ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

HORACE FILE, ERWIN HEIGER, ARLIN WOKER ANDY TIFT, LAYTON PEDDICORD, BURNELL NEUMANN, LAVERLE EAKLE, LYNN SCHMOLLINGER, HOWARD PRINGLE, REID BINGHAM, CRAIG WOKER, MRS. O.J. DAIL, JEANETTE TIFT, ARLENE DAIL, GLEN MILES, JUANITUA HEDIGER, LEILA MILES, BILL GOODALL, CAROLYN SPRADLING, DONNA HAMPTON, HOLLIE WILLMAN, CHARLES H. FUNK, LEROY WEISE, MIKE EATON, PAM FUNK, JIM STOECKLIN, MARY BLOEMKER, DONALD SPRADLING, BOB BOWEN, DON MARTIN, JEANETTE FILE, and BOND COUNTY CONCERNED CITIZENS,	)	
Petitioners,	)	
v.	)	PCB 90-94 (Siting Review)
D & L LANDFILL, INC., BOND COUNTY BOARD OF SUPERVISORS, COUNTY OF BOND, STATE OF ILLINOIS,	)	
Respondents.	)	

JAMES BUCHMILLER APPEARED FOR PETITIONERS;

WILLARD A. DILLOW APPEARED FOR D & L LANDFILL;

JOHN KNIGHT, BOND COUNTY STATE'S ATTRONEY APPREARED FOR BOND COUNTY SUPERVISORS.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board upon a petition for hearing filed by petitioners on May 7, 1990 contesting the decision of the Bond County Board of Supervisors ("County Board") granting D & L Landfill (D & L) site location approval for a new regional pollution control facility. Petitioners are persons living and/or owning property in the vicinity of the proposed facility and bring this appeal pursuant to Section 40.1(b) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1040.1(b)).

PROCEDURAL HISTORY

On October 10, 1989, D & L filed its application for site

location suitability approval for a proposed facility to be located at the southwest entrance to Greenville, Bond County, Illinois. The proposed facility would be located adjacent to an existing facility (the "McCray" landfill) also owned by D & L, but it would be developed and operated independent of the McCray facility. (BCB Ex. 1)[1] On January 24, 1990, a public hearing was held in Bond County. The testimony and exhibits introduced at that hearing will be addressed in the "DISCUSSION" section of this opinion. On April 3, 1990, Bond County reached its decision finding that, with the imposition of certain conditions, D & L had met its burden of proof on each of the six applicable criteria set forth in Section 39.2 of the Act. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1039.2.)

In their petition for hearing filed May 7, 1990, petitioners assert that the County Board's decision that D & L met its burden of proof on criteria 1, 2, 3 and 6 of Section 39.2 of the Act is against the manifest weight of the evidence. Petitioners therefore request that the Board reverse the County Board's decision granting site location approval.

SCOPE OF REVIEW

Requirements for the siting of a new regional pollution control facility are set forth in Section 39.2 of the Act. Section 39.2 sets forth nine criteria, six of which are applicable here, which must be satisfied in order to obtain site approval. Upon review, the Board is required to review each of the challenged criteria. (Waste Management v. PCB, 530 N.E.2d 682, 691-92 (2d Dist. 1988).) In the instant matter, petitioners challenge the County Board's findings on four of the applicable six criteria.[2] Therefore, the Board must determine whether the County Board's decisions on criteria 1, 2, 3 and 6 are against the manifest weight of the evidence. (Waste Management of Illinois v. PCB, 461 N.E.2d 542 (3d Dist. 1984).) The standard of manifest weight of the evidence has been explained in the following manner:

> A verdict is ... against the manifest weight of the evidence where it is palpably erroneous, wholly unwarranted, clearly the result of passion or prejudice, or appears to be arbitrary, unreasonable, and not based upon the evidence. A verdict cannot be set aside

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[1] "BCB Ex. ___ " denotes exhibits introduced by the County Board. "BCC Ex. ___ " denotes exhibits introduced by petitioners, Bond County Concerned Citizens.

[2] Neither petitioners nor D & L have challenged the imposition of conditions imposed by the County Board. Consequently, the Board will not review the propriety of those conditions.

> merely because the [County Board] could have drawn different inferences and conclusions from conflicting testimony or because [the Board] would have reached a different conclusion ... when considering whether a verdict was contrary to the manifest weight of the evidence, [the Board] must view the evidence in the light most favorable to the [party for whom favorable judgment was rendered].
>
> (Steinberg v. Petta, 487 N.E.2d 1064, 1069 (1st Dist. 1985).)

Consequently, if after reviewing the record, this Board finds that the County Board could have reasonably reached its conclusion, the decision must be affirmed. That a different conclusion might also be reasonable is insufficient for reversal; the opposite conclusion must be clearly evident. (Willowbrook Motel v. PCB, 481 N.E.2d 1032 (1st Dist. 1985).)

DISCUSSION

In reviewing the County Board's decision, the Act requires that the Board consider the "fundamental fairness of the procedures used by the ... governing body of the municipality in reaching its decision." (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1040.1(a).) Here, petitioners do not challenge the procedures used by the County Board in reaching its decision. After reviewing the record, the Board finds that the County Board adhered to principles of fundamental fairness in reaching its decision.

Criterion 1

Section 39.2(a)(1) of the Act requires the County Board to review D & L's request for site location approval to ensure that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1039.2(a)(1).) The Board must determine whether the Count Board's finding that D & L established "need" is against the manifest weight of the evidence.

Mr. David Kimmle, a civil engineer employed by Hurst-Rosche Engineers, Inc., the firm hired by D & L to prepare its application, testified on behalf of D & L. (Tr. at 11-53.) Kimmle testified that the existing McCray facility has a "minimal" remaining capacity, but that he did not know the exact figure. (Tr. at 52.) Mr. Thomas Connor, a civil engineer and Director of Hurst-Rosche, testified that the McCray facility had a remaining capacity of "two years based on our calculations." (Tr. at 58.)

Petitioners introduced a report prepared by the Agency in

March 8, 1988 entitled "Annual Solid Waste Disposal And Landfill Capacities In Southwestern Illinois" in support of their contention that the facility is not "needed". (BCC Ex. 10.) Petitioners did not present the testimony of anyone familiar with the preparation of this report but cross-examined Mr. Kimmle's position on "need" based upon a statement in the report that the McCray landfill had a remaining capacity of 16 years based upon 1987 data. (Tr. at 35-38.) Mr. Kimmle did not agree with the findings contained in the report stating that "Bond County is well aware that there is not 16 years of life available." (Tr. at 37-38.)

The appellate court has held that an applicant for siting approval need not show absolute necessity in order to satisfy criterion 1. (Clutts v. Beasley, 541 N.E.2d 844, 846 (5th Dist. 1989); A.R.F. Landfill v. PCB, 528 N.E.2d 390, 396 (2d Dist. 1988); WMI v. PCB, 461 N.E.2d 542, 546 (3d Dist. 1984).) The Third District has construed "necessary" as connoting a "degree of requirement or essentiality." (WMI v. PCB, 461 N.E.2d at 546.) The Second District has adopted this construction of "necessary", with the additional requirement that the applicant demonstrate both an urgent need for, and the reasonable convenience of, the new facility. (Waste Management v. PCB, 530 N.E.2d 682, 689 (2d Dist. 1988; A.R.F. Landfill v. PCB, 528 N.E.2d at 396; WMI v. PCB, 463 N.E.2d 969, 976(2d Dist. 1984.).)

In their petition to the Board, petitioners state that criterion 1 has not been met because D & L failed to introduce evidence "establishing the radius of the proposed site." The record does not contain specific evidence of the proposed service area. However, given that both D & L and petitioners addressed "need" in terms of the remaining capacity of the existing McCray facility, it is reasonable to conclude that the parties and the County Board, being familiar with the area, assessed need in terms of the area serviced by the existing facility. The Board finds that the failure to define a specific radius under the circumstances presented here does not, in and of itself, warrant the conclusion that the County Board's decision on criterion 1 is against the manifest weight of the evidence.

The Board notes that the record in this case is sparse, both regarding evidence introduced in support of the application by D & L and rebuttal evidence introduced on behalf of petitioners. D & L's evidence relating to need, discussed above, is not extremely detailed. The evidence on the remaining capacity of the existing landfill is conflicting; a range of two years to 16 years was presented to the County Board. Neither D & L nor petitioners went to great lengths to attempt to explain this discrepancy. The Board finds that the County Board could have reasonably rejected reliance upon the Agency's 1988 report and concluded that the proposed facility is needed based upon the testimony presented by D & L. The County Board could have also accepted the evidence of remaining capacity in the Agency report, yet still concuded that the proposed

facility is "needed." As noted above, merely because the County Board could have drawn different inferences and conclusions from this conflicting testimony is not a basis for this Board to reverse the County Board's finding. (Steinberg v. Petta, 487 N.E.2d at 1069.) The Board cannot say, based upon the record, that the County Board's decision that the proposed facility is necessary is "palpably erroneous" or "wholly unwarranted." (Id.) Therefore, the Board concludes that the County Board's decision that D & L met its burden of proof on criterion 1 is not against the manifest weight of the evidence.

Criterion 2

The second criterion of Section 39.2 of the Act requires that the applicant establish that the proposed facility is so designed, located and proposed to be operated so that the public health, safety and welfare will be protected. The record includes a report detailing the findings of a subsurface investigation of the proposed site prepared by Atlas Soils, a subsidiary of Hurst-Rosche Engineers, Inc. (BCB Ex. 2.) Mr. Kimmle testified that 20 soil borings were taken in order to evaluate the hydrogeologic conditions beneath and surrounding the site. (Tr. at 13, 17-20.) According to Mr. Kimmle, the findings of this investigation indicate that the site is "primarily glacial till, which is a hard compact soil." (Tr. at 17; BCC Ex. 1 at 15.) Numerous "sand lenses" were also found. (Id.) Kimmle testified that sand lenses are small seams of sand and that there is usually groundwater associated with sand lenses. (Id.) D & L plans to excavate down to the hard glacial till and excavate out any sand lenses before any trash placement occurs. (Id.) The sand lenses would be replaced with material sufficient to meet the requirement of 10 feet of clay liner. (Id.) Kimmle also testified regarding the proposed groundwater monitoring system. (Tr. at 18.) The subsurface investigation report also sets forth details of the proposed monitoring system. (BCC Ex. 2 at 17-18.) Approximately 15 wells would be installed to monitor possible groundwater contamination. (Id.)

Petitioners cross-examined Kimmle regarding a letter he had received from the Illinois State Geological Survey Division of the Illinois Department of Energy and Natural Resources. (BCC Ex. 1 at F-1; BCC Ex. 4.) This letter was in response to D & L's request for a preliminary hydrogeologic evaluation and was based upon six boring logs provided by D & L and not on an on-site investigation. The letter states that the materials beneath the proposed expansion "have a relatively high potential for contamination. ... If shallow trenches are planned, there appears to be a moderate chance of groundwater contamination ... ." Kimmle responded that the trenches would be sufficiently deep to excavate out the sand lenses which will then be replaced with suitable liner material, thereby protecting the groundwater. (Tr. at 26-28.) Kimmle also testified that, in addition to the clay liner, a synthetic liner would be

installed. (Tr. at 28.) Mr. Connor also testified regarding the liner, leachate collection system and groundwater monitoring system. (Tr. at 54-65.)

In their petition for hearing, petitioners state that "[t]here was no substantial evidence received that the facility [would meet the requirements of criterion 2]. According to petitioners:

> "[t]he uncontradicted evidence was that the facility would extend twenty feet above the existing elevation in the immediate area of existing residences. That the facility would be within site of work and mounds of trash, within earshot of compacting and heavy equipment and burial operations; could be smelled by nearby residents, and from uncontradicted testimony from real estate appraisers that real estate property and residents in the area would be severely depressed. There was also uncontradicted evidence submitted by the respondent that the site was immediately adjacent to one of the main entrances at the city limits of the City of Greenville, it could be heard, seen and smelled by persons on the major highway coming to and from the city at one of its main entrances to a residential area.

The Board fails to see how these matters raised by petitioners relate to the public health, safety and welfare factors of criterion 2. Rather, these matters seem more relevant to an assessment of the County Board's finding on criterion 3. In any event, D & L provided sufficient evidence, both in its application and supporting documents and testimony, to support the County Board's decision that criterion 2 has been satisfied. The Board finds that the County Board's decision that D & L established that the facility is designed and will be operated to protect public health, safety and welfare is not against the manifest weight of the evidence.

Criterion 3

Criterion 3 of Section 39.2 requires that the facility be 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. The proposed facility is located approximately 600 yards to the east/northeast of the city limits of Greenville in a sparsely populated area used primarily for farming. (BCB Ex. 1 at 13.) The area is zoned as agricultural or general manufacturing. (BCB Ex. 1 at 13.) There is one residence within 200 feet of the facility and approximately 4 residences within 500 feet of the proposed site. (Tr. at 42.) D & L proposes that the following measures be taken to minimize the site's incompatibility with the surrounding area: the facility would be limited in height to 20 to 30 feet above the highway (Tr. at 40); a row of oak trees approximately 3 inches in diameter and 6 to 8

feet tall would be planted along the highway to conceal the site (Tr. at 15, 33); a 6 foot high woven wire fence will be installed around the site; and the exterior slopes would be landscaped with grass. (Tr. at 40.) D & L did not conduct a study of the impact of the proposed facility on the surrounding property values. However, it did present the testimony of a witness who purchased a home within 750 feet of the existing landfill in 1986 for $62,500. (Tr. at 69-71.)

Petitioners introduced several statements from realtors opining that the value of certain properties would be significantly decreased if the proposed landfill went forward at the proposed site. (BCC Ex. 5-8.) The realtors who prepared these statements were not available for cross-examination. However, on cross-examination of one of the petitioners familiar with the appraisals it was revealed that several of the valuations were based upon an incorrect assumption of where the entrance to the proposed facility would be located. (Tr. at 104-05.)

The appellate court has construed criterion 3 as requiring that the testimony adequately show that the applicant has taken steps to do what is reasonably necessary to minimize incompatibility. (Waste Management of Illinois v. PCB, 463 N.E.2d 969, 980 (2d Dist. 1984).) D & L presented sufficient evidence of proposed measures to be taken to minimize the proposed facility's impact on the surrounding area. The County Board could reasonably have concluded that D & L's proposed actions were reasonably calculated to minimize incompatibility. Additionally, criterion 3 requires only that the applicant establish that the facility be located to minimize, not eliminate, the effect on surrounding property values. The Board cannot say that the County Board's rejection of reliance upon the realtors' appraisals, where those persons were not available for cross-examination, is wholly unwarranted in light of testimony that homes were purchased near the existing McCray site. The Board concludes that the County Board's decision that D & L met its burden on criterion 3 is not against the manifest weight of the evidence.

Criterion 6

Criterion 6 of Section 39.2 of the Act requires that the applicant establish that the "traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." Mr. Kimmle testified that entrance to the proposed facility would be by way of the entrance to the existing facility. (Tr. at 41; BCB Ex. 1 at 23.) An access road will be provided from the existing site to the proposed site. (Id.) Petitioners' cross-examination of Kimmle revealed that the road leading to the entrance is a two-lane highway. (Tr. at 41.) Petitioners also introduced the testimony of Erwin Hediger who lives near the proposed site. Mr Hediger testified that highway is old and narrow. (Tr. at 92.) Mr. Hediger expressed concern about

increased traffic resulting from the proposed facility.

The Board reiterates that the record in this matter is far from replete with evidence. Given the evidence concerning use of the existing entrance to the McCray facility, the County Board could have concluded that the impact on existing traffic patterns would be minimal. Again, the Board is constrained in its review by the "manifest weight of the evidence standard of review" and concludes that the County Board, being familiar with the means of access to the proposed facility, could have reasonably concluded that D & L met its burden of proof on criterion 6. Therefore, the Board finds that the County Board's decision is not against the manifest weight of the evidence.

Based upon the foregoing, the Board concludes that the decision of the County Board finding that D & L has met the requirements of Section 39.2 of the Act and granting D & L site approval is not against the manifest weight of the evidence.

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

ORDER

The decision of the Bond County Board of Supervisors granting D & L Landfill, Inc. site location approval is hereby affirmed.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for the appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

B. Forcade concurs.

J. D. Dumelle dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 30th day of August, 1990, by a vote of 6-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Pollution Control Board