

ILLINOIS POLLUTION CONTROL BOARD
March 5, 1998

CDT LANDFILL CORPORATION,)	
)	
Petitioner,)	
)	
v.)	PCB 98-60
)	(Landfill Siting Review)
CITY OF JOLIET,)	
)	
Respondent.)	

ELIZABETH HARVEY, OF MCKENNA, STORER, ROWE, WHITE & FARRUG, AND L. PARK DAVIS AND JOHN J. KOBUS, JR., OF DAVIS, KAPLAN, DYSTRUP AND HOSTER, P.C., APPEARED ON BEHALF OF THE PETITIONER;

PERCY L. ANGELO, KEVIN DESHARNAIS, AND THOMAS W. DIMOND, OF MAYER, BROWN & PLATT, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by C. A. Manning):

On October 20, 1997, the petitioner, CDT Landfill Corporation (CDT), filed a petition for review of a local siting decision pursuant to Section 40.1 of the Illinois Environmental Protection Act (Act). 415 ILCS 5/40.1 (1996). CDT is appealing a City of Joliet (City) decision of October 7, 1997, that denied local siting approval to CDT for an expansion of its landfill located on Mound Road, Joliet, Will County, Illinois. The City determined that CDT failed to meet criteria (i), (ii), (iii), (vi), and (viii) of Section 39.2 of the Act. 415 ILCS 5/39.2 (1996). On appeal, CDT contends that the City's denial of siting approval is against the manifest weight of the evidence. CDT does not challenge jurisdiction or fundamental fairness in this appeal. For the reasons that follow, the Board affirms the City's decision to deny CDT local siting approval.

BACKGROUND

On April 16, 1997, CDT filed an application for expansion of its landfill with the City of Joliet. See C1-C2681.¹ The application seeks to expand the landfill vertically and laterally. C3117. The City held a hearing in this matter on July 29, 1997 (C3102-C3387), and on October 7, 1997, the City voted to deny siting approval for the expansion. C3096; C3071-C3072. CDT filed a petition for review of the City's decision before the Board on October 20, 1997. A public hearing before Board Hearing Officer Deborah Feinen was held on

¹ References to the record before the City of Joliet will be cited as "C_." References to the transcript of the Board's hearing in this matter will be cited as "Tr. at ___." References to CDT's post-hearing brief will be cited as "Pet. Br." References to the City's brief will be cited as "Resp. Br." References to CDT's reply brief will be cited as "Reply Br."

December 19, 1997. No evidence was presented at the Board's hearing. Tr. at 5. Post hearing briefs were filed by both parties. CDT filed a reply brief, and the City filed a surreply.

On appeal, CDT challenges the siting decision on one ground; that the City's decision was against the manifest weight of the evidence on Section 39.2 criteria (i), (ii), (iii), (vi), and (viii). Pet. Br. at 1. After addressing the outstanding pleadings, the Board will address each criterion separately.

PRELIMINARY MATTERS

Before the Board are respondent's January 12, 1998, motion to review hearing officer ruling; petitioner's January 20, 1998, motion to review hearing officer ruling, and response to the City of Joliet's motion to review hearing officer's ruling; respondent's January 12, 1998, clarification and limited surreply, accompanied by a motion for leave to file; respondent's January 27, 1998, response to CDT's motion to review hearing officer ruling; petitioner's January 29, 1998, response in opposition to the City's motion for leave to file a clarification and limited surreply; petitioner's motion for supplementation of the record filed on January 30, 1998; and respondent's motion to supplement the record and for leave to file limited copies of oversized exhibits filed on February 5, 1998. The Board will deal with each of these pleadings in turn.

Hearing Officer Ruling

A number of the outstanding pleadings concern a ruling made at the December 19, 1997, hearing by Hearing Officer Feinen. The City requested that the Board take administrative notice of three group exhibits. Exhibit 1 contains photographs of certain portions of the area surrounding the CDT landfill, and an affidavit purporting to provide foundation for the photographs. Tr. at 118-123. Exhibit 2 consists of resolutions, ordinances, council minutes, and a September 30, 1997, memorandum from the Joliet city manager to the mayor and city council. Exhibit 3 contains excerpts of the March 1996 update to the Will County Solid Waste Management Plan. Hearing Officer Feinen admitted Respondent's Exhibits 2 and 3 into the record, and denied the admission of Exhibit 1. Tr. at 121.

Hearing Officer Feinen reasoned that Exhibits 2 and 3 are within the body of public knowledge the City had before it when making its decision, but that the photographs in Exhibit 1 constitute new, additional evidence not before the City at the time of decision. The Board sustains Hearing Officer Feinen's decision on this issue. The Board may take administrative notice of facts within the common knowledge of the City at the time of decision. Exhibits 2 and 3 contain such information and, accordingly, were properly admitted. However, the photographs in Exhibit 1 were not before the City at the time of decision, and, in fact, were not taken until two to three months after the decision was made. These photographs constitute additional evidence not in the record, that, if admitted for the Board's consideration, would result in a violation of Section 40.1 of the Act (415 ILCS 5/40.1 (1996)). As such, admission of Exhibit 1 was properly denied by the hearing officer. Therefore, the Board denies both

motions to review the hearing officer ruling. All arguments in the City's brief based on Exhibit 1 are stricken, and not considered by the Board.

Clarification and Surreply

On January 23, 1998, the Board received respondent's clarification and limited surreply, accompanied by a motion for leave to file. The motion for leave to file asserts that the clarification and limited surreply (surreply) corrects material errors and misstatements found in CDT's reply brief. The City acknowledges that the briefing schedule does not allow the City any opportunity to respond to petitioner's reply brief, but states that failure to allow the surreply will cause undue prejudice to the City. In its response, CDT urges the Board to deny the request. CDT does not object to the City correcting a typographical error, but objects to any additional claims or arguments beyond the correction. CDT notes that this matter had an extremely tight briefing schedule, and argues that allowing the surreply would reverse the burden of proof. CDT alleges that the surreply seeks only to remedy faults in the City's response brief.

The Board will allow the correction of the typographical error in the City's brief. The City's motion is granted to that extent. The Board denies the remainder of the City's request. The surreply is not limited to correcting misstatements and material errors. Instead, the surreply makes additional substantive arguments not necessitated by information or legal theories raised for the first time in CDT's reply brief. The Board finds that allowing the surreply would prejudice CDT. The surreply is also in violation of the briefing schedule set by the hearing officer in this matter. Thus, to the extent the surreply seeks to correct more than a typographical error, it is denied.

Supplementation of the Record

On January 30, 1998, CDT filed a motion to supplement the record. The motion requests the Board or the hearing officer to direct the City to supplement the record with oversized exhibits admitted into the record at the underlying hearing. CDT states that these oversized exhibits are not listed on the City's certificate of record, and do not appear to be included with the materials filed before the Board. On February 5, 1998, the City filed a motion to supplement the record. The City agrees to supplement the record before the Board with the oversized exhibits referred to in CDT's motion for supplementation. However, the City requests leave to file only the original, and not the three copies of each exhibit as required by the Board's November 6, 1997, order. The City's motion is granted. The Board accepts the oversized exhibits, and will not require three copies of each exhibit. The inclusion of these exhibits provides the relief requested in CDT's motion to supplement. CDT's motion is, thus, moot.

ELEMENT OF REVIEW

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 was enacted in Public Act 82-682, commonly known as SB 172, to revise the permitting system under the Act. The intent of SB 172 was to divide between

local government and the Illinois Environmental Protection Agency (Agency) decisionmaking authority formerly held by the Agency alone. It vests authority in the county board or municipal government to approve or disapprove siting for each new regional pollution control facility. These decisions may be appealed to the Board, which derives its authority to review the landfill site location decisions of local governments from Section 40.1 of the Act. The Board's scope of review encompasses three principal areas: (1) jurisdiction, (2) fundamental fairness of the county board's site approval procedures, and (3) compliance with statutory criteria for site location suitability. As noted, the only issue in this appeal involves statutory criteria.

Section 39.2 provides that local authorities are to consider as many as nine criteria when reviewing an application for siting approval. Section 39.2(g) of the Act provides that siting approval procedures, criteria, and appeal procedures provided for in Section 39.2 are the exclusive siting procedures for new pollution control facilities. But, the local siting authority may develop its own siting procedures, if those procedures are consistent with the Act and supplement, rather than supplant, those requirements. See Waste Management of Illinois v. PCB, 175 Ill. App. 3d 1023, 530 N.E.2d 682, 692-93 (2nd Dist. 1988). 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. Only if the local body finds that the applicant has proven by a preponderance of the evidence that all applicable criteria have been met can siting approval be granted.

The Board's authority when reviewing a local decision regarding the siting of a pollution control facility is well established in the Act and pertinent case law. When examining local decisions on the nine criteria found in Section 39.2(a) of the Act (415 ILCS 5/39.2(a) (1996)), 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 (4th Dist. 1991); Fairview Area Citizens Task Force v. Pollution Control Board, 198 Ill. App. 3d 541, 555 N.E.2d 1178 (3rd Dist. 1990); Waste Management of Illinois, Inc. v. Pollution Control Board, 160 Ill. App. 3d 434, 513 N.E.2d 592 (2nd 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, 769, 451 N.E.2d 262 (4th Dist. 1983). On review, the Board is not to reweigh the evidence. Where conflicting evidence exists, the Board is not free to reverse merely because the lower tribunal credits one group of witnesses and does not credit the other. Fairview Area Citizens 555 N.E.2d at 1184; Tate v. PCB, 188 Ill. App. 3d 994, 592 N.E.2d 148 (4th Dist. 1989); Waste Management of Illinois, Inc. v. PCB, 187 Ill. App. 3d 79, 543 N.E.2d 505, 507 (2nd Dist. 1989). Merely because the local government could have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the local government's findings. File v. D & L Landfill, Inc. (August 30, 1990), PCB 90-94, *aff'd*. File v. D & L Landfill, Inc., 219 Ill. App. 3d 897, 579 N.E.2d 1228 (5th Dist. 1991).

SITING CRITERIA

In the instant case, the City voted to deny siting for CDT's proposed expansion. The City determined that CDT failed to meet its burden on the following five criteria of Section 39.2(a) of the Act:

- 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;
- vi. the traffic patterns to or from the facility are so designed as to minimize the impact on exiting traffic flows.
- 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 the plan;

Before each individual criterion is analyzed, a number of general arguments that apply to all criteria are made. The Board will first address these arguments.

Staff Recommendation

CDT notes that the City's own staff and its environmental consultant recommended approval of the siting application. Pet. Br. at 7-8. CDT states that a September 16, 1997, memorandum to the mayor and the city council concluded that CDT had presented unrefuted expert testimony establishing that its proposed expansion of the landfill satisfies all nine criteria set forth in Section 39.2(a). C3066. The staff members recommending approval include the city manager, the deputy city manager, the corporation counsel, the director of community and economic development, and the director of public works and utilities. Pet. Br. at 8. CDT states that the staff reiterated those findings at meetings on September 29, 1997, and on October 6, 1997. Pet. Br. at 8. CDT asserts that the City's environmental consultant determined that the City should support the planned expansion by CDT. Pet. Br. at 8; C2900-2902. CDT also observes that the Will County Board passed a resolution supporting the proposed expansion. Pet. Br. at 11. These recommendations indicate, CDT argues, that the City's decision is against the manifest weight of the evidence.

The Board notes that the decisionmaking authority rests solely with the local government. A local government's consultant report or a staff recommendation is not binding on the decisionmaker. Hediger v. D & L Landfill, Inc. (December 20, 1990), PCB 90-163

citing McLean County Disposal Company, Inc. v. County of McLean (November 15, 1989), PCB 89-108. The testimony of the City's staff and environmental consultant is, however, part of the underlying record before the City at the time of decision. The Board will consider the testimony of the City's staff and consultant to that extent.

Public Comments

A number of public comments for and against expansion of the CDT Landfill were accepted at the local level. The City argues that the public comments submitted by impacted businesses and citizens from the surrounding community provide a basis for concluding that the statutory criteria were not satisfied. Resp. Br. at 7. The City argues that it is appropriate for the local body to consider information submitted in public comments when making its determinations on the siting criteria, and that the local body determines the appropriate weight to be given to those comments. CDT agrees that the siting process properly includes the submission of comments from the public, but feels that conclusory public comments, especially when submitted with no opportunity for cross-examination, cannot be found to rebut expert testimony and evidence. Reply Br. at 6.

The Board finds that consideration of public comments during the siting process is appropriate. However, public comments are not entitled to the same weight as expert testimony submitted under oath and subject to cross-examination. Public comments receive a lesser weight. City of Geneva v. Waste Management Inc. (July 21, 1994), PCB 94-58; Browning Ferris Industries v. Lake County Board of Supervisors (December 2, 1982), PCB 82-101. The public comments submitted by impacted businesses and citizens from the surrounding community are evidence in the record properly considered by the local body in making its decision on the siting criteria. But, these public comments are entitled to less weight than is sworn testimony subject to cross-examination. The Board will assess public comments in this light when deciding whether or not the City's decision is against the manifest weight of the evidence.

Evidence not in the Record

An issue of what constitutes evidence properly reviewed by the Board has been raised. In its brief, the City asserts that petitioner's application contains substantial flaws in its analyses of certain criteria. Resp. Br. at 8. The City maintains that the contradictions in CDT's testimony and evidence coupled with the evidence in the comments from businesses and citizens provided sufficient basis for the City to conclude that the siting criteria were not satisfied. Resp. Br. at 7. The City identifies alleged flaws and shortcomings in CDT's application and evidence at the underlying hearing. CDT argues that the City is attempting to introduce new evidence into the record. CDT contends that many of the arguments in the City's brief are conclusions amounting to new evidence that may have been appropriate for a witness to present at the local level, but are inappropriate on appeal before the Board. Reply Br. at 2.

Section 40.1(a) of the Act clearly states what evidence the Board may and may not review during a local siting appeal. Section 40.1(a) provides in part:

No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the appropriate county board or governing body of the municipality shall be heard by the Board.

The Board is cognizant that its review of a local siting decision is limited to the evidence contained in the record before the underlying local body. It is proper for the City to make arguments based on the underlying record, even if those arguments were not raised during the local process. However, no new evidence may be introduced. As noted, the Board must affirm the underlying decision unless a review of the evidence yields an opposite result that is clearly evident, plain, or indisputable. Harris, 115 Ill. App. 3d at 769. In reviewing the City's decision, the Board will not consider any evidence not before the local body, nor will it consider arguments that assume evidence not within the underlying record.

Criterion (i) The facility is necessary to accommodate the waste needs of the area it is intended to serve.

With respect to this criterion, CDT argues that it presented expert testimony supported by a comprehensive report on the waste needs of the service area. CDT states that this evidence was independently confirmed by the County of Will. CDT asserts that no contrary evidence was offered at the hearing or during the public comment period, and that the only evidence presented on this criterion is testimony and documentation showing that the facility is necessary. Pet. Br. at 16.

At the underlying hearing, CDT presented the testimony of Lee William Smith, Senior Planning Consultant of Rolf C. Campbell & Associates (RCCA). Mr. Smith was found by the hearing officer to be a qualified expert witness. Pet. Br. at 12; C3131. RCCA conducted a study which analyzed the disposal capacity in the service area. C113-C153. RCCA concluded that, based upon waste generation and a comparison of existing diversion and disposal rates with the remaining available disposal capacity, the service area does not presently have sufficient capacity to meet its waste disposal needs. Pet. Br. at 13. The RCCA study concluded that Will County will reach full capacity in 2.9 years. C137-C138. RCCA also found that a disposal capacity deficit exists every year from 1997 until 2020. C148. Mr. Smith testified that the proposed expansion is necessary to accommodate the waste needs of the area it is intended to serve. C3167.

CDT notes that the RCCA study and the testimony of Mr. Smith are buttressed by the evidence supplied by Dean Olson, Waste Service Director of Will County. Mr. Olson indicated by letter that there is a need for the expansion of CDT Landfill. Pet. Br. at 15. Mr. Olson states in his letter that the need for landfill capacity in Will County exists for both the long and short term. C2702; Pet. Br. at 16.

The City argues that CDT did not prove the facility is needed to serve its intended area. The City states that CDT's expert testimony was based on a study containing several fundamental flaws which undermine the validity of its conclusions, and which indicate that the expansion is not necessary. Resp. Br. at 11. The City identifies a number of purported flaws

which, it argues, justify the City's decision that CDT failed to carry its burden of demonstrating a need for the proposed expansion.

Specifically, the City claims that the RCCA report analyzes the disposal needs for the Will County Service Area (WCSA) until the year 2020 despite the fact that the proposed expansion to the CDT landfill is intended to operate for only a period of seven to eight years. Resp. Br. at 12. The City feels that by analyzing this extended time frame, the RCCA report overstates the need for disposal capacity.

In response, CDT notes that the RCCA report includes a table which details disposal capacity deficits for each year of the life of the proposed expansion. Reply Br. at 9; C147. CDT also highlights that RCCA concluded that a need for the facility exists within the lifetime of the facility.

The City next argues that CDT improperly redefined the proposed service area for the landfill. The City notes that CDT redefined its service area to coincide with the service area set forth in the Will County Plan, and thus significantly expanded its service area by adding large municipalities such as Aurora, Naperville, Bolingbrook, Park Forest, and Tinley Park. Resp. Br. at 13. The City maintains that this represents a significant overstatement of need.

CDT states that the City is ignoring case law that clearly indicates it is the applicant's right to define the service area. CDT cites Metropolitan Waste Systems, Inc. v. Illinois Pollution Control Board, 201 Ill. App. 3d 51, 558 N.E.2d 785 (3rd Dist. 1990).

Next, the City asserts that CDT failed to properly consider existing and planned alternative available disposal capacity. The City argues that such omissions represent fundamental flaws in CDT's analysis. Primarily, the City contends that CDT did not consider the effects of the proposed Joliet Arsenal Landfill (Arsenal Landfill) on the disposal capacity needs for the WCSA. Resp. Br. at 14. It maintains that the Arsenal Landfill represents the cornerstone of the Will County Plan to meet its long-term waste needs, and that the City could have reasonably considered the development of the Arsenal Landfill in assessing the need for proposed expansion. In addition, the City states that Will County, as part of the bidding process for the Arsenal Landfill, requires the bidders to provide interim disposal capacity until the Arsenal Landfill is operational, and that CDT was not named as an interim facility. The City also asserts that CDT failed to consider existing disposal facilities that service Will County or portions thereof. Resp. Br. at 17. The City concludes that the RCCA study is flawed because it includes data demonstrating that significant disposal capacity is available that could meet the needs of the area, but fails to consider this capacity in its need analysis.

CDT responds that the Will County Plan clearly accounts for the possibility that an existing or expanded landfill could meet the interim disposal capacity need. Also, CDT contends that the RCCA report did consider proposed and existing facilities, but that there must be reasonable expectation that a potential disposal capacity will actually be available.

The City argues that CDT failed to consider waste exportation rates in calculating the estimated waste generated, and that the 1991 Will County Plan indicates that approximately

10% of the waste generated in Will County was exported. Resp. Br. at 19. Finally, the City asserts that CDT used the wrong recycling rate in calculating waste generation over the study period. Resp. Br. at 19. The City posits that the 30% rate used by CDT for its calculations is incorrect in light of the Will County Plan's call for the achievement of a 40% rate by 2001, and a 50% rate by 2006. The City feels that this is yet another demonstration of CDT's failure to comply with criterion (i).

CDT states that the Will County Plan sets forth recycling goals for the future, and it clearly states that 40% and 50% are nothing more than targets and goals. CDT states the RCCA's selection of 30% was based upon realistic goals that have been previously met. Reply Br. at 12.

CDT contends the City is attempting to counter unrebutted expert testimony with its own analysis of the issue. CDT claims that the City's analysis does not address any testimony or evidence that contradicts the evidence presented by CDT, but, instead, critiques Mr. Smith's detailed analysis of the need issue because there is a complete lack of evidence opposing CDT's expert testimony on the record. Reply Br. at 8.

Discussion. The application submitted by CDT defines the primary service area as that defined in the Will County Solid Waste Management Plan Update. Pet. Br. at 12. This includes all of Will County and all of the population of the municipalities bordering Will County. CDT also defines a secondary service area that includes Kankakee, Grundy, Kendall, Kane and DuPage Counties. The Board agrees that the applicant defines its own service area. See Metropolitan Waste Systems, 201 Ill. App. 3d 51. The City's contentions to the contrary, are, thus, unfounded.

Section 39.2(a)(i) of the Act provides that local siting approval shall only be granted if the facility is necessary to accommodate the waste needs for the area it is intended to serve. The applicant is not required to show absolute necessity in order to satisfy criterion (i). Fairview Area Citizens 198 Ill. App. 3d at 551, citing Tate v. Pollution Control Board, 188 Ill. App. 3d 994, 544 N.E.2d 1176 (4th Dist. 1989); Clutts v. Beasley, 185 Ill. App. 3d 543, 541 N.E.2d 844 (5th Dist. 1989). The Third District Appellate Court has construed "necessary" as a degree of requirement or essentiality, and found that a landfill must be shown to be reasonably required by the waste needs of the area intended to be served, taking into consideration the waste production of the area and the waste disposal capability, along with any other relevant factors. Waste Management, Inc., v. Pollution Control Board, 122 Ill. App. 3d 639, 644; 461 N.E.2d 542 (3rd Dist. 1984).

After careful review of the record, the Board finds that the evidence is not sufficient to reverse the City's decision on the need criterion. The Board agrees that CDT has presented expert testimony on the need criterion. However, the City has shown that the testimony, and the RCCA report upon which the majority of the testimony is based, is deficient. The Board is not convinced by all of the City's arguments, but finds enough merit therein so that a result opposite to the City's decision is not clearly evident, plain, or indisputable. Thus, the City's decision that CDT did not meet its burden of proof on the need criterion is not against the manifest weight of the evidence.

For instance, CDT's experts did not factor the proposed Arsenal Landfill into the need analysis. As stated, when considering whether a proposed landfill is reasonably required by the waste needs of the area, the local decisionmaking authority should consider the waste production of the area and the waste disposal capability, along with any other relevant factor. Waste Management, Inc., 122 Ill. App. 3d at 644. The proposed Arsenal Landfill is a relevant factor that the City can consider when making a decision on need. It is appropriate to consider proposed facilities that will be capable of handling a portion of the waste disposal needs of the county. Waste Management, Inc. v. Pollution Control Board, 175 Ill. App. 3d 1023, 530 N.E.2d 682 (2nd Dist. 1988). Future development of other disposal sites, projected changes in amounts of refuse generated within the service area, and expansion of current facilities are properly considered by the local authority. Waste Management, 175 Ill. App. 3d at 1033; Tate, 188 Ill. App. 3d at 1023.

The record contains ample testimony and discussion regarding the Arsenal Landfill. CDT's expert, Mr. Smith, was questioned about the Arsenal Landfill by City Councilman Uremovic at the underlying hearing. C3143. The Arsenal Landfill is contained in Will County's Solid Waste Management Plan Update. In addition, a question exists as to capacity at existing landfills. References to such existing landfills are contained in the RCCA report, as well as the record, and are properly considered by the City. The record indicates different projections on Will County's waste capacity. The RCCA report finds that Will County Landfill Capacity will be exhausted in 2.9 years. Pet. Br. at 13. However, Mr. Dean Olson, Waste Service Director of Will County, indicates that without the CDT expansion, regional landfill capacity will be completely exhausted by the year 2005. Pet. Br. at 16; C2702. Regardless, enough projected waste capacity exists for the City to view the Arsenal Landfill as a reasonably alternative to the CDT expansion. The City decided that CDT did not meet the need criterion. This decision is not against the manifest weight of the evidence, and is affirmed.

Criterion (ii) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

CDT contends that it presented testimony and evidence from four witnesses found by the hearing officer to be qualified experts. CDT asserts that no contradicting expert testimony was provided, and that CDT's testimony regarding design and location is un rebutted. CDT states that, because all of the testimony in the record supports its position that the proposed expansion satisfies criterion (ii), the City's vote that criterion (ii) was not met is against the manifest weight of the evidence.

Donald Reger, P.E., who created the engineering plans and drawings for the expansion testified for CDT as to landfill contours, the development plan, stormwater detention basins, the drainage and leachate collection systems, the gas collection system, the landscape plan, monitoring wells, berm construction, and final cover. Pet. Br. at 17; C3217-C3225. Mr. Reger was not cross examined.

CDT presented testimony from Roberta L. Jennings. Ms. Jennings is a hydrogeologist who performed a hydrogeological report including approximately 75 borings and 50

piezometers and monitoring wells. Pet. Br. at 17. Ms. Jennings has performed similar tests for landfill expansions and constructions and has testified on those issues 25-30 times. Ms. Jennings testified that the proposed expansion satisfies criterion (ii). C3235.

Michael S. Robinson, P.E., also testified for CDT. Mr. Robinson developed the construction quality assurance plan for the proposed expansion, and performed a foundation and mass stability analysis. Pet. Br. at 18. Mr. Robinson testified that the structural aspects and the design of the proposed expansion are designed to protect the public health, safety, and welfare. C3244.

Terese Laciak, an environmental chemist, testified about a groundwater study she performed at the facility. Ms Laciak concluded that the groundwater detection and monitoring plan for the proposed expansion complies with state regulations. Pet. Br. at 18. She also testified that there has been no significant change in groundwater quality since 1990, when she last performed such tests. C3246-C3251.

CDT presented an affidavit and report from Ralph F. Ruess, P.E. Mr. Ruess concluded that no leachate collection will be required after closure of the CDT Landfill.

A number of public comments relating to odor were received. CDT presented testimony from Jeffrey Geiss, manager of CDT's compost facility, who testified on procedures developed by CDT to handle odor complaints. Pet. Br. at 21. Mr. Geiss testified that any odor emitted from a CDT owned business, would be attributable to the compost facility, and not the landfill. C3380.

The City asserts that CDT did not demonstrate that the facility will be located, designed, and operated to protect the public. The City identifies a number of concerns with CDT's evidence, and also submits that various public comments regarding odor and dust indicate that CDT did not meet criterion (ii).

The City suggests that the record demonstrates the site characteristics of the proposed lateral expansion make it a poor choice for a landfill. Resp. Br. at 20. The City states the underlying fractured bedrock is totally or partially saturated, and contains an aquifer with an average linear velocity of 227 feet per year. Resp. Br. at 21. The City contends that CDT did not provide geological cross-sections of the southern or western borders of the expansion. The City asserts that a storm sewer from I-80 crosses the site, and that the site is nearby a tributary of the Des Plaines River which hydraulically influences the groundwater at the site. The City argues that the foregoing concerns coupled with a major drainage swale along the western boundary of the expansion increase the possibility that contaminated flows from the landfill could migrate off-site. The City maintains that, because of the noted problems with the site, the City was justified in concluding that CDT did not demonstrate the facility would be located to protect public health, safety, and welfare.

CDT responds that the City has failed to cite any authority contained in the record that supports its claims that the location's natural characteristics are troublesome. CDT notes that the City is attempting to present the type of testimony which might have been appropriate for a

qualified expert to present at the local level. Reply Br. at 13. CDT further states that the City has misstated alleged problems at the site. For example, CDT notes that no reference to fractured bedrock, or to total or partial saturation, exists at C1988 which is cited by the City. CDT also states that a review of C3221, cited by the City in support of its claim that a storm sewer from I-80 crosses the site, reveals a discussion of the surface water drainage system to be installed on Site III. Reply Br. at 14. CDT disputes that it did not provide geological cross-sections of the southern and western borders of Site III of the expansion, and cites to C2066-C2078 of the record.

The City argues that CDT failed to demonstrate that the proposed expansion will be constructed and operated in a manner that will protect human health and welfare. Resp. Br. at 22. The City raises the operating history of CDT, including what the City characterizes as numerous violations of the Act and regulations, as an indication that criterion (ii) was not satisfied. Resp. Br. at 22. The City identifies administrative citations for failing to timely submit an annual report and for depositing waste in an unpermitted portion of the landfill. The City notes that the Board assessed penalties and attorney fees against CDT and was affirmed by the Third District Appellate Court. Resp. Br. at 22. The City states that additional citations for overheight violations and for failure to provide final cover were subsequently issued against CDT.

In response, CDT notes that all administrative citations have been settled with Will County (the issuing body) through a supplemental environmental project agreement. CDT also states that the Board dismissed all citations in an October 16, 1997, order, and that no administrative citations have been subsequently issued. Reply Br. at 15.

The City next argues that CDT failed to provide a topographic map of the existing site as required by the application for expansion. The City argues that CDT used contours from 1991, and therefore failed to give the City sufficient information to analyze the impact of the proposed expansion. Resp. Br. at 24.

CDT maintains it submitted a topographic map of the existing site, as required by the City's application form, and urges the Board to review the document (C1851) to substantiate this claim. Reply Br. at 16. CDT states that it did not fail to provide the necessary information regarding the topography of the existing site.

Finally, the City asserts that the record contains substantial information concerning odor complaints regarding the CDT facility. The City states that the record shows a serious odor problem exists at the facility, and that CDT has not adequately addressed this problem. Resp. Br. at 25. The City states that it was entitled to weigh the citizens' assertions that odors are emanating from the landfill in determining whether the facility would be operated so as to protect the public health, safety, and welfare.

In response, CDT maintains that the CDT Landfill does not have an odor problem. CDT notes that the area is primarily industrial in nature. Pet. Br. at 20. CDT identifies Joliet Sand and Gravel, Kaluzny Brothers (an animal rendering facility), a grease recycling company, a scrap disposal operation, Schuller Building Products, Stone Container Corp.,

Ferro Asphalt, AP Green Refractories Company, several closed landfills, and the Banner-Western transfer station. Pet. Br. at 20; C577-C579; C620-C621. CDT's expert characterizes the area a part of a major, continuous industrial corridor containing many companies performing activities capable of generating odor. Pet Br. at 20. CDT contends that the record clearly demonstrates that the only evidence regarding the source of odors shows that other industrial facilities in the area of CDT's compost facility (not part of the proposed expansion) are responsible for any odors. Reply Br. at 17.

Discussion. Criterion (ii) requires that the applicant demonstrate the proposed facility is designed, located, and proposed to be operated in a manner in which the public health, safety, and welfare will be protected. Determination of this question is purely a matter of assessing the credibility of expert witnesses. Fairview Area Citizens, 198 Ill. App. 3d at 552; File, 219 Ill. App. 3d at 907.

The Board notes Industrial Fuels & Resources v. Pollution Control Board, 227 Ill. App. 3d 533, 592 N.E.2d 148 (1st Dist. 1992). In that case, the First District reversed a Board decision on criterion (ii). The First District noted that "there is not evidence of record to demonstrate that the design of the facility is flawed from a public safety standpoint or that its proposed operations present an unacceptable risk to the public health, safety, and welfare." Industrial Fuels, 227 Ill. App. 3d at 545. The First District continued: "No one testified, for example, how particular design features or operating procedures might increase the risk of harm to the residents. No expert witness testified that the design and proposed operation of the facility were flawed or that Industrial's application ignored or violated any of the applicable governmental regulations." Industrial Fuels, 227 Ill. App. 3d at 545.

In the instant case, the evidence before the City was clear and un rebutted. CDT presented testimony from four qualified expert witnesses. Expert testimony was given that the proposed expansion meets the requirements of criterion (ii). Expert testimony was provided that the proposed expansion complies with the requirements of the Act and associated regulations. In its brief, the City identified a number of alleged flaws with the evidence provided by CDT, but offered no expert opinion that any particular design feature or operating procedure might increase the risk of harm to the public.

The only testimony on record that might possibly pertain to criterion (ii) are the public comments concerning odor. As previously discussed, public comments are part of the record to be considered by the local governing body. The public comments concerning odor, however, state merely that odor is present in the area. No analysis of the odor source is presented. CDT presented testimony regarding the system set up to address odor complaints. C3372-C3381. In addition, the area in question is extremely industrial, and contains, *inter alia*, an animal rendering facility and a grease recycling company. Unrebutted expert testimony characterizes the area as one containing many companies performing activities capable of generating odor. CDT notes it has never received an administrative citation from state or local officials relating to odor from the existing facility. Pet. Br. at 21.

A review of the evidence for this criterion reveals that a result opposite to that of the City's is clearly evident. CDT did show that the proposed expansion is designed, located, and

proposed to be operated so that the public health, safety and welfare will be protected. The public comments regarding odor and the alleged design flaws regarding CDT's proposed facility are not sufficient to warrant the City's decision. Therefore, the Board finds that the City's decision on criterion two is against the manifest weight of the evidence.

Criterion (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.

The third criterion for consideration is whether the proposed expansion is located to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. CDT presented testimony from two witnesses, who were found by the hearing officer to be qualified experts. Pet. Br. at 23. Mr. Smith, who also testified on criterion (i), is a certified planner with previous experience in performing land use analyses for landfill siting proceedings. Pet. Br. at 23. Mr. Smith testified that he performed a land use analysis. Mr. Smith concluded that the proposed expansion is compatible with other industrial uses in the area, well removed from nearby residential subdivisions, and that the final, permanent use of the property, as passive open space, is consistent with the character of the area. C3275-C3276. Mr. Smith testified that the proposed expansion is located to minimize incompatibility with the character of the surrounding area. Pet. Br. at 24.

CDT presented testimony from William A. McCann, MAI, a licensed professional real estate appraiser and consultant. Mr. McCann performed a real estate impact evaluation of the proposed expansion to address whether the proposed expansion is located so as to minimize the effect on the value of the surrounding property. Pet. Br. at 24. Mr. McCann measured actual property value trends and average rates of appreciation in College Park and Cambridge (nearby residential subdivisions), and compared those rates to two similar subdivisions away from the landfill (control subdivisions). C3323. Based on his evaluation, Mr. McCann concluded that residential property values in areas near CDT show no discernible reduction in value, or lesser rate of appreciation, as compared to residential subdivisions located further from the facility. Pet. Br. at 25.

In performing this property evaluation, Mr. McCann used two different scenarios; scenario one excludes the highest and lowest sale prices, while scenario two excludes the highest and lowest prices, as well as any sale with an elapsed time of twelve months or less. C630-C634; C646-C662. Under scenario one, the mean annual rate of appreciation for College Park was 5.47% compared to 5.63% in Longleat (control subdivision). Cambridge had a mean annual rate of appreciation of 3.00% compared to 3.9% in Autumn Lake South (control subdivision). Under scenario two, the annual rate of appreciation for College Park was 5.35% compared to 5.29% for Longleat, while Cambridge had a mean annual rate of appreciation of 3.00% compared to 3.64% in Autumn Lake South. Mr. McCann concluded that the differences in appreciation rates are statistically insignificant, and resulted in no measurable impact on the value or rate of appreciation of homes near the landfill. C634; C3323.

Mr. McCann also testified that the industrial development in the area has not been negatively impacted in areas near the proposed expansion. Pet. Br. at 25. At hearing, Mr. McCann testified in response to a public comment by Industrial Developments International (IDI). IDI is the developer of Rock Run Business Park located near the existing CDT landfill, north of Interstate 80 and west of the Houbolt Road interchange. IDI had expressed concerns about Rock Run. IDI noted the trouble at Mallard Lake Business Park in Hanover Park, and cited the proximity of the Mallard Lake Landfill as a reason for the problems. Mr. McCann testified that the Mallard Lake Landfill has not deterred residential or commercial development around the landfill, and noted that the Mallard Lake Landfill is many times larger than CDT. Pet. Br. at 28.

IDI submitted an additional comment in the form of a letter prepared by Jeffrey C. Smith, P.E., Development Manager for IDI. C2739-C2740. Mr. Jeffrey Smith wrote to specifically refute the testimony provided by CDT's expert McCann regarding the impact of the proposed expansion on Rock Run. Mr. Jeffery Smith also disagreed with Mr. McCann's analysis of the development at Mallard Lake Business Park as well as additional business parks in the area. Mr. Jeffery Smith concluded that the proposed expansion of CDT Landfill would jeopardize the development of Rock Run as well as the corresponding long-term benefits it represents for the City. Resp. Br. at 29.

The City argues that CDT's analysis of the impact of the proposed facility is fundamentally flawed, and that, ergo, the City's determination that CDT failed to meet its burden on this criteria is not against the manifest weight of the evidence. Resp. Br. at 27.

The City asserts that the record shows an impact of the proposed expansion on the Rock Run Business Park and CDT's failure to minimize that impact. The City maintains that it was free to credit the evidence provided by IDI over the evidence provided by CDT in this regard, and that the Board is not free to reverse merely because the lower tribunal credits one witness over another. Resp. Br. at 30. The City cites Fairview Area Citizens, 198 Ill. App. 3d at 550, for this proposition. The City also contends that the Empress Casino has submitted evidence into the record that contests CDT's conclusion that the proposed expansion will not impact surrounding businesses.

In response, CDT asserts that Mr. McCann submitted additional comments responding to IDI's claims. Pet. Br. at 28. McCann notes that when IDI acquired the Rock Run property, at least eight years of capacity at the existing CDT landfill remained. Mr. McCann states that reasons other than the Mallard Lake Landfill are responsible for the alleged difficulties at the Mallard Lake Business Park. Pet. Br. at 28. Specifically, the Mallard Lake Business Park is a small park and surrounded on four sides by residential development. He also asserts that it is isolated from arterial roads, and has no expressway frontage, exposure, or identity. But, McCann notes that virtually 80% of the available lots in Mallard Lake Business Park have been sold. C2796-C2798.

The City contends that the proposed expansion is incompatible with the surrounding residences, and that CDT failed to show any effort to minimize the effects. Resp. Br. at 31. The City states that CDT failed to prove that it minimized incompatibility due to visual

impacts. The City identifies public comments that bear this out. Resp. Br. at 37; C2708; C2710. The City differs with CDT's analysis that the proposed expansion is only an expansion of a use that has been existing in the area of the subject site for more than 20 years. The City argues that the expansion must be viewed as a new facility in consideration of this criterion.

In response, CDT argues that the City is misrepresenting the evidence on this matter. CDT acknowledges that its experts each considered that the proposed expansion is the continuation of an existing use, but note that both testified from reports that also contain extensive analysis of other factors such as zoning ordinances and maps, planning documents, and aerial photographs. Reply Br. at 18. CDT states that the fact that the proposed expansion is a continuation of the current use is but one small part of its extensive analysis. Reply Br. at 18. CDT asserts that both experts analyzed the character of the surrounding area and concluded that the proposed expansion is located in a manner which will minimize incompatibility with the character of the surrounding area. C588; C623. CDT disputes the City's allegation that CDT failed to take into account alleged impacts on residential areas, and asserts that it submitted extensive expert testimony that the location of the proposed expansion minimizes the incompatibility with the surrounding area. Reply Br. at 19.

The City notes that the Will County Center for Economic Development (CED) proposed conditions it considered necessary to counter the negative impacts of the proposed expansion. Resp. Br. at 38. These conditions included the inclusion of more thorough landscaping and the construction of an earthen berm to screen landfill activities. Resp. Br. at 38. The City contends that CDT agreed to these conditions only so far as they were required by the Act and regulations, and, thus, effectively eliminated any requirements that CDT do anything more than comply with existing regulations. Resp. Br. at 38. The City argues that because of CDT's refusal to agree to the CED conditions, the record does not demonstrate the landfill will be adequately screened, and the City could properly reject CDT's conclusions on this criterion. Resp. Br. at 39.

In response, CDT asserts that the conditions proposed by CED were acceptable, and were re-written only for clarity and to ensure that any condition imposed by the City be consistent with state landfill regulations. Reply Br. at 20. CDT maintains that the City could have imposed the conditions by CED, CDT, or created its own. Reply Br. at 20. CDT contends that the City's assertion that the landfill will not be adequately screened because of CDT's changes to the CED conditions is unfounded, and that a review of the evidence in the record proves that the City's decision on this criterion is against the manifest weight of the evidence. Reply Br. at 20.

The City asserts that the record demonstrates that the existing landfill has negatively impacted property values, and that the proposed landfill will do the same. Resp. Br. at 36. In reaching this position, the City notes that CDT's evidence found an annual rate of appreciation for the Cambridge subdivision of 3.0% as compared to 3.9% for the control subdivision. The City posits that a home worth \$90,000 today appreciating at the lower rate will be worth approximately \$4,691 less after 5 years than would a house appreciating at the higher rate. The City also notes a public comment indicating a resident in the community near the CDT

landfill lost \$16,000 on the resale of his home. Resp. Br. at 37; C2714. The City states that it was justified in concluding that CDT failed to carry its burden.

In response, CDT asserts that the City fails to recognize that Mr. McCann's study also concluded that under one scenario the annual rate of appreciation in College Park was actually higher than in its control area. Reply Br. at 20. CDT again notes that Mr. McCann's expert and un rebutted testimony concludes that both differences in appreciation rates are statistically insignificant. Reply Br. at 20.

Discussion. Criterion (iii) requires the applicant to minimize the incompatibility of the facility on the surrounding area and to minimize the effect on property values. This criterion requires an applicant to demonstrate more than minimal efforts to reduce the landfill's incompatibility. File, 219 Ill. App. 3d at 907; Waste Management, 123 Ill. App. 3d at 1089. An applicant must demonstrate that it has done or will do what is reasonably feasible to minimize incompatibility. Waste Management, 123 Ill. App. 3d at 1090. However, an applicant cannot establish compatibility based upon a pre-existing facility, and the compatibility of an expansion must be considered as a new and separate regional pollution control facility. Waste Management, 123 Ill. App. 3d at 1088.

CDT presented testimony that the proposed expansion would not be incompatible with the surrounding area. This testimony was based in large part on a real estate impact evaluation performed and testified to by Mr. McCann. McCann concludes that differences in appreciation rates between houses near the landfill and those removed from the landfill are statistically insignificant. However, the study shows that, in at least one subdivision, the rate of appreciation was lower in houses near the landfill 3.0% compared to 3.9%. The Board notes public comments regarding the effect of the proposed expansion. Specifically, one resident said he incurred a \$16,000 loss when selling his house, and another reported difficulty in selling. The record contains comments from two local businesses that oppose the proposed expansion. One comment was filed by an IDI engineer expressly to refute the testimony of CDT's expert on the impact of the proposed expansion to IDI's Rock Run Business Park. The Board notes that this comment was not submitted under oath or subject to cross-examination.

A review of the record reveals that CDT did re-write two of the five conditions (those involving landscaping and berms) proposed by CED. C3065. Of the remaining three conditions, the record indicates that CDT would accept two conditions in whole (pertaining to a re-use plan for the closed landfill and the management of truck traffic), and one condition to the extent it was economically feasible (providing more favorable disposal rates to Will County customers). C3065.

The City was presented with conflicting views and evidence. Sufficient evidence exists on the record so that the City could find incompatibility with the surrounding area and a negative effect on property values. A review of the record indicates that the City could find that CDT did not demonstrate it has done or will do what is reasonably feasible to minimize incompatibility and effect on property values. An opposite result is not clearly evident or indisputable from a review of the evidence. The Board, thus, concludes that the City's decision on criterion (iii) is not against the manifest weight of the evidence.

Criterion (vi) The traffic patterns to or from the facility are so designed as to minimize the impact on exiting traffic flows.

In regard to this criterion, CDT presented testimony and evidence from Jeffery Miller, P.E., of Macchris Engineering Limited. Mr. Miller, who was found to be a qualified expert by the hearing officer, testified regarding a site traffic analysis conducted for CDT. Pet. Br. at 31. The analysis included traffic counts, determination of directional distribution, volume, and peak hours of volume. C683-C712. The report notes that CDT landfill is located on Mound Round, south of Interstate 80, approximately 2,000 feet east of Houbolt Road, and that an Interstate 80 interchange serves Houbolt Road. The report further notes that 92% of the trucks entering CDT Landfill approach and depart to the north on Houbolt Road. C686; C690. Mr. Miller testified that the proposed expansion will not create additional traffic volume. Pet. Br. at 32.

A public comment expressing concerns about dust, dirt, and increased levels of truck traffic after the proposed expansion was filed at the lower level. C2741. CDT notes that the comment includes no evidence regarding traffic from the landfill, and does not distinguish between landfill traffic, and that attributable to other nearby industry in the area. Pet. Br. at 32.

CDT argues that this criterion does not require that the proposed expansion create no impact on traffic, only that the traffic patterns minimize the impact on existing traffic. CDT asserts that unrebutted expert testimony found that traffic would remain the same during the proposed expansion, and that this conclusion satisfies the requirement that the proposed expansion minimize traffic impacts. Pet. Br. at 33.

The City contends that CDT did not meet its burden of proving it had minimized traffic impacts. The City argues that in evaluating the credibility of evidence submitted by an applicant and in weighing that evidence, a local siting authority's members can legitimately rely on the members' own knowledge and familiarity with local traffic conditions. The City cites Hediger v. D & L Landfill (December 20, 1990), PCB 90-163. The City maintains that the local body does not have to accept testimony from an applicant merely because no organized opposition exists, but can critically examine the evidence to determine if the applicant has met its burden of proof. Resp. Br. at 40. The City asserts that even unopposed or unquestioned expert testimony will not satisfy an applicant's burden of proof if that testimony fails to address the criterion, or is incorrect.

The City contends that CDT relies on traffic studies from 1982 and 1989 for classification and number of vehicles. Resp. Br. at 40. The City argues that a proposed expansion cannot justify its traffic impacts based on its current existence, but that those impacts must be viewed as if the facility were new. Resp. Br. at 42, citing Waste Management, 123 Ill. App. 3d at 1088. The City states that it was incumbent upon CDT to analyze its impact in light of the proposed USF Holland truck terminal to be located on Houbolt and Mound roads. The City disputes CDT's logic that the City would not have approved of this truck terminal if it had real traffic concerns. The City states that all failings

in proving this criterion are a matter of record, and that the City had no need for cross-examination or contrary expert testimony to reach its decision.

In response, CDT asserts that the City's contention that the traffic analysis must be viewed as if the facility was new, does not conform to the appropriate case law. CDT states that Waste Management, 123 Ill. App. 3d 1075, cited by the City, does not discuss criterion (vi), but is limited to criterion (iii). CDT states that the court in Tate specially notes that the existing flow of traffic into the existing facility is part of the existing traffic flow. Tate, 188 Ill. App. 3d at 1024. Thus, CDT argues, the analysis of criterion (vi) requires analysis of the existing traffic. CDT maintains that criterion (vi) is limited to traffic flows, and that dust and noise allegedly created by that traffic are not relevant to the issue. CDT argues that the uncontroverted testimony shows that CDT has demonstrated that traffic patterns will minimize the impact on existing traffic flows.

Discussion. Criterion (vi) requires the applicant to show that traffic patterns to or from the facility are designed to minimize the impact on existing traffic flows. The statute does not refer to a traffic plan, but instead requires that traffic patterns to and from the facility be designed to minimize impact on existing traffic flow. Fairview Area Citizens, 198 Ill. App. 3d at 553. Complaints about traffic noise and dust do not pertain to a proposed facility's effect on traffic flow. Fairview Area Citizens, 198 Ill. App. 3d at 553; Tate, 188 Ill. App. 3d at 1024; File, 219 Ill. App. 3d at 908.

The Board agrees that analysis of existing traffic flow into an existing facility is an appropriate consideration for this criterion. See Tate, 188 Ill. App. 3d at 1024. CDT presented testimony concerning a detailed traffic analysis by a traffic engineer. The testimony and evidence indicate that traffic flow will not increase as a result of the proposed expansion. This testimony is unrebutted. The record further shows that CDT is located north of Interstate 80, just off Houbolt Road which is an Interstate 80 interchange. Mr. Miller testified that 92% of the trucks entering the landfill approach and depart to the north on Houbolt Road.

The Board notes the public comment fearing increased dust and noise from the proposed expansion. C2741. However, the case law is clear that "this criterion does not refer to traffic noise or dust." File, 219 Ill. App. 3d at 908. In addition, the question is not whether there will be no adverse impact, but whether the impact on traffic flow has been minimized. Fairview Area Citizens, 198 Ill. App. 3d at 553. That CDT met the requirements of this criterion is clearly evident upon review of the evidence. The decision of the City is, thus, against the manifest weight of the evidence.

Criterion (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 the plan.

Criterion (viii) requires the applicant to demonstrate that the facility is consistent with the county solid waste plan if the facility is located in a county with such a plan. The Will County Board adopted a solid waste management plan consistent with the requirements of the

Illinois Solid Waste Planning and Recycling Act in 1991. In 1996, the County adopted an update to the plan.

To meet its burden on this criterion, CDT presented testimony and evidence from Lee William Smith of RCCA. Mr. Smith compared the plans of the proposed expansion to the 1996 update and the 1991 plan. Resp. Br. at 34. RCCA found the proposed expansion consistent with the Will County Plan. C731. RCCA found that the proposed expansion will not disrupt any policies or recommendations contained in the Will County Plan and its update. Pet. Br. at 35.

Also in the record are letters by Mr. Olson. C2702; C2854. CDT notes that Mr. Olson states the expansion of CDT Landfill is consistent with its solid waste management plan, and that the Will County Waste Service Division feels that the CDT Landfill expansion is desirable as it will assist the county in meeting its Solid Waste Management Plan, and in helping to promote proper solid waste disposal practices. Pet. Br. at 35; C2702. CDT contends that the Will County Board passed, and submitted to the City, a resolution supporting the proposed expansion. Pet. Br. at 35; C2986-C2987.

CDT argues that this is not a situation where the local decision-maker had to make a determination of credibility between opposing experts. CDT states that the only testimony, expert or otherwise, in the record demonstrates that the proposed expansion meets criterion (viii). Pet. Br. at 36.

The City argues that the local siting body is justified in relying on the plain language of the plan when making its determination regarding criterion (viii). The City notes that CDT must show, based on all the evidence presented, that the City's conclusion was clearly and plainly wrong. Resp. Br. at 44, citing Tate, 188 Ill. App. 3d at 1022. The City maintains that CDT did not consider the Arsenal Landfill in the projection of disposal capacity even though that proposed facility is the cornerstone of the Will County Plan. Resp. Br. at 45. The conclusion of CDT's consultant, states the City, ignores the fact that CDT is not the interim disposal facility designated under the Will County Plan by the contractor selected to develop the Arsenal Landfill. The City argues that the Plan provides that the selected contractor will designate an interim facility, and that CDT was not being considered by the contractor as an interim facility. Resp. Br. at 45. Therefore, states the City, CDT's proposed expansion is not consistent with the Will County Plan regarding either the role of the Arsenal facility or the designation of interim facilities.

The City revisits arguments made as to the need criterion (inconsistent recycling rate and failure to consider exportation rates) as evidence of further inconsistencies with the Will County Plan. The City also states that Mr. Olson had no authority to interpret the Will County Plan, and that the City was not compelled to accept his personal interpretation of the Will County Plan. Resp. Br. at 46. Finally, the City states that the resolution of the Will County Board was received by the City's attorney only one day before the City Council's decision, and over a month after the deadline for receiving evidence. The City notes that the resolution does not expressly conclude that CDT's expansion is consistent with the Will County Plan.

In response, CDT contends that a review of the Will County Plan clearly indicates the Will County Plan includes the option that an existing or expanded landfill could meet the interim disposal capacity need. CDT cites the 1996 update which provides, “the County’s interim disposal capacity needs may be accommodated in a variety of ways. These range from the provision of interim disposal capacity provided by the successful bidder to the provision of interim disposal capacity from an existing and/or expanded Will County landfill or a combination of both.” Reply Br. at 11, citing Resp. Exh. 3, 28.

CDT notes that Mr. Smith was established as an expert in the field of solid waste planning during the July 29, 1997, hearing. Reply Br. at 23. CDT maintains that the City’s question regarding Mr. Olson’s authority to interpret the Will County Plan is misplaced. CDT asserts that the Will County Waste Service Director is a person who has complete understanding of the Will County Plan and is more than qualified to render an opinion on this issue. CDT feels the documents cited clearly indicate the proposed expansion is consistent with the Will County Plan. Reply Br. at 24; C2702, C2834, C2987.

Discussion. Criterion (viii) requires the applicant to show that the proposed expansion is consistent with the County Solid Waste Management Plan. To satisfy this criterion, the local body must apply the County Solid Waste Management Plan to the proposed facility and make a determination whether the application is drafted in such a way as to be consistent with the plan. City of Geneva v. Waste Management of Illinois, Inc. (July 21, 1994), PCB 94-58.

The affirmation of criterion (i) does not dictate the Board’s decision on criterion (viii). The Board’s decision on criterion (i) is based, in part, on CDT’s failure to consider the Arsenal Landfill in its need analysis. The Arsenal Landfill is included in the Will County Plan. However, the proposed expansion is not inconsistent with the Will County Plan merely because CDT did not include the Arsenal Landfill in its needs analysis. Nor did CDT fail to meet this criterion because it was not named an interim facility by the contractor chosen to build the Arsenal Landfill. The Will County Plan does not state that no landfill other than the Arsenal Landfill may be used for disposal. On the contrary, the Will County Plan specifically states that either an existing or an expanded landfill in Will County may be utilized to accommodate the county’s interim disposal needs.

CDT presented extensive evidence and expert testimony finding the proposed expansion consistent with the Will County Plan. Mr. Olson stated that the proposed expansion is consistent with the Will County Plan. In addition, the Will County Board passed a resolution recommending the proposed expansion. CDT’s evidence on this criterion is un rebutted. The City’s arguments do not reveal any inconsistency between the proposed expansion and the Will County Plan. In reviewing the evidence, the Board finds the opposite result, that the proposed expansion is consistent with the Will County Plan, is clearly evident. Thus, the Board finds that the City’s decision regarding this criterion is against the manifest weight of the evidence.

CONCLUSION

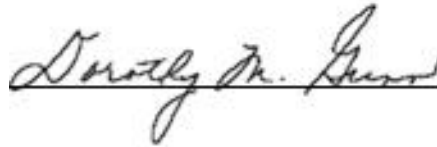
The Board finds the City’s decision on criteria (i) and (iii) was not against the manifest weight of the evidence. The City is affirmed on these two criteria. The City’s decision on

criteria (ii), (vi), and (viii) was against the manifest weight of the evidence. The City's decision on these criteria is reversed. Thus, the Board upholds the City's decision to deny local siting to CDT.

IT IS SO ORDERED.

Board Member J.Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 5th day of March 1998, by a vote of 5-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board