

ILLINOIS POLLUTION CONTROL BOARD  
December 30, 1982

JESSIE Q. ABBOTT, et al., )  
 )  
 Petitioners, )  
 )  
 v. ) PCB 82-124  
 )  
 WASTE MANAGEMENT OF ILLINOIS, INC., )  
 AND THE CITY OF EAST ST. LOUIS, )  
 )  
 Respondents. )

DISSENTING OPINION (by J.D. Dumelle):

My dissent follows from considerations of burden of proof and fundamental fairness.

The burden of proof in meeting the statutory criteria rests with Waste Management of Illinois, Inc. and with the City of East St. Louis. In this proceeding a landfill is proposed on 230 acres which will be 120 ft. higher than street level (R.161). A permanent land form of these dimensions is bound to affect the scenic view of many homes. But how many homes and to what degree? The record does not tell us.

A major consideration in another Waste Management case decided today (PCB 82-119) was the effect of the landfill expansion upon property values in the Village of Antioch and environs. The entire Pollution Control Board seemed to agree that any property value depression caused by the present landfill would not be a reason by itself to allow an expansion. Or, in other words, "bootstrapping" was not to be allowed. I agreed with that holding. Here, the 230 acres was used as an industrial site in the past. The proposed landfill would rectify the unsightly appearance created by that former use. But that does not itself make the new landfill needed. Property value considerations should assume the proper closure of the former industrial site if bootstrapping is not to be used.

There are other aspects of this landfill that are troubling. The contract entered into by the City of East St. Louis on May 20, 1981 provides for operation from "1:00 a.m. to 12:59 p.m." (Exhibit #2). The "12:59 p.m." should undoubtedly be "12:59 a.m." to indicate 24-hour operation. If this is indeed to be 24-hour construction for 15 years of a 120 ft. high "mountain", what then will be its effect upon nearby residents? There will be noise from bulldozers, and trucks and perhaps dust and odors at all hours of day and night. The record is silent on the effect of these deleterious influences upon quality of life and upon property values.

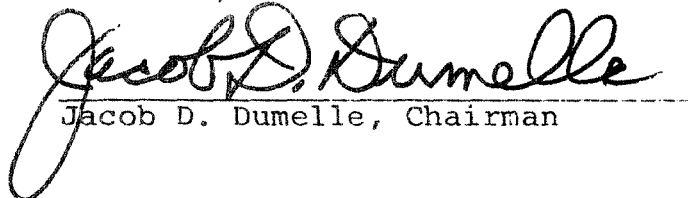
A key piece of testimony seems greatly in error. On August 17, 1982 the testimony from city officials was to the effect that the present haul to Millstadt was 22 miles one way (R. 21-2 and R.35). But scaling off the distance on an Illinois highway map, shows only about 11 miles from Millstadt to the center of East St. Louis. How could city officials be in error by 100% on such a simple fact? And does this error change the cost savings estimates?

The August 17, 1982 hearing raised some doubts as to fundamental fairness to the public. While the ending time of the hearing is not given, the transcript size would indicate a hearing of perhaps four hours. But the public did not have an opportunity to speak until 104 pages of a 174 page transcript had been recorded (60%). Or, in other words, the public portion was only 40% of four hours or about 1½ hours on a subject of great importance to them. And the record is replete with statements indicating a desire to cut off the hearing. Mrs. Abbott was limited to "one more minute" (R. 117). At page 167 it was "Three more people at the most". How many were cut off from testifying by that tenor? A counter argument to this is that no protest was indicated on the record. But we must remember that these residents had no counsel at the August 17 hearing and may have just been too frightened to protest further.

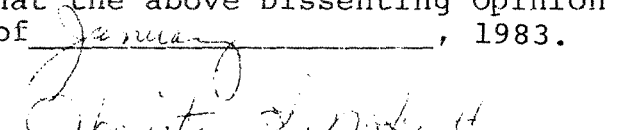
Two other issues deserve mention. Is this really a proper proceeding before the Pollution Control Board given the recorded objections by the Southwest Regional Post District and Formula-Research and Development, Inc.? Does title to both the land and to the "red mud" really rest with the City of East St. Louis? If it does not, then this is not properly before us.

Lastly, why did the East St. Louis City Council narrowly approve this landfill by an 8-7 vote? What were the dissenters' reasons? And how could the Council vote knowingly upon the issue on September 8 when the transcript of the August 17 committee hearing was not prepared until October 29?

Since the burden of proof was not carried and since fundamental fairness seems not to have been followed, I dissent.

  
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 Jacob D. Dumelle, Chairman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 4<sup>th</sup> day of January, 1983.

  
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 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board