ILLINOIS POLLUTION CONTROL BOARD
May 5, 1988

JOHN ASH, SR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 87-173
	)	
IROQUOIS COUNTY BOARD,	)	
	)	
Respondent.	)	

MR. THOMAS E. McCLURE, ELLIOTT & McCLURE, APPEARED ON BEHALF OF PETITIONER.

MR. TONY L. BRASEL, STATE'S ATTORNEY, APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon an appeal filed by John Ash, Sr. ("Ash") on November 12, 1987 pursuant to Section 40.1(b) of the Environmental Protection Act ("Act") (Ill. Rev Stat. ch. 111½, par. 1040.1(b)). Ash appeals the October 13, 1987 decision of the Iroquois County Board ("County") denying siting location suitability approval for a new regional pollution control facility.

Ash contends that the County's decision: (a) was reached as result of fundamentally unfair procedures, (b) was not rendered within the time period mandated by the Act, and (c) is against the manifest weight of the evidence. The County, for its part, contends that its decision as rendered was both fundamentally fair and in accordance with the evidence presented to it.

For the reasons described below, the Board finds that the County's procedures were fundamentally fair, that the County's decision was rendered timely, and that the County's decision was not against the manifest weight of the evidence. Accordingly, the Board affirms the County's decision denying site location suitability approval.

HISTORY

On August 11, 1986, Ash filed a siting request for a new sanitary landfill with the Clerk of Iroquois County. Between November 18 and December 3, 1986 the County's Regional Pollution Control Committee ("Committee") conducted nine public hearings on the proposed landfill pursuant to Section 39.2(d) of the Act. At these hearings the County received evidence and testimony

concerning the six applicable[1] criteria set forth in Section 39.2(a) of the Act. Objector Citizen Group ("Objectors") presented evidence to the County and was represented by Mr. James Yoho. On February 3, 1987 the County adopted an initial resolution denying the siting approval sought by Ash.

On March 9, 1987 Ash filed an appeal of the County's February 3, 1987 decision with this Board. The appeal was docketed as PCB 87-29. On July 16, 1987 the Board entered its Final Order, accompanied by a separate Opinion (hereinafter,"Ash I"[2]), in PCB 87-29. The Order reversed the County's February 3, 1987 decision on the basis of lack of fundamental fairness. Inter alia, the Board found that the County had failed to give adequate consideration to the record before it. Accordingly, the Board remanded the matter to the County for reconsideration and rectification of the fundamental fairness problem.

On October 13, 1987 the County adopted a second resolution ("Resolution"[3]), which again denied the siting approval sought by Ash. The Resolution contains seven sections, one section dealing with matters of jurisdiction and one section pertaining to each of the six statutory criteria; with respect to the latter the Resolution finds that Ash failed to adequately or satisfactorily demonstrate that each of the six criteria was met. The seven sections, plus the Resolution as a whole, were adopted by identical 19-0 votes[4].

On November 12, 1987 Ash filed the instant appeal. Subsequently the County moved to include the record of Ash I within that of the instant matter. That motion was granted by Board Order of December 17, 1987.

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[1] Section 39.2(a) contains a total of seven criteria. However, since the proposed facility is not intended for "treating, storing, or disposing of hazardous waste", only six of the criteria are applicable in the instant matter, pursuant to Section 39.2(a)(7) of the Act.

[2] John Ash, Sr. v. Iroquois County Board, PCB 87-29, slip op., July 16, 1987.

[3] The Resolution of October 13, 1987 is found in the record as Exhibit D attached to Petitioner's November 12, 1987 Appeal, and on pages C-86 through C-92 of the County's Supplemental Record, filed December 8, 1987.

[4] The County record shows at C-91 and C-92 that County Board Members Barker and R. Schroeder were absent and that County Board Members Carley, Kelly, and Lanoue voted present on each of the eight individual roll calls.

Hearing was held January 21, 1988 in Watseka, Illinois. Briefs were filed by Ash on March 21, 1988, and by the County on April 5, 1988.

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 of this Act". At the time this proceeding was before the Iroquois County Board, Section 39.2 provided in pertinent part:

(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 County's decision. Specifically, this Board must determine whether the County'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 County could have reasonably reached its conclusion, the County'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]).

In addition to determining whether the decision of the County was against the manifest weight of the evidence, the Act also charges this Board with reviewing several procedural facets of landfill siting proceedings. Among these are two items present in the instant matter: (1) whether the history of the Ash application is such that Ash is entitled to deem the site approved pursuant to Section 39.2(e) of the Act, and, (2) whether the County's procedures used in reaching its decision were fundamentally fair, pursuant to Section 40.1 of the Act (E&E Hauling, supra). Since each of these issue constitutes a threshold matter, the Board will address these issues before turning to consideration of the merits of the Ash application.

OPERATION OF LAW

Ash contends that the County failed to take final action within the 180-day time limit specified in the Act, and that

therefore he is entitled to deem the site approved pursuant to Section 39.2(e) of the Act. Ash notes that his application before the County was originally filed on August 11, 1986 and that the decision of the County presently under review was not delivered until October 13, 1987, a period in excess of fourteen months. It is to be noted, however, that the County originally rendered a decision on February 3, 1987, which was a timely decision with respect to the original 180-day period. The issue, therefore, is whether the February 3, 1987 decision constituted a final action.

This identical matter was addressed by the Illinois Second Appellate District in McHenry County Landfill, Inc. v. PCB, 154 Ill. App. 3d 89, 506 N. E. 2d 372 (1987) (hereinafter, "McHenry County") In addressing the "final action" concept of the statutory language, the court stated[5]:

> Landfill next argues that it was entitled to deem its site approved because the county board failed to take "final action" on its request within 120 days of filing, as required by Section 39.2(e) of the Act. (Ill.Rev.Stat. 1983, ch. 111-1/2, par. 1039.2(e).) Landfill admits that the county board denied site approval 114 days after the initial filing (on March 20, 1985), but contends that the order was not "final" because, on review, the PCB held that the wrong evidentiary standard had been used and that it therefore had "no proper subject for review before it." By the time the PCB remanded the case to the county board for a new vote, the initial 120-day period had expired, and Landfill argues that the county board's subsequent decision therefore was untimely.
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> Again, we must look to the legislature's intent (Maloney v. Bower (1986), 113 Ill.2d 473, 479), and the purpose the statute is designed to serve (Benjamin v. Cablevision Programming Investments (1986), 114 Ill.2d 150, 157) when interpreting its language. The legislature did not vest the county board with the authority to finally deny site approval, but instead allowed an applicant to appeal a county board's denial to the PCB. (Ill.Rev.Stat. 1983, ch. 111-1/2, par. 1040.1.) We therefore conclude that the "final

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[5] The Board notes that at the time of the McHenry County action the statutory timeframe for county board decisions was 120 days. This was subsequently changed to the 180 days applicable here.

> action" which a county board must take within 120 days of filing need only be sufficiently final to justify an appeal to the PCB. The county board's March 20, 1983, order clearly denied site approval and had the legal effect of precluding Landfill from obtaining a permit unless it filed a timely appeal with the PCB. Ill.Rev.Stat. 1983, ch. 111-1/2, pars. 1039.2(f), 1040.1(a); see Port of Boston Marine Terminal Association v. Rederiaktiebolaget Transatlantic (1970), 400 U.S. 62, 71, 27 L.Ed.2d 203, 210, 91 S.Ct. 203, 209 (an administrative agency's action is "final" for appeal purposes when review will not disrupt the orderly adjudication process and legal consequences will result from the agency's action).

It is clear that the County's action of February 3, 1987: (1) was within the statutory deadlines for action, (2) concluded the County's adjudicative process such that an appeal would not be disruptive, and (3) that legal consequences would result. Therefore the County took "final action" within the statutorily mandated timeframe and the landfill approval does not issue by operation of law.

FUNDAMENTAL FAIRNESS

Ill. Rev. Stat. 1986 ch 111 1/2 par. 1040.1 requires that this Board review the proceedings before the County to ensure fundamental fairness. In E&E Hauling, supra[6], 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 disinterested observer might conclude that he, or it, had in some measure adjudged the facts as well as the law of a case in advance of hearing it" (Id., 451 N.E.2d at 565). Adjudicatory due process further requires that the 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).

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[6] 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.

Petitioner alleges that the hearing process was fundamentally unfair due to a predisposition of County members to vote against the application. Specifically, Petitioner argues that because a majority of the County members already voted against the application without considering the evidence adduced at hearing, they were predisposed to vote against it the second time it came before them. As further support for his position, Petitioner states that the Resolutions of February 3, 1987 and October 13, 1987 are in substance "identical", indicating that the County did not consider the evidence prior to its second vote on the application. Petitioner also alleges that a certain statement made by County Board member Brown just prior to the second vote on the application indicates that he prejudged the facts as well as the law in the matter.

As noted previously in this opinion, the Board in Ash I found that the County had failed to give adequate consideration to the record before it and remanded the matter to the County for reconsideration and rectification of the fundamental fairness problem. The Board affirms its prior analysis and findings regarding fundamental fairness as stated in Ash I and finds it unnecessary to repeat those here except to note the standard which the Board used to determine whether the County considered the evidence:

> [T]he 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.
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> Ash I at 11.

In the instant review, the Board must determine whether the County's actions pursuant to remand indicate that the subsequent proceedings were conducted in a fundamentally fair manner with due process afforded Petitioner.

County correctly points out that the County minutes of September 8, 1987 state that the Committee suggested that each County member examine the transcripts and exhibits of the Ash Landfill that were available at the office of John Kuntz, County Clerk (Resolution at C-82). Further, it was stipulated at the January 21, 1988 hearing that the actual exhibits in this proceeding were sent to the County from the Appellate Court in

September 1987 (PCB 2 at 36)[7]. It is evident that the transcripts and exhibits were reasonably available such that it can be said that the County members had an opportunity to review them, and that they were sufficiently exposed to the record to support a finding that they "considered" the evidence within it, prior to the October 1987 vote on the application.

The similarity of the two resolutions (they are not "identical" in substance) does not support a finding that the County prejudged the application. The record indicates that the Committee, which drafted both resolutions, discussed the application at meetings held August 19, 1987, September 29, 1987, and October 13, 1987, prior to making its recommendations to the full County Board (Resolution at C-82, 86). The Board in Ash I recognized the fact that the County's second vote on the application "may or may not reflect its earlier vote" (Ash I at 13). The Board believes that it is reasonable, after a proper review of the evidence, that the County could reach conclusions which would not necessitate extensive revision of the resolution[8].

Lastly, Petitioner alleges that County Board member Arthur Brown told Petitioner at the September 29, 1987 meeting of the Regional Pollution Control Committee that "You don't think that the County is about to let you have this landfill after we have already spent $15,000 fighting it?" Petitioner argues that this statement is indicative of the predisposition of County Board members to vote against the application. Arthur Brown testified at the Board hearing on January 21, 1988 that he "might have" made the statement to Petitioner (PCB 2 at 15). However, he further testified that prior to his vote he had considered the evidence and exhibits pertaining to the application several times

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[7] Transcripts of the 1/21/88 hearing before this Board are referenced herein as PCB 2 at _____; transcripts of the hearings before the County will be referenced by the date and page number. Thus, for example, "T. 11/18/86 at 6" cites to page 6 of the November 18 hearing. Petitioner's and Objector's Exhibits will be cited as PX ___; and OX ___; respectively.

[8] Petitioner also pointed to the fact that the October 1987 Resolution contains jurisdictional arguments previously disposed of by this Board in Ash I as further evidence that the Resolutions are "identical". The Board notes that the October 1987 Resolution contains language which acknowledges this Board's prior decision on the issue, however, the Resolution further states that the County "still wished to make the jurisdictional argument part of this resolution" (Resolution at C-88). The Board affirms its prior decision on the jurisdictional issue as stated in Ash I.

(PCB 2 at 16). When asked whether his vote of October 1987 was based on the money that the County spent or the evidence that was presented in the case, Mr. Brown responded that his vote was based on the "evidence only" (PCB 2 at 17).

In Waste Management of Illinois, Inc. v. Lake County Board, PCB 87-75, the Board discussed the issue of prejudgment by elected officials, citing several cases and Board precedent:

> 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):
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> > 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. City of Rockford v. Winnebago County Board, PCB 87-92, November 19, 1987, at 24.

Waste Management of Illinois Inc. v. Lake County Board, PCB 87-75, December 17, 1987 at 15.

The Board believes that Petitioner's allegations do not overcome the presumption that the County acted on the merits of Petitioner's application without prejudging the law or facts. The record indicates that on remand from this Board, the County members had sufficient time to consider the record before it and that they were properly instructed to consider that record. The Board therefore finds that the County reached its decision on Petitioner's landfill siting application in a fundamentally fair manner.

STATUTORY CRITERIA

Ash next contends that the County's decision is contrary to the manifest weight of the evidence and that the decision should be reversed and the siting application approved. Ash claims that he has satisfied the statutory criteria contained in Section 39.2 of the Act, contrary to the County's position that Petitioner has met none of the criteria.

Criterion #1

Petitioner presented one main witness on the issue of need, Mike Watson, a waste hauler who has apparently contracted to run the proposed landfill for Ash. Watson testified that the landfill would be good for increased competition, and would be centrally located within the county. Ash testified that there are open dumps in the area of the proposed landfill (T. 11/25/86 at 17-22), and inferred that the approval of his application would eliminate open dumping problems (Ash Brief at 31, 33-2).

Watson also testified from his conversations with operators, and his observations and experience as a hauler, regarding the capacity of available landfills. He said that there are two landfills which service Iroquois County: the KID Landfill in Kankakee and the Bryce Landfill in Iroquois County. He then stated that in his opinion the KID Landfill site is half filled and has about a ten year remaining life, and the Bryce Landfill would be filled in approximately 15 years (T. 11/24/86 at 50-7). He further noted that the Agency permit application for the KID Landfill indicated an expected useful life of 20 years for the facility in 1974, and that the facility opened in 1975 (PX 23; T. 11/24/86 at 52). He said that the Bryce Landfill services Kankakee, Iroquois, Vermilion and Ford Counties in Illinois and

accepts waste from Indiana. He did not say what percentage of waste comes from areas other than Iroquois County and did not know the total volume of waste Iroquois County generates (T. 11/24/86 at 92-3, 82).

Watson testified that the proposed facility is necessary to accommodate the waste needs it is intended to serve (T. 11/24/86 at 59), but also testified that if there are no major changes in waste influx, a ten year reserve capacity is sufficient or adequate to meet the service area's need. (T. 11/24/86 at 95-6).

Objector's witness, John Thompson, testified that he is Executive Director of Central States Education Center and Central States Resource Center, two not-for-profit environmental groups based in Champaign, Illinois, and has worked on a number of landfill sitings and existing sites in Illinois (T. 12/1/86 at 8, 11). Thompson testified that he conducted an inventory of the landfills in Iroquois County and those of surrounding areas which could take Iroquois County waste. His information as compiled includes the landfill name, location and Agency site number, the annual volume in cubic yards, the remaining life in years, the anticipated year of closure, and the calculated reserve capacity in cubic yards (OX 2). He then divided the service area into primary and secondary service areas based upon the economically reasonable driving distance for waste generated in the area of the landfill sites. Secondary service area sites such as those in Champaign and Vermilion Counties were considered, although farther from the source, because of the potential for some of the waste from these areas to come to the landfills which are currently used by Iroquois County and due to their potential for use by Iroquois County (T. 12/1/86 at 20-4; OX 3). Thompson testified that he derived his information regarding annual volume of waste and remaining site life from Agency financial assurance documents which are certified as accurate (T. 12/1/86 at 19). However, it is worth noting that Objectors did not offer into evidence the actual Agency records or copies thereof. Thompson testified that other sources of information include contacting the site operator and utilization of surveying techniques (T. 12/1/86 at 93).

Thompson's information inter alia indicates that the Bryce or Milford Landfill has a remaining life of 40 years, that the Kankakee or KID Landfill has a remaining life of 17 years, that the primary and secondary service areas have 19 and 23 years of remaining capacity, respectively, and that the total service area has 23 years remaining life (OX 3). At hearing before the Committee, Thompson calculated the remaining life of the primary service area if the life of the Bryce Landfill were 15 years, which resulted in a capacity for the primary area of about 15 years (T. 12/1/86 at 127-31; 160). Thompson also agreed with Watson that a 10 year reserve capacity is sufficient. Thompson

concluded that the proposed facility is not necessary for the area it is intended to serve (T. 12/1/86 at 40).

Both Petitioner's and Respondent's witnesses agree that the only other landfill in Iroquois County, the K&H Landfill in Donovan, has an estimated remaining life of five years (PX 25; T. 11/24/86 at 54; OX 2 and 3). However, Thompson testified that the current owner of the site, Tom Van Wheeldon, has closed the site due to insufficient volume, and that the Agency permits remain active should the owner decide to reopen the site (OX 2, 3; T. 12/1/86 at 77). Watson also reported that the site was closed, but stated that he did not inquire as to why it was closed. He said he was unaware that the site was closed because it was not currently needed (T. 11/24/86 at 98-9).

Thompson testified that he believes competitive pricing for landfills exists in Iroquois County. As support for his belief, Thompson stated that the tipping fees in the area are already fairly low relative to the rest of the state (T. 12/1/86 at 46).

The County in its evaluation of the application under criterion #1 noted that the remaining capacity for landfills in Iroquois County was between 15 and 40 years. The County placed weight on Objector's witness citing his figure for the remaining life of the Kankakee Landfill (17 years). The County included the Donovan Landfill in its consideration noting that it has an "estimated remaining life of five years." The County then stated that "experts from the applicant and the Objectors agree that need is not established when reserve capacity is in excess of 10 years" (Resolution at 88).

The County dismissed the applicant's assertions regarding the benefits of competition, noting that tipping fees are low, in apparent reliance on the statements of Objector's witness to that fact. The County further found that "a reduction in fees does not establish need" (Resolution at C-89). As to the applicant's assertions that the proposed facility would eliminate open dumping problems, the County stated that these sites exist despite numerous free dumpsters made available by Iroquois County (Resolution at C-89). The County based its determination on the foregoing facts and found that the applicant did not adequately or satisfactorily demonstrate that the facility is necessary to accomodate the waste needs of the area it is intended to serve.

Petitioner and Respondent cite case precedent covering criterion #1 reviews. The Second District Appellate Court has defined the term "necessary" to mean that the applicant does not have to show that a proposed facility is absolutely necessary, but only that the proposed facility is "expedient" or "reasonably convenient" to the area's waste needs. E & E Hauling, supra, citing Foster and Kleiser v. Zoning Board of Appeals, 38 Ill.

App. 3d 50, 347 N.E.2d 493 (1976)[9]. The Third District Appellate Court has further stated that for a facility to be "necessary" the applicant must show that the proposed facility is reasonably required by the waste needs of the area intended to be served, taking into consideration the waste production of the area and the waste disposal capabilities, along with other relevant factors. Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 122 Ill. App. 3d 639, 461 N.E. 2d 542 (1984). The Second District later found that "expedient" connoted an element of urgency, and that "reasonable convenience" requires an applicant to show more than mere convenience. Waste Management of Illinois, Inc. v. Pollution Control Board, 123 Ill. App. 3d 1015, 463 N.E. 2d 969 (1984). 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 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 sufficient to handle waste production for over 10 years.

The Board finds that the Petitioner has not demonstrated that the County's decision was contrary to the manifest weight of the evidence. The County could have reasonably concluded that between 15 and 40 years of existing reserve capacity along with the other factors listed above do not constitute an element of urgency or that the proposed facility would be more than merely convenient, as interpreted by the courts.

Having found that the County decision on Criterion #1 was not against the manifest weight of the evidence, the Board must affirm the County's decision to deny the Petitioner's 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.

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

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[9] The Supreme Court, although it affirmed the Second District's decision regarding the six statutory criteria, it did not additionally discuss the issue of need or the criterion #1 review.

ORDER

The October 13, 1987, decision of the Iroquios County Board denying site-suitability approval to John Ash, Sr., for Petitioner's proposed landfill is hereby affirmed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Members Joan Anderson and J. Theodore Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of May, 1988, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board