BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LANDFILL 33, LTD., Petitioner, v. EFFINGHAM COUNTY BOARD and SUTTER SANITATION SERVICES, Respondents.	)	PCB No. 03-43
STOCK & COMPANY, LLC, Petitioner, v. EFFINGHAM COUNTY BOARD and SUTTER SANITATION SERVICES,	)	PCB No. 03-52

RESPONDENT SUTTER SANITATION SERVICE, INC'S RESPONSE BRIEF

NOW COMES Respondent, SUTTER SANITATION SERVICE, INC., by and through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Charles J. Northrup and David A. Rolf, of counsel, and pursuant to the December 19, 2002 Order of the Hearing Officer in this matter hereby submits its Response Brief.

I. INTRODUCTION

This matter went to hearing before a hearing officer of the Pollution Control Board ("PCB") on December 19, 2002. At the conclusion of the hearing the PCB Hearing Officer ordered simultaneous initial briefs to be filed on January 10, 2003. All parties filed such briefs. Many of the issues raised by Petitioners in their briefs were addressed in Sutter Sanitation Service, Inc.'s ("Sutter") Initial Post-Hearing Brief. As noted below, those issues and arguments

will not be revisited in this Response Brief. Accordingly, this Response Brief may not specifically address all issues raised by Petitioners.

II. ARGUMENT

A. Jurisdiction

As an initial matter, Petitoner Landfill 33 raises an issue contesting the Effingham County Board's jurisdiction to have heard this matter. Section 39.2(d) of the Illinois Environmental Protection Act ("Act") requires that "[n]o later than 14 days prior to such hearing [the hearing before the local siting authority] notice shall be published . . . and delivered by certified mail to all members of the General Assembly from the district in which the proposed site is located . . ." (Emphasis added.) 415 ILCS 5/39.2(d) (West 2002). The record irrefutably demonstrates that Senator Duane N. Noland received notice of the hearing by personal service 14 days prior to the hearing (C. 352).[1] Petitioner Landfill 33 nevertheless asserts that the Effingham County Board lacked jurisdiction to grant local siting approval to Sutter because Sutter failed to comply with statutory notice requirements. In short, Petitioner Landfill 33 argues that the timely notice of hearing the Senator received by personal service is either insufficient or prohibited under the Act, because §39.2(d) only allows service by certified mail. The Board must decided, therefore, whether §39.2(d) prohibits notice of hearing by personal service.

This is not the first time this Board has been presented with a "form over substance" argument relating to methods of service under this section of the Act. In Environmentally Concerned Citizens Organization v. Landfill L.L.C, PCB 98-98, 1998 Ill. Env. Lexis 195 (May

[1] The record also reveals that even though Respondents sent out notice of the hearings by certified mail on July 26, 2002, Senator Noland did not receive his notice by certified mail until August 1, 2002. © 345)(See also Petitioners' _____ at 4)(acknowledging that Senator Noland received notice of hearing by personal service on July 31, 2002, and by certified mail on August 1, 2002).

7, 1998), the Board was asked to determine whether "certified mail" could be used to perfect notice under §39.2(b), even though the plain statutory language of the Act expressly required that service be "in person or by registered mail." Id., Ill. Env. Lexis 195, at *8-9. The petitioner in that case, not unlike the Petitioner in this case, argued "the legislature 'commanded' that notice be given by either personal service or registered mail and made no allowance for any substitute." Id. at *9. The Board responded, however, that it "could not ascertain any substantive difference in the functions provided by registered and certified mail except that registered mail is insured. Id. at *12. The Board also noted that Illinois appellate courts have found in various factual settings that certified mail will serve the purpose of registered mail. Id. at *13. The Board concluded by finding that certified mail met the jurisdictional notice requirements under the Act. Id. at *13.

The Board's reasoning in Environmentally Concerned Citizens Organization is analogous to the reasoning used by the Illinois Supreme Court in Johnson v. Pautler, 22 Ill.2d 299, 174 N.E.2d 675 (1961). In Johnson, the Illinois Supreme Court was asked to address whether personal service was acceptable under the Election Code, even though the plain language of the statute expressly stated that the petition and complaint "shall be delivered by mail." Johnson, 22 Ill.2d at 302,174 N.E.2d at 677. The Court, while debating whether the method of service in the statute was "mandatory" or "directory", explained that "[p]ersonal service has uniformly been regarded by courts of all jurisdictions as the best and most satisfactory service. Johnson, 22 Ill.2d at 304,174 N.E.2d at 678. The Court concluded, therefore, that personal service answered the legislative intent that the clerk receive notice because even though it was essential that the county clerk be notified of the pendency of an election contest proceeding, it was not essential that the clerk receive such notice by mail. Johnson, 22 Ill.2d at 303,174 N.E.2d at 677.

In summary, Petitioner asks this Board to ignore reality and pretend that Senator Noland did not actually receive timely notice of the hearing because he had been served with the notice personally. Despite Petitioners' assertions to the contrary[2], the clear intent of the statute is to ensure that members of the General Assembly are provided with notice 14 days prior to hearing. The record irrefutably demonstrates that Senator Noland had been provided with notice 14 days prior to the hearing using "the best and most satisfactory service" available. There is no basis in fact or law, therefore, to find that the Effingham County Board lacked jurisdiction to grant local siting approval pursuant to §39.2 of the Environmental Protection Act because Senator Noland received notice by being personally served, because Respondents are not precluded from providing notice by personal service by statute. C.f. Johnson, 22 Ill.2d at 304, 174 N.E.2d at 678 (citing Ziff v. Sandra Frocks, Inc., 333 Ill.App. 353 to note that even though the plaintiff in that case had notified defendant by registered mail, a mode of service not provided for in the statute, the "statute does not purport to restrict the making of a demand or the service of notice to the particular method stated in the statute").

In addition to the above argument that notice was appropriate, a precise calculation of the 14 day notice requirement reveals that it has in fact been met in this case. Assuming that the certified mail was delivered to Senator Noland no later than 5:00 p.m. on August 1st, the 14th day (calculated as a 24 hour period) began at 5:01 on August 14th. The hearing, scheduled for 6:30 p.m. was therefore on the 14th day from 5:00 p.m. on August 1st. Receipt of the certified mail before 5:00 p.m. on the August 1st was therefore 14days prior to the day of the hearing.

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[2] Petitioner asserts, without citation to any legislative history or case law, that the clear "legislative intent is to avoid the necessity of probing into the bond fides of purported claims of service being made by agents and employees of siting participants" (Petitioners' _____ at 4).

Accordingly, Senator Nolan did in fact receive the certified mailing of notice 14 days prior to the hearing.

B. Fundamental Fairness

1. Recycling Issues

As anticipated, both Petitioners raised the purported influence of Sutter's existing recycling operation on the deliberations of the Effingham County Board. As noted in Sutter's Initial Post-Hearing Brief, to demonstrate such fundamental unfairness, the Petitioners must establish that a *decision maker* has prejudged the facts and law. Waste Management of Illinois v. Pollution Control Board, 175 Ill.App.3d 1023, 125 Ill.Dec.524 (2nd Dist. 1988). Neither Petitioner argues this point, but rather simply comments on the (unsubstantiated) "threats" by Sutter to cease its recycling operation and the comments by a citizen and non-decision maker, Nancy Deters. Not a scintilla of evidence was presented, or even alleged by Petitioners, that somehow issues of recycling resulted in any Effingham County Board Member having prejudged the law or facts of this case. These arguments are fully addressed in Sutter's Initial Post-Hearing Brief and will not be repeated here.

Petitioner Stock further attempts to argue that somehow the Effingham County Board was "confused" as to what its purpose was, namely to review the Application in light of the nine statutory criteria. However, no evidence of such confusion is presented. Petitioner Stock merely recites the comment of one Effingham County Board Member as to what issues might be *submitted* to the County during the public comment period and (again) the comments of the non-decision maker Nancy Deters. Nowhere in the record has Petitioner Stock pointed to any evidence that issues other than the nine statutory criteria were given any weight by the Effingham County Board. Nowhere in the record is it reflected that there was "confusion" about

what issues were before the Effingham County Board or what could properly be considered. Conversely, the record is replete with statements, cited in Sutter's Initial Post-Hearing Brief, by Chairman Gobczynski and States Attorney Deters, that the County Board's decision was to be limited solely to a review of the nine statutory criteria. In light of this evidence, there was clearly no confusion on the part of the Effingham County Board.

Petitioner Landfill 33 raises the issue that it was somehow prevented from presenting testimony on the recycling issue (33 Brf. 5). This argument is not supportable. Again, as noted in Sutter's Initial Post-Hearing Brief, when issues of recycling were presented, primarily through the response to questions, Effingham County Board Chairman Gobczynski admonished the Board that such issues were not to be considered in the Board's deliberations. These admonishments were expressly accepted by Petitioner Landfill 33 as satisfactory, and Petitioner Landfill 33 chose not to pursue the recycling issue. Indeed, had Petitioner Landfill 33 wanted to make a record on any issue with respect to recycling, it could have made an offer of proof or submitted such information via a public comment. It *chose* not to do so, and as reflected in Sutter's Initial Post-Hearing Brief, it has waived the issue.

2. Purported Visits to the Facility by County Board Members

Both Petitioner Landfill 33 and Petitioner Stock take issue with a purported visit/tour to the location of the proposed facility by certain Effingham County Board Members. Both Petitioner's seriously misrepresent the facts of this "visit/tour."

Petitioners cite the same two references in the record of a purported site visit/tour. First, there is a notation in the minutes of the *April*, 2002 County Board proceedings which indicate that a tour was scheduled for July 31, 2002 (C108-109). Second, there is testimony from Tracey Sutter that the waste committee (or certain members of it) had come to the site of the proposed

transfer station. Based upon these references, Petitioners claim the proceedings were fundamentally unfair. As noted, Petitioners seriously misrepresent these references.

During the pendency of the Application the Effingham County Board (or the waste committee) did not visit/tour the proposed waste transfer facility. First, the notation in the Effingham County Board minutes is nothing more than that a proposed site visit had been *scheduled* by the County. Other than this notation, there is no evidence in the record, presented by any party, including Petitioners, that this proposed visit/tour ever occurred. Despite the absence of any evidence in the record of a July 31, 2002 visit/tour, Petitioner Landfill 33 makes the bold pronouncement that "the County Board visited the transfer station on Wednesday, July 31, at 6;30 p.m. (33 Brf 6). Not only did this visit not take place, but there is simply no evidence to support that it did. Petitioner Stock at least acknowledges that there is no evidence of such a visit/tour taking place, but argues that there is no evidence that it didn't take place (Stock Brf. 38). To the contrary, and as discussed below, evidence does exist that no site visit occurred during the pendency of the Application. More importantly, Petitioner Stock cannot simply raise an allegation and then argue it is true because Sutter and Effingham County have not disproved it. The burden lies with Petitioner Stock to show that the purported visit/tour took place. It has not done so. For these reasons alone, Petitioner Stock's fanciful arguments on this point must fail.

Second, the record does reflect a visit by members of the waste committee to the site of the proposed transfer station. However, when the record is read as a whole, it is clear that the visit was to Sutter's recycling operation (which does occur at the same site as the proposed transfer facility) and that, in any event, it occurred prior to the Application even being filed with Effingham County. In his testimony, cited by Petitioners, Mr. Sutter makes it clear that

members of the waste committee visited the site to see Sutter's *recycling* operation (C. 191). The fact that this visit occurred before the Application was even filed is further supported by Mr. Sutter's testimony, made during an offer of proof presented by Petitioner Landfill 33, wherein the following exchange took place between Tracey Sutter and the attorney for Petitioner Landfill 33:

> "Q. So if I understand you correctly, even though the county board chairman set a date for the county board to tour your facility, you don't know anything about that; is that correct?
>
> A. Not of that date right there [July 31, 2002].
>
> Q. What date do you know about?
>
> A. The date that would have been prior to my proposed application of April 19th.
>
> Q. Okay.
>
> A. That's when the waste committee was there in regards to the recycling facility.

(Hrg tr. 73-74).

Further, even the absence of questions or commentary from the County Board Members such as "when we were at the facility we saw X, Y or Z" is instructive. No such questions or commentary exists. In fact, it is clear from the questions of the County Board that they were not familiar with the facility in any way. The visit/tour by members of the waste committee to review the recycling operation, which predated the submission of the Application, is not prohibited by PCB precedent nor, in any event, has the fact of such a visit demonstrated any prejudice to the Petitioners. Accordingly, Petitioners' claims must fail.

3. Familial Relationships

Petitioner Stock, as anticipated, raised the issue of *potential* bias due to non disclosure of certain familial relationships (Stock Brf. 36). This issue, including waiver arguments, was fully

addressed in Sutter's Initial Post-Hearing Brief and those arguments will not be repeated here. Again, however, Petitioner Stock has presented no evidence to meet its burden that any Effingham County Board Member had prejudged the facts or law in advance of the hearing.

Petitioner Stock does raise a new issue in this regard. In its Petition, Stock only alleged the potential bias stemming from the relationship between Duanne Stock and his cousin Effingham County Board Member Karen Willenburg. In its Brief, Petitioner Stock now raises the issue of the relationship between Effingham County State's Attorney Ed Deters and public commentator Nancy Deters (Stock Brf. 36). Indeed, State's Attorney Ed Deters is the son of Nancy Deters. Notwithstanding the fact of this relationship, Petitioner Stock can not meet its burden on demonstrating bias on the part of a *decision maker*.

As an initial matter, any argument with respect to any fundamental unfairness because of the familial relationship between States Attorney Deters and public commentator Nancy Deters has been waived by failing to raise it at the Effingham County Board hearing. The legal authority for this argument has been previously set out in Sutter's Initial Post-Hearing Brief with respect to the familial relationship between Stock and Board Member Willenburg. Second, the standard necessary to show bias is that the decision maker had somehow adjudged the facts and law prior to the hearing. Waste Management, 125 Ill.Dec. at 538. Petitioner Stock presents no evidence or allegation that any *decision maker*, i.e. an Effingham County Board Member, had somehow prejudged the law and facts of this case prior to the hearing. Third, allegations of bias stemming from the participation of a States Attorney have been routinely rejected by the Board. Tate et al. v. Macon County Board et al., PCB No. 88-126, p. 8 (December 15, 1988). Fourth, the innuendo that somehow State's Attorney Deters and his mother were conspiring to have the

Effingham County Board approve the Application without thorough and appropriate consideration was dispelled during the following colloquy at the PCB hearing:

> "Q. And its fair to say that you and I - - I have never indicated to you that I shared your views in this case - -
>
> A. Oh, please.
>
> Q. - - at all; is that correct?
>
> A. You don't share my views about anything. Rarely.

(PCB tr. 37).

In light of the above arguments, any claim that the relationship between State's Attorney Deters and public commentator Nancy Deters somehow prejudiced the Petitioners must be rejected. There has been no evidence of any bias on the part of any decision maker, and no prejudice has been shown by Petitioner Stock.

4. Unavailability of the Transcript

Petitioner Stock, as anticipated, raised the issue of the unavailability of a transcript of the Effingham County Board hearing. Here too this issue was fully briefed in Sutter's Initial Post-Hearing Brief. As noted in the Initial Post-Hearing Brief, no prejudice has been shown by Petitioner Stock in not having a copy of the transcript when it was requested which was *16 days* after Effingham County had made its decision and *18 days* after the close of public comment. Petitioner Stock seeks to make new law by arguing that its failure to have a copy of the transcript prior to the appeal deadline somehow rendered the proceedings unfair (Stock Brf. 31). A simple review of Petitioner Stock's Petition demonstrates that this is not the case. Petitioner Stock's Petition was a complete, valid and represented an appropriate framing of the issues on appeal before the PCB. The failure of Petitioner Stock to obtain a copy of the transcript has had no

effect on its ability to preserve or adequately pursue its appellate rights. In this regard, it should also be considered by the PCB that well before the close of the appeal period, Petitioner Stock was advised it could obtain a copy of the transcript from Sutter's attorneys. Notwithstanding this advise, and while represented by counsel, Petitioner Stock chose not to even contact Sutter's attorneys to obtain a copy. This failure, perhaps part of a conscious litigation strategy, should not be rewarded by the PCB.

C. Statutory Criteria

As set out fully in Sutter's Initial Post-Hearing Brief, when reviewing a local siting authority's decision on the nine statutory criteria, the PCB must determine whether the local siting decision is against the manifest weight of the evidence. E.g. American Bottom Conservancy et al. v. Village of Fairmont City et al., PCB No. 01-159 (October 18, 2001). Under this standard, a reversal is not warranted if the local siting authority gave greater weight to some but not other, or even conflicting evidence. Id. Indeed this is an important rule in that much of the discussion of the nine statutory criteria is a "battle of the experts." Nevertheless, the PCB is guided by the principle that to find a local siting authority made a decision against the manifest weight of the evidence, the opposite of that decision must be clearly evident, plain or indisputable from a review of the evidence. Id.

1. Criterion 1

Both Petitioner's attack the findings of the Effingham County Board on the "need" criteria. These issues were extensively addressed in Sutter's Initial Post-Hearing Brief and will not be reiterated here. Petitioners raise no new information on this criteria. In this regard, the need criteria was clearly met by evidence and testimony of the rapidly diminishing capacity of Effingham County area landfills and the economic viability of the proposed waste transfer

station. In light of this evidence, the Effingham County Board's decision is clearly not against the manifest weight of the evidence.

2. Criterion 2 and 5

Both Petitioners contest the Effingham County Boards determination that criteria 2 and 5 were satisfied. These criteria generally address whether the proposed facility will adequately protect the public health and safety (Criterion 2) and whether the proposed plan of operations will minimize the danger to the surrounding area from fire, spills or other operational accidents (Criterion 5). Specifically, the Petitioners raise questions concerning a number of aspects of the proposed facility that might implicate the possibility of some sort of a problem or concern. However, the discussion of these issues is not whether or not the Petitioners are crafty enough to pose hypothetical problems or the possibility of some occurrence happening at the facility. The issue is also not whether Sutter can guarantee that no accidents or problems will occur at the facility. Clutts v. Beasley, 185 Ill.App.3d 543, 541 N.E.2d 844 (5th Dist. 1989). The simple question is whether or not evidence or testimony exists that supports the Effingham County Board's decision that any such problems will be minimized and that the public is protected. The answer to this question is clearly yes.

The Petitioners seek to raise any many potential concerns as possible in an attempt to identify an issue that may not have been specifically addressed by Sutter or the Effingham County Board. In such a case, the Petitioners can then say the Effingham County Board overlooked an issue of potential concern. Such an attempt must fail. In this case, Sutter produced witnesses an expert testimony indicating that each of the nine statutory criteria had been satisfied. The simple fact that Petitioners may have produced competing experts is simply not enough to meet their burden..

Nevertheless, Sutter will briefly address the points raised by the Petitioner's as grounds for reversing the Effingham County Board's decision.

First, both Petitioners contend that siting is inappropriate because of the presence of a house on the site of the proposed waste transfer station. As the evidence shows, and as was demonstrated to the Effingham County Board, this is a non issue. As required by the Illinois Environmental Protection Act, no transfer station can be established within 1000 feet of a "dwelling." 415 ILCS 5/22.14. Sutter fully acknowledged that there is a house on the site (C. 147). Sutter also fully acknowledged that this house is going to be used as an office for the facility, not a house where someone will live (Id.). In granting the proposed siting, the Effingham County Board necessarily judged this to be a credible statement. The Petitioner's seek to persuade the PCB that somehow this statement is not true. However, they have presented no evidence to the contrary, nor can they. In addition, as an office for the facility, the house is not a "dwelling" and therefore does not fall within the prohibitions of Section 22.14 of the Act. People v. Bonner, 221 Ill.App.3d 887, 164 Ill.Dec. 502 (1st Dist. 1991).

Both Petitioners also raise the specter of a home across the street from the proposed transfer station thus precluding ultimate approval by the Illinois EPA (Stock Brf. 19, ftnte 6; Landfill 33 Brf. 14). First, no evidence of the existence of this "home" is in the record. In fact, no home has been across the street from the proposed siting location for several years (PCB tr. 49). Just recently, however, Petitioner Stock moved a mobile home onto the property in an effort to defeat required Illinois EPA approval. Such a back door, and belated, attempt to undue the decision of the Effingham County Board will not succeed under Section 22.14(b) of the Act. More importantly, it is not an issue properly before the PCB.

Second, Petitioner's raise concerns with the thickness of the concrete floor and potential cracking. The thickness of the floor was addressed in Sutter's public comment (this particular agruement was addressed in more detail in Sutter's Initial Post-Hearing Brief) (C. 387). Also, the issue of cracks was addressed during the hearing when it was made clear that any cracks would be promptly sealed (C. 268-269). Third, Petitioner's raise an issue with respect to the ability of the existing buildings to accommodate the waste trucks. Here too, this issue was given a full airing by the Effingham County Board, discussed, and Mr. Sutter testified that the existing buildings do indeed provide adequate clearance (C. 263 - 265). Fourth, an issue was raised with respect to the wooden construction of the buildings. However, it was also made clear that these structures are not solely wooden but are made of steel as well (C. 265). In addition, expert testimony exists as to the development of a continegncy plan in the event of fire (C. 158 -159). Fifth, an issue of staffing was raised. Here too the issue of appropriate staffing was addressed by Mr. Sutter during the hearing (C. 264-265). Sixth, leachate was raised as an issue. Again, this issue was addressed in the Application itself as well as the expert testimony from Sutter (C. 149 -152, 154). Seventh, the issue of danger from fire was also adressed and discussed (C. 158 - 159). Finally, issues were raised concerning traffic to and from the facility. Here too, Sutter's experts prepared a traffic impact study and ultimately opined that the proposed transfer station will minimize impact on existing traffic flow (C. 176). In all these instances, evidence was introduced that demonstrated compliance with the criteria at issue. In light of this evidence, it was not against the manifest weight of the evidence for the Effingham County Board to perhaps weigh the testimony of Sutter and its experts greater than that of the Petitioners and find the criteria satisfied.

3. Criterion 3

Petitioner Stock contests Effingham County Board's finding with respect to criterion three. The sole basis of Petitioner's argument is that Sutter failed to provide any evidence that the proposed facility will minimize incompatibility with the character of the surrounding area (Stock Brf. 22). This argument cannot stand. At hearing, Sutter's expert witness (Mr. James Bitzer) on this issue specifically testified that in his opinion the proposed facility, within a reasonable degree of his profession as a real estate appraiser, satisfied criterion 3 including minimizing any incomparability with the surrounding area (C. 182). This opinion was based upon the experts experience in the field, which included familiarity with other waste transfer sites, and a review of the property in question (including its use as a former commercial gain elevator). Based upon this foundation, the expert was fully capable of rendering an expert opinion. Accordingly, to say that no evidence was presented on this criteria is not correct. Furthermore, the Courts have upheld the sufficiency of expert testimony to satisfy this criterion. Moore v. IPCB, 203 Ill.App.3d 855, 148 Ill.Dec. 864 (5th Dist. 1990). Also it should noted that Petitioner Stock had the opportunity, and in fact did, cross examine this expert.

These facts clearly show that the Effingham County Board appropriately decided this issue. Under the applicable standard of review in siting cases (discussed in Sutter's Initial Post-Hearing Brief), Petitioner Stock has not demonstrated that a result opposite from the one determined by the Effingham County Board is "clearly evident, plain or indisputable from a review of the evidence." American Bottom Conservancy, PCB No. 01-159 p. 2 (October 18, 2001).

4. Criterion 8

Both Petitioner's contest the Effingham County Board's finding with respect to criterion eight. In support of the satisfaction of this criterion, Sutter presented the testimony of one of its experts, David Kimmle. Mr. Kimmle was familiar with the Effingham County Solid Waste Management Plan (C. 160). Mr. Kimmle highlighted for the Effingham County Board the Plan's preference for allowing waste haulers to choose the landfill at which they dispose of their waste as well as the encouragement of out of county waste disposal (C.162). Ultimately, Mr. Kimmle expressed his expert opinion that the Application was consistent with the Plan (C. 162). Mr. Kimmle's testimony is amply supported by the Plan itself.

In contrast to Mr. Kimmle's testimony, Petitioner Landfill 33 also presented the opinion of an expert witness. Despite the fact that the Petitioner Landfill 33 expert acknowledged that the Plan adopted in 1995 (and updated in 1999) called for an option of transfer stations, the expert opined that it wasn't included within the specific recommendations of the Plan (C. 215). Even assuming that this argument is correct in that a waste transfer station was not specifically recommended, the expert would have the County Board disregard those portions of the Plan which call for flexibility and allow for a response to changing waste needs and economic circumstances. Such concepts of flexibility are incorpoarted into the Plan as identified by Mr. Kimmle. Indeed, even Petitioner Landfill 33 should not be allowed to complain on the Plan's flexibility in that it has reaped the benefit of an acceleration of the Plan's specific recommendations that Landfill 33 not be allowed to expand until 2009.

Petitioner Stock simply refers back to its arguments on the need criterion and does not address any specific inconsistency between the Plan and the Application. Petitioner Stock does not refer to any section of the Plan that restricts the development of a transfer station, nor does it point to any expert testimony on this issue. Accordingly, its arguments must fail.

Ultimately, the Petitioners burden is to demonstrate that an inconsistency between the Plan and the siting of a waste transfer station was clearly evident, plain and indisputable from the evidence. Petitioners cannot simply hold up a competing expert who has developed an alternative theory of the Plan to meet this burden. Even in the face of conflicting evidence, the PCB cannot reverse a county decision merely because the local siting authority credits some evidence over other evidence. St. Clair County v. Village of Sauget et al., PCB No. 93-51, p. 5 (July 1, 1993). Similiarly, just because a local siting authority could draw different inferences and conclusions from conflicting testimony does not warrant a reversal of the local authority's findings. Id.. This well settled case law prevents the PCB from reversing the Effingham County Boards findings on this issue.

III. Conclusion

For the reasons set forth above, as well as the reasons identified in Respondent Sutter Sanitation Service, Inc.'s Initial Post-Hearing Brief, Respondent Sutter respectfully requests that the Pollution Control Board affirm the September 16, 2002 decision of the Effingham County Board approving Sutter's Request for Local Siting Approval for a Proposed Solid Waste Transfer Station in Effingham County.

Respectfully submitted,

SUTTER SANITATION SERVICES

By: _____
One of Its Attorneys

Sorling, Northrup, Hanna, Cullen
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PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served by hand delivery on Friday, January 17, 2003 to:

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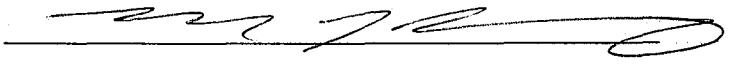

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