

Illinois Appellate Court Denies Siting of Kankakee Landfill

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On December 4, 2009, the Appellate Court of Illinois, Third District, issued an opinion in the case of *County of Kankakee v. Illinois Pollution Control Board, No. 3-04-0271*. At issue in this case was an application by Town & Country Utilities, Inc. and Town & Country and Kankakee Regional Landfill, LLC to site a landfill within the City of Kankakee, Illinois. The proposed landfill was located 1 & 3/4 miles away from an existing landfill run by Waste Management of Illinois, Inc.

Under Illinois law (415 ILCS 5/39.2), a county board or governing body of a municipality has authority to approve or disapprove a request for local siting approval for landfills. Local siting approval shall be granted only if the proposed facility meets the following criteria:

- (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 will 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) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or (under certain circumstances) if the site is flood-proofed;
- (v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;
- (vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
- (vii) 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;
- (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; and
- (ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Pollution Control Board for such areas have been met.

The *County of Kankakee* case dealt primarily with the eighth criterion (whether the facility is consistent with the county's solid waste management plan). The Kankakee County Solid Waste Management Plan had been amended to prohibit landfills within Kankakee County, except for "an expansion of the existing landfill on the real property that is contiguous to the existing landfill" run by Waste Management.

The issue was whether the proposed landfill was "contiguous to the existing landfill", even though the proposed landfill was located 1 3/4 miles away from the existing landfill. The Kankakee City Council and the Illinois Pollution Control Board ruled that the proposed landfill was, in fact, contiguous. However, the Appellate Court of Illinois disagreed and held that the proposed landfill was not contiguous. The Court found that the "proposed landfill was the immediate object of the County's decision to preclude 'non-contiguous landfilling. As such, the County intended its use of the word 'contiguous' to prevent what Applicants were proposing--a new landfill located 1 3/4 miles away from Waste Management's existing landfill." Therefore, the Court held that the Pollution Control Board "erred in finding that the proposed landfill was contiguous to the existing landfill for purposes of the County's solid waste management plan." As a result, the Court decided that the request for local siting approval must be denied.

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