

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1998

ENVIRONMENTALLY CONCERNED)	
CITIZENS ORGANIZATION and BETH)	
FINNEY,)	
)	
Petitioners,)	
)	
v.)	PCB 98-98
)	(Pollution Control Facility Siting Appeal)
LANDFILL L. L. C. d/b/a and/or a/k/a)	
WEST END DISPOSAL FACILITY and)	
SALINE COUNTY BOARD OF)	
COMMISSIONERS,)	
)	
Respondents.)	

KENNETH A. BLEYER APPEARED ON BEHALF OF PETITIONER.

STEPHEN F. HEDINGER, OF MOHAN, ALEWELT, PRILLAMAN & ADAMI,
APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

This matter is before the Board on a petition for review filed January 16, 1998, by Environmentally Concerned Citizens Organization and Beth Finney (collectively petitioners). The petition seeks review of a decision by the Saline County Board of Commissioners (Saline County) which granted siting for a new regional pollution control facility to Landfill L.L.C. d/b/a West End Disposal Facility (Landfill L.L.C.). On March 2, 1998, the Board received a motion for partial summary judgment filed by respondents. The petitioners filed its response to the motion in its brief. Hearing on this matter was held on March 9, 1998, in Harrisburg, Illinois before Board Hearing Officer Amy L. Jackson. No members of the public were present to make statements at that hearing. Petitioners filed their brief on March 23, 1998, and the reply on April 2, 1998. Respondents filed their brief on March 30, 1998.

Petitioners filed this request for review pursuant to Section 40.1 of the Illinois Environmental Protection Act (Act). 415 ILCS 5/40.1 (1996). The Board will first address the jurisdictional issues raised in the petition for review, the motion for partial summary judgment, and the fundamental fairness of the proceeding. The last part of the Board's discussion will address the challenged siting criteria found at Section 39.2(a) of the Act. 415 ILCS 5/39.2(a) (1996). For the reasons enunciated below, the Board finds that Saline County had jurisdiction to decide whether or not to grant the siting of a regional pollution control facility. The Board further finds that the proceedings before Saline County were fundamentally fair and that Saline County's decisions with respect to the five challenged siting

criteria (Section 39.2(a) of the Act) were not against the manifest weight of the evidence. The Board thereby affirms Saline County's landfill siting decision.

BACKGROUND

On July 11, 1997, Landfill L.L.C. filed a request for siting approval with Saline County for a new regional pollution control facility. C0002-C0231.¹ Notice of the filing of the application was served on property owners located within 250 feet of the proposed site between June 25 and June 26, 1997, as determined by the authentic tax records for Saline County. C0024-C0049. Notice was served by certified mail and in person. C0024.

Six public hearings were held on the siting application on October 21, 22, and 23, 1997, and October 27, 28, and 29, 1997. C0256-C1445. On December 18, 1997, Saline County approved siting for the Landfill L.L.C. pollution control facility. C2711-C2714.

LEGAL FRAMEWORK

Pursuant to Section 39(c) and 39.2(a) of the Act, an applicant for a new pollution control facility is required to request and receive siting approval from the local government before a development or construction permit is issued by the Illinois Environmental Protection Agency ("Agency"). 415 ILCS 5/39(c) and 5/39.2(a). Section 39.2(a) of the Act provides that local authorities are to consider nine criteria when reviewing an application for landfill siting approval. Only if the local body finds that all applicable criteria have been met by the applicant can landfill siting be granted.

Section 40.1 of the Act (415 ILCS 5/40.1) authorizes appeal to the Board of a local government decision to grant landfill siting approval. Section 40.1 of the Act also requires the Board to review the proceedings before the local siting authority to assure fundamental fairness. In E & E Hauling, Inc. v. IPCB, 116 Ill. App. 3d 586, 594, 451 N.E.2d 555, 564, (2nd Dist. 1983), *aff'd in part* (1985), 107 Ill. 2d 33, 481 N.E.2d 664, the appellate court found that although citizens before a local decision-maker are not entitled to a fair hearing by constitutional guarantees of due process, procedures at the local level must comport with due process standards of fundamental fairness. The court held that standards of adjudicative due process must be applied. See also Industrial Fuels v. IPCB, 227 Ill. App. 3d 533, 592 N.E.2d 148 (1st 1992); Tate v. IPCB, 188 Ill. App. 3d 994, 544 N.E.2d 1176 (4th Dist 1989). Due process requirements are determined by balancing the weight of the individual's interest against society's interest in effective and efficient governmental operation. Waste Management of Illinois Inc. v. IPCB (2nd Dist. 1989), 175 Ill. App. 3d 1023, 530 N.E.2d 682. The manner in which the hearing is conducted, the opportunity to be heard, the existence of *ex parte* contacts, prejudgment of adjudicative facts, and the introduction of evidence are

¹ The record from the proceeding before the Saline County will be cited as "C___"; the petition for review will be cited as "Pet. at _"; the brief filed by petitioners will be cited as "Br. at _"; the reply brief by petitioners will be cited as "Rep. _"; the brief filed by respondents will be cited as "R.Br. at _"; and the transcript from the hearing before the Board will be cited as "Tr. at _".

important, but not rigid elements in assessing fundamental fairness. Hedinger v. D & L Landfill, Inc. (December 20, 1990), PCB 90-163, 117 PCB 117.

Board review of a local government decision approving landfill siting based on the nine statutory criteria must apply the “manifest weight of the evidence” standard of review. Waste Management of Illinois, Inc. v. IPCB, 160 Ill. App. 3d 434, 513 N.E.2d 592 (2nd Dist. 1987); see also City of Rockford v. IPCB, 125 Ill. App. 3d 384, 465 N.E.2d 996 (2nd Dist. 1984). 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 (4th Dist. 1983). The province of the hearing body is to weigh the evidence, resolve conflicts in testimony, and assess the credibility of the witnesses. Merely because the Board could reach a different conclusion, is not sufficient to warrant reversal. City of Rockford v. IPCB and Frank’s Industrial Waste, 125 Ill. App. 3d 384, 465 N.E.2d 996 (2nd Dist. 1984); Waste Management of Illinois, Inc. v. IPCB, 22 Ill. App. 3d 639, 461 N.E.2d 542 (3d Dist. 1984); Steinberg v. Petta, 139 Ill. App. 3d 503, 487 N.E.2d 1064 (1st Dist. 1985); Willowbrook Motel v. IPCB, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985).

ISSUES

The petition for review raised numerous issues for the Board’s consideration. Pet. at 3-4. However, at hearing petitioners stipulated that they would not pursue certain issues. Tr. at 7-11. Thus, there are three main issues which remain for the Board’s consideration in this proceeding. Those issues are:

1. Whether Saline County had jurisdiction over Landfill L.L.C.’s application because:
 - 1) pursuant to Section 39.2(b) of the Act the applicant failed to give proper notice of the application by registered mail; or 2) the application was insufficient.
2. Whether the proceedings before Saline County were fundamentally unfair because:
 - 1) the application was “defective, incomplete and vague” and failed to put the public on notice; 2) the hearing officer at the public hearing made erroneous rulings on objections and the admission of evidence; or 3) the manner in which the public hearing was conducted created other procedural and substantive defects.
3. Whether Saline County’s decision that Landfill L.L.C. met the criteria in Section 39.2(a)(i), (iii), (iv), (v), and (vi) was against the manifest weight of the evidence.

The following discussion will present the arguments by the parties and the Board’s resolution of each of the issues.

Jurisdiction

Petitioners present two arguments attacking the jurisdiction of Saline County. The first argument involves the notice requirements of Section 39.2(b) of the Act and whether certified mail may be used to perfect that notice. The second issue is whether the application as filed was sufficient. For the reasons discussed below, the Board finds that Saline County did have jurisdiction to hear this siting application.

Whether Registered Mail Must be Used Pursuant to Section 39.2(b) of the Act

Petitioners' Argument. The requirement for notice pursuant to Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (1996)) was the subject of the motion for partial summary judgment filed by respondents. As stated above, petitioners responded to the motion for partial summary judgment in the brief filed on March 23, 1998. In that brief, petitioners argue that Saline County lacked jurisdiction to hear this regional pollution control facility siting request because Landfill L.L.C. failed to comply with the notice requirements of Section 39.2(b) of the Act. Specifically, petitioners assert that because Landfill L.L.C. notified persons owning property within 250 feet of the proposed site by certified mail rather than registered mail, the notice was insufficient.

In support of its position, petitioners argue that the plain language of Section 39.2(b) requires service "in person or by registered mail, return receipt requested" and thus certified mail is inadequate. Br. at 4. Citing to Connecticut National Bank v. Germain, 503 U.S. 249 (1992) as authority, petitioners argue that an administrative authority may not redraft "the law by way of unique interpretations." Br. at 6. Petitioners argue that the legislature "commanded" that notice be given by either personal service or registered mail and made no allowance for any substitute. *Id.*

Petitioners disagree with the Board's finding in Ash v. Iroquois County Board, PCB 87-29 (July 16, 1987) (Ash), a prior case where the Board held that certified mail was sufficient for notice pursuant to Section 39.2(b) of the Act. Mot. At 4. Because the plain language of the statute requires registered mail or personal service, the petitioners disagree with the Board's finding in Ash.

Petitioners also argue that notwithstanding Ash, the Board should not make allowances in this case for two reasons. First because a "co-owner, proponent, advocate and representative" of Landfill L.L.C. is an attorney and is held to "a higher standard for knowing and abiding by the law." Br. at 6-7. Second, the petitioners maintain that the Board should not make allowances because the issue of proper service in a pollution control facility siting is a jurisdictional prerequisite for the county board to hear a proposal. Br. at 7, citing Ogle County v. Pollution Control Board, 272 Ill. App. 3d 184, 649 N.E.2d 545 (1995).

Respondents' Arguments. Respondents, in the motion for summary judgment, argue that the Board has specifically held that "certified mail return receipt requested, complied with the service requirements of Section 39.2(b) of the Act." Mot. at 4, citing Ash. Respondents maintain that Ash is directly on point as the issue raised was whether a local siting authority jurisdiction was faulty because notices had been sent by certified rather than registered mail. Mot. at 4. Respondents also assert that the Appellate Court, Fifth District has accepted certified mail delivery of notice of the proposed filing of an application for local pollution control facility approval, as not conflicting with the statutory notice requirements. Mot. at 5, citing to Bishop v. Pollution Control Board, 235 Ill. App. 3d 925, 601 N.E.2d 310 (5th Dist. 1992).

In response to petitioners' arguments, respondents maintain that the petitioners' argument is "utterly devoid of both legal and factual support." R.Br. at 3. Respondents again cite to Ash and then point out that subsequent to the ruling in Ash there is "virtually no" Board or appellate court case construing Section 39.2(b) of the Act which calls into question the ruling in Ash. R.Br. at 3-4. Respondents argue that numerous cases both before the Board and appellate courts have taken note that certified mail has been used for notice purposes pursuant to Section 39.2(b) of the Act and until now the issue of certified versus registered mail has not been raised. R.Br. at 4, citing to Waste Management of Illinois, Inc. v. Village of Bensenville, PCB 89-28 (August 10, 1989); Wabash and Lawrence Counties; Tax Payers and Water Drinkers Association v. Count of Wabash, PCB 88-110 (May 25, 1989); Leroy Brown & Sons, Inc. V. County Board of McDonough Count, PCB 92-132 (February 4, 1992); Bishop v. PCB, 235 Ill. App. 3d 925, 601 N.E.2d 310 (5th Dist. 1992). Respondents further maintain that since the Ash decision, the legislature has on "at least twenty separate occasions revisited the language of Section 39.2" of the Act and in no instance did the legislature express any disagreement with the Ash ruling by inserting any language clarifying that certified mail could not accomplish the same purposes as registered mail. R.Br. at 4.

Board Discussion. It is well settled that the notice requirements of Section 39.2(b) of the Act are jurisdictional prerequisites which must be followed in order to vest the county board with the power to hear a landfill proposal. Ogle County Board v. Pollution Control Board, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2nd Dist. 1995); citing Kane County Defenders Inc. v. Pollution Control Board, 139 Ill. App. 3d 588, 487 N.E.2d 743. In this matter the issue is whether or not the use of certified mail return receipt rather than registered mail return receipt fails to meet the requirements of the Act. The respondents cite to Ash, a Board decision which is factually and legally on point. Thus, petitioners must convince the Board that its decision in Ash was incorrect in order to prevail on this issue. The Board finds that the petitioners have not done so.

In Ash, the Board decided that it could not ascertain any substantive difference in the functions provided by registered and certified mail except that registered mail is insured. Ash at 7. Further the Board found that the use of certified mail still proved a permanent record for the sending and receiving of notices. Ash at 7. Finally, the Board noted that Illinois appellate courts have found in various factual settings that certified mail will serve the purpose of registered mail. Ash at 7, citing to People ex rel. Gail Head v. Board of Education of Thornton Fractional Township High School District No. 215, 95 Ill. App. 3d 78, 81-82 (1st Dist. 1981); Olin Corporation v. William M. Bowling, 95 Ill. App. 3d 113, 116-117 (5th Dist. 1981); Norman Bultman v. Melvin Bishop, 120 Ill. App. 3d 138, 143-144 (5th Dist. 1984); Illini Hospital v. George P. Bates, 135 Ill. App. 3d 732, 734-735 (3rd Dist. 1985)..

Petitioners' reliance on the argument that the plain language of the statute requires registered mail is misplaced as the Board has already determined that certified mail is acceptable. Neither the courts nor the legislature have seen fit to disagree with the Board's interpretation. Therefore, based on the Board's prior decision in Ash, the Board finds that certified mail return receipt is acceptable to meet the jurisdictional notice requirements of Section 39.2(b) of the Act.

Whether the Application was Sufficient

Petitioners' Arguments. Petitioners assert that Saline County did not have jurisdiction because Landfill L.L.C. violated Section 39.2(c) by filing a request for siting application which did not disclose substantive portions of its proposal. Br. at 12-13. Petitioners assert that the application filed in July 1997 did not disclose the substance of Landfill L.L.C.'s position with regard to Sections 39.2(a)(v) and (vi). *Id.* Petitioners argue that Landfill L.L.C. introduced two letters at hearing (Exhibits 48 and 52) which were necessary to establish that to Section 39.2(a)(v) and (vi) were met and the failure to include these letters in the application violated Section 39.2(c) of the Act and is a jurisdictional defect. Br. at 19. Specifically one letter from Mr. R.L. Koonce dealt with rail traffic (Exhibit 52, C1850) while the second letter from the Galatia Fire Department dealt with fire protection (Exhibit 48, C1844).

Respondents' Arguments. Respondents maintain that this argument is legally incorrect in that neither the Board nor any appellate court in Illinois has ever held or even suggested that the contents of an application for siting approval rise to the magnitude of a jurisdictional concern. R.Br. at 11-12. In fact, respondents point out that if the application contents are important at all the importance lies solely in fundamental fairness considerations. R.Br. at 11.

Board Discussion. The Board agrees with respondents that this issue is one of fundamental fairness not jurisdiction. Petitioners have cited no authority which would convince the Board otherwise. Therefore, the Board finds that the sufficiency of the siting application is not a jurisdictional issue and we will review this issue under fundamental fairness.

Fundamental Fairness

Petitioners' Arguments

The petitioners' argument that the proceeding before Saline County was fundamentally unfair centers around the admission of certain documents and the testimony regarding those documents. Two of the documents at issue are the letters from R.L. Koonce and the Galatia Fire Department discussed above and petitioners' arguments are substantially the same with regards to those two documents. The argument is also the same for a third letter from Tate Township regarding the traffic patterns. Exhibit 53, C001851-1854. The remaining documents consist of Landfill L.L.C. exhibits 13, 14, 15, 16, and 17. C0080, C0081, C0082, C0083, and C00075-C0077. The Board will address the R.L. Koonce letter and the Galatia Fire Department letter followed by the remaining documents.

Petitioners argue that the failure of the applicant to include the letters in the application deprived the petitioners of the opportunity to properly prepare and respond to the letters. Specifically, petitioners assert that they were unable to question authors of the letters or address the substance of the letters because the letters were not a part of the application. Br. at 14. The letters were read into evidence over the petitioners' objections and, according to

petitioners, “seemed to resolve” issues regarding the two of the nine criteria without having been included in the original application.

In support of its argument petitioners called Mr. R.L. Koonce to testify at the Board’s hearing in this matter. Tr. at 13-36. Petitioners argue, in view of the testimony by Mr. Koonce at the Board’s hearing, that the opportunity to cross-examine or at least have Mr. Koonce testify about his letter was fundamentally unfair to the petitioners. Petitioners assert that the letter “was prepared by the drafter without any knowledge that it would become an exhibit admitted into evidence of a contested proceeding upon the sworn testimony of Mr. [Wayne] Hemmerich” a representative of Landfill L.L.C. Br. at 50.

The remaining documents at issue (Exhibits 13, 14, 15, 16, and 17) are figures prepared by Landfill L.L.C. Petitioners argue that the figures understate the disposal capacity of the state, region, and primary service area. Br. at 45. Petitioners maintain that the graphs are misleading because the graphs do not take into consideration recycling. *Id.* Petitioners also argue that none of the exhibits were available for inspection prior to the proceeding beginning although the application contained a reduced version of the graph. *Id.*

Respondents’ Arguments

In response to the assertions by petitioners, respondents points out that the challenge of fundamental unfairness regarding the three letters at Exhibit 48, 52, and 53 is the same as the objection previously raised as a jurisdictional issue. Petitioners allege that the documents were all hearsay and deprived the petitioners of their due process right to interrogate and cross-examine. R.Br. at 39. Respondents cite to Southwest Energy Corporation v. IPCB, 275 Ill. App. 3d 84 (4th Dist. 1995) in which the court unequivocally held that “fundamental fairness does not entitle any third party to a right to cross examine, but instead entitles third parties only to the right to participate and present evidence concerning the siting proceedings.”

Respondents assert that petitioners introduced no testimony challenging any of the exhibits, calculations, or information contained in them. R.Br. at 37. According to respondents, the petitioners relied on cross-examination of Landfill L.L.C.’s witnesses in an attempt to establish the inaccuracy of the documents. *Id.* Respondents maintain that the fundamental fairness argument suffers a fatal defect because the petitioners have no prejudice with respect to exhibits 13, 14, 15, 16, and 17. C0080, C0081, C0082, C0083, and C00075-C0077. Respondents argue that the public hearing record reveals the “falsehoods and inadequacies of these documents” and having caused no prejudice the offending materials do not provide any basis for relief through fundamentally unfair proceedings. R.Br. at 37-38.

Board Discussion

The Board is not persuaded that any of the factors asserted by petitioners alone or in total render the proceedings before Saline County fundamentally unfair. The three letters which were read into the record at the County siting hearing were read prior to the close of the proceedings with sufficient time for the petitioners to respond. With regard to the remaining exhibits, the public hearing record adequately addresses any potential problems with the

exhibits, some of which were raised by petitioners in cross-examining respondents' witnesses. Further, nothing in the record shows that petitioners were prejudiced by the admission of the exhibits. For these reasons, the Board finds the proceedings were fundamentally fair.

Criteria

Having determined that the proceedings before Saline County were fundamentally fair and that Saline County did have jurisdiction over this siting application, the Board now turns to a discussion of the challenged criteria. As noted above, the Board cannot reweigh the evidence. The Board may only reverse the Saline County decision on the criteria if the decision was against the manifest weight of the evidence. Waste Management of Illinois, Inc. v. IPCB (1987), 160 Ill. App. 3d 434, 112 Ill. Dec. 178, 513 N.E.2d 592. 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. The province of the hearing body is to weigh the evidence, resolve conflicts in testimony, and assess the credibility of the witnesses. Merely because we could reach a different conclusion, is not sufficient to warrant reversal. City of Rockford v. IPCB and Frank's Industrial Waste, (2nd Dist. 1984) 125 Ill. App. 3d 384, 465 N.E.2d 996.

Petitioners challenge criteria one, three, four, five and six. Those criteria provide:

The facility is necessary to accommodate the waste needs of the area it is intended to serve. 415 ILCS 5/39.2(a)(i).

The facility is so located so as to minimize the 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).

The facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed. 415 ILCS 5/39.2(a)(iv)

The plan of operations for the facility is designed to minimize the danger to the surrounding are from fire, spills, or other operational accidents. 415 ILCS 3/39.2(a)(v).

The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. 415 ILCS 5/39.2(a)(vi).

In general, petitioners maintain that the statute requires the applicant to "demonstrate compliance" with the statutory criteria. Br. at 20-21. The petitioners argue that Landfill L.L.C. never demonstrated "anything throughout all six nights of public hearings" on the application. Br. at 23. Thus, petitioners argue the criteria were not met. In general, respondents argue that Landfill L.L.C. put on a very complete and compelling case and did not "duck" its responsibility. R.Br. At 16. Further, respondents assert it is petitioners who failed to provide testimony. R.Br. at 18.

Criterion 1. The facility is necessary to accommodate the waste needs of the area it is intended to serve. 415 ILCS 5/39.2(a)(i).

Petitioners' Argument. Petitioners assert that the decision by Saline County that the landfill is necessary to accommodate the needs of the area is based on inaccurate assumptions. Specifically, petitioners allege that five assumptions are incorrect: (1) the region's disposal capacity will be depleted in seven years; (2) the primary service area has existing capacity of 11,077,832 (Br. at 25); (3) the landfill will benefit the county with a host agreement; (4) the landfill will create new jobs (*Id*); and (5) Landfill L.L.C. will conservatively have 80% of the market within a 20 mile radius. *Id*.

Petitioners maintain that the disposal capacity figures concerning the life of landfills and amount of capacity are based on "out-of date" data and do not take into consideration expansion of other facilities in the area. Br. at 25. The petitioners maintain that there is no host agreement in the record and no evidence as to how many jobs or what the wages will be. *Id*. Finally, petitioners maintain that the market share argument is flawed because there is no consumer base and the competition is vertically integrated. *Id*.

Respondents' Arguments. Respondents argue that the application contained a detailed discussion, along with exhibits in support of this criterion. R.Br. at 19. Respondents also indicate that four witnesses testified at the public hearing in support of the application and exhibits. *Id*. The first of these witnesses, Mr. John Acre, provided Saline County with an overview of waste disposal trends in the state and the Saline County Region. *Id*. Mr. Acre's testimony specifically addressed the life of the landfills and the capacity. R.Br. at 20. Mr. Acre also testified as to the marketshare the facility could expect. R.Br. at 21. Respondents note that petitioners disagree with Mr. Acre's testimony, however, respondents argue, petitioners did not present any contrasting evidence. R.Br. At 22. Respondents further argue that petitioners never placed more-up-to-date reports into evidence before Saline County. R.Br. at 22-23.

Board Discussion. The Board finds that there is evidence in the record which supports the finding by Saline County that the facility is necessary to accommodate the waste needs of the area it is intended to serve and therefore, the decision of Saline County is not against the manifest weight of the evidence. The record includes the more up-to-date information on capacity and Landfill L.L.C.'s experts answered petitioners' questions on that information at the public hearing. Thus, Saline County had both sets of information before it when Saline County found that criterion one was met and the Board cannot reweigh the evidence. The Board affirms Saline County's decision on criterion one.

Criterion 3. The facility is so located so as to minimize the 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).

Petitioners' Arguments. Petitioners challenge the testimony of Mr. Bill Parks on this criterion. Petitioners assert that that the "testimony was baseless" because Mr. Parks did no studies and relied on personal observations. Br. at 38. Petitioners further maintain that

because Mr. Parks “indicated that he had just finished his work on this matter in September, 1997” and the application was filed on July 11, 1997, the burden on criterion three had not been met. Br. at 39.

Respondents’ Arguments. Respondents assert that the evidence before Saline County on this issue included the testimony of two witnesses and about 150 pages of transcript. R.Br. at 29. Respondents argue that the siting application need not constitute the sum total of applicant’s case, but rather some discussion can be reserved for hearing. R.Br. at 30, citing Concerned Citizens for a Better Environment v. City of Havana, PCB 94-44 at 12 (May 19, 1994). Thus, respondent asserts, Mr. Park’s conclusion were appropriate for discussion and the October 1997 hearing especially as Mr. Park’s conclusion would apply prospectively when the landfill was built. R.Br. at 30. Finally Landfill L.L.C. maintain that Mr. Park’s credentials were established at the public hearing, he had previously performed an analysis if property values for the Saline County Landfill, and his personal opinions on property values are compelling. R.Br. at 31.

Board Discussion. The Board finds that there is evidence in the record which supports the finding by Saline County that the facility is located to minimize incompatibility and minimize the effect on the value of surrounding property. The Board cannot reweigh the evidence and a careful review of the evidence on this criterion does not indicate that a contrary ruling is “clearly evident, plain, or indisputable from a review of the evidence.” See Sierra Club v. City of Wood River, PCB 98-43, at 4 (Jan. 8, 1998), citing McLean County Disposal, Inc. v. County of McLean, 207 Ill. App. 3d 477, 566 N.E.2d 26 (4th Dist. 1991), Fairview Area Citizens Taskforce v. Pollution Control Board, 198 Ill. App. 3d 541, 555 N.E.2d 1178 (3d Dist. 1990), Waste Mgt. Of Illinois, Inc. v. Pollution Control Board, 160 Ill. App. 3d 434 (2nd Dist. 1987), and Harris v. Day, 115 Ill. App. 3d 762 (4th Dist. 1983). The Board affirms Saline County’s decision on criterion three.

Criterion 4. The facility is located outside the boundary of the 100 year flood plain or the site is flood-protected. 415 ILCS 5/39.2(a)(iv)

Petitioners’ Arguments. Petitioners argue that the testimony of Mr. Acree does not establish that the facility will be located outside the 100 year flood plain. Br. at 40. Specifically, the petitioners point to a discussion regarding a fence around the facility and maintain that the fence may be in the 100 year flood plain. *Id.*

Respondents’ Arguments. Respondents argue that Mr. Acre’s testimony establishes that most of the facility is outside the 100 year flood plain. R.Br. at 32. Further, respondents maintain that if the fence is considered a part of the facility it would be relocated if it was determined to be in the 100 year flood plain. R.Br. at 32, citing C1078-C1077.

Board Discussion. The Board finds that there is evidence in the record which supports the finding by Saline County that the facility is located outside the 100 year flood plain or will be flood proofed. The Board cannot reweigh the evidence and a careful review of the evidence on this criterion does not indicate that a contrary ruling is clearly evident, plain, or indisputable. The Board affirms Saline County’s decision on criterion four.

Criterion 5. The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. 415 ILCS 3/39.2(a)(v).

Petitioners' Arguments. Petitioners challenge the finding on this criterion primarily due to the letter from the Galatia Fire Department (Exhibit __) discussed above under jurisdiction and fundamental fairness. Br. at 40. Petitioners assert that the letter was not a part of the application and should not have been allowed in the proceedings. Br. at 41. Petitioners maintain that absent the letter, criterion five cannot be met. *Id.*

Respondents' Arguments. Respondents argue that the Galatia Fire Department stated that it will respond in case of emergencies. R.Br. at 33. Respondents maintain that there is nothing in the record which would indicate that the Fire Department could not respond as it has indicated. *Id.*

Board Discussion. The Board finds that there is evidence in the record which supports the finding by Saline County that the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents. The record includes the letter from the Galatia Fire Department (Exhibit __) which supports Saline County's finding on this issue. The Board cannot reweigh the evidence. The Board affirms Saline County's decision on criterion five.

Criterion 6. The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. 415 ILCS 5/39.2(a)(vi).

Petitioners' Arguments. Petitioners reiterate the same argument from criterion five on this criterion. Br. at 41. Petitioners maintain that the letter from Mr. Koonce and the letter from Tate Township should not have been admitted and absent those letters this criterion is not supported by evidence in the record.

Respondents' Arguments. Respondents argue that the record contains substantial materials relating to traffic patterns. R.Br. at 34. Respondents cite to the application (C0133-C0135), dozens of pages from the Illinois Department of Transportation (C0187-C0219, Ex. 51, C1847-C1848), and testimony by two witnesses regarding traffic patterns. R.Br. at 34-35. Thus, respondents maintain that Landfill L.L.C. had met its burden with regard to this criterion.

Board Discussion. The Board finds that there is evidence in the record which supports the finding by Saline County that the facility is designed to minimize the impacts on existing traffic flows. The record includes the letters from R.L Koonce and Tate Township which support Saline County's finding on this issue. The Board cannot reweigh the evidence. The Board affirms Saline County's decision on criterion six.

CONCLUSION

After reviewing the arguments and the record, the Board affirms the decision of Saline County which approved site location for a landfill proposed by Landfill L.L.C. d/b/a West End

Disposal Facility. The use of certified mail to serve notice of the impending application filing was sufficient to satisfy the notice requirements of Section 39.2(b) of the Act and confer jurisdiction on Saline County. In addition, the alleged inadequacy of the siting application is not a jurisdictional issue and was considered by the Board under the fundamental fairness arguments. The proceeding before Saline County was fundamentally fair and the decision was not against the manifest weight of the evidence. Therefore, the Board affirms Saline County's landfill siting approval.

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

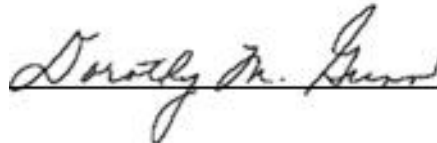
ORDER

The Board affirms the decision of the Saline County Board of Commissioners which approved the siting for a regional pollution control facility owned by Landfill L.L.C. a/b/a West End Disposal Facility. The docket is closed.

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 172 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 7th day of May 1998 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board