

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN BOTTOM CONSERVANCY,)
EAST ST. LOUIS COMMUNITY)
ACTION NETWORK, KATHY ANDRIA)
and JACK NORMAN,)
)
Petitioners,)
)
vs.) No. PCB 01-159
)
VILLAGE OF FAIRMONT CITY and)
WASTE MANAGEMENT OF ILLINOIS,)
INC.,)
)
Respondents.)

Proceedings held on August 16, 2001, at 1:00 p.m., at
St. Clair County Building, 10 Public Square, Room B-564,
Belleville, Illinois, before Steven C. Langhoff, Hearing Officer.

Reported by: Lynn E. Bartimus, CSR, RPR
CSR License No.: 084-004150

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A P P E A R A N C E S

LAW OFFICE OF YVONNE M. HOMEYER, P.C.

BY: Yvonne M. Homeyer, Esq.
225 South Meramec, Suite 325
St. Louis, MO 63105
On behalf of the Petitioners

PEDERSEN & HOUPT

BY: Donald J. Moran, Esq.
161 North Clark Street, Suite 3100
Chicago, IL 60601-3224
On behalf of Waste Management, Inc.

LAW OFFICE OF JOHN BARICEVIC

BY: John Baricevic, Esq.
4010 N. Illinois St.
Belleville, IL 62226
On behalf of Fairmont City

Also Present:

Kathy Andria	(Petitioner)
Kathleen O'Keefe	(Member of American Bottom Conservancy)
Scott Penny	(Chief of Police, Fairmont City)
Alex Bregen	(Mayor of Fairmont City)
Chuck Schaeffer	(St. Clair County Health Department)
David Schneidewind	(Asst. State's Attorney, St. Clair County)
Frank Boyne	(St. Clair County Board Member)
Joe Durako	(Division Vice-President, Waste Management)
Ernest Dennison	(Environmental Engineer, Waste Management)

E X H I B I T S

No exhibits were marked.

1 P R O C E E D I N G S

2 (August 16, 2001; 1:00 p.m.)

3 HEARING OFFICER LANGHOFF: Good morning, everyone. My name
4 is Steven Langhoff. I'm the Pollution Control Board Hearing
5 Officer who will be handling this hearing today. For the record,
6 John Knittle was the Hearing Officer who was originally assigned
7 to this matter. This is PCB 01-159, American Bottom Conservancy,
8 East St. Louis Community Action Network, Kathy Andria and Jack
9 Norman, Petitioners, versus Village of Fairmont City and Waste
10 Management of Illinois, Inc., Respondents.

11 For the record, it is Thursday, August 16th, 2001. And we
12 are beginning at 1:07 p.m. Are there any members of the public
13 present? Okay. I want to note for the record that there are no
14 members of the public present. Members of the public are
15 encouraged and allowed to provide public comment if they so
16 choose.

17 On May 24th, 2001, the Petitioners filed an appeal pursuant
18 to Section 40.1(b) of the Environmental Protection Act. This
19 appeal arises from the second decision by the Village of Fairmont
20 City to approve local siting for Waste Management of Illinois,
21 Inc., of a proposed expansion of the Milam Pollution Control
22 Facility, located in the village of Fairmont City, St. Clair
23 County, Illinois.

24 The Petitioners allege that the Village of Fairmont City's

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1 approval of the expansion is against the manifest weight of the
2 evidence because a proposed facility fails to meet four of the
3 nine criteria set forth in Section 39.2 of the Act. The Board
4 accepted this matter for hearing on June 7th, 2001.

5 The Board previously heard a petition by the Petitioners,
6 which challenged the same expansion of the Milam Pollution
7 Control Facility. On October 19th, 2000, the Board found that
8 the first proceedings before the village were fundamentally
9 unfair, vacated the village's earlier decision and ordered the
10 village to hold a new hearing on the expansion of the Waste
11 Management facility. That Board decision is *American Bottom
12 Conservancy, et al., v. Village of Fairmont City and Waste
13 Management of Illinois*, October 19th, 2000, PCB 00-200.

14 The Village of Fairmont City held hearings on February
15 12th, 2001, and February 19th, 2001, and again approved the
16 application for the expansion. The Petitioners filed their new
17 petition, challenging this decision by the Village of Fairmont
18 City, on the grounds it is against the manifest weight of the
19 evidence.

20 Pursuant to Section 40.1(b) of the Environmental Protection
21 Act, the hearing today is to be based exclusively on the record
22 before the County Board or governing body of the municipality.
23 On July 5th, 2001, the Village of Fairmont City filed the record
24 on appeal.

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1 I want to take a brief moment to let you know what is going
2 to happen today and after the proceeding today. You should know
3 that it is the Pollution Control Board and not me that will make
4 the final decision in this case. My job as the Hearing Officer
5 requires that I conduct the hearing in a neutral and orderly
6 manner, so that we may have a clear record of the proceedings
7 here today. It is also my responsibility to assess the
8 credibility of any witnesses giving testimony today. And I will
9 do so on the record at the conclusion of the proceedings.

10 We will begin with any opening statements from all the
11 parties who wish to give one. The parties have previously
12 represented that they did not intend to introduce any witnesses
13 or other evidence at the hearing. We will then proceed to open
14 the hearing for public participation in accordance with Section
15 107.404 of the Board's Procedural Rules, and statements from
16 participants in accordance with Section 101.628 of the Board's
17 Procedural Rules.

18 The Board's Procedural Rules and the Act provide that
19 members of the public shall be allowed to speak or submit written
20 statements at hearing. Any persons offering testimony today
21 shall be subject to cross-examination by all the parties. Any
22 such statements offered by members of the public must be relevant
23 to the case at hand. We will conclude with any closing arguments
24 that the parties may wish to make, and then we will discuss off

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1 the record a briefing schedule, which will be set on the record
2 at the conclusion of the proceedings.

3 This hearing was noticed pursuant to the Act and the
4 Board's Procedural Rules and regulations and will be conducted
5 pursuant to Sections 101.600 through 101.632 and Section 107 of
6 the Board's Procedural Rules. At this time, I will ask the
7 parties to make their appearances on the record, beginning with
8 the Petitioners.

9 MS. HOMEYER: Yvonne Homeyer, appearing on behalf of the
10 Petitioners, Kathy Andria, Jack Norman, American Bottom
11 Conservancy and East St. Louis Community Action Network.

12 HEARING OFFICER LANGHOFF: Thank you. For the Respondents?

13 MR. MORAN: Donald Moran, on behalf of Waste Management of
14 Illinois, Inc.

15 HEARING OFFICER LANGHOFF: Thank you.

16 MR. BARICEVIC: John Baricevic, representing the Village of
17 Fairmont City.

18 HEARING OFFICER LANGHOFF: Thank you. Are there any
19 outstanding or prehearing motions that the parties would like to
20 present before we proceed?

21 MR. MORAN: None.

22 HEARING OFFICER LANGHOFF: Seeing none --

23 MS. HOMEYER: None.

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HEARING OFFICER LANGHOFF: Thank you. Would the

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1 Petitioners like to give a brief opening statement on behalf of
2 their client?

3 MS. HOMEYER: No, we don't plan to do that today.

4 HEARING OFFICER LANGHOFF: Thank you. Anything from the
5 Respondents with regard to opening statement?

6 MR. MORAN: No.

7 MR. BARICEVIC: No.

8 HEARING OFFICER LANGHOFF: Thank you. At this time, I will
9 open the hearing for public participation in accordance with
10 Section 101 -- excuse me -- 107.404 of the Board's Procedural
11 Rules, and statements from participants in accordance with
12 Section 101.628 of the Board's Procedural Rules. Any testimony
13 must be relevant to the Village of Fairmont City's decision,
14 based exclusively on the record before them. Is there anyone who
15 wants to testify today?

16 Okay. Thank you. We have had an off-the-record discussion
17 regarding the filing of post-hearing briefs. And the parties
18 have agreed to a briefing schedule. I will go ahead and read
19 that schedule into the record.

20 The transcript of the proceedings will be available from
21 the court reporter by August 28th. I will establish a short
22 public comment period of 14 days. The parties know to talk to
23 the court reporter following the hearing regarding the

24 availability of the transcript. The Petitioner's briefs will be

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1 due by August 28th.

2 MS. HOMEYER: I thought we said August 30th.

3 HEARING OFFICER LANGHOFF: Excuse me. Thank you.

4 MS. HOMEYER: That's all right.

5 HEARING OFFICER LANGHOFF: August 30. And the Mailbox Rule
6 will not apply. Okay?

7 MS. HOMEYER: It has to be --

8 HEARING OFFICER LANGHOFF: That's right. Your brief has to
9 be filed by that date.

10 MS. HOMEYER: Yes.

11 HEARING OFFICER LANGHOFF: Okay.

12 MS. HOMEYER: Thank you.

13 HEARING OFFICER LANGHOFF: The Respondent's brief will be
14 due by September 13th. And the Mailbox Rule will not apply. A
15 reply brief, if any, will be due September 18th. And again, the
16 Mailbox Rule will not apply.

17 The transcript is usually put on the Board's website within
18 a few days of the availability of it. I would just like to note
19 that our website address is www.ipcb.state.il.us. All
20 post-hearing comments must be filed in accordance with Section
21 101.628 of the Board's Procedural Rules. As I have stated,
22 public comments must be filed by August 30th. The Mailbox Rule

23 set forth at 35 Ill. Adm. Code 101.102(d) and 101.144(c) will
24 apply to any public comment filings.

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1 Okay. Is there anything further from the parties before we
2 conclude?

3 MS. HOMEYER: Just one moment, please. Just to clarify,
4 opposing counsel needs to receive the briefs by the same due
5 date, correct?

6 HEARING OFFICER LANGHOFF: That's correct.

7 MS. HOMEYER: Okay. Thank you.

8 HEARING OFFICER LANGHOFF: Anything further?

9 MS. HOMEYER: Nothing from us. Thank you.

10 HEARING OFFICER LANGHOFF: Okay. Thank you. Okay. At
11 this time, I will note, again, that there are no members of the
12 public present that wish to make relevant statements on the
13 record.

14 At this time, I will conclude the proceedings. It's
15 Thursday, August 16th, 2001, at approximately 1:17 p.m. in the
16 afternoon. And we stand adjourned. I thank you all for your
17 participation and wish everyone a good day.

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STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

I, Lynn E. Bartimus, a Notary Public within and for the County of St. Clair, State of Illinois, do hereby certify that a hearing was held on August 16th, 2001, at St. Clair County Building, 10 Public Square, Room B-564, Belleville, Illinois, before Steven C. Langhoff, Hearing Officer; that examination of each witness was taken down in shorthand by me and afterwards transcribed by computer-aided transcription, and the transcript is herewith returned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 20th day of August, 2001.

Lynn E. Bartimus, CSR, RPR
Notary Public
License No. 084-004150

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