ILLINOIS POLLUTION CONTROL BOARD
August 10, 1989

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
Petitioner,	)	
v.	)	PCB 89-28
VILLAGE OF BENSENVILLE,	)	
Respondent.	)	

MR. DONALD J. MORAN, ESQ. APPEARED ON BEHALF OF THE PETITIONER; AND

MR. LARRY M. CLARK, ESQ. APPEARED ON BEHALF OF THE RESPONDENT.

OPINION OF THE BOARD (by J.D. Dumelle):

This Opinion supports the Board Order entered July 13, 1989.

This matter comes before the Board on an appeal filed by Waste Management, Inc. (WMI) on February 8, 1989 pursuant to Section 40.1 of the Environmental Protection Act (Act).*

WMI appeals the February 2, 1989 decision of the Village of Bensenville (Village) to deny a "SB172" local siting approval for a transfer station at its Garden City Disposal division pursuant to Section 39.2 of the Act.**

Hearing was held before the Board on April 12, 1989. No members of the public were present. The Board hearing consisted only of establishing a briefing schedule and acceptance of Exhibit 1, the original receipts of the certified mailings. WMI filed a brief and reply brief on April 19, 1989 and May 22, 1989 respectively; the Village filed its brief on May 8, 1989.

WMI filed its SB172 application with the Village on July 22, 1988. A hearing was held on November 10, 1988 at the Bensenville City Hall. Hearing testimony were the Hearing Officer, a hearing committee consisting of two Village Board members, the Village

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* On March 9, 1989, the Board ruled that the statutory time period for Board decision began running on February 27, 1989, the date the filing fee was received from WMI.

** The Board will continue here the "shorthand" custom of referring to these proceedings by the originally adopted bill number, SB172 (P.A. 82-682, eff. Nov. 12, 1981).

Manager and the Village Clerk. No member of the public was present; after hearing, written comment was filed, apparently by the Village (Village Res. R-5-89).*

Seven witnesses testified on behalf of WMI. There was no testimony or evidence offered in opposition. The witnesses were cross-examined by the Village's attorney.

The Village's February 2, 1989 resolution denied WMI's request, finding that WMI failed to meet its burden of proof on Criterion No.1 and No.6 of the nine criteria in Section 39.2(a) of the Act. The resolution contained no other statements in explanation of the decision.

Jurisdictional Issue

At the end of the Village hearing, the Village's and WMI's attorneys first argued the issue as to whether Noonan Machine Co. was given timely notice pursuant to Section 39.2(b) of the Act. (R.203-206) The issue was further argued in WMI's Brief and Reply Brief and the Village's Brief. Noonan Machine Company did not object to notice or otherwise participate in the Village's proceedings or at the Board's hearing.

The pertinent part of Section 39.2(b) of the Act reads as follows:

> 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 project, 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.

In its Resolution, the Village, prior to making its findings on the criteria, recognized, but made no decision on, the jurisdictional issue, stating in pertinent part that:

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* The comment, included with, but not listed on, the Village's Certificate of Record of Appeal, consisted of an undated intra-Village memo, a letter from Garden City Disposal, and two of three referenced pictures. In any event, the comment is not germane to the issues in this proceeding. On June 16, 1989, the Village filed a corrected certificate of record, including the comment as corrected and a correction of the Village's vote in its resolution.

> "Said notice was actually made on July 11, 1988 by certified mail. (Eleven days before the filing of this application). WMI also attempted delivery by personal service on or about July 6, 1988. This Board has resolved not to rule on the jurisdictional issue as they feel that the ruling on the criteria from Section 39.2 of the Environmental Protection Act will be dispositive of this application." (Village Res. p. 2).

The facts are not at issue. The application was filed on July 22, 1988; the 14-day deadline prior to that filing would be July 8, 1988.

On July 6, 1988, which was a normal business day, a private process server arrived at Noonan Machine Company ("Noonan") and found a sign on the front of Noonan announcing that the company was closed for vacation until July 11, 1988, so he left the Notice under the front door. He verified this by affidavit signed July 8, 1988. (Pet. Ex. 10). Also, a certified mailing was sent earlier by WMI to Noonan, on July 1, 1988, 21 days before the filing of the application. However, the date of delivery filled out by Noonan on the return receipt of the certified mailing was July 11, 1988 (Pet. Ex. 9).

There was no disagreement that the 14 day notice requirement of Section 39.2 is jurisdictional, and is to be strictly construed. Rather, the dispute revolved around whether either the July 1, 1988 certified mailing or the July 6, 1988 notice delivery under Noonan's front door, (or both) constituted timely 14 day notice, or whether the July 11, 1988 date on the return receipt constituted notice, which would mean notice was untimely.

The Village's attorney argues first that Noonan did not receive personal service, citing the summons provisions of Ill. Rev. Stat. Ch. 110, Sections 2-203 and 2-204 which states as follows:

> 2-203:
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> Service on individuals. (a). . . . service of a summons upon an individual shall be made (1) by leaving a copy thereof with the defendant personally or (2) by leaving a copy at the defendants usual place of abode with some person of the family, of the age 13 years or upwards . . .
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> 2-204:
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> Service on private corporations. A private corporation may be served (1) by leaving a

> copy with its registered agent or any officer or agent of the corporation found within the State; or (2) in any other manner now or hereafter permitted by law.

While the Village attorney acknowledges that Noonan was not being given a summons, he asserts that the intent of the Act is the same as the above noted sections, that it is a jurisdictional requirement that must be strictly complied with, citing Kane County Defenders v. PCB, 139 Ill. App.3d 588, 487 N.E.2d 743, (2d Dist. 1985) and that the process server did not obtain either individual or corporate service upon Noonan. (Village Br., p. 3,4).

The Village attorney next disputes that WMI's certified mailing was valid under the Board's City of Columbia opinion. City of Columbia v. County of St. Clair, PCB 85-177, 85-220 and 85-223 (consolidated), p. 13, April 3, 1986. He asserts that the pertinent part of the Board's Opinion stating that it would use Section 103.123(b) of its Procedural Rules, where there is a presumption of service four days after mailing of notice by certified mail, was dicta. He also argues that the Board's rationale was based on a concern that to hold otherwise would allow opposing property owners to refuse and frustrate service. In this case, however, there was no allegation that Noonan was attempting to frustrate service, and that they in fact received notice, but not during the statutory time frame since the signed receipt overcomes the presumption of service four days after delivery.

Finally, the Village attorney asserts WMI had notice from the process server that service on Noonan may not be had until July 11, 1988, and thus would be late. The Village attorney argues that WMI should have resolved the problem by re-noticing and re-publishing their intent to file.

WMI argues that the statutory provisions in the Act and Ch. 110 are fundamentally different. Service of summons under Sections 2-203 and 2-204 is intended to be consonant with due process for a named defendant involving a judgment of liability, whereas Section 39.2(b) of the Act is intended to provide service reasonably expected to apprise property owners of opportunity to participate in a siting proceeding where no corporate or personal liability exists. WMI asserts that this Board has held that an applicant need only initiate service "sufficiently far in advance to reasonably expect receipt of notice 14 days in advance of the filing of a notice", citing Phillips v. County of Wabash, PCB 87-122, December 3, 1987; p. 4,5, citing City of Columbia v. County of St. Clair, PCB 85-177, 85-220 and 85-223 (Consolidated), April 3, 1986, p. 13. WMI asserts that the 21 days prior mailing to Noonan satisfied this requirement.

WMI disputes the Village attorney's assertion that the actual receipt on July 11 overcomes this Board's presumption of

service four days after delivery; that the Board has, in fact, suggested the contrary (citing Phillips p. 5); that the Board's four-day presumption of service would be defeated anytime a property owner, for any reason - inadvertence, unavailability etc. - delayed or ignored picking up or signing certified mail service; and that the presumption promotes a site location approval process that operates efficiently and fairly. WMI also points out that there was no sign indicating in what manner deliveries should be made and, indeed, Noonan may have arranged for pick-up of its mail during the vacation period. WMI asserts that the important interests of administrative economy, efficiency and fairness should "not be thwarted or compromised by a lone property owner's business or vacation schedule". (Pet. Reply Br. p. 3.)

Finally, WMI argues that the Village, by declining to dismiss on jurisdictional grounds, recognized that the notice on Noonan complied with Section 39.2(b), as did all the other notices and newspaper publication in the county. Thus, the Board should reject the Village's arguments against the Village's own decision and find that the Village did, in fact, have jurisdiction.

Board Discussion

Before discussing the timely notice issues, the Board takes special note of the Village's asserted decision in its resolution not to rule on the jurisdictional issue and the anomaly of having the Village subsequently arguing, through its attorney, that the Village had in fact lost jurisdiction. Even ignoring the anomaly, the Village cannot, in effect, support its refusal to rule on the jurisdictional issue of notice by claiming that ruling on the criteria is dispositive.

A jurisdictional defect is dispositive of a case ab initio. See Illinois Power Co. v. Illinois Pollution Control Board, 137 Ill.App.3d 449, 484 N.E.2d 898 (4th Dist. 1985). This is true whether or not the Village elects, in the interests of judicial economy, to also rule on the criteria. Only if there were no jurisdictional defect would the ruling on the criteria be dispositive. For the Village to argue on appeal that there is a jurisdictional defect contradicts the Village's decision that its findings on the criteria were dispositive. However, since the Board must rule on the jurisdictional issue in any event, the Board has included in its consideration all arguments in this matter.

The Board finds that notice was timely served by WMI's certified mailing. This being the case, the Board need not address the issue of notice given by the process server.

In both City of Columbia and Phillips v. County of Wabash the Board formally referenced its procedural rules' presumption that service is accomplished after four days, to determine that a

lesser time constitutes a defective notice. Here, the certified mailing timeframe at issue is greater, i.e., 21 days. While the Board did not earlier make a formal holding as to what constitutes service under the circumstances here, (it was not at issue), the Board gave ample forewarning of its concerns in City of Columbia about the consequences of absolutely requiring that receipt of service controls the timeclock in all cases.

The Board does not construe the "caused to be served" language of Section 39.2 as requiring that receipt of service as signed is the only date by which the 14-day notice requirement may be counted.

The Board has already construed the Act as requiring initiation of service "sufficiently far in advance to reasonably expect receipt of notice 14 days in advance of filing of a notice". (City of Columbia, p. 13, Ibid.) The 21-day certified mailing certainly constitutes a reasonable expectation. That Noonan did not sign the receipt until 10 days later does not overcome this expectation; it does not matter whether the delay was caused by absence, inadvertence, or deliberate avoidance. The Village's argument that "the receipt as signed" must control leads to the conclusion that notice can never be perfected by the "reasonable initiation of mailing," and thus conflicts with the holding by the Board. If the signed receipt, whether signed timely or untimely, always controls, it would thus make no difference whether mailing was initiated sufficiently far in advance. Therefore, only if the receipt ends up not being signed at all, the argument implies, would early mailing perfect service; this latter state of affairs simply would place the whole proceeding in an ongoing limbo, effectively conferring upon absent or opposing neighbors the power to frustrate perfection of service, unless one were willing to declare that there is, in fact, a point in time when the signing of a receipt is not dispositive. That is precisely the reason that the Board is holding that, if receipt has not been timely signed in relation to the 14-day timeframe (if it has been there is no issue), or not signed at all, the Board will look to the timeliness of the mailing to determine whether service has been perfected.

The Board points out that the Village's only suggested remedy for WMI's purported failure of notice is to require the applicant to re-notice and refile; this is not only not a remedy, it is precisely this rollover result that could render an application incapable of ever being refiled. The Board notes that over 30 persons had to be served in this case. (Pet. Ex. 8-10.) This is the first SB 172 case appealed to the Board where there has not been any "third party" opposition, and even so, a company's vacation schedule frustrated a two-fold effort to secure timely signed receipts. Were the Board to accept the Village's arguments, opponents could frustrate the whole SB 172 procedure at the outset by absenting themselves or otherwise delaying acknowledgment of receipt of notice. The Board declines to construe Section 39.2 as creating such a loophole.

As there were no issues of fundamental fairness, the Board will proceed to a description of the proposed facility.

The Proposed Facility:

The solid waste transfer station is proposed to be constructed on seven acres of property by Garden City Disposal ("Garden City"), a division of WMI. The site is located in the relatively small portion of Bensenville located in Cook County, rather than DuPage County. Part of the site has been used for 10 years as a storage and maintenance area for Garden City's waste hauling operation where, on an average day, 46 trucks, i.e., 26 rear loader trucks and 20 roll-off trucks, enter and leave the site. There are presently about 91 employees. Garden City is starting a curbside recycling program for glass and cans in the Village of Elk Grove, and will use two dedicated recycling trucks to bring the separated glass and cans to its preseent facility for reloading and transport. (R. 115-118). The site is located in an industrial, heavy commercial area. (Pet. Ex. 1, Criterion 6, p. 3, R. 61.) Most, about 70 percent, is waste from roll-off containers from factories and consists of wood, corrugated cardboard and paper, the rest being household waste collected pursuant to a residential contract with the Village of Elk Grove. There is no special waste involved, hazardous or non-hazardous. Garden City wishes to establish its transfer station to receive the waste it now takes directly to landfills, compact it, and reload it onto 12 transfer trailers destined for landfills. They intend first to cull the cardboard and bale it for reuse prior to compaction of the waste. (R. 87.) The facility would also be used for removing from the waste stream wood skids (aided by a shredder), and aluminum, paper, and glass. About 4 more persons would be added for the transfer station operations.

WMI is considering using four different landfills: one in Batavia and the Green Valley landfill in Naperville (they take no waste to these two now) and the Lake landfill in Northbrook and one in South Elgin (about 10% of the loads presently are taken to these two (R. 107-109). WMI has also stated that it will not take waste to a proposed Northwest Municipal Conference "balefill" near Barlett; also, since Elk Grove Village is part of the balefill proposal, its waste would go to a baler transfer station and thus that waste would not go to the proposed transfer station. (R. 9, 119, 138, 144; Pet. Ex. 1, Criterion 4, p. 2.)

Statutory Criteria

Waste Management claims that the Village's conclusions as to Criteria Nos. 1 and 6 are against the manifest weight of the evidence, and that the Village's decision should be reversed and site location approved. We will review each of these criteria in turn.

Section 40.1 of the Act charges this Board with reviewing the Village's decision. Specifically, this Board must determine whether the Village's decision was contrary to the manifest weight of the evidence. E&E Hauling, Inc. v. Illinois Pollution Control Board, 116 Ill. App. 3d 586, 451 N.E. 2d 555 (2nd dist. 1983), aff'd in part 107 Ill.2d 33, 481 N.E.2d 664 (1985); City of Rockford v. IPCB, 125 Ill. App.3d 384, 386, 465 N.E.2d 996 (1984); Waste Management of Illinois, Inc. v. IPCB, 122 Ill.App.3d 639, 461 N.E.2d 542 (1984). The standard of manifest weight of the evidence is:

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

Consequently, if after reviewing the record, this Board finds that the Village could have reasonably reached its conclusion, the Village's decision must be affirmed. That a different conclusion might also be reasonable is insufficient; the opposite conclusion must be evident (see Willowbrook Motel v. IPCB, 135 Ill.App.3d 343, 481 N.E.2d 1032 [1985]).

In light of the Board's Section 40.1 duty, it again must be noted that there was no evidence or testimony offered in opposition to the evidence and testimony of WMI. As a result, the record that was reviewed by the Village of Bensenville in this case is basically one-sided. Obviously where evidence and testimony are offered in opposition to the positions of the Applicant, there exists a more complete record upon which to review a local siting decision. However, Section 39.2 of the Act does not impose a duty upon any person other than the applicant to present evidence with respect to an application. Therefore, it is conceivable that records such as this were contemplated by the General Assembly in empowering county boards or governing bodies of municipalities to grant or deny their approval. Thus, the Board believes that the lack of evidence in opposition to an application is not, in and of itself, grounds for reversal. The

Board believes that even where all of the evidence submitted is that of the applicant, the local decision making body may still deny its approval. Reasons for denial may include, but are not here limited to, a local decision making body's finding that the applicant has not met his burden of proof on any or all of the criteria or that the applicant's proof is not credible.

To further complicate the Board's review, the Village decision denying approval to WMI does not articulate its findings or reasons for denial. Although an articulation of the reasons for denial would be helpful to this Board's review, such an articulation is not required under the Appellate Court's decision in E&E Hauling, Inc. v. Pollution Control Board, 116 Ill.App.3d 586, 451 N.E.2d 555 (1983), wherein the Court stated:

> ... the county board need only indicate which of the criteria, in its view, have or have not been met, and this will be sufficient if the record supports these conclusions so that an adequate review of the county board's decision may be made.*

Thus, it is for this Board to review the record to determine whether the Village's conclusions are supportable by the record. We now turn to the contested criteria.

Criterion No. 1

Section 39.2(a)(1) of the Act requires that the applicant establish that "the facility is necessary to accommodate the waste needs of the area it is intended to serve". Relevant case law from the Second District Appellate Court provides guidance on the applicable analysis of this criterion:

> Although a petitioner need not show absolute necessity, it must demonstrate an urgent need for the new facility as well as the reasonable convenience of establishing a new or expanding an existing landfill. ...The petition must show that the landfill is reasonably required by the waste need of the area, including consideration of its waste production and disposal capabilities.
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> Waste Management of Illinois, Inc. v. PCB, 175 Ill.App.3d 1023, 530 N.E.2d 682 (2nd Dist. 1988); citing Waste Management of Illinois, Inc. v. Pollution Control Board, 123 Ill. App.3d 1075, 463 N.E.2d 969 (1984).

* The Board notes that this holding was recently affirmed in Gerald Clutts v. Herman Beasley and Alexander County, No. 5-88-0438, slip op. at 3 (5th dist. July 18, 1989).

The Village's decision of February 2, 1989, states:

> Upon due consideration of the record before the Village Board as applied to the ... criteria using the preponderance of the evidence standard, the Bensenville Village Board hereby finds that the applicant, WMI, has failed to meet its burden of proof as it relates to Criteria (sic) i (need)...

As discussed above this Board must review the record to determine whether this decision is supportable by the record.

Based on our review of the record we find that the Village could reasonably have determined that WMI did not meet its burden of proof with respect to the need criterion.

In support of this criterion, WMI offered the testimony of Mr. Edward Evanhouse, the general manager of Garden City Disposal Company. Mr. Evanhouse asserted that the transfer station is necessary based on three factors: a) the continuing decrease in available landfill space in the vicinity of the service area; b) the imposition of a quota system by the nearest available landfill; and c) the present inefficiencies of transporting waste from the service area to disposal sites. Mr. Evanhouse's testimony is found at pages 128 through 148 of the transcript.

On cross-examination, the Village attorney asked Mr. Evanhouse questions which explored his knowledge with respect to whether the transfer station "is necessary to accommodate the waste needs of the area it is intended to serve". Because the Board's affirmance of the Village's decision is based in part on the testimony under cross-examination, the Board believes it helpful to recite certain portions of that testimony here.

> Q. Mr. Evanhouse, where is the area its intended to serve?
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> A. Garden City has a service area that it generally bounded on the south by North Avenue, and approximately California Avenue on the east, and on the west Rout 53, and on the north we go as far as Euclid and then Milwaukee Avenue south to Golf east to California.
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> Q. Is there anywhere in the application that it talks about the service area at all?
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> A. I am not sure if there is. I don't think so.

Q. Well, you prepared the section on Criterion 1, that being whether or not this facility is needed. Is it contained in that section?

A. No, it's not. Probably an oversight on my part.

Q. Garden City doesn't service all the waste needs within this area; does it?

A. No, we don't.

Q. In fact, does it serve any of the residential portions of that area?

A. Yes, we have one residential contract which is with the City of Elk Grove Village.

Q. What percentage of waste do you serve within this service area?

A. I really would not be able to venture a guess on that.

R. 132-133.

This witnesses testimony, the remainder of which will not be reprinted here, indicates to us that the Village's finding that the application does not demonstrate that the facility is "necessary to accommodate the waste needs of the area it is intended to serve" is not against the manifest weight of the evidence. The witness admits that the application does not discuss the service area at all. R. at 132. Further, the witness was not certain of the amount of waste his company takes to the Lake Landfill in Northbrook, a WMI landfill. R. at 134. He did not know how much waste the Congress Development Company Hillside Landfill was accepting from his company. R. at 136. To us, these are necessary factors in any consideration of the waste needs of the area intended to be served. The record indicates that these landfills are within a reasonable distance to accommodate the waste needs of the area. R. 137-141. Since the evidence is uncertain on these factors, we believe that the Village could reasonably have concluded that the applicant had failed to meet its burden of proof on this criterion. The Village's decision is, therefore, not against the manifest weight of the evidence, and is, therefore affirmed.

Criterion No. 6:

The sixth criterion specified in Section 39.2(a) of the Act for local siting approval is as follows:

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

Mr. David Miller, a traffic engineer and President of Metro Transportation Group, testified for WMI on Criterion No. 6.

The site is located on the northeast corner of the intersection of County Line Road (dividing Cook and DuPage Counties) and Franklin Avenue, a minor arterial highway designated as a truck route with a 35 mph speed limit. There is a signal at the intersection; County Line Road terminates north of the intersection and Franklin Avenue is called Green Street west of the intersection in DuPage County. Access to the site is from Franklin Avenue. (Pet. Ex. 1, Criterion No. 6.)

No school districts operate buses in front of the site. Existing traffic on Franklin Avenue is about 18,000 vehicles/day and on County Line Road south of Franklin is about 8,300 vehicles/day. The vehicle traffic inbound and outbound during morning and afternoon peak hours (determined to be 7:00-8:00 a.m. and 4:30-5:30 p.m.), was counted. (Pet. Ex. 1, Criterion No. 6.) The 46 inbound/outbound site trucks move mostly during off-peak hours, leaving between 5:00-6:00 a.m. and returning somewhere between 2:00 p.m. to 5:00 p.m. The 91 employees come and go at staggered times, ranging from 5:00 a.m. to 12:00 p.m. depending on the shift.

Mr. Miller's opinion that the facility has been designed to minimize impact is based on the fact that existing site vehicular traffic occurs during off-peak hours, and the fact that Franklin Street is a designated truck route with a substantial amount of traffic from industrial users along Franklin as well as by trucks passing through.

Mr. Miller also testified that Franklin Avenue might be "service level D," with "A" denoting least congestion and "E" being the worst, based on peak hours, about 1,800-2,000 vehicles, and other factors. (R. 178-80.) He also testified that, while truck trips are being added in the immediate area, on an overall area basis, truck trips and travel miles would actually be reduced. (R. 181.)

The additional daily traffic generated by the transfer facility would amount to four additional employees and 60 truck round trips, or 120 each way, including the 12 transfer trailers. Mr. Miller estimates 10 additional vehicular trips during the morning peak hour, representing only about 0.6% of the whole. In the afternoon peak hours, the additional traffic burden would be even less; Mr. Miller estimates that only two additional employees would be leaving the site. (Pet. Ex. 1, Criterion 6, p. 5, 6; R. 152-55,163.)

Regarding the internal circulation at the site, Mr. Miller testified that it is more than adequate. (R. 155.) Mr. Miller also testified that only the easternmost of the three driveways would be used; utilizing the easternmost driveway, the driveway most distant from the traffic light, further minimized the negligible impact of the operation on the existing traffic flows in relation to the stop light. Mr. Miller stated that the 60 trucks inbound and 60 outbound, including the 12 transfer trailers, would tend to be spread out because of the nature of the truck trips, resulting in an average of about five vehicles in and 5 out each hour over the course of a day (R. 164); that a "gap" study showed no problem with acceleration of loaded trucks (R. 166); that they had done mechanical counts to determine the peak hours; that the counts were done in September, considered a normal month (R. 184); that the study did not include the possibility of potential recycling traffic since the recycling is from the refuse that comes in, and extra traffic depends on the extent it might be open to the public, but that the facility is fenced in now.

Mr. Miller testified that he did not investigate whether WMI could extend County Line Road north so vehicles could enter and exit on County Line Road; he did not know if it could be done physically or the safety impact it would have on the drive immediately to the west or whether it would be feasible. In any event, he does not believe that, with traffic volumes and patterns as they are now, the added traffic would affect the existing traffic flows. (R. 191.)

Finally, he testified that eastbound trucks or vehicles presently making a left turn into the facility were not found, even at peak hours, to have more than one or two vehicles behind them, and there was no backup to the County Line/Franklin intersection to the west. He also noted that there is additional pavement tapered to accommodate left turning westbound traffic, for cars to pass. (R. 194.)

The Village argues that WMI failed on Criterion No.6 because WMI's traffic engineer failed to account for potential recycling traffic and additional personnel; that the present level "D" traffic congestion is ignored by using incremental increases; that comparing the increased local traffic versus overall traffic is nebulous for purposes of minimizing existing traffic flows; and that WMI failed to consider the possibility of the potential mitigation effect of changing the traffic flow by extending County Line Road. (Village Br. p. 7-9.)

WMI responds that the traffic effects are negligible; that peak hour effects are minimized; that no improvements to the road system are needed; that internal site circulation will accommodate facility traffic; that Mr. Miller did consider any increase in recycling traffic, noting that the recycling will involve separating waste in vehicles already existing; that increased traffic would be off-peak in any event; and that

extending County Line Road could create safety problems because of turning conflicts with an existing access drive and is not possible because WMI does not own all the property. WMI asserts that Mr. Miller was not impeached in any meaningful manner. (WMI Reply Br. p. 6, 7.)

Board Discussion

The Board, after reviewing the record, finds that the decision of the Village with respect to Criterion No. 6 is contrary to the manifest weight of the evidence.

WMI demonstrated that it did design its facility to minimize existing traffic flows. The record shows that Mr. Miller did account for the "recycling" traffic, i.e., the added truck trips, at the transfer station. The Village itself asserted, on Criterion No.1, that any planned recycling activities at WMI's present facility was not part of the SB 172 process and, in any event, it involves potential, not existing, traffic. Also, Mr. Miller's assessment of incremental increases above the existing traffic flows, combined with his assessment of the design of the traffic patterns to or from the facility using the eastern driveway, and his emphasis on the "worst case" peak hour effects is hardly a "nebulous" way to "minimize the impact on existing traffic flows". Also, the level "D" designation is derived from peak hour traffic, where in this case the impact of facility traffic is negligible, involving 10 trips in the morning and two cars in the afternoon. Franklin Street is a designated truck route and there was nothing in the record to contradict Mr. Miller's overall testimony that the facility's impact was minimal throughout the day and that the use of the easternmost driveway further minimized whatever impact there was.

The Village's denial because WMI failed to consider changing the existing traffic flows, does not comport with the demonstration requirements of Criterion No.6, and certainly not when there is nothing in the record to contradict Mr. Miller's testimony showing that the impact was negligible on the existing traffic flows. E & E Hauling, Inc. v. Illinois Pollution Control Board, 116 Ill. App. 3d 586, 451 N.E.2d 555, 577 (2d Dist., 1983) aff'd in part 107 Ill. 2d 33, 481 N.E. 2d 664 (1985). WMI's presentation specifically and sufficiently addressed Criterion No.6. The Village, in its quasi-judicial role, could not have reasonably concluded otherwise based on the manifest weight of the evidence, and the Board so finds.

In summary, the Board affirms the Village of Bensenville's denial of local siting approval to WMI's proposed waste transfer facility based on Criterion No. 1.

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

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111-1/2, 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 J. Marlin and J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 10th day of August, 1989, by a vote of 4-3.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board