

town testified concerning operating practices at a nearby landfill operated by Watts (II-343). An officer and an employee of an adjoining factory testified in opposition (II-487, 507). Citizens made statements in opposition (II-511). The League of Women Voters made a statement in support of the location (II-261). There is written comment in the Council record, including letters from industry and civic groups supporting the siting.

The Council voted by a majority of 5 to 2 to deny the site location approval on October 12, 1983 (II-528). A written decision was entered on October 13, 1983.

The appeal was filed with the Board on November 15, 1983.

On January 17, 1984 Cathryn Braet, Jane Evans, Delores Smith, Barbara Wachtel and Theresa Williams filed an application to intervene, which was granted by the Hearing Officer over Watt's objection at the public hearing held January 26, 1984 (III-4). The Hearing Officer is affirmed.

No additional testimony was presented at the Pollution Control Board hearing.

Fundamental Fairness

At the beginning of the Council hearings the Mayor announced that there would be no questions from the audience (I-2). However, extensive cross-examination and presentation of rebuttal testimony was allowed (I-82, II-61). The intervenors did not contend that there were any procedural defects before the City Council (Brief filed January 27, 1984). The Board finds that the procedures used before the Council were fundamentally fair.

Facility

The facility will be described in greater detail below. It is to be located in an industrial tract in Rock Island, east of Centennial Expressway, north of Servus Rubber, west of certain railroad tracks and south of Sixth Avenue (I-8). Briefly, it is to be a hazardous waste treatment operation which is to treat aqueous wastes prior to disposal elsewhere. Wastes will be received by truck, but the treatment operation will be similar to physical-chemical wastewater treatment plants found at many industrial sites (II-36, 392). Wastes will include those which are typical of metal finishing, coating and plating operations. Wastes will include aqueous acids and bases, possibly containing heavy metals, dichromate, cyanide, sulfide, oil and solvent residues (I-17, 28; Permit

application, p. 133). Treatment processes will include oil and grease removal, solvent removal, neutralization of acids or bases, precipitation, separation of sludges, oxidative destruction of cyanide, filtration and reverse osmosis for final purification of wastewater (Permit Application, p. 21, 131).

The principal output, over 80%, will be highly purified water which will be offered for sale as boiler feed water or discharged in batches to the City sewer (I-30, II-197). Sludges and non-aqueous wastes will be shipped off-site for disposal elsewhere (Permit Application, p. 48).

Criteria for Approval

Site location suitability approval by local governing bodies is pursuant to Section 39.2(a) of the Act, which provides as follows:

The county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, 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 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 are so designed as to minimize the impact on existing traffic flows.

Council Decision

On October 13, 1983 the Rock Island City Council entered a written decision denying approval of the site location suitability, finding that it failed to meet criteria 2, 3, 5 and 6. No more specific reasons or findings of fact were contained in the written decision. However, the transcript of the October 12, 1983 Council meeting discloses the following reasons, given by individual Council members:

1. The financial burden of cleanup, monitoring and on-site spills (II-530, 536).
2. The financial burden of off-site spills (II-531, 532).
3. Proximity of the site to the downtown area (II-531, 535).
4. Proximity of the site to the wastewater treatment plant (II-531).
5. Location in a densely populated area (II-545).
6. Lack of information on untreated wastes to be stored on the site (II-532).
7. Inadequate information concerning liners (II-532).
8. Failure of the Environmental Protection Agency to appear at later hearings (II-533).
9. Inadequate frequency of Agency inspections (II-533).
10. Traffic patterns (II-535).
11. Inadequate information concerning operations and maintenance (II-536, 545, 547).
12. Failure of Illinois Department of Public Health to answer a Councilperson's question concerning the wastes (II-539).
13. Failure to provide test results of effluent and emissions (II-546).
14. Failure to provide data on similar treatment facilities (II-546).
15. Possible lack of maintenance of the scrubbers (II-547).

These are, of course, concerns voiced by individual Council members rather than findings made by the Council as a body. The Board has relied in part on these statements to give it guidance in reviewing the evidence in the absence of specific findings by the Council as a collective body.

The determinations of the local governing body are generally deemed conclusive. The Board is not allowed to determine issues independently, to substitute its own judgment or to re-weigh the evidence. The Board's role is to determine whether the local governing body's conclusions concerning the criteria were against the manifest weight of the evidence (City of East Peoria, et al. v. IPCB and Waste Management of Illinois, Inc., 17 Ill. App. 3rd 673, Third District, August 23, 1983). The Board will therefore review the evidence concerning each criterion to determine whether the Council's decision is against the manifest weight of the evidence. The Board will address the criteria in an order more convenient than numerical: 1, 4, 3, 6, 5 and 2.

Waste Needs and Flood Plain (Criteria 1 & 4)

The failure of the Council to list criteria 1 and 4 in its decision implies that it found that the site met these criteria pertaining to waste needs of the area and location outside the 100 year flood plain. These criteria are not at issue in this appeal.

Surrounding Area (Criterion 3)

As noted above, the facility is to be located on a tract surrounded by Centennial Expressway, Servus Rubber Co., railroad tracks and Sixth Avenue in Rock Island (I-8). A paint factory and a battery factory formerly occupied the site, which is zoned for general industrial use, which use would include the proposed facility (I-8, 34, II-15, 224). Servus Rubber Co. utilizes flammable hazardous materials to produce rubber boots adjacent to the site (II-15, 488, 499). Organic vapor concentrations in the plant are vented to the atmosphere through open windows (II-500, 502). The City's wastewater treatment plant is close to the site (I-35, II-15). There are three plating plants in the neighborhood which generate wastes like those to be treated (I-84).

The surrounding area includes residences, although it has been losing its residential character since construction of the raised highway resulted in destruction of many residences, and cut those remaining off from adjacent areas (I-11, 35, 59). There are still about 31 houses in the area (I-59). The closest residence is about 400 feet from the facility boundary (II-15, 227). About 5700 people live

within one-half mile of the facility (I-60, II-212, 223). Neighboring residents were of the opinion that it would reduce their property values (I-59, 67).

The vice-president of operations for the Servus Rubber Co. plant testified that it would be difficult to evacuate the Servus plant in the event of an accident at the facility (II-489). He believed that the presence of the facility would reduce the value of the Servus property (II-492, 497, 508, 524).

Section 39.2(a)(3) provides that the local governing body is to determine site location suitability in part according to the following criterion:

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.

One of the Council members cited the proximity to the City's wastewater treatment plant as a reason for denial (II-531). As noted previously, the facility is to be a physical-chemical wastewater treatment plant to which wastewater would be trucked instead of transported in pipes. The proximity of the City's biochemical wastewater treatment plant tends to support the compatibility of the proposed facility with the surrounding area.

Three potential dangers of the facility to the surrounding area, which are discussed in greater detail below, include: the danger of fire; emissions of organic materials from solvent separation and storage; and, emission of hydrogen cyanide or sulfide gas from accidental mixing of acid wastes with wastes containing cyanide or sulfide. Servus Rubber Co. poses a similar, if not greater, danger of fire (II-500). The proposed facility will avoid excessively flammable materials, and will have extensive fire protection design and equipment (I-19, II-60). Servus Rubber emits organic materials through open windows (II-502), while the proposed facility would vent organic emissions through activated charcoal for removal (I-19). The dangers of creation of hydrogen cyanide or sulfide gas is always present in industrial operations using cyanides or sulfides, such as plating operations. The facility will provide safeguards against mixing and for venting of all tanks and reaction vessels to a caustic scrubber capable of removing hydrogen cyanide and sulfide (I-18, II-22, 59).

The criterion calls for minimization of incompatibility with the surrounding area. Although the area was once more

residential, its use has now been dedicated to transportation corridors, with the enclosed area now industrial in character. The adjacent Servus Rubber plant uses hazardous materials, and plating operations in the area produce many of the wastes to be treated. The record contains little support for determining that the facility would be other than compatible with the character of the surrounding area, and it certainly is located so as to minimize any incompatibility.

The criterion also calls for minimization of effect on the value of surrounding property. Although further industrial development could arguably decrease the value of nearby residences as residences, industrial development of the area has already occurred. More specifically, the site itself has already been used for industrial purposes, as a paint factory and a battery factory (I-8). This project may attract other industry which would utilize its waste treatment services or boiler feed water. This arguably could also have a positive impact on the value of surrounding property.

As noted, Servus Rubber itself poses risks similar to those alleged to be posed by the proposed facility. The claims that Servus Rubber's property might be devalued must be considered in this light. It could also benefit from the availability of waste treatment service and boiler water, and general industrial development of the area.

The criterion calls for the facility to be located so as to "minimize" the incompatibility with the surrounding area and the effect on value, but does not allow for rejection simply because there might be some reduction in value. This record clearly shows that the applicant's proposed location minimizes the effect on the value of the surrounding property.

The Board therefore concludes that the Council's determination with respect to criterion 3 is against the manifest weight of the evidence.

Traffic Patterns (Criterion 6)

Trucks will reach the facility via Centennial Expressway, a four-lane, divided, limited access highway. They will exit at the Seventh Avenue exit and proceed 500 feet west on the exit ramp to Sixth Avenue (I-10, 59, II-17). Sixth Avenue is a wide, concrete-paved street (II-17). A count in August, 1983 showed 1752 vehicles in a 10-hour period, of which 569 were commercial trucks (I-9, 37, 61, II-18). The facility will receive 30 to 40 trucks per day at full production (I-10). The proposed routes have adequate capacity for

this additional traffic (II-18). Deliveries will be scheduled to avoid backups (I-70).

Section 39(a)(6) requires local government to approve the site location suitability in accordance with the following criterion:

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

One Councilperson's statement recites that traffic to and from the plant "would cross basically the entirety of our community" (II-535). From the context, it appears that his concern was the danger of spills rather than the traffic itself. This concern will be addressed in the next section of this Opinion.

The evidence is uncontroverted that ample capacity, including the number of vehicles and their weight, exists for the proposed traffic. The Board therefore finds that the Council's rejection with respect to criterion 6 is contrary to the manifest weight of the evidence.

Fires, Spills or other Operational Accidents (Criterion 5)

Criterion 5 concerns the danger to the surrounding area from fire, spills or other operational accidents. Discussion of this, and criterion 2 which follows, requires a more detailed discussion of the design of the proposed facility than was presented above.

Wastes will be received in drums, tank trucks, sludge trucks and dump trucks. Wastes will be received in a caustic dump pit, an acid dump pit, a bulk receiving terminal and a loading dock for drums. Bulk wastes will be pumped to storage tanks; drums may be stored prior to mixing and transfer to bulk storage (I-17, 20; Permit Application p. 15). There is also provision for receipt of oil emulsions and waste destined for direct treatment by the reverse osmosis unit (Permit Application p. 16, 17).

Wastes to be treated by the facility include hazardous wastes generated by metal finishers, electroplaters, heavy manufacturing, printing and dry cleaners (I-12, 27, Burns & McDonnell report, p. 8). The application specifically excludes explosive, radioactive, flammable and bacterial materials, polychlorinated biphenyls and dioxins (I-19). Wastes which are specifically mentioned to be treated are industrial wastes with a large amount of water present, including: spent pickle liquor; cyanide waste, typically

from plating operations; sulfide waste; heavy phenol waste; aqueous wastes containing miscible or floating organic compounds; and, wastes treatable by reverse osmosis (I-17, 28, Permit Application p. 34). The facility will also receive bag house lime, arc dust and fly ash, typically non-hazardous solid wastes, which will be mixed with liquid wastes produced by the facility (Permit Application, p. 34).

Wastes are stored mainly in a series of outdoor, above-ground tanks. These are divided into acid tanks, caustic tanks and high-organic tanks (I-18). There are also storage impoundments for non-hazardous oil emulsions and a storage tank for waste to go through reverse osmosis (Permit Application p. 75, 81). The drum storage area is in a building, with three storage bays with capacity of 328 drums per bay (Permit Application p. 92, 97). One bay will be for wastes intended for transfer without treatment. Maximum storage time will not exceed 120 days (Permit Application p. 98), or one month for waste stored for transshipment (II-19, 25, 58, 250, 378, 443).

Waste treatment is similar to the operation of a typical physical-chemical wastewater treatment plant (II-36, 38, 392, 394). Heavy metals are precipitated by adjustment of pH, which is largely accomplished by mixing acidic and caustic wastes. Lime is used when inadequate caustic waste is available. The precipitate is drawn off after flocculation (Permit Application p. 120). After filtration and ultrafiltration, the remaining metals and other contaminants are removed by reverse osmosis (Permit Application p. 124, 128, 130). This will be used to remove dissolved organics from water as well as inorganic contaminants.

The treatment process also includes a number of operations which remove contaminants which would interfere with the basic treatment scheme. These include:

1. alkaline chlorination to destroy excessive cyanide concentrations (Permit Application p. 115);
2. chemical reduction of hexavalent chromium utilizing ferrous iron in spent pickle liquor (Permit Application p. 121);
3. acid treatment of oil emulsions (Permit Application p. 126).

The principal waste output will be water, up to 30,000 gallons per day, around 80 to 98% of the waste received (I-30, II-197). This will be pumped to a covered concrete basin. It will be offered for sale as boiler feed water (I-31). If it is not sold, it will be discharged to the City

sewer in batches after analysis to insure the absence of contaminants which would upset the City's sewage treatment plant. The batch discharge will be conducted during times of low sewage flow to avoid hydraulic overloading of the City plant and sewers (I-47, II-33, 35, 176, 188, 191).

Other outputs will include oil and solvents recovered by skimming the aqueous wastes, or from the reverse osmosis unit. These may be sold to recyclers (I-18). If not, they will be sent off-site for incineration or solidified for land disposal off-site.

Another output will be sludge produced by the precipitation and flocculation, and other treatment. The sludge will be dewatered by centrifugation and sent off-site for disposal (Permit Application, p. 124).

Section 39.2(a)(5) of the Act provides that the local governing authority is to approve site location suitability in part according to the following criterion:

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

There are four types of on-site operational accidents which could pose a danger to the surrounding area: air emissions from a fire; air emissions from a spill; air emissions from mixing of incompatible waste; and, organic solvent vapor emissions (II-342).

The building and all components will be made of metal and concrete, with no flammable materials to be used in construction (I-19). The plant will have alarms, an automatic sprinkler system and two fire extinguisher stations (I-19). No flammable reagents will be used in the treatment process (I-19, II-405). The facility will not accept flammable materials for treatment, although it will accept limited amounts for temporary storage, and may recover flammable organic solvents through the treatment process (I-20, II-13, 172, 379, 394). The area for storage of flammable materials will be isolated and will have its own alarm and fire extinguisher system (I-20, II-14). Potentially flammable vapors are vented to activated carbon adsorption units (I-19, II-14, 42, 172).

The nearest residence is 400 feet away from the facility boundary (II-15, 227). There is virtually no possibility of fire itself spreading from the facility to the surrounding area. There may however be a danger of smoke and fumes reaching the surrounding area (II-171, 174). This danger

appears to be slight considering the limited amounts of flammable materials and the precautions which have been taken.

Criterion 5 requires that the facility be designed to "minimize" the danger to the surrounding area. The criterion specifies that the danger be minimized, but does not allow rejection simply because there is some danger. There is no showing in this record as to what greater precautions the applicant could take.

The immediate danger from on-site spills is the possibility of fumes escaping the site (II-342). The facility will only take non-fuming wastes, but there are also precautions against spills (I-17, II-158). Spills could result from truck unloading, tank overfilling or tank rupture. The tanks and treatment units will be equipped with overflow alarms, and surrounded by secondary containment capable in emergencies of holding the volume of liquid stored in the tank (I-21, II-12; Permit Application, p. 84, 92). The tanks will be vented to the scrubber system to prevent any pressure buildup (I-18, II-41, 59). The truck unloading area will be on a concrete floor several feet below grade. Any spills will be directed toward a sump from which the material can be pumped into the treatment process (I-17, 21, II-12). Considering the limitation to non-fuming wastes and the precautions taken, it appears that there is virtually no danger to the surrounding area from on-site spills.

Although the wastes taken into the plant are "non-fuming", they will include caustic waste containing cyanide or sulfide (I-12, II-39; Burns & McDonnell Report, p. 9). If these were accidentally mixed with acid waste in a tank, toxic hydrogen cyanide or hydrogen sulfide gas would be generated (I-17, II-11, 39, 59, 60). The site will have elaborate, color coded controls to prevent mixing (I-17, II-11). The tanks are vented to caustic scrubbers capable of removing hydrogen cyanide or sulfide should an accident happen (I-18, 82, II-11, 22, 157, 172, 175, 353, 434). There are monitors to alert the operation if toxic fumes are generated (II-60).

It is apparent that there is some risk of generation of toxic fumes; however, this is slight considering the precautions taken (II-59). The record is devoid of any suggestions of measures which could be taken to reduce this risk. Criterion 5 does not allow rejection of site location suitability based only on the existence of a danger; rather, it requires approval if the facility is designed to minimize the danger. All the evidence indicates that the danger has been minimized.

It is conceivable that an accident could result in emission of organic solvent vapors, although the facility's handling of these materials is minimal. Some of these solvents may be harmful if inhaled in large quantities (II-353, 409). Organic solvents are often emitted into the atmosphere by industrial operations, as for example, Servus Rubber Co. (R. 500, 502). Emission of organic solvents which are photochemically active is limited pursuant to 35 Ill. Adm. Code 215. As noted, the facility has taken precautions against spills. Tanks and sensitive areas of the plant are vented through activated carbon to adsorb organic vapors. The dangers to the surrounding area from organic material emission have been minimized.

The problem of off-site spills centers on the possibility of a traffic accident involving a truck delivering waste to the facility for treatment (I-82, II-13, 27). The possibility of air emissions or fire from an off-site spill is reduced by the limitations discussed above to non-fuming, non-flammable wastes (II-56). The main problem would be containing a spill before liquid could reach surface waters or enter the storm sewer system (II-28, 485). This might cause water pollution and damage the sewer system (II-56, 199, 437). The problems of such a spill would be identical to the problems created by an accident involving a truck carrying gasoline or bulk organic chemicals, acids or caustics (II-13, 32, 202, 512). As noted above, the traffic will be on streets already carrying these materials, and there will not be a significant increase. Coordination with local units will be required under the RCRA permit (II-31, 439). The City Engineer indicated that local units would have ample time to develop contingency plans (Letter of August 31, 1983).

Council members cited the financial burden of off-site spills as a reason for denial (II-531, 532). Transportation of hazardous waste is governed by the permit requirement of Section 21(g) of the Act and 35 Ill. Adm. Code 809, and by the RCRA transporter regulations of 35 Ill. Adm. Code 723. Section 723.131 requires the transporter to clean up any hazardous waste discharge which occurs during transportation.

The frequency of spills is related to the number of miles driven. The creation of a new treatment facility will have the primary effect of reducing the number of miles driven, especially for generators in the same city (II-419). Therefore, creation of a new facility may result in an overall decrease in the number of off-site spills, although there may be a local increase near the facility. Such a local increase could be a legitimate concern of the local governing body. However, in this case, the record indicates

that the roads have ample capacity for the traffic and that the waste is no different than the materials presently moving. The additional danger is not significant.

Criterion 5 requires approval if the danger from spills has been minimized. The record contains no suggestion of additional precautions which could be taken to further reduce the danger. It has therefore been minimized. The Board therefore concludes that the Council's finding that the proposed facility did not meet criterion 5 is against the manifest weight of the evidence.

Public Health, Safety and Welfare (Criterion 2)

Criterion 2 is the broadest and most troubling of the criteria. Section 39(a)(2) of the Act requires site location suitability approval in part if the local governing body finds that:

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

In an early case the Board reversed a County Board denial finding on criterion 2 which was based on the design and construction of a landfill and the underlying geology and hydrology, rather than the site location itself. The Board held that criterion 2 was not intended to give local authorities concurrent jurisdiction with the Environmental Protection Agency to review highly technical details of the landfill design and construction (Waste Management v. Tazewell County, PCB 82-55, 47 PCB 485 August 5, 1982). The Third District Appellate Court reversed the Board, holding that the Board erred in relying on legislative intent when the words of the statute unambiguously required the County Board to consider the public health ramifications of the landfill's design (East Peoria et al. v. Waste Management et al., *Supra*. The Supreme Court granted leave to appeal, but dismissed the appeal without prejudice pending Board consideration of a settlement agreement (East Peoria et al. v. IPCB et al., No. 59110, January 10, 1984). On February 22, 1984 the Board rejected the settlement, and asked the Supreme Court to decide this issue. Pending final resolution the Board will follow the Third District decision.

In this case the Council employed the consulting engineering firm of Burns and McDonnell to make an independent evaluation of the application. Burns and McDonnell's conclusion was that the site location met all of the criteria, including criterion 2. The Council nevertheless rejected the site, based in part on the failure to meet criterion 2.

The basic design of the facility has been discussed above. Among the features already discussed are the following which are closely related to the protection of public health, welfare and safety:

1. Protection against spills and tank overflows;
2. Protection against pressure build-up in tanks;
3. Caustic and acidic scrubbers;
4. Carbon adsorption of organic vapors;
5. Fire protection equipment;
6. Limitation of waste types to be received;
7. Batch discharge after analysis.

Other design features closely related to protection of public health, welfare and safety include the following:

1. Analysis of incoming waste to assure that it is placed in the correct storage area and is amenable to treatment (I-26, 45, 69, 81, II-401).
2. Training programs for employees to assure that they are able to operate the facility correctly (I-79, II-14, 49, 149, 263, 401, 408, 411, 414, 431).
3. Liability insurance and closure assurance (II-221, 263, 369, 512, 514).
4. Coordination with local emergency units (II-31, 201, 367).
5. Communications equipment to assure contact between parts of the facility and with outside emergency units (I-24).
6. Contingency plans and emergency equipment to contain and clean up any spills (I-25, II-263).
7. Inspection plan and logs to assure that equipment is inspected according to a routine to avoid malfunctions and deterioration (I-28, 41, 46, 77, 79, II-46, 444).
8. Security equipment to prevent accidental or intentional intrusion by unauthorized persons (I-23).

9. Run-on, run-off controls and provision for retention in lined basins and treatment of stormwater (I-22, 57, II-12, 44, 178, 184).

Part of the East Peoria decision concerned the level of detail to be reviewed by the local governing body. Burns and McDonnell were quite clear as to their function: they were reviewing a "conceptual" or schematic design to determine if the right type of systems and necessary safeguards were present, and whether equipment was available to do the job. They were not reviewing the design for construction purposes to determine, for example, whether the right brand of pump had been chosen (II-126, 136, 139, 142, 145, 158). Considering that the local government approval is an approval, which will often occur preliminary to the Illinois Environmental Protection Agency's review of construction details through the permitting process, this appears to be a workable interpretation.

Several design elements to be incorporated into this facility are required by 40 CFR 264 for this type of hazardous waste treatment facility, especially 40 CFR 264.13, 264.14, 264.15, 264.16, 264.32, 264.34, 264.37, 264.143, 264.147, 264.170, 264.190 and 264.220. These regulations have been adopted by the Board to allow the Illinois Environmental Protection Agency to apply for authority to issue RCRA permits rather than the United States Environmental Protection Agency (35 Ill. Adm. Code 724, 7 Ill. Reg. 14059, October 28, 1983). Although neither the City Council nor the Illinois Environmental Protection Agency have authority to issue RCRA permits, these regulations constitute a standard of care adopted by the Board and the United States Environmental Protection Agency for protection of the public health, safety and welfare with respect to hazardous waste facilities. There is no indication that any of the Part 264 standards would be violated by the "conceptual" or schematic design as proposed.

One of the denial reasons given by a Council member was the financial burden of cleanup, monitoring and spills (II-530, 536). As noted, the regulations require liability insurance and financial assurance of closure costs. The applicant has proposed to obtain these, and no RCRA permit can be issued until it does so. Furthermore, the Second District Appellate Court has held that proof of the applicant's financial responsibility may not be considered in granting approval pursuant to Section 39.2 (County of Lake v. IPCB et al., 120 Ill. App. 3rd 89; 457 NE2d 1309, December 12, 1983).

Another reason cited is the failure to provide test results of effluent and air emissions (II-564). Such test results could not be obtained until the facility is actually

built, which cannot happen until local site approval has been given. Experts have given their opinions as to the quality of the effluent and emissions to be produced (I-11, 31, II-11, 22, 33). This is all the evidence which can be given before a facility is built. Another reason given is the failure to present safety records of other similar facilities (II-542). This is not required by the criteria.

Other reasons cited by members of the Council include: the failure of the Illinois Environmental Protection Agency to appear at the later hearings; inadequacy of Agency inspections; and, the failure of the Illinois Department of Public Health to answer a Councilperson's questions concerning the wastes (II-533, 539). Nothing in the Act requires the Agency to appear at hearings held before the local governing body. The frequency of Agency inspections and the failure of the Department of Public Health to answer are beyond the control of the applicant, and irrelevant to the criteria. Furthermore, the Councilperson's contacts with the Department were outside the record and could not be used as a basis for denial.

Another reason cited by a Council member is inadequate information concerning liners (II-532). As has been noted, the review conducted by the Council's consultant was of a conceptual design, rather than a detailed review. Synthetic liners are to be placed in the locations required by 40 CFR 264, and liners are available which would be appropriate for the wastes to be stored (II-44). Although Appellate Court decisions arguably give the Council authority to consider such construction details, there is no evidence in this record other than that appropriate liners are available. There is no evidence on which the Council could have based its denial.

Other areas not specifically mentioned by the Council members, but addressed by citizens, concern: the necessity for a liner for the basin for storage of treated water; the necessity for groundwater monitoring; and, the advisability of discharging unsold water to the wastewater treatment plant as opposed to direct discharge to the River. The concrete storage basin is not intended to hold hazardous waste, but highly purified water (I-32, Burns & McDonnell report, p. 14). Process water is analyzed prior to discharge with the possibility of return to the treatment process if it is unacceptable (II-35). It appears that it will not be a hazardous waste storage lagoon which would require a liner.

A possible basis for denial which was not cited by any Council member was the lack of groundwater monitoring in the

proposal. Groundwater monitoring at hazardous waste treatment facilities is required by 40 CFR 264.90, which has been adopted as 35 Ill. Adm. Code 724.190. The groundwater protection provisions apply only to facilities which treat, store or dispose of hazardous waste in surface impoundments, waste piles, land treatment units or landfills. The latter three are not involved in this application. The treatment and storage operations for this facility appear to be in tanks and containers which do not trigger groundwater monitoring. Assuming they were impoundments, they could be designed so as to avoid groundwater monitoring under Section 724.322 (II-179). Dr. Robert Ginsburg, testifying for opponents of the siting, was uncertain as to whether groundwater monitoring would be required for this facility (II-413).

The applicant has proposed to discharge any unsold water in batches to the City sewer system which is on critical review because it is hydraulically overloaded (I-57, II-33). An alternative scheme which may be requested by the City, but was not proposed by the applicant, would be direct discharge to the Mississippi River pursuant to NPDES permit (II-34, 144, 360). Discharge to the treatment plant would provide an extra margin of safety in the event of accidental discharge of hazardous constituents, although this could upset the treatment plant. Such accidental discharge is very unlikely because of the batch discharge after analysis (II-33, 191, 358). Discharge of such a volume of clean water to a hydraulically overloaded plant may be inadvisable, even in batches at times of low flow as proposed (II-49, 176, 191, 358). Choice of direct or indirect discharge may depend on how much of the water can be sold. The City in any event retains complete control over whether to accept and how much to charge for such an industrial discharge to its sewer system (II-35, 406).

Another reason cited by a Council member was the lack of information on the untreated wastes to be accepted for storage at the site (II-532). The categories of waste to be accepted for storage and transshipment are limited, and the storage area is limited to 328 drums, with no drum to be stored for more than one month (II-19, 25, 58, 250, 378, 443). There is no indication other than that the drum storage area would meet the standards of 40 CFR 264.170 et seq. (35 Ill. Adm. Code 724.270 et seq.).

Among the reasons cited by citizens, but no Council members, for opposition to the siting is that the applicant lacks the skills needed to operate the treatment units, and that it has a poor record of compliance with environmental regulations at the Andalusia landfill (I-91, II-19, 36, 148, 153, 306, 309, 324, 335, 339, 346, 353, 408, 425, 431, 509).

The site location suitability criteria of Section 39.2(a) of the Act do not mention either the skill of the operator or the history of violations; indeed, the criteria focus on the facility itself, without regard to the operator. The definition of "new regional pollution control facility", contained in Section 3 of the Act, specifies modifications to the facility or wastes which would require reapproval by local government. Sale of the facility to a new operator is not included.

On the other hand, Section 22(b) of the Act allows the Board to adopt standards for certification of operators based on skill and a history of violations; Section 39(i) allows the Agency to deny a RCRA permit based on such history. In the face of these specific provisions dealing with operator skill and past violations, the Board will not read similar requirements into the criteria of Section 39.2(a). The Board therefore holds that evidence of operator skill or past violations is irrelevant to the site location suitability approval (Frinks v. City of Rockford, PCB 83-41, June 30, 1983, p.8).

It should be noted that Dr. Ginsburg's testimony in opposition to the siting centered on the issue of past violations and the operator's skill (II-306, 309, 335, 339). The remainder of Dr. Ginsburg's testimony can be construed as favorable to the design and location of the facility (II-399, 404).

In summary, in reviewing this record, the Board is unable to find any evidence other than that the facility will be designed, located and proposed to be operated so that the public health, safety and welfare will be protected. The Council's finding on criterion 2 is therefore contrary to the manifest weight of the evidence.

In reviewing the design of the facility under the East Peoria and Lake County decisions, the Board has been forced to dwell on details of the design which will also be the subject of review with the Part B RCRA permit application to the United States Environmental Protection Agency and the Illinois Environmental Protection Agency. In the event that authority to issue RCRA permits is delegated to Illinois before the Part B application is acted on, the Board could be in a position of again reviewing this facility pursuant to appeal of a permit denial or issuance with conditions. The Illinois Environmental Protection Agency is not a party to this appeal. The Board's discussion of the facility design in the course of this site location suitability approval decision is not intended in any way to limit the Illinois Environmental Protection Agency's detailed review

of the permit application, and will not limit any future permit review by the Board.

Conclusion

The Council's finding that the proposed facility failed to meet the criteria of Section 39.2(a)(2), (3), (5) and (6) is contrary to the manifest weight of the evidence. The Council's denial of approval of site location suitability is therefore reversed.


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

ORDER

The October 12 and 13, 1983 decision of the Rock Island City Council denying approval of site location suitability pursuant to Section 39.2(a) of the Environmental Protection Act to Watts Trucking Service, Inc. is reversed. Site location suitability for the facility is approved.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 8th day of March, 1984 by a vote of 6-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board