

ILLINOIS POLLUTION CONTROL BOARD
September 20, 1985

MCHENRY COUNTY LANDFILL, INC.,)	
and Illinois Corporation,)	
)	
Petitioner,)	
)	
v.)	PCB85-56
)	
COUNTY BOARD OF MCHENRY)	
COUNTY, ILLINOIS,)	
)	
Respondent,)	
)	
and)	
)	
ARTHUR T. MCINTOSH & CO.,)	
VILLAGE OF LAKEWOOD, VILLAGE)	
OF HUNTLEY, HUNTLEY FIRE)	
PROTECTION DISTRICT, LANDFILL)	
EMERGENCY ACTION COMMITTEE)	
(LEAC) MCHENRY COUNTY DEFENDERS,)	
)	
Cross Petitioners-)	PCB 85-61
Objectors,)	through
)	PCB 85-66
v.)	(consolidated)
)	
MCHENRY COUNTY LANDFILL, INC. AND,)	
COUNTY BOARD OF MCHENRY COUNTY,)	
)	
Respondents.)	

DISSENTING OPINION (by J. Marlin):

I agree with the majority that this matter should be remanded to the County to cure the defect regarding the standard applied in reaching its decision. To do otherwise would create a situation where all parties could expend considerable money on an appeal that would most likely result in remand on that issue alone, leaving substantive matters for a subsequent costly appeal.

However, I strongly disagree with the majority's conclusion that it is proper to restrict testimony at hearing to specific elements of the application as originally submitted. At a hearing on "site location suitability" the objective is to gather information for determining the suitability of the site. To bar testimony of any witness directly bearing on that issue defeats the purpose of the hearing. In this case, the testimony in question was on the hydrogeology of the site and was clearly

relevant to the matter being decided. The County should have access to the information of all witnesses at hearing. The majority opinion implies that the applicant's testimony must stay within the narrowly defined confines of the application while others can raise any issue. Such holdings will prevent applicants from suggesting ways to improve planned developments or offering alternatives that the County may accept as conditions.

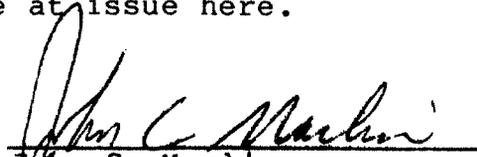
Allowing testimony beyond the confines of the application must not be confused with allowing major substantive changes in the application at hearing without providing the public adequate time for review. Fairness demands that an application contain enough details to enable the public to determine what is being proposed and to intelligently consider its potential impact.

Moreover, it is unreasonable to expect that the application be so detailed that the location of each building, height of each, fence, piece of machinery, species of plant, and number of employees to be given in immutable detail. It is impossible to predict in advance every item that may cause someone concern or that may change due to technical or economic conditions. In the instant case, for example, the leaf composting area was proposed and in the plan, but the applicant was not certain when or if it would actually be developed. The siting process must be flexible enough to accommodate such uncertainties.

It should also be remembered that the design in the application can be changed by conditions placed by the County Board and by the Agency during the permit process. Such changes are not subject to additional hearings.

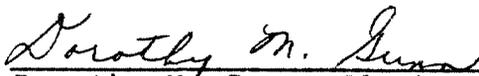
As the landfill siting process becomes increasingly costly, time consuming, and legally complicated, it is more difficult for persons to participate effectively.

Each controversial case seems to further complicate the process with holdings such as the one at issue here.



 John C. Marlin

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 10th day of October, 1985.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board