ILLINOIS POLLUTION CONTROL BOARD
December 17, 1987

WASTE MANAGEMENT OF ILLINOIS INC., a Delaware Corporation,	)	
Petitioner,	)	
v.	)	PCB 87-75
LAKE COUNTY BOARD,	)	
Respondent.	)	

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority opinion adopted in this matter. I do not agree with the majority's finding that the procedures used were fundamentally fair.

I agree with the majority insofar as its determination that a county board or governing body of a municipality may adopt procedural rules to govern the hearing process under Section 39.2 of the Environmental Protection Act (Act). Ill. Rev. Stat. 1985, ch. 111½, par. 1039.2. However, it is clear that any such rules must provide fundamental fairness to all parties. I believe that the provisions of the Lake County ordinance which forbid any amendment of the application while allowing various county departments and objectors to file written materials up to 10 days prior to hearing deny the applicant fundamental fairness. These provisions put the applicant at a disadvantage because the only opportunity to respond to submissions by the objectors and county departments is through oral testimony at hearing. The applicant cannot introduce any written reports or studies. I recognize that the intent of these provisions is "to give members of the public and departments of the County an opportunity to prepare adequately and fairly for the public hearing". Lake County, Illinois, Ordinance Establishing a Procedure for New Regional Pollution Control Facility Site Approval Requests (Sept. 9, 1986), Section II(E). The provisions of the ordinance, however, do not give the same protections to the applicant. Thus, these provisions are fundamentally unfair.

Unlike the majority, I do not feel that the "opportunity" to withdraw the application and then refile is sufficient to cure the unfairness to the applicant. Such a "solution" results in a circular situation: an applicant files an application, objectors and county departments submit written materials in response, and the applicant withdraws the application in order to add information in reply to the written submissions. Upon the

refiling of the application, the cycle is started all over again, potentially continuing indefinitely. This hardly provides fundamental fairness to the applicant.

I also note that the length of the record before this Board is merely one example of the ever-expanding records in landfill siting appeals. As the majority notes, the county board hearings in this case produced more than 7,300 pages of transcript, 131 exhibits, and 77 written comments, plus pleadings and motions. The hearings before this Board resulted in an additional 474 pages of transcript plus exhibits. (Majority opinion at 4.) There were five briefs filed in this appeal, with petitioner's opening brief alone being 137 pages. I recognize that the Board's procedural rules do not set a limit on the length of briefs, but I must point out that the rules of the Supreme Court of Illinois allow briefs of only 50 pages if printed, and 75 pages if not printed. S.Ct. Rule 341. The Federal Rules of Appellate Procedure also state that briefs are not to exceed 50 pages. F.R.App.P. 28(g). While I understand the parties' desire to fully argue their positions, perhaps a bit of common sense would result in a somewhat shorter record and facilitate this Board's review of the case.

Because the procedures utilized under the county ordinance in this case were fundamentally unfair, I feel that the proceedings were void ab initio. Thus, I believe that the case should be remanded to the county for new hearings on the application.

J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 28th day of December, 1987.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board