ILLINOIS POLLUTION CONTROL BOARD
December 16, 1993

LARRY SLATES, LONNIE SEYMOUR, JAMES KLABER, FAYE MOTT, and HOOPESTON COMMUNITY MEMORIAL HOSPITAL,	)	
Petitioners,	)	
v.	)	PCB 93-106 (Landfill Siting Review)
ILLINOIS LANDFILLS, INC., and HOOPESTON CITY COUNCIL, on behalf of the CITY OF HOOPESTON,	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two motions to reconsider. On October 25, 1993, respondent the City of Hoopeston (Hoopeston) filed its motion to reconsider. Respondent Illinois Landfills, Inc. (ILI) filed its motion to reconsider on October 27, 1993. On November 18, 1993, petitioners Larry Slates, Lonnie Seymour, James Klaber, Faye Mott, and Hoopeston Community Memorial Hospital (collectively, petitioners) filed their response in opposition to both motions to reconsider.

Both motions ask that the Board reconsider our September 23, 1993 decision reversing Hoopeston's grant of siting approval to ILI. The Board, with one member dissenting, found that Hoopeston's decision on criterion one did not comport with the requirements of Section 39.2(a) of the Environmental Protection Act (Act). (415 ILCS 5/39.2(a) (1992).) Hoopeston's written decision stated that "the facility is necessary to accommodate the waste needs of the City of Hoopeston and the Vermilion County Area", while the statute requires that the local decisionmaker consider whether the proposed facility is necessary to accommodate "the waste needs of the area it is intended to serve." (Emphasis added.) Because it was uncontested that the proposed service area is a 31-county area in Illinois and Indiana (Tr. at 26; C439), the Board held that Hoopeston's decision is at odds with the requirements of Section 39.2. The Board found that remand was inappropriate, and that Hoopeston's decision must be reversed. (Slates v. Illinois Landfills, Inc. (September 23, 1993), PCB 93-106, slip op. at 19-21.)

In ruling upon a motion for reconsideration the Board is to consider, but is not limited to, error in the decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County

Board of Whiteside County (March 11, 1993), PCB 93-156, we stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law. (Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill.App.3d 622, 572 N.E.2d 1154, 1158.)" We grant both motions to reconsider so that we can address several arguments made by Hoopeston and ILI. However, we reaffirm our September 23, 1993 opinion and order finding that Hoopeston's decision must be reversed.

Both Hoopeston and ILI contend that the Board should remand this matter to Hoopeston so that Hoopeston can clarify its decision. Hoopeston states that it "intended to approve the service area as defined by the applicant." (Hoopeston motion at 2.) Hoopeston contends that a reversal of its decision punishes it by "refusing to recognize the hard work and substantial resources committed to the review of complicated materials, the time devoted to taking and weighing the evidence and the care with which [Hoopeston] decided at least eight of the nine statutory points." (Hoopeston motion at 2.) Hoopeston argues that reversal does not end the matter for it, as the applicant is very likely to re-apply for site approval. Hoopeston maintains that a remand for clarification would preserve Hoopeston's effort in rendering a decision on eight criteria, and would allow Hoopeston to correct the decision to reflect its intention to find that ILI had established a need for the intended service area.

Initially, the Board states that we are sympathetic to the effort invested by Hoopeston in this process. However, the Board has a statutory obligation, set forth in Section 40.1 of the Act, to review Hoopeston's decision to determine whether it complies with the requirements of Sections 39.2. In this case, we concluded that the decision did not comply with the requirements of criterion one of Section 39.2(a). The fact that Hoopeston spent a great deal of effort in this process, or that its decision complied with the statute on eight of nine criteria does not change the fact that the decision on criterion one does not comply with statutory requirements. The Act clearly states that local siting approval shall be granted only if the proposed facility meets all of the statutory criteria. Thus, the Board can only affirm local decisions where we uphold all of the applicable statutory criteria.

As to Hoopeston's request that the matter be remanded so that it may "correct" its decision to reflect its intent, we reiterate that Sections 39.2 and 40.1 require that the local decisionmaker set forth its decision in writing, and that this Board review that written decision. We know of no authority which would allow us to consider a local decisionmaker's intent,

as opposed to the written decision issued by that decisionmaker. The Board believes that allowing a decisionmaker to "correct" its written decision to comply with an "intent" articulated after appeal of a local decision would lead to chaos. All persons involved in a local siting process should be able to rely on that written decision as the final expression of the local decisionmaker's findings.

ILI also contends that this matter should be remanded to Hoopeston, and asserts that a remand is consistent with principles that have guided this Board and the appellate courts in reviewing landfill siting cases. ILI points to the Board's decision in Land & Lakes Co. v. Village of Romeoville (December 6, 1991), PCB 91-7, where the Board ordered a remand for clarification. ILI contends that remand is "even more necessary" in this case than in Land & Lakes, because in this case, Hoopeston found that the facility was necessary to serve Hoopeston and the Vermilion County area, as contrasted with Land & Lakes, where the decisionmaker found that the facility was not necessary. ILI also maintains that even if it were true that Hoopeston intended to alter the service area, reversing that decision would allow local decisionmakers to deny applications by amendment. ILI argues that Hoopeston's error should not result in prejudice to the applicant.

We are not persuaded by ILI's claims that remand is even more appropriate in this case than it was in Land & Lakes. As we discussed in our September 23 opinion in the instant case, we have remanded cases where we have found a violation of fundamental fairness, where the local decisionmaker voted on only one criterion, and where, as in Land & Lakes, we were unable to determine whether the local decisionmaker denied the siting request, or approved the request with conditions. None of these situations are present in this case. Hoopeston clearly found, in its written decision, that the proposed facility was necessary for only a portion of the proposed service area. There is no ambiguity in that written decision, and thus remand is inappropriate.

It is true that in this case ILI, as the applicant, is negatively affected by the reversal of Hoopeston's decision. However, we know of no authority which would allow us to reach any other conclusion but the conclusion reached in our September 23 opinion: that Hoopeston's decision, which does not comport with the statutory requirements of Section 39.2(a), must be reversed. The Board has an obligation to review the entire local decisionmaking process. Sometimes a finding that a local decisionmaker erred may work in favor of an applicant (as in the case of a failure to make a timely decision pursuant to Section 39.2(e)), while other times such a finding may work in favor of objectors to the siting. The Board's statutory responsibility is to review the process and decision pursuant to the scheme

established by the legislature, and we find that we have done so in this case.

In the alternative, ILI contends that the Board should simply affirm Hoopeston's original siting approval. ILI claims that Metropolitan Waste Systems, Inc. v. Pollution Control Board (3d Dist. 1990), 201 Ill.App.3d 51, 558 N.E.2d 785, does not apply to this case. We are not persuaded by ILI's attempts to distinguish Metropolitan Waste, and note that our decision that Hoopeston's finding on criterion one did not comport with the statutory requirements was based only in part on Metropolitan Waste.

In sum, the Board reaffirms our September 23, 1993 decision that Hoopeston's decision on criterion one did not comport with the statutory requirements of Section 39.2, and that reversal, not remand, is the proper remedy.

IT IS SO ORDERED.

R. Flemal dissented, and M. McFawn abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of December, 1993, by a vote of 5-1.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board