ILLINOIS POLLUTION CONTROL BOARD
September 26, 1991

CITIZENS FOR CONTROLLED LANDFILLS and YMCA OF SOUTHWEST ILLINOIS,	)	
Petitioners,	)	
v.	)	PCB 91-89 and 91-90 (consolidated) (Landfill Siting)
LAIDLAW WASTE SYSTEMS, INC. and the ST. CLAIR COUNTY BOARD,	)	
Respondents.	)	

DANIEL WOLFORD APPEARED ON BEHALF OF PETITIONER CITIZENS FOR CONTROLLED LANDFILLS;

WILLIAM GAVIN APPEARED ON BEHALF OF PETITIONER YMCA OF SOUTHWEST ILLINOIS;

BRIAN KONZEN, LEUDERS, ROBERTSON AND KONZEN, APPEARED ON BEHALF OF RESPONDENT LAIDLAW WASTE SYSTEMS, INC.; and

DENNIS HATCH, ASSISTANT STATES ATTORNEY APPEARED ON BEHALF OF THE ST. CLAIR COUNTY BOARD.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter is before the Board on a third party appeal filed on May 31, 1991 by Citizens for Controlled Landfills ("CCL") and the YMCA of Southwest Illinois ("YMCA"). Petitioners contest the decision of the St. Clair County Board approving expansion of Laidlaw Waste Systems, Inc. ("Laidlaw") landfill facility located just outside of Bellville, Illinois. This appeal is brought pursuant to Section 40.1 of the Illinois Environmental Protection Act ("Act") (Ill. Rev. Stat. 1989, par. 1040.1 et. seq.).

Petitioners seek reversal of the County decision for the following reasons: 1) the application submitted by Laidlaw did not comport with the applicable local ordinance and was therefore void; 2) because the application was allegedly incomplete, the hearings held by the County were fundamentally unfair; and 3) the findings of the County as they pertain to the requirements of Section 39.2a(1), (2), and (3) were against the manifest weight of the evidence and therefore require reversal. For the reasons contained herein, we affirm the decision of the County.

FACTS/PROCEDURAL HISTORY

Laidlaw originally applied for a permit at this site in 1977. A permit was granted and Laidlaw operated the landfill for a short

period and then sold it. In 1983, Laidlaw reacquired the property and has been responsible for the site to this date.

In November of 1988, Scott Schreiber, a regional engineer for the company, determined that Laidlaw had surpassed the height allowed under its operating permit. (Tr. at 77-79). The company had stacked its landfill to a height of 586 feet over a 30-acre area rather than the 575 feet allowed. Over this 30-acre area, the trash had started to settle and ponds had formed on top of the landfill. Because of these problems, the company notified St. Clair County, in addition to the Illinois Environmental Protection Agency ("Agency"), and discussions were held to rectify the situation.

As a result of those discussions, Laidlaw submitted an application to expand its Belleville site to the St. Clair County Board on November 12, 1990. Public hearings were held by the County on February 19, 20 and March 13 of 1991. On April 29, 1991, the St. Clair County Board approved Laidlaw's application for expansion. On May 31, 1991, petitioners sought appeal before the Board. In that regard, a hearing was held on July 29, 1991.

STATUTORY CRITERIA

Section 39.2 of the Act presently outlines nine criteria for site suitability, each of which must be satisfied (if applicable) if site approval is to be granted. In establishing each of the criteria, the applicant's burden of proof before the local authority is the preponderance of the evidence standard. Industrial Salvage v. County of Marion, PCB 83-173, 59 PCB 233, 235, 236, August 2, 1984. On appeal, the PCB must review each of the challenged criteria based upon the manifest weight of the evidence standard. See Waste Management of Illinois, Inc. v. IPCB, 122 Ill.App.3d 639, (Third District, 1984). This means that the Board must affirm the decision of the local governing body unless that decision is clearly contrary to the manifest weight of the evidence, regardless of whether the Board might have reasonably reached a different conclusion. See E & E Hauling v. IPCB, 116 Ill.App.3d 586 (2nd District 1983); City of Rockford v. IPCB and Frink's Industrial Waste, 125 Ill.App.3d 384 (2nd District 1984); Steinberg v. Petta, 139 Ill.App.3d 503 (1st District 1985); Willowbrook Motel v. PCB, 135 Ill.App.3d 343 (1st District 1985); Fairview Area Citizens Task Force v. Village of Fairview, PCB 89-33, June 22, 1989.

FUNDAMENTAL FAIRNESS

The YMCA argues that St. Clair County erred in approving Laidlaw's application because it did not fulfill the requirements of the ordinance governing local siting applications. Accordingly, the YMCA asserts that the application is void. In the alternative, the YMCA alleges that the lack of specific information within

Laidlaw's application denied the public the opportunity to address all of the issues and was therefore fundamentally unfair.

In response, the County maintains that the Board is without the statutory authority to compel enforcement of a local county ordinance. Instead, the County submits that our scope of review in relation to the local hearings is limited to fundamental fairness. Nothing in Section 39.2 or 40 of the Act enables the Board to enforce a local statute. In fact, Section 39.2(g) states:

> ...The siting approval, procedures, criteria and appeal procedures provided for in this Act for new regional pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for facilities subject to such procedures. Local zoning or other local land use requirements shall not be applicable to such siting decisions...

Ill. Rev. Stat. 1989, ch. 111-1/2 par. 1039.2(g).

Section 40.1 mandates that:

> ...In making its orders and determinations under this Section, the Board shall include in its consideration the written decision and reasons for the decision of the county board or the governing body of the municipality, the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2, and the fundamental fairness of the procedures used by the county board or the governing body of the municipality in reaching its decision.

Ill. Rev. Stat. 1989, ch. 111-1/2 par. 1041.1

We note that the YMCA is asserting two propositions here, the first of which is that the application is void. St. Clair County's ordinance requires that the applicant list specific information concerning various aspects of the proposed landfill operation. It then gives the Clerk the discretion to accept the filing or reject it with stated reasons. In the instant case, the Clerk accepted the application and issued Laidlaw a certificate to that effect. (C632-33). In arguing that Laidlaw's petition was void and should therefore not have been accepted by the County, the YMCA does not state a fundamental fairness issue. The YMCA does not assert that the ordinance is inherently unfair; nor does it allege the ordiance was applied unfairly. Instead, the YMCA merely argues that the application is void without including what the ramifications would be. Because we agree with the County that our analysis is limited to whether the proceeding in St. Clair County was fundamentally fair, we will not rule on the alleged omissions contained within

Laidlaw's application. The Board is a creature of statute and is therefore limited by its enabling provisions. Accordingly, the only relevant inquiry for our purposes is whether Laidlaw's application met the requisites of 39.2(a) of the Act. Upon review of the company's petition, we find that ample documentation exists for every applicable criterion under the statute.

The second argument put forth by the YMCA submits that these alleged deficiencies in Laidlaw's application impacted the hearings so as to be fundamentally unfair.

> The absence of the required information deprived the County Board and the public, including opponents of the application, a fair opportunity to prepare for the public hearing on the application, and further prevented the possibility for opponents to fully prepare adequate written comment on the application.

(Pet. Br. at 4).

While this assertion raises a legitimate fundamental fairness issue, the Board finds it to be factually unconvincing. Laidlaw complied with all the requirements under the Act. Adequate notice was given and a wealth of substantive information was prefiled with St. Clair County. Three public hearings were held (February 19, 20 and March 13) and anyone who so desired could cross-examine any of those witnesses. Subsequent to the last hearing, a 30-day written comment period was established. Many citizens took advantage of the hearings and the comment period to express their concerns. In short, the Board finds that the hearing procedure undertaken by St. Clair County was fundamentally fair in that it afforded all interested parties due process.

SECTION 39.2 CRITERIA

The YMCA asserts that the decision of the St. Clair County Board should be reversed because "Laidlaw failed to prove the first listed criterion because it did not establish that the proposed expansion is reasonably necessary to accommodate the waste needs of the area in which it is located". (Emphasis added). (Pet. Br. at 6). In making this argument, YMCA misstates the criterion. Section 39(a)(1) states that the criterion is met if "the facility is necessary to accommodate the waste needs of the area it is intended to serve." (Emphasis added). Ill. Rev. Stat. 1989 ch. 111-1/2 par. 1039(a)(1). The YMCA states that approximately 50 percent of the waste delivered to the facility is generated in Missouri, and that Missouri has adequate waste facilities in place. The YMCA also notes the testimony of Mr. Schrieber that Laidlaw intends to service the needs of St. Clair County and its surrounding communities. Mr. Schrieber's statements indicate that Laidlaw expects the largest amount of its business will be

generated in St. Clair and Madison Counties. (Tr. at 36-37). Accordingly, the YMCA deduces that Laidlaw will drastically restrict its acceptance of non-Illinois waste at its Belleville site and that site's lifespan will be greatly increased. (Pet. Br. at 6). In short, the YMCA argues that "Laidlaw's presentation of incomplete and inconsistent evidence concerning the waste disposal needs of St. Clair, Madison and Monroe Counties presented an inaccurate picture...which is insufficient as a matter of law." (Pet. Br. at 7).

According to the YMCA, Exhibit 16, an Agency chart, demonstrates that St. Clair County has a landfill capacity of 13 years. In addition the YMCA notes that the Milan Landfill[1], also located in St. Clair County, was recently granted a 31 million cubic yard expansion, the result of which would give the county an approximate 41 year future landfill capacity. (Pet. Br. at 7).

Laidlaw disagrees and claims that necessity need not be absolute, but only expedient or reasonable. E & E Hauling v. PCB, 116 Ill.App.3d 586 (1983); Waste Management of Illinois v. PCB, 123 Ill.App.3d 1075 (1984); Clutts v. Beasley, 185 Ill.App.3d 543 (5th Dist. 1989). In that regard, Laidlaw argues that the St. Clair County disposed of 1,112,636 tons of solid waste in 1990, only 23% of which was imported into Illinois (Ex. 16; Pet. Br. at 5). The company also cites market demands and argues that more competition within the area stabilizes prices and discourages improper disposal. Laidlaw alleges that competition among sites is necessary because recent state regulations are forcing many sites to close, and because only three large corporations own almost all the remaining disposal capacity in the large service area.

The company also states that the subject site currently handles 30% of the wastestream in the service area. Moreover, 50% of the waste accepted by the current operation is special and industrial waste which requires ancillary permits. Laidlaw asserts that the neighboring landfills are not equipped to deal with this type of waste (Resp. Br. at 6). Furthermore, Laidlaw disputes the estimates of the YMCA and alleges that need is demonstrated by predictions that regional disposal capacity will be exhausted sometime after the year 2000. Indeed, the company maintains that the solid waste management plan adopted by St. Clair County predicts even less disposal capacity. (Resp. Br. at 7). (C1038).

Given the varying estimates of landfill capacity in conjunction with other reasons associated with need, we are unable to find the County's decision to be against the manifest weight of the evidence. Waste Management of Illinois v. PCB, 122 Ill.App.3d

---

[1]At the time of hearing, it was unclear as to whether the Milan Landfill had secured Agency approval.

(1984). The appellate courts have repeatedly held that whether a facility is necessary to accommodate the area's needs does not require a showing of absolute necessity; nor should the need be determined by application of an arbitrary standard of life expectancy of existing disposal capacities. Tate v. PCB, 188 Ill.App.3d 974 (1989); Fairview Area Citizens Taskforce v. PCB, 144 Ill.Dec. 659 (1990).

Based upon the evidence received at hearing, the County Board could have reasonably concluded that expansion of Laidlaw's Bellville facility was necessary to accommodate the waste needs of the area it is intended to serve. The County Board could have based its decision on landfill capacity in general. Moreover, its analysis may have focused on the large amount of industrial and special waste taken in by the facility. Finally, the County Board may have accepted the company's expert testimony in regards to market demands, effects on prices and the potential for illegal dumping. In any event, we find that ample evidence exists within the record to support the County Board's decision. Because our scope of review is limited to the manifest weight standard, we affirm the County Board's determination on this criterion. Fairview v. PCB, 198 Ill.App.3d 541 (1990).

The YMCA also challenges the decision of the St. Clair County Board in regard to the second and third criteria. The YMCA maintains that the County Board erred in its decision because the proposed expansion is not designed to be operated so that the public welfare will be protected, nor will its operation be located to minimize incompatibility with the character of the surrounding area. In support of these contentions, the YMCA notes that surface water drainage is already a problem, and expansion of the facility will aggravate the situation. The YMCA property is adjacent to the site, and on that property is a lake used by thousands of people for various activities throughout the year. The YMCA alleges that even though Laidlaw realizes that water drainage will be a problem, the company does not have a plan to deal with the excess water flow. (Pet. Br. at 9).

While Laidlaw admits that the surface water drainage issue is not entirely settled, the company maintains that the water issue is only one aspect of criterion two. Testimony revealed that the design of the proposed expansion calls for a composite, three-foot thick clay liner, a 60-mm HDPE liner and a leachate collection system in sand-lined trenches above that liner. The company further contends that a six-foot thick cap on the final cover of the site will prevent water from entering the closed site and better control run-off and erosion. Hydrogeologist Rod Blaese testified that there is no avenue for contaminants to travel from the site to public or private water supplies, even in the event of a total liner failure. (Tr. at 291-94).

Laidlaw admittedly filed its application because it had exceeded the scope of its operating permit. The company failed to construct a proper slope and went beyond its height limitation, thereby forming ponds on top of the landfill. These ponds will almost certainly cause additional infiltration of water, thereby generating more leachate. (Tr. at 23). Mr. Schrieber testified that there appear to be only two ways of solving this problem. The first is to scrape away the buried trash until a slope which is steep enough is achieved in order to establish water drainage. The other alternative is to build from the top of the landfill to accomplish the same objective. (Tr. at 24). The unrebutted testimony indicates that cutting away old, decomposing garbage invites a wealth of problems. Obnoxious odors are liberated, fugitive emissions of compounds are released and spontaneous combustion of newly exposed refuse is of great concern. (Tr. at 24).

In terms of surface drainage, Mr. Schrieber testified that it is impractical to design a plan without knowing the grade. (Tr. at 32). However, the company did promise to seek one of two options. The first option would be securing an easement or purchasing neighboring property. The second, and more concrete alternative the company proposed, was to move some buildings on site, construct earthen berms in addition to trenches, culverts and sedimentation ponds so that the only discharge would be water itself. (Tr. at 371-78). The company stressed that this water is not contaminated leachate, but rather precipitation.

We note that surface water run-off, while not desirable, is far less intrusive than scraping eleven feet of trash over a 30-acre area. We also note that any final plan by Laidlaw, including issues of water drainage, will have to be permitted by the Agency and therefore comport with the current landfill regulations adopted by this Board in 1990. Finally, although the YMCA alleged a great deal of harm by precipitation run-off draining into its lake, the organization failed to supply the County Board with any evidence of harm in relation to water drainage. Analyzed in its entire context, we find that the County Board could reasonably conclude that the public welfare would be protected by expansion of this landfill and its decision is therefore not against the manifest weight of the evidence. Thus we affirm the County Board as to criterion two.

With respect to criterion three, we do not believe that the County Board determination is against the manifest weight of the evidence. See Fairview, 144 Ill.Dec. 659. Section 32.2(a)(3) states: "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". The current site is adjacent to one landfill and a mile away from another. Further, the site is rural and characterized by depleted, mined-out land. There are very few residences nearby. While there were some

complaints of odors, muddy roads and negligent drivers, none of these complaints were directly attributed to Laidlaw. Even so, Laidlaw has pledged to install a tire washer to alleviate the muddy roads and has vowed to pick up any windblown trash within a 24-hour period. (Tr. at 124-25, 208).

Moreover, an independent realtor hired by the County filed a timely comment which stated that no impact should result to surrounding real estate values absent environmental contamination. (C1450-51). In regard to criterion three, the Clutts court held that:

> ...As to property values and better places, the law requires only that the location minimize incompatibility and effect on property values, not guarantee that no fluctuation will result; nor does the statute require the facility to be built in the "best" place, and rightly so for that is so subjective as to give no guidance at all to those who must decide these issues.

Clutts, 133 Ill.Dec. at 635.

Given the evidence in the record in addition to the applicable caselaw, we find that it is not against the manifest weight of the evidence for the County Board to determine that expansion of this landfill is located so as to minimize incompatibility with the character of the surrounding area. As such, we affirm the County Board as to the third criterion.

The YMCA only alleged deficiencies with respect to the application and criteria one, two, and three. The CCL however, seems to allege deficiencies in regards to every criterion except four, seven, and nine, the latter two of which are inapplicable. The petition filed by CCL consists mainly of conclusions without supporting documentation or argument. For example, CCL alleges that the proposed expansion is inconsistent with the Solid Waste Management Plan of St. Clair County, yet no citation to the record is given. The St. Clair County Board approved the solid waste management plan and CCL submits nothing which indicates that the County Board acted inconsistently with that plan by approving this landfill expansion. In any event, CCL does not allege any reversible grounds in its petition to review; it simply states it did not like the reasoning of the County Board. Accordingly, we affirm the County Board's decisions as to the contestable criteria contained within Section 39.2(a).

Finally, both CCL and the YMCA state that expansion should be reversed due to Laidlaw's past operating history. While Laidlaw's operation thus far may have been less than ideal, its past

performance, and the consideration thereof, is discretionary by the County Board. Section 39.2(a) states:

> ...The county board...may also consider as evidence the previous operating experience and past record of convictions on admissions of violations by the applicant...when considering criteria (ii) and (v) under this section.

We do not know if the County Board considered the testimony in this regard. Because such considerations are discretionary, however, we will not reverse on this basis.[2]

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

ORDER

For the reasons stated herein, the decision of the St. Clair County Board to approve site location under Section 39.2 of the Illinois Environmental Protection Act is hereby affirmed.

IT IS SO ORDERED.

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

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 26th day of September, 1991 by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

[2]We also note that the enforcement actions brought against Laidlaw by the County will be decided in a separate proceeding.