2016 IL App (5th) 150096-U

NO. 5-15-0096



IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

---

| | | |
|---|---|---|
| ROXANA LANDFILL, INC.,<br><br>Petitioner-Appellant,<br><br>v.<br><br>ILLINOIS POLLUTION CONTROL BOARD; VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEYVILLE, ILLINOIS; and CASEYVILLE TRANSFER STATION, LLC,<br><br>Respondents-Appellees. | ) | Petition for Review of the Order of the Illinois Pollution Control Board.<br><br>PCB Nos. 15-65 & 15-69 (cons.) |
| VILLAGE OF FAIRMONT CITY, ILLINOIS,<br><br>Petitioner-Appellant,<br><br>v.<br><br>ILLINOIS POLLUTION CONTROL BOARD; VILLAGE OF CASEYVILLE, ILLINOIS BOARD OF TRUSTEES; and CASEYVILLE TRANSFER STATION, LLC,<br><br>Respondents-Appellees. | ) | |

---

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held*: We affirm the order of the Illinois Pollution Control Board, which held that the Village of Caseyville's determination that the siting applicant had met the criteria for siting a solid waste transfer station within its boundaries was not against the manifest weight of the evidence, that the Village properly exercised jurisdiction over the proceedings, and that the proceedings were fundamentally fair.

¶ 2 Caseyville Transfer Station, LLC (CTS), acquired local siting approval from the Village Board of the Village of Caseyville (the Village) for a solid waste transfer station. Roxana Landfill, Inc. (Roxana Landfill), and the Village of Fairmont City (Fairmont City) appealed the Village's decision to the Illinois Pollution Control Board (the IPCB). The IPCB affirmed the Village's finding that CTS's application met the statutory criteria for siting approval, determined that the Village properly exercised jurisdiction over the proceedings, and concluded that the proceedings were fundamentally fair. Roxana Landfill and Fairmont City appeal. St. Clair, Madison, and Monroe Counties filed an *amicus curiae* brief, as did Canteen Township. CTS and the Village filed a motion to strike the *amicus curiae* brief of St. Clair, Madison, and Monroe Counties. We hereby affirm the IPCB's determination. We deny the motion to strike.

¶ 3 BACKGROUND

¶ 4 Application

¶ 5 On January 15, 2014, CTS, owned by John Siemsen, mailed notice of its intent to file a siting application with the Village to owners of property within 250 feet of the site and to members of the General Assembly from the legislative district in which the site

was located. On January 23, 2014, CTS published in the Belleville News Democrat the notice, which stated that CTS would file an application for local siting approval with the Village on February 10, 2014. On February 10, 2014, Siemsen personally delivered CTS's application for siting approval to the Caseyville Village Hall.

¶ 6 Pursuant to CTS's application, CTS sought local siting approval to develop a municipal solid waste transfer station, wherein waste collected from residences and businesses by conventional collection vehicles would be transferred into transfer trailers for transport to licensed municipal solid waste landfills for final disposal. The site of CTS's proposed transfer station was located on a five-acre parcel on the southwest corner of the intersection of Bunkum Road and the Harding Ditch, within the Village's municipal boundaries. CTS sought development of a 6,000 square foot transfer station building that could accept 300 tons of non-hazardous municipal solid waste per operating day. CTS anticipated that the waste received by the transfer station would originate principally from residents and businesses located in St. Clair County, while more limited quantities of waste were also expected to be received from residents and businesses in the counties of Madison and Monroe. CTS contemplated that no waste would be stored at the transfer station.

¶ 7 In its application, CTS asserted that the proposed transfer station was expedient and reasonably convenient to serve the waste disposal needs of the service area. CTS proposed that the waste collected would be transferred to landfills outside the service area, resulting in decreased transportation costs and extending the useful life of landfill facilities within the service area.

¶ 8 In its application, CTS also asserted that there were no residential land uses within 1,000 feet of the site. CTS noted, however, that property approximately 1,000 feet to the southeast of the site previously contained residential dwellings but that St. Clair County had acquired these properties under a Federal Emergency Management Agency (FEMA) buy-out program, which included permanent deed restrictions prohibiting any future residential development of the parcels 44 C.F.R. § 206.434 (2013).

¶ 9 In its application, CTS further asserted that the site was not located within a 100-year flood plain. CTS attached a Flood Insurance Rate Map (FIRM), showing the proposed site in "Zone X" which was defined on the map as "[a]reas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood." The map legend further defined "Zone X" as an "area protected from the 1% annual chance flood by the Mississippi River Levee System subject to failure during larger floods." The high risk areas, subject to inundation by the 1% annual chance flood event, were identified as "Zone AE" and "Zone AH."

¶ 10 In its application, CTS noted that at the maximum expected daily volume of 300 tons per day, the proposed transfer station would be processing approximately six packer trucks per hour, and each bay would process three trucks per hour or 20 minutes per truck. CTS estimated that eight trucks per hour would be entering and leaving the transfer station. CTS stated that given the light traffic generally experienced by Bunkum Road, the transfer station was not anticipated to impact existing traffic flows.

¶ 11 In its application, CTS noted that the St. Clair County Solid Waste Management Plan (the Plan) had been developed in collaboration with the adjacent counties of Monroe and Madison. CTS noted that the Plan did not address municipal solid waste transfer stations, but CTS asserted that the proposed transfer station was consistent with and furthered the objectives of the Plan. CTS asserted that "by providing for access to landfills outside of St. Clair County and the region, [the transfer station] would help to reduce the degree to which St. Clair County [wa]s an importer of municipal solid waste and extend the remaining life of the local landfills."

¶ 12 CTS attached the Plan to its application. The Plan identified as a concern the transportation of a large proportion of Missouri waste to Illinois landfills because the Illinois landfills charged waste haulers lower tipping fees than their Missouri counterparts. The Plan listed as objectives: source reduction, recycling, and waste-to-energy exploration. The Plan provided that "[a]ny privately developed waste-to-energy facilities where the primary beneficiary is not" the three counties "shall be discouraged." The Plan further provided that "[f]acilities proposed where the primary source of waste is from outside of the three county area shall be considered inconsistent with the solid waste plan." The Plan noted that the region had permitted landfill capacity that met its needs. An attachment to the Plan noted that the waste-to-energy provision of the plan had not been implemented.

¶ 13 The Plan described scenarios investigated in a feasibility study, one of which involved a centrally located waste management park containing a materials recovery facility, a yard waste composting facility, and a relatively large landfill. In the described

scenarios, a landfill would be located at the central waste management park near the centroid of solid waste generation in the three-county area. The common elements of the preferred waste management system were listed as reduction at the source recommendations, the materials recovery facility, and the yard waste composting facility. The Plan recognized that the needs of the counties may require multiple new or expanded existing landfill sites.

¶ 14 CTS also attached to its application the Illinois Environmental Protection Agency's 2012 report on Non-Hazardous Solid Waste Management Capacity in Illinois (the 2012 Landfill Capacity Report). The 2012 Landfill Capacity Report identified three operating landfills within the service area: Cottonwood Hills Recycling and Disposal Facility in Marissa; Milam Recycling and Disposal Facility in East St. Louis; and Roxanna Landfill in Roxana. According to this Landfill Capacity Report, two landfills within the region closed in 2010: the Bond County Landfill in Greenville, Illinois, and the Salem Municipal Landfill in Salem, Illinois. Pursuant to the 2012 Landfill Capacity Report, landfills within the region reported that capacity had decreased by more than 11.1 million gate cubic yards, providing for a landfill capacity decrease of 8.8%. The 2012 Landfill Capacity Report indicated that the region had a landfill capacity life of 16 years and that only one Illinois Environmental Protection Agency region had a shorter remaining landfill life.

¶ 15 In its application, CTS further noted that the landfill capacity remaining in regional landfills was not dedicated to or reserved for the waste management needs of the service area, in that the regional landfills received 43% of accepted waste from out of

state. The Cottonwood Hills landfill projected a closure date of 2064; however, 72% of the waste it accepted in 2011 originated from outside Illinois. The 2012 Landfill Capacity Report stated that the Milam landfill had a projected closure date of 2014, and in 2011, it had accepted 35% out-of-state waste. A North Milam Recycling and Disposal Facility was shown to be under development and estimated to open in October 2013. Roxana Landfill had a projected closure date of 2021, and it accepted 40% of its waste in 2011 and 47% of its waste in 2012 from outside the state of Illinois.

¶ 16 CTS also attached to its application a regional aerial map of the proposed site, an area land use map of the proposed site, a site boundaries diagram, a site plan diagram, a building layout diagram, a site traffic pattern diagram, an area roadways map, a service area map, a wetlands map, an article regarding transfer station design and operation, state transfer station regulations information, the United States Environmental Protection Agency's "Decision-Makers' Guide to Solid Waste Management" article, a 2009 Landfill Capacity Report, a list of parcels within 1,000 feet of the site, the deeds of parcels within 1,000 feet of the site, inventory and wild and scenic rivers information, Illinois Department of Natural Resources Ecological Compliance Assessment Tool consultation results, groundwater quality protection documentation, capacity and throughput analysis, proposed highway plans for Bunkum Road, and cited cases.

¶ 17 Village Hearing

¶ 18 The Village's hearing on CTS's application was held on May 29, 2014, at the Caseyville Community Center. Two members of the Village Board were present. Siemsen, declining over objection to testify under oath, presented information on behalf

of CTS at the public hearing. Roxana Landfill appeared through counsel as a participant, objected to the application, and presented evidence. Fairmont City also appeared through counsel as a participant, objected to the application, and presented evidence.

¶ 19 Siemsen explained that a transfer station is a distribution facility into which local waste haulers bring solid waste and unload it onto a concrete surface known as a "tipping floor." The waste is then loaded into semitrailer trucks that can more efficiently transport the waste for landfilling. Siemsen stated that the proposed transfer station would allow for exporting the waste away from landfills in the area.

¶ 20 Siemsen stated that CTS's proposed transfer station was necessary to accommodate the waste needs in the service area because there were no area transfer stations that accepted municipal solid waste. Siemsen cited the United States Environmental Protection Agency's manual, which stated that transfer stations tended to reduce waste transportation costs, reduce fuel consumption and vehicle maintenance costs, reduce traffic and air emissions, and reduce road wear. Siemsen stated that the transfer station would also increase competition in the area, reduce transportation and fuel usage, and decrease wear and tear on vehicles. Local waste haulers would no longer have to drive each load directly to the landfill by navigating unpaved roads and would thereby reduce their fuel usage, transportation costs, vehicle wear and tear, and waiting times.

¶ 21 Siemsen stated that the facility was designed, located, and proposed to be operated to protect the public health, safety, and welfare. Siemsen stated that no residential land uses were within a 1,000 square foot radius of the proposed facility. Siemsen stated that

the nearest residence was located 1,630 feet away from the site. Siemsen further stated that the surrounding land uses were not a type that would be incompatible with the transfer station. Siemsen recited as neighbors Mertzke Trucking Excavation, Rush Trucking, a salvage yard, and a quarrying operation. Siemsen stated that there were no wetlands in the immediate vicinity, no archeological or historic assets at the site, and no wild and scenic rivers within the vicinity of the site. Siemsen stated that there were no sole source aquifers, wells, or other sensitive groundwater features at the site.

¶ 22 Siemsen stated that to ensure that stormwater pollution did not create a problem, all of the waters coming in contact with the municipal solid waste would be collected in floor drains and pumped into an above ground storage tank. Siemsen stated, as a result, all of the waste material would be indoors, and the wash waters that resulted from cleaning the floors every day would be pumped into a tank and hauled to an off-site facility. Siemsen explained that the tipping floor of the transfer station would be pressure-washed every day.

¶ 23 Siemsen stated that the trucks would enter the site through the loading area and exit out onto Bunkum Road. Siemsen explained that the trucks would enter the facility, weigh, and then proceed to a ramp with two bays where they would enter, dump their waste, and then exit the facility. The site would be equipped with a queuing area where trucks would park in the event that the bays were occupied. Siemsen estimated an approximate waste average of 6 tons capacity for the trucks that were coming in and 22 tons for the trucks that were going out. Siemsen stated that CTS anticipated that the peak of the operation would be in the middle part of the day, with about six trucks coming in

per hour and one to two transfer trailers going out at peak operating times. Siemsen estimated handling about 20 tons of waste, approximately one truckload, within the transfer station facility at any given time. Siemsen explained that the transfer station was not a permanent storage facility to store a large volume of waste.

¶ 24 Siemsen presented a drawing showing that the proposed site was not near a retail business or residence. Siemsen stated that the proposed site was also located outside the boundary of the 100-year flood plain. Siemsen presented the FIRM flood plain data from FEMA and explained that the proposed site was located in Zone X, which Siemsen stated was an area protected from the 100-year flood by the levee system.

¶ 25 Siemsen explained that the Plan, adopted in 1991 and readopted in 2002, did not "really address transfer stations one way or the other." Siemsen stated that the proposed facility was consistent with the Plan in that it addressed the Plan's concern that a large amount of the waste landfilled was actually coming from Missouri. Siemsen explained that the transfer station would allow for exporting the waste away from the area to landfills outside the area.

¶ 26 At the hearing, Mayor Black opened the floor for additional comments or questions. Neither Roxana Landfill nor Fairmont City questioned Siemsen about CTS's application. Roxana Landfill noted that it had "nothing [to] question [Siemsen] under cross questioning [because] [t]his attorney who [has] made this presentation *** has presented only a long opening statement."

¶ 27 Kathy Mertzke asked Siemsen how he planned "to handle mud from the Harding Ditch because it floods regularly." Siemsen answered that he would probably raise the elevation where the building and access areas would be located.

¶ 28 Norman Miller, township supervisor of Canteen Township, noted that all of the vehicles would travel down Bunkum Road to the transfer facilities, dump the load, and exit back the same way, on Bunkum Road through Washington Park, because there was a weight restriction in Caseyville. Miller stated that Bunkum Road was a much-used road in the township and suggested that the transfer station would create more traffic than could be handled. Miller also questioned why the Village did not hire a traffic engineer to complete a traffic study.

¶ 29 Siemsen responded that traveling westbound on Bunkum Road was included in the application as the current condition. Siemsen stated that the highway engineer for St. Clair County indicated that construction would begin on Bunkum Road improvements and that the weight restrictions were likely to be eliminated on the eastbound portion of Bunkum Road so that traffic would not solely be traveling from the west. Siemsen stated that the St. Clair County Highway Department was scheduled to complete a traffic study before CTS was allowed to access Bunkum Road.

¶ 30 In addition to Mertzke and Miller, Steve Mitchell, Crystal Anthony, and Pat Mitchell were among those expressing additional comments and questions during the hearing. Mitchell, a registered voter of Fairmont City, expressed concern about the resulting odor from the proposed facility.

¶ 31 Anthony, a center manager with the Bluffview Head Start, which serviced Washington Park and Fairmont City, indicated that the truck traffic between 11 a.m. and 1 p.m. created concern. Anthony explained that the Head Start program encompassed morning and afternoon sessions, with children loading the bus at 11:15. Anthony stated that the proposed transfer station would cause difficulties for the Illinois Central Bus Company which serviced the entire district and traveled both directions.

¶ 32 Mitchell, who lived on Bunkum Road, stated that after a trucking company moved across the road, he consulted with the county, and the property officials indicated that the value of his property had decreased. Mitchell stated that he consulted the office again when the railroad company and the bus company moved nearby, and the officials advised that his property value had again decreased.

¶ 33 Fairmont City presented Sheryl Smith as an expert witness. Smith, an environmental consultant and senior project manager with URS Corporation, stated that she had previously performed 32 need assessments for siting cases. Smith explained that a waste transfer station is a facility that receives waste from individual collection vehicles or roll-off trucks. Those vehicles unload waste within a closed facility. The waste is then reloaded into a transfer trailer, which transports the waste longer distances for disposal. Smith explained that a transfer station's purpose is to provide more cost effective means of transporting and disposing of waste, specifically when closer and nearby landfills reach capacity and more distant landfills need to be used.

¶ 34 Smith calculated the waste generation of the service area to be 6.8 to 10.3 million tons over a 20-year period, depending upon the recycling goals that were actually met.

Smith determined that the annual amount of waste requiring disposal from the service area would average 333,000 tons. Smith estimated the capacity of the landfills within the service area, including those in Milam, North Milam, Cottonwood Hills, and Roxana, was approximately 47.8 million tons collectively.

¶ 35 Smith estimated that the cost to travel to a landfill outside the service area, such as to the Perry County landfill, for example, would be more expensive than delivering the waste directly to a local landfill. Smith estimated a cost of approximately $12.65 a ton to transfer the waste from Caseyville to the Perry County landfill but estimated a cost of $3.65 a ton to transfer waste from Caseyville to a landfill existing in the service area, namely the North Milam landfill, for example. Smith testified that the cost to travel to the Perry County landfill, as opposed to the local Roxana Landfill, calculated to an additional $8 a ton.

¶ 36 Smith concluded that the proposed transfer station was not necessary to accommodate the waste needs of the service area. Smith stated that there was sufficient disposal capacity within the service area from the existing landfills to accommodate the needs of the three counties over the next 20 years. Smith noted that the Plan for the three counties identified landfilling as the preferred disposal option and did not address the possibility of transfer stations.

¶ 37 Fairmont City also submitted the affidavit of Mr. Dallas Alley from St. Clair County's Building and Zoning Department. Alley stated that four parcels of land located on the attached map, which showed their location was within 1,000 feet of the proposed site, were zoned SR-MH by the St. Clair County Zoning Ordinance. SR-MH is Single

Family District−Manufactured Home District which allows single family residence dwelling. Alley stated that part of two additional parcels within 1,000 feet of the proposed site were zoned MHP, Manufactured Home Park District, allowing manufactured homes for residence purposes.

¶ 38 Roxana Landfill presented the expert testimony of Dustin Riechmann. Riechmann, a special operations traffic engineer licensed in the state of Illinois, testified that he met with the St. Clair County highway engineer and the Canteen Township supervisor, and he made extensive personal observations in the field. Riechmann testified that CTS's proposed facility was not so designed, located, and proposed to be operated that the public health, safety, and welfare were protected. Riechmann explained that CTS's application did not contain sufficient information from an on-site traffic plan to make such a determination. Riechmann explained that such a plan prepared by a professional engineer involved extensive detail about the signage, striping, grades, and profiles, along with on-site operations. Riechmann explained that CTS's application omitted key features necessary to make a determination, including grades, profiles of the proposed driveways and Bunkum Road and how they would intersect and interact, and the stationing of the driveway locations. Riechmann explained that CTS's application included crude sketches but no survey data to identify where the driveways would actually intersect Bunkum Road. Riechmann testified that it was impossible to determine where the proposed site would be located and where it would access the roadway. Riechmann further testified that CTS lacked determinations regarding safe sight

distances, on-site staging, storing and queuing of vehicles, parking calculations, and signage/striping plans.

¶ 39 Riechmann testified that the guardrail over the Harding Ditch obstructed sight lines for vehicles exiting the site. He described those sight lines as less than the American Association of State Highway and Transportation Officials' minimums. He presented a diagram he had prepared of the proposed site's ingress and egress and stated that even with the wide exit driveway provided for in the site plan, "trucks would encroach on the westbound lane of Bunkum Road."

¶ 40 Riechmann stated that CTS's presentation misrepresented the actual traffic impact of the facility by enumerating the incoming collection vehicles but failing to account for outgoing collection vehicles. He stated that Siemsen's traffic discussion did not account for employee trips, service vehicle trips, potable water haulers, general public trash haulers, outgoing collection vehicles, or incoming transfer trailers. Riechmann stated that CTS did not properly quantify the capacity or throughput as it related to traffic impacts, external and even internal to the site.

¶ 41 Riechmann further testified that CTS's application did not contain sufficient information to determine whether the traffic patterns to or from the facility were so designed to minimize the impact on existing traffic flow. Riechmann explained that CTS's application failed to include a traffic study establishing in detail the existing conditions that would be adjoining the site, the traffic generation characteristics of the proposed use, and the build condition, which effectively layered that traffic generation on top of existing conditions to analyze and view what the impacts of the development

would be. Riechmann explained that a traffic study would also include, *inter alia*, traffic counts, a review of crash history to establish safety information, detailed sight distance, traffic observations, and sight distance measurement.

¶ 42 Riechmann testified that the Bunkum Road pavement was in very poor condition, both east and west of the site. Riechmann introduced a photo showing the rough road warning sign as you enter the proposed area from the east. Riechmann explained that the photo revealed that the pavement had failed and that the shoulder had effectively failed as a gravel aggregate shoulder. Riechmann also identified a photo of a Bunkum Road intersection and described it as the "typical condition of all four approaches where there's heavy rutting in the pavement."

¶ 43 Riechmann testified that the primary point of ingress/egress for the proposed site was congested as an existing condition. Riechmann also highlighted rutting behind the curb line, revealing that trucks were jumping the curb on a regular basis as they maneuvered the turn. Riechmann testified that this would indicate that the curb line was perhaps not designed sufficiently for the types of trucks that were traversing it. Riechmann testified that there was a lot of activity immediately east of the site, where drivers were parked alongside the road, people routinely walked across the roadway, and school buses entered and exited. Riechmann testified that sending additional trucks through the Head Start school zone was an area of concern. Riechmann testified that the school program has a morning and afternoon program, with 244 students between the ages of two and five.

¶ 44 Riechmann testified that when waiting for a freight train to clear on nearby railroad tracks, the traffic would effectively queue back beyond the frontage of the site and block access to the site. Riechmann testified that the circulation patterns were dependent upon open ingress and egress on a regular basis throughout the day and that any interruption in them could create a serious traffic concern on-site and off-site.

¶ 45 Riechmann testified that even assuming that Bunkum Road was upgraded and the weight restrictions were lifted by the county board, CTS could not address the site plan deficiencies of intersection congestion, the existing school zone adjacent to the Head Start, the existing traffic flows that were adjacent to the bus depot, the railroad crossing and potential for queuing to obstruct access to the site, and the site restrictions that were due to the physical proximity of the bridge over Harding Ditch to this site.

¶ 46 In reply, Siemsen acknowledged that "the road is in poor condition" but that the county planned to address it. Siemsen also asserted that the law did not require a detailed traffic study.

¶ 47 On August 6, 2014, the Village granted approval to CTS for siting a municipal solid waste transfer station within Village boundaries. The Village determined that CTS complied with the procedural and notice requirements of the statute, thus giving the Village jurisdiction over the proceedings. The Village also concluded that CTS had met its burden on each of the statutory criteria and placed no conditions on the approval.

¶ 48 The IPCB Order

¶ 49 Roxana Landfill and Fairmont City (the petitioners) petitioned the IPCB to review the Village's siting decision and moved to consolidate their petitions. The petitioners

argued, among other things, that the Village did not have jurisdiction to conduct the hearing because CTS's filing of the application may not have occurred on the date stated in the prefiling notices, that the procedures used at the hearing were not fundamentally fair, and that the Village erred in granting CTS's application for siting approval.

¶ 50 The hearing before the hearing officer of the IPCB was held on October 28, 2014. In support of the contention that the Village had lacked jurisdiction, Village Clerk Rob Watt, via deposition, testified that he could not recall the date the Village received the siting application and that he "didn't know it was already delivered" on February 10, 2014. Likewise, Deputy Clerk Leslie McReynolds could not recall the exact date on which the application was delivered. Although Siemsen received no documentation from the Caseyville Village Hall acknowledging receipt of CTS's siting application on February 10, 2014, Watt indicated that CTS's documents were placed in Zoning Specialist Mike Mitchell's office, that Mitchell worked in the office twice a week, and that Mitchell provided them upon request.

¶ 51 Watt testified that he worked outside the Village Hall until approximately 6 o'clock and performed Village clerk duties in the evenings. Watt explained that during the day, McReynolds or employee Keri Cary normally received documents; however, if both were away from the office, the staff across the hall in the Village's water department received documents. Watt testified that if documents were received at the Village's administrative window, they would generally be date-stamped; however, the water department employees generally did not date-stamp the received documents.

¶ 52 Watt explained that CTS's application consisted of a box containing four binders. Watt was unaware that the Village had received the application until a member of the public asked to review it. He and his staff searched the office and discovered the application in Mitchell's office. Watt believed that CTS's application may have been delivered on February 10, 2014, but he did not personally know whether it had, nor could he "tell you the exact date" his office received it. If he discovered that a document had been submitted to the Village but not file-stamped, he would not consider it filed on the day it was discovered but he would attempt to determine the date it had arrived. Watt stated, "If it's in the Village offices I would figure Mike Mitchell had it, so it was delivered to the Village, so it would be technically filed."

¶ 53 Watt's deposition revealed that persons from the public asking to view the CTS siting application after February 10, 2014, but before February 14, 2014, were told by the Village office that there was no siting application on file. However, pursuant to Watt's deposition testimony, once he located the application, he notified the persons that the documents were available for review, and the application was available to the public the following week.

¶ 54 At the hearing, Siemsen testified that he personally hand delivered the application to the Village on February 10, 2014. Siemsen testified that he arrived at the Village Hall and went to the administrative office, *i.e.*, the glass window to the right of entering the Village Hall. Siemsen notified the attendant, who he believed was McReynolds, that he was there to file an application for local siting approval of a transfer station, handed over the application and accompanying materials, and left the building. Siemsen had attached

a cover letter dated February 10, 2014, noting that the application was "hand delivered." Siemsen did not receive a date-received stamped copy of his cover letter or any other portion of the siting application.

¶ 55 With regard to the fundamental fairness of the proceeding, Miller testified that the public hearing was not fair, the council room was unable to accommodate all the residents, and the residents could not hear or view the proceedings. Scott Penny, Fairmont City chief of police, stated that during the hearing, the room was packed with residents of Fairmont City, Canteen Township, and Washington Park. Penny testified that the mayor of Washington Park could not find an empty seat and had to stand outside throughout the hearing process.

¶ 56 On December 18, 2014, the IPCB entered its order. The IPCB concluded that the petitioners had failed to establish that the Village lacked jurisdiction, that the Village's siting procedures were not fundamentally fair, or that the Village's determination on any of the challenged siting criteria was against the manifest weight of the evidence. The IPCB concluded that the evidence was sufficient to demonstrate that the application was submitted on February 10, 2014. The IPCB found no evidence that the application was submitted on any date other than February 10, 2014, no statutory or case law requiring an applicant to maintain a receipt of the submission date, and no provision in the Environmental Protection Act (the Act) (415 ILCS 5/1 *et seq.* (West 2014)) requiring the application to receive a date-received stamp. The IPCB therefore concluded that the petitioners had failed to establish that the Village lacked jurisdiction to hear CTS's siting request based upon noncompliance with the Act (415 ILCS 5/39.2 (West 2014)).

¶ 57 The IPCB also found that the proceedings were fundamentally fair. Noting that the siting proceedings were not entitled to the same procedural protection as more conventional adjudicatory proceedings, the IPCB found no requirement in the Act or case law that an applicant testify or be subject to cross-examination. The IPCB was not convinced that the inability to cross-examine Siemsen prejudiced the petitioners' ability to present their argument at the Village hearing. The IPCB also found no evidence that any member of the public who wished to be present was turned away or denied the opportunity to offer public comment. The IPCB further found that the failure to produce copies of documents at an early stage in the proceedings, without a showing of prejudice, was at most harmless error. The IPCB upheld the hearing officer's decision to deny Fairmont City's motion to exclude CTS's posttrial summary, CTS's memorandums in opposition to Roxana Landfill's motions to dismiss, and CTS's objection to false information presented. The IPCB noted that Fairmont City did not contend that it was prejudiced by the late filings or that the Village considered the documents in its deliberations.

¶ 58 The IPCB concluded that the Village's findings on each of the disputed siting criteria were not against the manifest weight of the evidence. The IPCB noted that the CTS service area did not currently have a municipal solid waste transfer station, that the region had few municipal solid waste transfer stations, and that the proposed transfer station would promote competition, convenience, and efficiency.

¶ 59 The IPCB further noted that no evidence indicated that the proposed transfer station would have a deleterious effect on public health, safety, or welfare. The IPCB

found that CTS's application considered jurisdictional waters, flood plain data, archeological and historic sites, wild and scenic rivers, endangered and threatened species, and groundwater quality protection. The IPCB also found that CTS's application contained sufficient information addressing the site design, site access, on-site traffic flow, site security, site signage, lighting, site structures, utilities, contact water management, stormwater management, facility staffing, operating equipment, hours of operation, waste acceptance and processing, transfer operations, capacity and throughput analysis, cleaning procedure, litter control, vector control, dust control, odor control, noise control, fire prevention, employee training, an operational contingency plan, recordkeeping, and facility closure.

¶ 60 With regard to residential setback provisions of section 22.14 of the Act (415 ILCS 5/22.14 (West 2014)), the IPCB noted that the permanent deed restrictions in the parcels purchased by St. Clair County under the FEMA buy-out program provided that the grantee "agree[d] to conditions which [were] intended to restrict the use of the land to open space in perpetuity" and that the grantee "agree[d] that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that [was] open on all sides and functionally related to the open space use."

¶ 61 Noting that the Act did not require the elimination of all traffic problems, the IPCB found that the patterns to and from the facility were designed to minimize impact on existing traffic flows. The IPCB noted that CTS's application included a site plan showing the general flow of traffic of both transfer trailers and collection trucks. The IPCB further noted that the application included a site plan showing on-site parking, a

section for trucks to queue, an outgoing transfer trailer bay, and incoming packer truck bays. The IPCB concluded that "[t]he description of on-site traffic flow in the [a]pplication coupled with the traffic flow diagram provides information on the traffic patterns on-site."

¶ 62 The IPCB determined that it was within the decision makers' authority to determine consistency with the Plan as long as the approval was not inapposite to the Plan. The IPCB noted that, consistent with the Plan, CTS's proposed transfer station sought to reduce the degree to which St. Clair County was an importer of municipal waste and extend the remaining life of the local landfills.

¶ 63 Accordingly, on December 18, 2014, the IPCB entered its order and opinion affirming the Village's siting approval. The IPCB entered its order and opinion denying the petitioners' postjudgment motion for reconsideration on February 19, 2015. The petitioners filed timely petitions for review on March 23, 2015. See Ill. S. Ct. R. 335(a) (eff. Feb. 1, 1994); 735 ILCS 5/3-113 (West 2014); 415 ILCS 5/41(a) (West 2014).

¶ 64 ANALYSIS

¶ 65 Before the Illinois Environmental Protection Agency may issue a permit to develop or construct a new pollution control facility, such as a waste transfer station, the facility operator must obtain site approval for the facility from the local governmental unit. 415 ILCS 5/39.2 (West 2014); 35 Ill. Adm. Code 812.105 (2006). Section 39.2 of the Act governs pollution control facility siting applications and requires the applicant to submit sufficient details describing the proposed facility to demonstrate compliance with each of the nine criteria listed. 415 ILCS 5/39.2 (West 2014).

¶ 66 Section 39.2 "requires the local siting authority to hold a public hearing and issue a written decision." *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 108 (2007); 415 ILCS 5/39.2(d), (e) (West 2014). The public hearing shall be held "no sooner than 90 days but no later than 120 days after the date on which it received the request for site approval." 415 ILCS 5/39.2(d) (West 2014). The local siting authority shall consider any comment received or postmarked not later than 30 days after the date of the last public hearing. 415 ILCS 5/39.2(c) (West 2014).

¶ 67 At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the governing body of the municipality and any participants, the applicant may file not more than one amended application. 415 ILCS 5/39.2(e) (West 2014). Section 39.2(g) of the Act provides that the siting approval procedures, criteria, and appeal procedures provided for in the Act for new pollution control facilities shall be exclusive and that local zoning or other local land use requirements do not apply to such siting decisions. 415 ILCS 5/39.2(g) (West 2014). Notwithstanding section 39.2(g), however, the appellate court has held that a siting authority is not necessarily bound by the siting approval procedures, criteria, or appeal procedures provided for in the Act and may establish its own rules governing conduct of a siting hearing so long as those rules are fundamentally fair and not inconsistent with the Act. *Stop the Mega-Dump v. County Board of De Kalb County*, 2012 IL App (2d) 110579, ¶ 12.

¶ 68 The IPCB is charged under the Act with the responsibility for hearing appeals of local siting decisions. 415 ILCS 5/40.1 (West 2014). The IPCB "must consider all of the

criteria, although a negative decision as to one of the criteria is sufficient to defeat an application for site approval of the pollution control facility." *Town & Country Utilities, Inc.*, 225 Ill. 2d at 109. Hearings before the IPCB are based on the record before the local siting authority, except where evidence involves the local government's jurisdiction over the siting application or the fundamental fairness of the procedures used by the local government in reaching its decision. See 415 ILCS 5/40.1(a), (b) (West 2014); *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 11. Section 40.1 provides in part that, when reviewing a siting authority's decision, the IPCB shall consider the written decision and the reasons for the decision, the transcribed record of the hearings, and "the fundamental fairness of the procedures used by the *** governing body of the municipality in reaching its decision." 415 ILCS 40.1(a) (West 2014). A party adversely affected by the IPCB's final administrative decision may seek judicial review of it directly in the appellate court. 415 ILCS 5/41(a) (West 2014); *Town & Country Utilities, Inc.*, 225 Ill. 2d at 108.

¶ 69 Standard of Review

¶ 70 The standard of review to be applied to an administrative agency's decision varies depending on whether the question raised is a question of law, a question of fact, or a mixed question of law and fact. See *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). If the issue involves a question of law, the standard of review is *de novo*. *Id.* at 205. If the question is one of fact, the agency's determination will not be reversed unless it is against the manifest weight of the evidence. *Id.* If a mixed question of law and fact is raised, the agency's decision is subject to a clearly erroneous standard of review. *Id.*

¶ 71 "The fact that the [IPCB] undertakes consideration of the record prepared by the local siting authority rather than preparing its own record does not render the [IPCB's] technical expertise irrelevant." *Town & Country Utilities, Inc.*, 225 Ill. 2d at 123. "Instead, the [IPCB] applies that technical expertise in examining the record to determine whether the record supported the local authority's conclusions." *Id.*

¶ 72 Jurisdiction

¶ 73 Siemsen testified that he delivered the siting application to the Caseyville Village Hall. Because the Village staff testified that they had not date-stamped the application as received on February 10, 2014, and did not know the application had been delivered upon the public's first request to review it, Roxana Landfill argues that it did not pass into the custody and control of the clerk on the appropriate published date, and it was therefore not timely filed. It thereby argues that the Village had no jurisdiction over the siting proceeding.

¶ 74 Whether the applicant provided proper notice under section 39.2(b) of the Act is a threshold question in the appeal of pollution control siting. *Maggio v. Pollution Control Board*, 2014 IL App (2d) 130260, ¶ 15. Section 39.2(b) of the Act provides, in pertinent part: "No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on" local property owners and certain members of the General Assembly, and such notice shall be published in a newspaper of general circulation published in the county in which the site is located. 415 ILCS 5/39.2(b) (West 2014). The notice shall

state, among other things, "the date when the request for site approval will be submitted." 415 ILCS 5/39.2(b) (West 2014). Section 39.2(c) requires an applicant to "file a copy of its request with the county board of the county or the governing body of the municipality in which the proposed site is located." 415 ILCS 5/39.2(c) (West 2014).

¶ 75 "Section 39.2(b)'s notice requirements are jurisdictional prerequisites" that an applicant must follow to vest the local government with the authority to hear a proposal for siting a pollution control facility. *Maggio*, 2014 IL App (2d) 130260, ¶ 15. In this case, the parties do not dispute that CTS served written notice of its request for siting approval on the local property owners and the appropriate members of the General Assembly and that CTS published notice in a newspaper of general circulation in the county. The parties dispute that CTS filed its application for siting approval on February 10, 2014, as was stated in its notice.

¶ 76 Although a "filed" date stamp on a document is *prima facie* evidence that the document was delivered to the proper office for filing on the date borne by the stamp (*In re Marriage of Linn*, 260 Ill. App. 3d 698, 700 (1994)), stamping a document "filed" is a ministerial task that is unnecessary to perfect a filing (*Valio v. Board of Fire & Police Commissioners of the Village of Itasca*, 311 Ill. App. 3d 321, 327 (2000)). Because the person who is filing a document has no control over the officer who receives it, delivery alone may constitute sufficient filing. *Valio*, 311 Ill. App. 3d at 327.

¶ 77 Moreover, a "filing" necessarily implies delivery of a document to the appropriate office with the intent of having the document kept on file by that office in the appropriate place. *In re Marriage of Linn*, 260 Ill. App. 3d at 700. The filing party's intent, however,

is not the only factor to consider. *Id.* " 'A document is considered filed when it is deposited with and passes into the exclusive control and custody of the clerk, who understandingly receives the same in order that it may become a part of the permanent records of his office.' " *Id.* (quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-02 (1943)); see also *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1027 (2009) (to constitute filing, document must pass into clerk's exclusive custody and control to be made part of the court records).

¶ 78 In this case, CTS published February 10, 2014, as the filing date in its section 39.2(b) notices. The parties do not dispute that Siemsen delivered CTS's 1,565-page siting application to the Village Hall on February 10, 2014.

¶ 79 The IPCB's opinion and order stated as follows:

> "The Board finds, based on the evidence in the record, that the [a]pplication was submitted to the Village on February 10, 2014, as stated in CTS's notice of [a]pplication. It is sufficient that Mr. Siemsen personally delivered the [a]pplication on February 10, 2014 at the Caseyville Village Hall. Contrary to petitioners' allegations, there is no noncompliance here with the [s]ection 39.2(b) requirement that the siting notice state the date when the request for site approval will be submitted."

¶ 80 We agree with the IPCB's conclusion that CTS's "submitt[al] to the Village on February 10, 2014" and Siemsen's "delivery" to the "Village Hall" was sufficient pursuant to section 39.2(c) of the Act. The evidence demonstrated that on February 10, 2014, CTS delivered the application to the Village with the intent of having it kept on

file. Although the application was placed in Mitchell's office and not date-stamped, the Village staff located it and considered it filed when it was delivered. No evidence indicated that the application was filed, submitted, or delivered on a date other than February 10, 2014. The Village received the application in order that it may become a part of the permanent records in the office.

¶ 81 We reject the argument that the application was not filed until in the personal possession of Watt, the part-time Village clerk. Watt testified that he worked evening hours and was not typically present at the Village offices during normal business hours. Instead, we find, under the particular circumstances of this case, the application was submitted and filed with the governing body of the municipality on February 10, 2014, consistent with the notices published pursuant to the Act. The Village therefore properly exercised jurisdiction over the siting proceedings.

¶ 82 Fundamental Fairness

¶ 83 The petitioners argue that the public hearing was not fundamentally fair because: (1) the Village did not make CTS's application available to view on February 10, 2014, (2) Siemsen was not sworn in, and thus, the public participants were not provided an opportunity to cross-examine him, (3) the forum for the public hearing was too small to hold the citizens who wanted to engage in the siting process, and (4) the Village accepted untimely posthearing comments.

¶ 84 In reviewing a local siting authority's decision, the IPCB is to consider, among other things, "the fundamental fairness of the procedures used by the" municipality in reaching its decision. 415 ILCS 5/40.1(a) (West 2014). Whether siting proceedings were

fundamentally fair is a mixed question of law and fact, and thus we apply the "clearly erroneous" standard of review. *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 25. Applying the clearly erroneous standard in this case, we will not overturn the IPCB's ruling on fundamental fairness unless, after a review of the entire record, we are left with the definite and firm conviction that a mistake has been committed. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 85 "A siting authority's role in the siting-approval process is both quasi-legislative and quasi-adjudicative." *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 60. "Recognizing this dual role, courts have interpreted the applicant's right to fundamental fairness as incorporating minimal standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence." *Id.*; see also *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 27.

¶ 86 Nonetheless, "[a]lthough a local siting proceeding more closely resembles an adjudicatory proceeding than a legislative one, the local governing body is not held to the same standards as a judicial body." *Southwest Energy Corp. v. Pollution Control Board*, 275 Ill. App. 3d 84, 91 (1995); see also *Daly v. Pollution Control Board*, 264 Ill. App. 3d 968, 970-71 (1994) (procedural due process in an administrative proceeding does not require a proceeding in the nature of a judicial proceeding). The protections afforded by the due process clauses of federal and Illinois Constitutions (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2) do not apply to proceedings to create a pollution control facility. *E&E Hauling, Inc. v. Pollution Control Board*, 116 Ill. App. 3d 586, 594, 595

(1983). With regard to third parties at the proceedings, "decisions on the siting of proposed landfills are essentially matters of public policy, not specific benefits that State law has conferred on individuals." *Id.* at 595-96; see also *Petersen v. Plan Comm'n of the City of Chicago*, 302 Ill. App. 3d 461, 469 (1998).

¶ 87 Accordingly, as there is no constitutional right to a fair administrative hearing, the Act requires hearing procedures at the local level to comport with due process standards of fundamental fairness. *Daly*, 264 Ill. App. 3d at 970-71; *E&E Hauling, Inc.*, 116 Ill. App. 3d at 596. 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. Pollution Control Board*, 175 Ill. App. 3d 1023, 1037 (1988). The manner in which the hearing is conducted, the opportunity to be heard, the existence of *ex parte* contacts, prejudgment of adjudicative facts, and the introduction of evidence are important but not rigid elements in assessing fundamental fairness. *Hediger v. D&L Landfill, Inc.*, Ill. Pollution Control Bd. Op. 90-163, at 5 (Dec. 20, 1990); *Landfill 333, Ltd. v. Effingham County Board & Sutter Sanitation Services*, Ill. Pollution Control Bd. Op. 03-43, at 2 (Feb. 20, 2003).

¶ 88 " 'An administrative body possesses broad discretion in conducting its hearings.' " *Petersen*, 302 Ill. App. 3d at 466 (quoting *Village of South Elgin v. Pollution Control Board*, 64 Ill. App. 3d 565, 568 (1978)). "However, this discretion must be exercised judiciously and not arbitrarily." *Id.* "All that is required is that 'the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those

who are to be heard, to insure that they are given a meaningful opportunity to present their case.' " *Id.* (quoting *Telcser v. Holzman*, 31 Ill. 2d 332, 339 (1964)).

¶ 89 *Application*

¶ 90 The petitioners argue that the proceedings were not fundamentally fair because CTS's application was not properly filed and because the Village clerk did not make the application available for review until February 19, 2014.

¶ 91 We have reviewed the IPCB's determination that CTS's application was submitted and filed on February 10, 2014, when it was transferred to the custody and control of the Village Hall employees. We have upheld this determination and hereby further find that it did not render the siting proceedings fundamentally unfair.

¶ 92 Further, the failure to produce copies of the documents at an early stage in the proceedings does not necessarily deprive petitioners of a fundamentally fair process. See *Tate v. Illinois Pollution Control Board*, 188 Ill. App. 3d 994, 1016-17 (1989) (since petitioners have failed to demonstrate how they have been prejudiced by the failure to file the documents with the original application or the failure to produce copies of the documents at an early stage in the proceedings, any error which may have occurred is harmless at best). Neither petitioner has shown that it or any member of the general public was denied access to the application. Even assuming a 9-day delay in denying the public access to the application, the public still had over 90 days to review the application before the public hearing. See 415 ILCS 5/39.2(d) (West 2014) (public hearing must be held no sooner than 90 days but no later than 120 days after the date on which the municipality "received the request for site approval"). Indeed, 108 days elapsed from the

February 10, 2014, filing date until the May 29, 2014, public hearing, and 99 days elapsed from February 19, 2014 (the following week), until the May 29, 2014, public hearing. Any such delay did not render the siting proceedings fundamentally unfair.

¶ 93 *Testimony and Cross-Examination*

¶ 94 Fairmont City further argues that because CTS was permitted to present its one and only witness as unsworn public comment, it shielded him from cross-examination, rendering the local proceedings fundamentally unfair. Roxana Landfill asserts that section 39.2(e) of the Act (415 ILCS 5/39.2(e) (West 2014)) provides an unambiguous requirement for sworn testimony and cross-examination, highlighting that clause's reference to the "applicant's factual evidence and an opportunity for cross-questioning."

¶ 95 In *Fox River Valley District Council of Carpenters v. Board of Education of School District No. 231*, 57 Ill. App. 3d 345, 349 (1978), the plaintiffs claimed they were denied due process by not being allowed to cross-examine witnesses at a public administrative hearing conducted by the school board. Noting that all the accepted requirements of due process in a trial are not necessary at an administrative proceeding, the court held that administrative hearing due process requirements did not require the cross-examination of witnesses. *Id.* The court stated:

> "The rules governing cross-examination of witnesses derives [*sic*] from strictly judicial proceedings and to enforce these rules in a hearing before a school board would subject the proceedings to undue complexity and to allow cross-examination without any rules might invite interminable and meaningless testimony and provide more heat than light to the proceedings." *Id.*

¶ 96 Likewise, in *Concerned Adjoining Owners v. Pollution Control Board*, 288 Ill. App. 3d 565, 574 (1997), *abrogated on other grounds by Town & Country Utilities, Inc.*, 225 Ill. 2d at 116), the objectors were denied the opportunity to question the applicant at the siting hearing. The IPCB determined that the decision in the siting hearing not to allow the applicant to be called as a witness did not cause that proceeding to be fundamentally unfair. *Id.* Finding that the right to cross-examine in a siting hearing is not unlimited, this appellate court agreed, noting that the objectors were allowed to present all of their other evidence, which was extensive. *Id.* This court further held that "[t]here is no rule that any person authoring a report relied upon in a siting application must be called as a witness in the siting hearing." *Id.* at 575; see generally *Petersen*, 302 Ill. App. 3d at 470 (notice and hearing provisions of ordinance, similar to Act's provisions for public notice and hearings on landfill permit applications, "do not require persons speaking on behalf of or against any matter to be placed under oath, nor do they provide for cross-examination").

¶ 97 In *Concerned Adjoining Owners*, this court characterized as "correct" the rule stated by the appellate court in *Southwest Energy Corp. v. Pollution Control Board*, 275 Ill. App. 3d 84, 92-93 (1995):

> "[S]iting proceedings are not entitled to the same procedural protection as more conventional adjudicatory proceedings. Although citizens before a city council in siting proceedings may insist the procedure comport with standards of fundamental fairness, they are not entitled to a fair hearing by reason of the constitutional guarantees of due process. [Citation.] Parties before a local

> governing body in a siting proceeding must be given the opportunity to present evidence and object to evidence presented, but they need not be given the opportunity to cross-examine opposing parties' witnesses. This point is also recognized by the General Assembly. Section 39.2(c) of the Act requires the local governing body to consider any written comment filed within 30 days of the last public hearing. [415 ILCS 5/39.2(c) (West 2014).] Obviously, the parties cannot cross-examine those who submit written comments."

See *Concerned Adjoining Owners*, 288 Ill. App. 3d at 575-76.

¶ 98 Upon the conclusion of Siemsen's presentation, Mayor Black opened the hearing to questions or comments. Declining to question Siemsen, the petitioners presented the extensive testimony of their expert witnesses. Neither petitioner has shown any prejudice as a result of the procedures used at the siting proceedings, and neither made an offer of proof as to what it would have asked Siemsen had he been placed under oath. No limit was placed on their ability to offer evidence, question the applicant, or give comment. The petitioners thereby failed to demonstrate that they were prejudiced by the procedures; thus, they failed to meet their burden of establishing that the proceedings were unfair. *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 47; *Fox Moraine, LLC*, 2011 IL App (2d) 100017, ¶ 15.

¶ 99 *Conditions at the Public Hearing*

¶ 100 Roxana Landfill further argues that the proceedings were not fundamentally fair because the hearing location was changed just prior to the hearing and the room in which the hearing was held failed to fit all participants. Roxana Landfill did not, however,

present to the IPCB any evidence that the Village's procedures prevented any person who wished to participate in the siting proceedings from doing so. Instead, the Village kept the public hearing open until all who wished to comment had the opportunity to do so. We agree with the IPCB's determination that the conditions were not fundamentally unfair. See *County of Kankakee v. City of Kankakee*, Ill. Pollution Control Bd. Op. 03-31, 03-33, 03-35, at 22 (Jan. 9, 2003); *City of Columbia v. County of St. Clair & Browning-Ferris Industries of Illinois, Inc.*, Ill. Pollution Control Bd. Op. 85-177, at 6 (Apr. 3, 1986).

¶ 101 *Comments*

¶ 102 Fairmont City contends that the Village Board improperly considered comments filed by CTS more than 30 days after the May 29, 2014, siting hearing. Fairmont City argues that the following documents should be stricken from the record: (1) CTS's posttrial summary; (2) CTS's memorandum in opposition to Roxana Landfill's motion to dismiss based on jurisdiction; (3) CTS's memorandum in opposition to Roxana Landfill's motion to dismiss based on fundamental fairness; and (4) CTS's objection to false information presented by opponents regarding 1,000 foot setback requirement.

¶ 103 The IPCB counters that although the Act provides that the local siting authority "shall" consider comments received within 30 days of the siting hearing, it does not require the local authority to reject comments received outside that time frame. See 415 ILCS 5/39.2(c) (West 2014). We agree.

¶ 104 The 30-day written comment provision of section 39.2(c) provides, "Any person may file written comment with the county board or governing body of the municipality

concerning the appropriateness of the proposed site for its intended purpose." 415 ILCS 5/39.2(c) (West 2014). "The county board or governing body of the municipality shall consider any comment received or postmarked not later than 30 days after the date of the last public hearing." *Id.*

¶ 105 The 30-day period is a minimum, not a maximum. Written comments filed after the 30-day period may be considered by the Village at its discretion. "The constraint is on the County to give at least a 30[-]day written public comment period." *Town of St. Charles v. Kane County Board & Elgin Sanitary District*, Ill. Pollution Control Bd. Op. 83-228; 83-229, 83-230 (Mar. 21, 1984).

¶ 106 The IPCB upheld the hearing officer's decision to deny Fairmont City's motion to exclude CTS's posttrial summary, memorandums in opposition to Roxana Landfill's motions to dismiss, and CTS's objection to false information presented. The IPCB noted that Fairmont City did not contend that it was prejudiced by the late filings or that the Village considered the documents in its deliberations.

¶ 107 We agree, finding that any such error in considering the documents is harmless. The Village's acceptance of CTS's posttrial summary, memorandums, and objections, filed more than 30 days after the public hearing, did not render the proceedings fundamentally unfair. After a review of the record, we cannot conclude with the definite and firm conviction that a mistake has been committed. Accordingly, because the IPCB's ruling on fundamental fairness was not clearly erroneous, we decline to overturn it.

¶ 108 The Siting Criteria

¶ 109 The petitioners also argue that the IPCB's decision to affirm the Village's siting determination was against the manifest weight of the evidence. The petitioners argue that although unsworn public comments are considered evidence in the context of a local siting proceeding, they are not entitled to the same weight as expert testimony submitted under oath and subject to cross-examination. Accordingly, the petitioners argue that Siemsen's unsworn testimony, unsworn exhibits, and siting application were insufficient to support a *prima facie* case under the Act (415 ILCS 5/39.2 (West 2014)), and the Village's determination was therefore against the manifest weight of the evidence.

¶ 110 The Village and CTS counter that the petitioners offer little to substantively challenge the accuracy or completeness of CTS's maps, drawings, proposed operating procedures, government publications, and other evidence supporting the Village's decision to approve the application.

¶ 111 In order for the petitioners to prevail here, they must demonstrate that the IPCB's decision is contrary to the manifest weight of the evidence. *Wabash & Lawrence Counties Taxpayers & Water Drinkers Ass'n v. Pollution Control Board*, 198 Ill. App. 3d 388, 392 (1990). "That a different conclusion may be reasonable is insufficient; the opposite conclusion must be clearly evident, plain[,] or indisputable." *Id.* "Furthermore, as a reviewing court we will not reweigh conflicting testimony or assess the credibility of witnesses." *Id.*

¶ 112 Again, an applicant for local siting approval must submit sufficient details describing the proposed facility to demonstrate compliance, and the siting approval will

be granted only if the proposed facility meets the nine criteria set forth in section 39.2(a) of the Act. 415 ILCS 5/39.2(a) (West 2014); *Town & Country Utilities, Inc.*, 225 Ill. 2d at 108; *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 10; *Fox Moraine, LLC*, 2011 IL App (2d) 100017, ¶ 14. "All of the statutory criteria must be satisfied before a local board may approve a local siting application." *Waste Management of Illinois, Inc.*, 175 Ill. App. 3d at 1030. The appellants take issue with criteria i, ii, iii, iv, vi, and viii, which are as follows:

> "(i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;
>
> (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare with be protected;
>
> (iii) 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;
>
> (iv) (A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed; ***
>
> ***
>
> (vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
>
> ***

(viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan ***." 415 ILCS 5/39.2(a)(i)-(viii) (West 2014).

¶ 113 *(i) necessary to accommodate needs*

¶ 114 The petitioners argue that Siemsen's conclusory, unsworn, and un-cross-examined testimony was insufficient to overcome the sworn expert testimony and evidence on the issue of need. The petitioners argue that Siemsen offered no evidence on waste production or disposal capabilities in the service area and offered no information on how the proposed facility would save or decrease transportation costs or achieve more efficient waste collection, management, and disposal. Fairmont City argues that Siemsen cited no supporting facts or evidence other than general language from a United States Environmental Protection Agency manual regarding the benefits of transfer stations.

¶ 115 CTS was required to show that the transfer station was "necessary to accommodate the waste needs of the area it [was] intended to serve." 415 ILCS 5/39.2(a)(i) (West 2014). Although an applicant need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 234 Ill. App. 3d 65, 69 (1992). The applicant must show that the pollution control facility is reasonably required by the waste needs of the area, including consideration of its waste production and disposal capabilities. *Id.* The applicant need not show that every other

pollution control facility site in the region is unsuitable but must show more than mere convenience. See *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 907 (1991); see also *E&E Hauling, Inc.*, 116 Ill. App. 3d at 609.

¶ 116 Siemsen stated that the transfer station was necessary to accommodate the waste needs in the St. Clair County service area because there were no transfer stations that accepted municipal solid waste in the immediate area. Siemsen cited the manual issued by the United States Environmental Protection Agency which stated that transfer stations tended to reduce waste transportation costs, reduce fuel consumption and vehicle maintenance costs, reduce traffic and air emissions, and reduce road wear. Siemsen stated that the transfer station would increase competition in the area, reduce transportation and fuel usage, and decrease wear and tear on vehicles.

¶ 117 The record supported his statements that the service area did not have a municipal solid waste transfer station serving the immediate area and that the metro east area had the fewest such facilities in Illinois, in terms of absolute numbers and relative to geographic area and population. The 2009 Landfill Capacity Report identified four transfer stations operating in the region: Bethalto Waste Transfer Facility, Granite City Landscape Transfer, and Keller Excavating Transfer Station (located in Madison County), in addition to Randolph County Transfer Station. Only Randolph County Transfer Station and Bethalto Waste Transfer Facility accepted municipal solid waste. The Bethalto Waste Transfer Facility is 22 miles away and accepted waste solely from the Village of Bethalto. The Randolph County Transfer Station is 53 miles from the proposed site. The evidence indicated that local waste haulers would benefit from a

transfer station because it would reduce their fuel usage, transportation costs, wear and tear on their vehicles, and waiting times.

¶ 118 The record also revealed that the proposed transfer station may extend the useful life of the existing landfills in the region. The 2012 Landfill Capacity Report indicated that the region had a landfill capacity life of 16 years and that only one Illinois Environmental Protection Agency region had a shorter remaining landfill life. The record further revealed that two landfills in the region had recently closed, the remaining landfills receive a significant portion of their waste from out-of-state sources, and that the Milam landfill is nearly at capacity. Roxana Landfill is projected to close by 2021.

¶ 119 In supporting its decision, the IPCB cited to portions of the United States Environmental Protection Agency's manual which described reduced transportation costs, air emissions, road wear associated with transfer stations, and the efficiencies in waste processing achieved by transfer stations. Additionally, the IPCB cited to a letter from an independent waste hauler, Brisk Sanitation, describing the potential benefits to that business from the proposed transfer station, including increased competition, efficiency, and convenience for the marketplace.

¶ 120 We recognize Smith's opinion that the proposed transfer station was not necessary because the existing landfills in the region had 20 years of remaining capacity and that the cost of transporting the waste to landfills further away would be too high to make economic sense. However, where the evidence is conflicting, this court should not reweigh the evidence or substitute its judgment for that of the agency. *File*, 219 Ill. App.

3d at 901. Accordingly, we cannot conclude that the IPCB's determination was against the manifest weight of the evidence.

¶ 121 *(ii) protection of the public*

¶ 122 The petitioners argue that Riechmann's testimony was unchallenged and unequivocal that CTS's siting application lacked items relating to the safety of on-site traffic, in addition to ingress and egress traffic at the transfer station. The petitioners argue that because CTS failed to present expert testimony with regard to section 39.2(a)(ii), it failed to demonstrate compliance with criterion (ii), and the IPCB's decision was against the manifest weight of the evidence.

¶ 123 Section 39.2(a)(ii) of the Act requires that the "facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected." 415 ILCS 5/39.2(a)(ii) (West 2014). Siemsen stated that there were no sensitive environmental or cultural features on or near the site and provided exhibits. Siemsen stated that no residential land uses were within a 1,000 square foot radius of the proposed facility. Siemsen further stated that the surrounding land uses were not a type that would be incompatible with the transfer station. Siemsen recited as neighbors Mertzke Trucking Excavation, Rush Trucking, a salvage yard, and a quarrying operation. Siemsen described the procedures that would be implemented at the transfer station to protect the public's health, safety, and welfare.

¶ 124 In its application, CTS noted that there was an area approximately 1,000 feet to the south-southeast of the site that previously contained some residential dwellings. However, these properties were acquired by St. Clair County under a FEMA buy-out

program. As a condition of the buy-out program, permanent deed restrictions were placed on these parcels which would prohibit any future residential development. CTS attached deeds of these parcels.

¶ 125 The IPCB found no evidence indicating that the proposed transfer station would have a deleterious effect on public health, safety, or welfare. The IPCB found that CTS's application considered jurisdictional waters, flood plain data, archeological and historic sites, wild and scenic rivers, endangered and threatened species, and groundwater quality protection. The IPCB also found that CTS's application contained sufficient information addressing the site design, site access, on-site traffic flow, site security, site signage, lighting, site structures, utilities, contact water management, stormwater management, facility staffing, operating equipment, hours of operation, waste acceptance and processing, transfer operations, capacity and throughput analysis, cleaning procedure, litter control, vector control, dust control, odor control, noise control, fire prevention, employee training, an operational contingency plan, recordkeeping, and facility closure.

¶ 126 We recognize that it has been held that the determination with regard to section 39.2(a)(ii) is generally a matter of assessing the credibility of expert witnesses (*File*, 219 Ill. App. 3d at 907) and that uncontradicted and unimpeached opinion of an expert cannot be rejected arbitrarily (*People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981)). However, even if several competent experts concur in their opinion and no opposing expert testimony is offered, it is still within the province of the trier of fact to weigh the credibility of the expert evidence and to decide the issue. *In re Glenville*, 139 Ill. 2d 242, 251 (1990).

¶ 127 Neither the Village nor the IPCB was required to accept the experts' conclusions. See *Zavala v. Powermatic, Inc.*, 167 Ill. 2d 542, 545 (1995); *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 283 Ill. App. 3d 630, 655 (1996) ("[e]xpert testimony is to be accorded such weight that, in light of all the facts and circumstances of the case, reasonably attaches to it"). Because the evidence supported the IPCB's decision and it is not the function of this court to reweigh evidence or reassess credibility, the IPCB's findings on this criterion were not against the manifest weight of the evidence.

¶ 128 *(iii) area character and surrounding property value*

¶ 129 The petitioners argue that Siemsen's conclusory, unsworn, and un-cross-examined testimony also failed to establish that the facility was so located as "to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property." 415 ILCS 5/39.2(a)(iii) (West 2014). The petitioners argue that CTS failed to present a study of land uses or property values in the surrounding area and failed to determine the proposed facility's effect on property values.

¶ 130 Section 39.2(a)(iii) of the Act requires both that 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." 415 ILCS 5/39.2(a)(iii) (West 2014). "While the applicant must establish that it has done or will do what is reasonably feasible to minimize incompatibility and impact on property values, the Act does not require a guarantee that there will be *no* incompatibility and impact on property values." (Emphasis in original.) *Fox Moraine, LLC*, 2011 IL App (2d) 100017, ¶ 112.

¶ 131 Again, the evidence established that there were no residential uses or dwellings within 1,000 feet of the site. Siemsen stated that there were no "incompatible land uses in close proximity to the area" and identified an excavation business, trucking business, salvage yard, and quarrying operation as neighbors in the surrounding area. Siemsen explained that there were no wetlands and no wild and scenic rivers within the vicinity of the site, and there were no archeological or historic assets at the site. Siemsen explained that the transfer station was not a permanent storage facility to store waste and further explained the site design, contact water management, stormwater management, and cleaning procedures. Accordingly, Siemsen established that CTS's proposal demonstrated that it had done or would do what was reasonably feasible to minimize incompatibility and impact on property values.

¶ 132 Although not a criterion under section 39.2 of the Act (415 ILCS 5/39.2 (West 2014)), the petitioners reference Alley's affidavit to assert that CTS's proposed transfer station failed to meet the residential setback required under section 22.14 of the Act. See 415 ILCS 5/22.14(a) (West 2014) ("[n]o person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"). The petitioners argue that CTS's proposed facility violates the 1000 foot setback requirements of the four parcels of property zoned Single Family District−Manufactured Home District and the two parcels zoned Manufactured Home District.

¶ 133 As the IPCB found, however, pursuant to a FEMA program, St. Clair County purchased the parcels within 1,000 feet of the site that were zoned residential use and placed permanent deed restrictions on them barring any residential use. See *Boschelli v. Villa Park Trust & Savings Bank,* 23 Ill. App. 3d 82, 85 (1974) (if restrictive covenants are more restrictive than zoning requirements, they prevail as to purchasers). Accordingly, the evidence supported the IPCB's determination that the facility was located so as to minimize incompatibility with the character of the area and to minimize the effect on the value of surrounding property. Accordingly, we find that the IPCB's determination was not against the manifest weight of the evidence.

¶ 134 *(iv) flooding*

¶ 135 Section 39.2(a)(iv)(A) of the Act requires that the applicant demonstrate that "for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed." 415 ILCS 5/39.2(a)(iv)(A) (West 2014).

¶ 136 Roxana Landfill argues that by not presenting evidence in the record as to the relationship between the FIRM and the regulatory flood plain definition, CTS failed to demonstrate that it complied with the section 39.2(a)(iv) criterion. 415 ILCS 5/39.2(a)(iv) (West 2014); 17 Ill. Adm. Code 3706.210. Likewise, Canteen Township argues that the Illinois Department of Natural Resources has regulations and a permitting process for proposed construction within a flood plain (17 Ill. Adm. Code 3700 *et seq*.), that it does not simply adopt the FIRM's definition of the flood plain, and thus, providing only a FIRM as sole support for a determination under this criterion is not sufficient.

¶ 137 CTS contends that contrary to the opponents' assertion that the Illinois Department of Natural Resources maintains a state flood plain map or generally regulates all constructions within flood plains, the section 3700 permit program (17 Ill. Adm. Code 3700.10(a), (b)) applies only to construction of structures such as roads, bridges, culverts, and levees within the floodways of certain regulated rivers, lakes, and streams which would "restrict a stream's capacity to carry flood flows." 17 Ill. Adm. Code 3700.10(a). Thus, CTS argues, the opponents' assertion is inapposite.

¶ 138 CTS and the IPCB also counter that because the argument is raised for the first time on appeal, it is therefore forfeited. We agree. Issues not presented to the administrative agency will not be considered for the first time on administrative review. See *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 214 (2008); 735 ILCS 5/3-110 (West 2014) (issues not raised before administrative agency will not be considered on administrative review).

¶ 139 Moreover, CTS presented the FIRM showing the proposed site in "Zone X" which was defined on the map as "[a]reas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood." The map legend further defines "Zone X" as an "area protected from the 1% annual chance flood by the Mississippi River Levee System subject to failure during larger floods." The high risk areas, subject to inundation by the 1% annual chance flood event, were identified as "Zone AE" and "Zone AH." Thus, the floodmap in the record identifies the proposed site as being "outside the boundary of the 100-year flood plain" or "flood-proofed," and thus,

the evidence supports the IPCB's conclusion on this basis. We cannot conclude that the IPCB's determination was against the manifest weight of the evidence.

¶ 140 *(vi) traffic impact on existing traffic flows*

¶ 141 Roxana Landfill argues that CTS failed to demonstrate that the traffic patterns to or from the facility were so designed as to minimize the impact on existing traffic flows. Roxana Landfill references the evidence regarding the poor road conditions, the highly congested intersections, the insufficient turning radius for transfer trailers, the access issues, the obstructed visibility issues, and the traffic conflicts with the local preschool program.

¶ 142 Section 39.2(a)(vi) requires that the "traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." 415 ILCS 5/39.2(a)(vi) (West 2014). "The operative word is 'minimize.' " *File*, 219 Ill. App. 3d at 908. "The Act does not require elimination of all traffic problems [citation], nor is the applicant required to provide evidence of exact routes, types of traffic, noise, dust, or projections of volume and hours of traffic." *Fox Moraine, LLC*, 2011 IL App (2d) 100017, ¶ 116. Moreover, "the Act does not require a traffic plan." *Id.* An applicant need "not have to establish that every arterial road would not be affected, just that it designed the entrance to and from the facility to minimize the impact on the roadways." *Id.*

¶ 143 CTS stated in its application that "[g]iven the light traffic generally experienced by Bunkum Road, the [t]ransfer [s]tation is not anticipated to impact existing traffic flows. However, the separated driveway and the overflow queuing areas have been designed to minimize any traffic impact associated with the [t]ransfer [s]tation." The site plans in the

record show the general flow of both transfer trailers and collection trucks, on-site parking, a section for trucks to queue when the bays are full, an outgoing transfer trailer bay, and incoming packer truck bays. At the hearing, Siemsen stated that CTS anticipated that the peak of the operation would occur in the middle part of the day, with about six trucks coming in per hour, with one to two transfer trailers going out at peak operating times. Siemsen explained that the trucks would enter the facility, weigh, and then proceed to a ramp with two bays where they would enter, dump their waste, and then exit the facility.

¶ 144 At the hearing, Riechmann testified that CTS's application failed to contain a traffic study, existing traffic counts, the build condition of the proposed facility, site conditions, nearby roadway conditions, crash counts, and other site-based, safety-related information. However, the Act does not require a traffic plan and does not require an applicant to show that the proposed facility will have no adverse impact on existing traffic flows. *E&E Hauling, Inc.*, 116 Ill. App. 3d at 616. The Act requires only that the design adopted minimizes this impact. *Id.* The IPCB's findings as to criterion (vi) were not against the manifest weight of the evidence.

¶ 145 *(viii) consistency with the Plan*

¶ 146 Fairmont City argues that the Plan contemplated a centrally located solid waste management park containing a landfill, recycling facility, and composting facility collectively approved by and serving the collective needs of Madison, Monroe, and St. Clair Counties. Fairmont City argues that the plain and ordinary meaning of the Plan's language expresses a clear preference that does not include a solid waste transfer station.

In their *amicus curiae* brief, Madison, Monroe, and St. Clair Counties agree. They argue that facilities omitted from the Plan, such as a solid waste transfer station, should be deemed inconsistent with that Plan.

¶ 147 CTS notes that the waste management park concept, while in a consultant's report in the Plan, was not adopted as part of the Plan. The IPCB further notes that the Plan clearly did not prohibit waste transfer stations because one of the participating counties, Madison, has three transfer stations: Bethalto Transfer Facility; Granite City Landscape Transfer; and Keller Excavating in Edwardsville. The IPCB argues that it "would be absurd to conclude that the [P]lan requires siting approval to be denied for a waste transfer station that could save local landfill space by diverting waste to landfills that are not currently within reach of the municipalities in the service area."

¶ 148 Section 39.2(a)(viii) requires that if the facility will be located "in a county where the county board has adopted a solid waste management plan *** the facility is consistent with" the Plan "in effect as of the date the application for siting approval is filed." 415 ILCS 5/39.2(a)(viii) (West 2014). The Plan at issue here identified as a concern the transportation of a large proportion of Missouri waste to Illinois landfills because Illinois landfills charge waste haulers lower tipping fees than their Missouri counterparts. The Plan implemented source reduction and recycling recommendations, with continued exploration into waste-to-energy recommendations.

¶ 149 The Plan contemplated a preferred waste management system arising pursuant to an agreement between St. Clair, Madison, and Monroe Counties and sited in a centrally located waste management park. The Plan stated that the preferred system would consist

of a landfill, materials recovery facility, and yard waste composting facility. The Plan described other appropriate scenarios, for example, where smaller waste-to-energy facilities were sited away from the waste management park. The Plan recognized that the needs of the counties may require multiple new or expanded landfill sites. The Plan did not reference solid waste transfer stations.

¶ 150 As noted by the IPCB, however, the Plan emphasized the flexibility of local units of government to deal with solid waste disposal. The Plan stated that "[a]ll units of local government have the ability to provide or contract for solid waste management services and may establish fees for such services." In a discussion of waste reduction through recycling and other means, the Plan also stated that "[o]ther changes shall be encouraged to further improve and reduce costs for haulers." Siemsen explained that the proposed transfer station was consistent with the Plan's concern that a large amount of the waste landfilled originated from Missouri. Siemsen explained that a transfer station allows for exporting the waste away to landfills outside of the area.

¶ 151 Moreover, the Plan's plain language discouraged certain waste-to-energy facilities and considered facilities where the primary source of waste was from outside the three-county area as inconsistent with the Plan. Thus, the drafters of the Plan clearly understood how to exclude a facility as inconsistent with the Plan's intent. The Plan's language does not so exclude the proposed waste transfer station. Instead, the Plan supports the Village's and the IPCB's conclusion that the transfer station advances, and does not detract from, the goals of the Plan. The IPCB appropriately held that "[i]t is

within the decision makers' authority to determine consistency as long as the approval is 'not inapposite' to the county solid waste management plan."

¶ 152 In sum, we cannot conclude that the decision of the IPCB is against the manifest weight of the evidence. The opposite conclusion is not clearly evident, plain, or indisputable. However, as noted by this court in *Wabash & Lawrence Counties Taxpayers & Water Drinkers Ass'n*, 198 Ill. App. 3d at 394:

> "Our determination *** by no means concludes the matter. This is but the first step in a long process. The Illinois Environmental Protection Agency still must approve [the] application and issue an operating permit. And, once that has occurred, [the applicant] will be subject to regular inspections and ongoing review of its facility in operation, thereby ensuring additional environmental safeguards."

See also 415 ILCS 5/39(c) (West 2014) (once approval is obtained from siting authority, applicant must obtain permission from the Illinois Environmental Protection Agency to build the facility).

¶ 153 CONCLUSION

¶ 154 For the reasons stated, we affirm the IPCB's opinions and orders. We find that the Village had jurisdiction to hold the public hearing, the public hearing and siting process were fundamentally fair, and the IPCB's finding that the section 39.2(a) siting criteria were satisfied was not against the manifest weight of the evidence.

¶ 155 Affirmed.