

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1992

WASTE HAULING, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 91-223
	)	(Landfill Siting
MACON COUNTY BOARD,	)	Review)
	)	
Respondent.	)	

DARRELL E. STATZER, JR., of WILSON, DYAR, MOSS & STATZER, and
THOMAS J. IMMEL, of IMMEL, ZELLE, OGREN, McCLAIN & COSTELLO,
APPEARED ON BEHALF OF PETITIONER;

THOMAS H. MOODY APPEARED ON BEHALF OF RESPONDENT; and

LEO W. QUIGG, JR., of FULLER, HOPP, McCARTHY, QUIGG & BYERS,
APPEARED ON BEHALF OF AMICUS CURIAE ORGANIZATION FOR ENVIRONMENTS
AND RESIDENTS' SAFETY.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a November 15, 1991
petition for review of the October 26, 1991, decision of
respondent the Macon County Board (County Board). Petitioner
Waste Hauling, Inc. asks that this Board review the County
Board's decision denying site approval to Waste Hauling for
expansion of its existing landfill facility. The petition for
review is brought pursuant to Section 40.1 of the Environmental
Protection Act (Act). (Ill.Rev.Stat. 1989, ch. 111 1/2, par.
1040.1.) On January 3, 1992, the hearing officer granted amicus
curiae status to the Organization for Environments and Residents'
Safety (OFEARS). That ruling was upheld by the Board on January
23, 1992. This Board held a public hearing on the petition for
review on January 7, 1992.

PROCEDURAL HISTORY

On April 30, 1991, pursuant to Section 39.2 of the Act,
Waste Hauling filed an application with the County Board for
siting approval of a vertical and horizontal expansion of its
existing landfill. (C. 1-4.)¹ The landfill is located on Rock
Springs Road, near Decatur, Illinois. (C. 14, 94.) Waste

¹ The local record will be denoted by "C.", and references to
the transcripts of the local hearings will be indicated by "Tr."
and the date of that local hearing.

Hauling requested an expansion of the existing facility from its present 14 acres to approximately 137.2 acres, and to a final height of 725 feet. (C. 3-4.) Of the requested 137.2 acres, roughly 75 acres would actually be used for expansion of landfilling activities. (Tr. 7/30/91 at 62.) The County Board siting committee held public hearings on Waste Hauling's application on July 30, August 1, 20, 21, 24, 27, 29, September 6, 12, 17, 19, and 24. The siting committee deliberated on October 5, 12, and 19, and on October 25, voted 5-1 to recommend denial of Waste Hauling's application. (Tr. 10/25/91 at 52-59.) On October 26, 1992, the full County Board voted to deny the application, by a 20-0 vote. (C. 1553-1560.) Waste Hauling then filed the instant appeal of that decision with this Board on November 15, 1991.

STATUTORY FRAMEWORK

At the local level, the siting process is governed by Section 39.2 of the Act. Section 39.2(a) provides that local authorities are to consider as many as nine criteria when reviewing an application for siting approval. These statutory criteria are the only issues which can be considered when ruling on an application for siting approval. Only if the local body finds that all applicable criteria have been met by the applicant can siting approval be granted. The County Board found that two criteria relating to hazardous waste and regulated recharge areas were not applicable to this application, and that the application demonstrated compliance with the requirement that the facility be located outside the 100 year flood plain or be adequately flood-proofed. However, the County Board concluded that the applicant had not shown compliance with the other six criteria. Therefore, the County Board denied siting approval for the proposed expansion. (C. 1553-1560.)

When reviewing a local decision on the criteria, this Board must determine whether the local decision is against the manifest weight of the evidence. (McLean County Disposal, Inc. v. County of McLean (4th Dist. 1991), 207 Ill.App.3d 352, 566 N.E.2d 26, 29; Waste Management of Illinois, Inc. v. Pollution Control Board (2d Dist. 1987), 160 Ill.App.3d 434, 513 N.E.2d 592; E & E Hauling, Inc. v. Pollution Control Board (2d Dist. 1983), 116 Ill.App.3d 586, 451 N.E.2d 555, aff'd in part (1985) 107 Ill.2d 33, 481 N.E.2d 664.) A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. (Harris v. Day (4th Dist. 1983), 115 Ill.App.3d 762, 451 N.E.2d 262, 265.) The Board, on review, is not to reweigh the evidence. Where there is conflicting evidence, the Board is not free to reverse merely because the lower tribunal credits one group of witnesses and does not credit the other. (Fairview Area Citizens Taskforce v. Pollution Control Board (3d Dist. 1990), 198 Ill.App.3d 541, 555 N.E.2d 1178, 1184; Tate v. Pollution Control Board (4th Dist.

1989), 188 Ill.App.3d 994, 544 N.E.2d 1176, 1195; Waste Management of Illinois, Inc. v. Pollution Control Board (2d Dist. 1989), 187 Ill.App.3d 79, 543 N.E.2d 505, 507.) Merely because the local government could have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the local government's findings. File v. D & L Landfill, Inc., PCB 90-94 (August 30, 1990), aff'd File v. D & L Landfill, Inc. (5th Dist. 1991), 219 Ill.App.3d 897, 579 N.E.2d 1228.

Additionally, the Board must review the areas of jurisdiction and fundamental fairness. Section 40.1 of the Act requires the Board to review the procedures used at the local level to determine whether those procedures were fundamentally fair. (E & E Hauling, 451 N.E.2d at 562.) Waste Hauling has not raised any jurisdictional issues, but has raised a question of fundamental fairness. Because the issue of fundamental fairness is a threshold matter, the Board will consider that issue first.

FUNDAMENTAL FAIRNESS

Waste Hauling argues that it was denied fundamental fairness by the County Board, maintaining that the County Board considered evidence which was not in the record, and that the County Board considered criteria other than those in the statute in making its decision. First, Waste Hauling contends that transcripts of the siting committee's meetings in October show that the committee considered written materials, relating to the merits of the application, which were not submitted during the public hearings and were not provided to Waste Hauling. Waste Hauling maintains that the committee considered the written materials over Waste Hauling's objections, without Waste Hauling having an opportunity to examine the materials, cross-examine the authors, or rebut the material in writing. Waste Hauling argues that this procedure denied it fundamental fairness and tainted the local proceedings. Waste Hauling contends that to any extent that the complained-of materials were staff comments received within 30 days of the close of the hearings, as provided for in Section 39.2(c), the comments were still prejudicial, since Waste Hauling had no opportunity to respond.

Second, Waste Hauling contends that the siting committee improperly considered matters which are not at issue under the statutory mandate of Section 39.2.² Waste Hauling alleges that the committee considered whether the granting of this application

² The Board notes that Waste Hauling's contention that the siting committee considered matters other than the statutory criteria was raised at the Board hearing, but was not discussed in either Waste Hauling's opening brief or its reply brief. (Bd. hearing tr. at 33-35.)

would have any impact on a possible siting application by a competing landfill, although that other application was never filed. Waste Hauling also maintains that the committee considered whether the size of the proposed facility would encourage importation of waste from other counties, and that improper communications between a County Board member and an employee of the Illinois State Geological Survey were considered as a basis for denying the application.

In response, the County Board contends that the materials to which Waste Hauling objects were written comments properly received within 30 days after the close of the local hearings and the advice of staff members. The County Board maintains that these materials had no effect on its decision in the technical areas discussed. The County Board also argues that this situation is similar to a situation which was approved by the Board and the appellate court, where the report of an expert was submitted during the public comment period. Fairview Area Citizens Taskforce v. Pollution Control Board (3d Dist. 1990), 198 Ill.App.3d 541, 555 N.E.2d 1178.

Amicus OFEARS contends that Waste Hauling has not specifically identified the materials of which it complains, or explained how it was prejudiced by the materials. OFEARS states that Waste Hauling is apparently referring to geological reports, and argues that the record makes clear that the County Board did not rely upon those reports. OFEARS points out that the County Board found that a landfill might be properly sited in the proposed location, but found that criterion two had not been met because of concerns about the operator's previous operating record. Therefore, OFEARS argues that Waste Hauling has not been prejudiced by the materials at issue.

Initially, the Board notes that its review of the fundamental fairness claims has been greatly hampered by Waste Hauling's failure to specifically identify which written materials it complains of, and failure to provide any citations to the record or the transcripts in support of either of its fundamental fairness arguments. The Board has nevertheless reviewed the record, transcripts, and arguments of the parties and the amicus, and finds no violation of fundamental fairness.

As to the contention that the siting committee improperly considered certain written materials, the Board believes that Waste Hauling objects to reports submitted by Paul McChancy, the county's chief planner and zoning officer (C. 1376-1383) and by Bob Johnson, the county's solid waste management director (C. 1389-1408). The Board finds that these reports were properly part of the record, since they were apparently submitted during the 30-day public comment period provided for in Section 39.2(c)

of the Act.³ The submission of reports by experts hired by the local decisionmaker was upheld in Fairview Area Citizens Taskforce v. Pollution Control Board (3d Dist. 1990), 198 Ill.App.3d 541, 555 N.E.2d 1178, 1182. Waste Hauling correctly points out that in that case, the applicant had an opportunity to respond to all comments after the close of the comment period. However, the decision in Fairview Area Citizens Taskforce is not hinged on any opportunity to respond (provided for in the local ordinance), but to the statutory provision for a comment period. As this Board has previously discussed:

the landfill siting process includes a 30-day post-hearing public comment period without including a restriction of the scope of comments to discussion of information already in the record. (City of Rockford v. Winnebago County Board, PCB 87-92, p.20 (November 19, 1987).) This provision does limit the ability to rebut all on-record information, but that is how the statutory scheme has been established. See Section 39.2. Fairview Area Citizens Taskforce v. Village of Fairview, PCB 89-33 (June 22, 1989 at 10).

The statute does not require that an applicant (or any other participant) have an opportunity to rebut comments properly filed during the 30-day comment period. Where, as here, staff reports and recommendations are submitted within the statutory public comment period, the Board finds no fundamental unfairness in any consideration of those reports and recommendations by the local decisionmaker.

Waste Hauling apparently also objects to the information supplied by the Illinois State Geological Survey (ISGS). The record shows that there was contact between Mr. Johnson and Sam Panno of the ISGS, and that the chief of the ISGS, Morris W. Leighton, followed up that contact with a letter to the County Board. (C. 1495-1496.) The letter from Mr. Panno, which was read into the record at the siting committee's October 19 meeting, does express several concerns about the location and its hydrogeology. (Tr. 10/19/91 at 43-47.) However, both contacts from the ISGS were submitted before the close of the public comment period. As stated above, there is nothing improper about a local decisionmaker considering information received during the public comment period. That is the intent of the statute. Additionally, as OFEARS points out, Waste Hauling has failed to even allege what prejudice it suffered as a result of this information from the ISGS. Indeed, the County Board specifically

³ Although Mr. Johnson's report is not dated, it appears in the county record between items dated October 2 and October 8, 1991. The Board finds that the record indicates that Mr. Johnson's report was submitted before the October 24, 1991 close of the public comment period.

found that a facility could be safely sited at the proposed location, despite the questions raised about the appropriateness of the site. (C. 1555.) The County Board's finding that Waste Hauling had not demonstrated that it met criterion two was based on the Board's concerns over the applicant's operating history. Waste Hauling has not demonstrated that it suffered any prejudice, even if the contacts with the ISGS had been improper.

Review of Waste Hauling's contention that the siting committee improperly considered matters which are not included in the criteria of Section 39.2(a) has also been difficult because of Waste Hauling's failure to provide citations to the transcripts in support of its claims. However, a review of the transcripts of the siting committee's meetings in October does show that there was some discussion of factors such as out-of-county and out-of-state waste, the experience of another near-by county after it granted siting approval for a landfill, and the possible expansion request of another competing landfill. These issues are not properly before a local decisionmaker pursuant to Section 39.2. However, the transcripts also show that the recommendation of the siting committee that the application be denied was based upon the seven applicable statutory criteria. (Tr. 10/25/91 at 25-59.) The County Board's brief discussion of the vote on the siting committee's recommendation does not show consideration of any improper factors. The Board finds, based on the record before it, that the County Board's decision was properly based upon the statutory criteria, and not upon other issues. All that the statute requires is that the decision itself be based on the criteria. As the appellate court stated in Fairview Area Citizens Taskforce, "[w]hile these listed criteria must be satisfied, the statute does not state these are the only factors which may be considered." (Fairview Area Citizens Taskforce, 555 N.E.2d at 1182.) The Board finds no fundamental unfairness in this case.

CHALLENGED CRITERIA

Waste Hauling has raised challenges to all six criteria which the County Board found were not met by the application. The criteria in dispute are: whether the facility is necessary to accommodate the waste needs of the area it is intended to serve (Section 39.2(a)(1)); whether the facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected (Section 39.2(a)(2)); whether 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 (Section 39.2(a)(3)); whether the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents (Section 39.2(a)(5)); whether the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic

flows (Section 39.2(a)(6)); and whether the facility is consistent with the county's adopted solid waste management plan (Section 39.2(a)(8)).

As noted above, the Board must review the County Board's decisions on the challenged criteria on a manifest weight of the evidence standard.

Need

The first criterion which the local decisionmaker must consider in ruling upon an application for local site approval is whether "the 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).) In its resolution, the County Board found that the proposed service area was unclear, but assumed that the service area was Macon County. If the facility is intended to serve areas other than Macon County, the County Board found that the application did not contain sufficient detail describing the service area to meet the criteria. Assuming the proposed service area is Macon County, the County Board found that while the county will always need a landfill, the proposed facility's life expectancy of between 25 and 50 years would far exceed the waste needs of Macon County. Therefore, the County Board found that the facility did not meet criterion one. (C. 1554-1555.)

Waste Hauling argues that there is no support in the record for the County Board's conclusion that the proposed facility would not meet the waste needs of the service area. Waste Hauling's argument centers around the County Board's finding that the proposed facility is too big--that the life expectancy of the facility exceeds the county's needs. Waste Hauling contends that it is undisputed that Macon County needs additional landfill capacity, and points out that this proposed facility would provide capacity throughout the 20 year period covered by the county's solid waste management plan. Waste Hauling notes that its president, Jerry Camfield, testified that Waste Hauling's existing landfill had approximately one year of capacity, and that if the Waste Hauling facility closes, the other major landfill in the county (Macon County Landfill) would run out of space by the end of 1995 or in early 1996. (Tr. 7/30/91 at 57-59.) Mr. Camfield testified that the proposed expansion would last 30 to 35 years. (Tr. 7/30/91 at 93.) Waste Hauling also maintains that Don Sheffer, a consulting engineer who was a consultant to the committee which formulated the county's solid waste management plan, testified that unless one or both of the two existing landfills expanded, there would not be enough landfill space in Macon County to get through the 20 year period in the solid waste management plan. (Tr. 8/27/91 at 10.) Waste Hauling contends that the testimony on this criterion offered by OFEARS was not presented by experts, and was based on speculation

as to what might happen to the county's need for landfill space if recycling and waste reduction programs are implemented. Waste Hauling argues that it met its burden of proving that the proposed facility is reasonably required by the waste needs of the service area (Waste Management of Illinois v. Pollution Control Board (3d Dist. 1984), 122 Ill.App.3d 639, 461 N.E.2d 542), and that there is no competent evidence in the record to rebut that showing. Waste Hauling contends that the County Board has concluded that the landfill as proposed might somehow outlive the existence of Macon County.

In response, the County Board maintains that there was conflicting testimony on the issues of when landfill space in Macon County would be exhausted, and how much additional capacity is needed. The County Board points to testimony from John Thompson, executive director of the Central States Education Center, that the life expectancy of the existing landfills could be extended through waste reduction measures which could be implemented quickly. Mr. Thompson testified that the requested 75 acre expansion would last 40 to 50 years, and that he believed that such an expansion is beyond the waste needs of Macon County. (Tr. 9/12/91 at 79, 88-89.)⁴ The County Board argues that it is obvious that since it took ten years to fill the present 14 acre Waste Hauling Landfill, a continuation of business as usual would require only 28 acres to carry the county through the 20-year planning period in the solid waste management plan. The County Board asserts that it is equally obvious that the proposed 75 acre increase in capacity "was not designed to meet the waste needs of Macon County, but rather to simply increase the private business potential of the operation." (County brief at 3.) The County Board characterizes Waste Hauling's arguments as assuming that so long as there is a need in the county for additional landfill space, the County Board is without authority to limit landfill expansion to that need. The County Board contends that such a position ignores the responsibilities of the County Board towards the citizens of the county.

OFEARS also contends that the record contains conflicting information on the county's remaining landfill capacity, and the life expectancy of the proposed facility. OFEARS concludes that because of the conflicting testimony, the County Board's decision is not against the manifest weight of the evidence. OFEARS maintains that an applicant must show that a proposed facility is reasonably required by the waste needs of the area, including consideration of its waste production and disposal capacities. Waste Management of Illinois v. Pollution Control Board (2d Dist.

⁴ The Board notes that the County Board's citations to the transcripts are often either incomplete or wrong, and urges that all parties use more caution in providing complete, accurate citations.

1988), 175 Ill.App.3d 1023, 530 N.E.2d 682.

After a review of the record and the arguments, the Board concludes that the County Board's decision that the application did not demonstrate compliance with criterion one was not against the manifest weight of the evidence. It is true that much of the testimony related to this criterion was speculative, and that other testimony was irrelevant. For example, the experience of Christian County after granting site approval for a landfill is not relevant to the issue of whether Waste Hauling's application demonstrated compliance with criterion one. Likewise, consideration of need based upon what might happen if another landfill applied for approval to expand, or if a refuse-derived fuel facility began operating, is speculative and should not be considered, when neither facility has even applied for siting approval.⁵ The Board notes that it is difficult to draw a "bright line" between impermissible speculation and permissible planning considerations, but finds that in this case that line was crossed into speculation. Nevertheless, there is plausible evidence in the record which supports the County Board's conclusion that the proposed facility is too big for the waste needs of Macon County. Mr. Thompson testified that he believed that the proposed expansion was more than Macon County needed, and other objectors voiced similar beliefs. Where, as here, there is conflicting evidence, this Board is not free to reverse merely because the local decisionmaker credits one group of witnesses and does not credit the other. (Fairview Area Citizens Taskforce v. Pollution Control Board, 555 N.E.2d at 1184.) The Board cannot say that the County Board's decision was against the manifest weight of the evidence. The Board finds that it is within a local decisionmaker's authority to decide that a proposed facility has too much capacity for a proposed service area. The Board also finds that the County Board's finding that the proposed service area is unclear is not against the manifest weight of the evidence. Our review of the record has found no specific delineation of the proposed service area.

Public Health, Safety, and Welfare

The second criterion which the local decisionmaker must

⁵ The Board notes that the County Board states in its brief that an RDF facility is now in operation in the county. (County brief at 4.) However, the only evidence the Board has found relating to RDF facilities in Macon County is the testimony of Mr. Sheffer that there are no significant facilities in the county which burn waste for energy recovery. Mr. Sheffer noted that there are a couple of facilities where pellets are burned to generate heat for a particular building, but testified that there are no substantial instances of burning waste for energy recovery. (Tr. 8/27/91 at 47-48.)

consider when ruling upon an application for local site approval is whether "the facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected." (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(2).) In its resolution, the County Board found that a facility can be safely sited at the proposed location, and that the design of the proposed facility meets or exceeds applicable regulations.⁶ However, the County Board stated that given numerous past violations of regulations at the existing Waste Hauling facility, the future operation of the facility is a key element in ensuring the protection of the public health, safety, and welfare. The County Board found that the application does not contain sufficient details demonstrating how the facility is proposed to be operated so as to satisfy criterion two. (C. 1555-1556.)

Waste Hauling argues that there is no support in the record for the County Board's conclusion that the application lacked details as to operation. Waste Hauling contends that its draft permit application (prepared for possible submission to the Illinois Environmental Protection Agency, and submitted to the County Board with the application for siting approval) details all operational phases of the facility, and demonstrates compliance with the applicable regulations. (C. 91-664.) Waste Hauling also points to the testimony of Robert Krimmel, the design engineer, on this issue, and to testimony from the sanitarian from the Macon County Health Department that overall the facility does an excellent job with daily cover and litter control. (Tr. 8/29/91 at 58-62.) Waste Hauling maintains that the evidence as to operating violations reveals five violations over a period of approximately five years, and that other concerns raised by the objectors are simply concerns, not evidence. Waste Hauling argues that Mr. Krimmel's testimony is un rebutted, and that the decision of the County Board is against the manifest weight of the evidence.

The County Board notes that Section 39.2(a) of the Act allows the local decisionmaker to consider the previous operating experience and past record of convictions or admissions of guilt of the applicant in the field of solid waste management when considering criteria two and five. The County Board maintains that the record includes evidence on Waste Hauling's past operating record, including Illinois Environmental Protection Agency inspection reports. (C. 808-1075.)

⁶ The Board notes that the County Board's resolution finds that the facility meets the regulations of the Illinois Environmental Protection Agency. In fact, environmental regulations in Illinois, including those governing landfills, are Pollution Control Board regulations.

OFEARS contends that based on the evidence of Waste Hauling's past violation of state regulations, the County Board's concern as to the safety of the future operation of the facility is well justified. OFEARS states that Mr. Camfield acknowledged that he was unable to obtain a closure permit because the existing facility is in violation of its height limitation. (Tr. 7/30/91 at 97.) OFEARS also maintains that there was considerable evidence introduced regarding the safety of the roads to and from the facility. (C. 758-770; Tr. 9/6/91 at 5-8.) Thus, OFEARS argues that the County Board correctly determined that Waste Hauling had failed to meet its burden of demonstrating compliance with criterion two.

After a careful review of the evidence, the Board finds that the County Board's decision that "[t]he application does not contain sufficient details describing how the facility is proposed to be operated to demonstrate compliance with this criterion" is against the manifest weight of the evidence. (C. 1556.) The County Board specifically found that the facility can be safely sited at the proposed location, and that the design of the facility meets or exceeds the applicable regulations. (C. 1555.) Therefore, the only inquiry before this Board is whether the finding regarding the sufficiency of the plan of operations is against the manifest weight of the evidence. The draft permit application, submitted with Waste Hauling's siting application, includes an eighteen page operating plan. (C. 350-367.) That operating plan includes information on the source of the solid waste, the method of landfill, personnel, fencing and litter control, odor control, dust control, groundwater monitoring, and a quality assurance plan, among other things. Additionally, Mr. Krimmel testified as to the proposed operating plan for the facility. (Tr. 8/20/91 at 53-60.) Neither the County Board nor OFEARS has pointed to any evidence in the record which in any way rebuts or discredits the written plan of operations or Mr. Krimmel's testimony, nor is there any explanation of what might be missing from the plan. In a situation where the applicant has made a prima facie showing that the application satisfies a particular criterion, and where there is no evidence in the record to rebut or impeach that evidence, it is against the manifest weight of the evidence for the decisionmaker to conclude that the particular criterion has not been satisfied. (Industrial Fuels & Resources/Illinois, Inc. v. Pollution Control Board (1st Dist. March 19, 1992), No. 1-91-0144, slip op. at 22, 26; Fairview Area Citizens Taskforce, 555 N.E.2d at 1184-1187.) The Board has found absolutely no evidence which challenges or rebuts Waste Hauling's plan of operations. Therefore, the County Board's decision that the application did not contain sufficient details describing how the facility is proposed to be operated is against the manifest weight of the evidence.

The Board recognizes that there is evidence of past

violations of state regulations at the existing facility.⁷ However, the County Board's resolution focuses on the plan of operations, not the past violations. The briefs filed by the County Board and OFEARS seem to argue that simply because the record contains evidence of past violations, that is in itself sufficient to support the County Board's decision on criterion two. The Board rejects that contention. The inquiry before the Board on criterion two is whether the County Board's decision that the plan of operations was insufficient is against the manifest weight of the evidence. The Board's review is not solely whether there is evidence of past operating violations.

Finally, as to OFEARS' contention that evidence shows questions about the safety of the roads leading to the facility, the Board reiterates that the County Board specifically found that the facility could be safely sited in the proposed location. That decision is not on review before the Board.

Character of Area and Property Values

The third criterion which the local decisionmaker must consider when ruling upon an application for local siting approval is whether "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." (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(3).) In its resolution, the County Board found that the requested increase in the height of the landfill would be inconsistent with the topography of the surrounding area, and that the horizontal expansion to 137 acres would remove all of the existing trees except those in the buffer area. The County Board stated that this would greatly reduce the natural visual screening, while the landfill operation expanded toward the neighboring properties. Therefore, the County Board concluded that the increased height of the landfill plus the loss of the trees make the landfill visually incompatible with the area. The County Board also found that the expansion would have no significant negative effect on property values if the volume of truck traffic stayed at or near present levels. However, the County Board felt that if the number of trucks drastically increased, as might happen if the landfill was expanded to 137 acres, property values could be significantly affected. Thus, the County Board concluded that the facility is not so located as to minimize incompatibility

⁷ The Board notes that although both the County Board and OFEARS continually refer to "violations", a number of the instances cited by the County Board and OFEARS are inspection reports by the Illinois Environmental Protection Agency, upon which no further action was apparently taken. Mr. Camfield did testify that Waste Hauling had paid fines on approximately eight violations in the past eleven years. (Tr. 8/1/91 at 10.)

with the character of the surrounding area and to minimize the effect on the value of the surrounding property. (C. 1556-1567.)

Waste Hauling contends that the testimony and evidence supports the County Board's conclusion that there would be no effect on property values as long as the volume of truck traffic did not significantly change. However, Waste Hauling objects to the County Board's "speculation" that if the number of trucks were dramatically increased, property values could be significantly affected. Waste Hauling points to the testimony of Mr. Camfield that there would be no increase in traffic. (Tr. 7/30/91 at 78.) Waste Hauling also challenges the County Board's finding that the proposed expansion is "visually incompatible" with the area. Waste Hauling maintains that the engineering detail in the draft permit application demonstrates the existence of a buffer zone and vegetative screening, and that Mr. Krimmel testified that the screening would temper any aesthetic impact created by the height of the facility. Waste Hauling argues that it need only show that the facility is located so as to minimize incompatibility with the surrounding area, not that there will be no impact. (Moore v. Pollution Control Board (5th Dist. 1990), 203 Ill.App.3d 855, 561 N.E.2d 170.) Waste Hauling contends that its evidence on this criterion is uncontroverted, and that the County Board's decision is against the manifest weight of the evidence.

In response, the County Board states that although Mr. Camfield testified that he had no present intent to increase the amount of truck traffic, virtually every other witness testified that the size of the expansion indicates the possibility of an increase in truck traffic. The County Board also maintains that the testimony of Waste Hauling's real estate appraiser, Mr. Johnson, on the issue of compatibility was strongly contested by several other witnesses. (Tr. 8/29/91 at 86, 99-102, 110-112; Tr. 9/12/91 at 19.) The County Board argues that an applicant cannot establish compatibility based upon the fact that a facility already exists in the area, and that the statute requires the local government to consider a proposed expansion as a new and separate facility. Waste Management of Illinois v. Pollution Control Board (2d Dist. 1984), 123 Ill.App.3d 1075, 463 N.E.2d 969.

OFEARS argues that the record contains testimony impeaching the testimony of Mr. Johnson, the real estate appraiser, and that therefore the County Board was well justified in rejecting the only evidence presented in connection with property values. OFEARS also contends that the County Board correctly concluded that the facility was not located so as minimize incompatibility with the surrounding area. OFEARS states that the record shows that the area is residential, with numerous neighbors near the facility, and that the area is utilized as a recreational area for canoeists, bicyclists, hikers, and horseback riders. OFEARS

contends that it cannot be said that the County Board's determination on criterion three is against the manifest weight of the evidence.

This Board concludes, after reviewing the record, that the County Board's decision that the application did not demonstrate compliance with criterion three is not against the manifest weight of the evidence. The Board agrees with Waste Hauling that the County Board's reasoning that the amount of truck traffic might drastically increase, thus significantly affecting property values, is speculative. However, there is evidence in the record which supports a conclusion that the proposed facility is not located so as to minimize incompatibility with the surrounding area. Witnesses testified to the recreational activities in the area, the beauty of the area, and the fact that the landfill could be seen from over a mile away. (E.g. Tr. 9/12/91 at 16-29.) As previously stated, the Board is not free to reverse because the local decisionmaker credits one group of witnesses and not another group. (Fairview Area Citizens Taskforce, 555 N.E.2d at 1184.) The Board cannot say that the County Board's finding that criterion three had not been satisfied was against the manifest weight of the evidence. An applicant must demonstrate compliance with both portions of the criterion: minimizing incompatibility with the surrounding area, and minimizing the effect on property values. Simply because the County Board's reasoning on one portion of the criteria was speculative does not mean that the finding that the other portion has not been met was against the manifest weight of the evidence.

Emergency Plan

The fifth criterion which is to be considered by a local decisionmaker is whether "the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents." (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(5).) The County Board, in its resolution, noted that the application states that emergency plans will be developed in the operational plan to be submitted to the Illinois Environmental Protection Agency as part of the final permit application. The County Board concluded that because the application did not include an emergency plan, the application lacked sufficient details for the County Board to make an informed decision. Therefore, the County Board found that the applicant had not proven compliance with criterion five. (C. 1557.)

Waste Hauling contends that the County Board was incorrect in concluding that the application did not contain an emergency plan. Waste Hauling points to Mr. Krimmel's testimony that the operating plan had been fully covered in the draft permit application, submitted as part of the record. (Tr. 8/20/91 at 55-57; C. 91-664.) Waste Hauling argues that the operating plan

covers all necessary details regarding fires, spills, and other operational accidents. Waste Hauling contends that any argument by the County Board that the plan was not adequately presented to the County Board ignores that fact that the trier of fact must consider all competent evidence before it, including the draft permit application, submitted into the record as an exhibit.

The County Board argues that although it might conclude from a careful examination of the 553 pages of the draft permit application that the overall plan of operations is sufficient to satisfy criterion five, the facts were not adequately presented to the County Board by Mr. Krimmel's conclusion that the operational plan contained all the necessary information. OFEARS contends that Waste Hauling presented no evidence on this criterion, other than to indicate that one would be filed with the Illinois Environmental Protection Agency. OFEARS maintains that Waste Hauling did not identify the plan or explain its contents. OFEARS argues that since Waste Hauling had the burden of satisfying the criterion, the County Board is not required to divine the contents of the plan.

After a careful review of the record, the Board finds that the County Board's conclusion that the application does not contain an emergency plan, thus failing to satisfy criterion five, is not against the manifest weight of the evidence. Although Mr. Krimmel testified that an emergency plan must be prepared, and stated that all necessary elements appeared in the draft permit application, his testimony consists of nothing more than statements that a plan would be prepared. (Tr. 8/20/91 at 55-57.) The draft permit application does contain an operating plan, which refers to fire protection. (C. 353.) However, the Board has found no reference to contingency plans for spills or other operational accidents, and Waste Hauling has not provided any citation to such plans, other than a general citation to the 553 page draft permit application. The Board cautions the County Board that it indeed is bound to consider all evidence before it, including exhibits, no matter how voluminous. The Board's decision that the County Board's decision was not against the manifest weight of the evidence is not based upon the County Board's assertion that the facts were not adequately presented by Mr. Krimmel's testimony. Instead, the Board's decision is based upon a finding that the record shows no evidence of a plan of operations designed to minimize the danger from spills or other operational accidents. Therefore, the Board finds that the County Board's decision on criterion five is not against the manifest weight of the evidence.

Traffic Patterns

The sixth criterion to be considered by a local decisionmaker is whether "the traffic patterns to or from the facility are so designed as to minimize the impact on existing

traffic flows". (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(6).) The County Board found that Waste Hauling's projection that traffic volume would increase seven to nine percent "ignores the opponent's concerns that truck traffic to the landfill has the potential to increase dramatically, in proportion with the size of the facility". (C. 1558.) The County Board stated that a significant increase in truck traffic would have very harmful effects, including traffic hazards and increasing the annual cost of road and bridge maintenance. Thus, the County Board concluded that the proposed traffic patterns are not so designed as to minimize impact on existing traffic flows. (C. 1558.)

Waste Hauling argues that the County Board's decision is pure conjecture, and is admittedly based upon "opponent's concerns" rather than the evidence. Waste Hauling notes that Mr. Camfield testified that there would be no significant increase in traffic, and that James Vasconcelles, the traffic engineer presented by Waste Hauling, testified that the expansion would have no impact on traffic flows even if traffic were to increase seven to nine percent. (Tr. 8/29/91 at 21.) Waste Hauling contends that it offered the only evidence on traffic volumes, and that such evidence is uncontroverted. Therefore, Waste Hauling maintains that the County Board's conclusion is against the manifest weight of the evidence.

In response, the County Board asserts that the County Board members expressed "obvious credulity" at Mr. Vasconcelles' testimony. The County Board argues that Jeffery Zeeb, appearing on behalf of the township road district, testified that although the two-mile stretch of road leading to the landfill represents about four percent of township road miles, in 1989, 1990, and 1991 the township spent approximately 32 percent of its maintenance funds on that stretch of road. (Tr. 9/6/91 at 114-115.) The County Board contends that "in view of the fact that garbage truck use of the township road can be expected to increase and possibly double on Rock Springs Road if the expansion is granted, the conclusion by the County Board that the continued use and likely increase in use of the township road by the landfill operator in the event the expansion is granted [will] be severe is justified". (County brief at 16-17.) The County Board argues that in view of the "imminent" closure of the present facility, the proposed expansion should be viewed as a request for a new facility.

OFEARS contends that Mr. Vasconcelles acknowledged under cross-examination that there were problems with the bridge and roadway, and that he could not express an opinion as to the safety of the bridge and roadways for any increase in excess of nine percent. (Tr. 8/29/91 at 24-26.) OFEARS also states that Mr. Vasconcelles' assumptions extended only five to ten years, although the life expectancy of the proposed expansion was as

high as fifty years. OFEARS maintains that the County Board correctly noted that the projections ignored legitimate concerns that the volume of truck traffic would greatly increase. OFEARS rebuts Waste Hauling's contention that it is merely a vague possibility that traffic would increase, stating that Mr. Camfield testified that he would not commit to limiting the area from which he would accept waste.

After a review of the evidence, the Board finds that the County Board's decision that criterion six was not satisfied is against the manifest weight of the evidence. There is no direct evidence in rebuttal to Waste Hauling's testimony about traffic flows. (The Board notes that, contrary to the County Board's argument, review of the evidence does not indicate any "obvious credulity" of the County Board members at Mr. Vasconcelles's testimony. (Tr. 8/29/91 at 37-41.)) The Board is troubled by the County Board's reliance on opponent's "concerns" that truck traffic may increase drastically, because of the size of the proposed facility. Size does not necessarily translate into increased usage--indeed, Mr. Camfield testified that the traffic volume would stay the same. (Tr. 7/30/91 at 78.) It could be that the proposed facility would operate at the same rate, but for a longer number of years. The County Board's finding that criterion six was not satisfied is hinged entirely on its "concern" that truck traffic will increase. The issues of traffic hazards and increased cost of maintenance are mentioned only in connection with a significantly larger number of trucks. There is no evidence that the anticipated traffic itself would have any increased cost of maintenance above the existing maintenance costs. Quite simply, the Board finds no evidence in the record, as opposed to concerns and speculation, to support a finding that there will be greatly increased numbers of trucks using the road. As the appellate court stated, "The operative word in the statute is 'minimize.' It is impossible to eliminate all problems." (Fairview Area Citizens Taskforce, 555 N.E.2d at 1186.) It is important to recognize that the statutory criterion only requires consideration of "existing traffic flows". Truck traffic is currently a part of that existing traffic flow. The Board finds that the County Board's decision that criterion six was not satisfied is against the manifest weight of the evidence.

Consistency with Solid Waste Management Plan

The eighth criterion to be considered by a local decisionmaker in ruling upon an application for local siting approval is whether "if the facility is to be located in a county where the county board has adopted a solid waste management plan, the facility is consistent with that plan". (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1039.2(a)(8).) The County Board found that its solid waste management plan states that landfills are to be a complement to other methods of solid waste management, and that

landfilling is not intended as the primary means for handling the waste stream. The County Board held that the proposed expansion would greatly exceed the county's need for landfill space, and would greatly exceed the 20-year plan period. The County Board further held that approval of such a large landfill could discourage further implementation of other methods of waste disposal, such as recycling. Therefore, the County Board concluded that the proposed expansion is not consistent with the adopted solid waste management plan.

Waste Hauling contends that the evidence in the record does not support the County Board's conclusion that the proposed facility is not consistent with the solid waste management plan. Waste Hauling points to testimony by Mr. Sheffer that the expansion is not inconsistent with the plan, and argues that there is no other testimony by competent witnesses that the facility is inconsistent. Waste Hauling maintains that the County Board's finding that approval of a large landfill could discourage implementation of other disposal options is merely speculation, and thus is against the manifest weight of the evidence.

The County Board argues, in response, that the question of whether the existence of excess landfill space would discourage the development of alternative methods of disposal "is an issue best left to the sound judgment of the County Board". (County brief at 18-19.) OFEARS contends that there is indeed other testimony in the record which rebuts Mr. Sheffer's testimony, and points to testimony by Terry Cullison, president of Macon County Landfill, and John Thompson that the expansion is not consistent with the solid waste management plan. (Tr. 9/6/91 at 39; Tr. 9/12/91 at 87-88.)

The Board finds, after reviewing the record, that the County Board's finding on criterion eight is not against the manifest weight of the evidence. The Board agrees with Waste Hauling that the concerns that a large landfill might discourage implementation of alternative methods of disposal seems speculative. Nonetheless, there is conflicting testimony in the record as to whether the proposed expansion is consistent with the solid waste management plan. Merely because the local government could have drawn different conclusions from conflicting testimony is not a basis for this Board to reverse the local government's findings. (File v. D & L Landfill, Inc., PCB 90-94 (August 30, 1990), aff'd File v. D & L Landfill, Inc. (5th Dist. 1991), 219 Ill.App.3d 897, 579 N.E.2d 1228.) The County Board specifically found that the proposed expansion would exceed the county's need, and would exceed the 20-year plan period. The County Board apparently credited the testimony of Mr. Cullison and Mr. Thompson over Mr. Sheffer's testimony. This Board cannot say that the local decision is against the manifest weight of the evidence.

CONCLUSION

In sum, the Board finds no violation of fundamental fairness in this proceeding. As to the challenged criteria, the Board finds the County Board's findings that criteria two and six were not met to be against the manifest weight of the evidence. The County Board's findings that criteria one, three, five, and eight were not met are not against the manifest weight of the evidence. Because an applicant must satisfy all applicable criteria, the County Board's denial of siting approval is affirmed.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

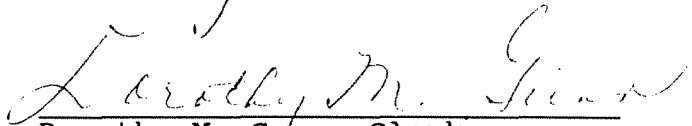
The County Board's findings on criteria two and six are reversed as being against the manifest weight of the evidence. The County Board's findings on criteria one, three, five, and eight are affirmed. Therefore, the County Board's October 26, 1991 denial of local siting approval is affirmed.

IT IS SO ORDERED.

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

J. Anderson concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 7th day of May, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board