

ILLINOIS POLLUTION CONTROL BOARD
September 27, 1990

INDUSTRIAL FUELS & RESOURCES/)
ILLINOIS, INC.,)
)
Petitioner,)
)
v.) PCB 90-53
) (Landfill Siting Review)
CITY COUNCIL OF THE CITY)
OF HARVEY,)
)
Respondent.)

W. ROBERT BLAIR AND ROXANNE JOYCE, APPEARED ON BEHALF OF
PETITIONER; AND

JEAN TEMPLETON, JAMES MONTGOMERY & ASSOCIATES, APPEARED ON BEHALF
OF RESPONDENT.

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

This matter comes before the Board on an appeal filed April 12, 1990 by Industrial Fuels and Resources/Illinois, Inc. ("Industrial"). Industrial contests the March 12, 1990 decision of the City Council of the City of Harvey ("Harvey") denying site suitability approval for a new regional pollution control facility pursuant to Section 40.1 of the Environmental Protection Act ("Act") (Ill.Rev.Stat. Ch. 111 $\frac{1}{2}$, par. 1040.1). Industrial challenges Harvey's decision with respect to criteria numbers 1, 2, 5, 6, and 7 of Section 39.2(a) of the Act. Harvey found in favor of that Industrial regarding Criteria 3, 4 and 9 and did not make any statement regarding Criterion 8.

Procedural History

Pursuant to Section 39.2 of the Act, public hearing was conducted by the Planning Commission of the City of Harvey commencing on November 29, 1989 and continued on January 4, 1990 and January 29, 1990; Post-hearing Public Comment was received for 30 days, including a supplemental filing by Industrial on February 27, 1990 (PCB, R. 6).* By Ordinance No. 2647

* This Board's transcript will be referred to as PCB, R. _____. The record filed by Harvey consists of three volumes. Vol. III contains the transcripts of Harvey's hearings, which the Board will refer to as R. _____. The material in Volumes I and II will be referred to by the sequential numbers stamped by the City as 000 _____. The briefs will be identified separately.

(Ordinance), dated March 12, 1990, the Harvey denied site location approval (000290). On April 12, 1990, Industrial filed its petition seeking review of that decision. The Board held a public hearing in this matter on June 12, 1990. Industrial filed its brief on June 26, 1990 and Harvey filed its brief on July 11, 1990. Industrial's reply brief was filed on July 19, 1990.

Background

Industrial's request is for a \$15 million (R. 14) multi-use facility, which will blend hazardous liquid and solid organic wastes as well as extracting solvents from contaminated soils, all for off-site secondary fuel use; and which will incinerate medical waste, with off-site disposal of the residue. The facility is proposed to be constructed and operated on approximately 13.57 fenced acres located at the northeast corner of the intersection of Center Avenue and 167th Street, in the City of Harvey, Cook County, Illinois. Four structures would be erected, totalling 65,500 square feet: a combination laboratory and office building; a container storage warehouse; a waste processing building; and a medical waste incineration building. Ten liquid storage tanks with a total capacity of 170,538 gallons would also be located on the site. The anticipated life of the facility would be at least 30 years. About 100-125 persons will be employed.

The hazardous waste treatment facility proposed by Industrial is intended to serve an area including mainly Illinois, Indiana, Wisconsin, Michigan, Minnesota, Ohio.

Some wastes determined to be hazardous under the Resource Conservation and Recovery Act ("RCRA") may be suitable for fuel-blending and burning as secondary fuels by certain industries, including cement kilns, fertilizer manufacturers and others which require high-temperature processing. The industries use a mixture of primary fuel (oil, natural gas, etc.) and secondary fuels in their furnaces which must meet rigid specifications for heat content and chemical constituents to assure that their use is economical and safe. (000008). Primarily due to ignitability, these wastes will be classified as hazardous under RCRA. (000018). Industrial would not accept or transfer to another facility wastes considered to be highly toxic, e.g. PCB's, herbicides and pesticides. An extensive list labeled "Typical Waste Components for Supplemental Fuel" and a table of 71 RCRA hazardous wastes (by RCRA hazardous waste number) were also submitted. (00020-21 and 000023). Many of the wastes are listed as hazardous under RCRA for toxicity. (000385).

Typical waste streams which may be blended for use as secondary fuels include:

| | |
|--------------------|-------------------|
| resins | solvents |
| pharmaceuticals | ink |
| paint and coatings | fuel |
| adhesives | organic chemicals |

These wastes are produced by various industrial and commercial sources, including:

| | |
|-------------------|----------------------|
| manufacturers | printers |
| distributors | building contractors |
| auto repair shops | dry cleaners |
| service stations | retailers |

(000008; see also 000018).

Contaminated Solids

Industrial also intends to process contaminated soils and other solids at the Harvey facility. The primary source of such contaminated solids would be due to clean-up programs related to buried tanks which released oil and/or fuel into the soil; the programs include the Responsible Property Transfer Act, the Illinois leaking Underground Storage Tank program, and new regulations for agricultural chemical facilities. Only Illinois is specified in the discussion of sources of the contaminated solids. (0000012). The Harvey facility would be capable of eventually processing 25 tons of contaminated solids per day using essentially a microwave-type technology. (000012 and Pet. Brief at 22).

Medical Wastes

The proposed facility would include an three-stage incinerator from Basic Engineering which would receive medical wastes not only from hospitals, but also from clinics, dental offices, veterinary clinics, and other related sources. Industrial expects increasingly more stringent legislative and regulatory controls, and the need to replace or upgrade on-site incinerators, as creating the impetus for new off-site medical waste incinerators, as proposed for the Harvey site. (000010-11).

"SB172"

Public Act 82-682, commonly known as SB172, is codified in Sections 3.32, 39(c), 39.2 and 40.1 of the Act. The Environmental Protection Agency (Agency) cannot issue a permit unless the county board or municipal government first approves the siting request for each new regional pollution control facility. These decisions may be appealed to the Pollution Control Board, whose authority to review the landfill site location decisions of local governments is found in Section 40.1 of the Act. The Board's scope of review encompasses three

principal areas: (1) jurisdiction, (2) fundamental fairness of the local government's site approval procedures, and (3) the nine statutory criteria for site location suitability. Pursuant to Section 40.1(a) of the Act, the Board is to rely "exclusively on the record before the county board or the governing body of the municipality" in reviewing the decision below. However, with respect to the issue of fundamental fairness, the Illinois Supreme Court has affirmed that the Board may look beyond the record to avoid an unjust or absurd result. E&E Hauling, Inc. v. PCB, 116 Ill.App.3d 587, 594, 451 N.E.2d 555 (2d Dist. 1983), aff'd in part 107 Ill.2d 33, 481 N.E.2d 664 (1985).

Jurisdiction

Jurisdiction is not at issue in this case.

Fundamental Fairness

Section 40.1(a) of the Act requires that the county board or local governing body must employ procedures in reaching its siting decision, which are "fundamentally fair." Due process considerations are an important aspect of fundamental fairness.

Administrative proceedings are governed by the fundamental principles and requirements of due process of law. [Citation.] Due process is a flexible concept and requires such procedural protections as the particular situation demands. [Citation.] In an administrative hearing, due process is satisfied by procedures that are suitable for the nature of the determination to be made and that conform to the fundamental principles of justice. [Citation.] Furthermore, not all accepted requirements of due process in the trial of a case are necessary at an administrative hearing. [Citation.] *** Due process requirements are determined by balancing the weight of the individual's interest against society's interest in effective and efficient governmental operation.

Waste Management of Illinois, Inc. v. PCB, 175 Ill.App.3d 1023, 1036-37, 530 N.E.2d 682 (2d Dist. 1988).

Industrial in its briefs has raised an issue concerning statements made at Harvey's hearings which were not in the form of sworn testimony. Only Industrial's testimony was sworn; neither the testimony of Harvey's consultant nor that of several members of the public who chose to comment concerning Industrial's request, were sworn. Although under some

circumstances, the unsworn testimony might result in fundamentally unfair procedures warranting remand, the Board holds that such is not the case here. The oral comments at hearing of Harvey's consultant did not appear to deviate in any significant respect from its formal report, and Industrial did not at hearing challenge anyone making statements on the basis that they were unsworn. Harvey clearly did not rely solely on such comments in reaching its decision. The statements here may be admitted as public comments, and not as testimony, and their probative weight thereby is reduced accordingly.

Since no additional fundamental fairness matters are at issue, the Board may proceed to address the statutory criteria for site suitability.

Statutory Criteria

Section 39.2 of the Act presently outlines nine criteria for site suitability, each of which must be satisfied 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). Section 39.2(a) of the Act sets forth the nine criteria as follows:

The county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, shall approve or disapprove the request for local siting approval for each new regional pollution control facility which is subject to such review. An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets the following criteria:

1. the facility is necessary to accommodate the waste needs of the area it is intended to serve;
2. the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
3. 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;

4. the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed;
5. the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;
6. the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
7. if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
8. the 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; and
9. if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

Industrial challenges Harvey's decision with respect to criteria numbers 1, 2, 5, 6, and 7, on which grounds Harvey denied Industrial's application.

Standard of Review

On appeal, the PCB must review each of the challenged criteria based upon the manifest weight of the evidence standard. This standard of review was recently restated in Fairview Area Citizens Taskforce v. IPCB, 144 Ill.Dec. 659, 555 N.E.2d 1184 (3d Dist. 1990) as follows:

In Tate, the standard of review in a regional pollution control facility site-location suitability case was stated:

Waste Management of Illinois, Inc. v. Pollution Control Board (1987), 160 Ill.App.3d 434 [112 Ill.Dec. 178], 513 N.E.2d 592, decided that all of the statutory criteria must be satisfied in order for approval and that the proper standard of review for the

County Board's decision is whether the decision is against the manifest weight of the evidence, with the manifest weight standard being applied to each and every criterion. See also City of Rockford v. Pollution Control Board (1984), 125 Ill.App.3d 384 [80 Ill.Dec. 650], 465 N.E.2d 996.

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 1983, 115 Ill.App.3d 762 [71 Ill.Dec. 547], 451 N.E.2d 262). The province of the hearing body is to weigh the evidence, resolve conflicts in testimony, and assess the credibility of the witnesses. A reviewing court is not in a position to reweigh the evidence, but can merely determine if the decision is against the manifest weight of the evidence. Jackson v. Board of Review of the Department of Labor (1985), 105 Ill.2d 501 [86 Ill.Dec. 500], 475 N.E.2d 879; McKey & Poague, Inc. v. Stackler (1978), 63 Ill.App.3d 142 [20 Ill.Dec. 130], 379 N.E.2d 1198.

Fairview Area Citizens Taskforce v. IPCB, 144 Ill.Dec. at 665, citing Tate v. PCB, 188 Ill.App.3d 994, 544 N.E.2d 1176, 1195.

Thus, 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 this Board or the local board might have reasonably reached a different conclusion. See also E&E Hauling v. PCB, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983); City of Rockford v. IPCB and Frink's Industrial Waste, 125 Ill.App.3d 384, 465 N.E.2d 996 (2d Dist. 1984); Waste Management of Illinois, Inc. v. IPCB, 22 Ill.App.3d 639, 461 N.E.2d 542 (3d Dist. 1984); Steinberg v. Petta, 139 Ill.App.3d 503, 487 N.E.2d 1064 (1st Dist. 1985); Willowbrook Motel v. PCB, 135 Ill.App.3d 343, 481 N.E.2d 1032 (1st Dist. 1985).

It should be noted that the Fairview court, citing Tate v. Illinois Pollution Control Board, 544 N.E.2d 1176, 1197 (4th Dist. 1989)); defined the responsibilities of the hearing body in terms of weighing the evidence, resolving conflicts in testimony, and assessing the credibility of witnesses. Industrial's petition and briefs claim that petitioner's evidence was neither refuted, rebutted or impeached, citing E&E Hauling, Inc. v. PCB, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983). The Board does not interpret this case as shifting the burden of proof to

the local government body, if this is what Industrial is implying. The Board will review each of the challenged criteria using the manifest weight of the evidence standard.

Harvey employed the technical services of Seely Stevenson Value & Knecht, Engineers Planners ("STV"), to review and analyze the application and data submitted by Industrial prior to Harvey's reaching its decision. In its letter to Harvey of January 4, 1990, in its supplemental letter of January 12, 1990, in its testimony of 1/29/90 and in its final report filed by Harvey at the 1/29/90 hearing, STV summarized the scope of its review and its findings. (000176-179). The review was conducted by STV personnel, including senior environmental specialists, waste management specialists, risk endangerment specialist/toxicologist, and traffic/transportation specialists. (See also review team qualifications at 000201).

In response to STV's request for more information in its detailed letter of January 14, 1990, Industrial submitted additional material for STV's review. (See Supplemental Information at 000584). On January 29, 1990, STV submitted its summary letter and report to the City of Harvey, which Harvey entered as Harvey City Council Exhibit #1 into the record. Harvey denied the application by Ordinance No. 2647 dated March 12, 1990. (000293).

The issue before the Board is whether or not the decision of Harvey, finding that Industrial did not satisfy criteria 1, 2, 5, 6, and 7, is against the manifest weight of the evidence.

The Criteria:

Section 39.2(a) of the Act requires an applicant to submit "sufficient details describing the facility to demonstrate compliance, and local siting approval shall be granted only if the proposed facility" meets the nine criteria.

We first note that the information addressing the criteria presented at the hearings in most all substantive respects did not diverge from the information also contained in written documents: the application by Industrial, the questions and concerns transmitted by STV, the supplemental information in responses by Industrial; and STV's final report, with recommendations, the latter, as noted above, having been put into the record as City Council Ex. 1. As earlier noted, there was some public comment at hearing and much more in the post-hearing comment period. However, in its brief Harvey singled out the issues raised by the "City's expert, STV" as sufficient to support its decision. (Res. Brief, p. 2). Therefore, the Board will look to the STV documents, particularly the final report,

for supporting evidence as to whether, on a manifest weight basis, Harvey should or should not be affirmed.

We also note that STV's recommendations were made from the perspective of its basic recommendation that Harvey grant conditional approval only. Part of STV's assignment was to assist in developing "facility design, construction, development and operational conditions/assurances." (000188). In its cover letter in its final report, STV stated, "Based on the current level of available information and technical approach presented by the applicant to date, it is the opinion of STV/Seelye Stevenson Value and Knecht that the facilities proposed can be designed, constructed, and operated in an environmentally sound manner utilizing state-of-the-art control technology." (000192). However, STV recommended conditional approval so as to allow the applicant to proceed with the permitting process and yet give Harvey the "opportunity to be involved in an ongoing manner in the design, permitting, construction, and operation of these facilities". (000093). STV stated that the record is incomplete without the actual detailed design plus the proposed environmental controls, and specifically singled out Criteria 2, 5 and 7 as being the source of its concerns leading to the conditional approval recommendation. A number of STV's recommended conditions relate to ongoing oversight, including the right to revoke the approval at any time at Harvey's sole discretion. (000093, 000094).

The Board does not construe Section 39.2 of the Act as allowing a conditional approval that allows ongoing review such as proposed by STV. (See Christian County Landfill, Inc. v. Christian County Board, PCB 89-92, 104 PCB 369, (October 18, 1989)), Concerned Citizens Group v. County of Marion, PCB 85-97, 66 PCB 423 (November 21, 1985)). We also note that, while an approving county or municipality may elect to defer to the Agency's permit process the detailed design and other data considerations, (see Tate v. Illinois Pollution Control Board and Macon County, 544 N.E.2d 1176 (4th Dist. 1989)), the appellate courts also have clearly held that the county or municipality is not required to do so, at least where Criterion 2 is concerned. (Cite E & E Hauling etc.). We finally note that Industrial has asserted that Harvey's consultant STV "is recommending Site Location Approval with certain conditions" and that "STV has found that the proposed Facility meets each of the criterion." (Comments by Industrial, at 000248). The Board is not persuaded that STV's statements have been accurately characterized by Industrial, or that STV's comments in any event should be construed as requiring Harvey to approve Industrial's application. The decisionmaking authority rests solely with the local government. A local government's consultant report, even if accurately characterized as urging approval, is not binding on the decisionmaker. McLean County Disposal Company, Inc. v. The

County of McLean, PCB 89-108, 105 PCB 203, 207 (November 15, 1989).

Criterion 1: the facility is necessary to accommodate the waste needs of the area it is intended to serve.

Section 39.2(a) (1) of the Act requires Harvey to review Industrial's application for site approval to ensure that the proposed 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).) The Board must determine whether Harvey's finding that Industrial failed to establish "need" as set forth in the Act is against the manifest weight of the evidence.

Organic Waste Suitable for Fuel Blending

The proposed service area for the facility, as defined by Industrial, is composed of Illinois, Indiana, Wisconsin, Michigan, Minnesota, Ohio and other states which generate candidate waste streams. (000008). The facility is capable of processing organic wastes suitable for fuel blending, contaminated solids and medical wastes. (Id.) Regarding organics suitable for fuel blending, Industrial's application sets forth the estimated gallons of suitable waste generated in the six-state-plus service area and the capacity for disposing of such waste based on existing facilities within the service area on a state-by-state basis. (000009-10). According to Industrial, wastes suitable for fuel blending within the six-state-plus service area total approximately 48,500,000 gallons. (Id. at 000009.) Industrial noted in its application that the data relating to service-area generation is based upon information on the quantities of wastes suitable for fuel blending which may not be totally accurate in that the data may include wastes which would not be suitable for fuel blending. (000009). Existing facilities, including the proposed facility, are capable of treating 31,100,000 gallons of waste or only 64% of this waste stream. (000010). Without the proposed facility, the existing facilities could treat only 24,850,000 gallons or 51% of the waste stream. Therefore, according to Industrial, there is a remaining need of 17,400,000 gallons even with the proposed facility being operational. (000010; R. 23-24).

Medical Waste

The evidence introduced by Industrial regarding the need for a facility for incineration of medical waste focuses on waste generated in Illinois and existing facilities in Illinois. (000010-11). Such waste is generated by hospitals, clinics, dental offices, veterinary clinics, medical research laboratories and other medical facilities. (000010). Industrial reports that

250 hospitals in Illinois, 80 of which are located in the Chicago area, generate a total of approximately 50,000 tons of waste per year. (000011). Industrial then reports that, although the "number of facilities which will be regulated when Illinois adopts a control program can only be estimated," when these facilities do become subject to regulation, they will produce "an amount [of medical waste] equal to the amount hospitals produce." (Id.) Industrial concludes that "[t]his means that 100,000 tons of medical wastes in Illinois will require some form of treatment and/or disposal." (Id.) In establishing need, Industrial also states that only a few of the existing hospital waste incinerators are capable of meeting air emission regulations and that many sources will chose to use off-site facilities rather than upgrade or replace their incinerators. (Id.) Noting that a facility located in Clinton, Illinois processes medical waste generated off-site and has a capacity of 4,250 tons per year, Industrial makes the following calculations:

If it assumed that 50 percent of the estimated quantity of medical wastes generated in Illinois will require off-site treatment, the need for additional capacity is clear. If regulations affecting existing incinerators are adopted, 50% is a very conservative assumption. The following analysis illustrates that the Harvey medical waste incinerator will only partially meet the anticipated demand:

| | |
|------------------|-------------------------|
| capacity needed | 50,000 tons/year |
| Clinton facility | -4,250 tons/year |
| Harvey facility | -12,000 tons/year |
| remaining need | <u>33,750 tons/year</u> |

(000011).

Contaminated Solids

In support of its position that the proposed facility is needed, Industrial asserts that "[t]he processing of contaminated solids is expected to be driven by the cleanup of buried tanks" which requires the "removal of solids contaminated with oil and/or fuel." (000012). Industrial states that recently enacted legislation and adopted regulations "will result in additional quantities of contaminated solids requiring treatment. (Id.) While recognizing that the "number of tank removals and property cleanups which may result from these initiatives is not known," Industrial estimates that 1,000 to 1,500 underground tanks may be undergoing evaluation in Illinois. (Id.) Industrial also estimates that real estate transactions requiring disclosure of environmental information will "range between 500 to 1,000 annually" and that this will result in a "large number of soil

operations." (Id.) Industrial reports that the proposed facility will be capable of processing 25 tons of contaminated soil per day. (Id.)

Based upon the above-discussed information set forth in the application for site approval and accompanying documents and the testimony of J. Douglas Andrews, President and Principal Engineer of Andrews Environmental Engineering which prepared the application (R. 16-26), Industrial contends that it has met its burden of establishing that the proposed facility is necessary to accommodate the waste needs of the intended service area and that Harvey's decision that Industrial failed to meet this burden is against the manifest weight of the evidence.

In its Ordinance rejecting Industrial's application, Harvey simply states that Industrial has "failed to meet its burden of demonstrating that the facility is necessary to accommodate the waste needs of the area it is intended to serve." (000291). The only discussion of criterion 1 by Harvey's consultant is set forth in a summary of STV's initial review of Industrial's application. (000176). STV states that "[t]here is little doubt of the need for environmentally sound facilities such as that proposed by [Industrial] on a local and regional basis" (000177); STV's final report does not deviate from this pronouncement. (000187-195).

In reviewing the Board's decisions regarding site location approval, the Appellate Court of Illinois has held that an applicant need not show absolute necessity in order to satisfy criterion #1. (Clutts v. Beasley, 541 N.E.2d 844, 846 (5th Dist. 1989); A.R.F. Landfill v. PCB, 528 N.E.2d 390, 396 (2d Dist. 1988); WMI v. PCB, 461 N.E.2d 542, 546 (3d Dist. 1984).) The Third District has construed "necessary" as connoting a "degree of requirement or essentially" and held that the applicant must show that the facility is "reasonably required by the waste needs of the area intended to be served, taking into consideration the waste production of the area and the waste disposal capabilities, along with any other relevant factors." (WMI v. PCB, 461 N.E.2d 546.) The Second District has adopted this construction of "necessary" with the additional requirement that the applicant must demonstrate both an urgent need for, and the reasonable convenience of, the new facility. (Waste Management v. PCB, 530 N.E.2d 682, 689 (2d Dist. 1988).)

In its post-hearing brief, Harvey argues that, regarding the fuel blending wastes, Industrial "has not adequately addressed the availability of other facilities, the possible expansion of other facilities or the specific generators of the waste to be treated at the [proposed] facility." (Res. Brief at 8.) According to Harvey, "a significant portion of the 'need' asserted by [Industrial] comes not just from an area outside the City of Harvey, but outside the State of Illinois itself" and

that Industrial "has sought to establish need by reviewing data from a service area which is far too large to give a proper picture of the necessity for such a facility." (Id.) Lastly, Harvey contends that Industrial has failed "to establish a more localized need for this particular facility" (Id.)

Harvey correctly notes that the appellate court has upheld the denial of site approval where the applicant failed to consider the capacities of other facilities immediately surrounding the intended service area. (A.R.F. v. PCB, 528 N.E.2d at 851.) However, in A.R.F. the applicant admitted upon cross-examination that it failed to consider the disposal capacities of other facilities within, and surrounding, the service area. (A.R.F. v. PCB, 528 N.E.2d at 851.) Here, there is no evidence indicating that, in calculating the disposal capacities of the six-state-plus service area, Industrial omitted any existing facilities. The Board finds that the evidence introduced by Industrial relating to the fuel-blending waste sufficiently addresses both the waste needs of the intended service area as well as the existing disposal capacities of facilities within that service area.

The Board notes that it is disturbed by Harvey's attempt to support its determination on the "need criterion" by arguing that the area intended to be served is "too large", that a significant portion of the "need" comes not just from an area outside of Harvey, but outside of Illinois and that Industrial failed to establish a more "localized need" for the proposed facility. (Res. Brief at 8.) The Board has recognized that Section 39.2(a)(1) of the Act "does not say 'local area', or make any implication that the geographical area of service is limited." (Fairview Area Citizens Task Force v. Village of Fairview, PCB 89-33 at 14 (June 22, 1989).) Furthermore, it is the applicant who defines the intended service area, not the local decision-making body. (See, Metropolitan Waste Systems, Inc. v. City of Marseilles, PCB 89-121 Supplemental Opinion at 4 (December 6, 1989).) According to the plain language of Section 39.2(a)(1), any assessment of need must be done in the context of the intended service area as proposed by the applicant. (Id.) Harvey's contention that, "depending on how one draws such a service area, one could almost always provide evidence" of need is erroneous. An applicant who proposes a large or heavily populated service area still has the burden of establishing need based upon a consideration of such relevant factors as the existence of other disposal sites, expansion of current facilities and changes in refuse generation. Hence, a larger intended service area will arguably impose a greater burden on the applicant in terms of the amount and type of evidence needed to be presented to establish "need." Therefore, any attempt by Harvey to find that Industrial failed to meet its burden of establishing "need" on the basis redefining the intended service area is misplaced.

Although the Board disagrees with Harvey's arguments relating to the fuel-blending waste, it does find merit in arguments raised by Harvey concerning the estimates relied upon by Industrial to support the "need" for treatment of medical waste. Industrial's data with respect to the "need" to treat medical waste is based upon a series of assumptions. (000011). Initially, Industrial assumes that regulations governing hospitals' treatment of medical wastes will be expanded to include other classes of medical facilities. Secondly, Industrial assumes that incineration is the sole method of treating medical waste and ignores the viability of sterilization and chemical treatment. Thirdly, Industrial assumes that anticipated stricter incinerator regulations may induce hospitals currently treating waste on-site to treat their medical waste off-site. (00000-11) Thus, ~~the "need" for off-site treatment is~~ more in the nature of conjecture based on the limited data available and minimizing the cost of on-site incineration. Harvey raised no arguments concerning the "need" for treatment of contaminated soil.

The Board recognizes that the evidence indicates that the proposed incinerator is indeed impressive and that the superior quality of the incinerator might attract large numbers of generators. The Board does not dispute that Industrial's business judgment may prove to be correct insofar as the medical waste market will expand and insofar as Industrial's incinerator's design and operation will give it a competitive edge. However, the appellate court has construed the term "necessary" as set forth in criterion 1 as requiring a greater showing. (Waste Management v. PCB, 530 N.E.2d at 689; A.R.F. Landfill v. PCB, 528 N.E.2d at 396; WMI v. PCB, 461 N.E.2d at 546.) The Board finds that such speculative data is insufficient to establish the "degree of essentially" (WMI v. PCB, 461 N.E.2d at 546) required for an applicant to meet its burden of showing that the proposed facility is necessary to accommodate the waste needs of the area intended to be served. (See e.g., Tate v. Illinois Pollution Control Board and Macon County, 544 N.E.2d 1176 (4th Dist. 1989).) Therefore, the Board concludes that Harvey's determination that Industrial failed to meet its burden of proof on criterion 1 is not against the manifest weight of the evidence.

Criterion 2: the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

Harvey, in its Ordinance denying the application for failure to meet this criterion, added that "The design and operational information supplied by Industrial Fuels is wholly inadequate to enable the Council to determine whether the facility would meet this criterion." (000291-2).

In its application, Industrial presents a plan of operations to show that the public health, safety and welfare will be protected. (000015, 000016-17). Industrial also asserts that by meeting present and anticipated more stringent local, state, and federal regulations as to design, criterion 2 will be satisfied. (000015). Additionally, Industrial states that "[t]he location of this facility within the City of Harvey assures the availability of adequate fire and police protection and emergency medical services, if needed". (000015). Exhibit 5, a consultant's report entitled, "Fire Safety Design and Review" was also presented in connection with criterion 2. (000015, 000107-000136).

a. Fuel - Blending and Contaminated Solids Processing

The application describes the receipt of incoming wastes, initially by truck only, as follows:

Upon arrival at the facility, the driver of a delivery vehicle must display a manifest document(s). The access control officer will report the arrival to the laboratory and request analytical work. The appropriate analyses will be performed and materials will be assigned to a storage area(s).

(000016).

Initially twelve, but eventually thirty, such deliveries would occur daily.

Industrial indicates that "[w]astes handled at this facility will be classified as hazardous under the characteristic of ignitability due to a measured flash point less than 140°F." (000018). To assure safe processing, mixing and storage, Industrial has specified fourteen (14) test parameters. (000018). If wastes are considered to demonstrate characteristics of reactivity, they will not be accepted. (000019). Industrial also states that some such wastes, if accepted, would be returned. (000028). Some accepted wastes could display characteristics of toxicity. "In most cases, the toxicity is due to an EP toxic metal(s), a common contaminant of paint, inks and coating waste streams. Regulated amounts of wastes which contain compounds considered to highly toxic, (PCB's, PBB's, herbicides and pesticides) will not be accepted by IFRI [Industrial] for processing or transfer to another facility." (000019). An extensive list labeled "Typical Waste Components for Supplemental Fuel" and a table of 71 RCRA hazardous wastes (by RCRA hazardous waste number) were also submitted. (000020-21 and 000023).

The waste analysis plan includes preshipment analysis of a waste sample before delivery to the facility. (000025). Sampling practices and intended methodologies also are briefly described in the application. (000028-30).

Closure of the facility is expected to occur in not less than 30 years. Closure and post-closure plans essentially call for decontamination and removal of all equipment, with no wastes intended to remain on the site. Buildings would be decontaminated and cleaned. Post-closure maintenance is not anticipated. (000031-34).

b. Medical Waste Incineration

~~The medical waste incinerator is briefly discussed with~~ respect to criterion 2. (000035-37). Two incinerator units, each capable of processing approximately 24 tons per day, would be equipped with pollution control devices. All wastes would be stored and handled within the 80x100 feet structure. As with the fuel blending operation, drivers would present a manifest describing the wastes being delivered for permanent recordkeeping. No radioactive wastes or hazardous wastes are intended to be received, and all shipments are to be pre-approved.

Description of the incinerator operations includes mention of automatic shutdown; storage capacity of up to two days incoming waste; cold storage; ash removal; and wastewater storage, testing ("if necessary") and discharge to the sewer system. Design and practices would plan to minimize the risk of odors. Inspections would be made daily. Personnel would be trained in medical waste handling and safety and use of available protective equipment. (000036-37).

Industrial asserts in its petition that all informational requests were satisfied by its petition and subsequent submissions. (Pet. at 4). Particularly with regards to the fuel blending operation, STV's letter and report of January 29, 1990 point out areas of information which were still unsatisfactory, though not necessarily permanently unsolvable. (See Letter, pp. 5, 6, 000192-193). Throughout the proceeding STV expressed its concerns about deficiencies in Industrial's information (e.g. see STV letters of January 4 and January 12, 1990, 000177, 000181). After receiving more information from Industrial, in its final report STV stated that the documents are too conceptual in nature to recommend unconditional approval.

Upon review of the entire record, the Board finds that Harvey's decision that Industrial did not satisfy criterion 2, was not against the manifest weight of the evidence. The application and supplemental information raised sufficient questions that Harvey could reasonably decide that insufficient

details were submitted to demonstrate compliance with Criterion 2.

Criterion 5: the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, and other operational accidents.

In its Ordinance, Harvey, in denying on the basis of this criterion added, "The design and operational information supplied by Industrial Fuels is wholly inadequate to enable the Council to determine whether the facility would meet this criterion." (000292).

Industrial's application and its Exhibit 5 describe its plan to minimize the danger from fire, spills or other accidents. (000042 and 000107). Industrial first discusses containers, 95% of which are expected to be 55-gallon steel drums. (000044). Industrial states that "[i]t is recognized that vibration, abrasion and other stresses during shipment may occasionally cause a container to fail during shipment." (000044). For this reason, Industrial would have a special area for emergency transfer and maintain a supply of empty containers. Corrosive wastes would not be considered for acceptance. Furthermore, "[c]areful review of analytical data to avoid the mixing of incompatible wastes will minimize the opportunity for creating a mixture that would be incompatible with the containment device." (000044). All incoming containers would be inspected and handling would be by specially padded forklift attachments.

Secondary containment to control leaks or spills would be provided at (1) the truck unloading dock; (2) inspection and sampling area; (3) container storage area; (4) container staging area; (5) processing area; and (6) tank storage area. (000045-47).

Ten steel storage tanks with total capacity of 170,538 gallons will be located on the site. All tanks are to be equipped with automatic feed shut-off at 90% of total capacity. There are no open-top tanks. Tanks would be periodically inspected and given protective paint coatings to prevent corrosion or erosion. (000048). Ignitable wastes will be stored in the tanks, and where storage is outdoors, the tank will be located at least 50 feet from the property line. (000054).

On-site management of the tanks contents is described as follows:

Material placement or removal from tanks will be controlled by a series of numbered sequential work orders. To assure the efficiency of the system in controlling the

quantities of waste or product in the various tanks, no work order is to be activated until the preceding sequential work order has been signed by the Plant Manager. This will not prevent two (or more) operations in the tank area from proceeding simultaneously; however, it will insure that the Plant Manager is aware of each operation and has accounted for each. As a practice, only one tank truck will be unloaded at any time.

(000049).

Additional safeguards include security measures (security guards, ~~barbed wire fence, lockable gate~~); ~~warning signs~~; scheduled inspections (varying from daily checks for spills to emptying tanks every 5 years to check corrosion or erosion); communications and fire equipment; preventive procedures; job descriptions; and training (for day-to-day and emergency situations). (000049-59). Job training was summarized in part, as follows:

Job training will occur in two phases. The initial phase will be conducted without "hands-on" experience. In this phase the employee will receive familiarization with facility operations and, also, with emergency procedures and equipment. In addition, the employee will receive instruction in the preparedness and prevention procedures for the entire facility with emphasis on the area where the employee's initial work station is located. It is anticipated that this phase of the employee's training will require approximately three (3) working days.

The second phase of each employee's training is related to handling actual job tasks and will be conducted as on-the-job training. There is a strong safety training component to this phase, also. The employee will be familiarized with the techniques of safely handling the hazardous materials. This training will be "hands-on" with supervision and instruction from the foreman or supervisor in the area. It is anticipated that this phase of the training will last approximately ten (10) working days.

(000054-55).

* * * *

All training policies as well as personnel records related to dates, type of training and extent of training will be maintained on a current basis at the site. Not later than six (6) months after employment or assignment to the facility, or assignment to a new position within the facility an employee shall complete all training required for his/her position. No employee shall work in an unsupervised position until they have completed the training requirements.

(000059).

STV's January 12, 1990 letter, expressed its concern in this area as follows: "The geologic setting, (i.e., dolomite) which warrants consideration due to the potential for groundwater contamination from sloppy housekeeping or accidental spills, is not addressed. Should groundwater contamination occur due to accidental release, remediation would be difficult due to the area's geology." (000187). Furthermore, details on spill containment systems were considered lacking. (000184). More details were also needed on the list of wastes and their concentrations, fire protection systems, training, and spill response. (000184-185).

The January 29, 1990 report by STV observes that accidental spills provide the greatest risk of harm to groundwater and surface water resources. Additionally, "any groundwater contamination in the dolomite geology aquifer will be a difficult remediation effort." (000191). The potential adverse impact can be minimized but "[s]pill prevention practices must be diligently adhered to by the applicant throughout the operating life of these facilities." (000191). In spite of Industrial's responses, and although STV states that "the facility proposed can be designed, constructed, and operated in an environmentally sound manner utilizing state-of-the-art control technology." (letter January 29, 1990, 000192, 000193). This was one of the three criteria where the information presented was considered too conceptual in nature for STV to recommend unconditional approval.

Based on the record before it, Harvey could reasonably conclude that Industrial did not carry its burden with respect to criteria 5. Questions about fire safety systems, spill prevention and containment and training considerations could persist after review of Industrial's submission. The Board finds that Harvey's decision is not therefore against the manifest weight of the evidence concerning the danger from fire, spills, and other operational accidents. That another decision could have been reached does not warrant reversal by the Board.

We note that Harvey, in its brief, addressed together Criteria 2, 5 and 7. In a certain sense, the concerns of Harvey were similar for all three criteria as regards to the lack of certain details. Harvey was concerned, for example, about the lack of agreements with hospitals and fire departments, of enough specificity regarding training of Industrial's own staff as well as the municipal departments. (City Br. p. 10-11). In response, Industrial argues that the evidence earlier submitted was massive, and that the extra detail submitted at the last hearing, on January 29, 1989 could not have been considered by STV (STV's final draft was submitted at the same hearing). Industrial argues that it is premature to take the time of the respective agencies and the hospital to execute the coordination and service agreements until approval has been given, noting that "~~There is more than ample time to work out these details following siting approval and before a Development Permit is issued by the IEPA~~". (Pet. Reply Br. P. 7).

While arguably under other circumstances one might conclude that Harvey was being unreasonable, here we are talking about a facility that will be handling materials that are hazardous because of their ignitability, and that additionally an unexpected spill could present quite a threat to the groundwater, particularly because of the toxic characteristics of some of the materials and the site geology. Although Harvey gets its drinking water from Lake Michigan, STV notes that, although there are no public water supplies, there are a number of groundwater users near the site, presumably for industrial process purposes (the record is not clear whether any water is used for drinking); the data is based on well inventories from the Illinois State Geological and Water Surveys. (000189). That Harvey would not want to approve without having unusual detail under Criterion 5 beforehand, including agreements, is not unreasonable based on the evidence in this record.

Criterion 6: the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

In its Ordinance, Harvey, in denying on the basis of this criterion added, "Industrial Fuels has failed to meet its burden of demonstrating a specific traffic pattern which would be utilized by vehicles entering and exiting the facility so as to minimize the impact on existing traffic flow. The design and operational information supplied by Industrial Fuels is wholly inadequate to enable the Council to determine whether the facility would meet this criterion." (000292).

Industrial engaged a consultant, Barton-Aschman Associates, Inc., to analyze the traffic impact of the proposed facility. Their report was attached as Exhibit 6. (000137).

The proposed site is located at the northeast quadrant of the intersection of Center Avenue and 167th Street in Harvey. The study considered present traffic counts and anticipated truck and car traffic for the proposed operations. Truck access would be via Center Avenue, a two-lane north-south roadway, with a 45 mph posted speed limit. Automobiles would access the facility via 167th Street, a two-lane east-west roadway with a posted speed limit of 25 mph. Including these two streets, the pertinent roadways are:

North-South

Center Street - West boundary of site; 2 lanes; 45 mph
Lathrop Street - East of site; 2 lanes; 25 mph
Halsted Street - East of site; 4 lanes; 25 mph

East-West

167th Street - South boundary of site; 2 lanes; 25 mph
159th Street - North of site; 2 lanes; 40 mph
171st Street - South of site; 2 lanes; 30 mph

In general, Industrial's consultant found traffic impacts to be minimal. Roadway capacities were analyzed using procedures specified in the 1985 Highway Capacity Manual. Operating levels of service (LOS), defined in terms of the average delay per vehicle, were evaluated. LOS A is the most favorable, representing delays of less than 5.0 seconds per vehicle. LOS F is the worst measure of intersection performance, with delays greater than 60.0 seconds per vehicle. The report provided the following analysis of existing traffic conditions:

| | <u>A.M.</u> | <u>P.M.</u> |
|---------------------------|-------------|-------------|
| Halsted and 167th Streets | B+ | B+ |
| Halsted and 171st Streets | C | E |

The report suggested certain improvements to upgrade existing conditions:

To obtain LOS E+ during the evening peak hour at Halsted and 171st Streets requires minor improvements. These include restriping the east and west approaches to create two lanes each - one lane for left-turning vehicles and a second lane for through and right-turning vehicles.

In addition, a left-turn arrow should be installed at the intersection of Halsted and 167th Streets for north - and southbound traffic. These minor improvements will ensure optimum operating efficiency under existing conditions.

(000142).

The report notes that accidents were higher than average for the three years from January 1985 through December 1987. Sixty-six to seventy-eight (66-78%) percent of the accidents were due to turning movements or rear-end collisions. An exclusive left-turn phase at the intersection would greatly reduce potential accidents. However, the LOS would diminish from B+ to C+ during the morning and evening peak periods.

Based on traffic information from the applicant's South Bend, Indiana facility (37 average daily truck trips), the following LOS was projected. The projection includes accident mitigation measures, but does not include any other possible property development.

| | <u>A.M.</u> | <u>P.M.</u> |
|---------------------------|-------------|-------------|
| Halsted and 167th Streets | C+ | C+ |
| Halsted and 171st Streets | C+ | E+ |

Industrial's consultant concluded that the intersections would operate at satisfactory levels of service, with LOS dropping not more than one level lower. Roadway improvements would not be required. (000148).

The consultant also reviewed the site access points (entrances/exits). The truck access point on Center Avenue places the truck access approximately 160 feet north of the southern property line. Employee access would be via 167th Street with two separate locations, one for ingress and one for egress. A single driveway would also be acceptable according to the consultant.

Overall, the consultant found the traffic impact and site access safety to be satisfactory. Additional traffic generated by the facility was not found to cause a significant impact and no roadway improvements were believed to be necessary.

STV initially found the traffic impact evaluation to be incomplete at the time of STV's January 4, 1990 letter. Traffic from the medical waste incinerator had not been addressed and the study was based on the South Bend facility and not on the proposed operations. (000177-178). STV's January 12, 1990 letter requested additional information.

Responding to STV's requests for information (000182), Industrial's supplemental information stated that trucks for the incineration process would total 12 to 30 trips per day (2-3 vehicles during peak times). Industrial's consultant expected no change in LOS due to factoring in the incinerator traffic.

In the final report of January 29, 1990, STV concluded that:

The traffic impact analysis conducted by Barton-Aschman Associates, Inc. for the

proposed Industrial Fuels and Resources (IFR) facility concludes that the traffic generated by this facility will have minimal impact on the surrounding streets and therefore, no roadway improvements are required to accommodate site-generated traffic.

(000218).

In the final letter and report of January 29, 1990, STV concluded that "[o]verall, traffic impacts are felt to be minimal on the existing transportation system." Rec. at 000192.

STV concurred with Industrial except for two particular aspects of the applicant's traffic report:

1. 171st Street

The existing intersection of 171st Street and Halsted operates at a low level of service, particularly during the evening peak hour. This situation is exacerbated by the sharp curve in 171st Street just west of Halsted and the traffic to and from the Holiday Inn at this location. Even with the restriping of the east and west approaches to create a left turn lane, it is not anticipated that there would be any substantial improvement at this location.

Without major geometric improvements on 171st Street, especially between Center Avenue and Halsted, it is not recommended that trucks utilize this street in gaining access to the site. Alternate routes should be investigated for the truck traffic coming from the south. Streets along residential areas should be avoided. A possible alternate would be 159th Street. Since the majority of the truck traffic from the south is coming on the Tri-State Tollway (I-294) and with the advent of a full interchange being proposed at 159th Street and I-294, it would be feasible to use this interchange to exit at 159th Street, travel east on 159th Street and south on Center Avenue to approach the site. 150th (sic) Street is a 2-lane state route and is designed to accommodate truck traffic. If this alternative becomes viable, the intersection of Center Avenue with 159th Street will have to be reanalyzed to determine the need for improvements.

2. Site Access

The truck access drive is to be located on Center Avenue. The Barton-Aschman study recommends providing a right-turn lane for inbound truck traffic approaching from the south. STV supports this recommendation, however, if all truck traffic approached the site from the north (159th Street/Center Avenue access) then this lane would not be needed. In lieu of that, we recommend a left turn lane be provided for the trucks turning into the facility from Center Avenue. This will reduce the potential for rear-end accidents. A 50 foot storage bay and a 100 foot taper should be provided as a minimum.

Employee traffic turning right or left from 167th Street into the facility will increase the potential for rear-end accidents. To alleviate this we recommend widening 167th Street between Lathrop Avenue and Center Avenue if feasible, to accommodate the additional traffic and allow for the turning movements into the proposed facility without impeding the through traffic on 167th Street.

(000219).

It is important to review this record from the perspective of the actual wording of Criterion 6, particularly insofar as it requires the applicant to minimize its impact on existing traffic flows.

In its brief, Harvey raised a number of issues where it asserted Industrial's traffic evaluation was incomplete. (Res. Brief p. 3,4.) However, by the January 29 meeting, those issues raised had been responded to. The question then is whether, on a manifest weight basis, Industrial's proposal was sufficient to meet Criterion 6. We believe it was. In the first instance, the evidence shows that, after careful analysis of Industrial's evaluation by Harvey's expert, STV, the expert agreed with Industrial that the impact of the facility on existing conditions was considered minimal. STV also concurred with Industrial's analysis except in the two areas quoted earlier. However, STV concerns, and its proposed alternatives relied on prospective changes in traffic flows, not on minimizing impact on existing flows.

Regarding 171st Street, STV's alternate would require that traffic instead would come into the facility from 159th Street on the north. STV relies on the completion of a proposed full interchange at 159th Street and the Tri-State Tollway (I-294); this change would allow most of the truck traffic, which comes from the south on the Tri-State, to travel east on 159th Street to Center and then south to the facility. STV then states that

the 159th Street and Center Avenue intersection will need analysis as to whether improvements will be required. It is clear STV's recommendation is dependent on a wholly prospective series of events that would also involve a change in the existing traffic flows. Thus, it would not be reasonable for Harvey to rely on this in denying Industrial's proposal.

Regarding Site Access, STV supports Industrial's proposed right-turn lane for truck traffic in-bound from the south. However, if all truck traffic were to approach from the north 159/Center Street access, then STV believes that the lane would not be needed. Instead, a left turn lane is recommended. It is clear that this recommendation also relies on the prospective change in the existing traffic flows, and thus cannot be relied upon as a reason for denial.

Finally, STV recommends widening 167th Street between Latrop and Center Avenues if feasible, so as to reduce the potential for rear-end accidents due to the increased employee use. Industrial disagreed, noting that the small added volume of vehicles during peak hour flows on 167th does not warrant such a remedy, particularly given its proposed left turn light. STV does not explain what it means by "if feasible". At the very least STV is suggesting that its option is hypothetical insofar as it saw impediments to implementing its recommendation. Even apart from the "if feasible" question, we do not construe Criterion 6 as requiring an applicant to improve all traffic problems generally, which this suggestion seems to imply.

After reviewing the evidence in the record, the Board finds, on a manifest weight basis, that Harvey could not have reasonably concluded that Industrial had not met the Criterion 6 requirements for minimizing its impacts on existing traffic flows. Harvey is therefore reversed insofar as Criterion 6 formed the basis for its denial.

Criterion 7: if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release.

Harvey, in citing this criteria in its Ordinance as the basis for its denial, also added, "The emergency response plan presented was only in general terms and the information supplied by Industrial Fuels is wholly inadequate to enable the Council to determine whether the facility would meet this criterion." (000292).

Criterion 7 requires that an emergency response plan exist for any facility which will treat, store, or dispose of hazardous wastes. Industrial's facility will be involved in each of these activities. (000063). To satisfy this requirement Industrial

submitted a plan which includes assigning primary responsibility for emergency response to the Plant Manager and Assistant Plant Manager; providing for communications by voice and air horn signals; providing emergency switches; providing for notification for outside assistance; maintaining records of wastes in storage and in process; acknowledging the possibility of the need for off-site evacuation; installing a fire safety system; constructing secondary containment to hold 10% of wastes in the event of releases/leaks; instituting inspection and materials handling procedures; training personnel; and planning to enter coordination agreements with local fire and police departments, emergency services and disaster agency, and at least one hospital. Industrial would also plan to submit a preliminary report to management within 7 days of an emergency incident and ~~submit a final report to government agencies within 15 days, or~~ sooner if required. (000063-68). Industrial also submitted its Exhibit 7, a map showing the location of police, fire, and hospital services.

Notification, which is required to be part of the emergency response plan, involves both on-site notification of employees and off-site notification for emergency assistance. This was discussed by Industrial as follows:

The system for immediately notifying on-site personnel of emergency conditions has built in redundancy. The facility will have a two way voice communication system linking the office with all areas where wastes are stored, processed and/or hauled. There is also a system of emergency switches. These systems could be damaged or rendered inoperable due to power failure or damage in emergency conditions. In addition to these systems, there will be a system of compressed air horn signals to notify and instruct on-site personnel.

* * * *

The Emergency Coordinator will be immediately informed of the emergency and a preliminary assessment of the nature of the emergency. If, in the judgment of the Emergency Coordinator, there is no hazard in making a further, personal assessment of the conditions, he may elect to delay notification for outside assistance until reviewing the threat at first-hand. If the nature of the problem can be assessed sufficiently, or if the nature and/or magnitude of the threat makes outside assistance necessary, the

Emergency Coordinator will summon the required services.

(000064-65).

Containment of spills or leaks, which is also discussed elsewhere in the application, was discussed briefly at pages (000066-67).

Evacuation procedures were not described in any detail. However, the following comments were made concerning evacuation:

The site location is removed from residential areas which should make the need for evacuation off-site areas unlikely. However, under some circumstances the fumes and/or smoke from a fire at the facility could make off-site evacuation a prudent step. If conditions develop so that evacuation of the facility and/or off-site area becomes necessary, the Emergency Coordinator will give assistance to the local emergency services in making a decision and will cooperate in providing notification and instruction to the affected persons.

* * * *

Facility personnel will be instructed in the proper response to emergency conditions. If a condition requiring evacuation is discovered and the signal given, all personnel will immediately move to the evacuation assembly area. Only such tasks as are necessary to minimize hazards to public health, safety and property damage will be undertaken prior to evacuating the premises. Area monitors will account for personnel from each area of the facility. If persons are unaccounted for; and only if it is safe to re-enter the facility, as determined by the Emergency Coordinator; or other responsible emergency services personnel, should rescue efforts be undertaken by persons trained and equipped to perform rescue operations.

(000065 and 66).

In its January 29, 1990 letter, STV reported that "[c]hemical spills, fires, explosions, loss of electric power, and the handling of chemicals at the IFRI [Industrial] facility will present hazards to workers, nearby residents, visitors and equipment." (000217). STV cautioned that "[e]xplosions,

particularly in processing solvents have occurred at other facilities and must be addressed." (000218). (emphasis added).

For the reasons noted in our comments regarding Criterion 5, it would not be unreasonable for Harvey to find that Industrial did not satisfy Criterion 7's requirement that "an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release." Section 39.2(a)(7) of the Act. The Board finds that Harvey's decision, that Industrial failed to submit adequate information regarding criterion 7, was not against the manifest weight of the evidence. As Industrial stated in its application, "[s]ince virtually all materials delivered to the facility are ignitable, any emergency, whether fire, explosion or spill, has the potential for escalation into a life-threatening episode." (000065). This being the case, the lack of detail in the description of emergency response plans, particularly with respect to notification and evacuation, supports denial of the application with respect to criteria 7. Harvey could have reasonably concluded that the conceptual plans for responding to an emergency would not appear adequate to protect workers, the residents as near as 700 feet away, other area workers, and the occupants of the Holmes School which is approximately 6 blocks north and 2 blocks west of the site. As Industrial observes, fumes could require area evacuation, and Harvey could reasonably conclude that the emergency response plan was inadequate in this, and other respects.

Conclusion

For the above-stated reasons, the Board affirms the decision of the City of Harvey, Illinois denying approval to Industrial Fuel and Resources/Illinois, Inc. for a regional pollution control facility on the bases of the statutory requirements of Section 39.2(a)(1), (2), (5), and (7) of the Act. The Board reverses Harvey on Criterion 6.

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

ORDER

The Board hereby affirms the decision of the City of Harvey, Illinois, denying site location suitability approval for a new regional pollution control facility.

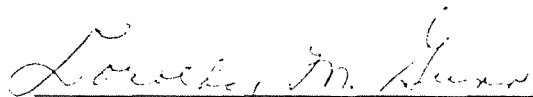
Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Members R. Flemal, J. Dumelle and M. Nardulli dissented on the Opinion. Board Member J. T. Meyer concurred on the Opinion.

Board Members J. T. Meyer and M. Nardulli dissented on the Order.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that on the 27th day of September, 1990, the above Opinion was adopted by a vote of 4-3, and the above Order was adopted by a vote of 5-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board