CITIZENS AGAINST REGIONAL LANDFILL, Petitioner, v. THE COUNTY BOARD OF WHITESIDE COUNTY and WASTE MANAGEMENT OF ILLINOIS, INC., Respondents.	)	PCB 92-156 (Landfill Siting Review)

PATRICK J. HUDEC APPEARED ON BEHALF OF CITIZENS AGAINST REGIONAL LANDFILL;

WILLIAM BARRETT AND MATTHIAS LYDON APPEARED ON BEHALF OF THE COUNTY BOARD OF WHITESIDE COUNTY;

DONALD MORAN APPEARED ON BEHALF OF WASTE MANAGEMENT OF ILLINOIS, INC.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board upon a petition for hearing filed by Citizens Against Regional Landfill (CARL) on October 20, 1992. CARL is a citizens group that participated in the siting proceeding and whose members are affected by the proposed facility. CARL, a third-party petitioner, contests the decision of the Whiteside County Board (Whiteside County) to grant siting approval to Waste Management of Illinois, Inc. (WMII) for a regional pollution control facility. This appeal is brought pursuant to Section 40.1(b) of the Environmental Protection Act (Act). (415 ILCS 5/40.1(b) (1992).)[1]

In its January 21, 1993 order, the Board granted a motion for sanctions against Mr. Hudec, attorney for CARL, for filing a brief referencing facts not supported by evidence in the record. WMII filed its statement of costs on January 29, 1993. On February 16, 1993, Mr. Hudec filed a "Memorandum in Opposition to the Bill of Costs filed by Waste Management of Illinois, Inc." WMII filed a "Motion for Leave to File Reply to Memorandum in Opposition to Bill of Cost" and "Response of Waste Management in Opposition to the Bill of Costs Filed by Waste Management of Illinois, Inc." On February 25, 1993, CARL filed a "Brief in Support of Motion for Reconsideration of Sanctions Imposed Upon

---

[1] The Act was formerly codified at Ill.Rev.Stat. 1991, ch. 111 1/2, par. 1001 et seq.

Counsel for Petitioner". The Board will not address the above filings in today's order but will handle the matter of sanctions in a separate Board order at a later date.

PROCEDURAL HISTORY

WMII filed its request for local siting approval of a solid waste landfill and landscape waste transfer station on April 30, 1992. The proposed site is located at the northeast corner of the intersection of Yager Road and US Route 30 (Lincoln Road) in unincorporated Whiteside County and has been given the name Prairie Hill Recycling and Disposal Facility. WMII proposes the development of a 229 acre solid waste disposal facility on a parcel of land consisting of approximately 423 acres.

The Public Works Committee of Whiteside County conducted public hearings on July 30 and 31, 1992. The committee accepted written comments for thirty days after the hearing. On September 15, 1992, Whiteside County, in a written decision, approved WMII's siting request by a vote of 18 in favor, 7 against with 2 board members absent. (C 919.)[2]

CARL filed its petition for hearing with the Illinois Pollution Control Board (Board) on October 20, 1992. The Board conducted a hearing on this matter on December 18, 1992 in Morrison, Whiteside County, Illinois. The petitioner filed its brief on January 4, 1993. On January 21, 1993, the Board granted a motion to strike pages 12 through 28 of the petitioner's brief and amended the briefing schedule. The respondents filed their briefs on January 25, 1993. CARL filed its reply brief on February 4, 1993.

In its reply brief, CARL contends that "it was denied its right to a fundamental hearing, but defers further argument on such issues until the Board rules on pending motions relative to the same." (Reply Br. at 2.) The Board emphasizes that briefs have been filed in this matter and the record is closed.

In its petition, CARL contests Whiteside County's approval of the proposed facility for the following reasons.

a. The Whiteside County Board acted contrary to the manifest weight of the evidence in finding that it had jurisdiction to hold the public hearing. CARL claims

---

[2] References to the record filed by Whiteside County shall be designated by the page number. The transcripts from the hearing before the county are contained in the county record at pages C 1 to C 916. The transcript from the Board's December 18, 1992 hearing will be referenced as Tr. at ___.

that WMII failed to notify all property owners within 250 feet of the proposed site. CARL asserts that the notices submitted failed to include a proper legal description or an accurate description of the site. CARL further asserts that Whiteside County failed to make the application for site approval and supporting documents available for public inspection for a sufficient time.

b. The finding of compliance with the nine statutory criteria set forth under Section 39.2(a) of the Act is contrary to the manifest weight of the evidence. CARL claims that WMII failed to establish on the record 8 of the 9 statutory requirements.

c. The Whiteside County Board improperly changed the terms of the proposed facility after the record was closed. CARL claims that it was denied the right to review the amended provisions of the siting proposal.

In its September 15, 1992 Finding of Facts and Decision, Whiteside County found that all requisite notices were provided, that WMII had filed, and the county had made available for an adequate time the requisite materials required by statute. (C 922.) Whiteside County found that it had jurisdiction to consider and decide the application. (C 922.) Whiteside County denied motions to dismiss from CARL claiming lack of jurisdiction, finding the submissions by CARL contained unsupported allegations. (C 922.)

On November 10, 1992, WMII filed a motion to strike the jurisdictional issue from CARL's petition. CARL did not file a timely reply to WMII's motion to strike. On December 3, 1992, the Board granted WMII's motion to strike the allegations concerning jurisdiction of Whiteside County. On December 17, 1992, CARL filed a motion for reconsideration of the Board's granting of the motion to strike. CARL contended that the hearing officer, in pre-hearing conferences, had informed the attorney for CARL that WMII's motion to strike would be held until the attorney for CARL was able to review the county record. On December 17, 1992, the Board denied the motion for reconsideration but permitted CARL to present the basis for its motion for reconsideration before the hearing officer at hearing.

CARL did not raise the issue of jurisdiction at the December 18, 1992 hearing. CARL has not pursued the allegation in its petition, that Whiteside County improperly changed the terms of the proposed facility after the record was closed and denied the right to review the amended provisions of the siting proposal. This matter was not presented at the hearing and is not argued in the briefs. The burden of proof is on the petitioner. (415 ILCS 5/40.1(b) (1992).) CARL has not presented any evidence on

jurisdiction or changes to the proposal after the record was closed. CARL has failed to meet its burden of proof, therefore, these areas are not at issue before the Board.

BACKGROUND

The proposed facility is to be located in Whiteside County approximately three miles southeast of Morrison, Illinois. (C 950.) The property encompasses approximately 423 acres. (C 950.) Approximately 229 acres will be developed for the solid waste disposal area and support features, including administrative building, maintenance and operation facility, recycling area, public drop-off area and landscape waste transfer station. (C 950.) The proposed facility is adjacent to the existing landfill and in a low population density, agricultural area. (C 951.) While the proposed facility is adjacent to the existing Whiteside County Landfill, it will not be designed or operated in conjunction with the existing landfill. (C 995.)

The service area consists of Whiteside County, Winnebago County, Boone County and portions of Lake, Du Page and Cook Counties. (C 960.) The landfill will provide disposal capacity for the service area for approximately 27 years. (C 950.) The landfill area has been subdivided into 24 phases, with landfilling operations commencing in the southeastern corner of the site and rotating in a counterclockwise fashion toward the western perimeter of the site. (C 1192.) Regulated hazardous waste will not be accepted at the proposed facility. (C 995.)

Within a one mile radius of the site there are approximately twenty-four residences. (C 1174.) Outside one mile and within one and one half miles from the site there are an additional twenty-six residences. (C 1174.) The proposed site is located on US Route 30, a two-lane asphalt paved thoroughfare traveled by trucks and automobiles which has a 55 mile per hour speed limit. (C 1200.)

PRELIMINARY MATTERS

On January 13, 1993, CARL filed a "Motion for Review of Hearing Examiner Rulings Pertaining to Discovery and Hearing Record" at the December 18, 1992 hearing. CARL claims that the hearing officer erred: 1) in not following the directives of the Board's December 17, 1992 order regarding William Barrett's deposition and 2) in refusing to allow the petitioner to call Mr. Barrett as a witness. CARL seeks a reversal of the hearing officer's rulings. Petitioner further requests that either the matter be remanded for further proceedings or in the alternative, reverse the siting approval granted by Whiteside County. On January 22, 1993, WMII filed its memorandum in opposition to petitioner's motion. On January 27, 1993, CARL filed a motion to file reply and its reply. CARL requests leave to file a reply to

"promote the interest of justice and to avoid any material prejudice." The Board grants CARL's motion for leave to file a reply.

CARL objects to the hearing officer limiting the scope of the deposition. CARL further argues that the hearing officer's limitation of the scope of the deposition prohibited CARL from fully exploring all avenues of discovery. CARL contends that this limitation was the basis of the hearing officer's refusal to allow Mr. Barrett to testify. In addition, CARL argues that despite the limited nature of the deposition there are sufficient grounds for a claim of bias and the appearance of a, if not an actual, conflict of interest.

WMII contends that the hearing officer acted in accordance with the directives of the Board's order in limiting the scope of Mr. Barrett's deposition to the compensation received by Mr. Barrett. WMII argues that the hearing officer properly refused to allow Mr. Barrett to be called as a witness. WMII argues that the attorney for CARL has failed to substantiate the information he has claimed to receive concerning the payment of fees to Mr. Barrett. WMII claims that the deposition provided no evidence that payment to Mr. Barrett was contingent on approval of the landfill siting. WMII argues that there is no evidence that CARL was unable to obtain necessary information from other sources than Mr. Barrett.

Prior to addressing the arguments raised by the parties, the Board will recount the events leading to the hearing officer's ruling.

On December 15, 1992, Whiteside County filed an "Emergency Motion to Quash Petitioner's Subpoenas and Deposition of Whiteside County Special Assistant's State's Attorney William Barrett". The hearing officer granted the motion and issued a protective order prohibiting the deposition of Attorney Barrett. On December 17, 1992, CARL submitted an "Emergency Motion to Require the Attendance of William Barrett at Deposition and at Hearings". In its December 17, 1992 order, the Board stated;

> Consequently, the Board specifically vacates the protective order entered by the hearing officer pertaining to testimony by Mr. Barrett. The Board notes that this new information was not before the hearing officer at the time he issued his protective order. As a result, the Board is vacating the order based upon new information, not reversing the hearing officer. The Board is not reversing the hearing officer order because nothing in the record indicates it was in error based upon facts known at the time it was issued. The Board orders that the deposition of Mr. Barrett be allowed for a minimum amount of time

> determined by the hearing officer, presumably not more than two hours, tomorrow morning at the time scheduled for the beginning of the hearing in this matter. At the conclusion of the deposition, the hearing officer shall convene the regular hearing. The decision of whether to require or admit testimony by Mr. Barrett is left to the discretion of the hearing officer, based upon his evaluation of the deposition.

Mr. Barrett was deposed on December 18, 1992, prior to the regularly scheduled hearing, with the hearing officer in attendance. The hearing officer denied CARL's request to have Mr. Barrett testify at hearing. (Tr. at 15.) Based on the deposition, the hearing officer determined that CARL had not demonstrated that the information was not available from other sources and that Mr. Barrett's testimony was necessary to the proceedings. (Tr. at 15.) In addition the hearing officer determined that the county would be unduly burdened if Mr. Barrett were required to remove himself as attorney due to his testifying. (Tr. at 15.) These are the same standards that the hearing officer applied in his December 16, 1992 order, granting the motion to quash the subpoena.

The Board affirms the hearing officer's interpretation of the Board's order in limiting the scope of the deposition. The Board vacated the hearing officer's prior order solely on the basis of the submission of new facts. The Board did not dispute the standards that the hearing officer followed in determining the conditions under which the deposition of opposing counsel should be allowed. In the December 17, 1992 Board order, the Board noted that the information was not described in the affidavit but "that this statement, under oath, provides an adequate basis to justify exploration, by discovery, of the information Mr. Barrett may possess regarding his role and compensation in such contract." The Board permitted the deposition based on the allegations contained in CARL's motion and sought discovery on the matter.

The hearing officer was granted the authority over the deposition. The Board ordered the hearing officer to limit the time of the deposition, observe the deposition and make a ruling based on the context of the deposition. By limiting the scope of the deposition the hearing officer was able to obtain the information on which to determine if Mr. Barrett should be allowed to testify.

Both CARL and WMII reference pages from the deposition transcript that are not part of the evidence in this matter. CARL has previously argued that the entire deposition transcript should be submitted into the record as an offer of proof. At hearing Mr. Hudec sought clarification from the hearing officer as to the handling of the transcript from Mr. Barrett's

deposition. Mr. Hudec stated:

> ...I just want to make clear that the extent that it -- part of the deposition is not to be part of the record, we're asking that the balance of the deposition and the exhibits thereto be admitted solely for purposes of an offer of proof in support of our contention that we should have been permitted to fully depose him as well as call him as a witness.
> (Tr. at 131.)

The attorney for WMII objected to submitting the entire deposition as an offer of proof. (Tr. at 133.) The hearing officer declined to submit the whole deposition to the Board. (Tr. at 136.) The hearing officer declared that submitting the whole deposition transcript would defeat "the purpose of Mr. Barrett not testifying here and any ramifications as appearing of counsel to flow from that." (Tr. at 136.) The parties agreed that the hearing officer would indicate those portions he believed should be submitted, allow the parties to submit arguments to him in a telephone conference and then submit the agreed upon portions to the Board. (Tr. at 137.) Portions of the transcript from the deposition of Mr. Barrett were submitted to the Board by the hearing officer on January 11, 1993. Only those portions of the transcript submitted by the hearing officer form the basis of the Board's decision. The Board will not consider any references to facts not in evidence or arguments based upon any such reference.

The Board finds that it is not necessary for the complete deposition transcript to be submitted to the Board as an offer of proof. The portions of the deposition submitted by the hearing officer provide a sufficient basis to review the hearing officer's ruling. The portions of the deposition present a summary of the deposition testimony and the arguments presented by the parties.

After a review of the portions of the deposition submitted by the hearing officer and the hearing officer's ruling, the Board finds sufficient support in the record for the hearing officer's refusal to require Mr. Barrett to testify, and therefore affirms the hearing officer.

In the hearing officer's order of December 16, 1992, the hearing officer stated his concern over requiring the deposition of an opposing attorney. The hearing officer order specified conditions under which an opposing attorney may be required to testify. At the deposition, CARL made no showing that any of the conditions specified by the hearing officer existed.

The hearing officer, after sitting through the deposition of Mr. Barrett, found that CARL did not present any circumstances

that would require Mr. Barrett to testify. The hearing officer was also concerned with the burden that would be placed on Whiteside County if Mr. Barrett were required to withdraw as counsel for the hearing scheduled that day. The Board is extremely reluctant to require an attorney of record to testify, without a showing that only that attorney can provide necessary information. (See also Gallatin National Co. v. The Fulton County Board (June 15, 1992), PCB 91-256.)

Courts have looked with disfavor on the practice of deposing opposing counsel, finding that such practice is disruptive of the adversarial process and lowers the standards of the legal profession. (Shelton v. American Motors Corp. (8th Cir. 1986), 805 F.2d 1323, see also Marco Island Partners v. Oak Development Corp. (N.D. Ill. 1987), 117 F.R.D. 418.) Experience teaches that countenancing unbridled depositions of attorneys constitutes an invitation to delay, disruption of the case, harassment and perhaps disqualification of the attorney to be deposed. (N.F.A. Corp. v. Riverview Narrow Fabrics (M.D.N.C. 1987), 117 F.R.D. 83.) It is appropriate to require the party seeking to depose an attorney to establish a legitimate basis for the request and demonstrate that the deposition will not otherwise prove overly disruptive or burdensome. (Id.)

The conditions enumerated by the hearing officer in his December 16, 1992 order and specified as the basis for his refusal to require Mr. Barrett to testify, have been employed by the courts when considering motions related to depositions of attorneys.

> Deposition of opposing counsel should be limited to situations where it is shown that: (1) no other means exists to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. (Shelton, 805 F.2d 1323; See also Harriston v. Chicago Tribune Co. (N.D. Ill. 1990), 134 F.R.D. 232, West Peninsular Title Co. v. Palm Beach County (S.D. Fla. 1990), 132 F.R.D. 301, Advance Systems, Inc. of Green Bay v. APV Baker PMC (E.D. Wis. 1989), 124 F.R.D. 200.)

The Board notes that the above cases rely on Federal Rule of Civil Procedure 26(a), which does not specifically apply to proceedings before the Board. However, the Board finds the standard to be consistent with the Board's procedural rules on the production of information (35 Ill. Adm. Code 101.261) and limitations concerning testimony from attorneys.

Requiring an attorney to testify is not strictly prohibited

rarely be resorted to and done only when circumstances so necessitate. (Cannella v. Cannella (2d Dist. 1971), 132 Ill. App. 2d 889, 270 N.E.2d 114.) In Christensen v. United States (1937), 90 F.2d 152, the court quoted from "Jones Commentaries on Evidence" (Second Edition) §2154, Vol. 5, page 4079.[4]

> ...The dual relations of attorney and witness in and for a cause on trial is not compatible with the conception of an attorney as an officer of the court and inclines to disrupt the normal balance of judicial machinery. It is tolerated at all only because occasionally proper in the interests of justice and because, rather than formulate a rule of absolute exclusion as has been done in some instances as to testimony by attorneys on disputed and material issues of fact, the great majority of the courts prefer to leave the question to the sound discretion of members of the bar with a threat of scathing reprimand in case of abuse.

The Illinois Supreme Court has held that the trial court has wide discretion in refusing to permit attorneys to testify, especially so where, as here, another witness was available to testify. (People v. King (1977), 66 Ill. 2d 551, 363 N.E.2d 838.) CARL sought to depose Mr. Barrett concerning the fees paid to him. Information on Mr. Barrett's fees could also have been obtained from Whiteside County or WMII. The record does not disclose any attempt by petitioner to secure this information from Whiteside County or WMII.

The attorney-client relationship makes it ethically improper for an attorney to testify in most matters. (Lavin v. Civil Service Comm. (1st Dist. 1974), 18 Ill. App. 3d 982, 310 N.E.2d 858.) Ethical standards require an attorney to withdraw from the case if he is required to testify. (Illinois Rules of Professional Conduct, Rule 3.7.) Ethical considerations may have compelled Mr. Barrett's withdrawal if he had been required to testify.

---

[3] See Annotation Attorney as Witness for Client in Civil Proceedings - Modern State Cases, 35 A.L.R. 4th 810 (1985) and Crowley, Modernizing and Liberalizing the Law of Evidence, 57 Chi. Kent L. Rev. 191.

[4] The Board notes that this comment relates to circumstances where an attorney is to testify at the request of his client. The Board believes that these general principles have considerable relevance where, as here, the testimony of an attorney is sought by opposing counsel.

reverse the hearing officer's ruling, the relief requested by CARL is inappropriate. Given the decision deadline of February 28, 1993 in this matter, time does not allow the Board to remand this matter for further proceedings.

STATUTORY BACKGROUND

Public Act 82-682, commonly known as SB-172, is codified in Sections 3.32, 39(c), 39.2, and 40.1 of the Act. It vests authority in a county board or municipality to approve or disapprove the siting request for each new regional pollution control facility. These decisions may be appealed to the Board in accordance with Section 40.1 of the Act. The Board's scope of review encompasses three principal areas: (1) jurisdiction; (2) fundamental fairness of Whiteside County's site approval procedures; and (3) statutory criteria for site location suitability. Pursuant to Section 40.1(a) of the Act, the Board is to rely "exclusively on the record before the county or the governing body of the municipality" in reviewing the decision below.

Section 39.2 of the Act presently outlines nine criteria for site suitability, each of which must be satisfied (if applicable) if site approval is to be granted. In establishing each of the nine criteria, the applicant's burden of proof before the local authority is the preponderance of the evidence standard. (Industrial Salvage v. County of Marion (August 2, 1984), PCB 83-173, 59 PCB 233, 235, 236.) On appeal, the Board must review each of the challenged criteria based upon the manifest weight of the evidence standard. (See McLean County Disposal, Inc. v. County of McLean (4th Dist. 1991), 207 Ill. App. 3d 352, 566 N.E.2d 26; Waste Management of Illinois, Inc. v. Pollution Control Board (2d Dist. 1987), 160 Ill. App. 3d 434, 513 N.E.2d 592; E & E Hauling v. IPCB, 116 Ill. App. 3d 586, 451 N.E.2d 555 (2d Dist. 1983), aff'd in part 107 Ill.2d 33, 481 N.E.2d 664.) 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 (4th Dist. 1983), 115 Ill. App. 3d 762, 451 N.E.2d 262, 265.) 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. IPCB (3d Dist. 1990), 198 Ill. App. 3d 541, 555 N.E.2d 1178, 1184; Tate v. IPCB (4th Dist. 1989), 188 Ill. App. 3d 994, 544 N.E.2d 1176, 1195; Waste Management of Illinois, Inc. v. IPCB (2d Dist. 1989), 187 Ill. App. 3d 79, 543 N.E.2d 505, 507.) Merely because the local government could have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the local government's findings. (File v. D & L Landfill, Inc. (August 30, 1990), PCB 90-94, aff'd File v. D & L Landfill,

Inc. (5th Dist. 1991), 219 Ill. App. 3d 897, 579 N.E.2d 1228.) However, where an applicant made a prima facie showing as to each criterion and no contradicting or impeaching evidence was offered to rebut that showing, a local government's finding that several criteria had not been satisfied was against the manifest weight of the evidence. (Industrial Fuels & Resources/Illinois, Inc. v. IPCB (1st Dist. 1992), 227 Ill.App. 3d 533, 592 N.E.2d 148.)

FUNDAMENTAL FAIRNESS

Section 40.1 of the Act requires the Board to review the proceedings before the local siting authority to assure fundamental fairness. In E & E Hauling, Inc. v. IPCB (2d Dist. 1983), 116 Ill. App. 3d 586, 594, 451 N.E.2d 555, 564, aff'd in part (1985), 107 Ill.2d 33, 481 N.E.2d 664, the appellate court found that although citizens before a local decisionmaker are not entitled to a fair hearing by constitutional guarantees of due process, procedures at the local level must comport with due process standards of fundamental fairness. The court held that standards of adjudicative due process must be applied. (See also Industrial Fuels, 227 Ill. App. 3d 533, 592 N.E.2d 148; Tate, 188 Ill. App. 3d 994, 544 N.E.2d 1176.) Due process requirements are determined by balancing the weight of the individual's interest against society's interest in effective and efficient governmental operation. (Waste Management of Illinois Inc. v. IPCB (2d Dist. 1989), 175 Ill. App. 3d 1023, 530 N.E.2d 682.) The manner in which the hearing is conducted, the opportunity to be heard, the existence of ex parte contacts, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. (Hediger v. D & L Landfill, Inc. (December 20, 1990), PCB 90-163.)

The Board on December 3, 1992 granted WMII's motion to strike portions of CARL's brief addressing the issue of fundamental fairness. While the issue of fundamental fairness is not properly addressed in any of the briefs before the Board, the Board will review the record, in particular the testimony presented at the December 18, 1992 hearing, on the issue of fundamental fairness.

The testimony presented at the December hearing raises several issues relating to fundamental fairness. Of concern to the Board are ex parte contacts, the claims of bias and conflict of interest against Mr. Barrett, the manner in which the hearing was conducted and the availability of the transcripts.

Ex parte contacts

Ron Marlier, a member of the Whiteside County Board, testified that he meet with Mr. Mehal, solid waste manager of Whiteside County, and Mr. Barrett in an informational meeting,

prior to the September 15, 1992 board decision. (Tr. at 55.) He testified that the information covered in the meeting was the same information presented at the public hearing. (Tr. at 57.) Mr. Marlier stated that nothing was said at the meeting that suggested how he should vote on the application. (Tr. at 56.)

A court will not reverse an agency's decision because of ex parte contacts with members of that agency absent a showing of prejudice. (Fairview, 198 Ill. App. 3d 541, 555 N.E.2d 1178, citing, Waste Management of Illinois v. IPCB (1988), 175 Ill. App. 3d 1023, 530 N.E. 2d 682.) The testimony does not show that any prejudice resulted from the meeting. Mr. Marlier testified that the information at the meeting was similar to that provided at the hearing and there was no attempt to influence his vote. The record does not contain evidence of prejudice resulting from ex parte contacts.

Conflict of Interest

Mr. Don Houseman, president of CARL, testified that he had spoken with a member of the Public Works Committee prior to the July 30 and 31 public hearing requesting that Mr. Barrett step down as hearing officer due to his conflict of interest. (Tr. at 60.) Mr. Houseman testified that Mr. Barrett, at the start of the July 30 hearing, noted that he was continuing as hearing officer despite objections from the CARL group. (Tr. at 61.) Mr. Ken Meinsma noted that he raised the issue of whether Mr. Barrett should be permitted to continue as hearing officer at the July 31 hearing. (Tr. at 70.)

Mr. Barrett, Whiteside County Special Assistant States's Attorney, was appointed the hearing officer for the July hearings held by the Public Works Committee. (C 2.) He also provided representation to Whiteside County in the appeal of this matter to this Board. As attorney for Whiteside County, Mr. Barrett was involved in various portions of the siting approval process which included contact with members of WMII. Mr. Barrett was also involved in preparing a question and answer summary (CARL Ex. 4) for an August 28th, 1992 press conference. (Tr. at 20.) Mr. Barrett also attended the press conference. (Tr. at 21.) The purpose of the press conference was to convey the facts that led up to the process which included the landfill siting area. (Tr. at 22.) On August 31, 1992, Mr. Barrett, Mr. DeMers and Whiteside County officials conducted a public meeting in Rock Falls. (Tr. at 81.)

This limited evidence does not rise to a showing of conflict of interest to support a finding that the proceedings before the county board were fundamentally unfair.

Bias

Mr. Meinsma, a member of CARL, claims that Mr. Barrett was biased due to his involvement with Waste Management for a long period of time prior to the hearing. (Tr. at 98.) Testimony from various citizens suggests that Mr. Barrett expressed views in favor of the landfill at a public meeting held on August 31, 1992. (Tr. at 88, 103, 112.) Mr. Meinsma testified that Mr. Barrett lambasted signs about sludge, insisting that no sludge would be brought into the landfill. (Tr. at 82.) He further testified that Mr. Barrett stated that signs reading "Cash or Trash" should read "Cash or Tax" and commented on the financial figures. (Tr. at 82.)

Mrs. Dorothy Houseman, a member of CARL, testified that she believed that the hearings on July 30 and 31 were conducted in an unfair way. (Tr. at 122.) She testified that the hearing officer was very hostile. (Tr. at 122.) She further testified that a lunch break was not provided until 2:30 pm and that the hearing lasted past 6 pm. (Tr. at 122.) She also testified that CARL was not allowed to present witnesses until after 3:30 pm on the second day of hearing. (Tr. at 122.) She further notes that Mr. Barrett had expressed his intent to finish the hearing that day. (Tr. at 122.) She stated that the second day of hearing lasted until nearly 8 pm. (Tr. at 122.) Mrs. Houseman noted that several witnesses had to leave before testifying due to other obligations. (Tr. at 123.)

A decisionmaker may be disqualified for bias or prejudice if a "disinterested observer might conclude that he had in some measure adjudged the facts as well as the law of the case in advance of hearing it." (E & E Hauling (2d Dist. 1983) 451 N.E.2d at 565-66, aff'd, 481 N.E.2d 668 (1985), citing Cinderella Career and Finishing Schools, Inc. v. F.T.C. (D.C. Cir. 1970), 425 F.2d 583, 591.) The Board notes that Mr. Barrett did not vote on the landfill siting and therefore is not a decisionmaker. However, the Board holds that the same standard of determining bias can be applied to the hearing officer.

After a review of the transcript of the hearing before the county, the Board finds that the record does not show that Mr. Barrett was biased. The testimony does not suggest that Mr. Barrett expressed any of his opinions on the landfill during the July hearings. The record does not indicate that Mr. Barrett's personal views on the landfill governed how the July hearing was conducted. The Board does not find that CARL was prejudiced by Mr. Barrett's personal opinions on the landfill.

The Board recognizes that the hearing was moved to a larger facility to accommodate the public, delaying the hearing by over an hour. (C 20.) The Board also notes that problems were encountered with the sound system throughout the hearing. The

hearing officer granted a motion by WMII to limit the questioning of witnesses to the criteria that the witness addressed. (C 66.) The hearing officer prohibited questions not directed to the witness's testimony. While this procedure created frustration among the audience, it is an acceptable manner in which to conduct a hearing. The Board finds that sufficient time was provided to CARL to present witnesses. The Board does not find that the manner in which the hearing was conducted prejudiced CARL.

Availability of Transcript

Mr. Meinsma testified to the difficulty he encountered in obtaining a copy of the transcript of the July 30 and 31 hearings from the public works committee. (Tr. at 80.) He further noted that the CARL group was unable to obtain a copy of the transcript from the July hearings until August 27, 1992. (Tr. at 81.) The County Clerk did not receive the complete transcript until August 25. (Tr. at 78.) Mr. Houseman testified that the CARL group attempted to serve a request to extend the 30 day comment period on a county board member, but he refused to accept the letter. (Tr. at 65.) The Whiteside County Board denied Mr. Houseman's written comment requesting an extension of the 30 day comment period in its September 15, 1992 decision. (C 922.)

The testimony does not show how CARL was prejudiced by not having a copy of the transcript before August 27, 1992. Members of the CARL group attended the hearings. Members of CARL filed post-hearing comments. The information presented at the hearing was included in WMII's application filed with Whiteside County. CARL does not argue that the unavailability of the transcript prohibited the filing of comments or altered the content of the comments filed. CARL does not allude to any requirement for the county to make the transcript available to the public and the Board is unaware of any such requirement.

The Board's review of the record leads it to conclude that the procedures followed by Whiteside County were fundamentally fair.

CHALLENGED CRITERIA

In its petition, CARL challenges eight of the nine criteria which Whiteside County found were met by the application. CARL does not challenge Whiteside County's finding on criterion 9. Whiteside County determined that criterion 9 concerning recharge areas was not applicable. In its brief CARL does not present any argument or contradictory evidence for criteria 4, 5 and 8, deferring to the Board's determination on whether WMII has meet it burden of proof with respect to these criteria. In its reply brief, CARL contends that WMII failed to provide sufficient evidence on criteria 1, 2, 3 and 6. CARL further respectfully

withdraws their prior contentions concerning criterion 7.

WMII argues that absent a showing by the petitioner that the manifest weight of the evidence directed a different result, the decision of Whiteside County must be affirmed. (See Fairview, 198 Ill. App. 3d 541, 555 N.E.2d 1178.) Therefore, WMII contends that CARL has not presented argument or evidence on criteria 4, 5 and 8, and therefore Whiteside County's decision with respect to criteria 4, 5 and 8 must be affirmed.

As previously noted, this Board must review Whiteside County's decisions on the challenged criteria on a manifest weight of the evidence standard. The Board will review the evidence presented concerning criteria 4, 5 and 8 to determine if the manifest weight of the evidence supports the findings of Whiteside County. The Board will also review the argument presented by CARL in its brief of January 7, 1993 concerning criteria 7.

CARL repeatedly asserts that Whiteside County's decision was based on the financial needs of the county and not on the statutory criteria as required. CARL alleges that the county's purpose in siting the landfill was to raise revenues to remediate problems associated with the county's existing landfill.

There is no impropriety in considering any economic benefit, as long as the statutory criteria are also met. (Fairview, 198 Ill. App. 3d 541, 555 N.E.2d 1178.) The Board is not to speculate on the political or social or economic consequences of approving the location of a regional pollution control facility; rather it is the Board's duty to determine whether the decision below was against the manifest weight of the evidence. (Id.) While the evidence shows that the economic factors relating to the siting of the proposed facility and the closing of the existing landfill were in front of Whiteside County, there is no evidence that shows that this was the only factor considered or that Whiteside County did not review the evidence concerning the statutory criteria. In reviewing Whiteside County's decision, the Board will look at the evidence that Whiteside County relied on in reaching its determination and the arguments presented by the parties in their briefs.

Need

The first criterion which the local decisionmaker must consider in ruling upon an application for local site approval is whether "the facility is necessary to accommodate the waste needs of the area it is intended to serve." (415 ILCS 5/39.2(a)(1) (1992).)

Richard Carlson, of Carlson Environmental Inc., prepared a report for WMII on the need for the facility. (C 957 to C 981.)

The report states that at the end of 1992 there will be no existing landfill capacity within Whiteside County. (C 978.) The report concludes that landfill capacity within the service area will be depleted by 1994. (C 978.) The report projects that regional landfill capacity in northern Illinois will be depleted around the year 2000. (C 980.) The report asserts that the proposed landfill is necessary to accommodate the waste needs of the service area. (C 980.)

Whiteside County found that no testimony or evidence was presented at the hearing which controverted or refuted Mr. Carlson's findings or conclusions. (C 922.) Whiteside County after reviewing the record as a whole determined that WMII met its burden of proof concerning criterion 1. (C 922.)

CARL contends that a "super-regional landfill" is neither necessary or urgent. CARL maintains that need should not be determined by an arbitrary standard of life expectancy of existing disposal capacities but rather by considering other relevant factors such as development of other sites and changes in projected amounts of refuse. (Waste Management Inc. v. IPCB (2d Dist. 1988), 175 Ill. App. 3d 1023, 530 N.E.2d 682.) Based on this premise, CARL contends that evidence was not presented on other sites or changes in refuse. CARL argues that a transfer station will meet the needs of Whiteside County. CARL notes that a resolution by the Whiteside County Farm Bureau stated that a transfer station would meet the needs of Whiteside County and requested Whiteside County to explore this option. (C 761.) CARL argues that the county is still faced with a substantial time frame in which to make its decision and therefore it does not appear to rise to the level of urgency.

WMII argues that Whiteside County cannot use a service area smaller than that described in the application to determine need. It is the applicant who defines the intended service area, not the local decision making body; Whiteside County has no authority to amend the service area. (Metropolitan Waste System Inc. v. IPCB (3d Dist. 1990), 201 Ill. App. 3d 51, 558 N.E.2d 785.) WMII contends that CARL's argument considers the service area as Whiteside County only and should therefore be rejected.

The service area specified by WMII in its application includes Whiteside County, Winnebago, Boone County, southern Lake County, eastern Du Page County and parts of suburban Cook County. (C 960.) In its argument CARL focuses on the waste needs of Whiteside County only and did not consider the need of the other areas in the service area. Whether a transfer station is adequate to meet the needs of Whiteside County does not address whether the application by WMII and the evidence presented at hearing show that the landfill is necessary to accommodate the needs of the area to be served. In Fairview, the court held that this criteria does not require a showing of absolute necessity

nor should need be determined by application of an arbitrary standard of life expectancy of existing disposal capacities. (198 Ill. App. 3d 541, 555 N.E.2d 1178.) The court held that petitioners had the opportunity to present evidence negating need, and absent contradicting calculations it is appropriate for the local decisionmaker to rely on the information in evidence.

CARL did not present calculations of their own or challenge the calculations presented by Mr. Carlson. The Board finds that it was appropriate for Whiteside County to rely on the information in evidence. The Board finds that Whiteside County's decision that WMII's application met criterion 1 is not against the manifest weight of the evidence.

Public Health, Safety, and Welfare

The second criterion which the local decisionmaker must consider when ruling upon an application for local site approval is whether "the facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected." (415 ILCS 5/39.2(a)(2) (1992).)

WMII's application contains written reports describing and analyzing the location, design and operation of the proposed facility. (C 983 to C 1171.) WMII presented three witness concerning criterion 2. Martin Sara, a hydrogeologist, testified concerning the suitability of the site. Paul John Wintheiser, a civil engineer, testified concerning the design of the facility. James Nold, business development manager for WMII, testified on the operation of the proposed facility. Mr. Gerald DeMers, the consultant hired by Whiteside County, also testified on criterion 2.

Mr. Sara testified that, due to the consistent geology and the simple groundwater flow patterns of the site, a very effective groundwater monitoring system can be designed. (C 411.) He also testified that the site contains sufficient materials to design and construct a liner, leachate collection system, daily cover and final cover for the facility. (C 413.)

Mr. Wintheiser described the following features of the landfill: composite liner system (C 512), final cover (C 513), leachate collection and management system (C 514), gas monitoring and management system (C 516), surface water management system (C 518) and the groundwater monitoring system (C 524). He further testified how each of these features serve to protect the public, health, safety and welfare. (C 526 to C 528.)

Mr. Nold testified as to the policies and procedures followed in the operation of WMII's landfills. He testified that the facility will have controlled access by a security gate and a locked gate. (C 641.) He described the procedure for monitoring

and recording all incoming vehicles and the waste delivered. (C 646.) He further explained the sorting, compacting and daily cover procedures. (C 650.) He also explained the steps taken to control litter (C 651) and dust (C 652).

Mr. DeMers testified that the design exceeds all applicable State of Illinois requirements. (C 699.) He testified that the design, location and proposed operation will protect the public health, safety and welfare. (C 700.)

Whiteside County found that the proposed facility will be designed, located and operated so that the public health, safety and welfare will be protected, provided that the conditions set forth in Whiteside County's decision are followed. (C 926.)

CARL contends that WMII failed to establish that the increased size of the landfill is necessary. In addition, CARL contends that WMII did not show that any concurrent increase in the groundwater contamination is necessary. CARL argues that the size of the proposed facility exceeds the needs of the county and therefore is not designed to minimize the threat to public health, safety and welfare. CARL maintains that a site that is proposed with a design that far exceeds the reasonable needs of a county or a contiguous geographical area runs contrary to criteria 2 and threatens the public health, safety and welfare. CARL further alleges that citizens vehemently expressed their concerns of health risks associated with having a regional landfill in the area. CARL notes that Joanne Vock tried without success to obtain information pertaining to health risks associated with exposure to various chemicals and waste coming into the proposed facility. (C 439.) CARL also points out that Jane Vanzuiden commented on the communities concern about health and safety. (C 771.)

WMII maintains that the evidence shows that the proposed facility is designed so public health, safety and welfare will be protected. WMII notes that CARL does not argue that the controls and procedures, safety features, training of personnel or security systems are substandard or create a significant safety hazard. (Industrial Fuels, 227 Ill. App. 3d 533, 592 N.E.2d 148.) WMII contends that CARL has mischaracterized the standard for criteria 2. WMII notes that CARL has provided no authority to support its contention that WMII must show that the landfill and the concurrent increase in the groundwater contamination are necessary. WMII argues that criteria 1 relates to need, but the size and nature of the facility is related to the service area and not to groundwater contamination. WMII maintains that there was no testimony to indicate that the facility would result in groundwater contamination.

The Board finds that CARL's argument relating to the necessity of a landfill of the proposed size are misplaced and

relate to criterion 1. The Board finds no authority to support CARL's contention that WMII must establish that a concurrent increase in groundwater contamination is necessary. The Board does not find evidence in the record to support CARL's contention that the design of the proposed facility will result in an increase of groundwater contamination.

While citizens did express their concerns about health and safety, the comments were directed at landfills in general. The comments did not reflect any specifics relating to this facility or defects in the application presented by WMII. Given the extent of the comments by the citizens, the Board finds it reasonable for Whiteside County to rely on the expert testimony presented by WMII and the county's consultant.

WMII has provided evidence of design and operating procedures to protect the public health, safety and welfare. Assuming, as is the case here, that the applicant presents a prima facie case that the application meets criterion 2, the Board believes that a local decisionmaker is free to place some reliance on the Illinois Environmental Protection Agency's permit review process. The appellate court has held that a local decisionmaker is empowered to consider any and all highly technical details of landfill design and construction in ruling upon criterion two. (Waste Management of Illinois, Inc. v. IPCB (2d Dist. 1987), 160 Ill. App. 3d 434, 513 N.E.2d 592, 594-596; see also McHenry County Landfill, Inc., v. Illinois Environmental Protection Agency (2d Dist. 1987), 154 Ill. App. 3d 89, 506 N.E.2d 372, 380-381; County of Lake v. IPCB (2d Dist. 1983), 120 Ill. App. 3d 89, 457 N.E.2d 1309.) We do not believe, however, that these cases mean that local decisionmakers must examine each request for siting approval so as to ensure compliance with every applicable regulation. (Cf. Tate, 188 Ill. App. 3d 994, 544 N.E.2d 1176, 1195.) Building a new regional pollution control facility in Illinois is a two-step process: siting approval from the local decisionmaker, and an approved permit from the Illinois Environmental Protection Agency. (415 ILCS 5/39 and 39.2 (1992).) The local decisionmaker is not required to perform both functions. In sum, the Board finds that Whiteside County's decision that criterion 2 was satisfied is not against the manifest weight of the evidence.

Minimize Incompatibility

The third criterion that the local decisionmaker must consider is if "the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property." (415 ILCS 5/39.2(a)(3) (1992).)

WMII presented two witnesses on criterion 3: J. Christopher Lannert, a professional landscape architect and urban planner,

and William McCann, a professional real estate appraiser and land use zoning consultant.

Mr. Lannert testified that the facility is to be located in a low-density, agricultural area. (C 47 to C 48.) He further testified that the entry design of the facility (C 61), the end-use plan (C 53 to C 59), the screening features and berms (C 60 and C 62) minimize the incompatibility with the character of the surrounding area.

Mr. McCann testified that, due to the fact that the proposed site adjoins an existing landfill, is located along a major thoroughfare and is removed generally from residential development, it minimizes both incompatibility and property value impact. (C 196.) Mr. McCann further testified that, based on studies around other landfills, the proposed facility has been located so as to minimize any potential effect on the value of surrounding properties. (C 202.) He found that these studies have shown that those landfills have not deterred development in the area. (C 199.) He also studied prior land transactions in the area and found no effect due to the existing landfill. (C 202.)

Whiteside County found that the proposed facility is so located as to minimize incompatibility based on the testimony presented by Mr. Lannert and Mr. McCann and the lack of credible or relevant evidence to the contrary. (C 927.)

CARL argues that Mr. McCann failed to consider the inherent impact that the landfill would have on the potential development of areas surrounding the landfill not serviced by city sewer and water services. CARL notes the regulations regarding the placement of wells in close proximity to landfills. CARL contends that Mr. McCann only considered the impact on areas serviced by city sewers and water. Further CARL asserts that while studies compared the effect of the existing landfill on the area to that of the proposed facility, it did not consider the greater size of the new facility. CARL argues that there was no consideration of the effect that increased traffic in the area would have on the compatibility of the site. CARL argues that the fact that the existing county landfill may have suppressed development in the area is an insufficient basis to conclude that a new and larger facility will not have a substantial impact.

CARL maintains that the testimony indicated that local residents would not buy homes near the proposed facility. (C 816.) CARL argues that market value depends on buyers desiring to live in the area. CARL asserts that current and future homeowners can provide the best evidence on the impact of the proposed site. CARL further argues that challenging testimony on the basis that it is not given by an expert, does not alone discredit otherwise persuasive testimony. (Ralston Purina Co. v.

IPCB (4th Dist. 1975), 27 Ill. App. 3d 53, 325 N.E.2d 727.)

WMII argues that criterion 3 does not require that the proposed facility have no impact on the surrounding area or on the value of surrounding property. WMII argues that CARL relies on opinion and speculation of what may occur in the future. WMII further contends that the testimony that CARL relies on is hearsay. WMII contends that the evidence establishes that WMII's plan not only would minimize any incompatibility of the landfill or effect on the value of the surrounding property, but would result in a scenic and geographically appropriate landform.

The Board finds that based on the testimony presented there is ample evidence in the record to support Whiteside County's finding on criterion 3. The Board finds the county's decision on criterion 3 is not against the manifest weight of the evidence.

Flood Plain

The fourth criterion which the local decisionmaker must consider in ruling upon an application for local site approval is whether "the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed." (415 ILCS 5/39.2(a)(4) (1992).)

Mr. Sara and Mr. DeMers testified that the facility is located outside the boundary of the 100-year flood plain. (C 412, C 698.) Whiteside County found no contradicting evidence and determined that criterion 4 was satisfied. (C 928.)

CARL presents no argument to contradict the finding of Whiteside County. Therefore, the Board finds that Whiteside County's determination that criterion 4 was satisfied is not against the manifest weight of the evidence.

Plan of Operations

The fifth criterion which the local decisionmaker must consider in ruling upon an application for local site approval is whether "the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents." (415 ILCS 5/39.2(a)(5) (1992).)

Written reports regarding operational plans, policies and procedures for the facility are included in the application. (C 1230 to C 1281.) Mr. Nold and Mr. DeMers also testified concerning the operation of the facility to minimize danger from fire, spills or other operational accidents.

Based on the evidence presented, and the lack of credible or relevant evidence to the contrary, Whiteside County found that WMII's plan of operation is designed to minimize the danger to

the surrounding area from fires, spills, or operational accidents. (C 928.)

CARL has not presented any arguments on this criterion or shown that any contradicting evidence was presented concerning this criterion. Therefore the Board finds that Whiteside County's decision that WMII's plan of operation met criterion 5 is not against the manifest weight of the evidence.

Traffic Pattern

The sixth criterion which the local decisionmaker must consider in ruling upon an application for local site approval is whether "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." (415 ILCS 5/39.2(a)(6) (1992).)

David Miller, a professional traffic engineer, testified for WMII concerning criterion 6. A report by Mr. Miller was included in the application. (C 1283 to C 1300.) Mr. Miller testified that the traffic to and from the facility has been so designed to minimize the impact on existing traffic flow. (C 268.) He based his opinion on: 1) the site volumes are very low, 2) the peak hours of the facility and US 30 do not correspond, 3) US 30 is more than adequate to accommodate the traffic, 4) the access to the site is good and 5) the design of the facility is adequate to handle parking and internal circulation. (Tr. at 267.)

Whiteside County found that based on the evidence presented by Mr. Miller and the written comment submitted on August 26, 1992, by the Whiteside County Engineer that criterion 6 had been met.

CARL argues that peak traffic periods during construction were not considered by Mr. Miller. CARL contends that the data used in Mr. Miller's report was not obtained from the Illinois Department of Transportation. (C 274.) CARL asserts that citizens provided information that contradicted Mr. Miller's findings. One citizen stated that he had to wait for 15 vehicles to pass before he could cross US 30. (C 272.) Another citizen stated that Highway 30 is already carrying more traffic than it was designed to handle. (C 283.)

WMII argues that CARL relies on the subjective perception of two citizens that Highway 30 is currently operating at excessive capacity. WMII notes that, while CARL contends that the data used was not from the Illinois Department of Transportation, it did not present such data or any other study to discredit Mr. Miller's testimony. WMII maintains that the finding that the applicant has satisfied criterion 6 should be upheld because CARL has presented no evidence to indicate that the proposed traffic pattern does not already minimize the impact on the existing

traffic flow. (See Waste Hauling Inc. v. Macon County Board (May 7, 1992), PCB 91-233.)

After reviewing the evidence, the Board finds that Whiteside County's finding that WMII satisfied criterion 6 is not against the manifest weight of the evidence.

Hazardous Waste/Emergency Response Plan

The seventh criterion which the local decisionmaker must consider in ruling upon an application for local site approval is "if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release." (415 ILCS 5/39.2(a)(7) (1992).)

WMII's application states that hazardous waste will not be treated at the proposed facility. (C 1303.) Therefore, Whiteside County found that criterion 7 does not apply and WMII need not show compliance. (C 929.) Whiteside County also noted that if the "Conditions for Approval" are followed, no hazardous waste will be treated, stored or disposed at the facility. (C 929.)

CARL contends that the testimony indicates that "household hazardous waste" will be accepted at the landfill. (C 674.) CARL argues that because the landfill will be handling "hazardous waste", an emergency response plan must be proposed. CARL maintains that no such plan has been presented by WMII and therefore this criterion has not been fulfilled.

WMII notes that the term "household hazardous waste" is not defined in the Illinois Administrative Code. WMII argues that "household waste" is excluded from hazardous waste by 35 Ill. Adm. Code 721.104(b) and defined to include "any waste or material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds and day-use recreation areas)." WMII concludes that household waste of any description does not constitute hazardous waste. Therefore, WMII maintains that an emergency response plan is not required, because the proposed facility will not be treating, storing or disposing hazardous waste.

The term "hazardous household waste" was used in a question asked on cross-examination by a resident. The application states that no hazardous waste will be treated, stored or disposed of at the facility. The decision by Whiteside County provides that hazardous waste will not be accepted at the proposed facility. The Board finds that the manifest weight of the evidence supports the finding that hazardous waste will not be treated, stored or

disposed at the proposed facility and that an emergency response plan is not required.

Solid Waste Management Plan

The eighth criterion which the local decisionmaker must consider in ruling upon an application for local site approval is "if the facility is to be located in a county where Whiteside County has adopted a solid waste management plan, the facility is consistent with that plan." (415 ILCS 5/39.2(a)(8) (1992).)

Mr. Lannert and Mr. DeMers testified concerning criterion 8. Mr. Lannert found the proposed facility to be consistent with the county's waste plan. (C 64.) He stated that the plan calls for a new landfill and recycling efforts, which are satisfied by the proposed facility. (C 64.) He further testified that the plan calls for professional management of the operation, which would be provided by WMII. (C 65.) Mr. DeMers also testified that the proposed facility was consistent with the county's plan. (C 139.)

Whiteside County noted that no contradicting testimony or evidence was presented on this criterion. Whiteside County found that the application is consistent with the Whiteside County Solid Waste Plan and that WMII had met its burden with respect to criterion 8.

CARL presented no argument to the Board on this criterion. CARL has not shown that the record contains any contradicting evidence. CARL does not argue that the evidence does not support the county's finding. WMII presented testimony that the proposed site was consistent with the Whiteside County Solid Waste Plan. The Board finds that Whiteside County's finding concerning criterion 8 is not against the manifest weight of the evidence.

CONCLUSION

The Board finds that the proceedings of Whiteside County were fundamentally fair. Additionally, the Board finds that Whiteside County's decision that WMII's application met all of the statutory criteria is not against the manifest weight of the evidence. Therefore, Whiteside County's decision granting siting approval is affirmed.

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

ORDER

The Board hereby affirms the Whiteside County Board's September 15, 1992 decision granting site approval to Waste Management of Illinois, Inc. for a regional pollution control facility.

IT IS SO ORDERED.

J. Theodore Meyer abstained

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)) provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 25th day of February, 1993, by a vote of 5-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board