 39.2(a)(2).

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

*It also arguably reflects the cancelling-out of the applicant's assertions that remaining life at ESL for hazardous waste may be shortened by, for example, the new RCRA requirements making generator on-site disposal less desirable versus the opponents arguments that Sec. 39(h) of the Act, for example, will make the landfilling option much more difficult after January 1, 1987, after which a generator must show that landfilling is the only reasonably available option.

ORDER

1. The Board affirms the County's determination to deny site location suitability approval of the ESL site expansion pursuant to Section 39.2(a)(1) of the Act.

2. Waste Management's March 17, 1983 Motion to Clarify The Record is hereby denied.

IT IS SO ORDERED.

J.D. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 7th day of April, 1983 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board