

ILLINOIS POLLUTION CONTROL BOARD
January 8, 1998

SIERRA CLUB and JIM BENSMAN,)	
)	
Petitioner,)	
)	PCB 98-43
v.)	(Pollution Control Facility Siting Appeal)
)	
CITY OF WOOD RIVER and NORTON)	
ENVIRONMENTAL,)	
)	
Respondent.)	

MR. ROBERT D. LARSON APPEARED ON BEHALF OF THE SIERRA CLUB;

MR. JAMES BENSMAN APPEARED PRO SE;

MS. CHRISTINE G. ZEMAN OF HODGE AND DWYER APPEARED ON BEHALF OF THE CITY OF WOOD RIVER;

MR. GLENN C. SECHEN OF SCHAIN, FIRSEL & BURNEY, LDT, APPEARED ON BEHALF OF NORTON ENVIRONMENTAL.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on an appeal filed pursuant to Section 40.1(b) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/40.1(b) (1996)) on September 22, 1997, by Jim Bensman. Mr. Bensman appeals the August 18, 1997, decision of the City of Wood River (City) granting local siting approval to Norton Environmental for a pollution control facility located in Madison County.¹ By order of November 6, 1997, the Board struck paragraphs 2, 8, 9, 10, 11, 12 and 13 of Mr. Bensman's petition for review. Sierra Club and Jim Bensman v. City of Wood River and Norton Environmental (November 6, 1997), PCB 98-43. Mr. Bensman's remaining petition challenges criteria i, ii, iii, and viii of Section 39.2 of the Act (415 ILCS 5/39.2(a)(i), (ii), (iii), and (viii) (1996)).

On October 30, 1997, Mr. Robert Larson, an attorney on behalf of the Sierra Club filed an appearance and amended petition for review. The Sierra Club filed the petition on its own behalf, not on behalf of Mr. Bensman. The Sierra Club challenges all of the criteria in Section 39.2(a) of the Act (415 ILCS 5/39.2(a) (1996)). The Board accepted the Sierra Club's amended petition for review by order of November 6, 1997. Sierra Club and Jim Bensman v.

¹ Specifically, the facility is a Central Processing Facility comprised of a mixed waste processing building and composting area; designed to process recyclables, provide landscape waste compost and processing capacity, and recover energy. C. at 00017.

City of Wood River and Norton Environmental (November 6, 1997), PCB 98-43. These petitions have been treated as consolidated matters.

PROCEDURAL HISTORY

A public hearing on this matter was held on December 2, 1997 in Wood River, Illinois. On November 5, 1997 Mr. Bensman and the Sierra Club filed initial siting criteria briefs.² On December 1, 1997, Norton Environmental filed a response brief. On December 4, 1997 the City of Wood River filed its brief. The City joined in the facts and arguments as presented by Norton Environmental in Norton's response brief.

The four briefs cited above were the only briefs allowed pursuant to the hearing officers' orders. Specifically, in a hearing officer order docketed at the Board's office on December 8, 1997, the hearing officer reaffirmed a October 8, 1997 hearing officer order, which stated, among other things, that supplemental briefs will "only be allowed to the extent evidence is presented on the issue of fundamental fairness." Evidence of fundamental fairness was not raised by the petitioners in the petitions or at hearing.

On December 4, 1997, Norton Environmental filed a motion for leave to file a supplemental brief. The Board hereby denies Norton Environmental's motion to file a supplemental brief.³ On December 9, 1997, Mr. Bensman filed a request for leave to file a reply brief, along with the reply brief, and opposition to Norton Environmental's motion for leave to file a supplemental brief/response. The Board hereby denies Mr. Bensman's request for leave to file a reply brief. On December 12, 1997, Norton Environmental filed an objection to Mr. Bensman's motion for leave to file. This motion is moot considering the Board has herein denied Mr. Bensman's motion for leave to file a reply brief, and will consequently not be considered by the Board. Finally, on December 17, 1997, Mr. Bensman filed a response to Norton Environmental's motion to strike and motion for sanctions against Norton Environmental. The Board likewise finds Mr. Bensman's motion to strike moot, and hereby denies his request for sanctions against Norton Environmental.

STATUTORY CRITERIA

At the local level, the siting process is governed by Section 39.2 of the Act. 415 ILCS 5/39.2 (1996). Section 39.2(a) provides that local authorities are to consider as many as nine criteria when reviewing an application for siting approval. These statutory criteria are the only

² The Sierra Club's October 30, 1997 Amended Petition will be cited as "Sierra Pet. at "; the Sierra Club's November 5, 1997 Initial Siting Criteria Brief will be cited as "Sierra Br. at "; Mr. Bensman's November 5, 1997 Initial Siting Criteria Brief will be cited as "Bens Br. at "; Norton Environment's December 1, 1997 Response Brief will be cited as "Norton Br. at "; and the City of Wood River's December 4, 1997 Responsive Brief will be cited as "City Br. at ".

³ The Board notes that the hearing officer previously denied Mr. Bensman's second request for schedule modification and Sierra Club's motion for leave to file a reply brief.

issues which can be considered when ruling on an application for siting approval. Only if the local body finds that all applicable criteria have been met by the applicant can siting approval be granted. In establishing each of the criteria, the applicant's burden of proof before the local authority is the preponderance of the evidence standard. Industrial Salvage v. County of Marion (August 2, 1984), PCB 83-173.

The City of Wood River found that Norton Environmental met its burden on all the criteria and granted siting approval on August 18, 1997. C. at 01928.

Section 39.2(a) of the Act sets forth the nine criteria as follows:

- i. the facility is necessary to accommodate the waste needs of the area it is intended to serve;
- ii. the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- iii. the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;
- iv. the facility is located outside the boundary of the 100-year flood plain or the site is flood proofed;
- v. the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;
- vi. the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
- vii. if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
- viii. if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; and
- ix. if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

415 ILCS 5/39.2(a) (1996).

On August 18, 1997 the City enacted an ordinance finding that applicable siting criteria from Section 39.2 of the Act had been satisfied, and approving the facility's siting application.

When reviewing a local decision based on the above nine criteria, the Board must determine whether the local decision is against the manifest weight of the evidence. McLean County Disposal, Inc. v. County of McLean, 207 Ill.App.3d 352, 566 N.E.2d 26, 29 (4th Dist. 1991); Fairview Area Citizens Taskforce v. IPCB, 144 Ill.Dec. 659, 555 N.E.2d 1184 (3d Dist. 1990); Waste Management of Illinois, Inc. v. Pollution Control Board, 160 Ill.App.3d 434, 513 N.E.2d 592 (2d Dist. 1987). A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. Harris v. Day, 115 Ill.App.3d 762, 451 N.E.2d 262, 265 (4th Dist. 1983).

CRITERIA

Criterion i. Section 39.2(a)(i) provides that a local decisionmaker must determine whether the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. 415 ILCS 5/39.2(a)(i) (1996).

The applicant is not required to show absolute necessity in order to satisfy criterion i. Fairview Area Citizens Taskforce v. PCB, 555 N.E.2d at 1185, citing Tate v. Macon County Board, 544 N.E.2d 1176; Clutts v. Beasley, 185 Ill.App.3d 543, 541 N.E.2d 844, 846 (5th Dist. 1989); A.R.F. Landfill, Inc. v. PCB, 174 Ill.App.3d 82, 528 N.E.2d 390, 396 (2d Dist. 1988); Waste Management of Illinois v. PCB, 122 Ill.App.3d 639, 461 N.E.2d 542, 546 (3d Dist. 1984). The Third District has construed "necessary" as connoting a "degree of requirement or essentiality" and not just "reasonably convenient". Waste Management of Illinois v. PCB, 461 N.E.2d at 546. The Second District adopted this construction of "necessary" with the additional requirement that the applicant demonstrate both an urgent need for, and the reasonable convenience of, the new facility. Waste Management of Illinois v. PCB, 530 N.E.2d 682, 689 (2d Dist. 1988); A.R.F. Landfill, Inc. v. PCB, 528 N.E.2d at 396; Waste Management of Illinois v. PCB, 463 N.E.2d 969, 976 (2d Dist. 1984).

The Sierra Club alleges that the City erred in finding the facility was necessary to accommodate the waste needs of the area it was intended to serve because the City ignored the testimony of Mr. Richard Worthen, member of the Madison County Board, and Chairman of the Madison County Board's Environmental Committee. Sierra Pet. at 2.

Mr. Bensman claims that the facility is not needed in the area for several reasons including: (1) Madison County already exceeds the state mandated 25% recycling requirement and the facility alone cannot meet that requirement, (2) Norton Environmental is mistaken as to Madison County's recycling goal, the goal is 25% and not 50%, as confirmed by Mr. Worthen's testimony; the County has a 50% diversion goal, not recycling goal, (3) Norton Environmental did not acquire the relevant records from Madison County, but instead performed only phone surveys to obtain data, and (4) the proposed facility is not a back-up to

curbside recycling, but instead a replacement for the curbside recycling program. Bensman Br. at 2-15.

Furthermore, Mr. Bensman argues that the City incorrectly found that the testimony of Mr. Worthen evidenced bias and was not credible. Bensman Br. at 3, 15. He argues that Mr. Worthen was testifying in his official capacity and there is a “presumption that administrative officials are objective and capable of fairly judging a particular controversy.” Bensman Br. at 3.

Norton Environmental’s witness, Mr. Walter Willis, a former member of the Solid Waste Management Section of the Illinois Environmental Protection Agency (IEPA) and a senior planner with Engineering Solutions (R. at 00154), testified at the City’s hearing as an expert on the need criterion. R. at 00155. Mr. Willis’ study on need considered population growth of the County, current solid waste capacity, solid waste generation, collection and management, among other things. R. at 00157-00158, 00168-00169, 00185-00187. Mr. Willis testified as to expected increases in the amount of waste to be imported into the area, and the fact that existing landfills will be closing. R. at 00158, 00161. He testified that there is only one main material recovery facility, Laidlaw/Allied in Roxana, Illinois which charges a tipping fee. R. at 00158. According to Mr. Willis, Laidlaw has a capacity of processing 50 tons/day, where the County’s current need is between 170 and 190 ton/day. As a result, the County is not self-sufficient in processing capacity and the majority of the recycled material is going outside the county at “considerable transportation costs”. R. at 00158.

Norton Environmental argues that Madison County does indeed have a 50% diversion rate consistent with the Solid Waste Hierarchy (Solid Waste Planning and Recycling Act), which was adopted by the full County Board, including Mr. Worthen. C. at 00844-00855. Norton Environmental does not argue that the 50% diversion is in the Madison County Solid Waste Management Plan (Final Preferred Waste Management System Plan, St. Claire, Madison, and Monroe Counties, Illinois, January 1991)⁴ (C. at 00841). Instead, Norton Environmental argues that the County identified a need, or a goal, for 50% diversion, which supports the need for its facility. Norton Br. at 11-12.

The City had the opportunity to receive and hear from Mr. Worthen, on behalf of Mr. Bensman, and Mr. Willis, on behalf of Norton Environmental. The City apparently found the expert testimony of Mr. Willis to be persuasive, over the testimony of Mr. Worthen, a County Board member. The Board on review is not to reweigh the evidence. Where there is conflicting evidence, the Board is not free to reverse merely because the lower tribunal credits one group of witnesses and does not credit the other. File v. D&L Landfill, Inc., 219 Ill.App.3d 897, 579 N.E.2d 1228 (5th Dist. 1991); Fairview Area Citizens Taskforce v. Pollution Control Board, 198 Ill.App.3d 541, 555 N.E.2d 1178, 1184 (3d Dist. 1990); Tate v. Pollution Control Board, 188 Ill.App.3d 79, 544 N.E.2d 1176, 1195 (4th Dist. 1989); Waste Management of Illinois, Inc. v. Pollution Control Board, 187 Ill. App.3d 79, 543 N.E.2d 505,

⁴ Update to Waste Management Plan, Madison County Solid Waste Plan, Five Year Update, dated March 1, 1996. C. at 01365.

507 (2d Dist. 1989). Simply because the local government could have drawn different inferences and conclusions from conflicting testimony is not a basis for the Board to reverse their findings. File v. D&L Landfill, Inc., PCB 90-94 (August 30, 1990), aff'd File v. D&L Landfill, Inc., (5th Dist. 1991), 219 Ill.App.3d 897, 579 N.E.2d 1228. There is no evidence in the record that the lack of credibility given to Mr. Worthen is against the manifest weight of the evidence. This Board's position is that the City was justified to credit the studies and reports put forward by Mr. Willis and therefore finds Norton Environmental met criterion i of Section 39.2(a).

Criterion ii. Section 39.2(a)(ii) provides that the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. 415 ILCS 5/39.2(a)(ii) (1996).

The Sierra Club claims that the record does not support the City's finding of criterion ii, and the 19 conditions associated with criterion ii render the "entire plan and finding vague and uncertain; and, in fact, permit Norton Environmental to proceed with designing, constructing, and operating without the City establishing standards or performance levels to measure the applicant's conduct." Sierra Pet. at 3. Mr. Bensman argues that Norton Environmental provided insufficient evidence, and did not present any witnesses with medical or public health expertise relating to the public health, safety, and welfare of the workers conditions. Bensman Br. at 16. He points to a video tape played at the City's hearing which showed workers at another Norton facility working in short sleeves and with their sleeves rolled up, as evidence of Norton Environmental's disregard for worker safety in other facilities.

Norton Environmental argues that the proposed facility will be operated similarly to its central processing facility in Medina County, Ohio, where they have never had a fire or spill, where litter is not a problem, and there is no safe harbor for vectors. R. at 00770, 00772. In addition, at Medina unauthorized or hazardous material is segregated and taken off-site. Norton Environmental claims that safety is number one at their facility and have included their safety plan in the application. C. at Appendix Q. According to Mr. Steven Vinny, Norton Environmental's President in charge of operations at Medina, Norton Environmental trains employees as to proper clothing, where they should walk in the facility, use of equipment, mechanical stops, lockout-tagout, and materials safety data sheets. R. at 00771. Norton attached to its application an Injury and Illness Prevention Program (C. at 00471-00483); a General Code of Safe Work Practice (C. at 00483-00504); a Responsible Safety Officer guide (C. at 00505-00509); as well as additional safety guidelines.

Another witness put on by Norton Environmental, Mr. Devin Moose, Director of Engineering Solutions, and a licensed professional engineer, testified at the City hearing that "[t]he facility is designed, located and proposed to be operated so that the public health, safety and welfare is protected." R. at 00642. He based his conclusion on, among other things, that the building is a state of the art design. R. at 00642.

Upon review of the entire record, the Board finds that the City's decision that Norton Environmental satisfied criterion ii was not against the manifest weight of the evidence. There is ample testimony from Norton Environmental's experts, Mr. Vinny and Mr. Moose, regarding the safety record of Norton Environmental's operations at Medina, along with their opinion of the safety of the instant facility, to supplement the safety plan included in the application. There is insufficient evidence for the Board to overturn the City's decision on criterion ii based upon one video from another facility.

Criterion iii. Section 39.2(a)(iii) provides that the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. 415 ILCS 5/39.2(a)(iii) (1996).

The Sierra Club argues that the evidence supporting criterion iii was insufficient because the City ignored the facilities location adjacent to and not at an intersection on a 4-lane divided highway near Mississippi River tourist attractions. Those attractions include wetlands with egrets, herons, bald eagles, and wild turkeys. Sierra Pet. at 3.

Mr. Bensman agreed and argued further that Norton Environmental did not meet criterion iii because it did not address the impact on other business in the industrial park of having garbage trucks driving down the roads. Bensman Br. at 18. Mr. Bensman claims that Norton Environmental's traffic study did not address the impact their garbage trucks would have on the value of the surrounding land, and none of Norton Environmental's witnesses stated that there would be no impact on the value.

Norton Environmental's witness, Mr. Paul Lauschke, a civil engineer who is also the president of a real estate business, testified at the City's hearing that the facility is located to minimize incompatibility with the character of the surrounding area and minimize the effect on the value of surrounding property. R. at 00882. He described the businesses in the area, which include a fertilizer plant where American Oil Company moves oil on and off of barges; Maple Island which handles barges with coal, grain, and oil; the Illinois Power coal-burning electric plant on the west; a large fly ash lake; Olin-Mathieson's brass mill; a small hotel; and a few commercial uses, including a trucking company and tavern. R. at 00882-00883. He depicted the area as "the epicenter of probably the densest manufacturing and industrial zoning between here and Chicago." R. at 00883. Furthermore on cross-examination by Mr. Bensman, Mr. Lauschke stated that in his opinion the property values would not go down if the facility is built. R. at 00886.

Upon review of the exhibits and the testimony presented at the City's hearing, the Board finds that it is not against the manifest weight of the evidence to find that the facility is sited in accordance with Section 39.2(a)(iii). The surrounding area is clearly zoned, and in fact used, for heavy industrial purposes.

Criterion iv. Section 39.2(a)(iv) provides that the facility must be located outside the boundary of the 100-year flood plain or shown that the site is flood-proofed. 415 ILCS 5/39.2(a)(iv) (1996).

The Sierra Club claims there was insufficient evidence to show that the facility is located outside the boundary of the 100-year Flood Plain or is flood-proofed because the City ignored the Illinois Department of Transportation's earlier determination that "the adjacent Berm Highway was off limits to trucks due to the Mississippi River flood water affecting the nature of the levy and the compaction of the Berm." Sierra Pet. at 3.

The Sierra Club has not provided any evidence in the record to show that the City ignored the Illinois Department of Transportation's report on the adjacent Berm Highway. The City could have considered the report and found that it was not persuasive in determining flood plain location. This lack of evidence on the part of the Sierra Club contradicts the evidence presented at the City's hearing by Norton Environmental's witness, Mr. Moose. Mr. Moose clearly stated that the proposed site "is not located within the 100-year floodplain". R. at 00643. Mr. Moose based his opinion on maps from the Federal Emergency Management Agency (FEMA) and correspondence with the State Department of Water Resources. R. at 00643. Furthermore, another Norton Environmental witness, Mr. Daniel Goodwin, environmental engineer and president of a consulting engineering firm, testified that initially he had concerns with satisfying this criterion, but now agrees that it is outside the 100-year floodplain. R. at 00937. The Board can not reverse the City where the only evidence presented is a showing that criterion iv of Section 39.2(a) is satisfied.

Criterion v. Section 39.2(a)(v) requires the plan of operations for the facility to be designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. 415 ILCS 5/39.2(a) (1996).

The Sierra Club alleges that there was insufficient evidence to show that the plan of operations was designed to minimize the danger to the surrounding area from fire, spills, and other operational accidents as required in criterion v. The Sierra Club argues that the City added conditions because fundamental issues were not addressed or incorporated in Norton Environmental's plan or proof. Sierra Pet. at 4. However the Sierra Club neither specifically addresses what those fundamental issues are, nor does the Sierra Club direct the Board to support in the record which would demonstrate that those issues remain outstanding. The Board cannot determine if there is a prohibition or limitation on the City's ability to place certain conditions on a siting acceptance when we do not know what conditions the Sierra Club is contesting. In fact, conditions are quite commonplace. Since the City imposed conditions to protect the health and safety of the community, the Board will not strike those conditions without any evidence. Also the Board finds no support in the record that the city adopted the conditions as a substitution for satisfying all the necessary criteria in Section 39.2(a) of the Act.

Criterion vi. Section 39.2(a)(vi) requires the traffic patterns to or from the facility to be so designed as to minimize the impact on existing traffic flows. 415 ILCS 5/39.2(a)(vi) (1996).

The Sierra Club alleges that criterion vi was not met because the City ignored testimony showing that the site was adjacent to a 4-lane highway which is a major by-pass for much of the City of Alton and Wood River, and that the Illinois Department of Transportation has in the past prevented trucks from traversing the Berm Highway due to Mississippi River flood water. Sierra Pet. at 4.

The Board cannot overturn the decision of the City unless the opposite result is clear, evident, plain or indisputable from reviewing the evidence. (File v. D&L Landfill, Inc. (5th Dist. 1991), 219 Ill.App.3d 897, 579 N.E.2d 1228.) It is not clear or indisputable that the facility must be relocated to be designed to minimize the impact on existing traffic flows. As a starting point, there are three entrances into the facility, from Dubois Trail, Enviorway Parkway and the north end. R. at 00627. The Sierra Club has not elaborated on their claim as regards any of the entrances. According to the testimony of Mr. Moose, the different entrances are designed for different purposes, including the packer trucks, resident drop-offs, parking, and municipal solid waste. R. at 00627-00628. The City was given maps of the traffic flow, in addition to hearing Norton Environmental's witnesses, there is no indication the City did not understand or underestimated the anticipated increase in traffic. The Board believes there is sufficient evidence in the record to show that the City could find traffic patterns are designed to minimize the impact on the surrounding area.

Criterion vii. Section 39.2(a)(vii) requires that if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release. 415 ILCS 5/39.2(a)(vii) (1996).

The Sierra Club believes that as a matter of law, criterion vii cannot be satisfied by imposing a condition that Norton Environmental maintain contracts with haulers and provide copies of such contracts to the City. The Board finds this bald assertion without further evidence in the record is simply insufficient to challenge the City's finding on criterion vii. Norton Environmental has included testimony in the record by Mr. Moose which directly refutes the Sierra Club's argument, he states that "[t]here's no plan to accept, treat, store hazardous waste. It's not in the operating plan. It will not occur. It's not in the operating plan." R. at 00644.

Criterion viii Section 39.2(a)(viii) requires that if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan. 415 ILCS 5/39.2(a)(viii) (1996).

The Sierra Club argues the City completely ignored the Madison County Solid Waste Ordinances in effect at the time, in opposition to the testimony of Madison County Board Member Mr. Worthen. Furthermore, the Sierra Club asserts both the City and Norton Environmental ignored the testimony regarding the existence of the County Plan and the percentage of reduction in the waste flow. Sierra Pet. at 4-5.

Mr. Bensman argues the fact that the County repeatedly rejected this type of facility in favor of curbside recycling clearly shows that the facility is not within the County's waste management plan. Mr. Bensman cites to debate within the County Board where Mr. Worthen explained the Environmental Committee's recommendation that the County continue clean curbside recycling. Bensman Br. at 19. According to Mr. Bensman, the clear intent of the plan is for curbside recycling and the proposed facility is "the antithesis of the County's Plan." Bensman Br. at 21. He stresses that the "entire" facility must be consistent with the County's Plan, not just part of it, specifically the part that agrees to accept source separated recyclables.

Mr. Walter Willis researched and testified on behalf of Norton Environmental regarding the facility's compatibility with the County's 1991 Waste Plan and the five-year plan update. R. at 00174-00186 He found that the proposed facility can help expand the focus on recycling. R. at 00182. The facility will also aid the Waste Plan because it will provide additional processing capacity, competition to bring the prices low and most importantly, result in potentially a 64% diversion from the landfill, which is "the main goal of any county plan" to move up the hierarchy and find ways to reduce reliance on landfilling. R. at 00186. Mr. Goodwin also testified that he had no concerns that the facility was consistent with the County Plan and the five-year update. R. at 00938.

As explained above, the Board must review the evidence using the manifest weight of the evidence standard. The Board has found in the past, that there is no requirement in Section 39.2(a) that the county plan be followed to the letter. City of Geneva v. Waste Management, PCB 94-58 (July 21, 1994). The City heard the testimony of Mr. Worthen, along with the opposing testimony, and found in favor of Norton Environmental's witnesses. Although Mr. Worthen was a County Board member, he was only one of almost 30 members. The Board finds the record does not indicate that the City's decision to credit Norton Environmental's witnesses over Mr. Worthen was not warranted, or that a different conclusion was clearly evident.

Criterion ix. Section 39.2(a)(ix) requires that if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

The Sierra Club believes that the following condition, imposed by the City, is an impermissible delegation of authority without reference to statute, IEPA, or application. Sierra Pet. at 5. It states:

Norton may request a modification of any of the conditions contained herein by submitting a written request for modification to the City Manager. Such request shall be subject to the City Manager and City Council's review and approval. Written notification of the City decision shall be supplied to Norton within 60 days after receipt of the request by the City Manager.

The Sierra Club has failed to provide any evidence linking Norton Environmental's alleged failure to meet criterion ix with the condition cited above. The record indicates that two witnesses, Mr. Daniel Goodwin and Mr. Devin Moose, testified that the facility meets criterion ix. R. at 00644, 00938. In fact, Mr. Moose stated that there "are no regulated recharge areas in Madison County or the State of Illinois." R. at 00644. He contacted the IEPA and they concurred with that conclusion. R. at 00644. The Board finds that there was sufficient evidence in the record for the City to find that Norton Environmental satisfied Section 39.2(a)(ix).

CONCLUSION

The Board has carefully considered each of the arguments raised by Mr. Bensman and the Sierra Club reviewing the City's decision on §39.2(a) of the Act, and has not found the City's finding regarding these criteria to be against the manifest weight of the evidence. Therefore, the Board affirms the City of Wood River's siting approval rendered on August 18, 1997.

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

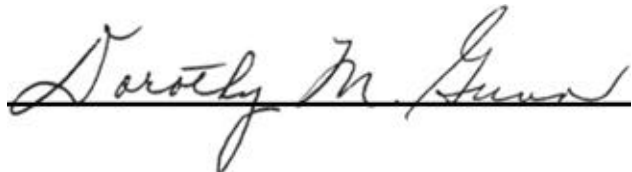
ORDER

The Board hereby affirms the City of Wood River's August 18, 1997 siting approval granted to Norton Environmental.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 8th day of January, 1998 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board