

ILLINOIS POLLUTION CONTROL BOARD
December 7, 1995

THOSE OPPOSED TO AREA)	
LANDFILLS (T.O.T.A.L.),)	
a Concerned Citizen's Group,)	
)	
Petitioner,)	PCB 96-79
)	(Third-Party Landfill Siting
v.)	Review)
)	
CITY OF SALEM,)	
)	
Respondent.)	
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)	
CONCERNED ADJOINING OWNERS,)	
a Concerned Citizen's Group,)	
)	
Petitioner,)	
)	
v.)	PCB 96-82
)	(Third-Party Landfill Siting
CITY OF SALEM,)	Review)
)	(Consolidated)
Respondent.)	

ORDER OF THE BOARD (by J. Yi):

On October 13, 1995, Those Opposed to Area Landfills (T.O.T.A.L) and on October 16, 1995, the Concerned Adjoining Owners (Adjoining Owners) filed petitions for review of the City of Salem's (City) siting approval for its landfill made on September 11, 1995. On October 19, 1995 the Board consolidated these matters and accepted them for hearing. This matter is before the Board on a "Motion for Pleadings to be made more Specific or in the Alternative Motion for Bill of Particulars" filed by the City on November 13, 1995. In addition, the City filed a motion for discovery which the Board directed to the assigned hearing officer for a ruling and issuance of an appropriate order. The Board therefore will not address that motion for discovery.

The motion requests the Board to order the petitioners to make their petition for review more specific to "...specify each and every deficiency that they claim took place in the site application proceedings; to particularly specify each and every criterion that they claim was not satisfied; to specifically identify each and every objection that they have to the fundamental fairness of proceedings at the local level; to specifically set forth any and all basis for their claim that The City of Salem did not have jurisdiction to hear the site

application...". (Motion at 3.) The petitions filed by T.O.T.A.L and Adjoining Owners contain identical reasoning and therefore will be discussed together.

On November 27, 1995, T.O.T.A.L filed a response to the City's motion. As of the date of this order no response has been filed by the Adjoining Owners. T.O.T.A.L states in response that the petition puts the City on notice that it is claiming that the City, as applicant, did not meet its burden of proof on the criteria, the hearing was fundamentally unfair and that the City, as decision-maker, had no jurisdiction to hear the site application because the City, as applicant, did not purchase part of the property pursuant to Illinois law. T.O.T.A.L concludes that the petition is sufficient and requests the Board to deny the motion.

The Board's procedural rules do not contain a provision allowing for a motion for a bill of particulars. The Board procedural rule at 35 Ill. Adm. Code 101.100 states that in the absence of a specific provision in the Board's procedural rules the parties may argue that a particular provision of the Code of Civil Procedure and the Illinois Supreme Court Rules should apply. In this instance, the City is arguing that the Board should require the petitioners to state specifically their claims. Section 5/2-607 of the Code of Civil Procedure discusses the purposes of a bill of particulars. (735 ILCS 5/2-607 (1994).) A bill of particulars is designed to appraise an opposing party of claims made in order to guide the opposing party in trial preparation, and ordinarily a party is limited to proof of matters particularized. (Kolberg v. Cities Service Oil Co., 1951, 343 Ill. App. 355, 99 N.E.2d 152.)

The petitions are explicit as to what issues will be raised by petitioners concerning fundamental fairness. On pages 2-3 of T.O.T.A.L's petition and pages 2-3 of the Adjoining Owners' petition the issues are listed. As far as the issue of jurisdiction, both petitioners are challenging the City's jurisdiction on the basis that the annexation of a portion of the property (Site 3) to be used for the landfill was allegedly not done according to the statutory requirements as discussed on page 3 of both petitions. The petitions are sufficiently specific concerning the issues of fundamental fairness and jurisdiction.

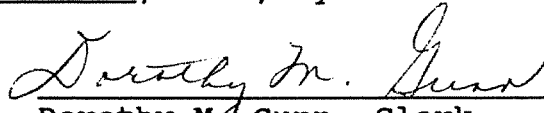
As to the issue of the criteria of Section 39.2 of the Act petitioners state that "...the applicant did not produce sufficient evidence during the public hearing to satisfy the criteria as required by 415 ILCS 5/39.2 ..." on page 2 of their petitions. The petitioners are challenging the City's decision concerning all the criteria of Section 39.2 of the Act. The burden of demonstrating the insufficiency of the evidence submitted at the hearing before the City is on the petitioners. When reviewing a local decision on the criteria, this Board must

determine whether the local decision is against the manifest weight of the evidence. (McLean County Disposal v. County of McLean, 207 Ill. App.3d 352, 566 N.E.2d 26, 29, (4th Dist. 1987); E & E Hauling v. Pollution Control Board, 160 Ill.App.3d 434, 451 N.E.2d 555, (2d Dist. (1983).) A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. (Harris v. Day, 115 Ill.App.3d 762, 451 N.E.2d 262, 265, (4th Dist. 1983).) The Board, on review, is not to reweigh the evidence. Where there is conflicting evidence, the Board is not free to reverse merely because the lower tribunal credits one group of witnesses and does not credit the other. (Fairview Area Citizens Taskforce v. Pollution Control Board, 198 Ill.App.3d 541, 555 N.E.2d 1178, 1184 (3d Dist.); Tate v. Pollution Control Board, 188 Ill.App.3d 994, 544 N.E.2d 1176, 1195; Waste Management of Illinois, Inc. v. Pollution Control Board, 187 Ill.App.3d 79, 543 N.E.2d 505, 507, (2d Dist. 1989).) No new evidence may be presented at hearing concerning the Board's review of the criteria. The Board's decision will be based solely on the record before the City when it made its decision. Therefore, no new evidence may be presented concerning the criteria and the petition does not need to be further clarified to prepare the City. Since the criteria in question are set forth in Section 39.2 of the Act and no new evidence or witnesses may be offered concerning the criteria the petition does not need to be clarified. However, in the interests of efficiency of briefing, petitioners are directed to state on the record before the close of hearing whether there are any criteria which, after additional review, they no longer wish to challenge in this appeal.

For the reasons stated above the Board denies the City's motion. This matter is to proceed to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of December, 1995, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board