ILLINOIS POLLUTION CONTROL BOARD
December 17, 1987

WASTE MANAGEMENT OF ILLINOIS INC., a Delaware Corporation,	)	
Petitioner,	)	
v.	)	PCB 87-75
LAKE COUNTY BOARD,	)	
Respondent.	)	

MR. DONALD J. MORAN, PEDERSEN & HOUPT, APPEARED ON BEHALF OF PETITIONER,

MESSRS. LARRY M. CLARK AND MICHAEL J. PHILLIPS, ASSISTANT STATE'S ATTORNEYS OF LAKE COUNTY, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board on a Siting Application Appeal filed by Petitioner on June 1, 1987. Specifically, Petitioner, Waste Managment of Illinois, Inc. ("WMII"), appeals the May 5, 1987, decision of the County Board of the County of Lake ("LCB") denying local siting approval to Petitioner's proposed incinerator and landfill in Lake County, Illinois.

WMII contends that the procedures utilized by the LCB were fundamentally unfair because overly restrictive and arbitrary rules regarding the admissibility of testimony, documents, and other relevant evidence were applied, and because individual LCB Members had prejudged the Application, the LCB proceedings were tainted by ex parte contacts, and the full LCB did not have adequate opportunity to consider the Application before voting. WMII further contends that the LCB hearings were fundamentally unfair because the decision maker, Lake County, itself appeared as a party opposing the Application. Finally, WMII contends that the decision of the LCB that Petitioner had not met its burden on four of the statutorily-defined criteria is against the manifest weight of the evidence and is based on factors which the LCB had no authority to consider.

Hearing before this Board was held on October 1 and 2, 1987, in Waukegan, Illinois. Pursuant to schedule established by the Hearing Officer, WMII filed a brief ("WMII Brief") on October 28, 1987, the LCB filed a brief ("LCB Brief") on November 12, 1987, and WMII filed a reply brief ("Reply Brief") on November 18, 1987.

Based on the record before it, the Board finds that the hearing below was conducted in a fundamentally fair manner. The Board additionally finds that the decision of the LCB to deny WMII's Application based on failure of WMII to meet its burden of proof on the statutorily-defined criteria is not against the manifest weight of the evidence. The Board will accordingly affirm the decision of the LCB.

MOTIONS

On November 12, 1987, Mr. William Alter filed a motion with the Board for leave to file an amicus brief in support of Respondent Lake County. In support of his motion, Alter states that he participated in the hearing on the Application before the LCB, and that he asserts two arguments which will not be asserted by any other party to the proceedings: that the LCB lacked jurisdiction to conduct hearings on the Application, and that certain LCB members should have recused themselves because of a personal financial interest in the granting of the Application. On November 18, 1987, WMII filed a response to that motion, claiming that Alter's brief is an attempt to cross-appeal and that cross appeals in landfill siting reviews are not authorized by the Environmental Protection Act ("Act"); Ill. Rev. Stat. 1985 ch. 111 1/2) WMII Reply to Alter Motion at 2; citing, McHenry County Landfill, Inc. v. Pollution Control Board, 154 Ill.App.3d 89, 506 N.E.2d 372,376 (2d Dist. 1987).

On December 3, 1987, A.R.F. Landfill, Inc. ("A.R.F") also filed a motion for leave to file amicus brief and amicus brief in support of Lake County's denial of WMII's siting Application. In support of its motion A.R.F. stated that it participated in the hearing of the Application, it owns property located almost adjacent to the proposed site, and that A.R.F.'s brief addresses problems with the site geology and hydrogeology and WMII's monitoring system.

The Board believes Mr. Alter properly filed his brief as amicus curiae, and does not construe the filing as a cross appeal. It is the general practice of the courts that the granting or denial of a motion for leave to file a brief as amicus curiae lies wholly within the discretion of the court. Generally, the motion will be granted where the movant establishes the necessity or advisability of aiding the court in consideration of the case in which it is presented. The Board sees no reason to differ in this approach. The Board believes that Alter has satisfied that standard. Therefore Alter's motion is granted. The Board also grants A.R.F's motion as A.R.F. has satisfied the standard. The Board notes that the granting of the above motions is consistent with the Board's Orders of July 16, 1987, and October 15, 1987. Acceptance of the briefs as amicus curiae in no way bestows any of the rights and privileges of party status upon Mr. Alter or A.R.F.

The second motion before the Board was filed by the LCB on November 12, 1987, and is a motion to strike Section I of WMII's brief filed October 28, 1987. The LCB claims that Section I, entitled "Introduction" contains material that is "highly prejudicial" and "irrelevant"; and that it also contains alleged facts which do not appear in the record of proceedings before the LCB and PCB. WMII responded on November 18, 1987, that the LCB motion did not identify the statements or facts which it finds objectionable. WMII also stated that Section I contains legal argument which cannot be stricken without violation of fundamental fairness.

The Board denies the LCB's motion to strike Section I of WMII's brief and notes that Section I contains history of the SB172 process, as well as case precedent, legal argument and Petitioner's perceptions of inherent difficulties of the present landfill siting process. In regard to the LCB's allegations of material which is not in the record, the Board is able to determine and exclude from its consideration material cited in briefs which is outside the record and is not of the type which it can take judicial notice. The Board therefore finds it unnecessary to strike Section I of WMII's brief.

PROCEDURAL HISTORY

On November 7, 1986, WMII presented an Application ("Application") to the LCB for local siting approval for an incinerator and landfill. The incinerator is proposed to be a waste to energy mass burn incinerator capable of accomodating 1000 tons/day of waste. The landfill is proposed to accomodate 500 tons/day of additional refuse plus the noncombustible waste from the incinerator.

The site of the proposed facility is on approximately 160 acres located on the east side of Illinois Route 83 (Ivanhoe Road), bounded on the south by Peterson Road and approximately one mile south of Route 137, in unincorporated Fremont Township, Lake County, Illinois. The site is located immediately to the south of an existing solid waste, non-hazardous waste landfill owned and operated by A.R.F. Landfill, Inc.

The LCB reached its decision after 33 days of hearing held February 5 through March 30, 1987. In addition to WMII as Petitioner, various other parties appeared and participated in the LCB hearing. These included Lake County Joint Action Solid Waste Planning Agency ("SWPA"), Libertyville Township, C.L.E.A.R., the Casey-Almond Group, William Alter, A.R.F., Lake County Defenders, and Citizens for a Better Environment

(hereinafter collectively as "Objectors"[1]). At the LCB hearing Petitioner presented witnesses, testimony, and evidence in favor of the Application. Likewise, Objectors and concerned citizens were afforded similar opportunity to present evidence and make public comment. A total of forty-five witnesses appeared and forty-six members of the public presented oral public comment. The LCB hearing generated in excess of 7,300 pages of transcript plus pleadings, motions, argument, 131 exhibits, and 77 written public comments. Hearing before this Board generated an additional 474 pages of transcript plus exhibits and briefs.

The LCB hearing was conducted by a seven-member committee of the full LCB. This committee prepared a resolution ("Resolution") denying siting approval. The Resolution was subsequently adopted on May 5, 1987 by the full LCB on a vote of 21-0 with two abstentions. Among other matters, the Resolution found that Petitioner had met procedural requirements for the LCB to hear the matter, that the LCB had jurisdiction to hear the matter, and that the proceedings before the LCB were conducted in a fundamentally fair manner. On the issue of merits of the Application, the LCB found that WMII had satisfied two of the statutory criteria, nos. 4 and 5, but had failed to satisfy the remaining four criteria, nos. 1, 2, 3, and 6. The request for site location approval was accordingly denied.

REGULATORY FRAMEWORK

Requirements for the siting of new regional pollution control facilities are specified in the Act. Section 39(c) of the Act provides that "no permit for the development or construction of a new regional pollution control facility may be granted by the [Environmental Protection] Agency unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board of the county if in an unincorporated area *** in accordance with Section 39.2 ofthis Act". At the time this proceeding was before the LCB[2], Section 39.2 provided in pertinent part:

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[1] Use of the term "Objectors" to identify those groups and/or individuals who cross-examined Petitioner's witnesses, and/or offered their own witnesses, and/or presented their own exhibits is used herein soley as a convenient collective reference in accord with similar usage by both Petitioner (e.g., Appeal at 3) and Respondent (e.g., Resolution at 8). Its use is not intended to imply a determination that any one or any combination of the groups and/or individuals constitutes objectors in any legal context.

[2] The Board notes that amendments concerning Ill. Rev. Stat. 1985 ch. 111 1/2 par. 1039.2 were recently passed under SB-749, to be effective July 1, 1988. The amendments do not alter the six criteria applicable to the proposed WMII facility.

(a) The county board *** shall approve the site location suitability for such new regional pollution control facility only in accordance with the following criteria:

1. The facility is necessary to accommodate the waste needs the area it is intended to serve;

2. the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

3. the facility is located so as to minimize incompatibility with the character of the surrounding area and minimize the effect on the value of the surrounding property;

4. the facility is located outside the boundary of the 100 year flood plain as determined by the Illinois Department of Transportation, or the site is flood proofed to meet the standards and requirements of the Illinois Department of Transportation and is approved by that Department;

5. the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents; and

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

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

> A verdict is ... against the manifest weight of the evidence where it is palpably erroneous, wholly unwarranted, clearly the result of passion or prejudice, or appears to

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

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

Additionally, this Board must evaluate whether the LCB's procedures used in reaching its decision were fundamentally fair, pursuant to Section 40.1 of the Act (E&E Hauling, supra). Since the issue of fundamental fairness is a threshold matter, the Board will consider this matter first.

FUNDAMENTAL FAIRNESS

Ill. Rev. Stat. 1986 ch No. 111 1/2 par. 1040.1 requires that this Board review the proceedings before the LCB to ensure fundamental fairness. In E&E Hauling[3], the first case construing Section 40.1, the Appellate Court for the Second District interpreted statutory "fundamental fairness" as requiring application of standards of adjudicative due process (116 Ill.App.3d 586). A decisionmaker may be disqualified for bias or prejudice if "a distinterested observer might conclude that he, or it, had in some measure adjudged the facts as well as the law of the case in advance of hearing it" (Id., 451 N.E.2d at 565). A decision must be reversed, or vacated and remanded, where "as a result of improper ex parte communications, the agency's decisionmaking process was irrevocably tainted so as to make the ultimate judgment of the agency unfair, either to an innocent party or to the public interest that the agency was obliged to

[3] The Board notes that, while the Illinois Supreme Court reversed the Appellate Court's conclusions in that case about the existence of conflict of interest and bias/pre-judgment which would disqualify the entire County Board as an institution from making a decision, the Court did not repudiate the adjudicative due process standard applied by the Appellate Court.

protect" (Id., 451 N.E.2d at 571). Finally, adjudicatory due process requires that decisionmakers properly "hear" the case and that those who do not attend hearings in a given case base their determinations on the evidence contained in the transcribed record of such hearings (Id., 451 N.E.2d at 569).

Specifically, Petitioner argues that it was not afforded due process below for the following reasons:

1. The Lake County Ordinance as applied and on its face failed to afford petitioner procedural due process.

2. The LCB acted as both objector and judge in the proceedings.

3. Eight members of the LCB had prejudged the Application.

4. The proceedings were tainted by ex parte contacts between LCB members and the public.

5. The LCB did not have an adequate opportunity to consider Petitioner's Application before voting.

The Board will address each of these allegations in turn.

Lake County Ordinance

Petitioner asserts that the LCB has adopted an ordinance which establishes a procedure for new regional pollution control facility site approval requests in unincorporated areas of Lake County, Illinois, that is in derogation of Section 39.2(g) of the Act (WMII Brief at 88-9). That section of the Act states:

> The siting approval, procedure, criteria and appeal procedures provided for in this Act for new regional pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for such facilities. Local zoning or other local land use requirements shall not be applicable to such siting decisions.

No state statute specifically prohibits a county board from enacting an ordinance regulating the conduct of a site location approval proceeding. Therefore, it is necessary to determine whether the enacting of the ordinance falls within the LCB's implied powers. The Fourth District Appellate Court has stated the standards for determining a local government's implied powers as follows:

> It is a well established rule that the powers of the multifarious units of local government in our State, including counties, are not to be enlarged by liberally construing the statutory grant, but, quite to the contrary, are to be strictly construed against the governmental entity. (Arms v. City of Chicago, 314 Ill. 316, 145 N.E. 407 (1924). A county is a mere creature of the State and can exercise only the powers expressly delegated by the legislature or those that arise by necessary implication from expressly granted powers. (Heidenreich v. Ronske, 26 Ill.2d 360, 187 N.E.2d 261 (1962.) This necessarily implied power has been interpreted to mean that which is essential to the accomplishment of the statute's declared object and purpose--not simply convenient, but indispensable. (Merrill v. City of Wheaton, 379 Ill. 504, 41 N.E.2d 508 (1942). However, the implied power need not be absolutely indispensable, and it is sufficient if it is reasonably necessary to effectuate a power expressly granted. (Klever Shampay Karpet Kleaners v. City of Chicago, 323 Ill. 368, 154 N.E. 131 (1926); Houston v. Village of Maywood, 11 Ill.App.2d 433, 138 N.E.2d 37 (1957).)
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> Connelly v. County of Clark, 16 Ill.App.3d 947, 949 (1974).

The standard has also been reiterated by the Second District in McDonald v. County Board of Kendall County, 146 Ill.App.3d 1051, 100 Ill.Dec. 531, 497 N.E.2d 509 (2nd Dist. 1986), appeal denied 113 Ill.2d 576, 106 Ill.Dec. 48, 505 N.E.2d 453 (1986). when it stated that "County boards can exercise only such powers as are expressly stated by law or derived by necessary implication therefrom or are required to carry into effect the object and purpose of their creation" (citing Heidenreich and Connelly, supra).

The LCB believes that it is thus impliedly authorized to enact the Lake County Ordinance in order to fulfill its express duty to develop a sufficient record for appeal (LCB Brief at 19-20); the Board agrees. The Board further notes that the language of Section 39.2(g), in making the procedures of the Act the exclusive procedures for siting of landfills, precludes the applicability of local zoning and other local land use requirements to this process. However, the Act makes no reference to a county's own "procedural rules", enacted in the form of an ordinance in order to implement the requirements of the Act. Procedures developed in order to conduct hearings and

to ensure fundamental fairness are reasonably necessary to effectuate the powers expressly granted by the legislature.

This view is further supported by the language of Section 40.1(a) which states in part that "the Board shall include in its consideration ... the fundamental fairness of the procedures used by the county board or the governing body of the municipality in reaching its decision" (emphasis added). If the legislature had intended that counties not set up procedures in order to abide by the requirements of the Act, it would not have required this Board to review the fundamental fairness of those procedures. It naturally follows that counties in setting up procedures would reduce those procedures to writing either in the form of an ordinance or resolution.

Petitioner next asserts that the procedures contained in the Lake County ordinance are unfair because they do not allow the applicant to amend the Application after filing to include additional materials or to subsequently submit or introduce materials not included in the Application (WMII Brief at 89). Though an applicant may not amend its application, the ordinance allows that an applicant may withdraw the application at least 14 days before the first scheduled hearing and refile its request for site approval, placing into operation all the requirements which pertain to a new request for site approval. Lake County, Ill., Ordinance Establishing a Procedure for New Regional Pollution Control Facility Site Approval Requests (Sept. 9, 1986). Petitioner further asserts that the procedures are unfair because various County departments and objectors are allowed to file written materials up to ten days prior to hearing, and that Petitioner is not allowed to comment on such material, except through oral testimony. The LCB replies that in addition to offering sworn testimony in response to documents submitted by County departments and objectors, the applicant may extend the 180 day time period for the LCB to render a final decision on the application, if the applicant needs additional time to procure sworn testimony in rebuttal of the documents (LCB Brief at 20).

The Board has faced a similar matter in McHenry County Landfill, Inc. v. County Board of McHenry County et al., PCB 85-56, PCB 85-61 through 85-66 (consolidated), 65 PCB 487, September 20, 1985. There the Board considered amendment of a site-suitability application thusly:

> The function of notice and the required time period between notice and hearing is first to inform the affected public that a landfill site suitability approval process has been initiated and, second, to allow time for the public to review the application to determine whether, or in what manner, further participation is warranted. The Hearing Officer concluded that the evidence attempted

> to be presented "in a defacto way or expressly" constituted an amendment of the application. ***** The Board does not disagree with that determination. If such an amendment were allowed during the course of the proceeding, a member of the public who may have decided not to participate because the application seemed acceptable would not have had the opportunity to review the amended application. Further, even if he participated and did become aware of the amendment, he might not have the necessary time to adequately respond to the changes. The same may be true of the County or any other participants. This could be cured, however, by allowing such evidence to be presented at a later hearing contingent upon the applicant serving sufficient notice upon those required to be notified of the original application and hearing date and executing a waiver for the period necessary to schedule and hold the additional hearing.
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> Id., 65 PCB 490-1

The Board finds that those circumstances in McHenry County Landfill which argued for a prohibition against amendments of a petition without refiling are indistinguishable from those of the instant matter. Moreover, the Board notes that because the procedures contained in the LCB ordinance allowed Petitioner the opportunity to amend the Application and refile, and to rebut documents filed by County departments and objectors through the use of sworn testimony with the ability to extend the 180 day decision deadline, the Petitioner has failed to show that the procedures of the LCB were fundamentally unfair on this count.

Petitioner further asserts that the County Ordinance was applied against Petitioner in violation of due process. Specifically, Petitioner asserts that the Hearing Officer refused to admit into evidence two of Petitioner's site specific studies, while allowing those of Objectors and the LCB, and that the Hearing Officer acted arbitrarily in allowing and disallowing certain other evidence. The two site specific studies which Petitioner contends were arbitrarily excluded are an air dispersion modeling study prepared by WMII witness George C. Stotler and analyses of real estate trends prepared by WMII witness William McCann (WMII Brief at 94-5). Petitioner admits that both site specific studies were completed subsequent

to filing of the Application (Id.; R.[4] 2/24 at 96-7; 3/3 at 116; 3/12 at 61).

The Board finds that the Hearing Officer's ruling to exclude the two WMII site specific studies was proper. The record clearly indicates that the Hearing Officer gave weight to the surprise upon the Objectors which late introduction of this material would have occasioned (See R. 2/24 at 107; 3/3 at 123), and in this aspect his ruling was correct with respect to both the Lake County Siting Ordinance and this Board's holding in McHenry County Landfill.

Moreover, the Board notes the following section contained within the Application:

VIII: EXHIBITS OF APPLICANT

PETITIONER SHALL SUBMIT all studies, maps reports, permits or exhibits which the petitioner desires County Board to consider at the public hearing.

> This Application document contains all studies, maps, reports, permits or exhibits which WMII desires the County Board to consider at the public hearing. Application, Lake County Application Form, p. 16-7 (underlining as in original)

WMII thereby submitted at the very onset of its hearing before the LCB that it desired the LCB to consider no studies, reports, or exhibits other than those timely submitted as part of the Application. In this light, it would have been fully proper for the Hearing Officer to rule that WMII had waived any rights which it might have otherwise held for late submission of new studies or exhibits.

As to the matter of the general admission of evidence, the Board's review of the proceedings below indicate that the Hearing Officer acted in a generally even-handed manner in allowing and disallowing evidence. The Illinois Appellate Court in its review of the procedure of a county board hearing committee stated that

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[4] Transcripts of the hearing held before the LCB are referenced herein by the designation "R.". Numbering of pages in these transcripts was restarted with each day of hearing. Moreover, on some occasions renumbering was started after recesses within a single day of hearing. To accommodate this situation, transcripts of the hearing before the LCB are referred to herein by date as well as page number, and include reference to the session in question where there is more than one numbered transcript per day. Thus, for example, "R. 2/21 P.M. at 119" cites to page 119 of the February 21 afternoon hearing.

examples of fundamental unfairness include a hearing where the petitioner is prevented from cross-examining witnesses or from presenting its own evidence. Waste Management, supra, citing E&E Hauling, supra. The court went on to state:

> The 98 hours and 2,500 pages of hearing testimony demonstrate petitioner was afforded ample opportunity to present its case. The Hearing Committee collected and reviewed the evidence and made its recommendations; in other words, performed its adjudicatory function. Waste Management, supra, at 1081.

The Board believes that the rationale for the decision is equally applicable here. The instant case includes 33 days and over 7,300 pages of hearing testimony, which implies that this Petitioner was also afforded ample opportunity to present its case. The LCB hearing committee collected and reviewed its evidence and made its recommendations to the full LCB which body voted on the Application. The Board finds that the LCB performed its adjudicatory function and Petitioner fails to prove that the decision-making process was fundamentally unfair.

Dual Role Issue

Petitioner claims that the hearing before the LCB was fundamentally unfair because the County acted as both objector and judge in the proceedings. Although Petitioner's brief is not clear on this point, it appears Petitioner is claiming that the LCB, through the Lake County Department of Planning, Zoning and Environmental Quality ("PZ&EQ") and SWPA, appeared as a party to the hearing on the Application, that the LCB provided legal assistance to PZ&EQ and SWPA through the Lake County State's Attorneys Office, and that the LCB assumed its quasi-judicial role in ruling on Petitioner's Application[5].

In support of its position, Petitioner cites a statement of the Illinois Appellate Court in E&E Hauling, supra at 596, in which the court indicated that "it is difficult to conclude that a procedure under which the hearing body consists of the same people who also comprise the body applying for the permit can be fundamentally fair". In that case, the DuPage County Board assumed the investigator's role when the county applied for an

[5] Apparently in further support of its position that the hearing was fundamentally unfair, Petitioner mentions the fact that Bernard Wysocki, the attorney for the Hearing Committee, replaced Thomas Morris as hearing officer at the hearings beginning March 26, 1987. The Board notes that a stipulation was signed by attorneys for Petitioner, the principal Objectors, and the attorneys for the County, which stated that all agreed and would not object to the hearing officer substitution (Hearing Ex. 5).

Illinois Environmental Agency permit for a landfill. At a later date the DuPage County Forest Preserve District and E&E Hauling, Inc., submitted an application to the same county board for expansion of the same landfill. The county board then assumed the adjudicator's role to decide the merits of the application. The Appellate Court concluded that the county board suffered from a disqualifying conflict of interest, but further found that there being no other forum, the rule of necessity required the the county board act as forum for the matter (Id. at 599-603). The Illinois Supreme Court affirmed the Appellate Court in its ultimate decision that the county board should hear the matter, but disagreed that the county board was biased or disqualified, stating that:

> The village ... claims that the hearing was unfair because both the county and the district had earlier approved the landfill by ordinance. The village thus is claiming a type of bias that has been called "prejudgment of adjudicative facts." (See K. Davis, 3 Administrative Law Treatise sec. 19:4 (2d ed. 1980).) But the ordinances were simply a preliminary to the submission of the question of a permit to the Agency. Subsequently, the Act was amended and the board was charged with the responsibility of deciding whether to approve the landfill's expansion. The board was required to find that the six standards for approval under the amended act were satisfied. It cannot be said that the board prejudged the adjudicative facts, i.e., the six criteria. This conclusion is supported by the line of decisions that there is no inherent bias created when an administrative body is charged with both investigatory and adjudicatory functions. See, e.g., Withrow v. Larkin 421 U.S. 35, 47-50, 43 L.Ed.2d 712, 723-25, 95 S.Ct. 1456, 1464-65 (1975); Scott v. Department of Commerce and Community Affairs, 84 Ill.2d 42, 54-56 (1981).
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> E&E Hauling 481 N.E.2d at 668.

The Board believes that the reasoning of the Supreme Court is applicable to the matter at hand. PZ&EQ and SWPA were performing investigatory functions regarding this Application, and it is not unreasonable to expect that the Lake County State's Attorneys Office would provide counsel for those agencies, both being county agencies. It is also worth noting that in E&E Hauling, members of the county board were also members of the co-applicant DuPage County Forest Preserve District. Here, the members of the LCB are not members or employees of PZ&EQ or SWPA. The Board accordingly finds that Petitioner failed to show

that the appearance of the county agencies or their representation by Lake County Assistant State's Attorneys constitutes fundamental unfairness.

Prejudgment of Application/Bias

Petitioner claims that the hearing before the LCB was fundamentally unfair owing to the prejudice and bias of individual Board Members. The thrust of Petitioner's allegations is that certain LCB Members were predisposed to denying the Application. Petitioner asserts that such bias and prejudice renders invalid the LCB decision, and requires that the matter be remanded to the LCB for further consideration.

In support of this contention, Petitioner presented newspaper articles which are contained in the record as Exhibit A to Petitioner's Motion to Disqualify. (The motion was before the LCB.) The Board notes that the same or similar articles were also presented in A.R.F. Landfill, Inc. v. Lake County, PCB 87-51 (October 1, 1987)[6]. There the Board stated:

> The proffered newspaper articles fall neatly into two categories: first, quotations of statements made by Board Members and secondly, articles by newspaper reporters giving the reporters' impressions and interpretations of certain statements made by individual Board Members. The second group will not be considered. In addition to being more than double hearsay the articles merely contain newspaper reporters' impressions of an event, and are neither admissable nor credible concerning the accuracy of those statements.
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> In reading the direct quotations of County Board Members and transcripts of the Board meeting it is important to note the type of conduct which requires disqualification: The test has been succinctly stated as whether a disinterested observer might fairly conclude that the decision maker had adjudged the facts as well as the law of the case in advance of hearing. Cinderella Career and Finishing Schools, Inc. v. F.T.C., 138 U.S. App. D.C. 152, 425 F.2d 583, 591 [D.C. Cir. 1970]. E & E Hauling, Inc. v. IPCB, 116 Ill.App.3d 586, 71 Ill.Dec. 587, 451 N.E.2d 555 at 565.

[6]A.R.F submitted an application for the siting of a landfill at a location contiguous to the site of the proposed WMII facility. The LCB denied that application, and on appeal this Board affirmed the LCB's decision.

Slip op. at 5

The Board believes that the above reasoning is equally applicable to the assertions in the case at bar. It is also important to note that in an analysis of bias or prejudgment elected officials are presumed to be objective and to act without bias. The Illinois Appellate Court discussed this issue in Citizens for a Better Environment v. Illinois Pollution Control Board, 152 Ill.App.3d 105, 504 N.E.2d 166 (1st Dist. 1987):

> In addressing this issue, we note that it is presumed that an administrative official is objective and "capable of judging a particular controversy fairly on the basis of its own circumstances." (United States v. Morgan (1941), 313 U.S. 409, 421, 85 L. Ed. 1429, 1435, 61 S. Ct. 999, 1004). The mere fact that the official has taken a public position or expressed strong views on the issues involved does not serve to overcome that presumption. (Hortonville Joint School District No. 1 v. Hortonville Educational Association (1976), 426 U.S. 482, 49 L. Ed. 2d 1, 96 S. Ct. 2308). Nor is it sufficient to show that the official's alleged predisposition resulted from his participation in earlier proceedings on the matter of dispute. (Federal Trade Commission v. Cement Institute (1948), 333 U.S. 683, 92 L. Ed. 1010, 68 S. Ct. 793).
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> 504 N.E.2d at 171.

The Board has also addressed the application of the above standards in a landfill siting case:

> Although the First District's Statement in Citizens for a Better Environment was made during the judicial review of a rulemaking, the Board believes that the statement still has considerable value in this proceeding which is a review of a quasi-judicial decision. The cases cited in the above passage concern decisions which were reviewed on the basis of adjudicatory standards.
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> City of Rockford v. Winnebago County Board, PCB 87-92, November 19, 1987, at 24.

The Board will next consider the allegations of bias concerning the individual LCB members. In support of its allegations concerning certain Board members, Petitioner cites testimony regarding statements made by those Board members. The

Board notes that the majority of the cited statements were made in reference to the A.R.F. proposal[7], and need not be considered. The Board recognizes, however, that due to the continuity of the resolution of the A.R.F. application and Petitioner's Application, there may be some instances where it is difficult to determine which application the speaker intended to address. Therefore, the Board will discuss those statements where it may be less than clear which application is the subject matter of the alleged statements.

Petitioner asserts that Mr. Gerald Beyer, a member of the LCB hearing committee, prejudged the Petitioner's Application. In support of its assertion regarding Mr. Beyer, Petitioner presented a letter prepared for distribution to the residents of District 6 in Lake County. An unsigned copy of a letter purported to be the one sent to the residents was admitted at the PCB hearing as Petitioner's Exhibit No. 6, and states in pertinent part as follows:

> [The A.R.F. proposal] was fortunately, rejected by the Lake County Board...
>
> The record of landfills at or near the Freemont Township site is not a good one. For years one nearby site was ordered closed by the Environmental Protection Agency. Lake County, now approaching a population of 500,000 people, should concentrate on alternatives to landfilling. Recycling and intensive resource recovery is one part of the refuse solution. We can all expect to have separation of the components in our refuse as a responsibility of each household. Separation of materials to be recycled at the source makes recycling much more economically feasible.
>
> The A.R.F. proposal was rejected because it would have a severe and detrimental effect on the quality of life in Lake County for years into the future. We felt it was our responsibility to oppose this proposal. We intend to continue our opposition to this application and will keep you informed on any new developments.

[7] The A.R.F. hearings before the LCB were concluded on February 9, 1987, and the decision of the LCB on that matter was rendered on March 24, 1987. Thus, the LCB's consideration of the A.R.F. proposal in part overlapped the LCB's consideration of the instant matter.

The Board believes that the letter on its face does not appear to show any bias. Mr. Beyer testified that the letter he signed had all references to Petitioner removed. He further stated that the purpose of the letter was to communicate to the constituents that the A.R.F. application had been turned down (Tr.[8] at 161-2). Messrs. Anderson and Hansen, co-authors of the letter, also testified that the letter was written pertaining to the A.R.F. proposal (Tr. at 100-2, 376-378). The letter was written pertaining to the A.R.F. proposal, therefore it does not apply to the instant matter and need not be considered. However, if it were to be considered, the Board believes that at most, it indicates that the authors and/or signatories held certain views related to waste disposal which do not overcome the presumption that Mr. Beyer, in his role as public official, was capable of judging the merits of the Application fairly on the basis of its own circumstances (See, Hortonville Joint School District No.1, supra).

Mr. Beyer testified that "[i]t is very possible" that in August, 1986, he stated that "There is already a landfill in that area. It is a sore thumb. Those people have had enough of it" The Board believes that this statement does not presume bias against any particular future landfilling proposal. It does show that Mr. Beyer was aware of the public sentiment among those residing near the site of the proposed landfill, but does not show that Mr. Beyer's vote was influenced by that knowledge or that he did not fairly consider the evidence presented. The Second District faced this problem in Waste Management, supra:

> While the board members were aware of public opposition because of the statutorily-mandated public hearings, petitioner has not demonstrated that the board members decided on its application as a result of the public opposition and without consideration of the evidence. The only factor cited by petitioner is that more than half of the LCB members faced reelection within two months of the date of the decision. This fact, however, is not referenced in the record, and more important, is insufficient to establish a biased decisionmaking process. Where the statute requires the LCB to conduct a public hearing, a decision does not become unfair merely because elected officials recognize public sentiment. Petitioner here has failed to sustain its burden of showing that the procedures of the LCB or the decision making process were fundamentally unfair.

[8] Transcripts of the Hearing before this Board are cited as "Tr.".

Id. at 1082.

The other statements cited by Petitioner alleging Mr. Beyer's bias were quotations contained in newspaper articles. Mr. Beyer testified that these quotations were not made in the manner that they were printed (Tr. at 174). The Board therefore finds that the accuracy of these statements was adequately rebutted[9].

Petitioner next alleges that Mr. Norm Geary was biased or prejudged the Application, as indicated by certain statements he made. Mr. Geary testified that he stated, "We already have a landfill site which is a disgrace to the entire area. If this incinerator and landfill are put in it will destroy central west Lake County and will destroy Grayslake, certainly." He testified that at the time of his deposition of August 5, 1987, he thought the statement was made in relation to the Petitioner's Application (Tr. at 342-344). However, Mr. Geary further testified that the statement was made regarding the A.R.F.. application (Tr. at 345-346). The Board notes that Petitioner did not present any evidence of the date that the statement was made. Although the date alone would not be conclusive in the determination as to whether the statement was made regarding Petitioner's Application, there is sufficient conflicting testimony for this Board to conclude that Petitioner failed to show by that statement that Mr. Geary was biased or prejudged the Application. The other alleged statements are contained in newspaper articles that were also presented in the A.R.F. landfill siting appeal. The Board found Mr. Geary did not adjudge the law and facts prior to hearing that matter (PCB 87-51, October 1, 1987 at 5), and now finds that it has no reason to deviate from that determination, even if it were to find the statements applied to Petitioner's case.

Petitioner next alleges that LCB member Andrea Moore should be disqualified for a statement she made shortly after the Hearing Committee's deliberations. The Hearing Committee's deliberations occurred after the hearing on the Application, and thus cannot be an adjudication of the facts and law prior to hearing. It is worth noting that there is no indication from the statement that Ms. Moore had decided the issues prior to hearing.

Petitioner further asserts that Ms. Moore was biased as indicated in her written responses to letters she received. Petitioner cites portions of three letters, which were written

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[9] The Board's Hearing Officer granted a motion to quash the subpoena served on Kathy Rosemann, the author of the newspaper articles containing Mr. Beyer's statements. Ms. Rosemann claimed the reporter's privilege, allowing her not to disclose privileged information. Petitioner asks the Board to reverse the Hearing Officer (WMII Brief at 106). The Board declines to so do.

during the hearings on Petitioner's Application and could be applicable to both the A.R.F. and WMII proceedings. Two of these letters, while acknowledging the efforts of the C.L.E.A.R. Organization and its founders, also note the efforts of the County itself. As the postscript to the letter to Ms. Dorothy Mosior, a co-founder of C.L.E.A.R., states:

> P.S. I hope you have gained a better knowledge of the complexity of these issues and the thoroughness with which the County has approached them. You and Chris are to be commended for your efforts. (Pet. Exh. 8).

The last letter cited by Petitioner contained statements that Ms. Moore would favor the Forest Preserve purchasing a portion of the Heartland property[10], "particularly the central range area where there are many acres of wetlands" (Pet. Exh. 8). The Board believes that the letters on their face do not support a showing of disqualifying bias and merely assert facts without any indication of a prejudgment of the facts or law in relation to the Application.

Petitioner contends that Board members F.T. "Mike" Graham and Carol Calabresa were biased against Petitioner. Specifically, Petitioner referred to Ms. Calabresa's testimony that she was a "dedicated recycler" (Tr. at 72), and that she made the statement:

> I feel sorry for the CLEAR group. They have to spend $100,000 in legal fees and the county should be doing it for them. (Tr. at 70)

Petitioner also cited statements allegedly made by Mr. Graham regarding his views on recycling and landfills.

The Board believes that the analyses contained in the Citizens for a Better Environment, Hortonville, and Morgan cases noted above are equally applicable to the statements of Ms. Calabresa and Mr. Graham. Though they held views regarding waste disposal and may have even made those views public, Petitioner failed to show that either board member was incapable of judging the Application of the basis of its own circumstances. Ms. Calabresa further testified that she thought a proper review of Petitioner's Application should be completed prior to hearing, and that at the time she made the statement regarding C.L.E.A.R., she was unaware that PZ&EQ was also conducting a review of the Application (Tr. at 80-81).

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[10] The Heartland property is a 2,500 acre tract in central Lake County which partially overlaps the WMII proposed site.

Petitioner further asserts that Mr. Graham was biased based on the fact that at the time of hearings and the vote on the Application, he was Libertyville Township Supervisor, and that Libertyville Township was an Objector. Petitioner also alleged that Mr. Graham advocated a donation of $50,000.00 to C.L.E.A.R., another Objector in the proceedings. The Board believes that the allegation regarding the donation to C.L.E.A.R. has little basis in fact. Petitioner cited a newspaper article which contained no direct quotes of Mr. Graham, and it has been previously stated that the Board will not consider such evidence since it is double hearsay and cannot be given much, if any, weight. Respondent argues that Petitioner failed to produce any evidence that Mr. Graham participated in the decision of the Libertyville Town Board to appear as a party to the hearings on Petitioner's Application, and therefore failed to meet its burden of proof that Mr. Graham had a personal interest in the proceedings which would constitute bias. The Board agrees.

Petitioner alleged that LCB member John P. Reindl was biased, and in support of its allegation noted that Mr. Reindl along with LCB members Anderson and Hansen appeared on the Lake County Forum television program on February 12, 1987. Petitioner then noted that Mr. Reindl stated in his deposition presented at the PCB's hearing that the people who appeared on the Lake County Forum television program "were all sympathetic to CLEAR" (Pet. Exh. 15 at 53-4). The Board finds that this statement was taken out of context and its intent is thus misinterpreted. On pages 53 and 54 of the deposition, Mr. Reindl was questioned regarding what the people who appeared on the show "generally" spoke of. A pertinent question and answer reads as follows:

> Q. Did anyone who appeared on the program speak against the effort of the CLEAR group in its opposition to the application?
>
> A. No. They were all sympathetic to CLEAR.
>
> Pet. Exh. 15 at 53-4 (emphasis added)

It is also easy to see how Mr. Reindl could have been referring to other guests on the program, especially by his use of the word "they" instead of "we".

Petitioner asserts that Board member C. Richard Anderson was predisposed to vote against Petitioner, and in support of its allegations Petitioner refers to certain statements Mr. Anderson made during the Lake County Forum television program. Mr. Anderson testified that on the program he made statements regarding the siting of landfills in Lake County. Upon further questioning, Mr. Anderson described the statements (Tr. at 110-6). The Board believes that the statements made by Mr. Anderson are of the same sort as those made by Ms. Calabresa and Mr. Graham, and the same analysis applies here.

Other allegations pertaining to Messrs. Reindl and Anderson involve the letter that was sent to the residents of Lake County District 6 which was disposed of in the discussion involving Mr. Gerald Beyer.

Petitioner alleges that E. Bruce Hansen prejudged the Application as shown by a statement he made at the November 19, 1987 meeting at the Libertyville Township Hall that "the only place Waste Management should burn is in hell". This statement was made slightly over three months prior to the start of the hearings on Petitioner's Application and clearly shows that Mr. Hansen had made up his mind regarding, at the very least, the incinerator portion of the proposal, prior to the hearing on the matter. Mr. Hansen's testimony that the statement "was made in the broader context of remarks [made] that evening" is unconvincing. He did not relate any other statements made during that evening, therefore he offered nothing that would mitigate against the weight he placed on the statement (Tr. at 403). The statement itself shows that Mr. Hansen would not accept an incinerator by the applicant at any place on this earth and clearly shows he is biased against this Petitioner. As such, Mr. Hansen is disqualified from hearing this case. The participants and public have the right to an impartial, fair adjudication and Mr. Hansen is simply not impartial.

Disqualification of Mr. Hansen does not render the County Board's decision invalid. "Disqualification will not be permitted to destroy the only tribunal with power in the premises" (E&E Hauling, supra, citing Brinkley v. Hassig, 83 F.2d 351, 357 [10th Cir. 1933]).

The fact remains that Ill. Rev. Stat. 1986 ch. No. 111-1/2 par. 1039.2(a) provided as follows: "The County Board of the County or the overruling body of the municipality ... shall approve the site location suitability ...".

The County Board is, by statute, the only body empowered to render a decision in this matter; and the disqualification of Mr. Hansen does not affect this. Additionally, Mr. Hansen was not needed to constitute a quorum nor was his vote critical to the outcome: the final vote was 21-0, with two abstensions.

In summary, the Board can find no basis for reversible error with respect to the issue of alleged bias of LCB members.

Ex Parte Contacts

Petitioner next contends that the LCB's decision was fundamentally unfair because of certain ex parte contacts which took place between LCB members and members of the public, and that LCB members were unduly influenced by the public opposition to the Application.

WMII notes that all nine of the LCB members who were called to testify regarding their alleged ex parte contacts testified that they received numerous telephone calls and letters in opposition to the Application (See Tr. at 58-60, 95, 158, 192, 216, 253, 299, 314-6, 368-9, 422). However, seven of the nine, Dolan, Fields, Geary, Moore, Calabresa, Axelrod, and LaBelle, also testified that these calls and letters did not in any way influence their votes (Tr. at 300, 423, 318, 223, 65, 257, and 203). LCB members also explained that they handled callers by describing the hearing and siting process and stating that they were unable to discuss the merits of the case, or by merely thanking callers for their interest (Tr. at 57, 193-4, 253-4). The two LCB members whose families received threatening phone calls also testified that phone calls did not influence their votes (Tr. at 257, 300). Only one LCB member, J. Richard Anderson, testified that the letters he received from citizens opposing the application factored in his vote on the Application (Tr. 103-4).

The impropriety of ex parte contacts in administrative adjudication is well-recognized and stems from the fact that such contacts violate statutory requirements of public hearings and public participation at hearings, may frustrate judicial review of agency decisions, and may violate due process and fundamental fairness rights to a hearing (E&E Hauling, supra at 606).

Once it is determined that ex parte contacts did in fact occur, it is necessary to consider

> whether, as a result of improper ex parte communications, the agency's decisionmaking process was irrevocably tainted so as to make the ultimate judgment of the agency unfair, either to an innocent party or to the public interest that the agency was obliged to protect. In making this determination, a number of considerations may be relevant: the gravity of the ex parte communications; whether the contacts may have influenced the agency's ultimate decision; whether the contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and whether vacation of the agency's decision and remand for new proceedings would serve a useful purpose. Since the principal concerns of the court are the integrity of the process and the fairness of the result, mechanical rules have little place in a judicial decision whether to vacate a voidable agency proceeding. Instead, any such decision must of necessity be an exercise of equitable discretion.

> E&E Hauling, supra citing PATCO v. Federal Labor Relations Authority, 685 F.2d 547, 564-565 (D.C. Cir. 1982).

A court will not reverse an agency's decision because of improper ex parte contacts without a showing that the complaining party suffered prejudice from these contacts. E&E Hauling at 607, citing Fender v. School District No. 25, 37 Ill. App. 3d 736, 745 (1976).

The Board finds in light of the above testimony that the ex parte contacts did not affect the votes of the LCB members challenged by Petitioner, save for Mr. Anderson. In a previous opinion, the Board faced a similar problem:

> Messrs. Kelly and Laroue have clearly specified that their votes were cast in part due to public opinion which they derived through ex parte contacts. Consequently, their votes cannot stand and are disallowed. These two individuals will only be able to make determinations on the merits of that application without relying on, or being influenced by, the opinions of others expressed via ex parte contacts.
>
> This notwithstanding, the Board concludes that the ex parte contacts described by Ash are not a sufficient basis on which to find that the County's decision was arrived at in a fundamentally unfair manner. All of the other ex parte contacts which Ash alleges have either been denied, *** or have not been shown by Ash to have had any impact on the votes cast by the relevant County Board members ... Thus, all that can be said is that two votes out of the nineteen cast were improper. Under the circumstances, the Board cannot find that the ex parte communications have "irrevocably tainted" the decision of the County.

Ash v. Iroquois County Board, PCB 87-29, at 15.

Similarly, the Board finds that LCB member Anderson cast his vote against the Application in part due the opinions of citizens he determined through ex parte contacts. His vote was therefore improper and should be disallowed. The Board further finds that Petitioner failed to show that it was prejudiced by the remaining ex parte contacts, or that these contacts "irrevocably tainted" the decision of the LCB.

Contained in its argument regarding ex parte contacts, Petitioner also makes certain allegations concerning the

influence of public opinion and constituent pressure on LCB members. Petitioner noted statements made by an LCB member concerning a citizen petition presented in the A.R.F. proceeding. Petitioner also discussed comments made at the PCB hearing by members of the public who believed LCB members should be influenced by letters and should be responsive to public opinion in their judicial capacity, and further related a comment made by a citizen during the LCB hearing as an example of constituent pressure (WMII Brief at 129-131).

Since the illustrations offered in support of Petitioner's allegations are not ex parte contacts. The Board at this juncture finds it necessary to point out the distinction between ex parte contacts with individual county board members and public opinion and its role in the decisionmaking process. The Appellate Court has noted that public officials would recognize public opinion and that the mere existence of even strong public opposition does not taint the proceedings, per se (See Waste Management, supra at 1082). This is especially true in light of Section 39.2 of the Act, which provides for public comment in the public hearing process for landfill siting. This is distinct from ex parte contacts which are those contacts between a decisionmaker and a party or interested person outside the presence of other interested persons or parties involved, and without the opportunity for cross-examination.

The statments cited by WMII relating to the citizen petition contained in the A.R.F. proposal do not concern this proposal and need not be considered. All citizens comments made during the LCB hearings are contained in the record and are proper to be considered as provided by Section 39.2 of the Act. The testimony of the two members of the public at the PCB hearing regarding the amount of influence they believe the public should have on the LCB members says nothing about the effect the ex parte contacts may or may not have actually had on the LCB members, or whether the members voted on the proposal without consideration of the record. The Board therefore finds these allegations are without merit.

Opportunity to Consider Record

Petitioner next alleges that the proceeding was fundamentally unfair because the LCB members did not have an adequate opportunity to consider the record, and that as a result, this matter should be remanded to the LCB for redetermination.

The Board addressed this issue in Ash v. Iroquois County Board, supra. The Board, in applying the rationale of the Illinois Supreme Court in Homefinders, Inc. v. City of Evanston, 65 Ill.2d 115 (1976), stated that:

> The Board's analysis of whether the County adequately "considered" the evidence adduced at hearing will involve consideration of two questions: First, whether the transcripts were reasonably available such that it can be said that the County Board members had an opportunity to review them, and second, whether overall the County members were sufficiently exposed to the record to support a finding that they "considered" the evidence within it.
>
> Ash, slip. op. at 11

The Board finds that both of the tests of reasonable availability and sufficient exposure, as applied to both the Application and the transcripts of the hearings, are met in the instant matter. It is attested to by LCB members that the Application was available to them (Tr. at 53, 125, 154, 188, 211, 307-8, 310, 361, 427). It is also attested to by LCB members that the hearing transcripts "would appear between a few days and a week after the session was held, so we had time to peruse them" (Tr. at 79, 83); that the transcripts "were routinely available within a couple of days after the hearing date" (Tr. at 191); and that the final transcript was received "within a couple of days" of the March 30 final day of hearing (Tr. at 251). Although Petitioner challenges each of these testiments (WMII Reply Brief at 31), it provides no evidence which could lead this Board to the conclusion that the testimony is false.

These facts are distinctly different from those presented in Ash. There the hearing transcripts were not generally available prior to the time the county board undertook its final action. To this extent, Petitioner's reliance upon Ash is misplaced.

Petitioner also challenges whether the Resolution, that document which denied site location approval and which was adopted by the full LCB on May 5, 1987, was sufficiently available to the full LCB before its vote, and asserts that the Resolution was "unlikely to have been read" "by a weary Board, eager to complete the agenda and go home" (WMII Brief at 134).

It is uncontested that the vote on the Resolution took place shortly following a continuous 25-hour session of the LCB held to elect a new County Board Chairman. Petitioner seemingly implies that this fact automatically rendered the LCB incapable of registering an informed vote. Nevertheless, six of the eight LCB members who where questioned by Petitioner on the matter of their mental and/or physical state at the time of the vote testified to their general alertness (Tr. at 241, 259, 305-6, 333, 407, 425). The other two used the word "exhausted" to characterize their state (Tr. at 77, 178), but did not testify that they were incapable of giving complete consideration to their vote as a consequence.

On the matter of the availability of the Resolution, it is uncontested that the Resolution in its final form was initially adopted by the Hearing Committee on April 30, 1987. The history of its distribution thereafter is less certain. One member of the LCB testified that she first received a copy of the Resolution on the morning of May 5 (Tr. at 78), although she had received and read "summaries and briefs" "about a week before" the vote (Tr. at 82). A second LCB member, who was also a member of the Hearing Committee, stated that the Resolution may not have been distributed to his fellow LCB members until May 5, although he could not be sure of when the distribution took place (Tr. at 336, 341, 344-5). Conversely, another of the LCB members testified that a draft copy of the Resolution was presented to the LCB "perhaps five, six days before the final vote" (Tr. at 408-9); a second testified "whether it was in the exact form or not, I saw something like this [the Resolution] within the week before the meeting that we voted on the case" (Tr. at 202); and a third testified that he believed that he had received the Resolution before May 5, but that he did not recall how much before (Tr. at 306). Still other LCB members testified that they did not recall when they first received a copy of the Resolution (Tr. at 123-4, 279).

It is unclear from this record when the Resolution was first available to the full County Board. Differing recollections of various individuals, from the vantage point of five months after the fact, do not provide clarity on this issue. However, the Board does not see that this a dispositive matter. Petitioner provides no evidence that the LCB was unfamiliar with the content of the Resolution, yet alone the exact form of the Resolution, prior to the vote. It would appear that at least a "draft" of the Resolution was available to the full LCB well before the day of the vote, and that a summary of the record prepared by the LCB counsel, who also prepared the text of the Resolution, was similarly distributed well prior to May 5.

In viewing this entire matter, this Board must bear in mind that the siting of WMII's proposed facility was an issue of high interest and visibility within Lake County and before the LCB over a period of many months, and that the LCB had received over this time a very voluminous record, including the Application itself, transcripts of 33 days of hearing, a large number of exhibits and public comments, and briefs. In this light, it is unproven that the LCB members did not know the content of what they were voting upon, irrespective of what exterior circumstances might have preceeded that vote. For this reason, the Board can find no basis for reversible error on the matter of opportunity to consider the record.

STATUTORY CRITERIA

WMII next claims that the LCB's decision was in error because Petitioner satisfied all six of the statutory criteria

contained in Section 39.2 of the Act, not just two as found by the LCB. The Board first turns to the matter of Criterion #1. Given the extraordinary length of the record below and the need to efficiently analyze this record, the Board finds it appropriate to consider the LCB's decision in light of Petitioner's record, Objectors' record, and the bases for the LCB's decision in turn.

CRITERION #1

Petitioner's Case

Petitioner's Application contains approximately 43 pages regarding the matter of need for the proposed facility, as prepared by Eldredge Engineering Associates, Inc., a consulting firm retained by WMII. Included in the analysis, in addition to text, are various maps, tables, and graphs which identify current waste disposal facilities and projections of future waste disposal needs.

WMII presented Richard W. Eldredge, a professional engineer and principal preparer of the need section of the Application, as a witness. Mr. Eldredge concluded that the proposed facility is necessary to meets the needs of Lake County (R. 2/12 at 110). He based this conclusion on analysis of the existing and projected landfill capacity of the general Lake County area as presented in the Application.

Specifically, Mr. Eldredge testified that there are three active municipal waste landfills in the county, each of which provides service to Lake County. These are A.R.F. at Grayslake (adjacent to the proposed WMI facility), BFI in Winthrop Harbor, and Zion at Zion (R. 2/12 at 91). There are also several landfills in adjacent counties, including Mallard Lake in DuPage County, Woodland in Kane County, Vuegler in McHenry County, and Pleasant Run in Kenosha County, Wisconsin (Id. at 97-9). Mr. Eldredge concluded that this combination of landfills is sufficient to meet Lake County's current needs (Id. at 106).

However, Mr. Eldredge additionally testified that this situation can not be expected to last. In particular, he believes that Lake County will need additional capacity of 400,000 gate yards per year by 1990 (R. 2/12 at 169), and perhaps as much as 600,000 to 1.2 million additional yards of capacity by the year 2010 (Id. at 170). He did allow that adjustments in the amount of waste sent to particular facilities, principally the BFI facility, could extend the date of needed additional capacity to 1996 (Id. at 107). Mr. Eldredge's conclusions are based on the premises that certain existing landfills will reach capacity in the future, and therefore be required to close, and that as "a rule of thumb" the service area of a landfill is enclosed within an approximate 15 mile radius around the landfill (Id. at 94-5, 133-4). Mr. Eldredge additionally made the observation that

there is a movement on the part of landfills to restrict service to in-county areas, thus raising uncertainty about Lake County's future ability to rely on out-of-county landfills (Id. at 97-9, 127).

Under cross-examination Mr. Eldredge testified that he did not consider the Pheasant Run facility in his analysis of available capacities (R. 2/12 at 123, 145, 172), nor did he consider waste flowage to other out-of-the county facilities (Id. at 172, 181). He also allowed that he chose to use the lower SWAC Feasibility Study[11] estimate of the annual gate yardage at the BFI facility rather than a more recent and higher estimate published by the Northeasten Illinois Planning Commission (Id. at 179), and that the 50% Lake County use figure he assigned to the BFI facility may not be accurate (Id. at 180). Mr. Eldredge also testified that he was aware of the admonition in the SWAC Feasibility Study regarding the accuracy of the data therein (Id. at 125), to wit:

> The accuracy of the Data Base report was sufficient for the purposes of doing a technological assessment for waste disposal. However, prior to actual sizing, design and site location of a resource recovery facility or new landfill, more precise figures for the various waste streams should be developed[12].

Mr. Eldredge was the only WMII witness called expressly to address the matter of need. However, two other WMII witnesses, Harold Gershowitz and Peter Ware, also testified to matters related to Criterion #1. Mr. Gershowitz is a Senior Vice President of Waste Management, Inc. (R. 3/11 at 6), which is the parent company of WMII (Id. at 7, 15). Mr. Gershowitz testified that the parent company is committed to guaranteeing an incinerator and landfill which will provide a disposal capacity for 23 years (Id. at 8). Mr. Gershowitz also testified that his company commits to building an incinerator with a capacity no smaller than 250 tons per day and no larger than 1000 tons per day (Id. at 204).

Mr. Gershowitz also addressed the matter of the geographic origin of the wastes which would be handled at the proposed facility. He noted that:

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[11] The SWAC Feasibility Study (Full title: Lake County Solid Waste Management Plan Feasibility Study) was excluded from the LCB's record by order of the LCB Hearing Officer. It was subsequently submitted as a public comment by WMII, but stricken from the record by motion of the Hearing Committee (R. 4/30 at 11-12).

[12] The quotation from the SWAC Feasibility Study cited here was read into the record R. 2/12 at 125-6 and R. 3/23 at 35-6.

> Our current assumption very strongly anticipates that the waste generated in Lake County will be all of the waste required for this to be a very viable facility. (R. 3/11 at 62).

Mr. Gershowitz also testified that his company is prepared to vest the County "with the right to preclude any waste coming from outside the County, any time the County or generators in the County can in fact provide tonnage themselves" (Id. at 63). However, Mr. Gershowitz also noted that his company is not requiring the County to guarantee the necessary tonnage (Id. at 22), and that if an agreement can not be reached "it's going to be incumbent upon Waste Managment if necessary to provide its own tonnage to guarantee the integrity of the plant" (Id. at 24). Mr. Gershowitz further allowed that this tonnage might derive from outside the County (Id. at 24, 120, 153), and that the ability to obtain such tonnage constitutes Waste Managment's "safety valve" for successful operation of the facility (Id. at 29).

Mr. Ware, WMII witness on the matter of design of the proposed incinerator, also noted that, in the event Lake County were to adopt an ordinance requiring recycling and that recycling included all of Lake County's paper, "there would be little or no combustive material left to operate an incinerator with" and "there would be no purpose to run the incinerator" (R. 2/16 at 167-8). He also noted that if both recycling of paper, glass, and metals and composting of organic material were required, there would be no need for the proposed incineration facility (R. 3/30 Evening at 188).

Objectors' Case

The first of the Objector witnesses called to testify regarding Criterion #1 was Robert L.W. Luedtke, Village President of Hawthorn Woods and chairman of the Lake County Joint Action Solid Waste Planning Agency ("SWPA"), who testified on behalf of SWPA. Mr. Luedtke noted that SWPA was formed pursuant to the Illinois Local Solid Waste Disposal Act (PA 84-963) which became effective July 1, 1986 (R. 3/5 at 139). He explained that SWPA is composed of elected officials from twenty-six Lake County municipalities plus the County of Lake, and that it represents 90% of the population of the County (Id. at 128). He also indicated that the charge of SWPA is "to implement a comprehensive publicly inspired long range solid waste management plan for Lake County" (Id. at 127-8).

Mr. Luedtke outlined a nine-point program of objectives that SWPA is attempting to accomplish by December 1, 1988 (R. 3/5 at 133-4). Mr. Luedtke asserted that these objectives are designed to allow SWPA to present a solid waste management program to the LCB for S.B. 172 review (Id. at 172) with sufficient lead time to meet the waste disposal needs of the County (Id. at 134-5, 137-

8), and that SWPA "in full compliance with the spirit and the intent of state law and policy, is already in the process of meeting those waste needs" (Id. at 138).

Mr. Luedtke acknowledged that the SWAC Feasibility Study recommended a solid waste disposal system consisting of a combination of mass-burn incineration, landfilling, and recycling (R. 3/5 at 129), and acknowledged that SWPA continues to support these three elements (Id. at 155-6). Mr. Luedtke also acknowledged that each of these elements is contained in the Application filed by WMII (Id. at 140-1). Nevertheless, Mr. Luedtke asserted that the WMII Application is "premature and as such presupposes the outcome of several important decisions which have not yet been made" (Id. at 135). Mr. Luedtke specifically noted that there has been no decision by SWPA regarding whether Lake County's needs are better met by a public-owned, privately-owned (Id. at 135) or jointly-owned (Id. at 171) facility; that SWPA has not yet made decisions regarding the specific technologies which should be employed (Id. at 136); and that a decision now on the WMII proposal would preclude SWPA's consideration of comparing several sites (Id. at 137). He also noted that acceptance of the Waste Management proposal would eliminate possibilities of competitive bidding (Id. at 135-6). As the basis for SWPA's authority to make such decisions, Mr. Luedtke quoted the Local Solid Waste Disposal Act:

> Units of local government may provide by ordinance, license, contract or government (sic) that the methods of disposal of solid waste specified in the plan shall be the exclusive methods of disposal to be allowed within the respective jurisdictions, notwithstanding the fact that competition may be displaced or that such ordinance, license, contract or other measure may have an anti-competitive effect. (Id. at 131).

Resolutions supporting the SWPA initiative from the Fremont Township Board (Hearing Ex. 7) and the Board of Trustees of the Village of Mundelein (Hearing Exhibit 9) were admitted into the record.

The County called two witnesses on the matter of Criterion #1. The first of these was Robert Varner, an attorney with a Washington D.C. firm and a specialist in the "implementation, the planning, the procurement of resource recovery projects on behalf of public sector entities" (R. 3/16 at 105). Mr. Varner testified that he had reviewed the Application and the testimony presented by Messrs. Eldredge and Gershowitz (Id. at 117) regarding specifically the incinerator portion of the proposed facility (Id. at 116-7). Mr. Varner concluded that the information presented in the Application and the testimony are insufficient to allow the conclusion that the proposed

incinerator will meet the needs of Lake County (Id. at 119, 134, 147-8).

Mr. Varner did not undertake an independent analysis of the needs of Lake County for waste disposal capacity in general, but rather assumed for the purposes of his analysis that such need does exist (R. 3/16 at 118; 147). He questioned, however, whether the proposed incinerator met that need. Mr. Varner indicated that the Application and testimony are silent on several matters which he judged to be critical in addressing whether a proposed facility actually meets an identified need. These include firm specification of the size of the proposed facility (Id. at 111, 120, 128), quantities of wastes intended to be processes (Id. at 111), methods of flow control (Id. at 112-3, 125), and financial obligations and risk allocation (Id. at 113, 120, 123). Mr. Varner indicated that uncertain sizing of the facility "makes it very difficult on the overall planning effort that a community must go through to achieve a successful comprehensive approach to long-term reliable and environmentally safe waste disposal" (Id. at 132). He also testified that "put and pay" committments must be in place to assure that a facility is financially viable (Id. at 121), and that he questioned whether these committments can be developed in the one-year time frame provided for in the Application (Id. at 135-6). He also questioned whether the County or local municipalities might not come under unexpected financial obligation should the revenues to the proposed facility fall short (Id. at 123-6), and whether there was a performance guarantee on the part WMII for construction of the facility (Id. at 127-8)

Jeanne Becker was the second witness called by the County to address Criterion #1. Ms. Becker had been retained by the Lake County Planning Department to review that portion of the WMII Application dealing with Criterion #1 (R. 3/23 at 8). She is president of a planning and consulting firm (Id. at 5) and is also a former employee and Chief of the Advanced Planning Section of the Lake County Department of Planning, Zoning and Environmental Quality (Id. at 6); she was principal staff person to the Lake County Solid Waste Advisory Committee (Id.) and presently is retained by SWPA "to provide technical assistance and overall project management on the development of their plan" (Id. at 7).

Ms. Becker's conclusion is that "the proposed facility is not necessary to meet the waste needs of the area it's proposed to serve" (R. 3/23 at 9-10). Ms. Becker stated that she based her conclusion on her analysis of the capacity of existing waste disposal sites within Lake County, plus the existing Pheasant Run facility in Wisconsin and the proposed Northwest Municipal Conference facility at Bartlett in Cook County. Ms. Becker calculated that the five active in-county landfills have a total combined capacity of 2,650,000 yds/yr, 2,087,000 of which are available to meet Lake County needs (Id. at 16-7; County Ex.

8). This number constrasts with the 1,400,000 yds/yr of in-county capacity asserted by Mr. Eldredge (WMII Ex. 4). Ms. Becker pointed out that the disparity stems in part from a 420,000 yd/yr underestimation by Mr. Eldredge of the in-county use of the BFI Winthrop Harbor facility (R. 2/23 at 10-13) and a 383,000 yds/yr underestimation of the in-county use of the Land & Lakes landfill (Id. at 15; WMII Ex. 4). Ms. Becker was also critical of Mr. Eldredge's failure to consider Lake County waste which flows outside the county (R. 2/23 at 18). In particularly, she testified that Pleasant Run adds an additional "conservative" 110,000 yds/yr (Id. at 21) to the total capacity available to the county. Should the Bartlett facility be developed, it would add a prospective 172,000 yds/yr capacity for those four Lake County communities which are affiliated with the Northwest Municipal Conference (Id. at 22-3). Ms. Becker contended that the combination of capacities is sufficient to meet Lake Counties needs through 1996 or 1997 (Id. at 24, 73, 98), even if no new in-county facilities are developed (Id. at 73).

Against this need background, Ms. Becker calculated that the WMII proposal would add an additional 1,360,000 yds/yr capacity (R. 3/23 at 25), 429,000 attributable to the proposed landfill and 931,000 to the proposed incinerator (Id.). Ms. Becker concluded that the proposed WMII facility is "much too large for the County's needs" (Id. at 95) and that:

> when the landfill first opens in 1989, it is going to have to take all of its waste from outside the County because there is no need for disposal capacity in 1989. ... even in 1992 when this facility [the incinerator] opens, you are ... going to have to import garbage from outside the County because again there is no need for a facility in 1992. (Id. at 26-7).

Ms. Becker did concede that the SWAC Feasibility Study, which was prepared in early 1983 (R. 3/23 at 11), indicated that there was need in Lake County for both additional landfill capacity and for an incinerator (Id. at 39-40, 108). However, she pointed out that subsequent events, including the closing of the HOD landfill near Antioch and the opening the Pheasant Run landfill, have significantly changed the need figures presented in the SWAC study (Id. at 11). Lastly, Ms. Becker contended that SWPA has planning for the waste disposal needs in hand, and it is planning in such a manner as to avoid a future crisis in waste disposal (Id. at 87).

Timothy Warren, Manager of the Illinois Department of Natural Resources' Resource Recovery Section, was called by the Lake County Defenders to addresses State waste management programs. Mr. Warren indicated that the purpose of the Illinois Solid WMII Program, established under HB 3548, is to

"progressively change the waste management practices from the primary dependence on landfill disposal to a future which is based on a number of waste management alternatives" (R. 3/27 at 174). He further noted that HB 3548 established a heirarchy of waste disposal alternatives ranging from the most to the least desirable: waste reduction, recycling and reuse, incineration with energy recovery, incineration for volume reduction, and landfilling (Id.). Mr. Warren also outlined programs that the State offers to assist alternative waste management initiatives (Id. at 175-83).

The Lake County Defenders also called Dr. Eliot Epstein, a soil physicist and specialist in composting and stabilization of wastes. Dr. Epstein testified that composting is a excellent alternative to incineration, landfilling, and recycling (R. 3/19 at 11-12), which is widely used in Europe (Id. at 12) and locally in the United States (Id. at 13). He also testified that composting could easily serve the needs of Lake County (Id. at 14). Among the advantages of composting that Dr. Epstein cited are its ability to dispose of 62% to 65% of typical solid waste (Id. at 16); ability to handle a wide variety of wastes, including such materials as yard wastes, sewage sludge, septic sludge, industrial waste, and pulp and paper mill wastes (Id. at 22); low costs (Id. at 53); minimal environmental impact (Id. at 43-4); absence of need for a large central facility (Id. at 52); and flexibility in adding to existing capacity (Id. at 52). Dr. Epstein noted that landfilling is a necessary adjunct to a composting facility to allow for disposal of the 20% of a typical waste stream which is not compostable (Id. at 47-8, 54); recycling can also be a important part of a total composting operation (Id. at 50).

The Lake County Defenders called other witnesses on the matter of composting, including Earl Van De Wege, owner of a local lawn care service, who testified that there is a local market for compost (R. 3/25 at 11). Thomas Ulick testified that waste can be turned into a material beneficial to overall land use and crop production (Id. at 83) as is shown in his use of leaf compost at his organic vegetable farm (Id. at 72-80). Charles J. Beeson, owner of a wholesale nursery operation (R. 3/26 at 7), testified that sludge is used as a compost (Id. at 8).

The Lake County Defenders also called two witnesses on the matter of recycling programs. Patrick Barry, a freelance journalist and recycling consultant, testified that recycling has the potential to cut Lake County's waste disposal needs by as much as 50%, and that 35% is a reasonable short-term goal (R. 3/26 at 27). He cited advantages of recycling, testifying that recycling: cuts energy costs, reduces pollution, reduces need for incineration, reduces need for landfilling, saves natural resources, and creates jobs (Id. at 31). Mr. Barry stated that he believed that there should be no problem in finding markets in

the midwest for most of the commonly recycled materials (Id. at 33), and that avoided costs are a critical factor in a favorable analysis of the economics of recycling (Id. at 38-42). As regards the proposed facility, Mr. Barry testified that the WMII Application has insufficient detail to assess whether it proposes "a significant recycling program" (Id. at 49-50).

The second Lake County Defenders' witness on the matter of recycling was Alice Howenstine, a member of the Illinois Association of Recycling Centers and coordinator of recycling drives in McHenry County (R. 3/26 at 170-1). Ms. Howenstine testifed to the commitments and resources necessary to conduct a successful recycling program (Id. at 171-208). She, like Mr. Barry (Id. at 61), did acknowledge awareness of current recycling programs run by WMII (Id. at 191).

County's Decision

The LCB clearly placed substantial weight on the testimony given by Ms. Becker, devoting approximately one-half of that portion of the Resolution which deals with Criterion #1 to a summary of Ms. Becker's testimony (Resolution at 6). In particular, the LCB points out conflicts between Mr. Eldredge's and Ms. Becker's analyses of the capacity of existing landfills and the need for added disposal capacity (Id.). The LCB also placed weight on the determination that there will be no need for additional landfills in the County until "1997 at the earliest" (Id.) and that the capacity of the proposed facility is excessive (Id.). The LCB further noted Petitioner's failure to undertake "an independent analysis" or review of landfill availability" and Petitioner's providing of "only a partial inventory of existing landfills" (Id.). The LCB concluded that:

> The burden of proof is on the applicant to show that there is a need for the facility. This the applicant has failed to do with any credible evidence. (Id. at 6-7).

Board's Finding

Both WMII and the LCB rely on Waste Management v. Pollution Control Board, 123 Ill.App.3d 1075, 463 N.E.2d 969 (2nd Dist. 1984). WMII contends that according to this decision "a landfill satisfies the need criterion if it is shown to be 'reasonably required by the waste needs of the area intended to be served', which would include 'consideration of its waste production and disposal capacities'"(WMII Brief at 23). The LCB counters that according to this decision "the applicant must prove more than that the proposed facility is convenient and that the term 'need' connotates an element of urgency" (LCB Brief at 11; emphasis in original).

The record clearly shows that there was extensive consideration of Lake County's waste production and disposal capacities by both WMII and the Objectors. According to Mr. Eldredge's data, substantial shortfalls in capacity could be expected to occur as early as 1990. However, Mr. Eldredge failed to consider the capacity of at least one major landfill which uncontestedly receives Lake County wastes, the Pheasant Run landfill[13], and chose to rely on the dubious estimates contained in the four-year old SWAC Feasibility Study of the county's use of two in-county landfills. Moreover, he did conclude that the shortfall date could be as late as 1996. Ms. Becker's data, on the other hand, indicate that shortfalls can not be expected until 1996 or 1997 at the earliest. Her data does include the Pheasant Run facility, as well as up-dated estimates of the use of in-county landfills.

WMII contends that the Ms. Becker's analysis was inconsistent with the estimates of the waste disposal needs contained in the SWAC Feasibility Study (WMII Brief at 21). However, while neither the LCB nor Ms. Becker have rejected the SWAC study (R. 3/23 at 50-1), there is uncontroverted testimony that the SWAC report is out-of-date with respect to landfill capacity data (Id. at 11-22). Accordingly, WMII was remiss in relying upon these figures, and Ms. Becker's updated data was the credible information upon which the LCB had to rely. Moreover, WMII's own witness, Mr. Eldredge, chose to impeach the SWAC study by noting that it overestimated the per capita rate of waste production (R. 2/12 at 101, 124), and accordingly also overestimated the need for disposal capacity. Having found the SWAC study faulty in part, plus being aware of the SWAC study's own admonition regarding the accuracy of the SWAC data, WMII would have been well advised to gain independent verification of those remaining portions of the SWAC study upon which it intended to base its case; there is no evidence that WMII did this.

On this basis, the Board finds that a decision that additional Lake County waste disposal capacity is not needed for nine or more years is not against the manifest weight of the evidence. There remains the question of whether this circumstance nevertheless contains "an element of urgency", as invisioned by the Waste Management court. The Board does not believe that it does. The record clearly indicates that landfills and/or incinerators can come into operation in

[13] Petitioner argues in its reply brief that that it need not have considered this landfill (WMII Reply Brief at 7-8). The Booard is not pursuaded by the argument. The fact is that WMII's own witness testified that about one-third of Lake County lies within 15 miles of the Pheasant Run landfill (R. 2/12 at 98), and thus this portion of Lake County constitutes a "service area" for that landfill even according to WMII's own 15-mile criterion (Id. at 94-5).

substantially less than nine years, and thus be on-line in time to meet the future need[14]. The LCB also heard extensive testimony that it would be judicious for Lake County to further explore its waste disposal options before committing to any particular mode(s) of disposal or to any particular site(s) at which to conduct the disposal. Moreover, the LCB heard authoritive testimony that comprehensive planning is well under way, and that its fruition might obviate the need for the facility in question. It is therefore reasonable to conclude that there is no urgency associated with approval of the particular facility proposed.

In summary, the Board finds that WMII has not carried the heavy burden of showing that the LCB's decision was contrary to the manifest weight of the evidence. The LCB clearly heard conflicting testimony on many aspects of this matter. The Board can not find reversible fault with the manner in which the LCB weighed the evidence before it. In this light, it must be concluded that any informed and fair decision-making body could have reached the conclusion reached by the LCB. The LCB's decision accordingly does not meet any of the tests necessary for a finding against the manifest weight of the evidence standard. This Board will therefore affirm the LCB's decision.

CONCLUSION

Having found that the LCB decision on Criterion #1 was not against the manifest weight of the evidence, the Board must affirm the LCB's decision to deny the WMII Application. In as much as the Criterion #1 ruling is also dispositive of the case, the Board will and need not go further in its analysis of this matter. In so doing, the Board is aware that it is departing from its prior general practice with respect to S.B. 172 cases: the Board has most often proceeded to analyze and rule on all contested criterion decisions made below whether or not a portion of that analysis would have been dispositive. The Board has so acted, in part, out of a desire to provide guidance in an arena where case law was rudimentary and many issues were matters of first impression. The Board has now developed a substantial body of case precedent on criteria #2-6, and therefore believes that this general impetus for the Board's continuation of its prior practice is no longer compelling.

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[14] The Board notes that in Waste Management the court held that need for a landfill expansion had not been demonstrated where existing available facilities could handle the waste production for 10 years. The Board also notes that in a earlier case involving the same appellee, Waste Management of Illinois v. Pollution Control Board, 122 Ill.App. 3d 639 (1984), the court also held that need had not been demonstrated where existing and available landfills were sufficent to handle waste production for over 10 years.

Rather, the Board believes that it is appropriate to revert to general judicial practice of proceeding no further than is necessary to find disposition of the matter, and thus achieve administrative economy and conservation of the public resource. In the particular matter at hand, the Board believes that no significant end would result sufficient to warrant analysis beyond that already undertaken.

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

ORDER

The May 5, 1987, decision of the Lake County Board denying site-suitability approval to Waste Management of Illinois, Inc., for Petitioner's proposed incinerator and landfill is hereby affirmed.

IT IS SO ORDERED.

Board Members Joan Anderson and J. Theodore Meyer dissented.

Board Member J. Marlin concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of December, 1987, by a vote of 4-2.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board