ILLINOIS POLLUTION CONTROL BOARD
November 17, 1988

CITY OF ROCKFORD, Petitioner,	)	
v.	)	PCB 88-107
WINNEBAGO COUNTY BOARD, Respondent.	)	

DOUGLAS P. SCOTT, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF PETITIONER; AND

PAUL A. LOGLI AND GARY KOVANDA, STATE'S ATTORNEY OFFICE, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board on the July 6, 1988 petition of the City of Rockford ("Rockford") which seeks review under Section 40.1 of the Environmental Protection Act ("Act"), Ill. Rev. Stat. ch. 111 1/2, par. 1040.1 (1988), of a Winnebago County Board ("Winnebago County") disapproval of Rockford's application for the siting of a regional pollution control facility. The Board conducted a public hearing in this matter on September 13, 1988. The parties filed a stipulation with additional exhibits and testimony on October 3, 1988. Rockford filed its post-hearing brief on October 5, 1988, Winnebago County filed its response on October 12, 1988, and Rockford replied on October 14, 1988. The Board received an "intervenors' brief" on October 12, 1988. On October 31, 1988, the "intervenors," Save The Land, Richard Brown, Edward Brown, Melvin Banks, Ward Mercer, Lorenzo Capes, Armen Swanson, Lee Carlson, Betty Carlson, Orville Quanto, and Dorothy Quanto, filed a motion to intervene or, in the alternative, to file their brief amicus curiae.

This matter returns to the Board after a remand from earlier proceedings in City of Rockford v. Winnebago County Board, No. PCB 87-92 (Nov. 19, 1987). The broader procedural history and facts of this matter are more fully outlined in the Opinion and Order of November 19, 1987 in that case. That Opinion and Order found that the prior Winnebago County decision resulted from a fundamentally unfair process. It disqualified County Board members Bell, Barnard, Connelly, and Giorgi from further participation, and remanded the matter back to Winnebago County for further proceedings. The Board's Opinion and Order required Winnebago County to conduct an additional public hearing for the introduction into the record of the substance of known ex parte

contacts that had occurred and for a decision exclusively based on the six criteria of Section 39.2 of the Act, Ill. Rev. Stat. ch. 111 1/2, par. 1039.2 (1987). The Board found that the existing record compiled by Winnebago County was otherwise complete and compiled in a fundamentally fair manner. Therefore, the Board only opened the Winnebago County record for the introduction of the substance of the ex parte contacts that had occurred, and for a new decision exclusively based on the Winnebago County Record, as prescribed by law. Winnebago County, No. PCB 87-92, slip op. at 27-31. Winnebago County held the mandated hearings on February 27 and March 10, 1988 and rendered its decision, again adverse to Rockford, on June 9, 1988. This appeal resulted.

Preliminary to its discussion, the Board will dispose of the "intervenors' brief" filed on October 12. Save the Land, Inc. and ten individuals attempted to intervene in the prior proceedings in PCB 87-92. The Board denied intervenor status but construed the "intervenors' brief" as a brief submitted amicus curiae in that case. See Winnebago County, No. PCB 87-92, at 4. For the reasons stated in that case, the Board denies intervenor status, but will consider the October 12 filing as an amicus brief, as requested. See also Rockford Reply Brief at 2.

Discussion

Rockford asserts three principal bases favoring a reversal of the Winnebago County decision against the proposed landfill siting:

1. That Winnebago County did not render its decision within the statutorily-prescribed time;

2. That the Winnebago County decision was the product of a fundamentally unfair process; and

3. That the Winnebago County decision was against the manifest weight of the evidence.

The following discussion will separately consider the arguments relating to each asserted basis for reversal in the order outlined above.

1. Statutory Deadline for Decision

Section 39.2(e) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. ch. 111 1/2, par. 1039.2(e) (1988), provides that an applicant for siting approval may deem its request approved if the county board does not render a final decision

within 180 days of the filing of its request for siting approval. This Board has observed that this provision applies to local proceedings occurring after remand. Village of Hanover Park v. DuPage County Board, No. PCB 82-69, 48 PCB 95, 108 (Sept. 2, 1982).

Rockford urges the Board to reverse the Winnebago County denial because it was rendered 199 days after the county received the November 19, 1987 Opinion and Order of this Board. Winnebago County received a copy of that Opinion and Order on November 23, 1987. R. 152; cf. 35 Ill. Adm. Code 103.123 (1987). Winnebago County concluded its proceedings pursuant to that remand by its June 9, 1988 final decision denying siting approval. See Petition, Ex. L.

The Board does not believe the Winnebago County decision on remand was untimely. Following its November 19 decision in PCB 87-92, the Board certified questions for appeal by its Order of November 25, 1987. Rockford filed an appeal, and the Second District dismissed that appeal 41 days later, on January 5, 1988. See Rockford Brief at 7. This intervening time is more than twice that time by which Rockford contends the Winnebago County denial exceeded the statutory time for decision. The Board will not disturb the Winnebago County decision on this basis.

2. Fundamental Fairness

Rockford makes four independent arguments to support its contention that the Winnebago County decision was the product of a fundamentally unfair process. Each is separately considered below.

Rockford first argues that the remand failed to cure the impact of the ex parte contacts which occurred during the course of the prior case, PCB 87-92. The Board's November 19 Opinion and Order required Winnebago County to hold additional hearings to introduce the substance of those oral and written contacts. Winnebago County held such hearings on February 27 and March 10, 1988. The individual Winnebago County Board members testified and introduced copies of or the substance of those contacts into the record to the best of their abilities. See generally Winnebago County Transcripts of February 27 & March 10, 1988; Stipulation of October 3, 1988. This was all that the Board's Order required. See City of Rockford v. Winnebago County Board, No. PCB 87-92, at 31. Although it would have been preferable that the contacts had not occurred, or even that their introduction would have been more promptly made into the record of PCB 87-92, the Board cannot conclude that Rockford has demonstrated sufficient justification for overturning the Winnebago County denial: Rockford had ample opportunity to present its case before Winnebago County and assemble its record

to justify the merits of its request for landfill siting. See Id. at 27 & 31.

Rockford next argues that a number of Winnebago County Board members did not re-evaluate or read the record prior to the June 9, 1988 decision. Rockford cites the testimony of the Board members given over timely objection of counsel during the September 13, 1988 public hearing and the September 29, 1988 evidentiary deposition of Scott Christiansen. See generally Transcript of September 13, 1988; Stipulation of October 3, 1988. This raises the troubling issue whether a fundamentally fair procedure and a decision based exclusively on the Winnebago County record would require that each Board member voting familiarized himself or herself with the record.

The Board believes that a fundamentally fair process and a decision rendered exclusively on the county record would require each voting county board member to have gained some degree of familiarity with that record in some way. However, Rockford's argument raises another important issue. This is an issue with which the United States Supreme Court has had difficulty when it considered it in numerous separate decisions rendered in a single case between 1936 and 1941--during the infancy of modern administrative law. That issue defines the extent to which this Board can inquire into the Winnebago County Board members' decisionmaking mental processes by allowing their interrogation as to how and the extent to which each became familiar with the record. The Board adopts the Supreme Court's position: each voting Winnebago County Board member had an individual duty to somehow familiarize himself or herself with the county record prior to rendering a vote on the issues involved; however, this Board cannot inquire as to how and the extent to which each fulfilled that obligation.

As ultimately determined by the United States Supreme Court under similar circumstances, where a trial court allowed the deposition of an administrative decisionmaker regarding his decisionmaking process:

> [T]he short of the business is that the secretary should never have been subjected to this examination .... We have explicitly held in this very litigation that 'it was not the function of the court to probe the mental process of the secretary.'
>
> United States v. Morgan, 313 U.S. 409, 422 (1941) (Morgan IV; quoting Morgan v. United States, 304 U.S. 1, 18 (1938) (Morgan II)).

This conclusion of the Supreme Court is especially significant in light of the Court's prior opinions in that case.

In its initial opinion, the Court confronted an argument similar to that interposed here by Rockford: the administrative procedure was flawed because the Secretary had not himself reviewed the record and testimony before rendering his final determination. The Secretary had delegated the conduct of the hearings to a subordinate. The Morgan I Court held that the administrative decisionmaker sits like a trial judge, and must himself or herself personally review the record:

> The "hearing" is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations .... The "hearing" is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given.
>
> It is no answer to say that the question for the court is whether the evidence supports the findings and the findings support the order. ... The duty [to decide based on the evidence] cannot be performed by one who has not considered evidence or argument.
>
> Morgan v. United States, 298 U.S. 468, 480-81 (1936) (Morgan I).

Thus, the Court in Morgan I would have provided a basis to support Rockford's inquiry into whether each member of the Winnebago County Board had personally reviewed the record.

By the time of the next appeal in that case, however, the Court had modified its position. It basically held that the right to a hearing included the right to present a case before the administrative agency, to confront the opposing arguments, and to obtain a decision based on the evidence presented. The Court also observed that "it was not the function of the court to probe the mental processes of the Secretary in reaching his conclusions if he gave the hearing the law required." Morgan II, 304 U.S. at 18. This assertion formed the basis for the final Morgan IV pronouncement of the law quoted above.

The Morgan IV court found, "just as a judge cannot be subjected to such a scrutiny, so the integrity of the administrative process must be equally respected." Morgan IV, 313 U.S. at 422. The court felt considerations of comity demanded this result: "the administrative process ... [is] to be deemed collaborative instrumentalit[y] of justice and [its] appropriate independence ... should be respected ...." Id.

It is therefore not permissible for this Board to inquire into how the administrative decisionmaker dealt with the record in deriving his or her final determination--so long as there was a fair and adequate opportunity for Rockford to present testimony and exhibits into that record. The Board has already concluded that Rockford had such an opportunity. See City of Rockford v. Winnebago County Board, No. PCB 87-92, at 27 & 31. As observed by the Morgan IV court:

> [The Secretary] was questioned at length regarding the process by which he reached the conclusions of his order, including the manner and extent of his study of the record .... [T]he short of the business is that the secretary should never have been subjected to this examination ....
>
> Morgan IV, 313 U.S. at 422 (emphasis added).

This was essentially the scope of inquiry permitted by the hearing officer at the September 13 hearing. The Board holds that the hearing officer erred by allowing inquiry as to whether the individual Winnebago County Board members actually read or accessed the record. There is, therefore, no cognizable evidence that Winnebago County Board members did not exclusively base their individual decisions on the record.

Rockford's third argument is that Winnebago County mischaracterized its proceedings and that some members voiced contempt of this Board and the entire statutory process. It is immaterial how Winnebago County characterized its proceedings and what its individual members feel about the statutory process and this Board, so long as Winnebago County followed those procedures and rendered its decision according to law. There is no evidence that Winnebago County has done otherwise. Rockford had sufficient opportunity to present its case, and Winnebago County based its decision on the six criteria of Section 39.2(a), Ill. Rev. Stat. ch. 111 1/2, par. 1039.2(a) (1988), as required by law.

Finally, Rockford argues that it was prejudiced because Winnebago County did not separately vote on each individual criterion. Rather, its decision was rendered by a single vote asserting that Rockford had met its burden with regard to criterion four and failed with regard to criteria one through three, five, and six of Section 39.2(a). See Petition, Ex. L. The Board concludes that this voting procedure did not deprive Rockford of its right to a fundamentally fair process and decision. It is the totality of the Winnebago County decision on all six criteria that is under review, and not the votes of individual county board members on individual criteria. Although it is often easier to attack more particularized findings of a

tribunal, this Board can see no right under Section 39.2 to findings any more detailed than that the applicant either did or did not meet its burden with regard to each individual criterion. What is important here is that Winnebago County exhibited individualized consideration of each criterion.* See Waste Management of Illinois, Inc. v. PCB, 123 Ill. App. 3d 1075, 1083, 463 N.E.2d 969, 975-76 (2d Dist. 1984), cert. denied.

For the foregoing reasons, the Board holds that Rockford was not deprived of fundamental fairness in the Winnebago County proceedings. The Board will now proceed to consider the merits of Rockford's contentions that the Winnebago County decision was against the manifest weight of the evidence standard.

3. Manifest Weight

Rockford's final position is that the substantive Winnebago County decision was against the manifest weight of the evidence. This Board may only disturb the Winnebago County decision if the petitioner has proven that the decision is against the manifest weight of the evidence on each of criteria one, two, three, five and six. Section 1040.1(a). Therefore, affirmance is mandated if Rockford has failed to prove Winnebago County's decision was against the manifest weight of the evidence on any single criterion. See Waste Management of Illinois, Inc. v. PCB, 123 Ill. App. 3d 1075, 1083, 1091, 463 N.E.2d 969, 976, 981 (2d Dist. 1984), cert. denied. As stated by this Board in the past:

> Manifest weight of the evidence is that which is the clearly evident, plain and indisputable weight of the evidence, and in order for a finding to be contrary to the manifest weight of [the] evidence, the opposite conclusion must be clearly apparent.
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> Industrial Salvage, Inc. v. County Board, No. PCB 83-173, 59 PCB 233, 236 (Aug. 2, 1984) (citing Drogos v. Willage of Bensenville, 100 Ill. App. 3d 48, 426 N.E.2d 1276 (2d Dist. 1981) and City of Palos Heights v. Packel, 121 Ill. App. 2d 63, 258 N.E.2d 121 (1st Dist. 1970)).

* The Winnebago County Board resolution of June 9, 1988 set forth the text of Section 39.2(a), which is the applicable statutory language outlining the six criteria, then immediately summarized its findings that Rockford had met Criterion No. 4, had failed to meet Criteria Nos. 1, 2, 3, 5, and 6, and had failed in its overall burden as to all six criteria. See Petition, Ex. L.

A majority of the Board have concluded that Rockford has failed to prove that the decision below was against the manifest weight of the evidence with regard to the proposed siting and design of the landfill (Criterion No. 2). The opinion of that majority follows. Individual members of the majority may choose to file supplemental statements explaining their own views on other issues.

The Act provides in significant part that a county board evaluation of a siting request must turn on whether "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected ...." Section 1039.2(a)(ii). The Board cannot substitute its judgment for that of the Winnebago County Board. The Board concludes that Rockford has failed in its burden of persuasion.

The Winnebago County record includes many uncontroverted facts that could reasonably have induced the county to cautiously approach any issue of landfill siting. Winnebago County may be among the most susceptible county in Illinois to groundwater contamination because it has a "very sensitive geology," as asserted by Dr. Richard C. Berg of the State Geological Survey. County R. 1212. A generalized map of geological suitability of areas of Winnebago and Boone Counties indicates that although some narrow moderately acceptable areas lie in the vicinity of the proposed site, all of the most suitable areas lie in Boone County. Rockford Ex. 82 & 83. Winnebago County is generally unsuitable for landfill siting. County R. 614-15, 812, 1492 & 1499. In fact, the record indicates that Rockford now has one former landfill and another site on the U.S. Environmental Protection Agency's "Superfund" list awaiting remedial action.* County R. 1589, 1612, 1810, 1960 & 2044. The county has had experience with surface contamination and the contamination of groundwater forcing the closure of local wells from two other former landfills: the Tipton-Martin and Peoples Avenue sites. Rockford Ex. 75, pp. W-11 & R-18. Further, citizens' statements in the record indicate numerous wells have been closed in the

* The Comprehensive Environmental Response, Compensation and Liability Act of 1980, or "Superfund," 42 U.S.C. Secs. 9601-9675 (1987) Pub. L. 96-510, Title I, Stat 2767 (1980), as amended, provides for the designation of contaminated sites for environmental remedial action. 42 U.S.C. sec. 9605. One is the existing Pagel's Pit landfill in Rockford. The other site is the Acme Solvent facility at Morristown. See 40 CFR 300, app. B (1987). Both are about a mile from the proposed landfill site. See Rockford Ex. 83. Another site on the National Priorities List is the Belvidere Municipal Landfill in Boone County, which is in close proximity to Rockford. See 40 CFR 300, App. B.

county and in Rockford due to contamination of the groundwater. County R. 1213, 1463, 1589, 1810, 1863-66, 1941, 1960, 1987-88, 1997, 2044 & 2119; see also County R. 1650-51. Clarence D. Beatty, a Rockford witness, conceded that all landfills pose some potential for groundwater contamination. County R. 106; see also Rockford Ex. 80, p. 33 (report by Dr. Richard c. Berg, another Rockford witness). He believed the protection of groundwater resources was the most important aspect to landfill siting, design, and operation. County R. 42. A cautious approach would therefore have been generally supported by the county record, but more so in light of facts more specific to the site.

The glacial till under the site overlies a major aquifer, County R. 256-57, 361, 714, 1832, 1853-54; see Rockford Ex. 11, pp. I-13 to I-17; Rockford Ex. 12, pp. III-17 to III-19, which may provide water to well over 1,000 local wells. County R. 1870; see Rockford Ex. 11, p. I-19 to I-21. The till includes sand lenses or seams, as indicated by the site borings. Rockford Ex. 11, p. I-12; Rockford Ex. 12, pp. III-1 to III-17; Rockford Ex. 66 & 67; County R. 722-52, 841-46, 899-901, 946-48, 1215, 1486, 1651-53, 1694-96, 1713-17, 1751-53, 1854 & 1858. Whether there is continuity between these is disputed, but the record indicates no tests of continuity were performed. County R. 1651-52. No test trenches were dug on the site to determine continuity, but excavations into the till on properties within reasonably short distances of the proposed site encountered sand seams or lenses that discharged varying volumes up to copious amounts of water. County R. 1961, 1969 & 2072. According to Dr. Douglas A. Block, testifying against Rockford, sand lenses may interconnect at different levels because the till is unpredictable in content and on the horizontal aspect. County R. 1481-84. Further raising questions of site suitability is the potential existence of vertical, sand-filled fractures in the till of uncertain extent and occurrence. Rockford Ex. 59, p. 17; County R. 732-33, 740-46, 1695-97, 1714-17 & 2183-84. These could conceivably communicate with the underlying aquifer and act to increase permeability of the till. County R. 1695-97.

The aquifer lies in the fractured dolomite bedrock, County R. 614, 1696-97 & 1710-11, and overlying thick sand and gravel layer beneath the till. Rockford Ex. 12, pp. I-2 & III-1 to III-17; Rockford Ex. 66 & 67; County R. 140, 238, 252, 616, 842, 1400, 1488, 1840-41, 1852, 2142-43 & 2228. The base of the till defines the top of the major aquifer that lies in the bedrock and sand and gravel beneath the proposed site. County R. 1441. The sand-and-gravel-covered bedrock slopes eastward into a deep, sand-and-gravel-filled pre-glacial drainage valley which is a significant potential groundwater source. Rockford Ex. 11, pp. I-7 to I-6; Rockford Ex. 59, p. 9; County R. 1858. The site is a groundwater recharge area into the underlying aquifer and that of the bedrock valley. County R. 1841, 1854 & 2217-18; see Rockford Ex. 80, pp 26 & 30.

In the opinion of Dr. Musa Qutub, who testified against Rockford, this site poses a threat of groundwater contamination, County R. 1854-57, and the siting of landfills over pre-glacial drainage areas is something generally to avoid. County R. 1861. Pieter Braam and Dean W. Ekberg, who also testified for Save The Land, felt the subsurface geology and uncertainties in the piezometric contour beneath the site precluded a conclusion that this site was adequate. County R. 1387-1423, 1455, 1623-26, 1647 & 1703-04.

In all, four Rockford witnesses testified that the location was favorable for landfill siting: Robert M. Robinson, County R. 144, 151, 204 & 365-66; Clarence D. Beatty, County R. 125; William T. Shefchik, County R. 611 & 668; and Roberta L. Jennings, County R. 873. One Rockford witness, Dr. Richard Berg, somewhat equivocally testified that the site was somewhat better than one would expect in Winnebago County. County R. 1216. Five witnesses testified the site was not proven acceptable or was unacceptable for landfill siting: Dr. Musa Qutub, County R. 1861 & 1867-68; Dr. Douglas A. Block, County R. 1491 & 1503-04; Pieter Braam, County R. 1421; Dr. Yaron M. Sternberg, County R. 1653-54; and Dean W. Ekberg, County R. 1724.

Additional evidence in the record supporting this conclusion relates to the landfill design. The proposed landfill had an inward-gradient design with a gravel surcharge layer beneath its liner. The gravel surcharge layer renders this a novel design which has not been used elsewhere to date. County R. 1717-18, 1768, 1771-73, 1797, 2163, 2210 & 2212. Dr. Sternberg and Dean Ekberg felt there was a possibility of failure and a continuing need to pump water into the surcharge layer in perpetuity to avoid groundwater contamination. County R. 1634-39 & 1718-19. There was further an issue raised in the record whether prior landfills with the inward-gradient aspect of this design had failed and contaminated groundwater. County R. 903-08. This evidence would tend to at least raise questions whether the design was appropriate, and would tend to highlight any concerns over the adequacy of the proposed location.

Rockford has not proven the decision of the Winnebago County Board is against the manifest weight of the evidence.

In summary, the Board affirms the June 9, 1988 Winnebago County denial of landfill siting. That decision was timely and the result of a fundamentally fair process. Rockford has not shown that Winnebago County's determination that the proposed landfill is not so sited, designed, and proposed to be operated in such a manner that is protective of human health, safety and welfare is against the manifest weight of the evidence.

The Board notes its concern with a portion of the recent decision of the Second District in Waste Management of Illinois

v. The Pollution Control Board and Lake County Board, No. 2-88-0212, Slip Opinion (November 7,1988). A portion of that decision states that this Board must enunciate a review of each challenged statutory criterion in a proceeding such as this one. The Slip Opinion was received by this Board less than five working days prior to this decision date; thus, its impact on the deliberation of this case has been minimal. Further, the Board must state that it respectfully disagrees with the Second District on this issue, and will urgently pursue modification through all available avenues.

The Board notes that today's opinion constitutes the forty-sixth landfill siting decision rendered by this Board. Each of those decisions represents an accommodation between two opposing forces. The first is the extremely short time frame allowed for Board decisionmaking on records that may easily run several thousand pages of transcripts (and twice that number of pages of exhibits). The second is the ability of four or more Board members to reach agreement on a particular detailed explanation of the controversial and complex issues. The Board has historically felt that the obligation to provide "Orders and determinations," Ill. Rev. Stat. ch. 111 1/2, par. 1040.1(a) (1988), in these proceedings includes a duty to provide an explanation of the facts and law upon which this Board relied in reaching its decision.

Almost all of the landfill siting decisions which are appealed to this Board simply list which criteria the applicant has met or not met. Those decisions seldom explain how or why the lower body decided any of the criteria, nor do they exlain upon which facts reliance was placed. The courts have specifically approved decisions that simply inform the applicant which criteria have been met or not met.* The first articulation

* As stated by the Second District and upheld by the Supreme Court:

> [N]othing 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. The assertion that the county board's opinion must state from which of the criteria the conditions flow finds no basis in the statute. continued

to this Board of the "why and how" generally appears in the closing briefs, frequently less than 30 days prior to the statutory deadline for decision. At that point for the first time the petitioner may explain the facts and law upon which it relies to argue that the decision below is incorrect. In reply, for the first time, the respondent may provide facts and law to support the propriety of the decision below. Some of these after-the-fact rationalizations leave much to be desired in both quality and detail.

This Board has preferred to explain the why and how of its decision at the time that decision is rendered. But it must do so only to the extent that time and circumstances allow, and only to the extent that a majority of the Board can agree on the "why and how". This Board could easily take a roll call vote on each contested criterion, and provide an order affirming or reversing the decision below. However, that process would not provide an explanation of why the Board felt that any specific criterion's decision was correct or incorrect. The resulting one page orders would "deny the parties, and the reviewing court, the benefit of the PCB's expertise." (Waste Management, slip op. at 13).

Today's Opinion represents a rationale upon which a majority of the Board's members agree. The Board would hope that the parties and the reviewing courts would benefit more from these explanations than they would from another roll call vote without explanation.

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

ORDER

The June 9, 1988 decision of the Winnebago County Board denying landfill siting approval to the City of Rockford is affirmed.

IT IS SO ORDERED

Board Members Joan Anderson and J. Theodore Meyer dissented.

E & E Hauling, Inc. v. PCB, 116 Ill. App. 3d 586, 616, 451 N.E.2d 555, 577-78 (2d Dist. 1983), aff'd, 107 Ill. 2d 33, 481 N.E.2d 664 (1985).

(quoted in Waste Management of Illinois v. McHenry County Board, No. PCB 88-39, slip op. at 4 (Aug. 4, 1988)).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of November, 1988, by a vote of 5-2.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board