

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1986

WASTE MANAGEMENT OF ILLINOIS, INC.,)
a Delaware Corporation)
)
Petitioner,)
)
v.) PCB 86-109
)
McHENRY COUNTY BOARD,)
)
Respondent,)
)
and)
)
McHENRY COUNTY CONCERNED CITIZENS)
AND McHENRY COUNTY DEFENDERS,)
)
Cross-Petitioners,)
)
v.)
)
McHENRY COUNTY BOARD and WASTE)
MANAGEMENT OF ILLINOIS, INC., a)
Delaware Corporation,)
)
Cross-Respondents.)

MESSRS. DANIEL F. CURRAN, OF HOLMSTROM & GREEN, AND DONALD MORAN,
OF PEDERSON & HOUP, APPEARED ON BEHALF OF THE PETITIONER.

MR. MICHAEL F. KUKLA OF COWLIN, UNGVARSKY, KUKLA & CURRAN,
APPEARED ON BEHALF OF THE CROSS-PETITIONERS.

MESSRS. PAUL R. RYSKE, DAVID R. AKEMANN, AND WILLIAM F. BARRETT
APPEARED ON BEHALF OF THE RESPONDENT.

OPINION OF THE BOARD (by J. Marlin):

This matter comes before the Board on a July 25, 1986
Petition for Hearing to Contest Decision of McHenry County Board
by Waste Management of Illinois, Inc. (Waste Management) and on
an August 11, 1986 Petition for Cross Appeal of Issues Decided by
the McHenry County Board by McHenry County Concerned Citizens and
the McHenry County Defenders (Cross-Petitioners). This appeal
and cross-appeal results from the July 25, 1986 decision of the
McHenry County Board (County Board) pursuant to Section 39.2(a)
of the Environmental Protection Act (Act), denying approval of
site location suitability for a sanitary landfill proposed by
Waste Management. The County Board reached its decision after 20
days of hearings on the matter. At the hearings, Waste
Management, McHenry County Concerned Citizens, and the McHenry
County Defenders each presented witnesses. In addition, an

Assistant State's Attorney for McHenry County presented witnesses on behalf of the County of McHenry. One hearing was conducted to allow 65 members of the general public to address the McHenry County Pollution Control Siting Committee regarding the proposed landfill. The hearings generated a 3,990 page transcript, 131 exhibits, and a great number of written comments from the public.

On August 15, 1986, Waste Management filed a Motion to Dismiss Petition for Cross Appeal. This matter was denied by Order of the Board on September 11, 1986. A Board hearing was conducted on October 2, 1986. About 30 members of the public attended this hearing.

Motion to Strike Portions of Petitioner's Brief

On October 17, 1986, the Cross-Petitioners filed a Motion to Strike Portions of Petitioner's Brief. On October 24, 1986, the Petitioner filed a Response to the Motion to Strike. Reply to the Response was filed by the Cross-Petitioners on October 31, 1986. Specifically, the Cross-Petitioners have objected to a newspaper article, marked as Supplemental Exhibit No. 1, that was attached to the Petitioner's Brief. The article is from the October 7, 1986 edition of the Northwest Herald. As pointed out by the Cross-Petitioners, this article was not admitted at the Board hearing held on October 2, 1986.

In support of its position requesting that the Board consider the article, the Petitioner cites a case in which an Illinois Appellate Court held that an affidavit could be considered after an entry of summary judgment. However, the Board notes that with regard to veracity, a newspaper article cannot be considered equivalent to an affidavit. The Board finds that this newspaper article is not a part of the record here on appeal. The Board hereby grants the Cross-Petitioner's Motion to Strike Certain Portions of the Petitioner's Brief. The Board would also ~~like to~~ clarify for the record that it did not consider the Petitioner's Supplemental Exhibit No. 1 or any references to it when deciding this case today.

Motion to Strike Portions of Petitioner's Reply Brief

The Cross-Petitioners filed on November 13, 1986, a Motion to Strike Portions of Petitioner's Reply Brief. A Response to this motion was filed by Waste Management on November 19, 1986. The Board is cautious in addressing any motion which is seeking to strike aspects of a brief. Specifically, the Board is concerned that such motions may be improperly used as an indirect way of presenting a surreply brief. Briefs contain arguments built upon evidence from the record, but the briefs themselves are not considered evidence. Normally, the Board merely reviews the briefs in light of the record and gives weight to the various arguments accordingly. However, in this instance, the core of the Cross-Petitioners' motion involves allegations that information discussed in Waste Management's Reply Brief was not

in the record before the County Board. For that reason, the Board has addressed this motion. The Cross-Petitioners' motion is hereby granted in part and denied in part.

In their motion, the Cross-Petitioners first request that portions of the Petitioner's Reply Brief, which reference certain publications be stricken. Specifically, the Cross-Petitioners cite four sections in the Petitioner's Reply Brief which give explanations or definitions from various published materials. The Cross-Petitioners contend that these articles and books were not a part of the record before the County Board and therefore, should not be considered by the Board. (Cross-Petitioners' Motion to Strike, pp. 1-2). Waste Management argues that the referenced publications are in fact part of the record, because they are contained in a list of "References" found on page IX-1 of Waste Management's Application. (Petitioner's Response Motion, p. 2). However, Waste Management has not shown the Board when and where these specific passages, now used in the Petitioner's Reply Brief, were presented before the County Board. Waste Management merely states that the listed "References" are part of the Application and should be considered as part of the record. Consequently, Waste Management is asking the Board to rule that the entire contents of any publication merely listed in the Application is considered part of the record. If this position is accepted, hundreds of publications could be incorporated into an application by reference without actual copies being provided. It would be unreasonable to assume that such publications were readily available for review by the County Board. The Board also notes that when large reports and documents containing extraneous material are placed in the application or record, the relevant portions should be noted. Failure to do so would leave vast quantities of material open to examination and discussion.

Therefore, the Board rejects Waste Management's position. If the applicant wishes to use specific passages or conclusions from specific publications, then the applicant should present the specific information to the County Board via its application or during the hearings. This would allow the County Board and any opponents to adequately address the information. Merely presenting a list of publications with the application is not sufficient for the contents of these publications to be considered part of the record. The referenced information presented by the Petitioner's Reply Brief and complained of by the Cross-Petitioner's Motion was not part of the record before the County Board and should not be considered by this Board. Therefore, with respect to the issue, the Cross-Petitioner's Motion to Strike is granted.

Secondly, the Cross-Petitioners object to Waste Management's characterization that one of Waste Management's witnesses had written "authoritative works on the prevention of leachate collection system failure." Specifically, the Cross-Petitioners complain that there is no "evidence acknowledging the

authoritative nature of his work." (Cross-Petitioner's Motion to Strike, p. 2). Waste Management correctly points out that hearing transcript indicates that the witness has presented papers before professional conferences and has had papers published. (R. 219-20, 3790-96). Waste Management's use of the term "authoritative" merely seems to argue the credentials of its witness. Given the fact that the papers were addressed at the hearing, such argument is certainly allowable in post-hearing briefs. On this point, the Cross-Petitioner's motion is denied.

The Cross-Petitioners also object to the various theories presented by Waste Management to explain the geologic areas of low or no recovery from the boring sampler. On pages 40-42 of its Reply Brief, Waste Management stated that "breaking rods" during the drilling process as well as the mechanisms of wet rotary drilling caused areas of poor recovery by the boring sampler. The Cross-Petitioner's claim that such portions of the Reply Brief should be stricken because the explanations were not adequately presented before the County Board. (Cross-Petitioner's Motion to Strike, pp. 2-3). Waste Management counters that such explanations were presented at the hearing. It specifically refers the Board to R. 3808-17, 3867-69, 3921-24, 3931-37. (Petitioner's Response Motion, p. 3). After reviewing the record, it is apparent that the explanation regarding "breaking rods" was addressed at the hearing. It even was stated that the recovery of samples taken below a depth of 35 feet would be influenced by "breaking rods". (R. 3933). However, there appears to be nothing in the record stating that the wet rotary drilling process could cause diminished recovery in the samples. Consequently, the explanation regarding wet rotary drilling was never presented before the County Board. As a result, to the extent the wet rotary drilling explanation is used by Waste Management in its Reply Brief, the Cross-Petitioner's motion is granted.

Finally, the Cross-Petitioner's request that Petitioner's Supplemental Exhibit No. 2 be stricken. They allege that it is not part of the record and mischaracterizes testimony concerning the "phantom stratum". (Cross-Petitioner's Motion to Strike, p. 3). Supplemental Exhibit No. 2 reproduces, in a mural fashion, various boring log data sheets and superimposes elevation lines across them. In addition, areas on the data sheets indicating zero recovery are highlighted with pink coloring. The Cross-Petitioners wish to strike the exhibit because areas of low recovery were not colored pink. However, the Board notes that no information was deleted from the log sheets. One can still read where there are areas of low recovery as defined by the log sheets. The log sheets are a part of the record. (Appendix G of Applicant's Exhibit # 4(a) and County of McHenry Exhibit #18). Since Petitioner's Supplemental Exhibit No. 2 does not substantively change the data as presented by the log sheets, it can be classified as being an allowed graphical argument of facts in the record. The Board denies the Cross-Petitioner's Motion to Strike with respect to Supplemental Exhibit No. 2.

General Information

The site of the proposed landfill is a 118 acre tract of land located on the southeast corner of the intersection of Route 176 and McCue Road, in the Seneca Township of McHenry County. The Kishwaukee River flows near the south and west ends of the site. Waste Management claims the actual surface area of the proposed landfill will be about 65 acres. According to the proposal, the landfill will have a maximum excavation depth of about 35 feet (Applicants Exhibit #3a, p. I-2). The Tiskilwa Till formation, which Waste Management claims is 30 feet thick, will be utilized as a natural liner for the landfill. (R. 288) The proposed landfill is designed to take in 1,500 cubic yards of refuse per day. It would operate 5 1/2 days per week. (Applicant's Exhibit #3a, p. I-2). The estimated life of the landfill is 27 years (R. 113). Waste Management claims that the landfill's final form will have a high point that is 75 feet higher than the site's existing high point. (R. 1074). The proposed landfill is designed as an inward gradient, "below the zone of saturation" landfill. This means that the excavated base of the landfill will actually be below the level of the ground water. An inward gradient is maintained by keeping the level of the leachate inside the landfill at a lower level than the level of the ground water outside the landfill. The resulting relative hydraulic pressure will create the condition where water outside the landfill will tend to migrate into the landfill. As a result, Waste Management contends that the leachate inside the landfill will not leak out. (R. 285).

Under Section 39.2(a) of the Act¹, local authorities are to consider six criteria when reviewing an application for site suitability approval for a new regional pollution control facility which will not accept hazardous waste. The 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 minimize the effect on the value of the surrounding property;

¹ Section 39.2 was recently amended by P.A. 84-1320, Section 30 (1986). These amendments, which became effective after the County Board's decision, do not alter the six criteria as stated above.

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.

Section 40.1 of the Act charges the Board with reviewing the decision of the County Board, specifically whether the County Board findings as to the six criteria are against the manifest weight of the evidence. In addition, the Board must evaluate whether the County Board's procedures used in reaching its decision were fundamentally fair. E & E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 71 Ill. Dec. 587, 451 N.E.2d 555, 572 (2d Dist. 1983).

WASTE MANAGEMENT APPEAL

Technical Issues

Waste Management argues that the McHenry County Board lacked statutory authority to review highly technical details of the proposed landfill's design and construction. They claim that a contrary position would be inconsistent with the Act's purpose of a "unified state-wide program for environmental protection." (Petitioner's Reply Brief, p. 7) Waste Management also cites the legislative history of Section 39.2(a) in support of its position. (Petitioner's Brief, p. 8).

However, Waste Management concedes that the Third District of the Illinois Appellate Court has held that a county board could consider the technical aspects when evaluating a landfill application in terms of the statutory criteria. City of East Peoria v. Illinois Pollution Control Board, 117 Ill. App. 3d 673, 72 Ill. Dec. 682, 452 N.E.2d 1378, 1382 (3d Dist. 1983). There, the Third District stated that the legislative history need not be considered, because the statutory language was unambiguous in requiring the county board to evaluate, on its own, the public health ramifications of the landfill's design. In County of Lake v. Illinois Pollution Control Board, 120 Ill. App. 3d 89, 75 Ill. Dec. 750, 457 N.E.2d 1309, 1315 (2d Dist. 1983), the Second District stated that the statutory "language provides that local governmental units can take into consideration the technical details relating to design and operation of the landfill." After reviewing the reasoning of City of East Peoria, the Second

District concluded saying, "(w)e see no reason to depart from the decision in the City of East Peoria case and will adhere to it." Id. In its decision in Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 122 Ill. App. 3d 639, 77 Ill. Dec. 919, 461 N.E.2d 542, 547 (3d Dist. 1984), the Third District re-affirmed the position it took in City of East Peoria by holding that the county board did have jurisdiction to decide issues of safety. Also, in Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 123 Ill. App. 3d 1075, 79 Ill. Dec. 415, 463 N.E.2d 969, 981 (2d Dist. 1984), the Second District, in responding to the Pollution Control Board's position that the county board did not have jurisdiction to consider highly technical issues, stated:

Several recent decisions of our appellate court, however, have reached the opposite conclusion and have held that the county board has the authority to consider such matters. County of Lake v. Pollution Control Board (1983) (citations omitted); City of East Peoria v. Pollution Control Board (1983), (citations omitted); see also Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, (1984), (citations omitted).

Waste Management claims that all these cases do not have any precedential value and that county boards do not have the authority to consider technical issues when evaluating the six criteria. In support of its position, Waste Management relies exclusively on the fact that the City of East Peoria has been vacated by the Illinois Supreme Court. City of East Peoria had been appealed to the Illinois Supreme Court. While the appeal was pending, a settlement between the parties was reached. As a result, the Supreme Court issued an order stating, "The motion by appellant to dismiss this appeal as moot is allowed. On the Court's own motion, the decision of the Appellate Court, Third District, in this cause (117 Ill. App. 30673) is vacated." (No. 59110, May Term 1984). Waste Management states that since the decision has been vacated it can not be relied upon. Consequently, Waste Management concludes that the County of Lake and Waste Management of Illinois, Inc., 123 Ill. App. 3d 1075, which adopted the reasoning of City of East Peoria, also cannot be relied upon. (Petitioner's Reply Brief, p. 8).

The Board recognizes that although the decision of City of East Peoria was vacated, the reasoning behind City of East Peoria was not addressed. The Board notes that the Second District of the Illinois Appellate Court encompasses the County of McHenry. The court of that district stated in Waste Management of Illinois, Inc., 463 N.E.2d at 981, that "[s]everal recent decisions of our appellate court" have held that county boards can consider technical details. These other decisions do not fall merely because they adopted the reasoning of City of East Peoria. Consequently, decisions which have utilized City of East Peoria's reasoning still have precedential value despite its

vacation. The Board further notes that in December of 1985, over one year after City of East Peoria was vacated, the Second District still cited City of East Peoria when concluding that "(t)he legislature has charged the county board, rather than the PCB, with resolving the technical issues such as the public health ramifications of a landfill's design." Kane County Defenders v. Pollution Control Board 139 Ill. App. 3d 588, 93 Ill. Dec. 918, 487 N.E.2d 743, 746 (2d Dist. 1985).

The Board observes that a recent decision of the Illinois Appellate Court, Second District, states, "We can find neither statutory language nor indication of relevant legislative intent to persuade us that local control should be extended beyond matters concerning location. Since we are convinced that vertical expansion of a landfill does not raise questions pertinent to location, proposals for such expansion do not trigger the need for local review." M.I.G. Investments, Inc. v. Environmental Protection Agency, PCB No. 85-60, No. 2-85-734 slip op. at 11 (Ill. App., Second District, October 15, 1986). In discussing the term "location", the court explained, "Increasing the vertical capacity of a landfill does not involve use of any new land and does not alter the geographical relationship of the fill to its neighbors. In summary, although the legislature wanted to provide for review before a landfill was permitted in a local jurisdiction, it intended to limit that review primarily to the property of the location of the fill, not its capacity." Id. at 9. These statements are properly classified as dicta. The Board is bound by the Second District decisions which have held that a county board may resolve technical issues. In conclusion, the Board finds that the County Board had the authority to consider technical details when evaluating Waste Management's landfill proposal.

Fundamental Fairness

Waste Management also claims that the decision of the County Board was fundamentally unfair, due to the alleged predisposition of the County Board to decide against siting of the landfill. Waste Management cites three instances which evidence this predisposition. First, the County Board twice refused to allow Waste Management to amend its application after the hearing was underway. Secondly, the McHenry County Board has rejected two other landfill proposals in the past year. Finally, Waste Management claims that statements in a memo from McHenry County Board Chairman Edward J. Buss to other County Board members indicate this predisposition.

At the hearing, after Waste Management, the Cross-Petitioners, and the County of McHenry had each presented its case-in-chief, Waste Management inquired as to the procedure for amending its application. Waste Management wanted to amend its application thereby stipulating to certain recommendations of two County of McHenry witnesses. The Regional Pollution Control Facility Committee (Committee) decided that it would amend its

rules regarding amendment procedures on July 17, 1986 and then address the motion by Waste Management to amend the landfill application. (R. 3769). The Committee made amendments to its rules, after which Waste Management formally filed its motion to amend. The Committee denied the motion. At the close of the hearing, Waste Management again filed the same motion to amend which had been denied earlier. (R. 3977). Once again, the motion was denied by the Committee (R. 3979). In both instances the Committee provided no reasons for the denials. Waste Management claims that these summary denials show a predisposition by the Committee against the landfill, because Waste Management asserts it had complied with the amendment procedures set forth in the amended Committee rules. (Petitioner's Brief, p. 33).

The Committee's amended rules state that no amendments to the application shall be made by the applicant during the hearing. If the applicant wants to amend the application, the applicant must wait until the end of the hearing and then request another hearing on the proposed amendments. The rules then detail the requirements of this request. (Hearing Officer Exhibit #6, p. 10, "Article of Rules and Procedures," Article IV, Section 2(H)(1)). However, even if these requirements are met, it does not appear that the Committee must grant the request as a matter of right. Section 2(H)(2) of the Committee's rules states, "If the Committee grants the applicant's request..." (Hearing Officer Exhibit #6, p. 12). Such a statement indicates that the Committee's decision in this matter is purely discretionary. Consequently, according to the amended rules of the Committee, Waste Management's first motion to amend was untimely, because it was offered prior to the end of the hearing. Its second motion, although timely, was denied as a matter within the discretion of the Committee.

In McHenry County Landfill, Inc. v. County Board of McHenry County, PCB 85-56, (September 20, 1985, p. 5), the Board voiced its concerns regarding amendment of an application:

If such an amendment were allowed during the course of the proceeding, a member of the public who may have decided not to participate because the application seemed acceptable would not have had the opportunity to review the amended application. Further, even if he participated and did become aware of the amendment, he might not have the necessary time to adequately respond to any changes. The same may be true of the County or any other participants. This could be cured, however, by allowing such evidence to be presented at a later hearing contingent upon the applicant serving sufficient notice upon those required to be notified of the original application and hearing date and executing a waiver for the period of time necessary to schedule and hold the additional hearing.

McHenry County procedures would have required an additional hearing with notice if the Waste Management motion had been granted. The Board knows of no provision in the Act or any case law which would mandate that an applicant be allowed to amend their application as a matter of right. With regard to a county board's discretion, the Board also stated in McHenry County Landfill, Inc., p. 6, "the County Board properly exercised its discretion to keep the record closed and to make a recommendation. This decision did not constitute fundamental unfairness...." The McHenry County Board likewise merely exercised its discretion in denying the amendment by Waste Management, thereby closing the county hearing record.

Waste Management also claims that the denial by the McHenry County Board of other landfill siting applications indicates the County Board's predisposition against landfills. Waste Management points out that on October 15, 1985, the County Board denied local siting approval to the McHenry County Landfill, Inc. proposal for a sanitary landfill. Also, on September 16, 1986, the County Board turned down the proposed landfill of Laidlaw Waste Systems, Inc. (Petitioner's Brief, p. 34).

The Board finds it difficult to accept Waste Management's position that the County Board is predisposed against landfills merely because it has denied siting approval to two other landfill proposals in the past year. Without evidence to the contrary, this Board can only assume that the County Board has addressed each proposal on its individual merits and has not prejudged the applications. Waste Management has not presented anything which would warrant changing this assumption.

Finally, Waste Management offers the memo of County Board Chairman Edward Buss (Petitioner's Exhibit #1) as further evidence of predisposition. In the memo, directed to other County Board members, Mr. Buss voices his concerns regarding the County Board's role in the landfill siting process as created by Section 39.2 of the Act. Mr. Buss goes on to suggest that if others agree with him, then they might wish to pursue a legislative remedy. (Petitioner's Exhibit #1, p. 3). It is clear from the memo that Mr. Buss is merely expressing his own personal views regarding the County Board's landfill siting role. He is clearly not speaking for the County Board as a whole. Also, it is important to note that Mr. Buss recused himself from voting on the instant application due to a conflict of interest. Consequently, the Board does not find that this memo indicates a predisposition on the part of the County Board.

In summary, the denial of the amendments, the denial of other landfill applications, and the Buss memo neither individually nor taken together indicate any predisposition against landfills on the part of the County Board. Section 40.1 of the Act requires that the Board evaluate the County Board's proceedings with regards to "fundamental fairness." Fundamental

fairness has been interpreted to mean adjudicative due process. E & E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 608, 71 Ill. Dec. 587, 451 N.E.2d 555, aff'd, 107 Ill. 2d 33, 89 Ill. Dec. 84, 481 N.E.2d 664 (1985). E & E Hauling, Inc. set forth the standard which the Board must apply in evaluating whether the County Board's hearing and decision should be disqualified due to bias or prejudice. Such disqualification would only be necessary if a "disinterested observer might conclude" that the County Board had "in some measure adjudged the facts as well as the law of the case in advance of hearing it." E & E Hauling, Inc. 451 N.E.2d at 565-66. Waste Management has not presented any evidence which would indicate to the Board that this standard was violated; the County Board did comport with adjudicative due process. Therefore, the Board finds that the County Board's procedures were fundamentally fair.

Cross Appeal

On August 15, 1986, Waste Management moved to dismiss the cross-appeal of the Cross-Petitioners. The Board denied this motion with its Order of September 11, 1986. Now, Waste Management is again requesting that the Board dismiss the cross-appeal for the same reasons stated in the motion of August 15th. (Petitioner's Brief, p. 4) The Board hereby re-affirms its denial of the motion to dismiss the cross-appeal. The Board incorporates by reference the Order of September 11th as well as the Order of August 14, 1986, which initially granted the cross-appeal. These Orders set forth the Board's position concerning this issue.

Reasons for Decision

Waste Management claims that the County Board did not give sufficient reasons for its decision as required by Section 39.2(c) of the Act. (Petitioners Reply Brief, p. 2). The Second District of the Illinois Appellate Court addressed this issue in E & E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 71 Ill. Dec. 587, 451 N.E.2d 555, 577 (2d Dist. 1983) aff'd 107 Ill. 2d 33, 89 Ill. Dec. 821, 481 N.E.2d 664 (1985):

Although the statute does require the County Board to make written decisions which specify the reasons for its decisions, "such reasons to be in conformance with subsection (a) of this Section" (Ill.Rev.Stat.1981, ch. 111 1/2, par. 1039.1(e)), nothing in the statute would require a detailed examination of each bit of evidence or a thorough going exposition of the County Board's mental processes. Rather, the County Board need only indicate which of the criteria, in its view, have or have not been met, and this will be sufficient if the record supports these conclusions so that an adequate review of the County Board's decision may be made.

In its Findings and Order, the County Board stated that Waste Management had met its burden of proof as to criteria 1, 4, 5 and 6, and had not met its burden of proof as to criteria 2 and 3. The Board finds these reasons to be sufficient according to E & E Hauling, Inc.

Manifest Weight Standard

The Board may reverse a County Board decision, if after applying the manifest weight standard the Board finds that the County Board decision was in error. E & E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 608 71 Ill. Dec. 587, 451 N.E.2d 555 (2d Dist. 1983). The Illinois Appellate Court has recently stated:

"A verdict is said to be against the manifest weight of the evidence where it is palpably erroneous, wholly unwarranted (citations omitted), is clearly the result of passion or prejudice (citations omitted), or appears to be arbitrary, unreasonable, and not based upon the evidence (citations omitted). A verdict cannot be set aside merely because the jury [in this case, the County Board] could have drawn different inferences and conclusions from conflicting testimony or because reviewing court [in this case, the Board] would have reached a different conclusion if it had been the trier of fact. (citations omitted). When considering whether a verdict was contrary to the manifest weight of the evidences, a reviewing court must view the evidence in the light most favorable to the appellee (citations omitted). Steinberg v. Petra, 139 Ill. App. 3d 503, 508 (1986).

Consequently, if, after reviewing the record, the Board finds that the County Board could have reasonably arrived at its conclusions, then the County Board's findings must be affirmed. Waste Management contends that the County Board's decisions regarding Criteria 2 and 3 are against the manifest weight of the evidence and, therefore, should be reversed.

Criterion 2

Waste Management's first witness was Daniel P. Dietzler. Dietzler is a professional engineer registered in Illinois. He is also the President of Patrick Engineering, which designed Waste Management's proposed landfill (Petitioner's Brief, p. 13, 14). At the hearing, Dietzler testified that he believed the proposed landfill satisfied criterion 2. He specifically cited the Tiskilwa Till layer, which would be used as a natural liner for the landfill, as an important factor for this conclusion. (R. 354) Dietzler stated that he believed that the Tiskilwa Till was well suited as a liner for a landfill (R. 271, 279-80).

Laboratory permeability tests showed that the Till had a hydraulic conductivity on the order of 2×10^{-8} cm/sec. (R. 273). Also, four test pits, excavated in the Tiskilwa Till by Patrick Engineering did not show any secondary features, such as cracks, that would increase the Till's permeability. (R. 655). Dietzler testified that the Tiskilwa Till was composed predominately of silts and clay particles, although it also contained sand and some gravel. (R. 270). He claimed that the Till layer would be at least 30 feet thick below the lowest point of the excavated landfill. (R. 288).

Secondly, Dietzler stated that the presence of a basal sand layer aquifer, which lies just below the Tiskilwa Till, was another asset of the proposed site. Dietzler reasoned that the basal sand layer could be monitored to check the integrity of the Tiskilwa Till. That is, to determine whether the Till was allowing leachate to leak into the layers below. (R. 355).

Next, Dietzler credited the inward gradient design as an important aspect leading to his conclusion that the proposed landfill satisfied criterion 2. (R. 355). Because the inward gradient design would cause water to migrate into the site, leachate would be prevented from migrating out of the site. (R. 285).

Dietzler claims that the leachate collection system is another positive aspect of the proposal. The system consists of perforated plastic pipes laid in a 12 inch gravel bed at the base of the landfill. Dietzler stated that such a system has not been used in any other Illinois landfill. (R. 356). He also testified that approximately 7,800 gallons of leachate would be removed from the site each day. (R. 622).

Finally, Dietzler cited the four foot thick final cover as an important aspect of the design. He noted that the Illinois Environmental Protection Agency only requires a two foot thick final cover. (R. 356).

Waste Management's second witness, Dan L. Nelson also stated that he believed the proposed landfill fulfilled Criterion 2. Nelson works for Waste Management as the district engineer who would be responsible for the landfill's construction, compliance with state laws and regulations, and the monitoring of the site (Petitioner's Brief, p. 18). Nelson stated that Waste Management would do routine methane gas monitoring using probes. (R. 766). Also, he believed that the proposed ground water monitoring was adequate to meet Criterion 2. (R. 765). This proposed monitoring program would include quarterly sampling of water from surficial soils, basal sand layer, and the bedrock. These samples would be tested for various contaminants. (R. 822, 823). Nelson also stated that there would be 800 feet between each of the three ground water monitoring wells. (R. 990).

Nelson stated that Waste Management would attempt to maintain the leachate level at least two feet below the ground water level (R. 1009). He also testified that during the operation of the landfill, the leachate level would be monitored on a weekly basis (R. 833). However, during the post closure period, the leachate level would be only monitored on a quarterly basis. (R. 834). Nelson also said that in order to maintain the inward gradient, leachate removal would be needed "on a continuous basis" after the closure of the landfill. (R. 850).

Waste Mangement's last witness to testify regarding Criterion 2 was J. Christopher Lannert. Lannert is a landscape architect. In summary, he stated that Criterion 2 was met for four reasons. First, the site does not have any limiting characteristics which would prevent a landfill from operating there. Secondly, the parcel is large enough to operate as a landfill. It's also situated well in terms of roadway access. Finally, Lannert stated that the proposed landfill was compatible with the surrounding area (R. 1054-55).

The Cross-Petitioners as well as the County of McHenry put on witnesses during the hearing who stated that the proposed landfill did not satisfy Criterion 2. David Anderson, who has a Master's Degree in soil physics and soil science, testified on behalf of the McHenry County Defenders. (Cross-Petitioner's Reply Brief, p. 29). Anderson, who works for a firm specializing in hazardous waste disposal, stated that Criterion 2 was not met because the landfill was designed as a "below the zone of saturation" landfill. (R. 1552). He claimed that the rate of leachate generation, estimated by Waste Management, was unrealistically low. He stated that the landfill could generate 78,000 gallons of leachate a day. (R. 1536). Anderson was troubled by the situation of "perpetual generation of leachate and a dependency [in order to maintain an inward gradient] on a system [leachate collection] that definitely is not going to last forever." (R. 1540). Anderson recommended that the landfill be moved out of the ground water zone and that synthetic liners be utilized. (R. 1556, 1554).

The second witness for the McHenry County Defenders was Greg Lindsey. Lindsey is an environmental planner specializing in solid waste management and recycling. He is also a member of the Northeastern Illinois Planning Commission Solid Waste Technical Advisory Committee. (Cross-Petitioner's Brief, p. 30). Lindsey testified that the proposed landfill does not meet Criterion 2, because it is inconsistent with McHenry County policies and its proposed post-closure plan is insufficient. Lindsey said that McHenry County Board has adopted 10 policies concerning Basic Operating Standards regarding landfills. (R. 2512). According to Lindsey, Waste Management's plan doesn't adequately address all of the Operating Standards. (R. 2521). The Board notes that Section 39.2 in its totality controls the County Board's decision. In addition, Lindsey testified that even a ten year post-closure care period, would be insufficient. Also, he was

concerned that the post closure fund, as proposed by Waste Management, would be inadequate to provide sufficient post-closure care. (R. 2526).

McHenry County Concerned Citizens called George Noble as their first witness. Noble is a registered professional engineer. He works as an environmental consultant. For the last 20 years, he has worked in the area of solid waste management and disposal, which included the designing of landfills. (Cross-Petitioner's Reply Brief, p. 21). Noble testified that the landfill did not meet Criterion 2. (R. 1869). Noble stated that "an inward gradient landfill presupposes that there will always be leachate." (R. 1848). He was concerned that inaccurate leachate level readings may result from the combination of three conditions of the proposed landfill. Due to biochemical reactions of the leachate, Noble believed that the leachate pipes might clog and that the gravel, in the gravel bed containing the pipes, might cement together. Also, he felt that locating all of the leachate monitoring wells on one side of the landfill, created the potential for inaccurate readings. (R. 1894, 1852). Under such circumstances, an outward gradient condition could exist without ever being detected. Noble also believed that Waste Management never fully addressed whether the surrounding ground water level would be continually monitored. (R. 1860).

Noble testified that the Tiskilwa Till should have been checked for secondary features via a "test cell" procedure. (R. 1874). He also stated that if he had designed an inward gradient landfill, he would have wanted a 10 foot layer of recompacted clay not just a natural, in situ, clay liner. He believed that a recompacted layer would give the engineer more control over the liner's permeability. (R. 1956, 1898). Noble was also troubled by the fact that Waste Management never conducted any field permeability tests on the Tiskilwa Till, which he believed to be a routine procedure. He stated that the permeability results from field tests are sometimes two to three orders of magnitude greater than the permeability results from lab tests. (R. 1840). Field permeability tests allow the testing of the material in an undisturbed condition. (R. 1885). If sand and gravel is present, a field permeability test may show this by a higher permeability value than with a lab test result. (R. 1981). Noble felt that there was an insufficient amount of data regarding permeability of the Till (R. 1939). Specifically, he concluded that no lab permeability tests were even performed on any sample taken from the part of the Tiskilwa Till that would be located directly below the proposed excavated bottom of the landfill. (R. 1844). Noble also stated that he was concerned over the lack of a complete methane gas collection system. (R. 1870).

Dr. Musa Qutub was the second witness who testified for McHenry County Concerned Citizens that Criterion 2 was not met. Dr. Qutub has a Ph.D in geology, specializing in water resources. He is a hydrologist and professor at Northeastern

Illinois University. (Cross-Petitioner's Reply Brief, p. 22). Qutub testified that the proposed site failed the criterion because the Tiskilwa Till is not homogeneous. Also, Qutub contended that the actual flow of the ground water is not in the direction that Waste Management claimed it to be. He criticized Waste Management's assumption that the static ground water level could be controlled. In addition, he believed that the proposed leachate collection system is inadequate. (R. 2144). Qutub stated that Waste Management's portrayal of the geology under the site in Applicant's Exhibit # 16 is inaccurate. (R. 2118). He claims that the Tiskilwa Till is not a homogeneous layer of clay, but, it is rather a mixture of clay, sand, gravel and cobbles. These constituents other than clay give it a higher porosity and permeability. (R; 2111, 2374). He also believes field permeability tests should have been taken. (R. 2126).

Qutub also questioned the methods of Waste Management in determining the direction of ground water flow. (R. 2102). Qutub stated that the results of his study showed that the ground water flowed from west to east. (R. 2100). He claims this is consistent with a U.S. Geological Survey finding that the flow in the area is from northwest to southeast. He pointed out that Waste Management claimed the ground water flows from east to west. (R. 2372). Qutub testified that an inward gradient would not be attained because the static water level could not be maintained in the landfill since the surrounding area is made up of sand and gravel. Also, he stated that natural phenomenon (such as earthquakes), rainfall, and pumpage will change the static levels. He concluded that he has never seen a sanitary landfill where the static water level was maintained (R. 2224-2225).

McHenry County Concerned Citizens last witness was Michael Robinson. Robinson is a licensed geotechnical engineer. (R. 2376). Robinson studied Waste Management's boring data and determined that there was a correlation between areas of the geologic strata which produced low or no recovery in the boring sampler. These correlated areas of unknown composition were labeled as "phantom strata". They are located within the boundaries, as defined by Waste Management, of the Tiskilwa Till. According to Robinson, one such phantom stratum ranges from 2 1/2 feet to 4 1/2 feet thick between elevation 830 and 820. He claims that another lies just below elevation 820. (R. 2391).

The County of McHenry put on Robert Layer as a witness. He is a staff engineer for the county. (R. 2707). He found that with regard to storm-water management, the proposed landfill does not meet Criterion 2. (R. 2740). Layer claimed that water runoff from the final land form would be 2.3 times greater than it is now (R. 2718). He concludes that such a runoff would be highly erosive. (R. 2721).

Jerome Chudzik was another witness for the County of McHenry who testified regarding Criterion 2. Chudzik is a registered

professional engineer. (R. 3025). He suggested that the proposed landfills would meet Criterion 2. (R. 3080). However, he believed that his particular recommendations were important and should be adopted. (R. 3092). He recommended items such as surface water monitoring (R. 3049), additional ground water monitoring wells to decrease the gap between wells (R., p. 3051), and a methane detection system (R. 3046).

Another County of McHenry witness, Gerald DeMers, also testified that the proposed landfill would meet Criterion 2. However, like Chudzik, DeMers stated that Waste Management should adopt his recommendations. (R. 3276). DeMers, a registered professional engineer, recommended that the leachate should not be allowed to accumulate. Waste Management's plan allows it to accumulate to a depth of 12 feet inside the landfill. He claims that the removal of leachate as it is generated reduces the chance of not maintaining an inward gradient. (R. 3181). Also, to avoid excess leachate while the landfill is operating, he recommended that the landfill should be excavated and filled from the higher elevations first while working downward. This is the opposite of the way Waste Management has proposed filling the landfill. (R. 3185).

The last County of McHenry witness was Dr. Pratap Singh. Dr. Singh has a Ph.D. in soil and water engineering (Cross-Petitioner's Reply Brief, p. 24). He testified that the proposed landfill would not meet Criterion 2. (R. 3483). His firm conducted additional borings on the sites which seemed to confirm the phantom stratum theory. (R. 3524). After reviewing this data and Waste Management's boring data, Singh stated that "4 to 5 feet below the invert of the landfill there is a possibility that cobbles and boulders, plus sand seams, are there throughout...the entire base of the landfill." (R. 3407). He stated field permeability tests should have been conducted, because they are more representative of true permeability. (R. 3410). Singh also recommended that Waste Management recompact the clay liner, thereby removing the cobble layers. (R. 3436). He stated that electrical resistivity or electromagnetic survey should be taken of the site to better investigate its geology. (R. 3438). Singh stated that the present amount of data, gathered by Waste Management, is insufficient with regard to understanding the geology and hydrology of the site. (R. 3416). To better facilitate leachate removal, he recommended that the spacing between the leachate collection pipes be decreased to 150 to 200 feet. Waste Management's plan calls for 600 feet between pipes. Also, he suggested that the slope of the bottom of the landfill be 2 percent rather than 1 percent. (R. 3440).

Although the testimony concerning Criterion 2 addressed a wide variety of issues, after reviewing the record, it is apparent that conflicting evidence was presented to the County Board on major aspects of the landfill proposal. Waste Management contends that the inward gradient design of the landfill will prevent leachate from leaking out of the

landfill. However, Waste Management's own witnesses have admitted that the landfill would require continual pumping of leachate, after closure, in order to maintain this inward gradient. According to witnesses for the Cross-Petitioners, this constant need to monitor and pump leachate is a major detriment to the landfill's design. Also, a witness for the Cross-Petitioners estimated that the landfill could generate 78,000 gallons of leachate per day. This is a great contrast to Waste Management's estimate of one-tenth that amount. The amount of leachate generated obviously has a great impact upon the maintenance of an inward gradient which is dependent upon the constant removal of leachate. Witnesses for the Cross-Petitioners and County of McHenry testified that the leachate collection system was inadequate. It was claimed that the proposed placement of the monitoring wells and collection pipes could lead to inaccurate leachate level readings. Consequently, an outward gradient could go undetected.

It was also suggested by Waste Management's opponents that the proposed distance between the leachate collection pipes should be substantially reduced. The proposed slope of the bottom of the landfill was also criticized by witnesses for the Cross-Petitioners and County of McHenry as being only half of what is needed for efficient leachate collection. Witnesses for Waste Management stated that the leachate in the landfill would be allowed to accumulate to a depth of about 12 feet. However, witnesses for the County of McHenry and the Cross-Petitioners agreed that the leachate should not be allowed to accumulate in order to reduce the chances of accidentally creating an outward gradient.

In addition, evidence was presented by the Cross-Petitioners that the groundwater flow was in the direction opposite of what Waste Management claimed it to be. The methodology of Waste Management's hydrologic study was severely criticized by one of the Cross-Petitioner's witnesses. It was also stated by this witness that an inward gradient design was unworkable because it relied on the questionable assumption that static water levels could be maintained.

In its design, Waste Management utilizes 30 feet of Tiskilwa Till as an in situ liner. Waste Management claims that lab tests on the permeability of Tiskilwa Till indicate that it has a sufficiently low permeability. Witnesses for the Cross-Petitioners and County of McHenry stated that field permeability tests should have been conducted. Specifically, they claimed that the permeability indicated from lab tests could be several orders of magnitude less than the level of permeability that actually exists on the site. It was also pointed out that Waste Management did not perform even lab permeability tests on samples taken from the area of the Till that would actually function as the liner.

Waste Management's witnesses also claimed that the Tiskilwa Till is a fairly homogeneous formation that is composed predominately of silty clay. However, other witnesses countered that the Till is not homogeneous, and it likely contained layers of sand, gravel, and cobbles. The phantom strata interpretation of boring logs presented by witnesses for the Cross-Petitioners and the County of McHenry, conflicts directly with the geologic interpretation of Waste Management. These phantom layers are claimed to be located just below the proposed excavated bottom of the landfill. It is suggested that the "phantom strata" are composed of cobbles and boulders. If layers of cobbles and boulders are present in the Till, as it was claimed, then the overall permeability of the Till would be much greater than what Waste Management has concluded. Witnesses for the Cross-Petitioners and County of McHenry also criticized Waste Management's methodology in evaluating the geology of the site. Specifically, opposing witnesses contended that Waste Management had not gathered enough boring data of the area within the proposed landfill footprint and the area surrounding the site.

The above summary of the various positions of the witnesses touches only upon certain issues regarding Criterion 2. There are literally thousands of pages of testimony addressing this particular criterion. Pursuant to the manifest weight standard, the Board must consider the evidence in the light most favorable to the County Board's position that Waste Management's proposal did not meet this criterion. Credible testimony was presented which questioned the wisdom of Waste Management's application. This is particularly true regarding ground water dynamics, sub-surface geology and the ability of the design to function properly over time.

After reviewing the massive record, it becomes apparent that the County Board could have reasonably concluded that Waste Management's proposal did not satisfy Criterion 2. Therefore, applying the manifest weight standard, the Board affirms the County Board's finding regarding Criterion 2. The Board notes that it has in no way made a determination as to the general suitability of inward gradient landfills.

Criterion 3

Waste Management's first witness with regard to this criterion was J. Christopher Lannert. Lannert has been a landscape architect and urban planner for the past sixteen years. (Petitioner's Brief, p. 19). He testified that the landfill was "designed [The Board notes that the statutory language of this Criterion is "located" not "designed".] to minimize incompatibility with the surrounding area." He specifically cited several factors for the basis of his opinion. First, he believed that the end use plan was compatible with the surrounding area. (R. 1086). However, he also acknowledged that the surrounding area does not have a sufficient population now, or even in the year 2005, to support the proposed recreational use

after the landfill closes. (R. 1188). Secondly, Lannert stated that the screening berms, planting, and setbacks would "protect our neighbors." He also felt that the landscaping around the entrance to the proposed landfill was adequate to shield the truck traffic from view. Next, he stated that the surrounding topography and woodlands were consistent with the landfill and helped to minimize its impact. Finally, he stated that the intermediate screening berms, which would be utilized during the actual filling of the landfill, would serve to reduce the impact of the landfill's operations on the surrounding area. (R. 1086, 1087). Lannert testified that the landfill in its final form would end up being the highest point in the Township (R. 1136). He stated that the highest point of the final form would be 75 feet higher than the existing high point on the site. (R. 1074). The permanent screening bern, which would be erected on the eastern boundary of the site, would only be 25 feet high. (R. 1144). He stated that the residences east of the site would screen the view of the landfill from each other. (R. 1084).

According to Lannert, the site is bounded by open farmland to the north and to the south. West of the site is a large tree nursery. (R. 1068). He stated that single lot residences are located in a wooded area east of the site. (R. 1070).

Lannert testified that the site is presently zoned A-1, for agriculture. He noted that a landfill could be permitted as a conditional use in such a zoning classification. (R. 1218). However, he also stated that McHenry County classifies this site "as prime farmland" due to its soil composition. (R. 1048). Lannert testified that the McHenry County Comprehensive Land Use Plan also shows the site in an agricultural district. In the plan, just east of the site is an agricultural-rural transitional zone. (R. 1049). Lannert stated that the site contains 15 recorded lots. He claimed that the existence of these potential residences take the site out of a "pure agricultural classification." That is, he believed the site has turned from an agricultural to a more residential type use. (R. 1193). He stated that if residences were built on the site, they would be "an extension of this [east of the site] residential community." (R. 1192). Lannert stated that the presence of these recorded lots makes the site inconsistent with the pure agricultural classification of Comprehensive Land Use Plan. Therefore, Lannert concluded that the site is really located in a "flexible area" of classification. (R. 1050). However, Lannert also asserted that a landfill would be better classified as an agricultural rather than residential use. (R. 1181).

Waste Management's other witness concerning this Criterion was Thomas Collins. Collins has been a real estate appraiser and consultant for 32 years. (Petitioner's Brief, p. 30). He testified that the landfill would not be incompatible to the surrounding area. (R. 1263). He also classified a landfill as being an agricultural or residential type of use rather than an industrial or commercial use. (R. 1338). In his report on the

site, he had stated that the immediate area around the site had no discernable trend. However, Collins testified at the hearing that the trend in the area is toward residential development. (R. 1298, 1318). However, he did state that the Emery Woods subdivision, which is located east of the site, is only 60 percent developed even though the development is 15 to 20 years old. (R. 1255).

Collins also testified that the end use plan of the landfill would not cause any depreciation or change in the area's development trend. (R. 1263). He claimed that the landfill, even during its operation, would not deter the residential growth east of the site (R. 1271). He testified that residential development has continued near several Illinois landfills. The Veugler landfill near Crystal Lake in McHenry County was used to illustrate this point. He stated that construction of homes near that landfill had continued and expanded (R. 1267-1270). He also testified that the proposed screening and berming would have a positive effect on the neighborhood and were significant when considering the effect on property values (R. 1262). Collins testified that only one piece of property in the area will lessen in value due to the landfill. According to Collins, this property, located just off the southwest corner of the landfill's boundary, would lessen in value no matter what type of screening is used. (R. 1273). However, he claimed that other properties in the area would not diminish in value if the landfill was sited. (R. 1269). Collins never addressed farmland values because he felt that farms were not the highest and best use of the land. (R. 1360).

Herbert Harrison was the first County of McHenry witness who testified regarding Criterion 3. He stated that the proposed landfill did not minimize incompatibility and the impact on property values. (R. 2850). He attacked Waste Management's report regarding this Criterion as having "no substance." That is, he believed an insufficient amount of information had been gathered by Waste Management. (R. 2845, 2846).

Harrison testified that there were 11 homes within a quarter of a mile of the landfill and 14 homes within a half a mile. (R. 2880). He also was concerned that if odors were emitted from the landfill, they would be blown by the wind to the subdivisions east of the site. (R. 2812). Harrison, though, suggested that if the final form of the landfill was limited to the existing contours, instead of 80 to 90 feet above them, the impact of the landfill on the properties east of the site would be minimized. (R. 2946). Harrison stated that the obvious trend in the building of single family residences was from Route 47 westward toward the site. (R. 2849). He concluded that if residences were built on the site, they would merely be "a continuation of the slow but steady trend that has occurred there over the past 20 years." (R. 2845). Harrison also acknowledged that the population of Seneca Township has been projected to grow by less than 1,000 people from 1980 to the year 2005. (R. 2899).

Harrison pointed out that Waste Management's report by Collins did not appraise any values of property east of the site. Harrison claimed that this was not done, because Collins believed the technology of the landfill was such that it would not adversely impact on those properties. According to Harrison, that was a wrong assumption. (R. 2816). Harrison also stated that a multiple regression analysis of area property values should have been run by Waste Management to accurately investigate the landfill's impact. (R. 2826). Harrison noted that Waste Management also did not investigate the potential loss of value to the properties east of the site, due to the fact that the high final elevation of the landfill would block the late evening sun. (R. 2836).

The other County of McHenry witness who addressed Criterion 3 was Steve Aradas. Aradas is the Director of the McHenry County Department of Planning. (Cross-Petitioner's Reply Brief, p. 32). He testified that the site is not located to minimize incompatibility. (R. 2971). Aradas stated that the only way to minimize incompatibility was to locate the landfill in an industrial area. He particularly emphasized incompatibility due to the fact that the landfill final form will extend 80 to 90 feet above the existing contours. He discounted the use of berms as having minimizing effect. (R. 2979). Aradas also claimed the proposed recreational end use would be an anomaly in the agricultural type of area surrounding the site. (R. 2968).

He testified that within a 1 1/2 mile radius of the site were 94 single lot residences and 24 farmsteads. (R. 2961). He stated that the predominant land use east of this site was residential. (R. 2965). He claimed that the trend along Route 176 is toward residential use. Consequently, according to Aradas, residential development would be more compatible than a landfill. (R. 2972).

However, because the site is considered "prime farmland," Aradas testified that the highest and best use for the site would be farming. (R. 2977, 2978). He stated that the County's zoning and Comprehensive Land Use Plan objectives are to protect productive farmland from development. (R. 2463, 2967).

In summary, Waste Management presented testimony which stated that the landfill's design would minimize incompatibility with the surrounding area. Waste Management contended that the presence of berms and landscapes would minimize the impact on the landfill's neighbors. Also, witnesses for Waste Management stated that a landfill site would not be inconsistent with the County Plan or detrimental to the residential development of the area. In addition, Waste Management claims that only one piece of property would suffer a loss in value due to the landfill.

The County of McHenry presented witnesses who testified in opposition to Waste Management's position. One witness stated that since the site is considered "prime farmland," it should be

preserved as an agricultural use. It was claimed that such a use would serve the objectives of the County Plan and the areas zoning. The development trend of the area was stated to be residential. It was concluded by the County of McHenry witnesses that a residential use of the site would be more compatible with the surrounding area than a landfill use. These witnesses also claimed that the berms and landscaping would not minimize incompatibility, especially since the final landfill form would be 80 feet higher than the existing contours of the site. Waste Management's study concerning had values was also criticized as being insufficient and inaccurate.

With regard to this Criterion "an applicant must demonstrate more than minimal efforts to reduce the landfill's incompatibility." Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 123 Ill. App. 3d 1075, 1090, 79 Ill. Dec. 415, 463 N.E.2d 969, 980 (2d Dist. 1984). However, the Second District, following E & E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 71 Ill. Dec. 587, 451 N.E.2d 555 (2d Dist. 1983) also stated that "an applicant must demonstrate it has done or will do what is reasonably feasible to minimize incompatibility." Waste Management of Illinois, Inc., 123 Ill. App. 3d at 1090, 463 N.E.2d at 980. The Board assumes that the same conditions apply to the requirement to "minimize the effect on the value of surrounding property." It is apparent from the record that the applicant has studied the surrounding area. The site is mostly bordered by agricultural land with scattered residences, particularly to the east. A landfill could reasonably be located in such an area. Waste Management's proposal reflects more than a token effort to minimize incompatibility. Waste Management presented an extensive plan for setbacks, berms, and landscaping. Their proposal seems to include that which would be considered "reasonably feasible to minimize incompatibility." Therefore, viewing this record in light of the above case law, the Board finds that the County Board's decision with regards to this criterion was against the manifest weight of the evidence. The Board hereby reverses the County Board's finding that Criterion 3 was not met.

CROSS APPEAL

Sufficiency of Application

The Cross-Petitioners contend that the County Board should have dismissed Waste Management's application, because it did not contain all the information which is required by the Articles of Rules and Procedures of the Regional Pollution Control Facility Committee (Hearing Officer's Exhibit #6). Specifically, the Cross-Petitioner's claim that the application did not contain "all land uses within a one-mile radius of the site" (Article IV, Section 1(A)(8)(g)), "property values of the surrounding properties" (Article IV, Section 1(D)(5)(b)(4)(c)(1)), and the "financial condition of Waste Management of Illinois, Inc."

(Article IV, Section 1(A)(10)(c)). (Cross-Petitioner's Brief, p. 10-11).

The Board finds that the County Board's refusal to dismiss the petition was reasonable. In so saying, the Board cautions that it is not implying that a question of insufficiency of information (whether the informational requirements were framed by this County, or any other county or municipality), can, in and of itself, be a reason for considering dismissal. For example, while an application "form" may be a useful means of assuring a fair and orderly hearing process, if the information required goes beyond the scope of Section 39.2 of the Act, it cannot be given weight; in the same manner, if a form is insufficient in its scope, it cannot serve as a constraint on the criteria that must be considered in Section 39.2.

The Cross-Petitioner's also contend that the County Board's findings with respect to Criteria 1, 4, 5 and 6 are against the manifest weight of the evidence and therefore, should be reversed.

Criterion 1

Richard W. Eldridge testified for Waste Management with regards to Criterion 1. Eldridge is a licensed professional engineer and president of Eldridge Engineering Associates. (R. 83). He testified that there was a definite need for the proposed landfill. He based his conclusion on past "need" studies, current available landfills, and the expectant life of these current landfills. (R. 115). Eldridge testified that the service area of the proposed landfill would be approximately within a 15 mile radius from the site plus the whole of McHenry County (R. 101). He also said that there was currently only one operating landfill within this proposed service area. That landfill, which is the Veugeler landfill, is expected, according to Eldridge, to have a remaining service life of only 3 years. (R. 111-112).

Gerald DeMers testified for the County of McHenry that the landfill was "necessary to meet the disposal needs of the area intended to be served. He also based his opinion on the fact that the existing landfill capacity is limited to 1 to 3 years. He stated that even if the Waste Management landfill is sited, there may be a period of time, before the landfill begins operation, during which the County would have zero landfill capacity. (R. 3171). DeMers also cited a Northern Illinois Planning Commission Study which stated that McHenry County had a substantially lower locally available landfill capacity when compared with the rest of the region. (R. 3164).

The Cross-Petitioners presented no witnesses who testified to Criterion 1.

Witnesses testified for Waste Management and the County of McHenry that the only landfill operating in the proposed service area has a short remaining operating life. No opposing testimony was presented. In light of the manifest weight standard, the Board finds that the County Board could have reasonably concluded that Criterion 1 has been met. Therefore, the Board affirms the County Board's finding that Criterion 1 had been satisfied by Waste Management.

Criterion 4

Waste Management submitted a letter, dated September 16, 1983, from the Illinois Department of Transportation (IDOT), which states that IDOT "has determined that the proposed sanitary landfill...is located outside the boundary of the 100 year flood plain." (Applicant's Exhibit #25).

The Cross-Petitioners presented no witnesses testifying to Criterion 4, nor did they address this issue in any of their briefs.

Applying the manifest weight standard, the Board affirms the County Board's findings that Criterion 4 has been met.

Criterion 5

Dan Nelson also testified for Waste Management on this Criterion. He stated that Criterion 5 has been met. (R. 759). He claimed that the possibilities of accidents on the site would be minimal. He specifically said that the site would be fenced and no one under the age of 16 would be allowed at the working face of the landfill. (R. 756).

According to Nelson, fires are rare at modern sanitary landfills. He also asserted that no smoking would be allowed at the working face. (R. 1020). Each piece of equipment at the landfill will carry a small fire extinguisher. Also Nelson claims the equipment can be quickly used to spread soil over any fire. A water truck, normally used for dust control, could also help put out a fire. Nelson stated that Waste Management employees will be trained in how to put out fires. He believed that the application of daily cover would also minimize the chance of fires. Nelson concluded that there would not be a need for off-site equipment used for the purpose of fighting fires. (R. 753-55).

Nelson testified that no liquid wastes would be accepted at the site, consequently, the chance of spills would be non-existent (R. 757). He also stated that Waste Management has adopted a Safety Manual of Waste Management, Inc. (See Applicant's Exhibit #29, R., p. 758). Nelson stated that a procedure regarding who to contact in case of fires or an emergency is not addressed in the Safety Manual, but such a

procedure will be developed with respect to the site. (R. 872-73).

Jerome Chudzik testified for the County of McHenry on this criterion. He stated that Waste Management had met Criterion 5. However, he suggested that Waste Management adopt his recommendations. (R. 3059). Chudzik recommends that Waste Management develop some protocol regarding who to contact in case of an emergency. This should include procedures for an agreement in order to call fire department equipment to the site. Also, Chudzik recommended that records of incoming waste as well as water quality samples be regularly provided to the County for inspection. In addition, he believed that all vehicles on the site should be equipped with two-way radios. He also suggested that proper leachate removal and transport equipment be made available to the site. Chudzik also recommended that the refueling of vehicles be done away from the working face. He believed that provisions should be made in order to detect any methane migration off the site. (R. 3040-47). In addition, he wanted samples to be taken from existing neighboring water supplies to establish existing quality. (R. 3050). An additional ground water monitoring well was also recommended to reduce the chance of a plume of contaminants escaping detection. (R. 3051).

The Cross-Petitioners did not present any witnesses to testify with regards to this criterion.

Witnesses for Waste Management and the County of McHenry testified that Criterion 5 has been met. Evidence was presented to show that Waste Management has developed or will develop various procedures which will reduce the danger due to fire, accidents, and spills. No witnesses were presented in opposition to this evidence. Consequently, there is evidence upon which the County Board could have reasonably made its finding. Applying the manifest weight standard, the Board affirms the County Board's finding that Criterion 5 has been met.

Criterion 6

David Miller testified for Waste Management concerning Criterion 6. Miller is a traffic engineer and president of Metro Transportation Group. (R. 1379). He testified that Criterion 6 has been met. He stated that Route 176, a two lane road, carries about 4,300 vehicles per day. According to Miller, this current traffic load only amounts to about 25 percent of the road's capacity. He stated that during the landfill's operation, about 70 to 75 trucks would travel in and out of the site each day. He claims that 65 percent of the trucks would be 25-yard packers, 30 percent would be roll offs, and 10 percent would be semi-trailers, 2 axle stake beds and pickup trucks. (R. 1384-86). Miller concluded that the traffic added by the landfill's operation would increase Route 176 traffic flow by only two percent. (R. 1389). He also noted that the peak times for the

landfill are from 10:30 am to 11:30 am and from 2:00 pm to 3:00 pm. He pointed out that these peak times are different than the existing peak times which are from 7:00 am to 8:00 am and from 4:00 pm to 5:00 pm. (R. 1387). Miller stated that if the site were developed into 15 single family residences, these residences would generate 150 vehicular trips per day and that there would be more roads entering Route 176. On the other hand, he claimed that the landfill would generate 180 vehicular trips per day. (R. 1400-01).

Miller claims that there is good sight distance along Route 176, and the access design is adequate to accommodate inbound and outbound trucks. (R. 1409). He stated the Illinois Department of Transportation determined that acceleration or deceleration lanes would be unnecessary. (See Applicant's Exhibit #45, R. 1410). Miller concluded that the traffic caused by the landfill would not adversely impact upon the operating efficiency of Route 176. (R. 1390).

The County of McHenry witness addressing this criterion was James Rosenmerkel. Rosenmerkel is a civil engineer in charge of the transportation division of an engineering firm. (R. 2660). He testified that the landfill's traffic system has been "designed to minimize any negative impact on existing traffic." (R. 2683). He also stated that the sight distance along Route 176 was very good. Furthermore, he found that given the existing amount of traffic, there would be no negative impact upon the traffic due to the landfill's operation. (R. 2671). However, he did suggest that a bypass lane for westbound traffic, to drive around stationary trucks waiting to turn left, would be a good idea. (R. 2677). He also recommended an acceleration lane for trucks heading east out of the landfill. (R. 2702).

The Cross-Petitioners did not present any witnesses to testify concerning this Criterion.

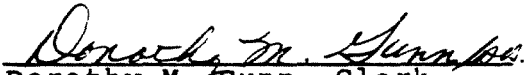
With regard to this criterion, witnesses of Waste Management and the County of McHenry agreed that the proposal was sufficient. A Waste Management witness estimated that the landfill's operation would only increase the traffic on Route 176 by two percent. Even with this increase, it was testified that Route 176 would still carry less than one-third its traffic capacity. The witness for Waste Management also stated that additional turning lanes would not be needed. Although the County of McHenry witness recommended additional turning and acceleration lanes for the landfill, he still concluded that Waste Management's proposal was sufficient for this Criterion. Consequently, evidence was presented at the hearing which would support the County Board's finding. In light of the manifest weight standard, the Board finds that the County Board could have reasonably concluded that Criterion 6 was met. Therefore, the Board affirms the County's finding with regard to Criterion 6.

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

IT IS SO ORDERED.

B. Forcade, R. Flemal, and J.T. Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 5th day of December, 1986, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board