ILLINOIS POLLUTION CONTROL BOARD
June 16, 1988

LAIDLAW WASTE SYSTEMS, INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 88-27
	)	
THE MCHENRY COUNTY BOARD,	)	
	)	
Respondent.	)	

SAM VINSON, KAREN P. FLYNN, CHRISTOPHER W. ZIBART, TODD R. WEINER, OF HOPKINS & SUTTER, APPEARED ON BEHALF OF THE PETITIONER.

DAVID R. AKEMANN AND WILLIAM F. BARRETT, SPECIAL ASSISTANTS STATE'S ATTORNEY FOR MCHENRY COUNTY, APPEARED ON BEHALF OF THE RESPONDENT.

RICHARD G. FLOOD AND ANDRE T. FREUND, OF ZUKOWSKI, ROGERS, FLOOD & MC ARDLE, APPEARED ON BEHALF OF THE VILLAGES OF LAKE IN THE HILLS AND ALGONQUIN AS AMICUS CURIAE.

RICHARD W. COSBY, SPECIAL ASSISTANT STATE'S ATTORNEY FOR MCHENRY COUNTY APPEARED ON BEHALF OF THE PEOPLE OF MCHENRY COUNTY AS AMICUS CURIAE.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a Petition for Hearing filed by Laidlaw Waste System, Inc. (Laidlaw) on January 27, 1988. Specifically, Laidlaw appeals the January 21, 1988 decision of the McHenry County Board (County Board) which, pursuant to Section 39.2 of the Illinois Environmental Protection Act (Act), denied Laidlaw's application for site location suitability approval concerning a proposed, new regional pollution control facility. Laidlaw challenges the County Board's finding that Laidlaw failed to meet its burden of proof concerning criteria 2, 3, and 6 as set forth by Section 39.2(a).

After reviewing the record, given the manifest weight standard of review, the Board must affirm the County Board's decision

Requirements for the siting of new regional pollution control facilities are specified in the Act. Section 39(c) of the Act provides that "no permit for the development or construction of a new regional pollution control facility may be granted by the [Environmental Protection] Agency unless the applicant submits proof to the Agency that the location of said

facility has been approved by the County Board of the county if in an unincorporated area...in accordance with Section 39.2 of this Act." At the time this proceeding was before the County Board, Section 39.2 provided in pertinent part[1]

a) The county board too shall approve the site location suitability for such new regional pollution control facility only in accordance with the following criteria:

1) The facility is necessary to accomodate the waste needs of the area it is intended to serve;

2) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

3) the facility is located so as to minimize incompatibility with the character of the surrounding area and minimize the effect on the value of the surrounding property;

4) the facility is located outside the boundary of the 100 year flood plain or the site is flood proofed;

5) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents; and

6) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

Before making its decision, the County Board held 16 hearings during June of 1987 and 9 hearings in November and December of 1987. These hearings generated a transcript of 3833 pages. In addition, the County Board admitted over 180 exhibits. One of those exhibits, H.O. 87-90, includes portions of the record from previously held hearings conducted by the County Board regarding another Laidlaw application, which had

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[1] Criterion #7, which applies to facilities that will accept hazardous waste, did not apply in the instant situation since Laidlaw's proposed facility would not accept hazardous waste. Criterion #8 was added by P.A. 85-863 which became effective on September 24, 1987. This criterion concerns "regulated recharge areas" which are yet to be determined by the Board pursuant to Section 17.4 of the Act. In addition, the Board notes that another criterion was added by P.A. 85-945; however, that provision which concerns solid waste management plans, does not become effective until July 1, 1988.

been filed within the County Board on August 5, 1985. This one exhibit alone includes 26 hearing transcripts, totalling 6478 pages, and over 180 exhibits from the 1985 proceeding.

At its last hearing in June of 1987, the County Board granted leave to Laidlaw to file an amended application. As a result, a second set of hearings were held on the amended application during November and December. This generated additional pages of transcript. For clarity, citations to the transcripts will be denoted as follows: 1985 Hearings--RI; 1987 June Hearings--RII; 1987 November and December Hearings--RIII. The Board notes that two other applications were filed by Laidlaw in 1985 and withdrawn due to notice problems. (R. III, 25).

By its Order of March 10, 1988, the Board granted leave to the Village of Algonquin and the Village of Lake in the Hills (collectively, "the Villages") to allow the Villages to participate in this matter as an amicus curiae. Similarly, on March 24, the Board granted leave to the McHenry County's State Attorney to file an amicus brief on behalf of the People of McHenry County.

The Board held its own hearing in this matter on March 25, 1988. That hearing generated a transcript of 23 pages, and one exhibit was admitted. It will be cited as "Bd R."

On April 8, 1988, the County Board filed a Motion to Strike. Specifically, the County Board requests that the Board strike from Laidlaw's brief, filed on April 1, the sections entitled "Introduction," "Heart of the Case," and "Standard of Review." The County Board contends that these sections contain allegations of fact that are not based on the record. In addition, the County Board claims that the allegations are not relevant to this proceeding since they go to the issue of fundamental fairness which Laidlaw has not challenged.

Laidlaw did not file a response to the County Board's motion. However, it did address the County Board's motion in its Reply brief. Laidlaw asserts that its appeal does not challenge the fundamental fairness of the procedures utilized by the County Board. It is Laidlaw's position that its original brief merely sought to show that the County Board's decision is against the evidence of the record.

The Board denies the County Board's motion. It is clear that Laidlaw is not alleging that the County Board's decision was the result of a fundamentally unfair process. Also, the Board is able to determine and exclude from its consideration material cited in briefs which is outside the record and not of the type which the Board may take official notice. Waste Management of Illinois v. Lake County Board, PCB 87-75, slip. op. at 3 (December 17, 1987).

On May 25, 1988, Laidlaw filed a Motion for Leave to File Additional Brief and For Oral Argument (Motion). Laidlaw bases its Motion upon remarks made by Board Member Marlin during the Board's public discussion of this matter at the Board meeting of May 19, 1988. Laidlaw claims that these comments indicate that the Board is "confused about the relevance of testimony from the earlier two [sets of] hearings to Laidlaw's final amended application." Laidlaw further states:

> Confusion over which testimony is relevant could lead the Board once again to feel constrained to affirm a county board denial. This would be unfortunate here, because the Board would be ignoring the unique opportunity to approve a landfill on the merits.

Laidlaw suggests that it could clear up this "confusion" with an additional brief and oral argument.

The Villages filed a Response to the Motion on May 31, 1988. The Villages do not have party status in this matter; they participate only as amicus curiae. The filing of a response to Laidlaw's Motion exceeds the Village's limited role in this proceeding. As a result, the Board has not considered the Villages' Response.

The County Board requests that the Board deny Laidlaw's Motion in the Objection it filed on June 6, 1988. In its Objection, the County Board states:

> Merely because one member comments on one small aspect of a large record does not mandate or even suggest that the entire Board has not considered the entire record and will decide the case accordingly. If the Petitioner feels that the case has been decided incorrectly, there still remain other avenues which the Petitioner could pursue including appeal.
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> Petitioner's motion, if granted, may create a chilling effect upon discussion at this Board's open meetings and would encourage a steady stream of requests for additional briefs on subjects that members of this Board must comment upon. Such untimely requests would hinder a prompt determination by the Board and make arriving at a decision an even more arduous task.

The Board is in complete agreement with the County Board's position on this point. Consequently, the Board hereby denies

Laidlaw's Motion. However, the Board is compelled to state that it does not feel "confused" by the record. Although the record in this matter is enormous, and naturally more difficult to review, such bulk has not clouded the Board's analysis of the issues. In addition, Laidlaw seems to suggest that the Board must seize upon the opportunity to approve a landfill on the merits of a proposal. The Board's sole role in the landfill siting process is to review a county board's decision on a manifest weight standard. This is the only directive for Board action in proceedings such as this. It is not the responsibility of the Board to site landfills; rather, such decisions lie with a county board.

Review of Local Decisions

Pursuant to Section 40.1 of the Act, the Board must review a site location suitability decision in two ways. First, the Board must determine whether the county, or unit of local government, rendered its decision in a fundamentally fair manner. If the Board concludes that the local decision was the result of a fundamentally fair process, then the Board may substantively review the record below to determine whether the decision is against the manifest weight of the evidence. If the local decision is against the manifest weight of the evidence, the Board must reverse that decision; if it is not, the Board must affirm. E&E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 451 N.E.2d 555 (1983) aff'd in part 107 Ill. 2d. 331 481 N.E.2d 669.

The standard of review, imposed by the courts upon the Board, requires that a significant amount of deference be given to the findings of the county board. The manifest weight standard of review gives a county board's findings the respect customarily accorded fact findings by administrative agencies. E&E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d at 608. This standard is "consistent with the legislative intent to grant local authorities the power to determine the site location suitability of a proposed new regional pollution control facility." Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, No. 2-87-0029, slip. op. at p. 10 (September 11, 1987). Indeed, "the County board does have the authority to consider any and all of the technical details associated with the landfill siting decision." Waste Management of Illinois, slip. op. at 6. While the Board's own "technical expertise and informed knowledge is relied on in its review of county board findings involving technical matters," (Waste Management of Illinois, slip. op. at 11), it is clear that the Board may not substitute its own judgement for that of the county board's.

The Board explained the application of the manifest weight standard in Waste Management of Illinois v. McHenry County Board, PCB 86-109, slip. op. at 12 (December 5, 1986), aff'd, Waste

Management of Illinois v. Illinois Pollution Control Board, Illinois Appellate Court No. 2-87-0029 (2d Dist., September 11, 1987):

The Illinois Appellate Court has recently stated:

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

Consequently, if, after reviewing the record, the Board finds that the County Board could have reasonably arrived at its conclusions, then the County Board's findings must be affirmed.

Jurisdictional Issues

However, before the Board embarks on a review of the local authority's decision concerning the fundamental fairness or manifest weight of the evidence, the Board must first address any allegations that the local authority lacked jurisdiction to make a decision. Courts have held that notice requirements contained in Section 39.2(b) of the Act are jurisdictional and must be followed in order to vest the county board with the power to hear a landfill proposal. Kane County Defenders, Inc. v. Pollution Control Board, 139 Ill. App. 3d 588, 487 N.E.2d 743 (2d Dist. 1985); Browning-Ferris Industries, Inc. v. Illinois Pollution Control Board, No. 5-86-0292, __ Ill. App. 3d __, N.E.2d (5th Dist. 1987); Concerned Boone Citizens, Inc. v. M.I.G. Investments, Inc., 144 Ill. App. 3d 344, 494 N.E.2d 180 (2d Dist. 1986); The Village of Lake in the Hills v. Laidlaw Waste Systems, Inc., 143 Ill. App. 3d 285, 492 N.E.2d 969 (1986); See also McHenry County Landfill, Inc. v. Environmental Protection Agency, 154 Ill. App. 3d 89, 506 N.E.2d 372 (2d Dist. 1987) (Although the

Second District found that the requirements of Section 39.2(b) were jurisdictional, the Board's own failure to provide notice in accordance with Sectin 40.1 was not jurisdictional).

In the Villages' Amicus Curiae Brief, the Villages raise five specific objections on the question of the County Board's jurisdiction to decide Laidlaw's application for site-location suitability approval. Three of these points involve allegations that the notice requirements of Section 39.2(b) have not been fulfilled and hence that the County Board lacked jurisdiction.

Section 39.2(b) of the Act provides:

> No later than 14 days prior to a request for location approval the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirements; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.
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> Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located. Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the county board, and a description of the right of persons to comment on such request as hereafter provided.
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> Ill. Rev. Stat. 1986 Supp., ch. 111 ½, par. 1039.2(b)

The Village's first two contentions concern Laidlaw's service of notice of the amendment to its application. That is, these allegations do not involve the service of notice in conjunction with Laidlaw's February 27, 1987 filing of its request for site-location suitability approval.

The Villages assert that some individuals were served notice by "leaving a copy of the Notice with a person who purportedly resided with the property owner sought to be served." According to the Villages, this service was defective, because Laidlaw, "did not attempt supplemental service by registered mail or make a subsequent attempt at service." The Villages state that personal service is only accomplished when the person to be served receives the notice in hand. The type of service utilized by Laidlaw, according to the Villages, does not comport with the requirements of Section 39.2(b) of the Act. Laidlaw counters that such service is consistent with the Act.

The second notice allegation arises out of Laidlaw's failure to serve or attempt to serve notice of the amended application upon Randy Schafer, who had recently acquired parcel No. 19-28-129-009. The Villages contend that Schafer's name was placed on the official tax rolls of the County on May 20, 1987 by manually writing his name on a computer print-out sheet. The Villages state that Laidlaw attempted to effectuate service for the amendment on July 15, 1987. In response, Laidlaw asserts that the handwritten entry of Randy Schafer, even if in existence at the time of Laidlaw's service of notice, did not constitute an official entry onto the County's tax rolls. Laidlaw states that it did serve the Administration of Veteran Affairs which Laidlaw claims was the owner of the parcel and which appeared on the authentic tax records of the County at the time Laidlaw gave notice of its amendment.

Generally, it is Laidlaw's position that the Act does not require service of notice for an amendment to an application, although Laidlaw had agreed to serve notice of the amended application on all who would be entitled to receive notice if it were considered a new request.

The underlying assumption of the Villages' position is that an amendment to an application for site location suitability approval must be noticed pursuant to Section 39.2(b) of the Act before the county is vested with jurisdiction to decide the amended application.

Section 39.2(b) requires that notice be served "14 days prior to a request for location approval." This subsection of the Act does not expressly address the situation of an amendment to an application. None of the court cases which held that the notice requirements were jurisdictional involved the noticing of an amendment to an application.

The legislature recently addressed the issue of amending an application in P.A.85-945 which will become effective on July 1, 1988. Specifically, the legislature added the following language to Section 39.2(e):

> At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the county board or governing body of the municipality and any participants, the applicant may file not more than one amended application upon payment of additional fees pursuant to Section 39.2(k) of the Act. Provided, however, that the time limitation for final action set forth in Section 39.2(e) of the Act shall be extended for an additional period of 90 days.
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> Ill. Rev. Stat. 1982, ch. 111 1/2, par. 1039.2(e)

It is apparent that in addressing the issue of amendments to an application, the legislature has remained silent as to noticing requirements.

In short, the Act does not expressly require that an amendment to a landfill siting application be noticed according to the rigid provisions of Section 39.2(b). In addition, the Courts have not construed the Act as imposing such a requirement.

The Illinois Supreme Court has held that courts "cannot inject provisions not found in a statute, however desirable or beneficial they may be." Droste v. Kerner 34 Ill. 2d 495, 217 N.E.2d 73, 79 (1966). The Board believes that it should follow that rule in this case. Consequently, the Board holds that the Act does not require an applicant to notice an amendment to its application pursuant to Section 39.2(b). The strict notice requirements of Section 39.2(b) apply to the initial request for site-location suitability approval. The applicant must comply with that provision in order for jurisdiction to vest. This jurisdiction is not divested by subsequent attempts at noticing an amended application. However, fundamental fairness requires that a reasonable attempt to inform the public of amendments and hearings on them must be undertaken.

Previously, the Board has addressed the issue of application amendment in terms of the fundamental fairness issue. The Board notes that neither the Villages nor Laidlaw have alleged that the County Board's decision was the result of a fundamentally unfair process.

In McHenry County Landfill, Inc. v. County Board of McHenry County, PCB 85-56, 65 PCB 487, 490-92 (September 20, 1985), the Board reviewed a ruling by a hearing officer at a county hearing. The hearing officer had excluded evidence which he believed constituted a defacto or express amendment to the application. The Board concluded that the exclusion was not fundamentally unfair. While the Board did discuss the notice requirements and their value in informing the public about the substance of the application, the Board did not conclude that an amendment had to be noticed according to Section 39.2(b).

Similarly, in Waste Management of Illinois v. Lake County Board, PCB 87-75, slip. op. at 9-10 (December 17, 1987) the Board reviewed a county ordinance, which prohibited amendments, in a fundamental fairness context. After citing its own decision in McHenry County Landfill, the Board concluded that the petitioner had failed to show that the ordinance was fundamentally unfair. As with McHenry County Landfill, the Board did not conclude that an amendment would require full noticing pursuant to Section 39.2(b).

Consequently, any notice requirements for Laidlaw's amendment, which were imposed by the County Board, relate to the matter of fundamental fairness not jurisdiction.

On June 30, 1987, the County Board ordered that Laidlaw notice its application amendment as a condition for allowing the amendment. The Board has held that a local authority may develop procedures in order to conduct hearings and to ensure fundamental fairness of the process. Waste Management of Illinois v. Lake County Board, PCB 87-75, slip. op. at 8-9 (December 17, 1987). It is the Board's role to address any allegation that such procedures were fundamentally unfair. No person has contended that the County Board's notice requirement concerning Laidlaw's amendment was fundamentally unfair. The only complaint arising out of the notice issue comes from the Village's assertion that Laidlaw failed to meet the notice requirement for the amendment and that the County Board lacked jurisdiction.

However, the Villages also do not assert that actions of Laidlaw resulted in a fundamentally unfair process. It must be emphasized that the notice requirement for Laidlaw's amendment originates with the County Board and not the Act. Evidently, the County Board is satisfied with Laidlaw's actions concerning the service of notice of the amendment. In its post hearing brief before the Board, the County Board asserts that the type of service employed by Laidlaw, that is leaving notice with a person who resides with the person intended to be served, was sufficient. Also, the County Board contends that at the relevant time of service, July 1987, the authentic tax records of the County did not include Randy Schafer as owner of parcel No. 19-28-129-009. According to the County Board, failure to serve Randy Schafer was not improper.

In summary, no one has alleged that Laidlaw's actions in attempting to meet the County Board's notice requirement for the amendment rendered the County Board's hearing process fundamentally unfair. The Board finds that Laidlaw made a good faith effort to comply with the County Board's order. The County Board takes the position that Laidlaw did indeed comply. Given all the circumstances, the Board finds that Laidlaw's service of notice of the amended application did not result in a fundamentally unfair process. The Board cautions, though, that

its conclusion regarding Laidlaw's actions for service of notice applies only to an evaluation as to fundamental fairness. The Board's decision today does not address the issue of whether Laidlaw's actions were in accordance with the jurisdictional notice requirements imposed by Section 39.2(b) that would apply to an initial application.

The Village's third contention concerning notice deals with the description of the site contained in the notice. According to the Villages, the County Board lacked jurisdiction because the legal descriptions of the proposed site in the notices for the original and amended application were in error. Specifically, the Villages assert that the legal description included portions of a road which is actually within the Village of Lake in the Hills, not unincorporated McHenry County. Also, the Villages assert that the narrative portion of the description failed to state that certain portions of the "site" were located in the Village of Lake in the Hills.[2]

Laidlaw responds that given the recent decision by the Illinois Appellate Court, Fifth District in Daubs Landfill, Inc. v. Illinois Pollution Control Board, No. 5-87-0198, slip. op. (5th Dist. February 19, 1988), the narrative descriptions found in Laidlaw's notices were sufficient for the purposes of Section 39.2(b).

For reasons already stated, the Board need not look at the notice for the amended application to determine whether the requirements of 39.2(b) were fulfilled. The only relevant consideration is the description of the location which appeared in Laidlaw's notice concerning the initial request for site location suitability approval which was filed with the County Board on February 27, 1987.

In Daubs Landfill, the Fifth District reversed the Board's conclusion that an error in a legal description rendered the notice defective. The court found that a notice is proper if it contains a narrative description which sufficiently apprises adjoining landowners and the general public of the location of the proposed site. Daubs Landfill, slip. op. at 6.

Laidlaw's notice for the site approval request it filed on February 27, 1987, included the following narrative description:

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[2] The Village argues that since Laidlaw has promised improvements to Pyott road and the relocation of Lake in the Hills Well No. 6, if necessary, then Pyott Road and Well No. 6, although located in the Village of Lake of the Hills, are a part of Laidlaw's Proposed "site." This argument is addressed later.

> The proposed site consists of a parcel containing 159.1579 acres located East of Pyott Road, West of the abandoned Chicago and Northwestern Railway right of way, having a southerly property line approximately 350 feet North of the intersection of Pyott Road and Algonquin/Huntley Road, in Algonquin Township, McHenry County, Illinois. The subject site is approximately 4550 feet from its southerly property line to its northerly property line which is contiguous to the Larsen Industrial Park.
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> (H.O. Exh. 87-1)

The Board finds that this description meets the standard enunciated in Daubs Landfill; therefore, Laidlaw's notice was not defective because of its description of the location of the proposed site. In addition, Laidlaw appears to have complied with all other requirements for the content of the notice which are imposed by Section 39.2(b). Also, for the same reasons set forth below, Laidlaw's notice did not need to state that part of the proposal involved items located in the Village of Lake in the Hills.

The fourth jurisdictional issue raised by the Village involves Laidlaw's proposals to 1) make improvements to Pyott Road and 2) relocate a municipal drinking water well--well No. 6--if it becomes contaminated. Both Pyott Road and Well No. 6 are located in the Village of Lake in the Hills. The Villages contend that as a result of Laidlaw's promises, Pyott road and Well No. 6 should be considered part of Laidlaw's "site." Next, it is argued that the McHenry County Board does not have jurisdiction to decide these aspects of Laidlaw's proposal, since Pyott Road and Well No. 6 are not located in unincorporated McHenry County. The Villages conclude that references to the road improvements and well relocation should be stricken from the record, since these features are not within County Board's jurisdiction for landfilling siting decisions. That is, according to the Villages, the Board should not consider these matters in evaluating the County Board's decision with regard to the manifest weight standard.

In response, Laidlaw states that the Villages are improperly using the statutory definition of the term "site" in an attempt to create a jurisdictional issue. According to Laidlaw, this definition should not be transferred to the site location approval process. It is maintained by Laidlaw that Pyott road and Well No. 6 are not a part of the landfill facility that Laidlaw is proposing. That notwithstanding, Laidlaw asserts that the County Board could properly consider Laidlaw's proposals concerning the road and the well. In other words, Laidlaw contends that since the site location suitability process involves consideration such as safety, off-site factors may and should be considered.

The Board generally agrees with Laidlaw. The Villages' position appears to comingle two concepts that are distinct in the Act. The first is the issue of determining which local authority has jurisdiction over the proposed facility. The second, concerns a local authority's evaluation of the proposal in terms of the criteria enunciated in Section 39.2(a).

In its argument, the Villages cite A.R.F. Landfill Corporation v. Village of Round Lake Park, PCB 87-34 79 PCB 92 (July 16, 1987). However, the situation in A.R.F. Landfill is quite different than the one presently before the Board. In A.R.F. Landfill, the applicant was seeking site location suitability approval from the Village of Round Lake Park concerning a proposed expansion to an existing landfill. The proposed area of expansion included a parcel which the applicant contended was within the Village of Round Lake Park. The Board held that since a portion of the proposed expansion was considered within the Village of Round Lake Park,[3] then that portion of the proposed expansion had to be approved by the Village of Round Lake Park. The County of Lake had jurisdiction over the remaining portion of the expansion. 79 PCB at 100-101.

The legislative history of the landfill siting provisions of the Act, Senate Bill 172, addresses the jurisdiction issue specifically. Prior to a vote in the House of Representatives which passed S.B. 172 through the adoption of the Conference Committee Report #1, Representative Breslin, while discussing the bill, stated:

> They must before getting a permit from the EPA, first secure the permit from the County or the local unit of government in which they lie. If they lie totally within a municipality then they get it from the municipality, if they lie in the county, in the unincorporated area then they get the permission from the county, if they overlap they get it from both. And this must be granted prior to the EPA going ahead with its siting approval.
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> 82nd General Assembly, House of Representatives, July 1, 1981, p. 191-92.

[3] The Board notes that at the time of the decision the annexation, by the Village of Round Lake Park, of the parcel in question was being contested in a quo warranto action in the Illinois circuit court. As a result, the Board held that it would treat the annexation as valid, since the validity of an annexation may not be collaterally challenged.

The Villages reason that Laidlaw's proposals concerning Pyott Road and Well No. 6 are a part of the proposed "site" and are exclusively within the jurisdiction of the Village of Lake in the Hills for the purposes of location approval. The Board believes that such reasoning is erroneous.

Section 39(c) of the Act provides:

> [N]o permit for the development or construction of a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area in which the facility is to be located in accordance with Section 39.2 of this Act. (emphasis added)

In short, the determining factor for jurisdiction is the location of the proposed facility. The Act does not utilize the term "site" when it discusses the issue of jurisdiction in the siting of new regional pollution control facilities. Since the Act does not define the word "facility," a common usage of the word would apply. It is the Board's belief that Pyott Road and Well No. 6 are not a part of the new regional pollution control facility that Laidlaw is proposing. Although these features do figure into Laidlaw's proposal, they are not determinative of jurisdiction.

The jurisdictional aspect should not be confused with the second phase of the siting process; the process by which a local authority grants site location approval.

While the term "facility" is also used in Section 39.2(a), it is obvious from the criteria set forth by that Section that the county board or local governing body must consider factors which extend beyond the limits of the facility in deciding whether to approve a location. The local authority must determine how the facility would impact on the surrounding environment--including areas that are outside the site-approval jurisdiction of the decisionmaking body. Therefore, it was not inappropriate for the County Board to consider those aspects of Laidlaw's proposal that dealt with features located outside of unincorporated McHenry County. The Board cautions, however, that the County must recognize that any offer of impact minimization that requires the agreement of another person to implement is not within the applicant's sole control to implement, e.g. paving a road or purchasing a house external to the site.

Consequently, the Board finds that it was proper for the County Board to consider Laidlaw's proposals concerning Pyott Road and Well No. 6 when it decided this matter. The Board notes

In its brief which was filed on April 8, 1988, the County Board expressly adopts the "arguments, positions, and evidentiary evaluations" contained in portions of a document entitled "Proposed Findings and Order Submitted by Richard Flood". The particular portions are attached to the County Board's brief.

Laidlaw states that the County Board is attempting to create the impression that it initially adopted these findings when it made its January 21, 1988 decision. Laidlaw correctly asserts that the County Board's decision did not mention these particular findings.

To the extent Laidlaw is objecting to the County Board's inclusion of rationale supporting its decision, the Board must overrule such objections. The Board views the attachment in the County Board's brief as argument which cites evidence in the record that supports the County Board's decision. The underlying document from which the attachment is taken was submitted to the County Board prior to the County Board's January 21, 1988 decision. Laidlaw also had submitted a similar document to the County Board. It is the Board's role to evaluate a county board's decision as to whether it is against the manifest weight of the evidence. Such a review becomes much more focused when the Board can turn to particular findings of a county board which led to the final decision. Certainly, if any of those findings can support the decision given the manifest weight standard of review of review, the Board must affirm the County Board's decision. All too often, county boards or other units of local government do not provide any findings or rationale supporting the ultimate decision. Rather, they merely give their conclusions as to which criteria the applicant proved or failed to prove. While these actions are consistent with case law (e.g. E&E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 451 N.E.2d 555, 577 (2d Dist. 1983)), they create a situation where the record is extremely difficult to review. This becomes quite evident when one considers that the record in a landfill siting case such as this proceeding, often involves hundreds of exhibits and thousands of pages of transcripts. Often the briefs of the local units of government do not even contain citations to the record.

Therefore, the Board welcomes the County Board's brief which cites evidence supporting the County Board's decision. It must not be forgotten that the burden of proof in this proceeding is upon Laidlaw; Laidlaw must prove that the County Board's decision is against the manifest weight of the evidence. Also, Laidlaw had the opportunity to respond to the County Board's rationale in a reply brief which Laidlaw filed on April 15, 1988.

Criterion #2

that County Board expressly declared that it made no jurisdictional finding concerning "any real estate located within the corporate limits of the Village of Lake-in-the-Hills." County Board Findings and Order, January 21, 1988, p. 3. However, the specific proposals relating to Pyott Road and Well No. 6 had no bearing on the outcome of the Board's own substantive review of this matter. That is, there is a sufficient amount of evidence in the record, even when excluding Laidlaw's proposals concerning Pyott Road and Well No. 6, for the Board to conclude that the County Board's decision is not against the manifest weight of the evidence.

The fifth and final jurisdictional challenge of the Villages is that the County Board lacked jurisdiction because Laidlaw failed to fully disclose the beneficial interests of trusts that own parcel 1 of the proposed site. The Villages assert that Laidlaw has not complied with a provision with the Land Trusts Act (Ill. Rev. Stat. 1985, ch. 148, par. 72) and that, as a result, Laidlaw's notice was defective.

Laidlaw correctly asserts that the provisions of the Land Trusts Act do not apply to this matter. However, Laidlaw also claims that it has in fact complied with the Land Trusts Act by disclosing that 1) the property is owned by a Land Trust, 2) the beneficial owner of the trust is the Raymond E. Plote Living Trust, 3) Raymond E. Plote is the principal beneficiary of the living trust, and 4) Laidlaw has provided the address of the beneficiary.

As Laidlaw points out, Section 39.2(g) states:

> The siting approval, procedures, criteria and appeal procedures provided for in this Act for new regional pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for facilities subject to such procedures. Local zoning or other local land use requirements shall not be applicable to such siting decisions.
>
> Ill. Rev. Stat. 1987, ch. 111 ½, par. 1039.2(g)

Clearly, the Act does not require that an applicant abide by the provisions of the Land Trust Act in order to fulfill the notice requirements imposed by the Act. Consequently, the Village's allegation regarding this issue has no merit. In addition, the Board finds that Laidlaw's actions on this point did not render the County Board's process fundamentally unfair.

Substantive Review

Now, the Board may review the merits of the County Board's decision to determine whether it is against the manifest weight of the evidence.

Laidlaw asserts that its proposed site meets Criterion #2 which states that "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected." This criterion is broad and its discussion is responsible for a large portion of the record. It covers a range of topics including potential groundwater contamination, geology, leachate generation, surface water, gas, odor, and potential landslides. There are 11 private and three public water supply wells within 1,000 feet of the proposed landfill (R. I, 549) including the main Lake in the Hills well which is 206' 10" from the edge of the site. (R. III, 541). The site sits over a Silurian dolomite aquifer which is used as a water supply by most of McHenry County. (R. I, 360). It is also within 500 feet of 68 residential dwelling units and 13 industrial or commercial concerns. In addition, the proposed site is within 10,000 feet of an airport runway. (R. III, 542-545). The Board will first consider the record as it relates to potential groundwater contamination. This discussion will by no means cover every issue raised on this topic.

The proposed landfill is to be located in and above a layer of glacial till. This layer is the Tiskilwa Till Member of the Wedron Formation. Beneath this layer, lies an aquifer composed of a basal, glacial drift layer (which is sometimes referred to as the basal sand and gravel layer) and a bedrock formation of Silurian dolomite. The Village of Lake in the Hills draws its drinking water supply from this aquifer. Approximately, 90 vertical feet of till would be between the proposed landfill and the aquifer. (Report of the Hydrogeological Investigations, Vol. I. p. 31). According to Laidlaw's application, the glacial till provides an "excellent barrier" between the proposed landfill and the aquifer. (Report of Hydrogeological Investigations, Vol. I, p. 72). In addition shallow sand and gravel deposits located above the till act as an aquifer. (Id., p. 56).

At the hearings conducted in 1988, Ms. Roberta Jennings, a Laidlaw witness, characterized the Tiskilwa Till as follows:

> The Tiskilwa Till, in my opinion, is an ideal repository for solid waste. The characteristics of this till are such that it is probably the most favorable till that I've encountered in the State of Illinois in terms of having the high cation exchange capacities, the low coefficients of permeability, the continuity that it--that it displays. (RI, 295)

She also stated that the till on the site was "one of the more remarkable glacial tills in terms of being a containment for a sanitary landfill facility." (RI, 237)

In 1987, she reiterated her beliefs concerning the till:

> My conclusions are that the--that this site has been, throughout many investigations, very thoroughly characterized, and that the material, the 90 feet of thick glacial till, the Tiskilwa Till, is one of the most important features on the site, in that it has very low permeability, water moves through extremely slowly, and that it will form an adequate protection feature, containment or containment system for the landfill. (R II, 660)

Another Laidlaw witness, Dr. Robert Bergstrom, also stated that the thick layer of Tiskilwa Till below the landfill would be "an excellent containment bed" and that is "the most important feature that assures the safety of this site." (R.II 873)

In other words, it is Laidlaw's position that the relatively low permeability of the till would prevent any leachate, which may leak out of the landfill, from entering the aquifer.

Dr. Nolan Aughenbaugh, testified at the Amendment hearings that the proposed site lacked the proper natural setting which would provide protection if the engineering of the landfill failed. Dr. Aughenbaugh stated that since the site is located in a "sea of sand and gravel," the natural setting would not prevent the extension of a site failure. (RIII. 390-91). Further, Dr. Aughenbaugh stated that Laidlaw's own data taken from borings demonstrate that sand and gravel seams and lenses occur in the till below the invert of the proposed landfill. (RIII. 406). Due to the presence of these seams and lenses, he concluded that the layer beneath the proposed landfill did not consist of 90 feet of continuous till. (RIII. 410).

On the issue of sand seams in the till, the Report of Hydrogeological Investigations, Vol. I states as follows:

> Below [an] elevation [of 780 MSL] to [an] approximate elevation 750 MSL, the till contains a few extremely thin sand seams. Organic fragments were also noted in one or two borings in this interval. The sand seams are considered to be sheared remnants of an interglacial episode, and as such may be intermittently continuous across limited areas of the site. The seams are extremely thin and are commonly hairline to less than three inches in thickness. A few thicker lenses were encountered, the thickest being two feet of very clayey sand. The composition of the seams is variable, ranging from fine clayey sand to coarse sandy

> gravel. The seams are neither thick enough nor continuous enough to serve as aquifers, even for wells of very low yield.
>
> Above elevation 780 MSL a few isolated lenses were encountered. These were generally thicker, which is typical of intratill lenses, and each lense encountered had a totally different character, including a lense of clayey fine sand, a lense containing clay with thin sand seams interbedded, and a lense composed purely of pea-sized gravel. These were located at widely separated locations across the site, and nearby borings did not encounter similar material. With the exception of a few isolated lenses, and the zone containing limited, extremely thin sand seams, the Tiskilwa Till is remarkably free of sand inclusions and is unusally massive throughout. This was observed in preliminary borings and substantiated by subsequent investigation. (Report of Hydrogeological Investigation, Vol. I, p. 22, 25)

When asked of the role sand seams could play in the contamination of the aquifer, Jennings stated that leachate could travel laterally along sand seams. Such movement could lead to a poorly-sealed well tapped to an aquifer. The leachate could then travel through the well to the aquifer. (RII 611-12). It is interesting to note the Report of Hydrogeological Investigations, Vol. I, p. 48, reports that Well 4 for the Village of Lake in the Hills is not sealed, although it is no longer in use. This well which is located only 500 feet west of the proposed landfill is finished in the basal sand/dolomite aquifer. (Id. p. 48).

In its brief, the County Board cites testimony of Dr. Kirk Brown in support of the County Board's conclusion that Laidlaw failed to prove Criterion #2. Dr. Brown prepared exhibits from Laidlaw's own data which, according to Dr. Brown, prove that there is a direct hydraulic connection between the till and the aquifer. (RII, 1797, 1826). Dr. Brown draws this conclusion from well data that detail fluctuations in water levels measured by piezometers. Dr. Brown correlates such water level fluctuations between wells that are based in the aquifer with wells that are based in the overlying till.

In particular, Dr. Brown contends that the data indicate a strong correlation between the water level in well G-102 with the water levels in wells P-2D and P-2I. Well G-102 is based in the basal drift/dolomite aquifer, and P-2D and P-2I sample water in sand seams located within the glacial till layer. G-102 is located on the proposed site about 400 feet from a Village of Lake in the Hills' drinking water well known as L-6. (RII,

494). Well L-6 also draws water from the basal drift/dolomite aquifer.

Dr. Brown asserts that the water level in G-102 fluctuates in response to the variable draw on the aquifer by L-6. That is, when the Village of Lake in the Hills pumps more water out of L-6, the water level in G-102 correspondingly decreases. When the pumping is decreased, the water level in G-102 recovers and thereby rises. Using data gathered by Laidlaw from December 29, 1986 to February 17, 1987 and from April 4, 1987 to May 22, 1987, Dr. Brown has drawn graphs which he stated indicate a correlation in water fluctuations between wells G-102, P-2D and P-2I. (Obj. Exh. 87-14). In other words, the pumping of L-6 not only impacts upon G-102, but also upon the levels of water found in P-2D and P-2I which are located within the till layer. According to Dr. Brown, this is proof of a hydraulic connection between the basal drift/dolomite aquifer and the overlying glacial till. (RIII. 1819). Furthermore, the fluctuations which appear in the till wells occur only a couple of days after the same fluctuations are observed in the aquifer well. (RII. 1806).

It is also interesting to note the locations of the wells P-2D and P-2I. P-2D takes water from within the till at an elevation range of 749.9 to 754.9 feet mean sea level (MSL). P-2I records water levels taken from within the till at an elevation range of 792.3 to 797.3 MSL. (Report of Hydrogeologic Investigations, Vol. I, p. 23 Table 1). The invert of the proposed landfill will be located at approximately 800 MSL. (RII. 1790). Consequently, if accurate, the data gathered from P-2D and P-2I describes hydrogeologic conditions of areas that exist between 3 to 30 feet below the invert of the landfill. Simply put, there could be areas in the till just below the base of the landfill which could be hydraulically connected with the aquifer. If so, the leachate would not have to move far from the base of the landfill before it enters an area linked to the aquifer.

Dr. Brown points to data from other wells which further support his conclusion that the till layer is hydraulically connected to the aquifer. According to Dr. Brown, water fluctuations in the P-6 series of wells indicated that the water levels in the till are fluctuating in response to water levels in the aquifer. (RII, 182). The P-6 wells measure water levels in the till and sand seams within the till. (Report of Hydrogeologic Investigations, Vol. I, p. 23, Table 1). They are located east of the P-2 wells. (Id. Figure 10). Similarly, Dr. Brown correlated, to a certain extent, water level fluctuations between the P-10 series of wells and well G-106 which samples water from the aquifer. Dr. Brown stated that the P-10 wells were mirroring water level fluctuations in the aquifer. (RII. 1922-23).

In summary, Dr. Brown describes the mechanism by which pollutants could move through the till to the aquifer:

> So there is evidence that not only--are the piezometers that are screened near well 102 connected to the aquifer, but also the piezometers across the whole area are connected to the aquifer; and every time the municipality turns the well on, it draws some water out of that aquifer, along with the contaminants from the landfill. Those move towards the well. New water is drawn in and we are doing this three steps forward, one step backward on the pollutants, and essentially milking them out of the till by fluctuating the water on and off. (RII, 1825).

At the hearings held on the amendment to Laidlaw's application, Dr. Brown reiterated his position with regard to the till's ability to act as a barrier.

> [T]he 90 foot of till underneath the landfill will not prevent it [leaks from the landfill] from getting into the aquifer that the community is dependent on; and even if the wells are moved, I believe that still the aquifer will be contaminated and it will just be a matter of time until new wells will also be contaminated by the toxic leachates that will emanate from this landfill. (RIII, 947)

Dr. Pratrap Singh also testified that, off-site, there was a hydraulic connection between a shallow aquifer, which exists at an elevation of 800 MSL, and the basal drift/dolomite aquifer. He states that the data indicate the connection might exist on-site as well. As evidence supporting this conclusion, he cites the correlation of water level fluctuation of wells on-site with the pumping of L-6. (RIII. 817-18).

Given the data, Dr. Brown also estimates that once leachate leaks from the landfill, it would only take 2 to 4 years before it contaminates the Village of Lake in the Hill's drinking water well, L-6. (RII. 1827).

The County Board cites Dr. Brown's conclusion that sand seams of the till layer are hydraulically connected to the basal drift/dolomite aquifer which supplies water to the Village of Lake in the Hills. According to the County Board brief, such data "proves that the 90 feet of supposedly impermeable soil [till] is in fact permeable." In addition, the County Board cites Dr. Brown's assertions that it would only take "2, 3, or 4 years" before leachate leaking from the landfill would contaminate the aquifer which supplies Lake in the Hills with water. (County Board Brief: Attachment p. 31).

The issue now becomes whether there existed opposing evidence such that the County Board's decision was against the manifest weight of the evidence. As noted before, it is the burden of the petitioner to prove that the decision is against the manifest weight. In Valessares. v. County Board of Kane, PCB 87-36 slip. op. at 2d (July 16, 1987), the Board found:

> Where a Petitioner fails to make a significant or detailed showing that a county board determination is in error, the Board can determine that petitioner has failed to carry the burden of demonstrating that the determination is in error. The Board need not provide a detailed review of the facts and evaluate all arguments which the petitioner might have made. Concerned Citizens Group et al. v. County of Marion, PCB 85-97, at p. 3, November 21, 1985.

In Valessares, the Petitioner "failed to provide [the] Board with legal arguments or factual assertions from the record, which would demonstrate why the county board's determination is against the manifest weight of the evidence." Id at 19-20.

Interestingly, Laidlaw did not address much of the above-discussed issues and conclusions put forth by Dr. Brown, and cited in the County Board's brief, in Laidlaw's briefs to the Board. Apparently, Laidlaw has decided not to do battle on this ground. Instead, Laidlaw's briefs concern other witnesses and other issues developed in the record.

It is clear from Valessares that a petitioner cannot afford to let the record speak for itself; a petitioner must actively argue its case on all points. If a petitioner ignores an issue or conclusion adopted by a County Board, it does so at its own peril.

However, notwithstanding this rule, the Board has, on its own, sifted through the voluminous record to review evidence that opposed Dr. Brown's conclusions.

Laidlaw's own application recognized the observed correlation between water fluctuations in G-102, P-2D and P-2I. However, according to Laidlaw's report, written by Jennings, the only possible cause of this phenomena was that an inadequate grout, or seal, existed in G-102. The report stated that this conclusion would be verified after G-102 was regrouted. (Report of Hydrogeologic Investigations, Vol. I, p. 71).

Well G-102 was regrouted. After the regrouting, more water level data was gathered in April and May. (App. Exh. 87-25, Appendix J). Dr. Brown uses the post-grout data to show that a correlation in water fluctuations existed even after G-102 was

regrouted. (RII. 1805). Roberta Jennings asserts that while the water levels in P-2D and P-2I fluctuate, the origin or cause of the fluctuation is unknown (RII. 375). Jennings again concludes that there is no hydraulic connection between the till and the aquifer. (RII. 376). She points to new wells which were sunk at the time of the regrouting. These wells, called T-P25, TP-2I, TP-2D were all drilled into the till layer. At the time of the hearings in late 1987, these wells had not yet stabilized according to Jennings. (RII. 369). At the same time, she stated that field permeabilities could only be accurately measured after the wells stabilize. (RII. 371). However, she still concluded that the lack of fluctuation in the TP-2 wells, which were not stabilized, showed a lack of connection between the till and aquifer. (RII. 374).

Jennings testified that the water level of G-102 does flucuate and that "pumping at the Village's [Lake in the Hills] well affects the till above it..." In addition, she stated that similar curves in water fluctuation graphs, over the same period of time, would indicate hydraulic connection. (RIII, 365). She claimed that after the regrouting of G-102, a different response in the wells was evident and that the fluctuations in P-2I and P-2D "bear no resemblance" to the fluctuations of G-102. (RII. 370; App. Exh. 87-29, p. J-6).

On the other hand, Dr. Brown contended that the correlation existed even after the regrouting (RII. 1805). He points to Obj. Exh. 87-14; as showing the continued correlation. The Board finds that the County Board could have reasonably agreed with Dr. Brown that the water fluctuation graphs for G-102, P-2I and P-2D appear to correlate after the regrouting of G-102.

Dr. Bergstrom agreed with Jennings that fluctuations are not a serious matter. He said they could be due to movement of heavy equipment in the quarry (R.III, 943), barometric pressure changes (R.II, 941) or topography (R.II, 933). He also said that there is "very little likelihood that leachate can move laterally though any horizontal horizon below the landfill to a well off the site." (R. II, 1004).

At the June 22, 1987 hearing, Jennings said that the piezometer data show there is no "immediate" hydraulic connection between the site and the aquifer, but that there is a "slow" hydraulic connection. She said an immediate connection would be a direct connection such as a fracture, while a slow connection is the natural state of affairs in till with low permeability. According to her, Dr. Brown did not consider fluid mechanisms in reaching his conclusions. (R.III, 2437-2463).

On November 16, 1987 at a hearing on the amended petition, Robert Robinson, an engineer with Burns and McDonnell, testified to an impressive number of refinements to the proposal. These items were in response to concerns raised at hearing and proposed

new landfill regulations. The new design called for recompacted liners, a drainage blanket, increased slopes to help collect leachate and prevent infiltration, and an improved leachate collection system among other items. (R. III, 97-127). Laidlaw made some of these changes, such as recompacting the lines, despite earlier testimony by its witnesses that such modifications were unnecessary. (R. II, 1333 and 2367).

Later, Dr. Brown stated:

> I have looked at the amendment to review the engineering solutions that are proposed, and I don't think, and it's my opinion that they won't be adequate to solve the problem. The fill will still leak. (R. III, 928).

This statement was consistent with Dr. Brown's opinion of the site as expressed in the earlier set of hearings. When asked about additional engineering solutions to protect groundwater, he said:

> I think, you know, some of these things would help a little bit; but it's kind of like digging a hole out there and putting a band-aid in there to try and keep the water from flowing out.
>
> The site is poor, and we can throw more and more and more engineering at it. Maybe we ought to Teflon line it. There are more and more things of that nature we could do; but it's my observation, I have seen municipal waste landfills, I have seen hazardous waste landfills.
>
> I have seen these engineering solutions. I have personally tested plastic membranes, and I have found that they leak, and so that you can go to more and more trouble to put a band-aid on the solution, and the problem is that the site is just bad, it's too close to that well, and any engineering you throw at it it just becomes more and more expensive and you still don't solve the problem. (R.II, 1831).

Dr. Brown was joined by several other witnesses in concluding that the leachate would eventually leave the landfill. These witnesses included Dr. Nolan Aughenbaugh. (R. III, 421-423) and Dr. Pratap Singh (R. III, 838). Dr. Aughenbaugh described the site as one of the worst he had seen. (R. III, 463).

Given that the manifest weight standard requires the Board to view the evidence in a light most favorable to the respondent, County Board, the Board finds that it was reasonable for the County Board to adopt the conclusions of Dr. Brown concerning the hydraulic connection issue and the potential for leachate to migrate from the landfill and contaminate groundwater.

Laidlaw also argues that the close proximity of the Village of Lake in the Hills' well L-6 to the proposed site is inconsequential to the County Board's determination concerning site location approval. As support for this contention, Laidlaw cites its promise to provide the Village of Lake in the Hills with another drinking water well if L-6 ever becomes contaminated. The Board disagrees with Laidlaw's position.

Well L-6 currently pumps approximately 72 million gallons of water per year. (RII. 1802); the well represents approximately half of Lake in the Hills' current water supply. (RIII. 895). Even if it is assumed that Laidlaw's promise regarding well relocation adequately compensates the Village of Lake in the Hills for the loss of well L-6, such a compensation need not be the redeeming factor for Laidlaw's proposed site. An offer to pay for damages resulting from an injury does not necessarily justify the infliction of the injury. The County Board must determine whether the proposal is located, designed, and operated so that "public health, safety, and welfare will be protected." Therefore, it was reasonable for the County Board to consider the front-end implications as to how the proposed site will impact public health, safety, and welfare. Promises of relocation or clean-up operations, while relevant in their own right, do not negate these considerations. In other words, the fact that the proposed site may contaminate a drinking water well cannot be ignored by the County Board simply because Laidlaw has promised a new well if the old one is contaminated.

Implicit in Laidlaw's position is the assumption that the Village of Lake in the Hills will agree to Laidlaw's well relocation proposal. While Laidlaw may be willing to pay for relocation, there is no indication that the Village of Lake in the Hills has accepted, or otherwise committed itself to, such a plan. In short, Laidlaw's promise appears to be unilateral and not in any way binding upon the Village of Lake in the Hills.

The above discussion assumes that Laidlaw's offer to drill another drinking well would be adequate compensation for any contamination caused by the proposed landfill. It must be remembered that if Laidlaw's landfill contaminates well L-6, then Laidlaw's landfill has contaminated the basal drift/dolomite aquifer. This fact cannot be ignored. While it is significant that L-6 is quite close to the site, it is equally significant other wells draw water from the aquifers under the site. Logically these wells and even the new well promised by Laidlaw, would also be in jeopardy.

Laidlaw seems to imply that the price of one well is adequate compensation for the contamination of an aquifer. The Board believes that it would have been reasonable for the County Board to reject such an argument. This is especially true when further testimony concerning Well L-6 is considered.

Mr. Robert Sasman, who is a consulting hydrologist, testified on behalf of the Villages. He previously worked 36 years for the Illinois State Water Survey. At hearing on the Amendments, Sasman stated that relocating the Village of Lake in the Hills' well 500 or 1000 feet away, and drawing still from the same aquifer, would not be a viable option if well L-6 was contaminated. (RIII. 746). He testified that if the aquifer became contaminated, a new well that distance away would also become contaminated within weeks. (RIII. 768). In addition, he stated that if a deep well was drilled to replace L-6, such a well would likely produce water that exceeded federal and state drinking water standards for barium and radium. According to Sasman, deep water wells in McHenry County regularly exceed these radioactivity standards. (RIII. 748). In addition, Well #5 of the Village of Lake in the Hills is a deep water well which has such problems. As a result, that well is only used during an emergency, according to Sasman. Water from L-6 does not have a radium or barium problem. (RIII. 751). He stated that use of deep well water would require additional treatment facilities in order to reduce the levels of radium and barium. (RIII. 752). Sasman testified that in general it is more expensive to operate a deep water well. (R. III. 756). Sasman also concluded that the basal/drift dolomite aquifer could probably be classified as a sole source aquifer for the Village of Lake in the Hills, since there are no other reasonable alternative water supplies available to the community. (RIII. 769).

The testimony of Barbara Key, Village President of the Village of Lake in the Hills, echoed Sasman's conclusions as to the importance of well L-6 to the Village of Lake in the Hills:

> In 1971 my family of six moved into Lake in the Hills. I was shocked at the water quality.
>
> When you would turn on the faucet for a glass of water, it would be filled with liquid that wasn't clear but rust colored. I found the water was safe to drink but impossible.
>
> So we would catch it up, put in in a glass and let it set in the refrigerator overnight.
>
> Because of the initial shock and concern of the quality, I was in constant contact with the E.P.A., who had me take daily samples.

I vowed then that I would get involved and get the water quality improved.

After the Village purchased the private utility, which was in 1976, we were able to drill a new well, known commonly as Well 8, 6. There has always been a mix-up. We originally had it 8 and it was changed to 6.

The well was like a blessing to the Village, not because it was a natural flowing artesian well pumping 700 gallons a minute but because of the quality of the water. It was crystal clear, which was -- the crystal -- excuse me.

The crystal clear water put our original well to shame, which was heavy with a concentration of iron and sulfur, and the new well was not cursed with barium or radium, as the deep wells were.

Before Laidlaw filed its Application with the County, company representatives contacted me about annexing and zoning the landfill operation.

The offer was tempting because of the potential revenue Laidlaw officials said it would produce for the Village.

However, our engineer warned us that the landfill would have a very bad effect on our drinking water supply. We, myself and the Village Board, decided that no amount of money would be worth such an effect of the drinking water of the Village....

We have found when we went back and went through our records, that Well No. 6 produces roughly 50 percent of our water. It's a good quality water, it's something that you can draw a glass of water and drink it directly from the tap.

When this well for any reason is off the line, such as when we constructed the water tower and at one time we had to have it off for connecting mains and that, you wouldn't believe the complaints we had because of the quality of the water.

> I am telling you here and now and I am telling Laidlaw officials, we cannot afford to lose this well. It's the best well we have got, it's the best drinking water we have got and we won't lose it. We can't afford to. (RIII, 892-96)

Laidlaw's Report of Hydrogeological Investigations, Vol. I describes the community water supply of the Village of Lake in the Hills. As stated earlier, well L-6 draws water from basal drift/Silurian dolomite aquifer. L-6 has an artesian flow of 50 gallons per minute and can be pumped to yield 750 gallons per minute. According to the Report, Wells 1 and 2 also draw water from the Silurian dolomite. Wells 1 and 2 pump at a rate of 100,000 to 120,000 gallons per day and 300,000 gallons per day respectively. The only other well currently utilized by the Village of Lake in the Hills is Well #5, which is the deep-water well drawing from the Galena-Platteville/Glenwood-St. Peter deep aquifer. (Report of Hydrogeological Investigations, Vol. I, p. 48-49).

Dr. Brown also calculated the cone of depression for Well L-6. The cone of depression defines the area surrounding a well which is influenced by the pumping of that well.

Dr. Brown testified that the cone of depression for L-6 during periods of heavy pumping, can extend at least 10,000 feet around the well. He also stated that any replacement well, of the same capacity as L-6, which was located within that area could also become contaminated. (RIII. 946).

Dr. Singh calculated the cone of depression for L-6 as extending as far away as 4,800 feet. Dr. Singh used a pumping rate of 800 gallons per minute, taken from Appendix H of the Application for his estimate. According to Dr. Singh, Laidlaw's entire facility would be encompassed by this cone of depression. Dr. Singh claims that his figures represent a draw-down that is "somewhere between the worst-case situation and...the initial groundwater level." (RIII. 815-16).

In addition, Dr. Singh testified that if a replacement well were located 3000 feet from the proposed landfill, the cone of depression for that well would extend to the boundary of the proposed facility. (RIII. 821-22).

Laidlaw argues that Dr. Singh's conclusions regarding the safety of this site should be disregarded because of differences between his 1985 and 1987 testimony concerning the proposed site. However, Laidlaw does not seem to challenge Dr. Singh's estimate of the cone of depression, which according to Laidlaw was the same in 1985 as in 1987. In its briefs, Laidlaw did not argue against Dr. Brown's conclusion regarding the cone of depression.

Conclusion

Given the record, the Board finds that the County Board's decision is not against the manifest weight of evidence for Criterion #2. There is credible, though disputed, evidence which calls into question the ability of the Tiskilwa Till to act as a natural barrier to protect a much-used aquifer from contamination by leachate which might leak from the landfill. There is also credible testimony that leachate will migrate from the landfill despite liners and a collection system. The close proximity of drinking water supplies to the landfill is relevant and bears further upon the potential impact that the landfill may have upon public health, safety, and welfare. This is true notwithstanding Laidlaw's offer to relocate a drinking water well. Evidence suggests that the basal drift/dolomite aquifer is a sole source aquifer for the Village of Lake in the Hills and that it is important to other communities in McHenry County as well.

Although the Board has discussed certain issues in this Opinion, their inclusion does not imply that these are the sole issues which support the County Board's decision. Given the enormity of the record, it would be a needless indulgence of State resources to discuss all the evidence that was before the County Board.

The Board notes that the applicant in its briefs expressed great frustration that the county board again denied its application. The applicant did in fact redesign the landfill to incorporate most suggestions made by the opponent's technical witnesses. The applicants April 1, 1988 brief stated:

> As this Board knows, McHenry County has denied every landfill application that has come before it. The County Board seems to have but one goal when it comes to landfills and that is to keep them out of McHenry County. Unless this Board intervenes, McHenry County will continue to blackball landfills.
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> * * *
>
> After the County Board issued its previous opinion, Laidlaw searched the 6,400 page record compiled in 1985 for the criticisms and advice of the experts on which the County Board must have relied. Laidlaw fixed the things that these experts said were wrong. Laidlaw resubmitted its application and participated in new public hearings, but McHenry County did not give it the reasonable consideration to which it was entitled.

> What Laidlaw got instead was the same terse denial.

As noted previously, the landfill siting procedures of the Act vest the decision in these matters with local authorities. Absent convincing evidence to the contrary, this Board must assume that the County Board acted in good faith. City of Rockford v. Winnebago County Board, PCB 87-92, slip. op. at 23 (November 19, 1987). The mere fact that a county board has previously denied other landfill siting applications does not necessarily overcome this presumption. See John Ash, Sr. v. Iroquois County Board, PCB 87-173, slip. op. 7-10 (May 5, 1988); City of Rockford, slip. op. at 26. As noted earlier, Laidlaw has not alleged that the County Board's decision resulted from a fundamentally unfair process. Even though the applicant corrected many perceived deficiencies in the design, the County Board still could have reasonably concluded that the site is unsuitable for a landfill. The Board is also aware of the anger and frustration of the citizens who participated in this long process. This was amply stated by several persons during the public comments periods during the hearings:

> This is the third pubic comment session I've attended since this all began three long, long, long years ago....
>
> We all have been pushed around, threatened and forced to oppose this landfill time and time and time and time and time again. That's right, five times, Applications 1, 2, 3, 4 and 5, called amendments.
>
> I'm sure all of us here today feel just as indignant as I do about these ridiculous proceedings....
>
> I believe it was thought that we from Algonquin and Lake in the Hills wouldn't stick. We were supposed to get tired of the fight and just let them roll over us.
>
> Unfortunately, for the powers that be, that has not happened. Fortunately for us, the residents of Algonquin and Lake in the Hills, we have kept up the fight.
>
> With each Application by Laidlaw and each set of hearings, more geological defects and shortcomings have been found on the site....
>
> The density of the population surrounding the site alone should have been enought to stop the dump before it ever got started.

> Laidlaw has been given many ample opportunities to prove their case. They cannot. Five times Laidlaw has tried to make this ill-suited location application palatable to us. They cannot.
>
> Why? Because this is the wrong place to site a garbage dump. (R. III, 1160, 1162).
>
> This is the third time I've come before you to defend what I hold precious from attack.
>
> This is the second time I say we should not have to keep doing this.
>
> Our goal of protecting our environment, our health and our investments has not changed since the first time we met.
>
> But what has changed since then?
>
> For one thing, we've all become older and more tired from fighting this garbage pit, and our communities and County have become poorer in the process. (R. III, 1187).

Having found that the County Board decision on Criterion #2 is not against the manifest weight of the evidence, the Board must affirm the County Board's decision that denied Laidlaw's site location suitability request. Inasmuch as the Board's determination of Criterion #2 is also dispositive of the case, the Board will and need not go further in its analysis of this case. This is consistent with previous Board decisions. Waste Management of Illinois v. Lake County Board, PCB 87-75 (December 17, 1987); Ash v. Iroquois County Board, PCB 87-173 (May 5, 1988).

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

ORDER

The January 21, 1988 decision of the McHenry County Board denying site location suitability approval to Laidlaw Waste Systems, Inc. is affirmed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 ½ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Members J. Anderson and J. Theodore Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 16th day of June, 1988, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board