

ILLINOIS POLLUTION CONTROL BOARD  
September 15, 1982

MILO AND/OR BRADEN M. LAMBERT d/b/a )  
LAMBERT CONSTRUCTION CO., )  
 )  
Petitioners, )  
 )  
v. ) PCB 82-47  
 )  
SALINE COUNTY BOARD, )  
 )  
Respondent. )

MS. NINA T. WILLIAMS, ATTORNEY AT LAW, APPEARED ON BEHALF OF  
PETITIONER:

MR. DAVID HAUPTMAN, STATE'S ATTORNEY SALINE COUNTY, APPEARED ON  
BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

This matter is before the Board upon the April 21, 1982 appeal by Milo and/or Braden M. Lambert d/b/a Lambert Construction Company (Lambert), from the March 19, 1982 written decision of the Saline County Board (Saline County) denying site approval for a proposed solid waste management site pursuant to Section 39.2 of the Illinois Environmental Protection Act (Act). On April 29, 1982 the Board ordered Saline County to prepare and file the record on appeal. Hearing was held before the Illinois Pollution Control Board (Board) on July 23, 1982 at which there was no citizen testimony.

This case is among the first group of appeals to the Board pursuant to a new statute which divides citing authority for the landfills in the state between local officials, here represented by Saline County, and the statewide interest represented by the Illinois Environmental Protection Agency (Agency). Prior to Agency approval of a proposed landfill, the landfill site must be approved by local officials solely pursuant to six criteria contained in Section 39.2(a) of the Act.

On January 19, 1982 a request for site approval was filed on behalf of Lambert for sanitary landfill #3 before the Saline County Board. Included with the transmittal letter and request were plans of the proposed site and the Agency permit application. Saline County held the required public hearing on the proposed landfill site on February 2, 1982. The hearing was apparently

recorded on tape and later transcribed. A consulting engineer for Lambert made a short presentation and presented maps showing the location of the proposed site. The hearing was then opened for public comment and the reading into the record of a number of letters apparently from citizens objecting to the landfill site. At the end of the hearing there was some additional testimony on behalf of Lambert and some questions from the participants at the hearing.

At a regularly scheduled meeting of the Board of Commissioners of Saline County on March 18, 1982, the Board of Commissioners voted not to grant siting approval for the proposed site stating, "The Board of Commissioners...voted not to accept the proposed site due to it not being centrally located to meet the needs of all the people of Saline County. The Saline County Board feels Lambert has met all other required Agency standards and have no other objections except the aforementioned location." The denial of siting approval was transmitted to the Agency on March 19, 1982 along with copies of letters of citizens of the County concerned with the location of the proposed site. On April 21, 1982, Lambert filed his petition for hearing and review before the Board.

Lambert alleges that Saline County erred in its decision to deny siting approval because their sole objection, the proposed site was not centrally located in the area, did not fall within any of the six criteria mandated in the Act. Lambert further alleges that since Saline County had specifically found no other objection, the site should have been approved and requested the Board order site approval to be deemed approved. At the hearing before the Board, testimony presented concerning procedures indicated that the Saline County Board voted to deny site approval upon the recommendation of the Landfill Committee of the County Board. Additional testimony by Bill Endsley, Chairman of the Saline County Board, indicates that there was discussion of a motion or resolution regarding "other requirement standards of the EPA" possibly referencing the six criteria mandated by the Act. That discussion apparently did not result in any other motion or resolution (R. 17). In response to cross-examination concerning his knowledge of the six criteria and whether or not the objection to the landfill site was based on any of these criteria, Mr. Endsley said that he stood by what was contained in the denial letter sent to the Agency.

Gary Bond, Chairman of the Landfill Committee, testified that the Landfill Committee held a meeting concerning the proposed landfill site sometime before the Saline County Board meeting and decided to recommend not to accept the proposed site (R. 24). Under cross examination, Mr. Bond acknowledged that he was aware of the new law at the time the committee made the decision (R. 26). Other than the opening and closing argument, the foregoing is basically the record presented to the Board on appeal.

This case presents the Board with a number of problems with respect to review of the Saline County Decision. The first problem is the form of the decision itself. It appears to be simple and straight forward; site approval is denied as the site is not centrally located in the area to meet the needs of all the people of Saline County. However, that is not one of the reasons that the legislature has allowed Saline County authority to consider. The six criteria to be considered by the local authorities in review of a siting approval petition under Section 39.2 of the Act are as follows:

1. the facility is necessary to accommodate the waste needs of 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 to 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 is designed to minimize the impact on existing traffic flows.

In addition, the section also states that "the County Board... shall approve the site location suitability for such new regional pollution control facility only in accordance with the following criteria:" (emphasis added). Nowhere in the six criteria does the statute address meeting the needs of all the people of the county by being centrally located. Nowhere in the record is there any indication how or why Saline County came to the conclusion concerning the central location. Certainly some of the citizen testimony and letters of objection addressed the lack of convenience of the location, but there were more objections concerning road conditions in the County. There were additional objections concerning litter on county roads, conditions at Lambert's present landfill, the possibility of contaminated water and the fact that the citizens had to pay to dump refuse at the landfill. Since the Board has insufficient information

to interpret the mode of rejection it finds that the stated reason for denial of siting approval is beyond the authority of Saline County and is therefore improper. However, the same lack of information in the record that causes the Board to reject Saline County's reason for denying site approval also causes the Board to be unable to deem the site approved.

Given the rural nature of the county and the informal character of the public hearing, Lambert did a reasonably good job of addressing the six criteria. However, from a purely technical standpoint, Lambert failed to prove that he had met the conditions of criterion #4, i.e., that the proposed facility is located outside the boundary of the 100-year flood plain as determined by the Illinois Department of Transportation (IDOT), or that the site is flood-proofed to meet the standards and requirements of IDOT and is approved by that Department. The letter from Lambert's consulting engineer to IDOT requests sign-off or issuance of a permit for the landfill project stating that it is petitioning the Agency for a permit to develop and operate the site. Nowhere in the letter does it allude to Section 39.2 of the Act or the County Board approval situation. In its response, IDOT merely notes that no permit is required from IDOT since the project "while within the 100-year flood plain, is not within the 100-year floodway, therefore a permit is not required for this activity." Although this is a new statute which may result in confusion with respect to precisely what is required, the Board finds that the evidence presented by Lambert with respect to criterion #4 is inadequate.

Beyond the technical deficiency noted above, the Board has great concern as to whether or not Saline County could have or intended to deny siting approval for legitimate reasons within the purview of the six criteria and merely utilized the central location pronouncement as a convenient summation of their objections. The statement in the letter of denial that "the Saline County Board feels Lambert has met all other required EPA standards and have no other objections except the aforementioned location" does not alleviate the Board's concern. If we presume that the required EPA standards refers to the six criteria of the Act, a fact that is not at all clear, the evidence indicates that motion which Saline County voted upon did not contain that language. Indeed, if Saline County considers "not centrally located" as encompassing all of its objections, the statement that Lambert has met all other objectionable standards becomes meaningless.

The testimony at the Pollution Control Board hearing by two members of the Saline Board of Commissioners is likewise not conclusive. Although admitting that they were aware of the six criteria contained in the Act, both stood by the wording of the letter denying site approval. Thus, the Board finds that although the manner used by Saline County to deny site approval is inappropriate, it is not clear that the intent of the disapproval was

not within the six criteria. The intent of the legislature in enacting Section 39.2 of the Act was to allow local authorities the right to review the proposed site in accordance with the six criteria and thereafter to grant or deny site approval. The Board will not circumvent the intent of the legislature merely because the decision of the local authorities is confusing or inappropriate. The Board shall therefore remand this matter to Saline County for correction of the technical deficiencies and for further review consistent with Section 39.2 of the Act.

Saline County's attention is directed to two previous Opinions and Orders of the Board on the subject [Waste Management of Illinois, Inc. v. Board of Supervisors of Tazewell County, PCB 82-55 (August 5, 1982) and Village of Hanover Park v. County Board of Du Page, Du Page Forest Preserve District and E & E Hauling, Inc., PCB 82-69 (August 30 and September 2, 1982)]. The Opinions cited address both what exactly the local authorities are to consider under Section 39.2 of the Act and what is reasonably required in terms of an opinion supporting their decision. In particular, the Board wishes to emphasize that Section 39.2(e) requires the local officials to specify the "reasons for the decision, such reasons to be in conformance with the six criteria," each of which should be separately listed and discussed.

The Board hereby directs the Clerk of the Board to serve copies of the Opinions and Orders cited herein on the parties in this case. The 120-day decision period is construed as recommencing upon Saline County's receipt of this Opinion and Order.

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


#### ORDER

This matter is hereby remanded to the Saline County Board for further consideration consistent with the Opinion herein.

IT IS SO ORDERED.

Board Member Don Anderson dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15<sup>th</sup> day of September, 1982 by a vote of 4-1.

  
 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board