ILLINOIS POLLUTION CONTROL BOARD
December 5, 1986

WASTE MANAGEMENT OF ILLINOIS, INC., a Delaware Corporation,	)	
Petitioner,	)	
v.	)	
McHENRY COUNTY BOARD,	)	
Respondent.	)	PCB 86-109
and	)	
McHENRY COUNTY CONCERNED CITIZENS AND McHENRY COUNTY DEFENDERS,	)	
Cross-Petitioners,	)	
v.	)	
McHENRY COUNTY BOARD and WASTE MANAGEMENT OF ILLINOIS, INC., a Delaware Corporation,	)	
Cross-Respondents.	)	

CONCURRING OPINION (by J. Theodore Meyer):

While I concur in today's result I feel it necessary to file this Concurring Opinion since I strongly disagree with the Board's decision that the McHenry County Board had the authority to consider technical details when evaluating Waste Management's landfill proposal. Principally, the Board bases this conclusion on a case decided in the Third Appellate District, East Peoria v. Illinois Pollution Control Board, 117 Ill. App. 3d 673, 72 Ill. Dec. 682, 452 N.E. 2d 1378, 1382 (3d. Dist. 1983), which was subsequently vacated in a one sentence order without comment by the Illinois Supreme Court on its own motion. (No. 59110, May Term 1984). Obviously, this vacated decision cannot support the finding that county boards may consider technical issues whether or not the reasoning behind the decision was addressed. See Board Opinion at 7. Recognizing this, the Board cites other decisions rendered in the Second and Third Districts adopting the reasoning of East Peoria and concludes that they continue to stand despite their use of the East Peoria decision as underpinning. However, this rationale fails to recognize that the subsequent courts did not conduct independent analyses of the

issue, thereby calling into question the solidity of their "holdings." I find it surprising that, on the basis of such dubious precedent, the Board feels bound to abandon its long-standing view that technical issues are not a matter for local review given the strong policy reasons repeatedly articulated by this Board for holding otherwise. See, Waste Management of Illinois, Inc. v. County Board of Will County, 52 PCB 23, PCB 82-141 (April 7, 1983); Browning-Ferris Indus. of Illinois, Inc. v. Lake County Board, 50 PCB 61, PCB 82-101 (December 2, 1982); Waste Management of Illinois, Inc. v. Board of Supervisors of Tazewell County, 47 PCB 485, PCB 82-55 (August 5, 1982).

Moreover, recent authority exists to support a Board holding otherwise. The most recent decision of the Second District, which contains McHenry County, clearly stated that "the role of local entities is not meant to be unlimited. . . . We can find neither statutory language or indication of relevant legislative intent to persuade us that local control should be extended beyond matters concerning location." M.I.G. Investments, Inc. v. Environmental Protection Agency, No. 2-85-734, Slip op. at 11 (2nd Dist. October 15, 1986). While the Board attempts to treat these statements as dicta, I do not agree that the court's rationale can be so lightly dismissed. Rather, the court's finding that local control extends only to matters concerning location was central to its conclusion that local site approval did not pertain to vertical expansions. The propriety of vertical expansion at a landfill is a technical question to be evaluated by technical experts: the Agency.

Moreover, the Second District's finding that the legislature intended to circumscribe local review to matters concerning location is supported by significant policy reasons. First of all, it seems self-evident that Section 39.2 must be read in consonance with the Environmental Protection Act's purpose "to establish a unified, state-wide program for environmental protection . . . ." Ill. Rev. Stat., ch. 111 1/2, par. 1002(a)(2)(b)(1985). To use the Board's own words, allowing county boards to inquire into such matters as landfill design and construction will result in "total chaos" rather than a unified program. Browning-Ferris, supra at 70. In addition, allowing local entities to duplicate the role of "technical expert" intended for the Agency will necessarily both diminish and complicate the Agency's duty to administer a state-wide program. This duplicative effort will result only in increased costs for the applicant, the Agency and the local entity with no accompanying benefits.

Local entities are already hard-pressed to perform their siting obligations under Section 39.2. Being composed of lay people they generally lack the scientific backgrounds necessary to adequately evaluate the fine points of landfill design such as soil permeability and compaction, liner depth, placement of

groundwater monitoring wells, etc. The legislature simply never intended to open the "can of worms" now made way for by the Board under today's opinion. In fact, the legislative intent clearly demonstrates that the question whether local entities were to begin performing technical reviews under Section 39.2 was considered and expressly rejected as in conflict with the object of Section 39.2. To requote Representative Breslin's explanation concerning the limits of local review "[local entities] are not to make technical decisions as to the suitability of the site, rather that power still lies with the Environmental Protection Agency." State of Illinois, 82nd General Assembly, House of Representatives Transcription Debate, June 17, 1982, at 1 (emphasis added). To now allow local review of technical issues simply negates the separation of functions between the Agency and local siting entities so patently intended by the legislature. In effect, the Board's holding today transforms the multitudinous local siting entities into a host of mini-environmental protection agencies, with all the attendant confusion in the state's environmental program that that course of action invites. With this unfortunate result, I cannot agree.

J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 19th day of December, 1986.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board