ILLINOIS POLLUTION CONTROL BOARD
October 10, 1991

RICHARD WORTHEN, CLARENCE BOHM, HARRY PARKER, GEORGE ARNOLD, CHARLES CRISWELL, THOMAS GIBSON, CITY OF EDWARDSVILLE, CITY OF TROY, VILLAGE OF MARYVILLE, VILLAGE OF GLEN CARBON, SAVE ALL FARMLAND AND ENVIRONMENTAL RESOURCES, and MADISON COUNTY CONSERVATION ALLIANCE,	)	
Petitioners,	)	PCB 91-106 (Landfill Siting Review)
v.	)	
VILLAGE OF ROXANA and LAIDLAW WASTE SYSTEMS (MADISON), INC.,	)	
Respondents.	)	

GEORGE J. MORAN, SR., APPEARED ON BEHALF OF PETITIONERS;

BRIAN E. KONZEN, LUEDERS, ROBERTSON & KONZEN APPEARED ON BEHALF OF RESPONDENT LAIDLAW WASTE SYSTEMS (MADISON), INC.; and

LEONARD F. BERG APPEARED ON BEHALF OF RESPONDENT VILLAGE OF ROXANA.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This case is before the Board on a June 24, 1991 petition for hearing to contest the May 20, 1991 decision of respondent the Village of Roxana (Roxana). Petitioners Richard Worthen, Clarence Bohm, Harry Parker, George Arnold, Charles Criswell, Thomas Gibson, the City of Edwardsville, the City of Troy, the Village of Maryville, the Village of Glen Carbon, Save All Farmland and Environmental Resources, and Madison County Conservation Alliance (collectively, petitioners) ask that this Board review Roxana's decision granting site approval to respondent Laidlaw Waste Systems (Madison), Inc. (Laidlaw) for expansion of its Cahokia Road landfill. The petition for review is brought pursuant to Section 40.1 of the Environmental Protection Act (Act). (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1040.1.) This Board held a public hearing on the petition for review on August 23, 1991.

PROCEDURAL HISTORY

On December 28, 1990, pursuant to Section 39.2 of the Act, Laidlaw filed an application with Roxana for siting approval of a vertical and horizontal expansion of its existing Cahokia Road landfill. This proposed facility had previously been the subject of two siting proceedings before the Madison County Board. The Madison County Board denied the first application on February 8, 1988, and the second application was withdrawn by the applicant before a decision was made. (Application for Regional Pollution Control Facility Site Approval for the Cahokia Road Sanitary Landfill, Village of Roxana, Illinois (hereafter "App."), Vol. I, p. 27.) The site of the facility was subsequently annexed to Roxana, pursuant to an agreement between Laidlaw and Roxana. Laidlaw then applied to Roxana for siting approval of the proposed expansion, and Roxana granted that request on June 18, 1990. On appeal to this Board, the Board found that Laidlaw's application to Roxana was filed less than two years after the disapproval of a previous, substantially similar request for siting approval, in violation of Section 39.2(m) of the Act. Therefore, this Board held that Roxana had no jurisdiction to consider the application, and reversed the siting approval. (Worthen v. Village of Roxana, PCB 90-137 (November 29, 1990).) Laidlaw appealed the Board's decision to the appellate court, where that case is currently pending.

In addition to appealing this Board's decision in Worthen, Laidlaw also filed a new application for siting approval with Roxana. It is this application, filed on December 28, 1990, that is the subject of the instant appeal. Public hearings on this application were held by the Roxana Regional Pollution Control Hearing Committee on April 8, 10, 11, and 15, 1991. On May 20, 1991, the Roxana Village Board approved the siting application. (C.9879-9880.)[1]

STATUTORY FRAMEWORK

At the local level, the siting approval process is governed by Section 39.2 of the Act. Section 39.2(a) provides that local authorities are to consider as many as nine criteria when reviewing an application for siting approval. Only if the local body finds that all applicable criteria have been met can siting approval be granted. The Roxana Village Board of Trustees found that Laidlaw's application met all of the applicable criteria, and thus granted siting approval for the proposed expansion. (Ordinance No. 613,

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[1] The local record will be denoted by "C." , and references to the transcripts of the local hearings will be indicated by "Tr.". References to exhibits introduced at the local hearing will be indicated by "Applicant's Ex.", "Intervenor's Ex.", or "Madison County Ex.".

adopted May 20, 1991, C.9879-9883.)

When reviewing a local decision on the criteria, this Board must determine whether the local decision is against the manifest weight of the evidence. (McLean County Disposal, Inc. v. County of McLean (4th Dist. 1991), ___ Ill.App.3d ____, 566 N.E.2d 26, 28-29; Waste Management of Illinois, Inc. v. Pollution Control Board (2d Dist. 1987), 160 Ill.App.3d 434, 513 N.E.2d 592, 596-597; E & E Hauling, Inc. v. Pollution Control Board (2d Dist. 1983), 116 Ill.App.3d 586, 451 N.E.2d 555, aff'd in part (1985), 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. Pollution Control Board (3d Dist. 1990), 198 Ill.App.3d 541, 555 N.E.2d 1178, 1184.) Merely because the local government could have drawn different inferences and conclusions from the conflicting testimony is not a basis for this Board to reverse the local government's findings. File v. D & L Landfill, Inc., PCB 90-94 (August 30, 1990), aff'd File v. D & L Landfill (5th Dist. October 3, 1991), No. 5-90-0630; see also Steinberg v. Petta (1st Dist. 1985), 139 Ill.App.3d 503, 487 N.E.2d 1064, 1069.

Additionally, the Board must review the areas of jurisdiction and fundamental fairness. Section 40.1 of the Act requires the Board to review the procedures used at the local level to determine whether those procedures were fundamentally fair. Petitioners have not raised any claims that the local procedures were not fundamentally fair, nor do they contend that there are any jurisdictional problems in this case. Based upon a review of the record, the Board finds that the procedures used at the local level were fundamentally fair.

CHALLENGED CRITERIA

Petitioners have raised challenges to two of the statutory criteria set forth in Section 39.2: whether the facility is necessary to accommodate the waste needs of the area it is intended to serve (Section 39.2(a)(1)), and whether the facility is consistent with the county's solid waste management plan (Section 39.2(a)(8)).

The Board notes that petitioners contend that because the facts in this case are not in dispute, the legal effect of those facts becomes a matter of law, and thus the manifest weight of the evidence standard of review is not applicable. In support of this contention, petitioners cite General Motors Corp. v. Bowling (1st. Dist. 1980), 87 Ill.App.3d 204, 408 N.E.2d 937. That case involved

administrative review of an Illinois Department of Labor decision. However, petitioners have not cited any cases involving the landfill siting process under Sections 39.2 and 40.1 of the Act, and have not made any argument beyond the assertion that the manifest weight standard should not apply here. The appellate courts have repeatedly held that the Board is to review local government findings in landfill siting cases under the manifest weight standard. (McLean County Disposal, Inc. v. County of McLean (4th Dist. 1991), _____ Ill.App.3d _____, 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; City of Rockford v. Pollution Control Board (2d Dist. 1984), 125 Ill.App.3d 384, 465 N.E.2d 996.) In fact, the appellate court held that it was error for the Board to consider to review the evidence in the record on a de novo basis. (City of East Peoria v. Pollution Control Board (3d Dist. 1983), 117 Ill.App.3d 673, 452 N.E.2d 1378.) Additionally, contrary to petitioners' assertions, the Board finds that many of the areas of dispute involve questions of fact or mixed questions of fact and law. Therefore, the Board will review petitioners' challenges to the criteria under a manifest weight of the evidence standard.

Need and Service Area

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". (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(1).) In its findings of fact,[2] the Village Board found that "[t]he proposed facility is necessary to accommodate the waste needs of the proposed service area which consists principally of Monroe, Madison, and St. Clair Counties." (C.9882.)

Petitioners have raised two claims of error related to this criterion. First, petitioners contend that Laidlaw's proof of necessity was fatally defective because it described and attempted to prove a service area consisting only of Madison, St. Clair, and Monroe Counties although it had "contracted" with Roxana to serve an area of 100 miles in radius from the proposed site. Petitioners point out that Article II, Section IX of the annexation agreement states "Record Owner agrees that it will not accept solid waste from communities or customers located more than one hundred (100) miles from the [e]xisting [s]anitary [l]andfill site." (C.8014-

[2] The Regional Pollution Control Hearing Committee of the Roxana Village Board made findings of fact and recommendations to the full Village Board on May 20, 1991. (C.9881-9883.) Those findings of fact and recommendations were adopted by the Village Board and incorporated into the village ordinance approving the siting application. (C.9879-9880.)

8036.) Petitioners maintain that this language means that the intended service area is an area within 100 miles, and that Laidlaw's representation at hearing that the service area consists of three Illinois counties conflicts with the "contract". Petitioners argue that the testimony presented by Scott Schreiber, Laidlaw's regional engineer, shows that the intended service area is a 100 mile radius, rather than the three county area described in Laidlaw's application for siting approval.

In response, Laidlaw contends that the language in the annexation agreement is a prohibition, not a requirement. Laidlaw states that the language prohibits Laidlaw from accepting solid waste from customers over 100 miles away, but that the language does not state or imply what the service area should or will be. Laidlaw cites Metropolitan Waste Systems, Inc. v. Pollution Control Board (3d Dist. 1990), 201 Ill.App.3d 51, 558 N.E.2d 785, for the proposition that the service area is determined solely by the applicant, not by the local board. Therefore, Laidlaw maintains that even if petitioners' "strained" reading of the annexation agreement were correct, only Laidlaw, not the annexation agreement, can define the service area. Laidlaw argues that its application and the testimony presented in support of the application show that the intended service area for the facility consists solely of Madison, St. Clair, and Monroe Counties.

After a review of the record and the parties' arguments, the Board finds that the proposed service area for this facility is indeed the three county area defined in Laidlaw's application, and not a 100 mile radius. The language of the annexation agreement quoted by petitioners simply states that Laidlaw will not accept waste from outside a 100 mile radius. The agreement does not use the term "service area", nor does it indicate in any way that Laidlaw must accept waste from the entire area within a 100 mile radius. The Board finds that the language in Article II, Section IX of the annexation agreement is a prohibition against accepting waste from more than 100 miles away, and does not require that the facility accept waste from all areas within a 100 mile radius. Laidlaw's application clearly states that its proposed service area consists of Madison, St. Clair, and Monroe Counties. (App., Vol. I, pp. 28, 30.) Additionally, Mr. Schreiber testified repeatedly that the intended service area is Madison, St. Clair, and Monroe Counties. (Tr. 30, 60, 162.) The service area is defined by the applicant (Metropolitan Waste, 558 N.E.2d at 787), and Laidlaw has defined its proposed service area as the three county area. Therefore, the Board finds that Laidlaw's proof of necessity, which focused on the three county area, is not "fatally defective", as alleged by the petitioners.

Second, petitioners argue that Laidlaw did not prove that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. Petitioners contend, based upon data from the 1990 report of available waste disposal capacity in

Illinois, issued by the Illinois Environmental Protection Agency (Agency), that Madison County has between 16.2 and 25 years of remaining capacity, St. Clair County has from 5 to 13 years of landfill space, and the two counties considered together have about 16 years of remaining capacity.[3] Petitioners assert that the appellate court has held that a proposed expansion of a landfill was not necessary where existing landfills were sufficient to handle waste production for 10 years. (Waste Management of Illinois v. Pollution Control Board (2d Dist. 1984), 123 Ill.App.3d 1075, 463 N.E.2d 969.) Petitioners also maintain that Laidlaw has filled most of the disposal space in the Cahokia Road landfill in a short time, thus greatly reducing its previously projected life. Petitioners thus conclude that any shortage of landfill space in Madison County was created by Laidlaw's own actions, and argue that Laidlaw should not be allowed to profit from its own wrong doing. Petitioners further contend that Laidlaw presented an incomplete and inaccurate assessment of the area's waste disposal needs. Petitioners state that Laidlaw's needs assessment included the fact that 60 percent of the waste disposed of in the three county service area is imported into that area, but that the needs assessment did not consider whether the area from which the waste is imported (generally the St. Louis area) has adequate space to handle its own waste. Petitioners contend that their witness who testified on the needs issue, Frank Boyne, was the only witness who considered the waste needs and capacities of the whole St. Louis area, and that his testimony shows that current waste disposal facilities are sufficient.

In response, Laidlaw contends that petitioners' argument contains two key errors. First, Laidlaw maintains that petitioners erroneously assume, without legal authority or expert testimony, that the only way to assess need is by estimating landfill life expectancy. Laidlaw argues that the appellate court has found that it is better to rely on projected changes in refuse generation in the service area, future development of other disposal sites, and other factors, rather than determining need by application of an arbitrary standard of life expectancy of existing disposal facilities. (Waste Management of Illinois v. Pollution Control Board (2d Dist. 1988), 175 Ill.App.3d 1023, 530 N.E.2d 682, 691.) Laidlaw contends that techniques of estimating site life expectancies are unreliable, and points to another landfill in the service area whose life expectancy went from 18 years to 44 years to 27 years to 32 years in a four-year period, with no permitted increase in capacity. Laidlaw maintains that petitioners rely only on estimates of landfill life expectancy because all other evidence in the record (such as waste generation projections, projected population increases, continued loss of disposal sites, and a lack

[3] Petitioners state that figures for Monroe County are not furnished because the amounts of waste generated and disposed of are quite small.

of competition in the service area after 1995 if the proposed facility is not expanded) confirms the need for additional disposal capacity in the service area. Laidlaw asserts that even estimated life expectancies of landfills within the service area demonstrate need, since at current intake rates landfill capacity will be exhausted in as little as five to ten years.

Laidlaw argues that petitioners' second error is their estimation of landfill life expectancies, using "nonexistent" intake rates. Petitioners argue that plenty of service area capacity exists, as long as waste intake rates are limited to amounts generated within the service area. However, Laidlaw contends that there is no evidence in the record that any landfill in the area, with the "possible" exception of Laidlaw, will confine its disposal to waste generated within the three county service area. (Tr. 97-99.) Laidlaw maintains that importation must be considered in determining need, since the record shows that the historic trend of importation of waste into the service area will continue.[4]

Initially, the Board notes that petitioners argue that Laidlaw did not prove that the proposed facility is necessary to accommodate the needs of the service area. This contention raises questions involving both facts and law. As discussed above, the applicable standard of review is whether Roxana's finding that the proposed expansion is necessary is against the manifest weight of the evidence. That is the standard with which we review this criterion, not whether Laidlaw proved that need exists.

After a review of the record, the Board finds that Roxana's decision that need exists is not against the manifest weight of the evidence. Laidlaw included a needs assessment in its application (App. Vol. I, pp. 30-86), and presented the testimony of Mr. Schreiber in support of its contentions. (Tr. 37-64.) Mr. Schreiber testified that the service area will run out of disposal space as soon as 1995, based upon projected population growth, waste generation rates, projected recycling programs, area disposal capacity, and the historical importation of waste into the area. (Tr. 37-38.) Mr. Schreiber also stated that without the proposed expansion, all landfills in the service area would be owned by one company after 1995, and alleged that increased capacity in the service area owned by another company would keep disposal prices at an affordable level. (Tr. 43-46.) Additionally, Mr. Michael Coulson, manager of environmental planning for the East-West Gateway Coordinating Council, testified that a needs assessment prepared for Madison, St. Clair, and Monroe Counties in February 1989, using 1988 data, estimated that the area had eight years of

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[4] Laidlaw notes that although petitioners object to the importation of waste into Illinois, they have not objected to the fact that Madison County exports waste to Missouri.

disposal capacity remaining. (Tr. 580-581.) In sum, the Board finds that there is sufficient evidence in the record to support Roxana's decision that the proposed facility is necessary to serve the needs of the area. The Board notes that the appellate court decision cited by petitioners (for the proposition that an expansion was not necessary where there were ten years of remaining capacity in the area) merely held that the decision of the local government that there was no need, and this Board's decision upholding it, were not against the manifest weight of the evidence. That case did not hold that the existence of ten years of remaining disposal capacity meant that there was no need. Waste Management of Illinois v. Pollution Control Board (2d Dist. 1984), 123 Ill.App.3d 1075, 463 N.E.2d 969.

Consistency With County Solid Waste Management Plan

The eighth criterion which the local decisionmaker must consider in ruling upon an application for local site approval is whether "if the facility is to be located in a county where the county board has adopted a solid waste management plan, the facility is consistent with that plan." (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(8).) In its findings of fact, the Village Board found that "[t]he drafts of the Madison County Solid Waste Management Plan, as presented by the evidence, documents and testimony, are considered as if such plan is in full force and effect; the facility is consistent with such plan." (C. 9882.)

Petitioners contend that the proposed facility is not consistent with the solid waste management plan adopted by Madison County. Petitioners state that they consider the solid waste management plan adopted by the Madison County Board on February 21, 1991 [sic][5] as being in full force and effect, and argue that Laidlaw's siting application does not conform to that plan. Petitioners state that Mr. Coulson, who was the project manager during the preparation of the solid waste management plan, testified that the plan calls for a three-year moratorium on the siting of landfills. (Tr. 562.) Petitioners contend that the language of the February 20, 1991 plan supports Mr. Coulson's interpretation. Finally, petitioners maintain that this siting application is inconsistent with the Madison County solid waste management plan because it allows Laidlaw to disrupt the planning authority given to counties under the Solid Waste Planning and Recycling Act. (Ill.Rev.Stat. 1989, ch. 85, par. 5951 et. seq.)

Laidlaw makes two arguments in response to petitioners' claims. First, Laidlaw argues that Madison County did not have an adopted solid waste management plan. Laidlaw contends that

[5] Petitioners' argument refers to a February 21, 1991 plan; however, the Board believes that petitioners intend to refer to a February 20, 1991 plan.

according to the county's own timetable, the plan was still subject to review by the Illinois Environmental Protection Agency (Agency) during the local hearings on this application, so that the plan was still in draft stages. (Tr. 65-71, 586; Applicant's Ex. 82 and 83.) Laidlaw maintains that the latest draft of the plan states that it was not scheduled for final adoption until September 1991. Laidlaw points out that the Solid Waste Planning and Recycling Act requires the county to consider any Agency recommendations and adopt a revised plan (Ill.Rev.Stat. 1989, ch. 85, par. 5954(b)), so that a county cannot have a final, adopted solid waste management plan until the Agency returns the plan to the county. Because Madison County did not have a final, adopted plan, Laidlaw contends that criterion eight is not applicable to this application.

Second, Laidlaw contends that its application is consistent with the proposed county plan. Laidlaw maintains that the proposed facility is consistent with the waste management hierarchy contained in the draft plan, in that in promotes recycling and composting, and provides a disposal site for residue ash from waste-to-energy or incineration projects. Laidlaw points to the information in its application (App. Vol. I, December 26, 1990 letter from Nick R. Sturzl to Scott Schreiber) and to Mr. Schreiber's testimony that the application is consistent with the proposed plan (Tr. 75-82). Laidlaw argues that all the evidence in the record, with the exception of Mr. Coulson's testimony, shows that the proposed facility is consistent with the draft county plan. Therefore, Laidlaw maintains that it was not against the manifest weight of the evidence for Roxana to conclude that the proposed facility is consistent with the draft county plan.

The Board has reviewed the record and the parties' arguments, but is unable to determine whether Madison County had an adopted solid waste management plan when Roxana made its decision on this application. The record contains at least two different documents titled "Final Preferred Waste Management System Plan: St. Clair, Madison, and Monroe Counties, Illinois". Neither of those documents are themselves dated, but one contains a Madison County resolution dated June 20, 1990 (Intervenors' Ex. 44), while the other contains a February 14, 1991 Madison County resolution (Intervenors' Ex. 45). Nothing in the record shows if the plan was actually submitted to the Agency, as opposed to the numerous schedules for implementation, which state that the plan will be submitted to the Agency by March 1, 1991 and resubmitted (after consideration of Agency comments) by September 1, 1991, with implementation to begin on September 1, 1992. (Applicant's Ex. 82 at 73; Applicant's Ex. 83 at 48; Intervenors' Ex. 44 at VI-14--VI-15; Intervenors' Ex. 45 at VI-25--VI-26.) In sum, the Board cannot determine, based on the record before it, whether the plan was "adopted" within the meaning of Section 39.2(a)(8) of the Act.

However, Roxana's findings of fact specifically state that

"[t]he drafts of the Madison County Solid Waste Management Plan, as presented by the evidence, documents and testimony, are considered as if such plan is in full force and effect; the facility is consistent with such plan." (C. 9882.) Therefore, the Board will review Roxana's finding that the facility is consistent with the county plan to determine whether that finding is against the manifest weight of the evidence. Again, this issue raises questions of fact. The record does contain conflicting testimony as to whether the county plan envisions a moratorium on the siting of landfills. However, Mr. Coulson admitted that the text of the plan does not expressly state that there will be no new landfills during the three-year evaluation period. (Tr. 592-593.) Additionally, the record shows that the Madison County Board approved the siting of a new landfill (unrelated to this facility) after it "adopted" its solid waste management plan. (Applicant's Ex. 81; Tr. 52-56, 595-596.) The Board finds that there is sufficient evidence in the record to support Roxana's decision that the proposed facility is consistent with the county plan, and that Roxana's decision on criterion eight was not against the manifest weight of the evidence. Merely because Roxana could have drawn different conclusions from the conflicting testimony is not a basis for this Board to reverse the local government's decision. File v. D & L Landfill, Inc., PCB 90-94 (August 30, 1990), aff'd File v. D & L Landfill (5th Dist. October 3, 1991), No. 5-90-0630; see also Steinberg v. Petta (1st Dist. 1985), 139 Ill.App.3d 503, 487 N.E.2d 1064, 1069.

The Board disagrees with petitioners' contention that this siting application is inconsistent with the county solid waste management plan because it allows Laidlaw to "disrupt" the planning authority given to the counties. As Laidlaw points out, this argument alleges that all applications for site approval in a county with an adopted plan should be before the county, instead of any municipality. However, Section 39.2(a) of the Act clearly states that municipalities have exclusive jurisdiction over siting facilities within their municipal boundaries. Section 39.2 merely requires the local decisionmaker, whether the county or a municipality, to determine whether a proposal facility is consistent with the county plan. Neither Section 39.2 nor the Solid Waste Planning and Recycling Act take siting approval authority from municipalities.

In sum, the Board finds that Roxana's decision granting site approval for the proposed expansion was not against the manifest weight of the evidence.

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

ORDER

The May 20, 1991 decision of the Roxana Village Board of

Trustees, granting site approval to Laidlaw Waste Systems (Madison), Inc. for expansion of its Cahokia Road landfill is hereby affirmed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1989, 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.

J.D. Dumelle dissented, and J. Theodore Meyer was present but did not vote.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10th day of October, 1991, by a vote of 5-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board