BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC. and KENDALL COUNTY LAND AND CATTLE, LLC,	)	PCB 09-43
Petitioner	)	(Pollution Control Board Facility Siting Appeal)
v.	)	
COUNTY BOARD OF KENDALL COUNTY, ILLINOIS,	)	
Respondent	)	

NOTICE OF FILING

To: All Counsel of Record, See Attached Service List

PLEASE TAKE NOTICE that the undersigned has, on this 10th day of April, 2009, caused to be filed with the Clerk of the Illinois Pollution Control Board, via electronic filing, the attached ***Motion to Dismiss Portions of Amended Petition for Hearing to Contest Site Location Denial*** on behalf of the County Board of Kendall County, Illinois, a copy of which is herewith served on you.

Respectfully submitted,

County Board of Kendall County, Illinois

By: /s/James S. Harkness

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC. and KENDALL COUNTY LAND AND CATTLE, LLC,	)	PCB 09-43
Petitioners,	)	(Pollution Control Board Facility Siting Appeal)
vs.	)	
COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, *et. al.*,	)	
Respondent.	)	

MOTION TO DISMISS PORTIONS OF AMENDED PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL

NOW COMES Respondent, COUNTY BOARD OF KENDALL COUNTY, ILLINOIS ("County Board"), by its attorneys MOMKUS McCLUSKEY, LLC, and as its Motion to Dismiss Portions of Amended Petition for Hearing to Contest Site Location Denial ("Amended Petition"), brought pursuant to 735 ILCS 5/2-619 and 35 Ill. Adm. Code 101.506, states as follows:

1. Respondent seeks the dismissal of Petitioners' allegations set forth in paragraphs 10 and 11 of their Amended Petition *with prejudice* due to the failure of the Petitioners to establish any cause of action in law or fact.

2. In support of Respondent's Motion to Dismiss, it submits and fully incorporates as though stated herein the attached *Memorandum of Law in Support of Motion to Dismiss Portions of Amended Petition for Hearing to Contest Site Location Denial.*

3. Each basis asserted in Respondent's Motion to Dismiss and supporting Memorandum of Law justifies dismissal, *with prejudice,* of paragraphs 10 and 11 of the Amended Petition. As such, Respondent respectfully requests that the Illinois Pollution Control Board enter an Order dismissing these allegations in Petitioners' Amended Petition.

WHEREFORE, for the above stated reasons, Respondent, COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, respectfully requests that the Illinois Pollution Control Board dismiss the Petitioners' allegations set forth in paragraphs 10 and 11 of their Amended Petition for Hearing to Contest Site Location Denial, with prejudice, and for any other or further relief the Illinois Pollution Control Board deems just and proper.

Respectfully submitted,

COUNTY BOARD OF KENDALL COUNTY, ILLINOIS

By: /s/ James S. Harkness
James S. Harkness

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC. and KENDALL COUNTY LAND AND CATTLE, LLC,	)	PCB 09-43
Petitioners,	)	(Pollution Control Board Facility Siting Appeal)
vs.	)	
COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, *et. al.*,	)	
Respondent.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PORTIONS OF AMENDED PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL

NOW COMES Respondent, COUNTY BOARD OF KENDALL COUNTY, ILLINOIS ("County Board"), by its attorneys MOMKUS McCLUSKEY, LLC, and as its Memorandum of Law in Support of Motion to Dismiss Portions of Amended Petition for Hearing to Contest Site Location Denial, brought pursuant to 735 ILCS 5/2-619 and 35 Ill. Adm. Code 101.506, states as follows:

INTRODUCTION

In their Amended Petition for Hearing to Contest Site Location Denial ("Amended Petition"), Waste Management of Illinois, Inc. ("Waste Management") and Kendall County Land and Cattle, LLC, allege the following:

> "10. The hearing officer improperly struck the public comment filed October 28, 2008 by WMII, in violation of Section 39.2(c) of the Act and of Articles 6 and 7 of the Amended and Restated Kendall County Site Approval Ordinance for Pollution Control Facilities ("Ordinance No. 08-15").
>
> 11. The hearing officer improperly struck a portion of the written findings of the County Board's legal counsel, in violation of

Sections 8.4 and 9.2 of Ordinance No. 08-15." (Exhibit A, Amended Complaint).

The October 28, 2008 "public comment" stricken and referenced in the Amended Petition was actually deemed to be impermissible late-filed evidence by the hearing officer, Patrick M. Kinnally ("Mr. Kinnally"). (Exhibit B, November 11, 2008 Order); (Exhibit C, Waste Management's October 28, 2008 filing). The late-filed evidence was the subject of motions to strike to which Waste Management filed a written response. (Ex. B). Mr. Kinnally, properly, concluded that the late-filed evidence attempted to "explain why [Waste Management] did not undertake the investigation of certain unconsolidated soils." (Ex. B, p. 3). Also, he found that the late-filed evidence "submission contains various tests conducted by [Waste Management] ***after the hearing closed.*** These studies were performed on a part of the facility footprint that ***had not been examined and included as part of WMI's application***...The point is, WMI had the ability to perform these studies as part of its application and chose not to do so." (Ex. B, p. 4). (Emphasis supplied).

Similarly, the allegedly stricken findings of counsel alleged in paragraph 11 of Waste Management's Petition are the very same materials that were later sought to be re-introduced into the record (Exhibit D, November 13, 2008 Order, p. 1) ("it parrots the opinions contained in WMI's late-filed submission); (Ex. D, p. 2) ("Already, in the WMI order it was indicated that WMI's submission would not be recognized"); (Exhibit E, Blazer Report).

Each allegation presents a question of law that should be determined from the record. Specifically, (i) whether the material stricken from the October 28, 2008 submission was "public comment," or actually improper late-filed evidence as the hearing officer held, and (ii) whether the hearing officer properly struck an improper submission as a violation of the hearing's notice requirements under Sections 8.4 and

9.2 of the Kendall County Facility Ordinance No. 08-15 ("the Ordinance"), as the hearing officer held. (Exhibit F, Ordinance)

With regard to these allegations, each can be determined solely from the record and application of the law. No set of facts can be proven to contradict the record and, therefore, Respondent is entitled to judgment as a matter of law pursuant to Section 2-619 of the Illinois Code of Civil Procedure. Succinctly, the material was not submitted during the hearing. That is uncontroverted. It is either late-filed evidence or it is not. This is a legal question.

FACTUAL BACKGROUND

Public hearings before the County Board and Mr. Kinnally began on September 8, 2008 and concluded on October 1, 2008. On October 28, 2008, ***approximately seven (7) weeks after the deadline to file evidence and nearly four (4) weeks after the close of the public hearing***, Waste Management, one of the Petitioners in this matter, submitted ***new*** evidence in the form of hydrogeologic reports for tests that had never been performed prior, as exhibits, but labeled that evidence as "public comment." (Ex. C). The cover letter that was submitted with Waste Management's purported "public comment" admits that the data and reports were provided as additional evidence to support the theory that the unconsolidated soils beneath the double composite liner are a confining unit. (Ex. C, p. 1).

The evidence submitted for the first time by Waste Management on October 28, 2008 purports to describe, map and report on a series of wells that were allegedly drilled on the site between October 17, 2008 and October 20, 2008—after the hearing closed—to support Waste Management's theory of the site's hydrogeology. (Ex. C). The evidence also includes new soil boring logs. *Id.*.

According to the cover letter for the evidence, it was allegedly filed in response to inquiries made by Mr. Kinnally and the County Board during the rebuttal portion of Waste

Management's case. (Ex. C, p. 1). Waste Management knew that, after the hearings took place, it failed to meet its burden. Thus, additional, new studies were sought because originally "more wells were not put into the unconsolidated soils without going into the bedrock." *Id.* Indeed, Waste Management agreed with a statement purportedly made by Mr. Kinnally that "information from such wells that showed no water would be the ***most convincing evidence***..." in its case. *Id.* (Emphasis added). This information was obviously lacking in Waste Management's hydrogeologic study of the proposed site before and during the time of hearing. In fact, the record is devoid of any such evidence prior to the close of the hearing and period for submitting evidence. This is why Waste Management attempted to file what it thought to be its "most convincing evidence" under the guise of "public comment" nearly four (4) weeks after the close of the public hearing.

Both Grundy County and Village of Minooka, participants in the hearing, filed Motions to Strike Waste Management's October 28, 2008 filing. (Ex. B, p. 1). In his November 11, 2008 ruling, Mr. Kinnally found the following regarding the October 28, 2008 filing: "Clearly, it is evidence, and I so find it to be." (Ex. B, p. 2). Mr. Kinnally further found that the evidence was not filed in "apt time" and that Waste Management failed to satisfy the "good cause" exception for late filing of evidence. *Id.* As part of his explanation for his ruling, Mr. Kinnally states the following:

> "One of the underlying tenets of the ordinance, of which I am charged to observe is that any decision shall be in accord with the concept of fundamental fairness (Ord. Sec. 7.12(2)(b)). This applies to all participants. The Ordinance provides every participant has the guarantee of cross-examination (Ord. Sec. 7.1(2)(i)). It is an important right. This hearing is a testament to that fact. Here, the admission of WMI's submission would foreclose the rights of every participant, as well as the Board, from being able to test, by cross-examination, the testimony of the persons who authored the reports sought to be admitted. That is unfair." (Ex. B, p. 4).

On November 5, 2008, the County Board's counsel, Michael Blazer, filed a report that adopted and re-submitted the representations, arguments and late-filed evidence of

Waste Management ("The Blazer Report"). (Ex. E). This, simply, was a back door re-submittal of Waste Management's late-filed evidence.

Additionally, the Blazer Report improperly relied on a November 4, 2008 report drafted by a professional geologist, Laura Swan ("the Swan Report"). (Exhibit B to Ex. E). It appears that Blazer attempted to admit this report into evidence simply by attaching it to his recommendation report. The Swan Report evaluates the hearing testimony and exhibits and she ***also*** relied heavily on Waste Management's late-filed hydrogeologic evidence.

Finally, the Blazer Report improperly relied on and attached a report drafted by Stuart Russell, an engineering expert (the "Russell Report"). (Exhibit A to Ex. E). Here, Blazer attempted again to file evidence by attaching it to a report. The purpose of presenting the Russell Report was apparently to discredit damaging testimony given under oath by a hearing witness. However, the Russell Report expresses opinions of an expert who did not testify and, therefore, could not be cross-examined.

Grundy County responded to the Blazer Report with a Motion to Strike the report, arguing that the exhibits attached to the report were filed untimely, never admitted into evidence and, therefore, should not be considered by the County Board because they were outside of the record. (Ex. D, p. 1). Mr. Kinnally ruled on this legal issue in his November 13, 2008 order, finding that the Swan Report and Russell Report were both late-filed evidence and that Blazer offered no "good cause" as to why the reports were not offered as evidence at the hearing where, in fact, he produced no evidence whatsoever on behalf of the County. (Ex. D). Although Mr. Kinnally did not strike the entire Blazer Report, he struck the attached Swan and Russell reports and any reference made thereto in the Report. *Id.*

In its Amended Petition, Waste Management now claims that Mr. Kinnally's evidentiary rulings on the above matters were improper and fundamentally unfair

through allegations 10 and 11 of the Amended Petition. This is absolutely not the case and is affirmatively disposed of by the record itself, which negates the claims.

STANDARD

A section 2-619 motion to dismiss affords a means of obtaining a summary disposition of issues of law or easily proved issues of fact. *Kedzie and 103rd Currency Exchange v. Hodge*, 156 Ill.2d 112, 115, 619 N.E.2d 732, 735 (1993); 735 ILCS 5/2-619. In achieving this end, a section 2-619 motion raises defects or defenses that negate a plaintiff's cause of action completely or refute conclusions of material fact that are unsupported by allegations of specific fact. *Spillyards v. Abbound*, 278 Ill.App.3d 663, 668, 662, N.E.2d 1358, 1361 (1st Dist. 1996). When raising such defects or defenses, a section 2-619 motion admits all well pleaded facts together with all reasonable inferences which may be gleaned from those facts. *Id.*

However, section 2-619 does not admit mere conclusions of law or conclusions of fact unsupported by allegations of specific fact that those conclusions rest upon. *Id.* "In order to sufficiently state a cause of action, a complaint must allege facts, not mere conclusions, in support of each of the elements of the claim." *Brown Leasing, Inc. v. Stone*, 284 Ill.App.3d 1035, 1045, 673 N.E.2d 430 (1st Dist. 1996), *citing, Harris v. Johnson,* 218 Ill.App.3d 588, 161 Ill.Dec. 680, 578 N.E.2d 1326 (1991); *see also Logal v. Inland Steel Industries, Inc.*, 209 Ill.App.3d 304, 308, 568 N.E.2d 152 (1st Dist. 1991) (finding insufficient "conclusions of law or fact that are unsupported by allegations of specific facts upon which such conclusions rest."); Although a motion to dismiss admits all well-pleaded facts, it does not admit conclusions of fact or conclusions of law unsupported by specific facts. *Provenzale v. Forister*, 318 Ill.App.3d 869, 878, 743 N.E.2d 676, 683 (2nd Dist. 2001).

DISCUSSION

In finding that Waste Management's October 28, 2008 filing and portions of the Blazer Report were late-filed evidence and striking same, Mr. Kinnally was clearly operating within his legal duties and boundaries. Under Article 7 of the Ordinance, a hearing officer of a site proceeding is authorized to rule on evidentiary issues and issues of fundamental fairness. (Ex. F).

Pursuant to Section 7.1(2)(a) of the Ordinance, the hearing officer of a site proceeding is authorized to "preside over the siting hearing and be responsible for ruling on preliminary motions, ***evidentiary issues***, objections or any other contested legal issues." (Ex. F) (Emphasis supplied). Section 7.1(2)(b) further allows the hearing officer to:

> "...make any decisions concerning the manner in which the hearing is conducted subject to this Ordinance and the law concerning such applications. All decisions and rulings shall be in accordance with the concept of fundamental fairness..." (Ex. F).

Section 5.5 of the Ordinance provides the following, in relevant part:

> "Subject to the Hearing Officer's right to extend filing deadlines as set forth in Article 7, all reports, studies, exhibits ***or other evidence*** or copies thereof, other than testimony, which any Participant desires to submit for the record at the public hearing ***must be filed with the County Clerk at least seven (7) calendar days before the public hearing*** and shall be available for public inspection in the office of the County Clerk..." (Ex. F) (Emphasis supplied).

Section 5.5 is unmistakably intended to provide all participants with an opportunity to review and scrutinize all of the applicant's technical evidence at the hearing. However, there is a provision that allows late-filed evidence, under very strict circumstances. Pursuant to Section 7.1(2)(j) of the Ordinance, as to the rebuttal portion of any participant's case, evidence may be filed one day before the day of the public hearing at which it is offered. (Ex. F). In this case, neither Waste Management's October 28, 2008 filing nor the stricken portions of the Blazer Report fall under this

exception to the Section 5.5 late-filed evidence rule, as both were filed, for the first and only time, ***long*** after the hearing took place.

A. Hearing Officer Kinnally Properly Struck Waste Management's Late-Filed Evidence.

Because the evidence filed by Waste Management on October 28, 2008 was filed nearly four (4) weeks after the hearing, the Participants who opposed the siting had no opportunity to cross-examine the technical findings presented in Waste Management's new evidentiary reports. For example, there was no way of determining Waste Management's methodology for deciding how, under what conditions and where to drill the wells that are the subject of the reports. There was no way to ask the reports' creators questions about their discoveries and determinations. As such, these reports should not have been considered by the County Board in making its siting decision. For Mr. Kinnally to rule otherwise would have been fundamentally unfair to Kendall County, its County Board and non-applicant Participants and would have been a clear violation of the Ordinance.

The Ordinance clearly differentiates between "evidence," which must be filed at least seven (7) days in advance of the hearing, and "written comment" which may be filed at any time during the thirty (30) days following the hearing. (Ex. F at 5.5, 6.1 and 6.4). The purpose for differentiating between "evidence" and "comment" is apparent, as evidence must be subject to scrutiny and cross-examination, especially if it is technical evidence, as Waste Management's October 28, 2008 filing was.

The Illinois Environmental Protection Act ("the Act") requires that an applicant seeking siting approval "submit sufficient details describing the proposed facility to demonstrate compliance" with the siting criteria detailed in §39.2 of the Act. 415 ILCS 5/39.2(a). The Act further provides that, after an application is filed, public hearings are to be conducted for the purpose of publicly assessing the sufficiency of the application.

415 ILCS 5/39.2(d). In this case, Waste Management clearly did not complete its application before filing, because in response to Mr. Kinnally and the County Board acknowledging during the hearing that Waste Management failed to present certain hydrogeologic evidence, Waste Management proceeded to conduct new testing to obtain that evidence ***after the hearing*** and then submit it as "public comment." This testing was available to Waste Management prior to the hearing and should have been conducted and filed prior to the hearing.

Moreover, as Grundy County pointed out in its reply brief filed in support of its motion to strike Waste Management's late-filed evidence, "[t]his proceeding is not Waste Management's debut with respect to supplying after-the-fact evidence disguised as Public Comment." (Exhibit G, Grundy County's Reply, p. 6) (citing a string of cases demonstrating that, "over the last eight (8) years, Waste Management has grown ever more bold in its efforts to circumvent the public siting requirement by utilizing this technique).

By attempting to file evidence under the pretext of "public comment," Waste Management attempted to avoid subjecting its newly-developed reports and conclusions to scrutiny. Mr. Kinnally was correct in finding that Waste Management could not cure its inadequate investigation by conducting testing at the site after the hearing and then providing new reports and conclusions at a time when the Board and other interested parties have no opportunity to question such data. Therefore, as a matter of law, Mr. Kinnally properly found Waste Management's October 28, 2008 filing to be late-filed evidence and properly struck that evidence from the record.

B. Hearing Officer Kinnally Properly Struck Portions of the County Board's Counsel's Written Findings, Which Sought to Re-Submit the Improper Late-Filed Evidence.

The Blazer Report asked the County Board to consider material that is outside of the official record. Not only did it rely on the October 28, 2008 late-filed evidence by

Waste Management, but it relied on the Swan and Russell Reports, which are unadmitted expert opinion evidence predicated upon *additional* unadmitted evidence, i.e. the October 28, 2008 filing. (Ex. E).

It is well-settled Illinois administrative law that a decision-maker must base its decision upon the facts, data and testimony in the record, and not on any information outside of the record. *Seul's, Inc. v. Liquor Control Comm'n,* 240 Ill.App.3d 828, 831 (1st Dist. 1993); *Gumma v. White,* 345 Ill.App.3d 610, 655 (1st Dist. 2003), *affirmed,* 216 Ill.2d 23 (2005). Moreover, nothing can be treated as evidence in the record unless it is introduced as such. *Anderson v. Human Rights Comm'n,* 314 Ill.App.3d 35 (1st Dist. 2000).

Therefore, Mr. Kinnally correctly determined that the Swan and Russell Reports were late-filed evidence. (Ex. D). Therefore, those reports and any mention of them in the Blazer Report were correctly stricken from the record.

There is no question of fact. Waste Management's allegations are legal conclusions affirmatively negated by the record: the stricken material was predicated on unadmitted evidence submitted by Waste Management, and on reports expressing the opinions of experts who never testified and whose reports were never presented at the hearing.

CONCLUSION

WHEREFORE, for the above stated reasons, Respondent, COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, respectfully requests that the Illinois Pollution Control Board dismiss the Petitioners' allegations set forth in paragraphs 10 and 11 of their Amended Petition for Hearing to Contest Site Location Denial, with prejudice, and for any other or further relief the Illinois Pollution Control Board deems just and proper.

Respectfully submitted,

COUNTY BOARD OF KENDALL COUNTY, ILLINOIS

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Petitioners,	)	No. PCB 09-43
vs.	)	(Pollution Control Facility Siting Appeal)
COUNTY BOARD OF KENDALL COUNTY, ILLINOIS,	)	
Respondent.	)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on March 24, 2009, we filed with the Illinois Pollution Control Board, via electronic filing, **PETITIONERS' AMENDED PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL** in the above entitled matter, which is attached hereto and herewith served upon you.

WASTE MANAGEMENT OF ILLINOIS, INC. and
KENDALL LAND and CATTLE, L.L.C.

By: s/Donald J. Moran
One of Their Attorneys

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Petitioners,	)	No. PCB 09-43
vs.	)	(Pollution Control Facility Siting Appeal)
COUNTY BOARD OF KENDALL COUNTY, ILLINOIS,	)	
Respondent.	)	

AMENDED PETITION FOR HEARING
TO CONTEST SITE LOCATION DENIAL

Petitioners Waste Management of Illinois, Inc. ("WMII") and Kendall Land and Cattle, L.L.C. ("KLC"), by Pedersen & Houpt, their attorneys, respectfully request a hearing to contest the decision of the County Board of Kendall County, Illinois ("County Board") denying site location approval for the proposed Willow Run Recycling and Disposal Facility. In support of this Petition, WMII and KLC state as follows:

1. This Petition is filed pursuant to Section 40.1(a) of the Illinois Environmental Protection Act (the "Act") (415 ILCS 5/40.1).

2. On February 5, 2007, WMII and KLC filed a Site Location Application for the Willow Run Recycling and Disposal Facility with the County Board ("2007 Application"). As proposed in the 2007 Application, Willow Run was located on a 669-acre site with a 282-acre waste footprint. Its waste disposal capacity was 35 million tons, and it had a site life of 35 years. Over one-third of the base double composite liner system was to be constructed within the underlying bedrock aquifer. At its highest point, Willow Run would be 235 feet above ground surface.

3. Public hearings on the 2007 Application were held over a three-week period in May, 2007. Having been made aware of the concerns that the County Board and the public had regarding the proposal, WMII and KLC withdrew the 2007 Application in July, 2007.

4. On June 3, 2008, WMII and KLC filed a revised Site Location Application for the Willow Run Recycling and Disposal Facility with the County Board ("2008 Application"). As proposed in the 2008 Application, Willow Run was substantially reduced in size and scope from the facility proposed in the 2007 Application. The site was reduced from 669 to 368 acres, the waste footprint from 282 to 134 acres, the capacity from 35 to 14.5 years and the high point from 235 to 180 feet. In addition, no part of the double composite liner would be constructed in the bedrock aquifer, but would be completely out of, and above, the bedrock aquifer. In fact, the bottom of the double composite liner and the top of the bedrock aquifer would be separated by a low permeability soil layer ranging in thickness from 5.2 to 24 feet providing further environmental protection.

5. Public hearings on the 2008 Application were conducted by the County Board and were held from September 11 to October 1, 2008.

6. On November 20, 2008, the County Board considered the 2008 Application, and voted to approve each of the statutory criteria except criteria (ii) and (iii). A true and correct copy of the Resolution Denying the Application, No. 08-34, is attached as Exhibit A.

7. WMII and KLC contest and object to this decision and its denial of criteria (ii) and (iii) as fundamentally unfair.

8. On information and belief, County Board members had improper *ex parte* communications with third persons both before and after the filing of the Application that prejudiced or otherwise influenced their vote to deny.

9. County Board members considered and relied upon matters outside the record in voting to deny.

10. The hearing officer improperly struck the public comment filed October 28, 2008 by WMII, in violation of Section 39.2(c) of the Act and of Articles 6 and 7 of the Amended and Restated Kendall County Site Approval Ordinance for Pollution Control Facilities ("Ordinance No. 08-15").

11. The hearing officer improperly struck a portion of the written findings of the County Board's legal counsel, in violation of Sections 8.4 and 9.2 of Ordinance No. 08-15.

12. The County Board's denial of criterion (ii) is unsupported by the record and against the manifest weight of the evidence.

13. The County Board's denial of criterion (iii) is unsupported by the record, against the manifest weight of the evidence and contrary to law.

WHEREFORE, WMII and KLC respectfully request that this Board enter an order (1) setting for hearing this contest of Resolution No 08-34, and (2) reversing the County Board siting denial.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC. and
KENDALL LAND AND CATTLE, L.L.C.

By s/Donald J. Moran
One of Their Attorneys

Donald J. Moran
PEDERSEN & HOUPT
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EXHIBIT "A"

No. 08-34

A RESOLUTION DENYING THE APPLICATION OF KENDALL LAND & CATTLE, LLC AND WASTE MANAGEMENT OF ILLINOIS, INC. FOR SITING APPROVAL OF A POLLUTION CONTROL FACILITY LOCATED IN UNINCORPORATED KENDALL COUNTY, ILLINOIS

WHEREAS, pursuant to §39.2 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/39.2, Kendall County, Illinois (the "County") has the authority to approve or deny requests for local siting approval for new pollution control facilities, such as landfills; and

WHEREAS, the General Assembly of the State of Illinois has provided in the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.* (the "Act"), that the Illinois Environmental Protection Agency may not grant a permit for the development or construction of a new pollution control facility which is to be located in an unincorporated area without proof that the location of said facility has been approved by the County Board of the County in which said new pollution control facility is proposed to be located; and

WHEREAS, Section 39.2 of the Act provides that an applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance with, and the County Board approval shall be granted only if, the proposed facility meets the following criteria (the "criteria"):

(i) the facility is necessary to accommodate the waste needs of the area that 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) the facility is located outside the boundary of the 100-year flood plain or 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 and 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 excavation 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; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed; 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; and

WHEREAS, the County Board may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under §39.2 of the Act; and

WHEREAS, in conjunction with the Act, the Kendall County Site Approval Ordinance For Pollution Control Facilities, as amended (the "Siting Ordinance"), establishes certain rules and regulations relating to the form, content, fees, and filing procedures for

applications and other matters relating to the approval of sites for the location of New Pollution Control Facilities in the unincorporated areas of the County; and

WHEREAS, on June 3, 2008, Kendall Land & Cattle, LLC and Waste Management of Illinois, Inc. (collectively the "Applicant") filed with the County Board an application for site location approval for the Willow Run Recycling and Disposal Facility in unincorporated Kendall County (the "Application"), which Application consists of nine (9) volumes of reports and supporting data; and

WHEREAS, the County Board conducted public hearings on the Application on September 11, 12, 13, 15, 16, 17, 18, 22, 23, 24, 25, 29 and October 1, 2008, and the report of proceedings (transcripts) contains the testimony of each witness, the oral arguments of and cross-examination by the attorneys and participants and oral comments by citizens; and

WHEREAS, throughout the proceedings, comments and pleadings were filed by citizens, participants and parties, including but not limited to: (1) the Recommendation dated November 5, 2008 submitted by Mr. Michael S. Blazer, counsel to the County (the "Blazer Recommendation"), and (2) the proposed Findings dated November 11, 2008 submitted by Hearing Officer Patrick Kinnally (the "Kinnally Recommendation"); and

WHEREAS, the Siting Ordinance and Act require the County Board to determine compliance or non-compliance with the criteria and the County Board approves or denies a requested site location, which determination by the County Board may include conditions as permitted by the Act; and

WHEREAS, the Act requires that the County Board take final action on the Application within 180 days from the date of its filing; and

WHEREAS, the County Board undertook all the necessary and legal steps required to review and consider the Application and to develop a written decision consistent with

the requirements of §39.2 of the Act; and

WHEREAS, the County Board has accepted and considered all written comments received or postmarked within 30 days after the date of the last public hearing held in this matter; and

WHEREAS, the County Board has reviewed and considered the Blazer and Kinnally Recommendations; and

WHEREAS, the County Board has reviewed the Application in light of the criteria established for siting new pollution control facilities in §39.2 of the Act and the Siting Ordinance; and

WHEREAS, having reviewed the hearing record in accordance with the rulings of the Hearing Officer, the County Board finds that the application process was fundamentally fair and efficient and accessible to the County's citizens and the public generally; and

WHEREAS, after review of the Application, all relevant testimony, all exhibits, all public comments, the record made herein in its entirety and, after further consideration of all relevant and applicable factors and matters, the County Board finds that it has jurisdiction to rule on the Application of the Applicant for the Willow Run Recycling and Disposal Facility based upon the Applicant's proper notification as provided by the Act; and

WHEREAS, for the reasons set forth in the Kinnally Recommendation, the County Board finds that the Applicant has met its burden with respect to siting criteria 1, 4, 5, 6, 7, 8 and 9; and

WHEREAS, for the reasons set forth in the Kinnally Recommendation, the County Board finds that the Applicant has failed to meet its burden with respect to criteria 2 and 3; and

NOW, THEREFORE, BE IT RESOLVED by the Kendall County Board as follows:

SECTION 1. Recitals. The facts and statements contained in the preambles to this Resolution are found to be true and correct and are hereby adopted as part of this Resolution.

SECTION 2. Decision. The County Board denies the Application of Kendall Land & Cattle, LLC and Waste Management of Illinois, Inc. for failure to meet criteria 2 and 3.

SECTION 3. Findings of Fact. The County Board adopts the findings of fact and recommendations set forth in the Kinnally Recommendation.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

SECTION 5. Prior Resolutions. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict

ADOPTED and APPROVED by the KENDALL COUNTY BOARD on this

20th day of November, 2008

County Board Chairman

Jeanette Nickelson

County Clerk

CERTIFICATE OF SERVICE

I, Lauren Blair, an attorney, on oath certify that I caused to be served the foregoing, **PETITIONERS' AMENDED PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL** to be served upon the following parties listed below electronically on this 24th day of March 2009.

James F. McCluskey
James S. Harkness
Momkus McCluskey, LLC
1001 Warrenville Road, Suite 500
Lisle, IL 60532
E-mail: jfmccluskey@momlaw.com
jharkness@momlaw.com

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601
E-mail: hallorab@ipcb.state.il.us

Eric C. Weis
Kendall County State's Attorney
807 West John Street
Yorkville, IL 60560
E-mail: eweis@co.kendall.il.us

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Ottawa, IL 61350
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Law Office of Daniel J. Kramer
1107 S. Bridge St.
Yorkville, IL 60560
dkramer@dankramerlaw.com

s/Donald J. Moran
Donald J. Moran

STATE OF ILLINOIS)
: §
COUNTY OF KENDALL)

IN THE MATTER OF :
APPLICATION OF WASTE MANAGEMENT OF ILLINOIS INC. AND KENDALL LAND AND CATTLE LLC FOR SITE LOCATION FOR A NEW POLLUTION CONTROL FACILITY

ORDER

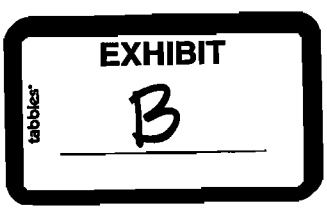
On October 28, 2008, the applicant, Waste Management of Illinois, Inc. and Kendall Land and Cattle, L.L.C., (collectively referred to as "WMI") submitted a letter to the Kendall County Clerk ("Clerk"). Attached to it was a "Field Results Summary" with exhibits A and B ("the submission"). This information was filed for consideration by the Hearing Officer and the County Board ("Board"). [1]

The hearing in connection with WMI's landfill siting application ended on October 1, 2008.

On October 31, 2008, Grundy County ("Grundy"), a participant, filed a Motion to Strike the submission of WMI. The Village of Minooka ("Minooka") filed a similar pleading.[2] Grundy's motion states several reasons. First, it says WMI's submission is not "public comment". Next, it argues the submission violates the Kendall County Ordinance

[1] Preliminarily, although no participant has raised it, is the power of the hearing officer to rule on post- hearing motions. Perhaps, it might be argued that post-hearing motions were not contemplated by the Ordinance's drafters. The participants obviously think otherwise. Implicit in the ordinance is that authority of the hearing officer to be responsible for ruling on all contested issues, as well as, making decisions concerning the manner in which the hearing is conducted (Ord. Secs. 7.2 (a)(b)). Moreover, since the hearing officer has the authority to allow the introduction of late-filed evidence, (Ord. Sec. 7.1(2)(j) necessarily, because the fact that evidence is "late-filed", the hearing officer might have to consider an application like WMI's submission after the hearing adjourned. This is exactly what occurred here.

[2] Minooka's motion, although somewhat different, essentially requests the same relief as Grundy, that is, striking of WMI's submission. As to both of these motions, WMI filed a response, and Grundy and Minooka filed separate replies. I have reviewed all these briefs in reaching the decision made in this order. I have not considered the reply filed by Grundy for the reasons indicated in this Order. In view of the findings of this Order, I do not intend to fashion a separate order on Minooka's motion since I find it is rendered moot.



(Amended and Restated Kendall County Site Approval Ordinance for Pollution Control Facilities No. 08-15, (April 15, 2008) Sec;. 5.5; 6.1; 6.4) ("the ordinance"), since it is untimely. Finally, Grundy, asserts WMI's filing is an attempt to cure the inadequate site application of WMI.

The Ordinance says the Hearing Officer is empowered to make decisions consistent with the concept of fundamental fairness. (Ord. Sec.7.1(2)(b)) Additionally, the Hearing Officer has the discretion to allow introduction of late-filed evidence, whether written or testimonial, provided "good cause" is shown as to why it is overdue (Ord. 7.1(2)(j)). The ordinance states all reports, studies, exhibits or other evidence shall be submitted 7 calendar days prior to the hearing (Ord. Sec. 5.5 (1)). Finally, the ordinance says, that as to the rebuttal portion of any participant's case, evidence may be filed one day before the day of the public hearing at which it is offered (Ord. Sec. 7.1(2)(j)).

The letter from WMI's counsel to the Clerk, dated October 28, 2008, does not state it is "public comment". It doesn't say what it is. Another letter from WMI's counsel dated October 31, 2008, to the Clerk which submits ASTM Designation D5084-08, states it is being filed as "public comment". No objection has been made to that filing.

The October 28, 2008, submission states it is being filed in response to inquires made by the hearing officer and the Board during the rebuttal portion of WMI's case. Clearly, it is evidence, and I so find it to be.

The question then becomes whether it was filed in apt time. It was not. It was not filed seven days prior to the hearing or one day prior to the day of the public hearing which it could have been offered, namely, the rebuttal portion of WMI's case. The hearing closed on October 1, 2008.

The next issue is whether WMI has shown "good cause" for the late filed evidence. "Good cause" is not defined in the ordinance. Maybe it should be. The ordinance requires me to follow Illinois law (Ord. Sec. 7.1(2)(b)). The most recent exposition from the Illinois Supreme Court on what constitutes "good cause" is Vision Point of Sale Inc. v. Haas (2007) 226 Ill. 2d 334 ("Vision")

In Vision, our Supreme Court determined what constituted "good cause" to remedy an unintentional non-compliance with one of its procedural rules, namely an extension of time (Supreme Court Rule 183). It held, citing Bright v. Dicke (1995) 166 Ill. 2d 204) that a paramount concern in permitting a late filing in connection with a Request to Admit (Supreme Court Rule 216) is the reason given for the failure to adhere to the rule. The Court went on to hold that in ascertaining whether "good cause" exists, the decision maker may consider various events. These include such matters as: attorney neglect, mistake, inadvertence, as well as, other behavior related to the causes for the party's original non-compliance. Basically, the Court concluded the determination of "good cause" is an issue of fact, which is a discretionary decision of the decision maker.

Although, WMI does not specifically invoke the Ordinance's "good cause" exception, in its October 28, 2008, submission, it seems fair to ascribe to WMI such an intent. I do. Indeed, the letter clearly indicates that WMI is trying to explain why it did not undertake the investigation of certain unconsolidated soils in a portion of the proposed landfill footprint. Hence, WMI's submission should be considered under the "good cause" exception.

WMI, in reply to Grundy's motion, says it has the right to submit public comment. (Land and Lakes Co. V. Illinois Pollution Control Board (3d Dist. 2000) 319 Ill. App. 3d ("Land and Lakes"). I agree. The problem is WMI's submission is not public comment, but

late-filed evidence.

WMI's reliance on Land and Lakes is misplaced. The Appellate Court held the Will County Board, as the siting authority, could have treated the exhibits filed in that proceeding as untimely, consistent with its siting ordinance. It did not do so. Here, as indicated previously, WMI's submission is not public comment but late-filed evidence.

The WMI submission contains various tests conducted by it after the hearing closed. These studies were performed on a part of the facility footprint that had not been examined and included as part of WMI's application. WMI offers no explanation why the filing of this untimely evidence could not have been investigated and undertaken originally. It clearly could have. Maybe it was an oversight. The point is, WMI had the ability to perform these studies as part of it's application and chose not to do so.

One of the underlying tenets of the ordinance, of which I am charged to observe is that any decision shall be in accord with the concept of fundamental fairness (Ord. Sec. 7.1(2)(b)). This applies to all participants. The Ordinance provides every participant has the guarantee of cross-examination (Ord. Sec. 7.1(2)(i)). It is an important right. This hearing is a testament to that fact. Here, the admission of WMI's submission would foreclose the rights of every participant, as well as the Board, from being able to test, by cross-examination, the testimony of the persons who authored the reports sought to be admitted. That is unfair.

For the reasons stated, I find that WMI has failed to satisfy the "good cause" exception for late filing of evidence (Ord. Sec. 7.1(2)(j)).

Grundy County's motion to strike the October 28, 2008, letter and attachments of the applicant, Waste Management of Illinois, Inc., is granted.

Patrick M. Kinnally, Hearing Officer

Patrick M. Kinnally, Hearing Officer
KINNALLY FLAHERTY KRENTZ & LORAN, P.C.
2114 Deerpath Road
Aurora, Illinois 60506
Telephone: 630/907-0909
Facsimile: 630/907-0913
pkinnally@kfkllaw.com

PEDERSEN&HOUPT

October 28, 2008

Donald J. Moran
Attorney at Law
(312) 261-2149
Fax (312) 261-1149
dmoran@pedersenhoupt.com

Ms. Rennetta Mickelson
Kendall County Clerk
111 Fox Street
Yorkville, IL 60560

Re: ***Willow Run Site Location Application***
Waste Management of Illinois, Inc. Public Comment

Dear Ms. Mickelson:

At the last night of the siting hearings on October 1, and following up on questions asked by various County Board members, Hearing Officer Patrick M. Kinnally asked Joan Underwood why more wells were not put into the unconsolidated soils without going into the bedrock. As stated by Mr. Kinnally, information from such wells that showed no water would be the most convincing evidence that the unconsolidated soils beneath the double composite liner are a confining unit. (Tr. at 2328 - 2329.)

In response to the inquiries of the County Board and Mr. Kinnally, five shallow water table piezometers (wells) were constructed in the unconsolidated soils across the landfill footprint. They were installed entirely within the unconsolidated soils, and evaluated whether the soils produced water. Installed on October 17, these wells contained no water after three days.

The results from these wells are presented on the enclosed attachments: Field Results Summary, Shallow Water Table Piezometer (Well) Location Map, Shallow Water Table Piezometer (Well) Water Level Measurements, Final Soil Boring Logs for B-225, B-226, B-227, B-228 and B-229, and IEPA Well Completion Reports for SP-225, SP-226, SP-227, SP-228 and SP-229.

Very truly yours,

Donald J. Moran

DJM:vlk
Enclosures

cc: Patrick M. Kinnally
Michael Blazer
Counsel of Record

EXHIBIT
tabbies B

PEDERSEN&HOUPT

October 28, 2008

Donald J. Moran
Attorney at Law
(312) 261-2149
Fax (312) 261-1149
dmoran@pedersenhoupt.com

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Very truly yours,

Donald J. Moran

DJM:vlk
Enclosures

cc: Patrick M. Kinnally
Michael Blazer
Counsel of Record

EXHIBIT
C

FIELD RESULTS SUMMARY

SITE LOCATION APPLICATION
WILLOW RUN RDF
KENDALL COUNTY, ILLINOIS

SHALLOW WATER TABLE PIEZOMETER CONSTRUCTION

Shallow water table piezometers ("piezometers" or "wells") were constructed in October 2008 within the landfill footprint of Willow Run. The well locations are shown on Figure 1 (Attachment A). These piezometers were installed to investigate whether the fine-grained unconsolidated soils produce water, and to intersect the water table. Installation of these wells proceeded as follows:

1. The boring log obtained at each location was reviewed for evidence of the water table location, and water table information presented on Figure G-4-1 in Appendix G of the Site Location Application was reviewed. Well depths to intersect the water table in the fine-grained unconsolidated soils were then chosen. Final soil boring logs are provided in Attachment C.

2. Shallow water table wells were constructed solely within the fine-grained unconsolidated soils.

3. Water levels were measured periodically and are provided in Attachment B. Piezometer construction information is provided in Attachment D.

RESULTS

The shallow water table wells contained no water after 3 days. The shallow water table wells could not be developed or slug tested because there was no water. Slug testing cannot be conducted in dry wells (Bouwer, 1989). In addition, water should not be added to these water table wells to conduct slug testing because erroneous results will occur because of changing the effective screen length from adding water (Butler, 1998). The shallow water table well data confirmed that the unconsolidated soils have low hydraulic conductivity, consistent with the information obtained during the site investigation, including the soil descriptions and classifications, geotechnical laboratory testing, and aquifer testing. This data demonstrates the low permeability of the unconsolidated soils and its condition as a confining unit.

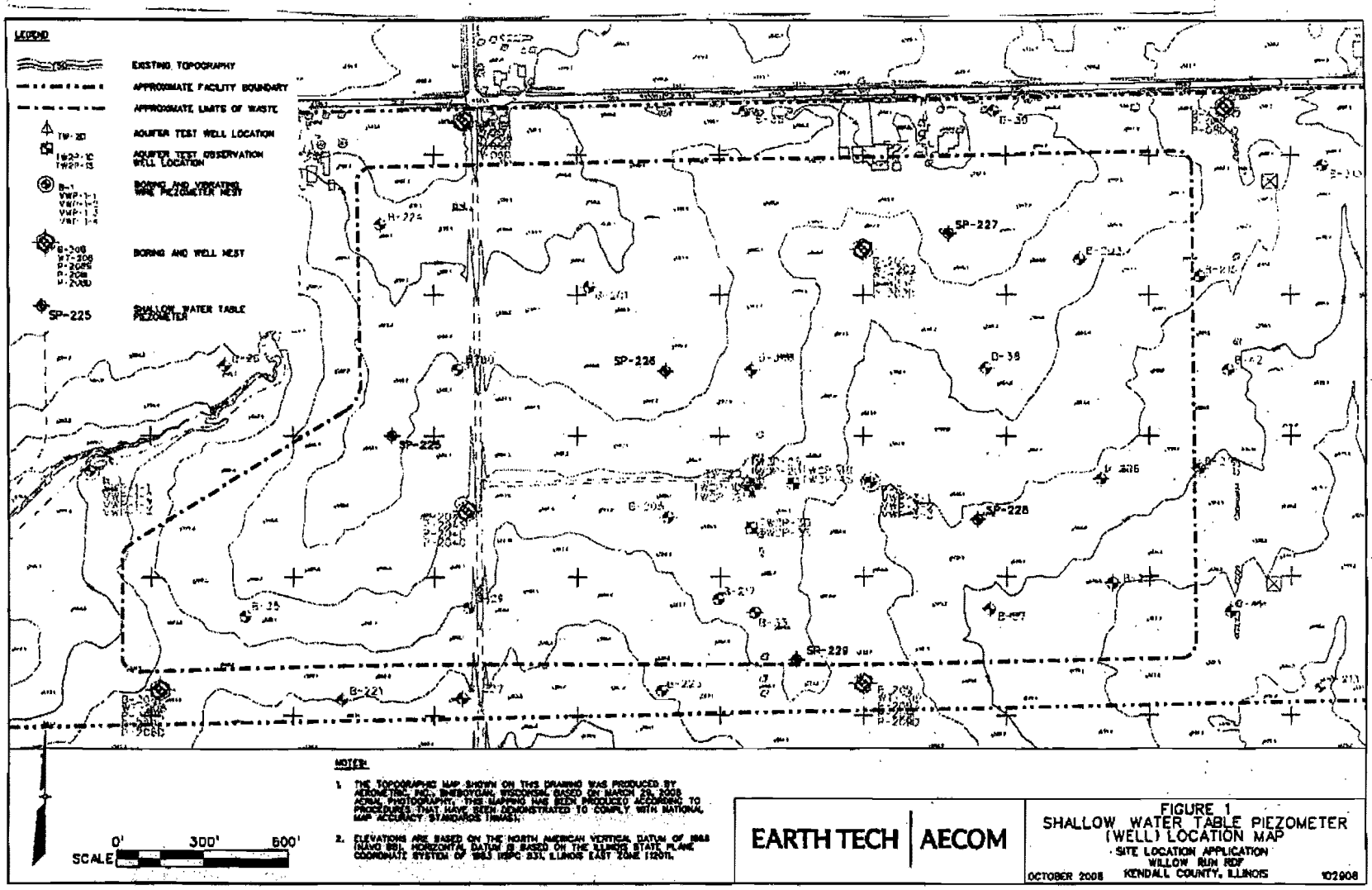
REFERENCES:

Bouwer, H., 1989. The Bouwer and Rice Slug Test – an Update, Groundwater, v. 27, No. 3, pp. 304-309.

Butler, J.J., 1998, The Design, Performance, and Analysis of Slug Tests: Boca Raton, CRC Press LLC, Lewis Publishers, 252 p.

ATTACHMENT A

SHALLOW WATER TABLE PIEZOMETER (WELL) LOCATION MAP



ATTACHMENT B

SHALLOW WATER TABLE PIEZOMETER (WELL)
WATER LEVEL MEASUREMENTS

SITE LOCATION APPLICATION
WILLOW RUN RDF
KENDALL COUNTY, ILLINOIS
SHALLOW WATER TABLE PIEZOMETERS (WELLS)

Water Level Measurements					
Measurement Time	**SP-225**	**SP-226**	**SP-227**	**SP-228**	**SP-229**
10/17/2008 10:00 a.m.			Dry		
10/17/2008 12:00 p.m.				Dry	
10/17/2008 2:00 p.m.		Dry	Dry	Dry	Dry
10/17/2008 3:00 p.m.	Dry	Dry	Dry	Dry	Dry
10/18/2008 7:30 a.m.	Dry	Dry	Dry	Dry	Dry
10/20/2008 10:00 a.m.	Dry	Dry	Dry	Dry	Dry

Shallow water table well borehole measurements

SP-225 = 7.0 feet
SP-226 = 7.5 feet
SP-227 = 7.5 feet
SP-228 = 7.0 feet
SP-229 = 7.0 feet

ATTACHMENT C

FINAL SOIL BORING LOGS

EarthTech

FINAL SOIL BORING LOG

BORING NO. B-225

SITE: Willow Run RDF PROJECT NO. 102908 SHEET 1 OF 1

SITE #:

WATER LEVEL READINGS			
DATE	WATER DEPTH	HOLE DEPTH	CASING DEPTH

GROUND SURFACE ELEV: 588.35

PHYSICAL SETTING: Glacial Lake Plain

LOG BY: M. Zhang

FIRM/DRILLER: Transfield Underground Services/M. Lajbdak

DRILLING METHOD: Geoprobe with 1.8-in. dia. by 5 ft long Geoprobe Macro-Core soil sampler.

ABANDONMENT DATE:

ABANDONMENT METHOD:

LOCAL COORDINATES:
NORTHING: 1750000
EASTING: 969850
DATE/TIME STARTED: 10/17/08
DATE/TIME COMPLETED: 10/17/08
WELL INSTALLATION: NA

Depth in Feet	SAMPLING DATA B	N	A	% Recovery	No.	T	Graphic Log	USCS	SOIL DESCRIPTION AND DRILLING COMMENTS
0				100	1	GP		CH	QUATERNARY, TOPSOIL AND/OR PEORIA SILT. Firm, black (10YR 2/1) FAT CLAY (CH); moist; medium to high plasticity; cohesive; massive; A horizon of modern soil profile; loess.
								CL	EQUALITY FORMATION. Firm, dark brown (10YR 3/3) LEAN CLAY (CL); moist; medium plasticity; cohesive; massive; B horizon of modern soil profile; lacustrine.
								CL	Firm, dark yellowish brown (10YR 4/4) LEAN CLAY (CL); moist; medium plasticity; cohesive; laminated, with dark gray (2.5Y 4/1) laminae; MOU; lacustrine.
5				90	2	GP			As above from 3.0 to 5.0 feet.
								ML	LEMONT FORMATION, undifferentiated. Firm, light olive brown (2.5Y 5/4) SILT (ML); moist; low plasticity; cohesive; massive; trace gravel; OU; diamicton.
								LS	ORDOVICIAN, WEATHERED BEDROCK. Weathered bedrock; angular limestone fragments.
10									END OF BORING AT 10.0 FEET.
15									
20									

Tracking Codes: 102WWILLOW.GPJ, ETSOIL, 10/22/08, 10:14

EarthTech

FINAL SOIL BORING LOG

BORING NO. B-226

SITE: Willow Run RDF PROJECT NO. 102908 SHEET 1 OF 1

SITE #:

	WATER LEVEL READINGS WATER DEPTH	HOLE DEPTH	CASING DEPTH

GROUND SURFACE ELEV: 588.75

PHYSICAL SETTING: Glacial Lake Plain

LOG BY: M. Zhang

FIRM/DRILLER: Transfield Underground Services/M. Lajdziak

DRILLING METHOD: Geoprobe with 1.8-in. dia. by 5 ft long Geoprobe Macro-Core soil sampler.

ABANDONMENT DATE:

ABANDONMENT METHOD:

LOCAL COORDINATES:
NORTHING: 1750235
EASTING: 970810
DATE/TIME STARTED: 10/17/08
DATE/TIME COMPLETED: 10/17/08
WELL INSTALLATION: NA

Depth in Feet	SAMPLING DATA B	N	A	% Recovery	No.	T	Graphic Log	USCS	SOIL DESCRIPTION AND DRILLING COMMENTS
0				100	1	GP		CH	QUATERNARY, TOPSOIL AND/OR PEORIA SILT. Firm, black (10YR 2/1) FAT CLAY (CH); moist; medium to high plasticity; cohesive; massive; A horizon of modern soil profile; loess.
								CL	EQUALITY FORMATION. Firm, very dark grayish brown (10YR 3/2) LEAN CLAY (CL); moist; medium plasticity; cohesive; massive; B horizon of modern soil profile; lacustrine.
								CL	Firm, dark grayish brown (10YR 4/2) LEAN CLAY (CL); moist; medium plasticity; cohesive; laminated; OU; lacustrine.
5				100	2	GP			As above from 3.5 to 5.0 feet.
								CL	Firm, gray (10YR 5/1) mottled with brown (10YR 4/3) LEAN CLAY (CL); moist; medium to high plasticity; cohesive; laminated; MOU; lacustrine.
10				83	3	GP			As above from 6.0 to 10.0 feet.
								ML	LEMONT FORMATION, undifferentiated. Firm, yellowish brown (10YR 5/8) SANDY SILT (ML); moist; nonplastic to low plasticity; cohesive; massive; few gravel; OU; diamicton.
									END OF BORING AT 13.0 FEET.
15									
20									

Tracking Codes: 102908\WILLOW.GPJ, ETSOIL, 10/22/08, 18:17

EarthTech

FINAL SOIL BORING LOG

BORING NO. B-227

SITE: Willow Run RDF PROJECT NO. 102908 SHEET 1 OF 1

SITE #:

WATER LEVEL READINGS

DATE	WATER DEPTH	HOLE DEPTH	CASING DEPTH

PHYSICAL SETTING: Glacial Lake Plain

LOG BY: M. Zhang

FIRM/DRILLER: Transhield Underground Services/M. Lajdziak

DRILLING METHOD: Geoprobe with 1.8-in. dia. by 5 ft long Geoprobe Macro-Core soil sampler.

ABANDONMENT DATE:

ABANDONMENT METHOD:

GROUND SURFACE ELEV: 586.93

LOCAL COORDINATES:

NORTHING: 1750720

EASTING: 971800

DATE/TIME STARTED: 10/17/08

DATE/TIME COMPLETED: 10/17/08

WELL INSTALLATION: NA

Depth in Feet	SAMPLING DATA B	N	A	% Recovery	No.	T	Graphic Log	USCS	SOIL DESCRIPTION AND DRILLING COMMENTS
0				85	1	GP		CH	QUATERNARY, TOPSOIL AND/OR PEORIA SILT. Firm, black (10YR 2/1) FAT CLAY (CH); moist; medium plasticity; cohesive; massive; A horizon of modern soil profile; loess.
								CL	EQUALITY FORMATION. Firm, dark grayish brown (10YR 4/2) LEAN CLAY (CL); moist; medium plasticity; cohesive; massive; B horizon of modern soil profile; lacustrine.
								CL	Firm, olive brown (2.5Y 4/3) mottled with gray (10YR 5/1) LEAN CLAY (CL); moist; medium plasticity; cohesive; laminated; MOU; lacustrine.
5				100	2	GP			As above from 3.0 to 5.0 feet.
								CL	Firm, olive brown (2.5Y 4/4) LEAN CLAY (CL); moist; medium to high plasticity; cohesive; laminated, with yellowish brown (10YR 5/6) silt laminae; MRU; lacustrine.
10				70	3	GP			As above from 7.0 to 10.0 feet.
								CL	Firm, gray (10YR 5/1) LEAN CLAY (CL); moist; medium to high plasticity; cohesive; laminated; UU; lacustrine.
								CL	LEMONT FORMATION, undifferentiated. Firm, dark gray (10YR 4/1) LEAN CLAY WITH SAND (CL); moist; low plasticity; cohesive; massive; trace gravel; UU; diamicton.
15				100	4	GP		LS	ORDOVICIAN, WEATHERED BEDROCK. Weathered bedrock; angular limestone fragments.
									END OF BORING AT 16.0 FEET.
20									

Tracking Codes: 102908WRLLOW.GPJ, ETSOIL, 10/23/08, 16:19

EarthTech

FINAL SOIL BORING LOG

BORING NO. B-228

SITE: Willow Run RDF PROJECT NO. 102908 SHEET 1 OF 1

SITE #:

WATER LEVEL READINGS			
DATE	WATER DEPTH	HOLE DEPTH	CASING DEPTH

GROUND SURFACE ELEV: 581.79

PHYSICAL SETTING: Glacial Lake Plain

LOG BY: M. Zhang

FIRM/DRILLER: Transhield Underground Services/M. Lajdziak

DRILLING METHOD: Geoprobe with 1.8-in. dia. by 5 ft long Geoprobe Macro-Core soil sampler.

ABANDONMENT DATE:

ABANDONMENT METHOD:

LOCAL COORDINATES:
NORTHING: 1749700
EASTING: 971900
DATE/TIME STARTED: 10/17/08
DATE/TIME COMPLETED: 10/17/08
WELL INSTALLATION: NA

Depth in Feet	SAMPLING DATA B	N	A	% Recovery	No.	T	Graphic Log	USCS	SOIL DESCRIPTION AND DRILLING COMMENTS
0				100	1	GP		CH	**QUATERNARY, TOPSOIL AND/OR PEORIA SILT.** Firm, black (10YR 2/1) FAT CLAY (CH); moist; medium to high plasticity; cohesive; massive; A horizon of modern soil profile; loess.
								CL	**EQUALITY FORMATION.** Firm, dark olive gray (5Y 3/2) LEAN CLAY (CL); moist; medium to high plasticity; cohesive; massive; B horizon of modern soil profile; lacustrine.
								CL	Firm, olive brown (2.5Y 4/4) LEAN CLAY (CL); moist; medium plasticity; cohesive; laminated; OU; lacustrine.
5				100	2	GP			As above from 3.0 to 5.0 feet.
10				70	3	GP		CL	**LEMONT FORMATION, undifferentiated.** Firm to hard, dark brown (10YR 3/3) LEAN CLAY WITH SAND (CL); wet; low plasticity; cohesive; massive; trace gravel; OU; diamicton.
								LS	**ORDOVICIAN, WEATHERED BEDROCK.** Weathered bedrock; angular limestone fragments.
									END OF BORING AT 12.5 FEET.
15									
20									

Tracking Codes: 102908WR.LOW.BPI, ETHOL, 10/22/08, 10:21

EarthTech

FINAL SOIL BORING LOG

BORING NO. B-229

SITE: Willow Run RDF PROJECT NO. 102908 SHEET 1 OF 1

SITE #:

WATER LEVEL READINGS

DATE	WATER DEPTH	HOLE DEPTH	CASING DEPTH

GROUND SURFACE ELEV: 584.38

PHYSICAL SETTING: Glacial Lake Plain

LOG BY: M. Zhang

FIRM/DRILLER: Transhield Underground Services/M. Lajdziak

DRILLING METHOD: Geoprobe with 1.8-in. dia. by 5 ft long Geoprobe Macro-Core soil sampler.

ABANDONMENT DATE:

ABANDONMENT METHOD:

LOCAL COORDINATES:

NORTHING: 1749205

EASTING: 871265

DATE/TIME STARTED: 10/17/08

DATE/TIME COMPLETED: 10/17/08

WELL INSTALLATION: NA

Depth in Feet	SAMPLING DATA B	N	A	% Recovery	No.	T	Graphic Log	USCS	SOIL DESCRIPTION AND DRILLING COMMENTS
0				100	1	GP		CH	QUATERNARY, TOPSOIL AND/OR PEORIA SILT. Firm, black (10YR 2/1) FAT CLAY (CH); moist; medium to high plasticity; cohesive; massive; A horizon of modern soil profile; loess.
								CL	EQUALITY FORMATION. Firm, very dark gray (10YR 3/1) LEAN CLAY (CL); moist; medium plasticity; cohesive; massive; B horizon of modern soil profile; lacustrine.
								CL	Firm, dark gray (10YR 4/1) LEAN CLAY (CL); moist; medium plasticity; cohesive; laminated; RU; lacustrine.
5				100	2	GP		CL	Firm, brown (10YR 4/3) LEAN CLAY (CL); moist; medium plasticity; cohesive; laminated; OU; lacustrine.
								CL	Firm, gray (10YR 5/1) LEAN CLAY (CL); moist; medium to high plasticity; cohesive; UU; lacustrine.
10				92	3	GP			As above from 9.0 to 10.0 feet.
								ML	LEMONT FORMATION, undifferentiated. Firm, gray (2.5Y 5/1) SANDY SILT (ML); moist to wet; low plasticity; cohesive; massive; few gravel; UU; diamicton.
								ML	Firm, light olive brown (2.5Y 5/6) SANDY SILT (ML); wet; low plasticity; cohesive; massive; few gravel; RU; diamicton.
15				0	4	GP		LS	ORDOVICIAN, WEATHERED BEDROCK. Weathered bedrock; angular limestone fragments. As above from 14.5 to 15.0 feet.
									END OF BORING AT 15.5 FEET.
20									

Tracking Codes: 102908/WILLOW.GPJ, ET.GDT, 10/22/08, 18:23

ATTACHMENT D

IEPA WELL COMPLETION REPORTS

Illinois Environmental Protection Agency — Monitoring Well Completion Report

SITE #: _____ COUNTY: Kendall Well #: SP-225

SITE NAME: Willow Run RDF BOREHOLE #: B-225

STATE PLANE COORDINATE: N 1750000 E 969850 (or) LATITUDE ___° ___' _____" LONGITUDE ___° ___' _____"

SURVEYED BY: _____ ILL. REGISTRATION #: _____

DRILLING CONTRACTOR: Transhield Underground Services, Inc DRILLER: M. Lajdziak

CONSULTING FIRM: Earth Tech, Inc. GEOLOGIST: M. Zhang

DRILLING METHOD: 4 1/4 in. HSA DRILLING FLUIDS (TYPE): None

LOGGED BY: M. Zhang/B.J. LeRoy DATE STARTED: 10/17/08 DATE FINISHED: 10/20/08

REPORT FORM COMPLETED BY: B.J. LeRoy DATE: 10/21/08

ANNULAR SPACE DETAILS

TYPE OF SURFACE SEAL: 3/8 in. medium bentonite chips

TYPE OF UPPER SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF ANNULAR SEALANT: 3/8 In. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF BENTONITE SEAL - GRANULAR SLURRY (CHIPS)

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF FINE SAND PACK: N/A

GRAIN SIZE: N/A (SIEVE SIZE)

INSTALLATION METHOD: N/A

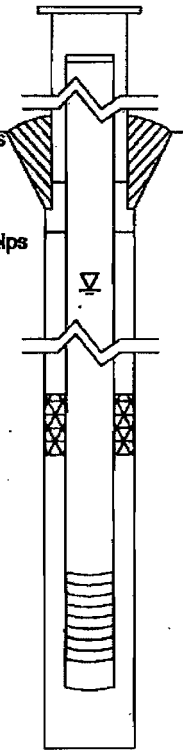
TYPE OF SAND PACK: Silica sand

GRAIN SIZE: 10-20 (SIEVE SIZE)

INSTALLATION METHOD: Gravity

TYPE OF BACKFILL MATERIAL: N/A (IF APPLICABLE)

INSTALLATION METHOD: N/A



ELEVATIONS (MSL)*	DEPTHS (BGS)	(.01 ft)
591.3	2.9	TOP OF PROTECTIVE CASING
590.9	2.5	TOP OF RISER PIPE
588.4	0.0	GROUND SURFACE
588.4	0.0	TOP OF UPPER SEALANT
588.4	0.0	TOP OF ANNULAR SEALANT
_____	Dry	WATER LEVEL (AFTER COMPLETION) DATE: _____
588.4	0.0	TOP OF SEAL
582.9	5.5	TOP OF FINE SAND
582.9	5.5	TOP OF SAND PACK
582.6	5.8	TOP OF SCREEN
581.6	6.8	BOTTOM OF SCREEN
581.6	6.8	BOTTOM OF WELL
581.4	7.0	BOTTOM OF SAND PACK
581.4	7.0	BOTTOM OF BOREHOLE

* REFERENCED TO A NATIONAL GEODETIC VERTICAL DATUM

WELL CONSTRUCTION MATERIALS (CIRCLE ONE)

PROTECTIVE CASING	SS304	SS316	PTFE	PVC	OTHER: (Steel)
RISER PIPE ABOVE W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
RISER PIPE BELOW W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
SCREEN	SS304	SS316	PTFE	(PVC)	OTHER:

REMARKS: Schedule 40 PVC. Sand manufacturer - RW Sidley Silica Sand No. 5.

CASING MEASUREMENTS

DIAMETER OF BOREHOLE	(in)	8
ID OF RISER PIPE	(in)	2.0
PROTECTIVE CASING LENGTH	(ft)	5.0
RISER PIPE LENGTH	(ft)	8.3
BOTTOM OF SCREEN TO END CAP	(ft)	0.01
SCREEN LENGTH 1st SLOT TO LAST SLO	(ft)	1.0
TOTAL LENGTH OF CASING	(ft)	9.3
SCREEN SLOT SIZE **	(in)	0.010

**HAND-SLOTTED WELL SCREENS ARE UNACCEPTABLE

IL_EPA_WELL_EARTHTECH_102806WILLOW.GPJ ET_SHEB10_05_06.G 10/22/08

Illinois Environmental Protection Agency — Monitoring Well Completion Report

SITE #: _____ COUNTY: Kendall Well #: SP-226

SITE NAME: Willow Run RDF BOREHOLE #: B-226

PLANE COORDINATE: N 1750235 E 970810 (or) LATITUDE ___ ° ___ ' _____ " LONGITUDE ___ ° _____ "

SURVEYED BY: _____ ILL. REGISTRATION #: _____

DRILLING CONTRACTOR: Transhield Underground Services, Inc DRILLER: M. Lajdziak

CONSULTING FIRM: Earth Tech, Inc. GEOLOGIST: M. Zhang

DRILLING METHOD: 4 1/4 in. HSA DRILLING FLUIDS (TYPE): None

LOGGED BY: M. Zhang/B.J. LeRoy DATE STARTED: 10/17/08 DATE FINISHED: 10/20/08

REPORT FORM COMPLETED BY: B.J. LeRoy DATE: 10/21/08

ANNULAR SPACE DETAILS

TYPE OF SURFACE SEAL: 3/8 in. medium bentonite chips

TYPE OF UPPER SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF ANNULAR SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF BENTONITE SEAL - GRANULAR SLURRY (CHIPS)

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF FINE SAND PACK: N/A

GRAIN SIZE: N/A (SIEVE SIZE)

INSTALLATION METHOD: N/A

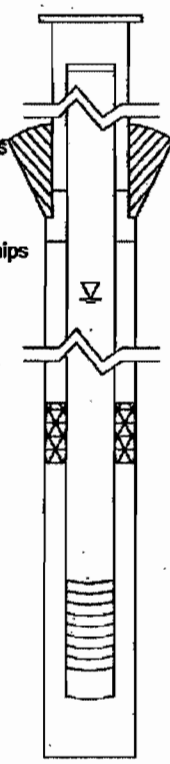
TYPE OF SAND PACK: Silica sand

GRAIN SIZE: 10-20 (SIEVE SIZE)

INSTALLATION METHOD: Gravity

TYPE OF BACKFILL MATERIAL: N/A (IF APPLICABLE)

INSTALLATION METHOD: N/A



ELEVATIONS (MSL)*	DEPTHS (BGS)	(.01 ft)
591.7	2.9	TOP OF PROTECTIVE CASING
591.3	2.5	TOP OF RISER PIPE
588.8	0.0	GROUND SURFACE
588.8	0.0	TOP OF UPPER SEALANT
588.8	0.0	TOP OF ANNULAR SEALANT
_____	Dry	WATER LEVEL (AFTER COMPLETION) DATE: _____
588.8	0.0	TOP OF SEAL
582.8	6.0	TOP OF FINE SAND
582.8	6.0	TOP OF SAND PACK
582.5	6.3	TOP OF SCREEN
581.5	7.3	BOTTOM OF SCREEN
581.5	7.3	BOTTOM OF WELL
581.3	7.5	BOTTOM OF SAND PACK
581.3	7.5	BOTTOM OF BOREHOLE

REFERENCED TO A NATIONAL GEODETIC VERTICAL DATUM

WELL CONSTRUCTION MATERIALS
(CIRCLE ONE)

PROTECTIVE CASING	SS304	SS316	PTFE	PVC	OTHER: (Steel)
RISER PIPE ABOVE W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
RISER PIPE BELOW W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
SCREEN	SS304	SS316	PTFE	(PVC)	OTHER:

REMARKS: Schedule 40 PVC. Sand manufacturer - RW Sidley Silica Sand No. 5.

CASING MEASUREMENTS

DIAMETER OF BOREHOLE	(in)	8
ID OF RISER PIPE	(in)	2.0
PROTECTIVE CASING LENGTH	(ft)	5.0
RISER PIPE LENGTH	(ft)	8.8
BOTTOM OF SCREEN TO END CAP	(ft)	0.01
SCREEN LENGTH (1st SLOT TO LAST SLOT)	(ft)	1.0
TOTAL LENGTH OF CASING	(ft)	9.8
SCREEN SLOT SIZE **	(in)	0.010

**HAND-SLOTTED WELL SCREENS ARE UNACCEPTABLE

IL_EPA_WELL_EARTHTECH 102908WILLOW.GPJ ET_SHEB10_08_05.GDT 10/22/08

Illinois Environmental Protection Agency — Monitoring Well Completion Report

SITE #: _____ COUNTY: Kendall Well #: SP-227

SITE NAME: Willow Run RDF BOREHOLE #: B-227

STATE PLANE COORDINATE: N 1750720 E 971800 (or) LATITUDE ___ ° ___ ' _____ " LONGITUDE ___ ° ___ ' _____

SURVEYED BY: _____ ILL. REGISTRATION #: _____

DRILLING CONTRACTOR: Transhield Underground Services, Inc DRILLER: M. Laldziak

CONSULTING FIRM: Earth Tech, Inc. GEOLOGIST: M. Zhang

DRILLING METHOD: 6 1/4 in. HSA DRILLING FLUIDS (TYPE): None

LOGGED BY: M. Zhang/B.J. LeRoy DATE STARTED: 10/17/08 DATE FINISHED: 10/20/08

REPORT FORM COMPLETED BY: B.J. LeRoy DATE: 10/21/08

ANNULAR SPACE DETAILS

TYPE OF SURFACE SEAL: 3/8 in. medium bentonite chips

TYPE OF UPPER SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF ANNULAR SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF BENTONITE SEAL - GRANULAR SLURRY (CHIPS)

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF FINE SAND PACK: N/A

GRAIN SIZE: N/A (SIEVE SIZE)

INSTALLATION METHOD: N/A

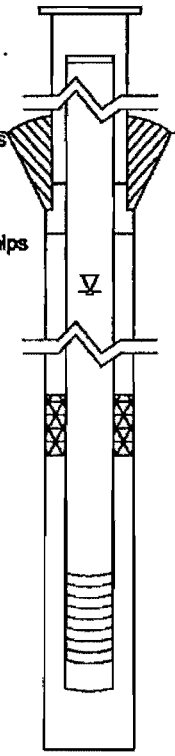
TYPE OF SAND PACK: Silica sand

GRAIN SIZE: 10-20 (SIEVE SIZE)

INSTALLATION METHOD: Gravity

TYPE OF BACKFILL MATERIAL: N/A (IF APPLICABLE)

INSTALLATION METHOD: N/A



ELEVATIONS (MSL)*	DEPTHS (BGS) (.01 ft)	
589.8	2.9	TOP OF PROTECTIVE CASING
589.4	2.5	TOP OF RISER PIPE
586.9	0.0	GROUND SURFACE
586.9	0.0	TOP OF UPPER SEALANT
586.9	0.0	TOP OF ANNULAR SEALANT
_____	Dry	WATER LEVEL (AFTER COMPLETION) DATE: _____
586.9	0.0	TOP OF SEAL
580.9	6.0	TOP OF FINE SAND
580.9	6.0	TOP OF SAND PACK
580.7	6.3	TOP OF SCREEN
579.6	7.3	BOTTOM OF SCREEN
579.6	7.3	BOTTOM OF WELL
579.4	7.5	BOTTOM OF SAND PACK
579.4	7.5	BOTTOM OF BOREHOLE

REFERENCED TO A NATIONAL GEODETIC VERTICAL DATUM

WELL CONSTRUCTION MATERIALS
(CIRCLE ONE)

PROTECTIVE CASING	SS304	SS316	PTFE	PVC	OTHER: (Steel)
RISER PIPE ABOVE W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
RISER PIPE BELOW W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
SCREEN	SS304	SS316	PTFE	(PVC)	OTHER:

REMARKS: Schedule 40 PVC. Sand manufacturer - RW Sidley Silica Sand No. 5.

CASING MEASUREMENTS

DIAMETER OF BOREHOLE	(in)	10
ID OF RISER PIPE	(in)	2.0
PROTECTIVE CASING LENGTH	(ft)	5.0
RISER PIPE LENGTH	(ft)	8.8
BOTTOM OF SCREEN TO END CAP	(ft)	0.01
SCREEN LENGTH (1st SLOT TO LAST SLOT)	(ft)	1.0
TOTAL LENGTH OF CASING	(ft)	9.8
SCREEN SLOT SIZE **	(in)	0.010

**HAND-SLOTTED WELL SCREENS ARE UNACCEPTABLE

IL_EPA_WELL_EARTHTECH 102908WILLOW.GPJ ET_8HEB10 08 05.0 10/22/08

Illinois Environmental Protection Agency — Monitoring Well Completion Report

SITE #: _____ COUNTY: Kendall Well #: SP-228

SITE NAME: Willow Run RDF BOREHOLE #: B-228

STATE PLANE COORDINATE: N 1749700 E 971900 (or) LATITUDE ___° ___' ___" LONGITUDE ___° ___' ___"

SURVEYED BY: _____ ILL. REGISTRATION #: _____

DRILLING CONTRACTOR: Transhield Underground Services, Inc DRILLER: M. Lajdziak

CONSULTING FIRM: Earth Tech, Inc. GEOLOGIST: M. Zhang

DRILLING METHOD: 6 1/4 in. HSA DRILLING FLUIDS (TYPE): None

LOGGED BY: M. Zhang/B.J. LeRoy DATE STARTED: 10/17/08 DATE FINISHED: 10/20/08

REPORT FORM COMPLETED BY: B.J. LeRoy DATE: 10/21/08

ANNULAR SPACE DETAILS

TYPE OF SURFACE SEAL: 3/8 in. medium bentonite chips

TYPE OF UPPER SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF ANNULAR SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF BENTONITE SEAL - GRANULAR SLURRY (CHIPS)

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF FINE SAND PACK: N/A

GRAIN SIZE: N/A (SIEVE SIZE)

INSTALLATION METHOD: N/A

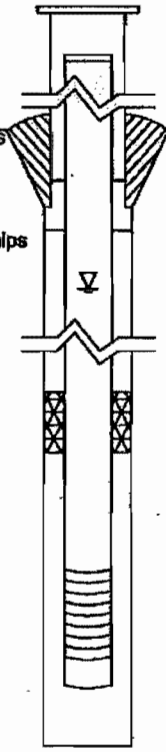
TYPE OF SAND PACK: Silica sand

GRAIN SIZE: 10-20 (SIEVE SIZE)

INSTALLATION METHOD: Gravity

TYPE OF BACKFILL MATERIAL: N/A (IF APPLICABLE)

INSTALLATION METHOD: N/A



ELEVATIONS (MSL)*	DEPTHS (BGS) (.01 ft)	
584.7	2.9	TOP OF PROTECTIVE CASING
584.3	2.5	TOP OF RISER PIPE
581.8	0.0	GROUND SURFACE
581.8	0.0	TOP OF UPPER SEALANT
581.8	0.0	TOP OF ANNULAR SEALANT
_____	Dry	WATER LEVEL (AFTER COMPLETION) DATE: _____
581.8	0.0	TOP OF SEAL
576.3	5.5	TOP OF FINE SAND
576.3	5.5	TOP OF SAND PACK
576.0	5.8	TOP OF SCREEN
575.0	6.8	BOTTOM OF SCREEN
575.0	6.8	BOTTOM OF WELL
574.8	7.0	BOTTOM OF SAND PACK
574.8	7.0	BOTTOM OF BOREHOLE

* REFERENCED TO A NATIONAL GEODETIC VERTICAL DATUM

WELL CONSTRUCTION MATERIALS (CIRCLE ONE)

PROTECTIVE CASING	SS304	SS316	PTFE	PVC	OTHER: (Steel)
RISER PIPE ABOVE W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
RISER PIPE BELOW W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
SCREEN	SS304	SS316	PTFE	(PVC)	OTHER:

REMARKS: Schedule 40 PVC. Sand manufacturer - RW Sidley Silica Sand No. 5.

CASING MEASUREMENTS

DIAMETER OF BOREHOLE	(in)	10
ID OF RISER PIPE	(in)	2.0
PROTECTIVE CASING LENGTH	(ft)	5.0
RISER PIPE LENGTH	(ft)	8.3
BOTTOM OF SCREEN TO END CAP	(ft)	0.01
SCREEN LENGTH (1st SLOT TO LAST SLOT)	(ft)	1.0
TOTAL LENGTH OF CASING	(ft)	9.3
SCREEN SLOT SIZE **	(in)	0.010

**HAND-SLOTTED WELL SCREENS ARE UNACCEPTABLE

IL_EPA_WELL CH...2906WILLOW.GPJ ET_SHE... 05 03.G... 10/22/08

Illinois Environmental Protection Agency — Monitoring Well Completion Report

SITE #: _____ COUNTY: Kendall Well #: SP-229

SITE NAME: Willow Run RDF BOREHOLE #: B-229

STATE PLANE COORDINATE: N 1749205 E 971265 (or) LATITUDE ___ ° ___ ' _____ " LONGITUDE ___ ° ___ ' _____

SURVEYED BY: _____ ILL. REGISTRATION #: _____

DRILLING CONTRACTOR: Transfield Underground Services, Inc DRILLER: M. Laidziak

CONSULTING FIRM: Earth Tech, Inc. GEOLOGIST: M. Zhang

DRILLING METHOD: 4 1/4 in. HSA DRILLING FLUIDS (TYPE): None

LOGGED BY: M. Zhang/B.J. LeRoy DATE STARTED: 10/17/08 DATE FINISHED: 10/20/08

REPORT FORM COMPLETED BY: B.J. LeRoy DATE: 10/21/08

ANNULAR SPACE DETAILS

TYPE OF SURFACE SEAL: 3/8 in. medium bentonite chips

TYPE OF UPPER SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF ANNULAR SEALANT: 3/8 in. medium bentonite chips

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF BENTONITE SEAL - GRANULAR SLURRY (CHIPS)

INSTALLATION METHOD: Gravity

SETTING TIME: 24 hours (minimum)

TYPE OF FINE SAND PACK: N/A

GRAIN SIZE: N/A (SIEVE SIZE)

INSTALLATION METHOD: N/A

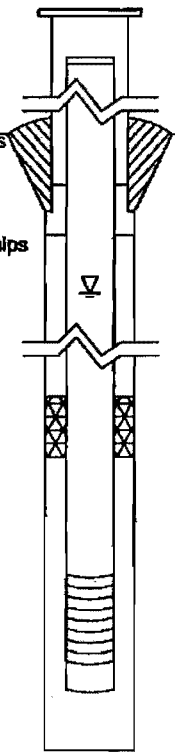
TYPE OF SAND PACK: Silica sand

GRAIN SIZE: 10-20 (SIEVE SIZE)

INSTALLATION METHOD: Gravity

TYPE OF BACKFILL MATERIAL: N/A (IF APPLICABLE)

INSTALLATION METHOD: N/A



ELEVATIONS (MSL)*	DEPTHS (BGS)	(.01 ft)
587.3	2.9	TOP OF PROTECTIVE CASING
586.9	2.5	TOP OF RISER PIPE
584.4	0.0	GROUND SURFACE
584.4	0.0	TOP OF UPPER SEALANT
584.4	0.0	TOP OF ANNULAR SEALANT
_____	Dry	WATER LEVEL (AFTER COMPLETION) DATE: _____
584.4	0.0	TOP OF SEAL
578.9	5.5	TOP OF FINE SAND
578.9	5.5	TOP OF SAND PACK
578.6	5.8	TOP OF SCREEN
577.6	6.8	BOTTOM OF SCREEN
577.6	6.8	BOTTOM OF WELL
577.4	7.0	BOTTOM OF SAND PACK
577.4	7.0	BOTTOM OF BOREHOLE

* REFERENCED TO A NATIONAL GEODETIC VERTICAL DATUM

WELL CONSTRUCTION MATERIALS (CIRCLE ONE)

PROTECTIVE CASING	SS304	SS316	PTFE	PVC	OTHER: (Steel)
RISER PIPE ABOVE W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
RISER PIPE BELOW W.T.	SS304	SS316	PTFE	(PVC)	OTHER:
SCREEN	SS304	SS316	PTFE	(PVC)	OTHER:

REMARKS: Schedule 40 PVC. Sand manufacturer - RW Sidley Silica Sand No. 5.

CASING MEASUREMENTS

DIAMETER OF BOREHOLE	(in)	8
ID OF RISER PIPE	(in)	2.0
PROTECTIVE CASING LENGTH	(ft)	5.0
RISER PIPE LENGTH	(ft)	8.3
BOTTOM OF SCREEN TO END CAP	(ft)	0.01
SCREEN LENGTH (1st SLOT TO LAST SLOT)	(ft)	1.0
TOTAL LENGTH OF CASING	(ft)	9.3
SCREEN SLOT SIZE **	(in)	0.010

**HAND-SLOTTED WELL SCREENS ARE UNACCEPTABLE

IL_EPA_WELL_EARTHTECH_102308WILLOW.GPJ ET_SHE_05_5.GDT

STATE OF ILLINOIS
BEFORE THE KENDALL COUNTY BOARD

IN RE:

APPLICATION OF WASTE MANAGEMENT OF ILLINOIS INC. and KENDALL LAND AND CATTLE LLC FOR SITE LOCATION FOR A NEW POLLUTION CONTROL FACILITY

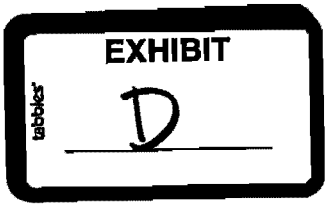
STATE OF ILLINOIS
COUNTY OF KENDALL
- FILED -
NOV 13 2008
Jeanette S. Nicklas COUNTY CLERK
KENDALL COUNTY

ORDER

The County of Grundy has filed a motion to strike the report of Kendall County's ("Kendall") Hearing Counsel Michael Blazer. The Motion, apparently was filed on November 11, 2008 (a state holiday). Although I have already filed my findings of fact and law in connection with this siting application, I believe it is my responsibility, as the Ordinance requires (Secs 7.1(2)(b),(3)) to decide all contested legal issues.

My previous order filed November 10, 2008 in connection with Waste Management of Illinois, Inc.'s (WMI) "public comment" submission is incorporated by this reference ("the WMI Order") and attached hereto.

Grundy's motion seeks to strike the report of Kendall County Hearing Counsel Michael Blazer ("the report") in its entirety. Grundy's complaint is threefold. First, it argues the exhibits attached to the report are untimely. Next, it posits these two exhibits were never admitted into evidence and should not be considered since they are outside the record. Lastly, by innuendo, it argues the report is "biased" because it parrots the opinions contained in WMI's late-filed submission. My comments address these complaints in inverse order.



The authority of the hearing counsel for Kendall County comes from the ordinance. (Sec.8.4). Consistent with the ordinance, Attorney Blazer "after consideration of all timely filed written comments" may submit draft written findings. Interestingly, there is no requirement that Attorney Blazer submit any findings. Clearly he has the right, but not an obligation to do so. Grundy may not like the report but the County's Hearing Counsel has a job to do. Mr. Blazer is entitled to proffer his opinion. He may be right; he may be wrong. Merely because he agrees with WMI does not mean he is biased. Grundy's assertions to the contrary are unwarranted.

Next, the exhibits (A&B) from Mr. Russell and Ms. Swan, are in my opinion, late-filed evidence. No reason has been offered as to why this evidence could not have been offered at the hearing, or why "good cause" exists to permit the late-filing. For whatever reason, the County chose not to offer any evidence at the hearing. Kendall does not, now, offer any reason why this evidence should now be considered.

Already, in the WMI order it was indicated that WMI's submission would not be recognized. And, in my findings of law and fact it was stated the exhibits to Mr. Blazer's report I did not evaluate. That, too, applies to his report that relies on those opinions. But it does not denote that the entirety of his report should be disregarded.

Finally, the reports of Ms. Swan and Mr. Russell are untimely. Kendall County had every opportunity to call each of them as witnesses. Maybe it wish it had, but that does not permit Kendall County, like any other participant, from not abiding with the terms of its own ordinance.

Accordingly, the motion of Grundy County is granted in part and denied in part. Exhibits A and B and any reference to them in the Hearing Counsel's report are stricken from the record. Otherwise, the motion to strike to the Hearing Counsel's report is denied.

Patrick M. Kinnally, Hearing Officer

Patrick M. Kinnally, Hearing Officer
KINNALLY FLAHERTY KRENTZ & LORAN, P.C.
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STATE OF ILLINOIS)
: §
COUNTY OF KENDALL)

IN THE MATTER OF :
APPLICATION OF WASTE MANAGEMENT OF ILLINOIS INC. AND KENDALL LAND AND CATTLE LLC FOR SITE LOCATION FOR A NEW POLLUTION CONTROL FACILITY

ORDER

On October 28, 2008, the applicant, Waste Management of Illinois, Inc. and Kendall Land and Cattle, L.L.C., (collectively referred to as "WMI") submitted a letter to the Kendall County Clerk ("Clerk"). Attached to it was a "Field Results Summary" with exhibits A and B ("the submission"). This information was filed for consideration by the Hearing Officer and the County Board ("Board"). [1]

The hearing in connection with WMI's landfill siting application ended on October 1, 2008.

On October 31, 2008, Grundy County ("Grundy"), a participant, filed a Motion to Strike the submission of WMI. The Village of Minooka ("Minooka") filed a similar pleading.[2] Grundy's motion states several reasons. First, it says WMI's submission is not "public comment". Next, it argues the submission violates the Kendall County Ordinance

[1] Preliminarily, although no participant has raised it, is the power of the hearing officer to rule on post- hearing motions. Perhaps, it might be argued that post-hearing motions were not contemplated by the Ordinance's drafters. The participants obviously think otherwise. Implicit in the ordinance is that authority of the hearing officer to be responsible for ruling on all contested issues, as well as, making decisions concerning the manner in which the hearing is conducted (Ord. Secs. 7.2 (a)(b)). Moreover, since the hearing officer has the authority to allow the introduction of late-filed evidence, (Ord. Sec. 7.1(2)(j) necessarily, because the fact that evidence is "late-filed", the hearing officer might have to consider an application like WMI's submission after the hearing adjourned. This is exactly what occurred here.

[2] Minooka's motion, although somewhat different, essentially requests the same relief as Grundy, that is, striking of WMI's submission. As to both of these motions, WMI filed a response, and Grundy and Minooka filed separate replies. I have reviewed all these briefs in reaching the decision made in this order. I have not considered the reply filed by Grundy for the reasons indicated in this Order. In view of the findings of this Order, I do not intend to fashion a separate order on Minooka's motion since I find it is rendered moot.

(Amended and Restated Kendall County Site Approval Ordinance for Pollution Control Facilities No. 08-15, (April 15, 2008) Sec;. 5.5; 6.1; 6.4) ("the ordinance"), since it is untimely. Finally, Grundy, asserts WMI's filing is an attempt to cure the inadequate site application of WMI.

The Ordinance says the Hearing Officer is empowered to make decisions consistent with the concept of fundamental fairness. (Ord. Sec.7.1(2)(b)) Additionally, the Hearing Officer has the discretion to allow introduction of late-filed evidence, whether written or testimonial, provided "good cause" is shown as to why it is overdue (Ord. 7.1(2)(j)). The ordinance states all reports, studies, exhibits or other evidence shall be submitted 7 calendar days prior to the hearing (Ord. Sec. 5.5 (1)). Finally, the ordinance says, that as to the rebuttal portion of any participant's case, evidence may be filed one day before the day of the public hearing at which it is offered (Ord. Sec. 7.1(2)(j)).

The letter from WMI's counsel to the Clerk, dated October 28, 2008, does not state it is "public comment". It doesn't say what it is. Another letter from WMI's counsel dated October 31, 2008, to the Clerk which submits ASTM Designation D5084-08, states it is being filed as "public comment". No objection has been made to that filing.

The October 28, 2008, submission states it is being filed in response to inquires made by the hearing officer and the Board during the rebuttal portion of WMI's case. Clearly, it is evidence, and I so find it to be.

The question then becomes whether it was filed in apt time. It was not. It was not filed seven days prior to the hearing or one day prior to the day of the public hearing which it could have been offered, namely, the rebuttal portion of WMI's case. The hearing closed on October 1, 2008.

The next issue is whether WMI has shown "good cause" for the late filed evidence. "Good cause" is not defined in the ordinance. Maybe it should be. The ordinance requires me to follow Illinois law (Ord. Sec. 7.1(2)(b)). The most recent exposition from the Illinois Supreme Court on what constitutes "good cause" is Vision Point of Sale Inc. v. Haas (2007) 226 Ill. 2d 334 ("Vision")

In Vision, our Supreme Court determined what constituted "good cause" to remedy an unintentional non-compliance with one of its procedural rules, namely an extension of time (Supreme Court Rule 183). It held, citing Bright v. Dicke (1995) 166 Ill. 2d 204) that a paramount concern in permitting a late filing in connection with a Request to Admit (Supreme Court Rule 216) is the reason given for the failure to adhere to the rule. The Court went on to hold that in ascertaining whether "good cause" exists, the decision maker may consider various events. These include such matters as: attorney neglect, mistake, inadvertence, as well as, other behavior related to the causes for the party's original non-compliance. Basically, the Court concluded the determination of "good cause" is an issue of fact, which is a discretionary decision of the decision maker.

Although, WMI does not specifically invoke the Ordinance's "good cause" exception, in its October 28, 2008, submission, it seems fair to ascribe to WMI such an intent. I do. Indeed, the letter clearly indicates that WMI is trying to explain why it did not undertake the investigation of certain unconsolidated soils in a portion of the proposed landfill footprint. Hence, WMI's submission should be considered under the "good cause" exception.

WMI, in reply to Grundy's motion, says it has the right to submit public comment. (Land and Lakes Co. V. Illinois Pollution Control Board (3d Dist. 2000) 319 Ill. App. 3d ("Land and Lakes"). I agree. The problem is WMI's submission is not public comment, but

late-filed evidence.

WMI's reliance on Land and Lakes is misplaced. The Appellate Court held the Will County Board, as the siting authority, could have treated the exhibits filed in that proceeding as untimely, consistent with its siting ordinance. It did not do so. Here, as indicated previously, WMI's submission is not public comment but late-filed evidence.

The WMI submission contains various tests conducted by it after the hearing closed. These studies were performed on a part of the facility footprint that had not been examined and included as part of WMI's application. WMI offers no explanation why the filing of this untimely evidence could not have been investigated and undertaken originally. It clearly could have. Maybe it was an oversight. The point is, WMI had the ability to perform these studies as part of it's application and chose not to do so.

One of the underlying tenets of the ordinance, of which I am charged to observe is that any decision shall be in accord with the concept of fundamental fairness (Ord. Sec. 7.1(2)(b)). This applies to all participants. The Ordinance provides every participant has the guarantee of cross-examination (Ord. Sec. 7.1(2)(i)). It is an important right. This hearing is a testament to that fact. Here, the admission of WMI's submission would foreclose the rights of every participant, as well as the Board, from being able to test, by cross-examination, the testimony of the persons who authored the reports sought to be admitted. That is unfair.

For the reasons stated, I find that WMI has failed to satisfy the "good cause" exception for late filing of evidence (Ord. Sec. 7.1(2)(j)).

Grundy County's motion to strike the October 28, 2008, letter and attachments of the applicant, Waste Management of Illinois, Inc., is granted.

Patrick M. Kinnally, Hearing Officer

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MEMORANDUM

FROM: **Michael S. Blazer**

TO: **Kendall County Board**

CC: **State's Attorney Eric C. Weis**

DATE: **November 5, 2008**

SUBJECT: **Kendall Land & Cattle/Waste Management of Illinois Siting Application for Willow Run RDF**

Section 8.4 of the Kendall County Site Approval Ordinance for Pollution Control Facilities provides for the submittal by our firm, as specially-retained outside counsel, of draft written findings after the close of the siting hearing and after consideration of all timely-filed written comments. We have in this regard reviewed, in great detail, the transcripts of the siting hearings, all exhibits and other written materials submitted and made a part of the hearing record, and all written comments submitted through October 31. The following represents our considered opinions regarding the evidence in this matter, and, specifically, the bases for our opinion that the Applicant, Kendall Land & Cattle/Waste Management of Illinois ("KLC/WMI"), has met its burden with respect to each of the nine siting criteria.

I. BURDEN OF PROOF

It is important to understand at the outset what an applicant's burden is. Section 39.2 of the Illinois Environmental Protection Act (the "Act") provides that, "An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate

compliance, and local siting approval shall be granted **only** if the proposed facility meets the [nine siting criteria]". [Emphasis added] This provision means what it says – all, not just some or most, of the statutory criteria in §39.2 of the Act must be satisfied before a local board may approve a siting application. See *Metropolitan Waste Systems, Inc. v. Pollution Control Board*, 201 Ill.App.3d 51, 54 (3rd Dist. 1990); *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board* (1987), 160 Ill.App.3d 434, 443 (2nd Dist. 1987).

Unlike criminal trials or civil cases involving claims for fraud, neither "beyond a reasonable doubt" nor the "clear and convincing evidence" standard apply to a siting proceeding. Rather, as counsel for the Village of Minooka correctly points out, the applicable burden of proof is the "preponderance of the evidence" standard. (Minooka Post Hearing Memo at 1) This is consistent with all the case law on the issue. See, *e.g.*, *American Bottom Conservancy vs. Village of Fairmont City*, PCB 01-159, 2001 WL 1286096, Slip Op. Cite at 3 (IPCB October 18, 2001); *CDT Landfill Corporation v. City of Joliet*, PCB 98-60, 1998 WL 112497, Slip Op. Cite at 4 (IPCB March 05, 1998); *Clean Quality Resources, Inc. v. Marion County Board*, PCB 91-72, 1991 WL 171684, Slip Op. Cite at 9 (IPCB August 26, 1991).[1]

What does "preponderance of the evidence" mean? "A proposition is proved by a preponderance of the evidence when it is more probably true than not." *Rodney B. Nelson v. Kane County Forest Preserve*, PCB 94-244, 1996 WL 419472, Slip Op. Cite at 5 (IPCB July 18, 1996) See also *Industrial Salvage, Inc. v. County Board of Marion County*, PCB 83-173, 1984 WL 37885, Slip Op. Cite at 2 (IPCB August 2, 1984) The distinction between the different standards of proof was explained in *Estate of Ragen*, 79 Ill.App.3d 8, 13 (1st Dist. 1979):

> Proof by a preponderance of the evidence is not the same as proof by clear and convincing evidence. The preponderance of the evidence has been defined as evidence sufficient to incline an impartial and reasonable mind to one side of an issue rather than the other. *Moss-*

[1] In its Post Hearing Memorandum, Kankakee Regional Landfill ("KRL") misrepresents the applicable burden by asserting that the standard of proof is "ambiguous" and that, "The law leaves it entirely to the local decision makers to determine for themselves what measure of proof is sufficient." (KRL Memo at 2) The cases confirm that this is not correct.

> *American, Inc. v. Fair Employment Practices Commission* (5th Dist. 1974), 22 Ill.App.3d 248, 259, 317 N.E.2d 343, 351.) A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. (See, generally, Illinois Pattern Jury Instructions, Civil, Nos. 21.00 and 21.01 (2d ed. 1971).) Clear and convincing evidence, on the other hand, reflects a more exacting standard of proof.
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> While it has been defined as evidence which leaves the mind well-satisfied of the truth of a proposition (*Hotze v. Schlanser* (1951), 410 Ill. 265, 102 N.E.2d 131; *Finney v. White* (1945), 389 Ill. 374, 59 N.E.2d 859), strikes all minds alike as being unquestionable (*Lines v. Willey* (1912), 253 Ill. 440, 97 N.E. 843), or leads to but one conclusion (*Johnson v. Johnson* (1953), 1 Ill.2d 319, 115 N.E.2d 617), proof by clear and convincing evidence has most often been defined as the quantum of proof which leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question. (*Galapeaux v. Orviller* (1954), 4 Ill.2d 442, 123 N.E.2d 321; *Morelli v. Battelli*.) It is apparent, however, that, although stated in terms of reasonable doubt, clear and convincing evidence is considered to be more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense. (*People v. Ralls* (5th Dist. 1974), 23 Ill.App.3d 96, 318 N.E.2d 703; *People v. Sansone* (1974), 18 Ill.App.3d 315, 309 N.E.2d 733; see also 30 Am.Jur.2d Evidence s 1167 (1967).) The spectrum of increasing degrees of proof, from preponderance of the evidence, to clear and convincing evidence, to beyond a reasonable doubt, is widely recognized, and it has been suggested that the standard of proof required would be clearer if the degrees of proof were defined, respectively, as probably true, highly probably true and almost certainly true. McBaine, Burden of Proof: Degrees of Belief, 32 Calif.L.Rev. 242 (1944).

As noted, it is our opinion that KLC/WMI has met its burden with respect to all of the siting criteria. This is subject in several instances to the imposition of special conditions.[2]

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[2] Section 39.2(e) of the Act provides that the siting authority "may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the [Pollution Control] Board".

II. SITING CRITERIA

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

There are two primary legal principles that must be considered in determining compliance with criterion 1. First, it is the applicant who defines the intended area to be served. *Metropolitan Waste Systems, Inc. v. IPCB*, 201 Ill.App.3d 51, 55 (3rd Dist.1990). *cert.* denied, 135 Ill.2d 558 (1990) (Tr. 1180-1181)[3] In this case, KLC/WMI has proposed a service area consisting of 11 counties: McHenry, Lake, Cook, DuPage, Kane, DeKalb, LaSalle, Kendall, Grundy, Will, and Kankakee. It is this 11-county service area, therefore, that must be considered in determining the need for the subject facility.

The second legal principle deals with the meaning of the word "necessary" in criterion 1. An applicant for siting approval does not have to show absolute necessity. It is enough that the proposed facility is "expedient" or is "reasonably convenient." *E & E Hauling, Inc. v. Illinois Pollution Control Board,* 116 Ill.App.3d 586, 605 (2nd Dist.), aff'd 107 Ill.2d 33 (1985). This standard has in turn been defined as requiring a showing that the facility is reasonably required by the waste needs of the service area, including consideration of its waste production and disposal capabilities. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 122 Ill.App.3d 639, 645 (3rd Dist. 1984); see also *File v. D & L Landfill, Inc.*, 219 Ill.App.3d 897, 906-907 (5th Dist. 1991)

We believe that the data presented in the Siting Application, coupled with the testimony of Jeanne Lindwall ("Lindwall"), was credible and established a need for the proposed facility in the service area for its projected life. Specifically, Lindwall examined waste production and disposal capabilities. Lindwall testified that the net amount of waste generated in the service area during the relevant time period (after deduction of recycling rates) is approximately 184 million tons. (Tr. 1136) In contrast, based in large part on figures published by the Illinois Environmental Protection Agency ("IEPA"), there is only about 137 million tons of available disposal capacity (considering all disposal facilities that do or may service the proposed area), resulting in a capacity shortfall of approximately 47

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[3] References to the transcripts from the siting hearings will be cited as "Tr. ___".

million tons. (Tr. 1138-1139) The capacity for Willow Run is 14.5 million tons, or approximately one-third of the capacity shortfall. (Tr. 1139)

KLC/WMI also committed in its Application to provide adequate disposal capacity for all waste received from municipalities in Kendall County for the entire site life, at a disposal fee no greater than the lowest fee charged by Waste Management in any waste contract negotiated with a municipality outside Kendall County.

Further, KLC/WMI agreed to a special condition limiting the service area to the 11 counties identified in the Application. (Tr. 1189-1190) The above evidence, coupled with the capacity guarantee and this condition (which we believe to be reasonable), in our opinion satisfies the requirements of criterion 1.[4]

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

This criterion, in many respects, is clearly the most important – particularly in light of the proximity of the proposed site to the potable water aquifer. It is thus not surprising that the evidence on this criterion took up the largest portion of the siting hearing. The testimony of KLC/WMI's witnesses on criterion 2, Andy Nickodem ("Nickodem") and Joan Underwood ("Underwood") was credible and supported by the evidence. In contrast, the testimony of the opposing geologists, Stephen Van Hook ("Van Hook"), Charles Norris ("Norris") and John Bognar ("Bognar") was at best equivocal and, in one significant instance, completely false.

A. Facility Design

In its Post Hearing Memo, Grundy County ("Grundy") makes much of the fact that both the Hearing Officer and the County's review team concluded that criterion 2 had not

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[4] There was some information presented during and after the hearing, in the form of public comment, regarding the possible availability of other technologies, such as "plasma arc gasification", that could theoretically render landfills in general "unnecessary". We have not found any authorities to support the proposition that speculative alternative technologies should be considered in the context of criterion 1. Nor, in any event, is there any credible evidence in the record that any such technology will be available in the foreseeable future in the proposed service area, or as to what portion of the waste needs of that area could be satisfied by any such technology.

been meet in connection KLC/WMI's first application in 2007. Grundy then argues that "nothing substantive has been changed, and that this Application offers no improvements whatsoever to safety." (Grundy Post Hearing Memo at 1) This assertion fails to account for significant design differences and enhancements. Attached hereto as Exhibit A is a memorandum from Stuart Russell ("Russell"), our engineering expert, based on an independent review of the Application. Russell points out several differences and enhancements that render this Application substantially different from the one in 2007, including:

1. The development is limited to the eastern portion of the original site that has the greatest overlying native soil thickness. The current design shows the entire waste footprint east of Walley Run.
2. The new proposed design shows a much smaller footprint (about half of the size of Willow Run 1), and the bottom liner system design includes excavation grades that are all above the bedrock, including the leachate sumps. Native clay of five feet or greater is maintained above the bedrock in the current design.
3. The current proposed design is similar to the one in 2007, but includes two new important elements. First, the design leaves at least 5 feet (and more thickness for most of the footprint) of native clay below the bottom liner system in addition to the other liner elements. This native material is indicated in the soil borings to have low permeability properties and provides an additional safety factor in preventing contaminants from entering the aquifer below the site. Second, the new design proposes the installation of a 16 ounce per square yard geotextile cushioning layer on top of the upper geomembrane liner prior to placing the one-foot drainage layer. The application provides calculations showing that this cushioning layer has the tensile strength and puncture resistance needed to protect the upper geomembrane. In addition, the application provides calculations demonstrating that the 4 ounce per square yard filter geotextile layer above

the drainage layer is adequate to prevent fine-grained materials from damaging the drainage layer function.

4. The new design shows the cells and leachate collection piping oriented in the east-west direction with clean-out access on both sides of the landfill. The suggestion of clean-out access at both ends of the gravity leachate collection pipe runs was incorporated in the new design.

5. The current design does not propose to divert or modify Walley Run Creek. The application also describes design elements that will reduce the flow of water in the regional drainage system during storm events that should reduce the occurrence of flooding after completion of the construction. The application includes supporting flow modeling that demonstrates that the design will not adversely affect drainage.

These differences and enhancements were confirmed during the siting hearing.

1. Liner Design

There was a great deal of testimony regarding the proposed "double composite" liner system, which exceeds the requirements of both State and Federal regulations. Extensive testing was conducted to confirm the stability of the liner system. (Tr. 103-104) Most important, no part of the liner system is proposed to be located in the bedrock aquifer. (Tr. 79, 101, 249) Further, while there are areas that are thicker, there is a minimum of five feet of low permeability in place material between the bottom of the liner system and the top of the bedrock aquifer. (Tr. 80, 102)

The system includes three feet of compacted soil, two 60-mil HDPE geomembrane liners, and a reinforced geosynthetic clay liner in between the geomembrane liners. All of these layers work together to prevent the migration of leachate. (Tr. 101-103) The synthetic liner materials will last several hundred years. (Tr. 174, 362-364)

Nickodem also described the testing that will be conducted to confirm proper and leak-free installation of the synthetic components of the liner system. The first is inspection by a third-party construction quality assurance company to insure that the liner panels have been installed and seamed properly. Taking this a step further, an electrical leak detection

system will be implemented to identify and repair any post-installation leaks, thus insuring a leak-free system. (Tr. 83, 104-106) The leak detection system exceeds State of Illinois construction quality assurance requirements. (Tr. 277)

2. Leachate Collection and Control

The three design components that relate to leachate control and management are the double composite liner system (discussed above), the leachate management system and the final cover system. (Tr. 101) The leachate management system was based on an evaluation of the requirements for the facility, taking storm events into account. (Tr. 83-84) The system is designed to minimize the formation of leachate, and to manage and contain the leachate. (Tr. 100-101)

The leachate collection and management system includes larger 8-inch collection pipes to provide greater flow capability. The design is intended to preclude the accumulation of any leachate on the liner, and KLC/WMI is not proposing to store any leachate on the liner. There will thus not be any leachate that could leak out in the event of a breach in the liner. (Tr. 107-109, 112-113)[5] Leachate will be taken off site by tanker trucks. The system also includes temporary storage capacity for 80,000 gallons of leachate, which represents five days of storage capacity. (Tr. 111-112) This complies with the regulations and is adequate to accommodate expected site conditions. (Tr. 184-186)

The final cover minimizes the amount of leachate that will be formed during operations and closure of the facility. (Tr. 115) The final cover system includes a one-foot soil grading layer, a low permeability synthetic layer which inhibits infiltration of water but is flexible enough to allow for settlement, a geocomposite drainage layer, and three feet of soil over the top. (Tr. 115-117)

3. Gas Collection and Control

The gas management system design is based on extensive analysis of the amount of gas that would be generated by the facility. (Tr. 85) The gas management system is designed to handle the greatest amount of gas generated during the operating and post-

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[5] The operational procedures that will be implemented will also reduce the amount of leachate that is formed. (Tr. 401-403)

closure periods. The plan includes, when enough gas is being generated, the installation of a gas recovery facility. (Tr. 127-132, 383-386)[6] Based on the phased development plan, this would be around the seventh year of operations. (Tr. 327-328)

4. Stormwater Management

An extensive analysis and survey of site and area conditions, including historical storm events, was conducted in order to design the surface water management system and insure that surrounding properties would not be impacted. (Tr. 84-85) The investigation for the stormwater system included extensive analysis of the Aux Sable Creek watershed and the existing drain tile system. (Tr. 85-90) The surface water management system is designed to prevent both upstream and downstream backing up or flooding, and will in fact reduce downstream water flow to inhibit flooding. (Tr. 117)

5. Monitoring Systems

Finally, monitoring systems will be put in place to monitor all engineered components of the facility, including air, gas, leachate, groundwater, and surface water. (Tr. 85, 134-138) All of the engineered systems and monitoring systems are designed to function in an integrated manner, to accomplish the goal of an effectively and safely functioning landfill. System installation will be coordinated with the phased cell development. (Tr. 138-146)[7] The application also includes a closure and post-closure plan to ensure the site is closed and maintained properly. (Tr. 85)[8]

6. Soil Borrow Area

This issue does not warrant extended discussion in this context. There was a substantial amount of back and forth during the hearing relating to the fact that there is a net soil "deficit" of approximately 3,000,000 cubic yards that will be needed for the development of the facility. (Tr. 206-207) It is expected that a significant portion of this soil

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[6] Pursuant to Section 9.21 of the Host Agreement, "The County reserves all its power and authority, including the power to tax and zone the property, including zoning authority over a landfill gas recovery system should one be installed at the landfill." Gas flares will be used until such time as a gas recovery facility can be installed. The gas flares will be enclosed. These prevent the flame from being seen and also burn the gas more efficiently. (Tr. 133)

[7] The facility would be built in 8 phases, or cells, over the 14½ year life. (Tr. 96-100, 397-400)

[8] Section 1.4 of the Host Agreement also imposes obligations on Waste Management that, irrespective of the IEPA post closure period, last forever. (Tr. 370-371)

may be brought in from a "borrow area" located on property owned by Waste Management to the south of the proposed facility. (Tr. 207-208, 210-212, 270-271) This borrow area is not within the facility that is the subject of the Application and siting hearing. (Tr. 270, 333-335)

Despite this, several participants filed Motions to Dismiss based on, among other things, the lack of specific information and notice regarding the borrow area. These Motions were denied by Hearing Officer Kinnally, who ruled that:

> Our ordinance is pretty clear as to what is required concerning a site description, and that's contained in Section 4.4. Nowhere in 4.4 does it indicate that property not within the site, so to speak, is to be considered part of the site. And it's somewhat vague as to what's required with respect to notice and, therefore, it relies on the state statute for notice given to people in the vicinity.
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> Our ordinance also has different notice requirements under Article VIII, but they don't talk about whether or not notice has to be given to owners of land within 250 feet of the lot line. That is a state statute, and that statute is contained in Section 39.2.(b) of the Act. Mr. Porter apparently argued that these borrow areas are part of the site, and he's incorrect. He also argued that these borrow areas are going to be mined. He's incorrect about that.
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> The case that he cited really has nothing to do with a landfill siting. It's a legal malpractice case that was filed against a lawyer who apparently or at least allegedly, because the case was decided on a motion to dismiss, there was no facts determined by a jury or a judge at that point. The case basically said that if you want to site one of these things, a landfill, you have to follow what the state statute says. And the statute says notification of owners of land within 250 feet of the lot line.
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> I'm troubled by the fact that Mr. Porter said that he could not find any case law other than this appellate court decision.
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> And I found one or one was given to me where the Pollution Control Board, in a somewhat similar situation, and this is at 1999 Westlaw, 436,320, 1999 Pollution Control Board case talked about what was required in addition to the case that Mr. Moran cited.

And that case at 1999 Westlaw 436,320 is called ESG Watts versus Sangamon County Board. And that decision, which talks about what is required and talks about jurisdiction, talks about lot lines, is a case where Mr. Helsten was one of the lawyers involved in that appeal. So apparently, the research done by Mr. Porter was somewhat wanting.

The case that is cited by the Applicant here, Land & Lakes Company Operations, PCB 91-7 is on point. And clearly in that case, the issue was raised. There were three different areas, A, B, and C parcels. The A parcel being the parcel identified as the site where landfill operations would occur.

And beginning at Page 10 of that decision and continuing through Page 12, the Pollution Control Board basically indicates that the requirements are the ones that Mr. Moran just talked about and talked about in his argument.

I'm going to file a copy of this decision with my clerk. I don't need to belabor this issue because the issue here is whether people were notified about the facility or the waste storage site within 250 feet, and that's undisputed that that occurred 250 feet of the lot line.

Merely because there are other parcels that are owned by the Applicant which are in the vicinity or next to the site that they have defined in their Application as the site for land filling operations does not mean that that becomes part of the site. And the Pollution Control Board made that very clear in their decision.

So for those reasons, and I will file all three copies of these cases, the ESG Watts case, the Land & Lakes Company case as well as the -- let me get it here -- the Environmental Control Systems versus Long case, which I think is consistent with the Pollution Control Board case, Land of Lakes. I'll file those with the clerk. Anybody can read those if they want.

But for the reasons indicated in those -- in the decision of Land & Lakes Company, I'm going to deny the motion. And I think the County Board does have jurisdiction, so that will be my ruling with respect to that motion.

(Tr. 1901-1904) It is abundantly clear that the issue of the borrow area is not properly the subject of this proceeding.[9]

B. Site Geology, Hydrogeology and Groundwater Use

As noted above, Grundy claims that "nothing substantive has been changed" in this Application, as compared to the one in 2007. Apart from the differences noted above, Grundy's argument ignores the primary reason for the recommendations regarding the 2007 application. Both recommendations focused on the fact that KLC/WMI's criterion 2 witnesses had not done any of the actual design and site work themselves, and that Underwood had candidly acknowledged that she could not vouch for the accuracy of the data. (Kinnally Recommendation at 13-15, attached as Exhibit A to Grundy's Post Hearing Memo; Blazer Recommendation at 6-7, attached as Exhibit B to Grundy's Post Hearing Memo)

One of the most significant "substantive changes" here is the fact that this time the witnesses did the work themselves, and vouched for the data. Nickodem is the chief designer of the site, and did not just testify in support of someone else's design. (Tr. 155) Similarly, Underwood was retained to evaluate the geologic and hydrogeologic conditions at the site, in order to determine whether the site is suitable for a landfill. (Tr. 523-524) As part of her analysis, Underwood characterized the geology at the site. This was accomplished by reviewing published information, reviewing the data from prior landfill applications, and generating substantial quantities of new information based on sampling and testing. This included approximately 6000 feet of soil borings and rock cores. These were also reviewed by professionals with the Illinois State Geologic Survey to confirm that the soil borings and rock cores were characterized correctly. Underwood personally observed every soil and rock sample that had been taken for the prior application.[10] Most

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[9] It would, however, be subject to local zoning and land use controls.

[10] The samples had been stored in a warehouse, in wax impregnated cardboard boxes that were covered with two sets of tarps. (Tr. 625-626) Van Hook criticized Underwood's use of core and soil samples that had been taken in the context of the previous siting application, because of potential issues resulting from how they may have been stored, where they may have been stored, and how they may have been handled. He felt Underwood should have gone back and redone the core samples. But Van Hook then admitted that "the Geological Survey does it all the time. They store them, and they go back and look at them." (Tr. 1378-

important, Underwood personally vouched for the accuracy of all the data. (Tr. 524-526, 538-540, 624-625, 2222-2223, 2226-2227)[11]

Underwood was able to testify with a much higher degree of certainty than she was in the first hearing because she was able to collect substantially more data. The data was also collected under her supervision, so she could confirm its accuracy, and thus arrive at a complete understanding of the hydrogeologic system under the site which she personally verified. (Tr. 572-573)

With this "substantially changed" background in mind, we can now turn to a review of the evidence. The geology at the site consists predominantly of stacked horizontal geologic units of soil and bedrock. The dominant soil or clay layer above the bedrock is the Equality Formation. This is a glacial lake deposit, and it is extensive, continuous and encompasses the entire site. There are three main rock formations below the clay. The first is the Galena Group, which is approximately 170 feet thick and constitutes the uppermost aquifer at the site. Below that is the Plattville Group. Beneath that is the Ancell Group, which contains the deep aquifer in the area. (Tr. 526-530)

Underwood also characterized the hydrogeology at the site. This included an analysis of the local, intermediate and regional groundwater flow systems in the shallow, intermediate and deeper subsurfaces, and of recharge and discharge areas. (Tr. 530-534) Underwood developed a three-dimensional understanding of the site hydrogeology, based on the data that she personally developed. (Tr. 535-536)

1. Upper Confining Layer

Underwood developed geologic cross sections reflecting the hydrogeology at the site. Groundwater flow is primarily northwest to southeast. According to Underwood, and

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1380, 1426-1430) Van Hook also ignored the substantial amount of new sampling that was conducted for this Application. Moreover, it is noteworthy that Van Hook also admitted that he was in fact speculating regarding the condition of the samples, since he did not even know where they were stored. (Tr. 1430, 1454) Indeed, although Van Hook had been on the project for five weeks as of the time he testified, neither he nor anyone from his company sought access to the core samples to personally inspect them. (Tr. 1451-1454) Bognar, Minooka's witness, saw nothing inappropriate with the re-examination of the stored samples from the 2007 application. (Tr. 2086-2087)

[11] As Hearing Officer Kinnally noted, this was contrary to the assertion of Bognar, Minooka's witness, that insufficient data had been collected. (Tr. 2225)

based on her review and analysis of all the data, the Equality Formation acts as a barrier to groundwater movement. This upper confining unit various in thickness from approximately 5 to 25 feet. The analysis also reflects that the Galena aquifer is being recharged from somewhere away from the site. (Tr. 534-535, 536-537)

All of the different testing methods and data reflected consistent results and led to the same conclusion. Aquifer or pump tests confirmed the presence of a confined aquifer system under the site. (Tr. 541-542) The aquifer is confined by the low permeability soils of the Equality Formation. The primary flow is also horizontal. This results from the layered geologic deposits. The testing confirmed that it is 100 times easier for water to move horizontally than it is vertically, against the geologic units. (Tr. 543-545)

Storage coeffecient is a number that indicates how water is released from storage in the aquifer. The storage coefficient data for this site further confirms that this is a confined aquifer. (Tr. 570-571)

Potentiometric surface data further confirmed the conclusion that the Galena aquifer is a confined aquifer. There is pressure that confines the water in the aquifer, which is released when a well is drilled into it. The water then rises in the well above the surface of the aquifer. (Tr. 669)

As noted, groundwater flow under the site is primarily horizontal. Coupled with the upper confining layer, this results in a naturally protective environment because there are no strong vertical gradients pushing water downward into the aquifer. (Tr. 537-538) The water table is present in the saturated portion of the upper confining layer. But the water table in the low permeability soils is not part of the aquifer.[12] The water is not transmitted easily through the soils, and is not considered part of the aquifer. The data confirms that

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[12] Norris, KRL's witness, claimed that some undefined portion of the liner system would be in the water table, apparently trying to equate the water table with the aquifer. Yet when Hearing Officer Kinnally asked him the direct question, "Do you equate the aquifer with the water table at this site, yes or no?", Norris could not answer. (Tr. 1576-1577)

the aquifer does not extend up through the confining layer. (Tr. 541, 547-549, 587, 646-647, 657-658)[13]

In summary, the hygrogeologic conditions at the site are:

a. Starting from the top, the clay soil at the surface confines the aquifer. That means that recharge is limited at the site. Water does not move through those materials easily.

b. The water table contained within those clay soils is not part of the aquifer because of the low transmissivity or transmissive abilities of those soils.

c. The groundwater in the uppermost aquifer moves predominantly in a horizontal direction. It is 100 times easier for the water to move horizontally then vertically. That results from the geologic layering and the small vertical gradients.

d. Finally, groundwater moves horizontally mainly along those bedding planes.

(Tr. 546-547)

Bognar, Minooka's witness, was not in our view successful in rebutting the evidence put forth by KLC/WMI. This is borne out first by the report he submitted. Bognar's ultimate "opinion" was that he could not render an opinion because, according to him, there was not enough information submitted to confirm that the Equality Formation is a confining unit. (Tr. 2039, 2041, 2049, 2052-2053, 2062) This was doubtless the rationale for the fact that, in his report, Minooka Exhibit 4, Bognar couched his opinions in terms of what may or may not "possibly" exist.

Bognar's testimony was at best inconclusive. Bognar did agree that the upper soil layer is laterally consistent across the site. (Tr. 2079) But he could not opine one way or the other whether the water table and the aquifer are equivalent at this site (Tr. 2079-2080, 2085), although he did acknowledge that there can be clay layers that separate a water

[13] The hydraulic conductivity of the clay above the aquifer is 10,000 times slower than in the aquifer itself. (Tr. 582-583)

table from the aquifer. (Tr. 2104) Notably, Bognar also admitted that there is data in Underwood's report that supports the claim that the overburden at the site is an upper confining unit. (Tr. 2082-2083) This included the fact, as noted by Underwood, that water rose above the top of the aquifer when wells were drilled into the bedrock, reflecting the release of pressure created by the upper confining unit. (Tr. 2084-2085) Bognar also confirmed that the data on vertical permeability, with which he had no quarrel, confirmed an extremely low vertical permeability at the site. This is consistent with a confining unit. (Tr. 2095-2098) Thus, when asked directly, Bognar acknowledged that he was not taking the position that the clay above the aquifer is not a laterally extensive confining unit. (Tr. 2085)[14] Ultimately, the only "conclusion" which Bognar could confirm was that he could not come to any conclusions. (Tr. 2092-2093)

Two additional items warrant some mention. First, on October 28 KLC/WMI submitted additional information, in the form of comment, regarding the results of new well tests conducted exclusively in the unconsolidated deposits above the bedrock aquifer. These wells produced no water after three days. This information was obviously submitted to further substantiate the fact that the clay above the bedrock is a confining unit. Several participants have filed Motions to Strike this information, arguing that this is improper "evidence" rather than "comment". We take no position on this issue, but note only that, given the other evidence already in the record on this issue, this new material is merely cumulative.

Second, Underwood testified on rebuttal regarding the pond that had been excavated and exists at the nursery operation east of the proposed site. Underwood attempted to point out that the information from the construction of the pond confirmed that no water came from the unconsolidated deposits and that this was further evidence that those deposits are a confining unit. (Tr. 2251-2255) The problem with Underwood's testimony is that it was second-hand information, relying on information purportedly

[14] Bognar also confirmed a preference for the Illinois method of site analysis, which allows for the application of the geologist's professional judgment, rather than requiring a defined testing protocol. (Tr. 2107-2108)

obtained from the nursery owner. That problem has now been corrected. The nursery owner, Tim Wallace ("Wallace"), submitted a letter as comment which confirms the details of the pond construction. (A copy of the letter is attached hereto as Exhibit C.) Consistent with Underwood's testimony, Wallace states the following:

> I began excavation of the pond in 2003. During that excavation, we encountered yellow and blue clay, and no water. At the north end of the pond, we continued to excavate, approximately 28 feet, until we reached rock. At that point only, did water run into the excavation. The excavation could not be kept dry by pumping.
>
> Near the middle of the pond, water only ran into the excavation from rain and drain tiles, and once the excavation was deeper, from an area of boulders located on top of the rock.

All of the foregoing is consistent with the review and analysis conducted by our retained expert on these issues, Laura Swan. Ms. Swan's review report is attached hereto as Exhibit B.

a. Tritium Data

A sub-issue that seemed to take on a life of its own related to the presence of tritium in the water in the aquifers below the site. Underwood examined the groundwater chemistry, focusing on differences in tritium and ion levels, which further confirmed to her that there is a resistance to vertical flow, and the groundwater flow is horizontal. (Tr. 545-546)[15]

In response to questioning from counsel for KRL, Underwood confirmed that the Willow Hill Landfill site (the subject of a separate siting application in 2007) is directly upgradient of the proposed site and is less than a mile away. (Tr. 567) Notably, Underwood pointed out that there is little recharge to the Galena aquifer in the subject site area. Recharge occurs outside the site area, where the bedrock comes up close to the surface.

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[15] There is serious doubt about the usefulness of the tritium data in any event. In its Post Hearing Memorandum, Minooka chides Underwood for apparently equivocating on the usefulness of tritium data. (Minooka Post Hearing Memo at 3-4). Yet Minooka's own witness, Bognar, agreed with Underwood and described the use of tritium as "inexact" and a "gross general tool". (Tr. 2098-2100)

(Tr. 575-577, 601)[16] Based on tritium levels, the water in the Galena aquifer is "newer" or post 1972 water. Given site conditions, Underwood assumed that this water would have to come from a more localized recharge source. (Tr. 602-603)[17] These facts, brought out by KRL's attorney, assume significant importance when considered in the context of the testimony of KRL's witness, Norris.

The opposing geologic testimony was substantially comprised, not of contrary data, but of contrary innuendo. The evident focus was to cast doubt on the applicant's conclusions. But these efforts did stoop, in one significant instance, to outright misrepresentation. Norris claimed that the presence of tritium below the site "absolutely establishes" "significant flow from the surface downward into the aquifer." Norris claimed that this was evidence that "the fine grain clay materials are so compromised that they do not form a confining layer." (Tr. 1501-1502)

Yet Norris told a substantially different story almost exactly one year earlier, when he testified in opposition to the Lisbon Development application for the Willow Hill Landfill.[18] In that proceeding, in response to a question from Board Member Wehrli, Norris testified that:

> I don't think it's probably a reason for it because the nature of recharge areas in, say, northern Illinois with the climate and stuff that we have here are that areas that are topographically flat or have a slight fall to them in -- in all directions generally are going to be recharge areas.
>
> **So if you just look at the topographic map, I think it -- this is a very likely case for having a recharge area.**
>
> **We know from the Willow Run data that bedrock wells there have tritium in them.** Tritium forms in the atmosphere. **It means that rain somewhere in this vicinity got into the bedrock and has moved that far. So there's a -- a recharge area fairly close to that site or it wouldn't have tritium in that groundwater. That's consistent with what we see here in a very flat area which would be a likely**

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16 The primary regional recharge area for the Galena aquifer is in the Newark area. (Tr. 578)

17 In response to a question from counsel for Grundy County, Underwood concluded that the tritium under the site came in laterally from a recharge area west of the site. (Tr. 681-682)

18 Norris appears to have spent a substantial portion of his career testifying in opposition to landfills. (Tr. 1551-1554)

> **recharge area**, and we have the head data that shows the downward flow of water. [Emphasis added]

(Willowhill Tr. 2388-2389)[19] There are two remarkable aspects to this testimony. It is completely inconsistent with Norris' testimony in this proceeding, and it is completely consistent with Underwood's. As noted above, Underwood testified early on that the there must be a localized recharge source. Thereafter, in rebuttal, Underwood testified about the data from the U.S. Geological Survey regarding information from the publication *Surface Water and Groundwater Resources of Kendall County*, which confirms that the areas immediately west and northwest of the site, where the bedrock is at or just below ground surface, are a local recharge area for the upper aquifer. (See KLC/WMI Exhibit 14; Tr. 2232-2234)

2. Groundwater Impact Assessment

A groundwater impact assessment ("GIA") is a process utilized in the IEPA permitting process. It involves the use of a contaminant transport model, using certain assumptions, to test the hypothetical situation of the landfill leaking and the potential affect it could have on groundwater. (Tr. 549-550) Underwood has performed 36 to 48 GIA's, all of which have been accepted by IEPA. (Tr. 551-552) In this case, Underwood's contaminant transport model utilized conservative "worst case" assumptions. (Tr. 554-555) The result of the GIA was that there would be no impact to the uppermost aquifer. (Tr. 555-556)

However, as the hearing progressed, it became clear that the GIA was of limited, if any, usefulness in determining whether or not KLC/WMI had met its burden with respect to criterion 2.[20] The GIA submittal to IEPA involves an iterative, back and forth process, where comments are taken into account to ultimately arrive at IEPA acceptance. (Tr. 552-553)

Van Hook, Grundy's witness, criticized some of the parameters used by Underwood in her GIA. (Tr. 1367-1368, 1381-1384) Yet Van Hook admitted that he used the same

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[19] The subject transcript was submitted as part of public comment in this matter by counsel for KLC/WMI.

[20] The County Siting Ordinance does not require the submittal of a GIA. (Tr. 605)

hydraulic conductivity factor for his model that Underwood used for hers. (Tr. 1456-1457) Van Hook ultimately confirmed that the GIA submittal to IEPA is an iterative process, whereby the submission is made, IEPA replies with comments, and ultimately the model is made to pass with the incorporation of the comments from IEPA. (Tr. 1394-1395, 1439-1440) Van Hook also acknowledged that a GIA is not part of the siting process and is not required by the County Siting Ordinance. (Tr. 1395) In any event, despite his "analysis", Van Hook was unable to provide any probability that the aquifer would be contaminated. (Tr. 1384-1385)[21]

Similarly, Norris' criticism focused primarily on the GIA.[22] Ultimately, however, Norris acknowledged that the back and forth process involving the submittal of GIAs to the IEPA, entailing the manipulation of data and submittal of different parameters, always results in a model that will pass. Under those circumstances, Norris was of the opinion that this exercise did not relate to the issues of public health, safety and welfare, and was not properly the subject of review by the siting authority. (Tr. 1528-1529)[23]

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[21] Moreover, the primary focus of Van Hook's testimony was not that this landfill would contaminate the aquifer. Rather, Van Hook felt that the area is "sensitive" to groundwater contamination and there are "better" sites in Kendall County for a landfill. (Tr. 1357-1363, 1385-1386, 1465) The case law makes clear that whether or not there may be "better" sites is irrelevant for purposes of the criterion 2 determination. Beyond that, Van Hook admitted on cross-examination that the author of the material upon which he based his opinion about better sites, the so-called "Berg report", specifically advises that this material should not be used for evaluating a specific proposed landfill site. (Tr. 1405-1407) In the final analysis, Van Hook's testimony seems to have been aimed more toward arguing in favor of some other site in Kendall County, rather than on whether or not the applicant for this site had met its burden with respect to criterion 2.

[22] Norris did not claim that Underwood misrepresented the data she gathered and reviewed, or that she misrepresented site conditions. He merely disagreed with her interpretation of the data. (Tr. 1581) Yet like Van Hook, Norris did not ask to obtain access to the samples Underwood examined. (Tr. 1582) Norris was also aware that Underwood took a number of new core samples, but he did not ask for access to those either. (Tr. 1582-1583)

[23] Norris felt that the County Board should not even consider the GIA modeling. (Tr. 1550-1551) Notably, in response to questions from Hearing Officer Kinnally, Norris admitted that he had not read the County Siting Ordinance, "the operative document that the County Board utilizes in this proceeding to determine whether the Applicant meets the nine criteria...", and which does not require a GIA. (Tr. 1584-1585) We are left wondering what the point of Norris' testimony really was. When asked directly whether it was his opinion that the liner system and other engineered components of the landfill would not be protective of the public health, safety and welfare, he admitted that he had no opinion one way or the other. He was then asked whether it was his opinion that the proposed facility does not comply with criterion 2. Norris again had "no opinion one way or another on that." (Tr. 1583)

Irrespective of the GIA, Underwood considered any potential impact on potable wells in the area and concluded that there would be no impact on the wells, or on the aquifer, from the landfill. (Tr. 561) This conclusion was based on the results of her geologic and hydrogeologic investigation, and the following factors:

a. Many of the private wells are upgradient (north or northwest) of the site, whereas groundwater flow is to the southeast, so they would not be in the pathway of any theoretical leak.

b. As for the downgradient wells, Underwood examined the well construction data together with the information concerning the hydrogeologic characteristics of the area to conclude that those wells would not be at risk from the landfill. The aquifer is naturally protected by the confining layer.

c. The design of the landfill is itself protective.

(Tr. 556-558)

C. Groundwater Monitoring System

As noted, groundwater flow at the site is generally from the northwest to the southeast. The proposed groundwater monitoring plan includes both upgradient and downgradient monitoring wells. This includes 33 wells around the landfill. This was based on a well spacing model which in turn took into account the site geologic and hydrogeologic conditions. (Tr. 558-561)

Given the totality of the evidence, and the failure of the opposing witnesses to rebut the evidence submitted by KLC/WMI, it is our opinion that KLC/WMI has met its burden with respect to criterion 2, subject to the following conditions, which we believe to be reasonable:

2.1 The domestic well protection program in the Host Agreement shall be extended to 3 miles from the property boundary, effective through the closure and post closure period.

2.2 Downgradient groundwater monitoring wells (on the east and south sides of the landfill) shall be spaced no more than 300 feet apart.

2.3 KLC/WMI shall install a groundwater monitoring well, in addition to the 33 provided for in the Application, on the northern portion of the east side of the landfill, 300 feet north of the northernmost well currently proposed.

2.4 All gas extraction wells shall be placed in underground vaults.

2.5 The secondary containment system for the leachate holding tanks shall incorporate a synthetic liner, in addition to low permeability clay.

2.6 The site access road shall be paved, including curb and gutter, for the first 2,000 feet starting at the entrance to the facility at Whitewillow Road and extending east past Walley Run.

2.7 Curb, gutter, and liquid runoff collection sumps shall be installed on the bridge crossing Walley Run to collect and manage any impacts from vehicle fluid leaks and soils being tracked onto the roadway.

Criterion 3: ***the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property*:**

There are, or course, two parts to this criterion, and KLC/WMI presented three witnesses on the issues: Joseph Duffy ("Duffy") with Rolf C. Campbell & Associates and David Yocca ("Yocca") with Conservation Design Forum regarding incompatibility, and Peter Poletti ("Poletti") on property values. The important thing to remember regarding both parts of this criterion is the word "minimize". It is clear from the use of this word that the statute presumes incompatibility with the surrounding area and some negative impact on property values.[24] Thus, for example, the court in *File v. D&L Landfill*, 219 Ill. App. 3d 897, 907 (5th Dist. 1991), held that:

> An applicant must demonstrate that it has done or will do what is reasonably feasible to minimize incompatibility. *** It is important to note, however, that the statute does not speak in terms of guaranteeing no increase of risk concerning any of the criteria.

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[24] This is consistent with Hearing Officer Kinnally's rulings during the hearing. (Tr. 879-880, 1084-1085)

See also *American Bottom Conservancy v. City of Madison*, PCB 07-84, 2007 WL 4330914, Slip Op. Cite at 45 (IPCB December 6, 2007); *Sierra Club v. Will County Board*, PCB 99-136, 99-139, 1999 WL 632548, Slip Op. Cite at 23 (IPCB August 5, 1999). Similarly, the court in *Clutts v. Beasley*, 185 Ill.App.3d 543, 547 (5th Dist. 1989) held:

> As to property values and better places, **the law requires only that the location minimize incompatibility and effect on property values, not guarantee that no fluctuation will result; nor does the statute require the facility to be built in the "best" place**, and rightly so for that is so subjective as to give no guidance at all to those who must decide these issues. [Emphasis added]

A. Minimize Incompatibility

The proposed facility totals 368 acres, with a landfill footprint of 134 acres and a maximum height of 181 feet. The site life is 14½ years. (Tr. 78-79) Even before the criterion 3 witnesses testified, KLC/WMI established certain significant steps that had been taken to minimize incompatibility. Specifically, as compared to the 2007 proposal, the proposed facility is less than half the footprint, over 50 feet shorter, and has a 20-year shorter site life. (Tr. 78-79)

Beyond this, Duffy conducted a three-tier review of the area surrounding the site -- within 1000 feet, within one mile and within five miles. Duffy testified that the substantial majority of the surrounding land uses are agricultural. (Tr. 830-832) In the fields of urban and regional planning, screening and buffers are used to reduce the impact of an incompatible use on surrounding properties. Those types of features are proposed here through a landscape plan. (Tr. 833-834, 846-848, 854) The features of the proposed landscaping, buffering and screening plan include clustering and grouping of trees, densely planted landscaping, and construction of berms. (Tr. 835-839) The landscape plan takes into account the phased development of the landfill, and was prepared in consultation with the design engineers. (Tr. 869-870)[25]

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[25] Much was attempted to be made during the hearing about the fact that the proposed landscape plan is essentially conceptual, and does not reflect a construction quality plan. (Tr. 853-854, 867, 874-875) Yocca confirmed that a detailed construction drawing for all of the landscape features and specific quantities and specifications for all of that plant material is something that would be developed as part of the final design

Based on the low-density agricultural uses in the area, and the provisions of the landscaping plan, Duffy was of the opinion that the facility satisfied the first portion of criterion 3. (Tr. 846-848)

There was a troubling aspect to Duffy's testimony. He acknowledged that this is the first time that he has independently conducted a criterion 3 analysis and rendered an opinion on the subject. (Tr. 849) This lack of experience was reflected in Duffy's unfamiliarity with the siting process. (Tr. 893, 930-931, 934-939) While this lack of familiarity with the siting process is disturbing, it does not detract from the adequacy of the information presented.[26] Moreover, any perceived shortcomings in Duffy's testimony were more than ably compensated for by Yocca.

Yocca is a land planner and landscape architect, with extensive experience in his field. (Tr. 941-946) Yocca was retained to evaluate and make recommendations for the landscaping and screening plan and to review and make recommendations for sustainable strategies as they relate to the landscaping and screening plan. (Tr. 947) Yocca provided substantially more specificity with respect to the plans, including the concepts and strategies upon which the landscape design is based (Tr. 948-958); how those concepts and strategies were applied to this landfill, specifically focusing on features to transition and buffer the impact of the facility on surrounding properties (Tr. 958-963); specific plantings in the different areas of the facility (Tr. 963-969); and final cover plantings. (Tr. 969-971) Yocca also identified the many benefits of the sustainable development concepts in the landscaping plan. (Tr. 971-973) All of these elements, and specifically the proposed berming, landscaping, and setbacks, led Yocca to the conclusion that the facility does in fact minimize incompatibility with the character of the surrounding area. (Tr. 973-975)

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engineering of the facility. (Tr. 984) Further, as noted by Hearing Officer Kinnally, the County Siting Ordinance does not require any more than what was submitted. (Tr. 1346-1347)

[26] We do not believe Duffy's lack of siting experience to be a relevant question, Whether or not a witness is technically an "expert" does not discredit otherwise persuasive evidence. *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board,* 123 Ill.App.3d 1075, 1086 (2nd Dist. 1984)

B. Minimize Effect On Property Values

Poletti is an experienced appraiser and real estate professional with extensive experience in siting proceedings. (Tr. 1053-1055, 1059, 1068-1070) Poletti based his opinion regarding minimization of the effect on property values on the property value protection program in the Host Agreement,[27] the low density uses in the area, and the screening, buffering, setbacks and landscaping that would provide a transition from existing uses to the proposed use. (Tr. 1057-1059, 1077-1078, 1119-1120) Poletti's report, included in the Application, also reflects a study of the literature in the area and a review of property value impacts from other landfill sites.

The type of evidence presented here has, in other cases, been found to establish compliance with criterion 3. See, *e.g.*, *Fairview Area Citizen's Taskforce v. Illinois Pollution Control Board*, 198 Ill.App.3d 541, 553 (3rd Dist. 1990) See also *A.R.F. Landfill, Inc. v. Lake County*, PCB 87-51, 1987 WL 56293, Slip Op. Cite at 19-20 (IPCB October 1, 1987):

> Criterion No. 3 calls for a proposal to minimize its effects – but does not allow for rejection simply because there might be some consequential reduction in value. Petitioner, via its plans to install screening berms, utilize setbacks and landscape around the area, does indeed minimize any impacts to be expected in the area.

The Application and the testimony establish reasonable efforts to minimize the effects from the landfill, particularly the berming, planting and screening plans. In addition, the property value protection program contained in the Host Agreement with the County further minimizes the impact on property values by compensating property owners for that impact. With that being said, there are certain conditions which we believe are reasonable, and would further minimize the impact of this facility, some of which have been agreed to by WMI/KLC. It is therefore our opinion that KLC/WMI has satisfied the requirements of criterion 3 with the implementation of the following special conditions:

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[27] Poletti testified that the property value protection program addresses those impacts that cannot be measured at this point in time. It is intended "to make that person whole if they do want to sell if there is some impact and we just can't measure it." (Tr. 1075-1076)

3.1 Implementation of a long term operations and maintenance and plant warranty/replacement program.

3.2 Implement a planting program to include vertical plantings, consistent with ¶7.1.2 of the Host Agreement.

3.3 Include a mixture of mature species for immediate buffering of landfill phases 1 and 2. Timing of berming and planting shall be designed to ensure planned maturity consistent with phasing development plan.

3.4 Provide for screening, planting and buffering on the south side of the landfill equivalent to that proposed for the north side of the landfill.[28]

3.5 Implement the Conservation Design Forum alternate proposal for the western portion of the facility (relating to the entrance drive and support facilities west of Walley Run).[29]

3.6 In conjunction with the implementation of the alternate design, KLC/WMI, and their successors and assigns, will never seek to expand the landfill to the western portion of the facility.

3.7 Pursuant to stipulation, KLC/WMI, and their successors and assigns, will never seek to expand the landfill north of Whitewillow Road.

3.8 Extend property value protection program in the Host Agreement to 1.5 miles from the landfill footprint.

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[28] Duffy testified that this was not part of the siting application because it was felt that the 25-foot berm on the south side, coupled with the ¾ mile setback from Sherrill Road, adequately minimized the impact to the south. (Tr. 854, 862-863, 900, 977-978) Nevertheless, both Duffy and Yocca agreed that this would be a reasonable condition on siting. (Tr. 931-932, 1036-1037)

[29] Yocca pointed out that this design creates a larger, uninterrupted, contiguous prairie restoration area. In ecological terms, this results in a less fragmented landscape with a greater potential for health and diversity over time. (Tr. 1037-1039)

Criterion 4: ***(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; (B) 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 if the facility is a facility described in subsection (b)(3) of Section 22.19a, the site is flood-proofed*:**

This criterion does not require evidence of the exact location of the nearest flood plain, it only requires evidence that the facility will not be in the flood plain. *Tate v. Illinois Pollution Control Board,* 188 Ill.App.3d. 994, 1023 (4th Dist. 1989) Nickodem testified that the facility is not in or near a 100-year flood plain. This testimony was based on data from the Federal Emergency Management Agency ("FEMA"). (Tr. 148-149) This testimony was not rebutted, and this criterion has been satisfied.

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

Here, again, the statute establishes "minimize" as the standard to be achieved. The statute clearly recognizes that any facility like this will create some risk, and a guarantee that there will be no risk is not required. See *Industrial Fuels & Resources/Illinois, Inc. v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 547 (1st Dist. 1992); *City of Rockford v. Illinois Pollution Control Board,* 125 Ill.App.3d 384, 390 (2nd Dist. 1984). See also *Wabash and Lawrence Counties Taxpayers and Water Drinkers Association v. PCB*, 198 Ill.App.3d 388, 394 (5th Dist. 1990):

> With respect to the fifth criterion, the Association contends K/C failed to establish its plan of operations is designed to minimize the danger to the surrounding area from operational accidents. The key, here, however is minimize. There is no requirement that the applicant guarantee no accidents will occur, for it is virtually impossible to eliminate all problems. (See *Tate*, 188 Ill.App.3d at 1024, 136 Ill.Dec. at 421, 544 N.E.2d at 1196.)

Dale Hoekstra ("Hoekstra") was KLC/WMI's witness with respect to landfill operations.[30] Hoekstra's testimony as to this criterion was both thorough and credible. This included testimony with respect to waste acceptance parameters (Tr. 394-395); waste acceptance procedures, including inspection procedures (Tr. 395-397); waste placement procedures, including phased landfill development, placement of select waste and daily cover operations (Tr. 397-403, 408-418); litter, odor, dust, and mud control (Tr. 404-408, 432-433); and fire prevention and control plan, spill prevention and control plan, accident prevention control plan, which includes health and safety and emergency action plans, and facility security around the site. (Tr. 422-427)

Hoekstra also addressed the bird control plan for the facility, comparing it to the plan utilized historically at the Settler's Hill landfill, which is located very near the DuPage County Airport. (Tr. 421-422) According to Hoekstra, the bird control measures worked well, and there was never a reported aircraft related incident resulting from any activity at the Settler's Hill landfill. (Tr. 422, 455-456)

Bird strikes were the primary subject addressed by the Village of Morris and its witness, Jeff Vogen ("Vogen"), the manager of the Morris Airport. There was a general stipulation during the siting hearing that birds striking airplanes can cause damage or personal injury. (Tr. 1592-1593) But that is not the relevant question. Was there evidence in the record that this facility, irrespective of the bird control measures proposed to be implemented, would increase the risk of bird strikes to the extent that the public health, safety and welfare would not be protected? Hearing Officer Kinnally stated the issue most succinctly in discussing the evidence sought to be introduced by Morris:

> I don't see anything in the materials that you submitted that indicate any of this information had anything to do with a bird strike near a landfill. I think we all know that birds strike airplanes. Mr. Vogen has told us that time and time again. I don't think that is disputed. The relevance is whether or not the information that you are seeking to admit here has anything to do with a bird strike by a landfill.

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30 This relates to both criterion 5 and the operations portion of criterion 2.

(Tr. 1670) Despite Vogen's efforts, the evidence on this issue was in fact to the contrary.[31]

Vogen's failure to provide any credible evidence on this issue was highlighted by the evidence regarding the DuPage Airport. Morris Exhibit 29 was a listing of reported bird strikes from DuPage Airport from 2001 to 2008. (Tr. 1645-1647)[32] Vogen stated that Morris Exhibit 29 showed "that the DuPage Airport does have a bird problem." But Vogen also admitted that he did not provide any evidence that any of the incidents resulted from birds on or near Settler's Hill. (Tr. 1699-1702) Indeed, Vogen admitted that DuPage Airport is ringed by bird attractants, such as golf courses and ponds. (Tr. 1707-1709) Bird strikes at the DuPage Airport in fact increased after Settler's Hill closed. (Tr. 1738-1739; Morris Exhibit 29) Vogen eventually admitted that none of the bird strike examples that he provided had anything to do with an operating landfill or the movement of a bird from a landfill. (Tr. 1714)

Notably, the Environtech Landfill is located less than three miles from the Morris Airport. That landfill has been operating for over 20 years. (Tr. 1711-1712) Planes fly over the Environtech Landfill, and there are gulls at the landfill. Yet the Morris Airport has never had any bird strikes. (Tr. 1720)[33] Rather, Morris' Mayor Kopczick stated that the Environtech Landfill has been "a good neighbor". (Tr. 1768)

Hoekstra's testimony was complete and thorough, and the evidence presented leads to our conclusion that KLC/WMI has satisfied this criterion. Nevertheless, there are a

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[31] Ultimately, Vogen could only identify one potential incident where a bird strike occurred at an airport at or near an operating landfill. This involved an incident at Kennedy Airport. Yet he could not identify the landfills in question, did not know when they were constructed, and did not know whether the landfills had any bird control plans or similar procedures in place to minimize bird activity. (Tr. 1712-1714) Most recently, Vogen submitted a multi-page document as public comment. This document includes a description of the subject incident, which occurred in 1975 (before the implementation of the subtitle D regulations). Notably, the document states that the National Transportation and Safety Board identified "ineffective control of bird hazards by the airport as one of the contributing factors to the accident." (Emphasis added)

[32] The DuPage Airport is located less than 10,000 feet from the Settler's Hill landfill. It is also a general aviation airport. In Hoekstra's experience, it was not uncommon for flight patterns to the DuPage Airport to pass directly over the Settler's Hill landfill. (Tr. 419-420) Indeed, DuPage Airport extended its runway closer to Settler's Hill while the landfill was still operating. (Tr. 1703-1704, 1717-1718) Vogen could not explain why, given his view of the risks, DuPage Airport extended their runway closer to Settler's Hill, and the FAA approved that extension. (Tr. 1732-1734)

[33] Morris Airport is also in the Mississippi flyway. (Tr. 1721)

number of special conditions that we believe are reasonable and necessary in this context. These conditions are:

5.1 Provide an on-site back-up generator for leachate and gas collection systems.

5.2 Establish and maintain back-up agreements for leachate treatment and disposal at primary and at least one back-up facility (commercial industrial treatment facilities or other treatment works).

5.3 A dedicated wheel wash facility shall be provided along the egress route of the internal landfill road, and will be utilized during times when muddy site conditions exist. A plan shall be implemented to control and collect runoff from this facility.

5.4 A high wind closure protocol shall be developed and submitted to the County for comment and approval.

5.5 Implement a daily litter control plan that will, at a minimum, include litter pickup to a 3-mile radius from the facility boundary.

5.6 Loaded waste vehicles shall not remain on site overnight or on weekends. Staging of loaded waste vehicles shall not exceed 1/2 hour.

5.7 Establish an outbound truck inspection and cleanout program providing, at a minimum, inspection of all outbound trucks and cleanout as necessary, and requiring that a dedicated outbound inspection and cleanout station be established. A plan shall be implemented to control and collect runoff from this facility.

5.8 Retain and maintain available, at all times, an emergency response contractor.

5.9 Obtain review and approval of Fire Prevention and Control Plan by Lisbon-Seward Fire Protection District.

5.10 Conduct orientation and training programs for Lisbon-Seward Fire Protection District.

5.11 Inbound truck inspection protocol shall provide for the inspection of a minimum of 3 random loads per day during the placement of select waste in the first five feet above the liner system in each cell.

5.12 Construction and demolition debris, both "general" and "clean", shall not be placed within the first five feet above the liner system in each cell.

5.13 The facility shall comply with all statutory requirements and Federal Aviation Administration regulations relating to the proximity of the landfill to the Morris Municipal Airport.

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

The operative word here, again, is "minimize", and the statute does not require elimination of all potential impacts. See *Tate v. Illinois Pollution Control Board,* 188 Ill.App.3d. 994, 1024 (4th Dist. 1989) It is also important to keep in mind that the focus is on existing traffic flows. Thus, prospective events that may result in a change to existing traffic flows cannot be considered. See *Industrial Fuels & Resources/Illinois, Inc. v. City Council of the City Of Harvey*, PCB 90-53, Slip Op. Cite at 18 (September 27, 1990), reversed on other grounds, 227 Ill.App.3d 533 (1st Dist. 1992) See also *File v. D&L Landfill, Inc.*, 219 Ill.App.3d 897, 908 (5th Dist. 1991):

> The final criterion which the parties dispute is whether the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. This criterion does not refer to traffic noise or dust, nor does it relate to the potential negligence of the truck drivers. (*Tate v. Illinois Pollution Control Board* (1989), 188 Ill.App.3d 994, 1024, 136 Ill.Dec. 401, 421, 544 N.E.2d 1176, 1196.) The operative word is "minimize", and it is recognized that it is impossible to eliminate all problems. *Tate*, 188 Ill.App.3d at 994, 136 Ill.Dec. at 421, 544 N.E.2d at 1196.
>
> The evidence in the instant case supports the findings of the county board and the Pollution Control Board that D & L Landfill, Inc. has made a reasonable effort to minimize the impact of the expanded landfill on existing traffic flows. Indeed, existing traffic flows will be

> impacted only slightly as all trucks entering or leaving the landfill will be using the existing entrance. Any impact on existing traffic flows will result only from any increase in traffic which, according to the evidence, should not be substantial.

The facility is proposed to be located generally at the northwest corner of Whitewillow and Ashley Roads. KLC/WMI's traffic witness, David Miller ("Miller"), confirmed that primary access to the facility by waste transfer trailers (semi trucks) would be from the south, via Interstate 80 to Route 47 to Whitewillow Road. Approximately 50% of the smaller waste vehicles, such as roll-offs and packer trucks, would approach the facility from the same direction, and the other 50% from the north. (Tr. 1209-1212) Miller analyzed the roadway system in the vicinity of the proposed facility. (Tr. 1195-1197) He also conducted manual traffic counts, factoring in facility traffic volumes, and performed a roadway capacity analysis, an intersection capacity analysis, a sight distance study and a gap analysis. (Tr. 1197-1205, 1212-1223)[34]

Miller also recommended that certain roadway improvements should be implemented. These include the following:

1. Upgrading of Whitewillow Road from Route 47 to the facility entrance, to accommodate 80,000 pound vehicles.
2. Widen Whitewillow Road as it approaches Route 47 from a single lane approach to two lanes, creating a separate left turn lane and a combination through and right turn lane.
3. Addition of an eastbound right turn lane at the facility access drive and an improvement of the radius there to better facilitate the larger vehicles that would be turning into the site.
4. Installation of a southbound left turn lane on Route 47 to go east on Whitewillow Road.

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[34] Miller also considered potential future uses on Route 47 that may be under consideration by Kendall and Grundy Counties. He stated that he included a 3% annual traffic growth factor to take these potential developments into account. (Tr. 1205-1207)

5. Increasing the length of the existing taper and storage length in the right turn lane northbound on Route 47 at Whitewillow Road, and a re-working of the radius at that intersection.
6. New signage, including installation of truck symbol signs on Route 47 both north and south of Whitewillow Road for traffic approaching that intersection; the same signage on Whitewillow Road both east and west of the site; and a new stop sign on the facility access drive as it intersects Whitewillow Road.

(Tr. 1223-1225)

Based on all of this information, Miller was of the opinion that the traffic patterns to and from the facility have been designed so as to minimize any impact on existing traffic flows. (Tr. 1225-1227) We agree, with the inclusion of Miller's proposed improvements and the following, which we believe to be reasonable and necessary:

6.1 All physical improvements shall be subject to the design standards, review and approvals of the Kendall County Highway Department and, where applicable, the Illinois Department of Transportation.

6.2 KLC/WMI shall conduct geotechnical surveys of the existing pavement (pavement cores) and underlying soils at Whitewillow Road to determine support strength for structural thickness calculations. Pending such surveys, for purposes of establishing preliminary pavement improvement conditions, a minimum Structural Number of 4.0 shall be established based on projected daily landfill truck generation and minimal underlying soil support, requiring a minimum 4-inch bituminous structural overlay of the existing roadway (with reflective crack control treatment on top of the existing pavement).

6.3 Widen and resurface Whitewillow Road between Route 47 and the landfill site access to provide a minimum 28-foot bituminous surface with a 4-foot aggregate wedge on each side. The resulting surface area will be striped to provide two (2) 12-foot lanes with a minimum 6-

foot shoulder consisting of a 2-foot width of full-depth bituminous pavement and the 4-foot aggregate shoulder. Centerline striping, edge-line striping and raised reflective pavement markings shall be required.

6.4 Signs shall be posted at appropriate intervals along Whitewillow Road prohibiting landfill truck standing or parking (particularly from Ashley Road east to the landfill site access drive). Warning signs shall be posted in advance (and on either side) of the landfill entrance indicating truck turning activity. A street signing plan shall be submitted to the Kendall County Highway Department for approval.

6.5 The southbound left-turn lane on Route 47 at Whitewillow Road will be constructed in accordance with the Illinois Department of Transportation ("IDOT") Bureau of Design and Environment ("BDE") criteria. This intersection widening and resurfacing shall provide for retention of the existing northbound right-turn lane on Route 47 at Whitewillow Road. KLC/WMI shall prepare an Intersection Design Study ("IDS") in support of this widening for submittal to Kendall County and IDOT District 3, with the IDS design (including turn lane storage) based on future signalization of the intersection.

6.6 The right-turn lane on Whitewillow Road at Route 47 will be incorporated into the IDS prepared for the Route 47 left-turn lane improvements.

6.7 Retain a traffic consultant to monitor the Route 47/Whitewillow Road intersection annually beginning the Spring after the first full year of landfill operation, plus a 3-year crash history through date of the annual traffic report. 12-hour turning movement counts shall be collected and a signal warrant ("justification") analysis performed in each annual review and submitted to the Kendall County Highway Department for initial review. The signal warrant analysis shall

evaluate both Manual of Uniform Traffic Control Devices ("MUTCD") and Strategic Regional Arterial ("SRA") criteria and shall include measurement of average vehicle delay during the morning and evening peak periods. When traffic signals are "justified" (authorized) by IDOT, KLC/WMI shall install fully-actuated traffic signals at Whitewillow Road/Route 47 (which may include, as required by IDOT, interconnect to adjacent existing signals).

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

This criterion does not require extensive discussion. Nickodem and Hoekstra's uncontroverted testimony was that this facility will not accept regulated hazardous waste. (Tr. 149, 395) This criterion is therefore not applicable.

Criterion 8: ***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; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed:***

This criterion, by its terms, requires an examination of the Kendall County Solid Waste Management Plan ("SWMP") in effect as of June 3, 2008, the date the Application was filed. "Consistent" has been viewed as requiring that the proposed facility not be "inapposite of" the SWMP. See *City of Geneva v. Waste Management of Illinois, Inc.*, PCB 94-58, Slip Op. Cite at 16 (July 21, 1994)

The SWMP was included in the Application. Les Pollock ("Pollock") confirmed the contents of the current SWMP, and that those contents are the basis for his opinion that the facility is consistent with the SWMP and, therefore, satisfies criterion 8. (Tr. 1281-1282)

Based on the contents of the SWMP and Pollock's testimony, it is our opinion that KLC/WMI has satisfied criterion 8.

Criterion 9: ***if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met:***

This criterion, like criterion 7, does not warrant extended discussion. Nickodem testified that the subject facility would not be located in a regulated recharge area, and that the only such area in the State is located near Peoria. (Tr. 149-150) This testimony was not rebutted, and this criterion is therefore not applicable.

III. CONCLUSION

In summary, as stated at the beginning of this memo, it is our opinion that KLC/WMI has satisfied its burden of proof with respect to all of the siting criteria, but we recommend adoption of the conditions for each of the criteria where conditions are proposed.

I feel compelled to turn to a more personal commentary. This is by no means an easy recommendation for me to make. No one with an ounce of intelligence or compassion can fail to be moved by the sincere and heartfelt sentiments of good and decent people like Cheryl Wallin and Beverly Anderson, or by the quiet eloquence of Jean Fletcher.[35]

But we cannot ignore a fundamental underlying principle here. It has often been said that we are a society of laws, not men (or women). In a civilized society those laws have to mean something, or we risk lapsing into anarchy. In a situation like this landfill matter, this means that fundamental fairness is a two-way street – applying with equal force to the applicant and to opponents. It also means that those in positions of authority have to be willing to make unpopular decisions, not just the popular ones, in the name of the rule of law.

I can certainly understand why some would feel put upon by the burden of this siting process – asking why the IEPA can't handle it. But I have been personally involved for the

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[35] On the other hand, I discount "comments" from those motivated by personal animus or political agendas.

last several years in an environmental disaster that is, at least in part, the result of unbridled decision making authority at the State level, with no local input. So however unsatisfactory the current system may be, I can assure you that the alternative is (and was) much worse. You have a host agreement that gives you unparalleled authority and oversight over this facility. It also imposes equally unique obligations on the operator – in perpetuity. You will not have to suffer the unchallengeable decisions of nameless, faceless bureaucrats in Springfield. The control will be in your hands, and those who come after you.

So the law must be followed, and in this case the limits of your discretion are constrained by the words of the statute that you are charged with applying. I suppose it would be convenient, or politically expedient, if you could just say "no, because my constituents don't want it". But you do not have that option. You are charged with applying the law, not ignoring it.

Respectfully submitted
Jeep & Blazer, LLC

By: _____
Michael S. Blazer

EXHIBIT A

HARD HAT SERVICES™
Engineering, Construction and Management Solutions

MEMORANDUM

Date: September 11, 2008
To: Mike Blazer
Company: Jeep & Blazer

From: Stuart H. Russell
Subject: Kendall County, Review of Willow Run 2 Application

I have reviewed the subject Site Location Application for the Willow Run Recycling and Disposal Facility dated June 3, 2008 (Willow Run 2). My review focused on the design aspects of the Criterion 2 evaluation. For consistency with our earlier testimony on the first Willow Run application dated February 5, 2007 (Willow Run 1), I have structured my review around the design issues identified for Willow Run 1, and analyzed the Willow Run 2 application to determine if these earlier issues were resolved in the new application.

Design Compatibility with Site Location

Willow Run 1:

The hydrogeological setting is sensitive because the upper aquifer (Upper and Lower Wise Lake) is fractured and connected to the lower aquifer, and because numerous private drinking and agricultural wells are in use in the vicinity that draw water from the upper and lower aquifers. Further, the Willow Run 1 location had relatively little thickness of overlying low-permeability soils (7 to 20 feet), creating a shortage of on-site soils to construct the landfill. Another design compatibility issue raised during the Willow Run 1 hearing was the encroachment of the proposed B5 alignment of the Prairie Parkway into the proposed landfill footprint.

Willow Run 2:

The current application proposes a site that incorporates a portion of the Willow Run 1 site, but the development is limited to the eastern portion of the original site that has the greatest overlying native soil thickness. The current design shows the entire waste footprint east of Walley Run Creek. The application still calculates the need to import a significant amount of off-site materials, but the site is smaller, so the need for these materials is reduced compared to Willow Run 1. In addition, the current design shows a layout that appears to be entirely outside the proposed Prairie Parkway alignment.

Bottom Liner Construction Depth

Willow Run 1:

The first application specified bottom liner grades that were within the Upper Wise Lake Aquifer (about 35% by area, mostly on the west side), and would have had an inward groundwater gradient in these areas. This design would have required a significant amount of blasting or ripping to remove the limestone bedrock to construct the bottom liner of a number of cells.

Willow Run 2:

The new proposed design shows a much smaller footprint (about half of the size of Willow Run 1), and the bottom liner system design includes excavation grades that are all above the bedrock, including the leachate sumps. Native clay of five feet or greater is maintained above the bedrock in the current design. The southeastern portion of the landfill is proposed to be constructed above the current ground level.

Bottom Liner Design Elements

Willow Run 1:

The first application proposed a double composite bottom liner design with two 60-mil geomembrane liners with a GCL between, and a 3-foot layer of compacted low-permeability (1x 10^{-7} cm/sec) clay beneath. The liner system was topped with a one-foot thick drainage layer with a 4 oz/SY geotextile filter layer on top. Our testimony on the Willow Run 1 application was that the liner system needed certain modifications to be acceptable, including;

1. An electronic leak detection system due to the placement of the bottom liner system within the aquifer;
2. A 12 to 18-inch soil layer between the geomembranes for puncture resistance; and
3. An 8 oz/SY geotextile filter on top of the drainage layer, instead of the 4 oz/SY fabric.

Willow Run 2:

The current proposed design is similar, but includes two new important elements. First, the design leaves at least 5 feet (and more thickness for most of the footprint) of native clay below the bottom liner system in addition to the other liner elements. This native material is indicated in the soil borings to have low permeability properties and provides an additional safety factor in preventing contaminants from entering the aquifer below the site. Second, the new design proposes the installation of a 16 oz/SY geotextile cushioning layer on top of the upper geomembrane liner prior to placing the one-foot drainage layer. The application provides calculations showing that this cushioning layer has the tensile strength and puncture resistance needed to protect the upper geomembrane. In addition, the application provides calculations demonstrating that the 4 oz/SY filter geotextile layer above the drainage layer is adequate to prevent fine-grained materials from damaging the drainage layer function. For these reasons, we believe that the liner system modifications proposed in our testimony for Willow Run 1 can be eliminated in this current design.

Landfill Finished Height and Footprint

Willow Run 1:

The old design proposed a peak elevation of 815 ft. above MSL, or 235 feet higher than the existing grade of 580 ft. above MSL. The land area of the waste footprint was proposed as 282 acres, containing about 30 million cubic yards of solid waste at completion. We testified that this height and waste footprint was unusually large compared to other landfills in northern Illinois, and should be modified. We proposed that the height be limited to 765 ft. above MSL, or 50 feet shorter.

Willow Run 2:

The new design has a much smaller waste footprint at 133.54 acres with about 15 million cubic yards of solid waste at completion, and has a significantly lower finished height at 757 ft. above MSL, or 177 feet above existing grade. This new design height is lower than the proposed limitation recommended for Willow Run 1.

Leachate Collection System

Willow Run 1:

The old design oriented the cells and the 8-inch perforated leachate collection gravity lines in a North-South configuration, creating drainage line runs of about 1,800 feet with clean-out access only on the south side. The design also showed single-wall piping for the leachate sump discharge force mains. We testified that the County should impose certain modifications to this design on the applicant;

1. Place cleanout access at both sides of the landfill to reduce the length of clean-outs for leachate collection pipe runs. A shorter run will make jetting for clogged collection pipes more easily accomplished; and
2. Construct all leachate force mains with double-walled pipe to prevent leakage, and provide a method to detect leaks without release of the leachate.

Willow Run 2:

The new design shows the cells and leachate collection piping oriented in the east-west direction with clean-out access on both sides of the landfill. The suggestion of clean-out access at both ends of the gravity leachate collection pipe runs was incorporated in the new design, however, the pipe run lengths are significantly longer than the Willow Run 1 design. The lengths vary between about 2,800 and 3,800 feet at completion of all cells. We should ask the applicant to describe what equipment will be used to clean out these long pipe runs should one or more of them become clogged, and if this equipment is capable of jetting or cleaning at these lengths.

Surface Water Management

Willow Run 1:

The first application proposed a design that required the diversion of Walley Run Creek around the landfill footprint in a "Bioswale." The application also lacked detail about how the construction of the landfill would impact local drainage. We testified that the design should be modified to reduce the number of 90-degree turns in the Bioswale, and incorporate methods to reduce sedimentation in the Bioswale.

Willow Run 2:

The current design does not propose to divert or modify Walley Run Creek. The application also describes design elements that will reduce the flow of water in the regional drainage system during storm events that should reduce the occurrence of flooding after completion of the construction. The application includes supporting flow modeling that demonstrates that the design will not adversely affect drainage.

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EXHIBIT B

HARD HAT SERVICES ™
Engineering, Construction and Management Solutions

MEMORANDUM

Date: November 4, 2008
To: Mike Blazer
Company: Jeep & Blazer, LLC

From: Laura Swan, PG
Subject: **Kendall County – Review of Willow Run 2 Application**

I have reviewed the Site Location Application for the Willow Run Recycling and Disposal Facility for Kendall County, Illinois, dated June 3, 2008 (Willow Run 2). My review focused on the geology and hydrogeology aspects of Criterion 2. In addition, I was present for all relevant testimony and have reviewed all filed documents with regard to the geology and hydrogeology of the site. Below is a summary of information presented in the application, as well as during siting hearing testimony, about several of the key issues discussed during the procedures.

Location of the Liner System

The Willow Run 1 Application design was to construct a significant portion of the liner system below the surface of the bedrock. This was an issue of concern because it would have set the liner system directly on top of the bedrock aquifer. This design element was changed for the current application. The liner system is proposed to be located a minimum of 5.2 feet (and a maximum of 24 feet) above the bedrock aquifer. The placement of the liner allows for an additional protective layer of in-situ clayey materials.

Equality Formation as a Barrier Unit

This was arguably the most discussed geologic issue during the public siting hearings. The application presents the unconsolidated materials (a combination of Equality and Lemont Formations) as a confining unit to the bedrock aquifer below. Ms. Underwood provided various evidence with regard to this interpretation. This evidence included the soil type, the pump test, laboratory tests, and the presence of drain tiles.

Soil Type – The Equality Formation was described as a fine-grained lake deposit that is classified primarily as lean clay (CL), with lesser amounts of silty clay (CL-ML), silt (ML), lean clay with sand (CL), and fat clay (CH) (p. 5-6). The Lemont Formation, the thinner of the two layers, was classified as a glacial diamicton, with various types of lean clay (CL), silt (ML), silty sand (SM), and silty clay (CL-ML) (p 5-6).

Pump Test – Ms. Underwood testified on September 13, 2008, that the Theis equation was used to evaluate the pump test data, and that the best fit for the data was the confined aquifer situation.

Laboratory Data – The application states that "laboratory permeability tests of Equality Formation samples range from $1.4x10^{-8}$ to $2.8x10^{-7}$ cm/sec" (p. 5-6). In addition, "laboratory permeability test results for undifferentiated Lemont Formation diamicton samples collected during this investigation are low, ranging from $2.5x10^{-8}$ to $7.8x10^{-8}$ cm/sec. Isolated lenses of sorted sand within the undifferentiated Lemont Formation are thin and only encountered outside the landfill footprint at B-32 and B-53 B" (p. 5-7).

Drain Tiles – On September 13, 2008, Ms. Underwood testified that "another piece of evidence that I looked at was the effect of the drain tiles and how the drain tiles in the area function. So drain tiles, if we look at, generally, how that will work and how the surface conditions are, you have precipitation, you have low permeability soils at the surface. Water can't infiltrate into soils easily so you need the drain tiles to be able to take that soil water out of the area, so that farming can be completed in those areas."

Although not detailed in the application, Ms. Underwood testified that another piece of evidence regarding the confining unit was seen in the potentiometric surface of the aquifer. On September 15, 2008, Ms. Underwood stated that "if you put a well into the aquifer and measured the water level in the well, it would rise above the top of the aquifer. And that's what we see here. That's why another reason that we see that it's confined. So there's pressure that confines the water in the aquifer. When you drill a well, the water in that well comes above the surface of the aquifer, and that's the potentiometric surface."

Ms. Underwood also testified that she had talked to the owner of the nursery on the adjacent property about the pond located there. She indicated that the interpretation of the unconsolidated materials as a confining unit was further confirmed by the events Mr. Wallace witnessed during the construction of the pond. Following the conclusion of the siting hearings, Mr. Tim Wallace submitted his own account of the excavation activities on his property. In a document dated October 24, 2008, Mr. Wallace stated "I began excavation of the pond in 2003. During that excavation, we encountered yellow and blue clay, and no water. At the north end of the pond, we continued to excavate, approximately 28 feet, until we reached rock. At that point only, did water run into the excavation. The excavation could not be kept dry by pumping."

Supplemental information was presented about the nature of the unconsolidated materials. On October 28, 2008, Donald Moran submitted a report indicating that in response to questions raised during the hearings, five shallow water table piezometers were constructed within the unconsolidated material. After waiting three days the wells were found to be dry. This data supports the applicant's interpretation that the unconsolidated materials are not part of the aquifer. Furthermore, this document addressed another question raised during the hearings, why the applicant was using laboratory hydraulic conductivities as opposed to in-situ slug test hydraulic conductivities. The results of the applicant's supplemental study indicated that "the shallow water table wells could not be developed or slug tested because there was no water. Slug testing cannot be conducted in dry wells (Bouwer, 1989). In addition, water should not be added to these water table wells to conduct slug testing because erroneous

results will occur because of changing the effective screen length from adding water (Butler, 1998)."

Use of 2007 Rock Cores

There was a good deal of discussion about the use of the 2007 soil and rock material. I believe the testimony did not clear up the confusion about this issue. As I understand the testimony, the 2007 soil and rock cores were used only as supplemental data to the new set of soil and rock cores obtained for this application. Questions were raised about how the samples were kept the last year, and if they were in a condition that they could be used again. It is my understanding that the 2007 samples were not resubmitted for laboratory analysis, and that all of the additional laboratory information was obtained from collecting new samples. The 2007 samples were relogged by Ms. Underwood's team and checked by herself. It seems reasonable that Earthtech would re-evaluate and check those samples, as they were originally logged by CEC.

EXHIBIT C

Tim Wallace
LANDSCAPE SUPPLY INC
& NURSERY

1481 W. Boughton Rd
Bolingbrook IL 60440
630-759-6813 phone
630-759-8153 fax
www.snowplowsupply.com

Dear County Board Members, October 24th, 2008

I am Tim Wallace, I own the Tim Wallace Landscape Supply & Nursery located at the corner of Whitewillow Rd. and Brisbin Rd. My pond was discussed during the public hearings for the recent landfill application. I am providing you with the history of activity at my nursery.

In 2002, I made plans to excavate a pond on my property to provide for irrigation at my nursery. I submitted my plans to Kendall County and received the necessary permits to perform this work.

I began excavation of the pond in 2003. During that excavation, we encountered yellow and blue clay, and no water. At the north end of the pond, we continued to excavate, approximately 28 feet, until we reached rock. At that point only, did water run into the excavation. The excavation could not be kept dry by pumping.

Near the middle of the pond, water only ran into the excavation from rain and drain tiles, and once the excavation was deeper, from an area of boulders located on top of the rock. I would sometimes have to pump this water out.

Excavation was completed and the irrigation pond finished in 2006. Water levels remain steady, even during irrigation.

If you have any questions about my irrigation pond, my documents are on file with the Planning and Zoning Department. You can verify the information I have provided.

Thank you,

Tim Wallace

Ordinance No. 08-15

AMENDED AND RESTATED
KENDALL COUNTY SITE APPROVAL ORDINANCE
FOR POLLUTION CONTROL FACILITIES

WHEREAS, as of November 12, 1981, PA. 82-682 entitled "An Act relating to the location of sanitary landfills and hazardous waste disposal sites" (415 ILCS 5/39/2) became effective and amended the "Environmental Protection Act" (415 ILCS 5/1 et seq.) (herein the "Act"), and which has subsequently been amended; and

WHEREAS, the Act restricts the authority of the Illinois Environmental Protection Agency to issue permits for the development or construction of new pollution control facilities in unincorporated areas unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board of the county in which the proposed site is to be located; and

WHEREAS, the Act requires an applicant to file an application for site approval with the County Board; and

WHEREAS, the Act requires that the County Board shall approve or disapprove the application for site approval for each pollution control facility which is subject to the Act; and

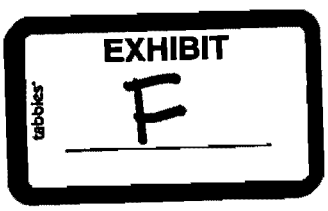
WHEREAS, by its terms, the Act supersedes local zoning and land use ordinances and requires the County Board to evaluate applications for site approval for pollution control facilities in accordance with the following criteria, and to grant site approval only if the following criteria are met:

1. The facility is necessary to accommodate the waste needs of the area it is intended to serve;

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

3. The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

4. (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; (b) 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 if the facility is a facility described in subsection (b) of Section 22.19a, of the Act the site is flood-proofed;



5. The plan of operations for the facility is designed to minimize the dangers to the surrounding area from fire, spills, or other operational accidents;

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

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

8. If the facility is to be located in a county where the County Board has adopted a solid waste management plan, the facility is consistent with that plan; and

9. If the facility will be located within a regulated recharge area, any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met;

provided, however, that this Ordinance governs applications for site location approval of new pollution control facilities as defined by the Act. To the extent a facility described in an application proposes to handle or manage material that is not a waste, or proposes to conduct an activity which is excluded from the Act's definition of a pollution control facility, or proposes to conduct an activity which does not require a permit from the Illinois Environmental Protection Agency, this Article does not govern the application, and authorization to locate such a facility shall be determined by other provisions in the County's Code of Ordinances, including but not limited to those related to zoning, special use, building or environmental requirements, as applicable, and

WHEREAS, the Act authorizes the County Board to also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) of 415 ILCS 5/39.2(a); and

WHEREAS, the Act requires that an applicant shall file as part of its application: (1) the substance of the applicant's proposal; and (2) all documents, if any, submitted as of the date of the application to the Illinois Environmental Protection Agency pertaining to the proposed facility, except trade secrets as determined under 415 ILCS 5/7.1; and

WHEREAS, the Act requires the County Board to hold at least one public hearing to commence no sooner than 90 days but no later than 120 days from receipt of the application for site approval, such hearing to be preceded by published notice in a newspaper of general circulation published in the county of the proposed site, and notice by certified mail to all members of the General Assembly from the district in which the proposed site is located, and to the governing authority of every municipality contiguous to the proposed site, and to the Illinois Environmental Protection Agency; and

WHEREAS, the Act provides that members or representatives of the governing authority of every municipality contiguous to the proposed site, and members or representatives of the County Board, may appear at and participate in public hearings related to any application for site approval, and;

WHEREAS, the Act provides that the public hearing shall develop a record sufficient to form the basis of appeal of any decision, and that appeals shall be based exclusively on the record made before the County Board; and

WHEREAS, the Act provides that any person may file a written comment with the County Board concerning the appropriateness of the proposed site for its intended purpose; and that the County Board shall consider any comment received or postmarked not later than 30 days after the date of last public hearing: and

WHEREAS, pursuant to this Ordinance the County Board shall also consider any post-hearing memorandum submitted by the applicant and received or postmarked not later than 30 days after the date of the last public hearing; and

WHEREAS, decisions of the County Board with respect to applications for location approval for such facilities are quasi-judicial determinations, and therefore are required to be based solely upon the evidence received at said public hearing, the written comments from persons received or postmarked not later than 30 days after the date of last public hearing and, pursuant to this Ordinance, the applicant's post-hearing memorandum, if any, received or postmarked not later than 30 days after the date of last public hearing; and

WHEREAS, the Act requires that decisions of the County Board regarding such matters are required to be in writing specifying reasons for the decision, and shall be made within 180 days after the receipt for site approval has been filed; and

WHEREAS, the Act provides that if no final action is taken by the County Board within 180 days after the filing of the application for site approval, the applicant may deem the application approved, but the Act does not prohibit the applicant and the County Board from agreeing to extend the time period for final action by the County Board; and

WHEREAS, the Act provides that the County Board, in granting approval for a site, may impose such conditions as may be reasonable and necessary to satisfy the purposes of the Act as long as those conditions are not inconsistent with regulations imposed by the Illinois Pollution Control Board; and

WHEREAS, it is apparent to the County Board that unless the information submitted by each applicant for siting approval and by other persons can be evaluated by qualified professionals, including but not limited to engineering and legal professionals, the County Board cannot accomplish what the legislature has mandated; and that the employment of such qualified professionals will impose a financial burden upon the County; and that because it would be impossible for the County Board to anticipate in any

given year whether any or how many applications for approval of pollution control facilities may be filed in Kendall County, the County Board cannot justify the employment of those competent professionals as salaried employees; and it is assumed the legislature was cognizant of those facts; and

WHEREAS, recognizing that a single county should not bear the substantial financial burden of the cost of determining the appropriateness of such a regional facility, said Act provides that a county may impose a reasonable fee upon an applicant to cover reasonable and necessary costs incurred in the siting review process; and

WHEREAS, in order to protect the public interest and to promote the orderly conduct of the hearing process and to insure that full and complete information is made available to the County Board, it is necessary that procedures be established for conducting the public hearings and making decisions regarding site approval applications;, and

WHEREAS, the terms of this Ordinance do not constitute or imply a policy decision by the County concerning siting pollution control facilities of any kind within the County but exist to guide the County in the fulfillment of its statutory duties with respect to applications for site location approval, and therefore

BE IT RESOLVED by the County Board of Kendall County, Illinois that the following procedures shall be established with respect to applications for site approval for pollution control facilities which are subject to Section 39.2 of the Act (415 ILCS § 5/39.2):

Article 1
DEFINITIONS

1.1 The terms used in these procedural rules and regulations shall have the same meanings as the same terms are defined in the Act, in effect as of the date hereof and as said Act may be amended or modified from time to time, except where otherwise specifically defined herein. Defined terms in this Ordinance need not be capitalized to have the meaning proscribed to them herein or in the Act.

1.2 Applicant, as used herein, shall include any person, group of persons, partnership, firm, association, corporation, company or organization of any kind that files an application for site approval pursuant to this Ordinance, including, but not limited to, any and all persons or entities having any pecuniary interest in the subject matter of the application for site location approval, provided, however, that this definition shall not include holders or owners of less than five percent (5%) of the stock of any such company or entity whose stock is publicly traded on a national exchange.

1.3 Operator, as used herein, shall include any person, group of persons, partnership, firm, association, corporation, company or organization of any kind that is designated or identified in an application for site approval pursuant to this Ordinance to operate the proposed facility, provided, however, that this definition shall not include

holders or owners of less than five percent (5%) of the stock of any such company or entity whose stock is publicly traded on a national exchange.

Article 2
FILING OF APPLICATION

2.1 A minimum of thirty (30) complete copies of applications for site approval shall be filed in the office of the County Clerk by the applicant. All exhibits that the applicant wishes to have considered as evidence by the County Board must be attached to the application for site approval at the date of filing. The applicant shall also provide at least one (1) copy to the governing authority of each municipality, if any, contiguous to the proposed site, and to the governing authority of each municipality within five (5) miles of the borders of the proposed site.

2.2 All applications shall be in writing on eight and one-half inch by eleven inch (81/2" x 11 "), eight and one-half inch by fourteen inch (8 ½" x 14"), or eleven inch by seventeen inch (11" x 17") paper, and shall also be submitted in an electronic P.D.F. format. All exhibits shall likewise be made available both in paper and electronic formats. The pages of the application and all exhibits, including pages intentionally left blank, shall be consecutively numbered.

2.3 Upon receipt of any such application and the filing fee as provided in Section 3.1, the County Clerk shall date stamp same. The date on the stamp of the County Clerk shall be considered the official filing date for all purposes relating to the time of filing. Should the application be presented to the County Clerk without the correct number of copies, in the incorrect form, or without the sections and fee described in this subsection, the application shall be rejected by the County Clerk, provided, however, that receipt and acceptance of an application by the County Clerk is pro forma, and does not constitute an acknowledgment that the applicant has complied with the Act or this Ordinance.

2.4 Three copies of the application for site approval shall be made available for public inspection in the offices of the County Clerk and members of the public shall be allowed to obtain a copy of the application or any part thereof upon payment of actual costs of reproduction to the County Clerk. The remaining copies of the application shall be delivered by the County Clerk to the County Board offices for distribution to the County Board members and County staff. The County Clerk shall also cause the electronic version of the application to be posted, in its entirety, in a publicly accessible area on the County's web site.

2.5 Copies of each application for site approval shall also be made available for public inspection in each public library within five (5) miles of the proposed facility. It shall be the responsibility of the applicant to identify all such libraries and to make such copies available.

2.6 At any time prior to the completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the members of

the County Board and any other Participants, the applicant may file not more than one amended application for site approval upon payment of an additional fee as set forth in Section 3.1 of this Ordinance. In the event an amended application is filed, the time limitation for final action as set forth by the Act shall be extended for an additional period of ninety (90) days from the date of filing of the amended application.

2.7 The application for site approval shall contain a certification signed by an officer or partner of the applicant stating "I certify under penalty of law that, based on information and belief formed after reasonable inquiry, the statements and information provided in the siting application are true, accurate, correct and complete."

2.8. Withdrawal of Application. An application for site approval may be withdrawn by a siting applicant under the following circumstances:

1. The applicant may, at any time before the public hearing called for by Article 8 hereof begins and upon notice filed with the County Clerk, withdraw the application for siting approval.

2. After the commencement of the public hearing, and up to the date said hearing is closed in accordance with §8.5.16 of this Ordinance, the applicant may withdraw the application for siting approval only upon terms fixed by the Hearing Officer, on a motion specifying the ground for withdrawal, which shall be supported by affidavit or other proof.

3. An applicant may not withdraw an application for siting approval after the close of the public hearing in accordance with §8.5.16 of this Ordinance.

Article 3
FILING FEE

3.1 There shall be paid to the County Clerk for delivery to the County Treasurer, for deposit in a segregated siting application fund, at the time of the filing of an application for site approval a fee of $500,000 (Five Hundred Thousand Dollars), by certified or cashier's check. In the event an amended application is filed pursuant to Section 2.3 of this Ordinance, an additional filing fee of $250,000 (Two Hundred Fifty Thousand Dollars) shall accompany said amended application. A fee of $1,000,000 (One Million Dollars) is required if said facility is designed as a Hazardous Waste Treatment, Storage or Disposal Site. In the event an amended application for a Hazardous Waste facility is filed pursuant to Section 2.3 of this Ordinance, an additional fee of $500,000 (Five Hundred Thousand Dollars) shall accompany such amended application. The County Treasurer is hereby authorized and directed to receive and hold said filing fee until payment is directed as described below.

3.2 In the event the applicant for site approval requests approval for a waste transfer station only, a reduced application fee in the amount of $125,000.00 (One Hundred Twenty-Five Thousand Dollars) will be accepted to cover notice costs, court reporter costs, hearing officer costs and other expenses incurred by the County in conducting the review of the application for site approval, the subsequent public hearing, and the site approval decision.

3.3 The County Board may, at its discretion, retain the services of one or more professional consultants to assist the Board and County staff in the siting process. The County Board shall use the filing fee to pay any costs and expenses incurred by the County as a result of the application for site approval and the hearing process set forth herein, including, but not limited to, the fees and costs of: County employees or staff review time, legal fees, expert witnesses, scientific testing, records or other investigations, data searches, notices, court reporters, transcription costs, consultants, the hearing officer, other expenses incurred by the County in conducting the review of the application, the public hearing, and the County's site location decision, or any issue raised at any time during any hearing, to pay any costs incurred in any appeal(s) of any decision of the County Board related to the application and to pay any other cost or expenses in any way connected with the application, including, but not limited to, remand hearings.

3.4 Records of County-incurred fees and costs, including but not limited to relevant time records of County employees and staff and County consultants, to the extent the County is seeking reimbursement of their time, are to be submitted by the persons creating such records to the County Treasurer on a monthly basis.

1. The County Treasurer, or his/her designee, shall organize the records and prepare and submit periodic reports to the County Board, County Clerk and the applicant, of invoices to or expenditures by the County. The actual invoices and bills shall be submitted to the County Treasurer and included in the report submitted to the County Board, County Clerk and Applicant, with all privileged and confidential information, if any, redacted. Inadvertent disclosure of confidential or privileged information by the County is not a waiver of confidentiality or privilege.

2. Upon approval of each report, described in subsection (a), above, by the County Board, the County Treasurer may draw upon the applicant's filing fee deposits in the amount of the reported incurred costs and fees, or as otherwise provided by the County Board.

3. In determining the fees to be paid to the County to reimburse the County for its employees or staff's time involved in matters concerning the application, the County Treasurer shall determine a rate for each employee who submits a record of his/her time to the County Treasurer, including in such rate, all costs of the County in compensating such employee or staff member, such as salary or

wage, or benefits. The County Treasurer shall include the rate he/she calculates per employee in the report described in (a) above.

3.5 If the costs incurred by the County under this Article 3 exceed, or are reasonably estimated to exceed, the amount of the filing fee then remaining on deposit, the County shall present a claim to the applicant for the excess, and for such additional amount as is reasonably estimated to be needed to complete the siting process. Payment of this excess is due within five (5) business days of the date the claim is presented to the applicant. Any unpaid amount shall constitute a debt and the County shall recover its costs and attorneys' fees if it is required to make a claim or commence a suit against the applicant and to recover the unpaid fees.

3.6 Upon termination of all proceedings hereunder, the County Treasurer shall prepare a final accounting and summary of all bills and expenses which shall be presented for approval to the County Board. Any portion of the filing fee deposits that remains unexpended at the conclusion of the local site location review process (including all appeals), shall be returned to the Applicant.

Article 4
CONTENTS OF APPLICATION FOR SITE APPROVAL

4.1 Each application for site approval shall contain information sufficient to allow the County Board to evaluate whether the proposed site meets the criteria for such facilities set forth in Section 39.2 of the Act. The determination of the quality and quantity of information to be included in an application is, ultimately, the applicant's to make, as it is the applicant's burden to demonstrate that the siting criteria set forth in Section 39.2 of the Act are met. However, for purposes of this Ordinance, an application shall contain, at a minimum, the following documents and information, in addition to what the applicant submits in support of the Section 39.2 criteria, together with, to the extent that such documents and information are based on other information or data, citations to the primary sources of data:

4.2 Background of Applicant. The application for site approval shall contain the following information concerning the applicant.

1. Applicant's full name, address, and telephone number. If applicant is a partnership or limited partnership, the names and addresses of each partner and limited partner.

2. If applicant is a corporation or is a limited partnership having a corporation as its general partner:

    a. the names and addresses of all officers, directors, all stockholders owning five percent or more of the capital stock of

the corporation and the name, address, and telephone number of the corporation and the registered agent of the corporation;

b. certified copy of the Articles of Incorporation or Organization in the State of Illinois or, if incorporated or organized in a state other than Illinois, a certified copy of its authorization to do business in the State of Illinois; and

c. the most recent annual report.

3. If applicant is a corporation or is a limited partnership having a corporation as its general partner and more than five (5) percent of such corporation's capital stock is owned by another corporation, either directly or derivatively, then the requirements of this section shall apply to such corporation.

4. A list of any and all court actions or administrative proceedings of any kind in which the applicant (including all persons and entities identified in Section 1.2 hereof) is or has been a named party and the subject matter of which was related to waste collection, hauling or disposal. Such list shall identify the court or agency, the number of the case, and a brief summary of the facts and disposition of the case.

5. A description of the previous operating history of the applicant in the field of solid waste management, including all pollution control facilities as defined in the Act, and all operations relating to the transport, transfer, storage or disposal of waste, owned or operated by the applicant in the United States at any time during the fifteen (15) years prior to the filing of the application, including but not limited to:

a. the name of each facility.

b. a description of the nature of each facility (i.e., sanitary landfill, hazardous waste landfill, construction and demolition debris site, transfer station, recycling facility, composting facility, etc.).

c. a description of the applicant's involvement in each facility (i.e., investor, owner, operator, co-operator, etc.).

d. an identification of the volume of waste deposited in, on or at each such facility or processed by each such facility for each of the five (5) years preceding the filing of the application.

e. a description of each court action or administrative proceeding initiated against the applicant (including all persons and entities

identified in Section 1.2 hereof) related to each such facility, or complaint, notice of violation or citation received by the applicant related to each such facility, along with an identification of the court or administrative agency in which or by whom any such proceeding was initiated, if any, and a description of the outcome or resolution of each such complaint or proceeding.

f. A description of any closure or post-closure activities undertaken by any person at each such facility within the five (5) years preceding the filing of the application.

6. With respect to each individual named in the application for site approval, said application for site approval shall state the prior employment history and qualifications of such person as it relates to the proposed site operation.

7. If the applicant (including all persons and entities identified in Section 1.2 hereof) has previously closed any facility regulated by the United States Environmental Protection Agency or the Illinois Environmental Protection Agency, the applicant shall make available a copy of all closure documents, including, but not limited to financial assurance documents, related to such closure. The terms of this paragraph shall apply to facilities which were owned or operated by a corporation, partnership or limited partnership of which the applicant was the owner of more than five (5) percent of the ownership interest of the corporation, partnership or limited partnership which owned or operated the facility.

8. A description of all claims made by the applicant within the five (5) years prior to the date of the application under or against any policy of insurance which covers, or is alleged by the applicant to cover, claims against the applicant related to any waste collection, hauling or disposal activities.

4.3 Background of Operator. The application for site approval shall contain the following information concerning the operator of the proposed facility.

1. Operator's full name, address, and telephone number. If operator is a partnership or limited partnership, the names and addresses of each partner and limited partner.

2. If operator is a corporation or is a limited partnership having a corporation as its general partner:

a. the names and addresses of all officers, directors, all stockholders owning five percent or more of the capital stock of the corporation and the name, address, and telephone number of the corporation and the registered agent of the corporation; and

b. certified copy of the Articles of Incorporation or Organization in the State of Illinois or, if incorporated or organized in a state other than Illinois, a certified copy of its authorization to do business in the State of Illinois; and

c. the most recent annual report.

3. If operator is a corporation or is a limited partnership having a corporation as its general partner and more than five (5) percent of such corporation's capital stock is owned by another corporation, either directly or derivatively, then the requirements of this section shall apply to such corporation.

4. A list of any and all court actions or administrative proceedings of any kind in which the operator (including all persons and entities identified in Section 1.2 hereof) is or has been a named party and the subject matter of which was related to waste collection, hauling or disposal. Such list shall identify the court or agency, the number of the case, and a brief summary of the facts and disposition of the case.

5. A description of the previous operating history of the operator in the field of solid waste management, including all pollution control facilities as defined in the Act, and all operations relating to the transport, transfer, storage or disposal of waste, owned or operated by the operator in the United States at any time during the fifteen (15) years prior to the filing of the application, including but not limited to:

a. the name of each facility.

b. a description of the nature of each facility (i.e., sanitary landfill, hazardous waste landfill, construction and demolition debris site, transfer station, recycling facility, composting facility, etc.).

c. a description of the operator's involvement in each facility (i.e., investor, owner, operator, co-operator, etc.).

d. an identification of the volume of waste deposited in, on or at each such facility or processed by each such facility for each of the five (5) years preceding the filing of the application.

e. a description of each court action or administrative proceeding initiated against the operator (including all persons and entities identified in Section 1.2 hereof) related to each such facility, or complaint, notice of violation or citation received by the operator related to each such facility, along with an identification of the court or administrative agency in which or by whom any such proceeding was initiated, if any, and a description of the outcome or resolution of each such complaint or proceeding.

f. A description of any closure or post-closure activities undertaken by any person at each such facility within the five (5) years preceding the filing of the application.

6. With respect to each individual named in the application for site approval, said application for site approval shall state the prior employment history and qualifications of such person as it relates to the proposed site operation.

7. If the operator (including all persons and entities identified in Section 1.2 hereof) has previously closed any facility regulated by the United States Environmental Protection Agency or the Illinois Environmental Protection Agency, the applicant shall make available a copy of all closure documents,, including, but not limited to financial assurance documents, related to such closure. The terms of this paragraph shall apply to facilities which were owned or operated by a corporation, partnership or limited partnership of which the operator was the owner of more than five (5) percent of the ownership interest of the corporation, partnership or limited partnership which owned or operated the facility.

8. A description of all claims made by the operator within the five (5) years prior to the date of the application under or against any policy of insurance which covers, or is alleged by the operator to cover, claims against the operator related to any waste collection, hauling or disposal activities.

4.4 Site Description. The application for site approval shall contain the following information concerning the description of the proposed site:

1. Legal description of the proposed site.

2. Vertical height (elevation-mean sea level (msl)) of site as it exists at the time of the application and vertical height (elevation-msl) of the site as it is expected to exist upon closure.

3. Name, address, and telephone number of each owner(s) (including, if applicable, beneficial owners) of the property. The requirements of Section 4.2 shall apply to owners of the property and such information should be provided at the time the application for site approval is filed by applicant.

4. If the site is not owned by the applicant, then documents granting to the applicant the right to develop the site for the proposed use must be attached to the application for site approval by the applicant.

5. A map, prepared and certified by an Illinois licensed professional engineer, of sufficient size, showing, but not limited to:

    a. Location of the site;

    b. Location and depths of all public and private water wells within five (5) miles of the boundaries of the proposed site and such other wells as may be affected by the proposed use (to the extent such information is available, the Application shall also contain well construction details and, if applicable, well closure information);

    c. Location of all aquifers, streams, ponds, rivers and lakes and such bodies of water as may be affected by the proposed use;

    d. Location of all roads and bridges and transportation structures that may be affected by the proposed use; and

    e. Location of all fences, buildings or other structures within the proposed site and within 500 feet of the boundaries of the proposed site and all other structures that may be affected by the proposed use.

    f. Locations of all groundwater monitoring wells in place at the site as of the date of filing of the application.

6. A complete hydrogeologic study of the site by a qualified hydrologist, including but not limited to:

    a. Studies completed by any federal or state agency;

    b. General description of the hydrogeologic conditions of the site and the surrounding area, based on an exploratory program including soil borings;

c. Detailed description of all known or suspected drinking water aquifers located within three (3) miles of the site;

d. A complete log of each boring made during the exploratory program, including but not limited to:

(1) Textural soil classification (USCS);

(2) Particle size distribution for representative samples;

(3) Coefficient of permeability based on field and laboratory determinations; and

(4) Ion-exchange capacity and ability to absorb and fix heavy metal ions.

e. If bedrock was encountered:

(1) Depth of bedrock;

(2) Physical character and hydrogeologic characteristics of the bedrock formation; and

(3) Names and ages of the formation encountered.

7. Information on any existing surface or sub-surface mining on the site and within any area that may be affected by the proposed use, including but not limited to:

a. Legal description of areas mined;

b. Materials removed by mining; and

c. Approximate size of displacement.

8. Information on any other activity that has occurred on the site in which the natural condition of the soil or support of the surface has been disturbed.

4.5 Proposed Service Area/Volume. The application for site approval shall contain the following information concerning the proposed service area for the proposed site:

1. A description of the geographic area that the proposed site is intended and designed to serve.

2. A statement identifying the location of each active Pollution Control Facility ("PCF") within the proposed service area and within 50 miles of the perimeter of the proposed service area, providing the following information:

   a. If the PCF is a landfill:

      (1) Dimensions of the PCF (including permitted vertical air space) that remains unfilled by waste, estimating life span of such facility;

      (2) Owner and operator; and

      (3) Classification of permit.

   b. If the PCF is a transfer station:

      (1) Permitted/allowed throughput capacity of the PCF, in tons or tons per operating day;

      (2) Owner and operator; and

      (3) Classification of permit.

3. Complete documentation of the facts and reasons supporting applicant's assertion that the proposed facility is necessary to accommodate the waste needs of the proposed service area.

4.6 Site Development Plan. The application for site approval shall contain the following information concerning the Site Development Plan:

1. A detailed topographic map of the site as it exists at the time of the application for site approval, prepared and certified by an Illinois licensed professional engineer, drawn to a scale of not less than 1" = 200', showing:

   a. Five-foot contour intervals on sites, or portions thereof, where the relief exceeds 20 feet, and two (2) foot contour intervals on sites, or portions thereof, having less than 20 feet of relief; and

   b. Location of all buildings, ponds, streams, wooded lots, bedrock outcrops, underground and overhead utilities, roads, fences, culverts, drainage ditches, drain tiles, easements, streets, boundaries, areas previously mined or where soil has been disturbed from its natural condition, the location and elevations

of borings made under Section 4.3 hereof, and any other item that may be affected by the proposed use.

2. A detailed topographic map of the site as it is to be developed, prepared and certified by an Illinois licensed professional engineer/surveyor, drawn to a scale of not less than 1" = 200', showing the same types of information as the map in Section 4.5(1), and more specifically:

   a. Location and description of all monitoring devices which will be utilized on the site;

   b. Location and description of all leachate collection systems to be installed at the site; and

   c. Location of all buildings and equipment to be utilized by the proposed use.

3. A description of the proposed landscaping plan and facility screening.

4. A statement of the approximate period of time for which the proposed facility will be in operation.

4.7 Operating Procedures. The application for site approval shall contain the following information concerning the operating procedures for the proposed facility:

1. Detailed operating procedures for the facility;

2. Specific details for the following items:

   a. Personnel requirements; including training and supervision;

   b. Traffic control on and in the vicinity of the site;

   c. Method of determining the quantity and characteristics of waste delivered to the facility;

   d. Method of inspection and chemical analysis of waste;

   e. Method of landfilling, incineration, resource recovery or other process;

   f. Hours of operation, including waste placement and non-waste placement operating hours;

   g. Litter, vector, vermin, dust and odor control;

h. Stormwater management and erosion control;

i. Fire control;

j. If applicable, the stages of development or use;

k. Landfill gas control, monitoring, recovery/re-use program, as applicable;

l. Leachate control, collection and treatment;

m. Overlay of on-site wetlands and mitigation plan;

n. Truck tarping and road maintenance program.

3. Specific details for the following items:

a. Identification of the specific types of wastes which the applicant plans to accept for disposal or processing at the proposed site classified according to the definitions set forth in the Illinois Environmental Protection Act. (415 ILCS § 5.3 et seq.);

b. Identification of the proposed yearly volumes of each type of waste identified in response to Article 4.6(3) above which the applicant expects to dispose of or process, or reasonably anticipates disposing of or processing, at the proposed site through the end of the expected life-span of the proposed site.

4.8 Closure/Post-Closure Plan. The application for site approval shall contain a detailed plan for voluntary or involuntary closure of the proposed facility, including, but not limited to, the following information:

1. A detailed topographic map of the site as it will appear at the time of closure, prepared and certified by an Illinois licensed professional engineer, drawn to a scale of not less than 1" = 200', showing the same types of information as the map in Section 4.5(1), and more specifically:

a. Location and description of all monitoring devices which will be utilized on the site after closure;

b. Location and description of all leachate and landfill gas collection and control systems to be installed at the site; and

c. Location of all buildings and equipment that will remain after closure;

d. Sequence/timing of closure for completed site area(s).

2. Final cover system, including proposed soil and/or geosynthetic material specifications, as applicable.

3. Proposed use(s) after operation (*i.e.*, end-use plan) including changes in topography and all new surface features, and plans for how site controls and engineered features will be compatible with end use plan(s).

4. Satisfactory evidence of financial assurance adequate to insure the implementation of the closure plan and the performance of all applicable closure/post-closure requirements.

4.9 The application for site approval shall include information on contingency and emergency plans, including, but not limited to:

1. List of possible emergency situations which might occur at or near this facility which might affect the operations of the facility, including, but not limited to, explosion, fire, spills, power outages, tornadoes, and vandalism.

2. The applicant's plan to insure against risks of injury to the person and property of others, including copies of insurance policies or commitment letters.

3. A summary of measures that the applicant will take to limit site access and other appropriate site security measures to prevent acts of vandalism and terrorism.

4.10 Flood Plain. There shall be filed with the application for site approval:

1. A statement that the facility is within or outside the 100-year flood plain as determined by the Federal Emergency Management Agency.

2. A map prepared and certified by an Illinois licensed professional engineer documenting the boundaries of the 100-year flood plain.

3. If the site is not a sanitary landfill or waste disposal site, and is within the 100-year flood plain, there shall be filed:

a. Evidence that the site has been flood-proofed to meet the requirements of the Federal Emergency Management Agency and the requirements of any other federal or state agency; and

b. Evidence of approval by applicable federal and state agencies.

4.11 Traffic Patterns. There shall be filed with the application for site approval:

1. A map of the county, prepared by an Illinois licensed professional engineer, showing the roads which will be used to transport material to and from the site.

2. A traffic impact study showing the present traffic flows on said roadways and the impact that the traffic generated by the facility will have thereon. The traffic study shall be in accordance with guidelines recommended by the Institute of Transportation Engineers regarding the proposed site, and shall include, at a minimum, the following information:

a. The anticipated number of motor vehicles and the types and weights (loaded and empty gross) thereof which will be entering and exiting the site, broken down by each hour of the day. If the number of vehicles is expected or intended to be greater or less on particular days of the week, identify those days, the numbers of vehicles, and where it includes vehicles other than passenger automobiles, include the hourly analysis for each day of the week.

b. Direction of flow of traffic, into, within and from, the proposed facility, and provide a copy of any driveway permit, if applicable.

c. A statement of the speed limits and load limitations of any and all roads and bridges that will be utilized by traffic entering and exiting the site;

d. Ascertainable accident history data compiled for roads and intersections within 2 miles of the site.

e. Detailed design plans for any roadway improvements, modifications proposed by the applicant to mitigate traffic impacts, if applicable.

4.12 The application shall be signed by the applicant, landowner(s), operator, engineer registered in the State of Illinois under the Illinois Professional Engineering Practice Act, land surveyor and any other technical consultant responsible for drafting all

or portions of the application. The application shall provide a contact address, telephone number and e-mail address for all persons named.

Article 5
PARTICIPANTS

5.1 The Applicant is a Participant.

5.2 The County, its employees and staff, and any experts, consultants, investigators or attorneys hired by the County to review, investigate, present at hearing, or otherwise work for the County conceming the application, are Participants. To the extent the County employees and staff wish to participate in the public hearings outside their roles or employment with the County, they must submit a Notice of Participation, as do other members of the public.

5.3 Any person other than described in 5.1 and 5.2 above, must file a written notification of intent to participate (Notice of Participation), with the County Clerk before the start of the first day of public hearing or, after the start and before the adjournment of the first day of public hearing, with the Hearing Officer. Such notification shall state, at a minimum:

1. The name, address daytime phone number and, if available, facsimile number of the person filing the Notice of Participation;

2. Whether the person will be participating on his/her own behalf or as a representative/spokesperson of another person or entity (and if on behalf of another person or entity, identify the name of that person or entity),

3. Whether the person (or the entity or association he/she represents) will be represented by an attorney during the public hearings, and

4. Whether the person intends on providing oral testimony or comment during the public hearing.

5.4 A person may not become a Participant after the first day of the hearing except for good cause shown. The County shall liberally interpret this limitation if the additional participation shall not delay the process or unfairly prejudice a prior Participant. No late Participant shall be entitled to cross-examine a witness who has previously testified.

5.5 Participant rights.

1. Participants have the right to present sworn testimony and witnesses; provide un-swom, oral comment during the public hearing (subject to the Hearing Officer's judgment and consistent with fundamental

fairness); to cross-examine or question witnesses who provide sworn testimony or, alternatively, submit to the Hearing Officer written questions to be asked of the witnesses by the Hearing Officer and at the Hearing Officer's discretion as to whether and how such questions are to be posed.

Participants shall have the right to be represented by a licensed attorney-at law at the public hearing(s). Any attorneys representing a Participant must be licensed and in good standing to practice law in the State of Illinois, or if licensed and in good standing to practice law in another State which is part of the United States, shall be allowed to serve as an attorney for a Participant upon motion made to and granted by the Hearing Officer. Subject to the authority of the Hearing Officer, such attorneys shall have the right of reasonable cross-examination. Any Participant not represented by an attorney shall also have the right to reasonable cross-examination of witnesses.

Subject to the Hearing Officer's right to extend filing deadlines as set forth in Article 7, all reports, studies, exhibits or other evidence or copies thereof, other than testimony, which any Participant desires to submit for the record at the public hearing must be filed with the County Clerk at least seven (7) calendar days before the public hearing and shall be available for public inspection in the office of the County Clerk. In the event that the seventh day prior to the date set for public hearing falls on a Saturday, Sunday or holiday, the next working day shall be considered the day that reports, studies and exhibits must be filed. The formatting requirements set forth in Article 2 hereof, including submittal of electronic versions of all materials, shall apply to Participants, provided, however, that Participants shall be required to file only fifteen (15) paper copies and one (1) electronic copy. One paper copy shall be provided by the County Clerk to the applicant.

4. The County Clerk shall cause all Participant submittals in electronic format to be posted on the County's web site, in the same manner and location as provided for the application.

5. Upon conclusion of the public hearing, any Participant may submit to the County Board a post-hearing memorandum addressing the siting criteria set forth in Section 39.2(a) of the Act (415 ILCS § 5/39.2(a)), as well as any other issue relevant to the proceeding. The post-hearing memorandum shall be based on the record developed during the siting approval process. Any such post hearing memorandum must be submitted within 30 days after the date of the last public hearing, by filing 8 copies with the County Clerk who shall receive and date stamp the post-hearing memorandum, which shall be made part

Article 6
PUBLIC COMMENT

6.1 The County Clerk shall receive and date stamp written comments from any person concerning the appropriateness of the proposed site for its intended purpose.

6.2 Copies of written comments shall be made available for public inspection in the offices of the County Clerk, and members of the public shall be allowed to obtain a copy of any written comments upon payment of actual cost of reproduction.

6.3 Subject to the Hearing Officer's authority to impose reasonable limits on the timing and duration of un-sworn oral comments, as set forth in Article 7 of this Ordinance, any member of the public shall have the opportunity to submit such oral comments during the course of the public hearing. Oral comments shall be transcribed in the same manner as sworn testimony and shall become part of the record of the public hearing.

6.4 Any written comment received by the County Clerk postmarked not later than 30 days after the date of the last public hearing, shall be made part of the record of the public hearings as hereinafter described and the County Board shall consider any such timely written comments and post-hearing memorandum in making its final determination. In the event that the 30th day falls on a Saturday, Sunday, a Federal, State or Kendall County holiday, the next day on which mail is received by the Kendall County Clerk shall be considered the 30th day for purposes of this paragraph.

Article 7
HEARING OFFICER

7.1 HEARING OFFICER. The County Board Chairman, with the advice and consent of the County Board, shall appoint a Hearing Officer to govern the proceedings under this Ordinance.

1. The Hearing Officer shall be a licensed attorney in the State of Illinois, skilled in matters of trial or administrative hearing procedures.

2. The Hearing Officer shall be authorized to perform the following functions:

    a. To preside over the siting hearing and be responsible for ruling on preliminary motions, evidentiary issues, objections or any other contested legal issues.

b. To make any decisions concerning the manner in which the hearing is conducted subject to this Ordinance and the law concerning such applications. All decisions and rulings shall be in accordance with the concept of fundamental fairness (unless a different standard is adopted as a matter of Illinois law), but need not be in strict compliance with the Illinois Supreme Court Rules, Illinois Code of Civil Procedure, or any local rules of evidence governing a civil judicial trial in the State of Illinois, County of Kendall, provided, however, that the rules relating to privileged communications and privileged topics shall be observed.

c. To conduct a fair hearing, to take all necessary actions to avoid delay, to maintain order and to ensure development of a clear, complete and concise record.

d. To administer oaths and affirmations.

e. To conduct a public meeting, prior to the start of the public hearings, to explain the public hearing procedure and site location review process. If the Hearing Officer decides to hold such a meeting, it shall be held no sooner than the ninetieth (90th) day from the date the Petition was filed, and notice shall be given in a newspaper of general circulation one week prior to the meeting (or alternatively, as part of the first published notice of the hearing) and such notice shall expressly state that it is a informational meeting concerning the procedure to be used at the public hearing and the site location review process, and that it is not a public hearing at which evidence will be taken for purposes of making a determination in accordance with this Ordinance and the Act.

f. To arrange for the presence of a certified court reporter to attend and transcribe the conduct of all public hearings for the public record.

g. To require a witness or person presenting un-sworn public comment to State his/her position either for, against, or undecided with respect to the proposed facility.

h. To examine a witness and direct a witness to testify.

i. To establish reasonable limits on the duration of the siting hearing consistent with the Act and this Ordinance, including but not limited to the reasonable limitation of sworn testimony, un-sworn oral comment, direct and cross-examination of any

witnesses, and the limitation of repetitive or cumulative testimony and questioning.

j. To allow the introduction of late-filed evidence, be it written or testimonial, on behalf of any Participant, provided good cause is shown for the late-filing, the evidence is offered in and is relevant to the rebuttal portion of the Participant's case, and the evidence was filed with the County Clerk at least one day before the public hearing at which it is offered, and fundamental fairness to all parties will be preserved.

k. The Hearing Officer, at his discretion or at the request of the County Board, may continue any session of the hearing from time-to-time, consistent with the timing provisions set forth in this Ordinance and the Act.

l. Pursuant to §2.8.2 hereof, to rule upon a motion to withdraw the application for siting approval filed prior to the close of the public hearing, and to impose reasonable terms upon the grant of such a motion.

3. The Hearing Officer shall confer with the County Board, and counsel for the County, as necessary, concerning the application, between the time of the filing of the application and the County Board's decision on the application. Given the Hearing Officer's role of communicating with the County Board, the Hearing Officer may not confer with Participants (members of the public, and applicant included) concerning the application, unless such conference takes place during the public hearing, is through correspondence which is filed with the County Clerk (and, thus, available for everyone to view), or concerns location, time or other similar scheduling aspects of the public meeting or public hearing, or the notices for same. The only additional exception from this restriction is that the Hearing Officer may confer with the County Clerk about the upkeep or status of the public record, make a request to review or copy the public record, or confer with the County Clerk regarding the scheduling or location of the public meeting or hearing, or arrangements for the notices of the pubic meeting and hearing.

4. At the conclusion of the public hearing and after consideration of all timely-filed written comments, the Hearing Officer shall submit draft written findings to the County Board and file a copy of such findings with the County Clerk.

5. The Hearing Officer does not have the right or the power to vote, as a County Board Member votes, on the application.

Article 8
PUBLIC HEARING

8.1 Within forty-five (45) days from the date the application for site approval is filed, the County Board shall determine the date, time and location upon which a public hearing shall commence. The initial session of the public hearing shall be scheduled no sooner than 90 days but not later than 120 days from the date the application for site approval was filed with the County Clerk.

8.2 If, in the County Board's opinion, County facilities are not sufficient to accommodate the number of persons expected to attend the hearing, the County Board may arrange for the hearing to be conducted at another site. In such an event, the County Board is authorized to lease an adequate auditorium and sound system for the hearing. Any and all costs associated with such lease or acquisition shall be paid from the filing fee.

8.3 The County Board shall notify the County Clerk of the date upon which such hearing shall be held and shall request the County Clerk to cause notice of such hearing to be made as follows. Upon receipt of such request, the County Clerk, and, at the County Clerk's discretion, with the help of the attorney representing the County (its staff and employees), shall cause the publication of notice pursuant to the following requirements.

1. By publication of two (2) legal notices in a newspaper of general circulation published in the County. One such notice shall be published no later than sixty (60) days from the date the application was filed and one such notice shall be published no later than seventy five (75) days from the date the application was filed.

2. Such notices shall consist of the following information, which, except for h. through k., below, must be disclosed by the applicant in the application:

    a. The name and address of the person, partnership or corporation requesting site location approval;

    b. The name and address of the owner of the site, and in case ownership is in a land trust, the names of the beneficiaries of said trust;

    c. The legal description of the site;

    d. The street address of the property, and if there is no street address applicable to the property, a description of the site with reference to location, ownership or occupancy or in some other

manner that will reasonably identify the property to residents of the neighborhood;

e. The nature and size of the proposed facility;

f. The nature of the activity proposed;

g. The probable life of the proposed activity and facility;

h. The time and date of the public hearing(s);

i. The location(s) of the public hearing(s);

j. A statement that all copies of evidence other than testimony to be submitted at the public hearing(s) must be filed with the County Clerk at least seven (7) days before the date of the first public hearing; and

k. A statement that any person wanting to present sworn testimony or cross-examine witnesses must register as a Participant with the County Clerk no later than the first day of the public hearing, or register with the Hearing Officer no later than the adjournment of the first day of the public hearing.

3. A copy of the notice shall also be sent, no later than fifty-five (55) days after the date the application was filed, by certified mail return receipt requested to the following. This notice, pursuant to Section 39.2(d) of the Act, must be delivered to the following persons/entities no later than fourteen (14) days prior to the first day of public hearing. If a return receipt is not received by the County Clerk confirming delivery of the notice on the following persons/entities, by the sixty-fifth (65th) day following the filing of the application, the County Clerk shall arrange for personal service on the following persons/entities.

a. all members of the General Assembly from the district in which the proposed facility is located;

b. the Illinois Environmental Protection Agency;

c. to the governing authority of every municipality whose corporate limits are within 1 mile of the boundary of the proposed facility;

4. Additional notice of the public hearing may, at the discretion of the County Board, be given, by publishing a notice in a newspaper of general circulation published as a display ad at least once during the

week preceding the public hearing. Such notice shall consist of all items described in subsection 8.3.2.a.-k. above except for item 8.3.2.c.

8.4 The State's Attorney, or an assistant, shall serve as legal advisor for the County Board. The County Board, with the advice of the State's Attorney, shall engage outside counsel to serve as legal advisor for the County and County staff. Such outside counsel shall be responsible for evaluating the application and advising the County and County staff throughout the application and hearing process, including any appeals or remand hearings. Said counsel shall be entitled to examine witnesses, and otherwise to participate in the Hearing as counsel to the County. At the conclusion of the public hearing and after consideration of all timely-filed written comments, said outside counsel may submit draft written findings to the County Board. A copy of any such submittal shall be filed with the County Clerk. Any and all costs and fees associated with such outside counsel shall be paid from the filing fee.

8.5 Conduct of the public hearing shall be substantially as follows:

1. Call to order with determination of a quorum;

2. Introduction of the Hearing Officer;

3. Introduction of the County Board Members who are present;

4. Recognition of the applicant and identification of the application;

5. Recognition of fees, notices, and date of filing of the application;

6. Recognition of the County staff and attorneys present;

7. Recognition of all other Participants who have filed a Notice of Participation pursuant to Section 5.3.

8. Recognition of all reports, exhibits, maps or documents of record as filed pursuant to Section 5.5.3.

9. Applicant, the County, and Participants may then make an opening statement.

10. The County Board shall then hear testimony from the applicant and/or any witnesses the applicant may wish to call. Upon the close of the applicant's testimony, Participants, other than the applicant and the County, may present sworn testimony, including any witnesses and evidence they wish to present.

11. After the close of the Applicant's and Participants' cases, the County may present any witnesses and evidence they wish to present.

12. Rebuttal testimony and evidence will be allowed at the discretion of the Hearing Officer; but if it is allowed, it will be presented in the same order as described in (9), above.

13. Following rebuttal testimony, if any, any Participant or other member of the public who wishes to present un-sworn oral comment may then present such comment to the County Board.

14. Closing statements, if any, by Participants, including the applicant and the County, who presented evidence or testimony at or questioned witnesses during the public hearing.

15. Rebuttal statement, if any, by the applicant, subject to limitations as imposed by the Hearing Officer.

16. Hearing closed.

8.6 All testimony at any public hearing shall be under oath or affirmation. All witnesses who testify under oath shall be subject to reasonable questioning as follows: direct, cross-examination, redirect, re-cross, etc.

8.7 The applicant requesting site approval shall have the burden of going forward with evidence of the suitability of the site for its proposed use, and that the proposed facility meets the criteria set forth in Section 39.2(a) of the Act (415 ILCS § 5/39.2(a)).

8.8 Upon conclusion of the public hearing the applicant may submit to the County Board a post-hearing memorandum addressing the siting criteria set forth in Section 39.2(a) of the Act (415 ILCS § 5/39.2(a)), as well as any other issue relevant to the proceeding. The post-hearing memorandum shall be based on the record developed during the siting approval process. If the applicant elects to submit a post-hearing memorandum, it shall do so within 30 days after the date of the last public hearing by filing 8 copies with the County Clerk who shall receive and date stamp the post-hearing memorandum, which shall be made part of the record of the public hearings and the County Board shall consider any such timely submitted post-hearing memorandum in making its final determination. The post-hearing memorandum shall be limited to no more than 25 pages in length.

Article 9
RECORD

9.1 The County Clerk or his/her designee shall be responsible for keeping the record of the hearing and site review process.

9.2 The record shall consist of the following:

1. The application for siting approval and any amendments filed with the County Clerk.

2. Proof of notice as described in Section 8.3 hereof.

3. Proof of each notice given by applicant pursuant to Section 39.2(b) and Section 39.2(d) of the Act (415 ILCS § 5/39.2).

4. Written comments filed by the public and received by the County Clerk or postmarked within 30 days of the last public hearing.

5. All evidence, reports, studies, exhibits or documents admitted into evidence at the public hearing.

6. All motions filed during the course of the public hearing.

7. All notices of participation filed with the County Clerk within the time frame specified in Section 5.3.

8. A complete transcript of the public hearing(s), in both written and electronic/digital form.

9. All post-hearing memoranda submitted by the applicant and any participant, received by the County Clerk or postmarked within 30 days of the last public hearing.

10. Written findings provided by outside counsel for the County.

11. The Hearing Officer's written findings.

12. A copy of the Resolution containing the final decision of the County Board.

13. A log which the County Clerk shall require each person seeking to view, copy or file documents with or in the public record, shall sign, stating the date the request to view, copy, file or other was made, the nature of the request (i.e., view, copy, file or other, and identifying the "other"), and the requesting person's name and address.

9.3 The County Clerk or his/her designee shall, during the regular business hours of the County Clerk's Office, make the public record available to any person requesting to review it.

9.4 The County Clerk or his/her designee shall, during the regular business hours of the County Clerk's Office, accept requests from persons for copies of the public record, in whole or in part, and arrange for copying so requested upon the requesting person's payment of the actual cost of copying. The County Clerk shall respond to copying requests within a reasonable time.

9.5 The County Clerk shall be responsible for certifying all copies of the public record.

9.6 Although late filed public comments are not part of the public record pursuant to this Article, they shall be retained by the County Clerk with any evidence of date of filing, such as the County Clerk's date stamp copy of the written comment or the postmark, if the written comment was mailed.

Article 10
SITE APPROVAL DECISION

10.1 After the public hearing(s) or any continuation thereof, the County Board shall consider the record of the public hearing, the findings of fact and the proposed findings of outside counsel for the County and the Hearing Officer, and shall, by written resolution, upon the vote of a majority of its members, make a written decision concerning a site approval application not more than 180 days from the date of the County Clerk's receipt of the site approval application, or within such extended time period as has been agreed upon by the applicant and the County Board. In the event an application for site approval is amended, the County Board shall render a decision within 270 days, or within 90 days after the amended application is received by the County Board, whichever period is longer, or within such extended time period as has been agreed upon by the applicant and the County Board. Such decision by the County Board may be to:

1. grant the application, without any conditions; or

2. grant the application, but with conditions on such approval, provided such conditions are reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and are not inconsistent with the regulations promulgated by the Illinois Pollution Control Board; or

3. deny the application.

10.2 The County Board shall state in its decision its findings as to whether the applicant has established, and whether the public record supports the establishment of each of the following criteria:

1. The facility is necessary to accommodate the waste needs of the area it is intended to serve;

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

3. The facility is located so as to minimize the incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

4. For a transfer facility or 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; and 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 if the facility is a facility described in subsection (b)(3) of Section 22.19a of the Act, the site is flood-proofed;

5. The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

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

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

8. The consistency of the facility with the County's Solid Waste Management Plan, including any updates of that Plan;

9. If the facility is located in a regulated recharge area, any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met.

10.3 The County Board shall consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary, parent corporation, or subsidiary of the parent corporation) in the field of solid waste management when considering the second and fifth criteria in Section 39.2 of the Act, and subsections 10.3.2 and 10.3.5, above.

10.4 In making its decision, the County Board shall consider the public record of the hearing proceedings. The County Board shall give greater evidentiary weight to sworn testimony and evidence presented during the public hearings than to un-sworn oral or written comment.

10.5 No determination by the County Board of an application may be reconsidered, except to the extent it is reversed and remanded on appeal and the County Board is directed by the Illinois Pollution Control Board or Illinois Appellate Court to conduct all or part of the review process again.

10.6 Any County Board member may be excused from participation in the hearing and decision upon demonstration of any disqualifying direct and personal interest in the property or the affairs of the applicant or any objector to the proceedings. Additionally, any County Board Member may abstain from voting on the decision, except to the extent there are insufficient number of Board Members to pass a resolution consistent with Section 10.2, above.

Article 11
SEVERABILITY

11.1 The sections, subsections, paragraphs, and provisions of this Ordinance shall be deemed severable and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

Article 12
REPEAL

12.1 Any or all Ordinances pertaining to a procedure for hearing site approval applications for new regional pollution control facilities prior to the enactment of this ordinance are hereby repealed.

Article 13
EFFECTIVE DATE

13.1 This Ordinance shall become effective upon its adoption by the County Board of Kendall County, Illinois.
Adopted by the County Board of Kendall County, Illinois this 15 day of April, 2008.

ATTEST:

Bennetta Nickelson
County Clerk
Kendal County, Illinois

Chairman
Kendall County Board

STATE OF ILLINOIS
BEFORE THE KENDALL COUNTY BOARD

IN RE:

THE APPLICATION OF WASTE MANAGEMENT OF ILLINOIS and KENDALL LAND AND CATTLE, LLC FOR SITE LOCATION APPROVAL FOR A NEW POLLUTION CONTROL FACILITY

COUNTY OF GRUNDY'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE NEW EVIDENCE SUBMITTED AS "PUBLIC COMMENT" IN VIOLATION OF THE KENDALL COUNTY SITING ORDINANCE

NOW COMES The County of Grundy by and through its attorneys, HINSHAW & CULBERTSON LLP, and for its reply in support of its Motion to Strike the new hydrogeologic evidence submitted by the Applicant as "Public Comment" in violation of the Kendall County Siting Ordinance, states as follows:

1. In its Response to the Motion to Strike, the Applicant urges the County Board to rely on the untimely hydrogeologic evidence (submitted as Public Comment) based, in large part, on the premise that such evidence shouldn't be subject to public scrutiny because the Applicant didn't actually drill the wells that are the subject of the evidence until after the hearing concluded. (*See* Applicant's Response at Paragraph 6). However, the Applicant's failure to complete its hydrogeologic investigation prior to the public hearing does not create a special exception that exempts the Applicant from the requirements set forth in the Siting Ordinance and the Act. Moreover, the Applicant now offers the feeble explanation that it "would have preferred to have presented the documents at the hearing and subjected them to cross-examination [but] this was not possible." (Response at Paragraph 7). The reason it "was not possible" for the Applicant to submit the evidence in a timely manner was that the Applicant did not conduct a complete hydrogeologic investigation prior to the hearing. Thus, the "impossibility" was self-

EXHIBIT
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created and, as noted herein, was intentionally created for tactical reasons. Moreover, it is difficult to fathom why the Applicant was able to dig the wells and derive the data within three weeks after the close of the hearing, yet found it "impossible" to complete this same work during the thirteen months between the time it withdrew its 2007 Application and the time the hearings commenced on its 2008 Application.

2. The Illinois Environmental Protection Act mandates that an applicant seeking siting approval must "submit sufficient details describing the proposed facility to demonstrate compliance" with the 9 siting criteria listed in Section 39.2(a) of the Act. 415 ILCS 5/39.2(a) (emphasis added). Such a request for siting approval must be filed with the County (or municipality) where the proposed site is to be located, and must include: "the substance of the applicant's proposal." 415 ILCS 5/39.2(c). The Act provides that after an application is filed, public hearings are to be conducted for the purpose of publicly assessing the sufficiency of the application. 415 ILCS 5/39.2(d).

3. The Kendall County Facility Siting Ordinance further requires, in relevant part, that an applicant must provide, as part of its application:

> A complete hydrogeologic study of the site by a qualified hydrologist, including but not limited to
>
> ...
>
> (b). General description of the hydrogeologic conditions of the site and the surrounding area, based on an exploratory program including soil borings;
>
> (c). Detailed description of all known or suspected drinking water aquifers located within three (3) miles of the site;
>
> (d). A complete log of each boring made during the exploratory program, including but not limited to:
>
> (1) Textural soil classification (USCS);

> (2) Particle size distribution for representative samples;
>
> (3) Coefficient of permeability based on field and laboratory determinations; and
>
> (4) Ion-exchange capacity and ability to absorb and fix heavy metal ions.

(Kendall County Siting Ordinance, Section 4.4(6)) (emphasis added).

4. In addition to requiring that the applicant provide the information described above in its application, the Kendall County Facility Siting Ordinance also declares, in its prefatory section, that:

> [I]t is apparent to the County Board that unless the information submitted by each applicant for siting approval and by other persons can be evaluated by qualified professionals, including but not limited to engineering and legal professionals, the County Board cannot accomplish what the legislature has mandated.

(Kendall County Siting Ordinance, No. 08-15, prefatory declarations at p. 3)(emphasis added).

5. The Ordinance emphasizes and reiterates this need to ensure that technical evidence is evaluated by qualified professionals, by requiring, at Section 5.5, that:

> Subject to the Hearing Officer's right to extend filing deadlines as set forth in Article 7, all reports, studies, exhibits or other evidence or copies thereof, other than testimony, which any Participant desires to submit for the record at the public hearing must be filed with the County Clerk at least seven (7) calendar days before the public hearing and shall be available for public inspection in the office of the County Clerk. In the event that the seventh day prior to the date set for public hearing falls on a Saturday, Sunday or holiday, the next working day shall be considered the day that reports, studies and exhibits must be filed.

(Kendall County Facility Siting Ordinance, Section 5.5.3) (emphasis added).

6. Section 5.5.3 of the Ordinance is clearly intended to provide all participants with an opportunity to have their experts review an Applicant's technical evidence and evaluate its reliability. In addition to safeguarding the rights of participants, this process ensures that the

Board receives reliable technical evidence that has been professionally analyzed, which then allows the Board to "accomplish what the legislature has mandated."

7. Public hearings in the above-referenced matter began on September 8, 2008 and concluded on October 1, 2008. During the public hearing, questions posed by the Hearing Officer and by County Board members made clear that the Applicant in this case, Waste Management, conducted a deficient and incomplete hydrogeologic study of the proposed site, thereby failing to meet the requirements of the County's Siting Ordinance at Section 4.4.6 (which mandates a complete hydrogeologic study), and also failing to comply with the Environmental Protection Act requirements set forth at Section 39.2(a) and (c) (*See* paragraph 2 above).

8. Two and a half weeks after the close of the public hearing, the Applicant got around to completing its hydrogeologic study of the site by drilling more wells, and on October 28, 2008, approximately four weeks after the close of the public hearing, Waste Management submitted hydrogeologic evidence concerning the new wells and new boring logs. It labeled this new evidence, "Public Comment." Notably, the Applicant made the strategic decision not to serve counsel of record with the new evidence electronically, although it clearly possessed email addresses for counsel and, in fact, all prior filings had been provided electronically. Instead, the Applicant sent the new evidence via U.S. Mail, and as a result, counsel for the County of Grundy did not receive copies of the new evidence until the afternoon of October 31, 2008, just hours before the deadline to file its Post-Hearing Memorandum. The Applicant thereby ensured that participants such as Grundy County would be unable to address the new evidence in their Post-Hearing Memoranda.

9. The cover letter Waste Management submitted with its so-called "Public Comment" admits that the new hydrogeologic evidence was being provided in order to support

the Applicant's theory that the unconsolidated soils beneath the double composite liner are a confining unit. (*See* October 28, 2008 letter from Attorney Don Moran to County Clerk Mickelson, referring to the fact that the Hearing Officer commented on the Applicant's failure to drill a sufficient number of wells in the unconsolidated soils, given that "information from such wells that showed no water would be the most convincing evidence that the unconsolidated soils beneath the double composite liner are a confining unit.")(emphasis added). Moreover, the Applicant's Response in opposition to the Motion to Strike acknowledges that it would have been preferable to introduce the new hydrogeologic evidence during the hearing, at a time when it could have been subjected to cross-examination. (Applicant's Response at Paragraph 7).

10. Waste Management's new evidence includes reports on new soil borings, data concerning newly drilled wells, as well as an anonymously authored "Field Result Summary" which purports to assign meaning to the new data. This new evidence purports to "prove" the conductivity and low permeability of the unconsolidated soils proposed to be situated under the double composite liner. According to the anonymous "phantom" author of the Field Report Summary, the new hydrogeologic data purportedly confirms the presence of a confining unit at the site.

11. When conducting its hydrogeologic study of the proposed site, which is mandated by the County Ordinance, Waste Management made the calculated decision to do an incomplete study before the hearing. The Hearing Officer and the Board, however, noted the incompleteness of the study and chided Waste Management's expert concerning the data missing from its analysis.

12. Once the hearing had concluded, and once Waste Management could be sure that no environmental engineers would be able to comment on its methodology, it then selectively

drilled several wells in areas that were located as far as possible from the northeast corner of the footprint of the landfill which is inside the water table, with intent to provide some pseudo-technical support for its "confining unit theory." Waste Management then submitted this new hydrogeologic evidence under the misnomer of "Public Comment." Waste Management's methodology does not, however, pass muster under professional analysis, and therefore the new evidence is erroneous and/or misleading. Had this evidence been supplied during the public hearing, Grundy County's experts, and presumably other experts as well, could have examined and evaluated the evidence, and could have explained the selective and indeed defective methodology employed in this creative endeavor.

13. This proceeding is not Waste Management's debut with respect to supplying after-the-fact evidence disguised as Public Comment. Indeed, over the last eight (8) years, Waste Management has grown ever more bold in its efforts to circumvent the public siting requirement by utilizing this technique. *See, e.g., Sierra Club, et al., v. Will Co. Bd. and Waste Management of Illinois*, PCB 99-136 / PCB 99-139, at 14 (August 5, 1999) (in which Waste Management filed previously undisclosed reports on or about the final date of the public comment period, resulting in a PCB opinion that declined to hold the technique constituted a denial of fundamental fairness because Waste Management's expert, Underwood, had relied on the previously unfiled documents during her testimony, but warning that "under facts other than these, filings as late as occurred here could well introduce prejudice to the point of rendering an entire proceeding fundamentally unfair."); *see also Land and Lakes Co. v. IPCB*, 319 Ill.App.3d 41, 51-52, 743 N.E.2d 188 (3rd Dist. 2000) (in which Waste Management submitted 2,000 pages of written material on the last day of the public comment period, about which the Appellate Court observed that because Sierra Club failed to demonstrate that the late-filed documents contained erroneous

data or conclusions, "even assuming that the County Board erred by considering the documents, any such error must be considered harmless"); *see also American Bottom Conservancy and Sierra Club v. City of Madison and Waste Management*, PCB 07-84 (Dec. 6, 2007)(in which Waste Management submitted new information on archaeological and wetland issues during the public comment period, which the PCB declined to characterize as fundamentally unfair because the petitioners failed to allege that Waste Management's submissions contained erroneous data or conclusions, and failed to articulate how the petitioners would have responded to the information if it was received earlier.)

14. Here, Grundy County takes exception to Waste Management's chicanery, and objects to the erroneous data and conclusions that appear in the maps, drawings, and other hydrogeologic evidence submitted by Waste Management after the hearing. The erroneous and/or misleading nature of the untimely evidence is discussed in the Affidavit of hydrogeologist Steven Van Hook, a copy of which is attached hereto and filed herewith as Exhibit A. Had the evidence been timely filed, it would have been subjected to professional scrutiny and its misrepresentations of the site would have thereby been exposed by professionals retained by participants such as the County of Grundy. As it is, even a cursory review by Grundy County's expert (necessitated by the time constraints created by the Applicant) has revealed that the evidence is seriously flawed.

15. Waste Management's history makes clear that in recent years it has made a habit of premeditatively withholding crucial information until after the public hearing has closed, and filing the withheld material during the Public Comment period, at the last possible moment, so as to avoid the professional scrutiny of experts. This tactic appears expressly designed to evade the

compelling public hearing requirements of the Environmental Protection Act and the Kendall County Siting Ordinance.

16. The public hearing before the local governing body is universally recognized as the most critical stage of the site approval process. *See e.g. Waste Management v. County Bd. of Kankakee*, PCB 04-186, at 22 (Jan. 24, 2008) (citing *Land and Lakes Co. v. PCB*, 245 Ill. App. 3d 631, 616 N.E.2d 349, 356 (3rd Dist. 1993)). As a result, the manner in which a hearing is conducted, the opportunity to be heard, the existence of *ex parte* contacts, the prejudgment of adjudicative facts, and the introduction of evidence are all important when assessing fundamental fairness. *Hediger v. D & L Landfill, Inc.*, PCB 90-163 (Dec. 20, 1990).

17. The prohibition against *ex parte* contacts derives from the requirement that adjudicatory decisions must be made on the basis of a sworn and transcribed record subject to cross-questioning by all parties involved. *City of Rockford v. Winnebago Co. Bd.*, PCB 87-92, at 15 (Nov. 19, 1987). The danger of *ex parte* contacts is that they "(1) violate statutory requirements of public hearings, and concomitant rights of the public to participate in the hearings, (2) may frustrate judicial review of agency decisions, and (3) may violate due process and fundamental fairness rights to a hearing." *E & E Hauling, Inc. v. Pollution Control Bd.*, 116 Ill.App.3d 586, 606, 451 N.E.2d 555, 571, 71 Ill.Dec. 587, 603 (2nd Dist. 1983).

18. Here, Waste Management's submission of new evidence on October 28, 2008, without affording any opportunity for expert scrutiny, constitutes the *ex parte* presentation of evidence and therefore a denial of fundamental fairness. In the aftermath of this *ex parte* presentation of evidence, the County Board Members have been presented with unexamined technical evidence, and in fact the Siting Counsel for the County relied upon the untested

evidence in reaching its conclusions and recommendations, which were filed on November 5, 2008.

19. It is clear that Waste Management made the conscious decision to conduct an inadequate hydrogeologic study in violation of the County Siting Ordinance, and to go to hearing having knowingly submitted an incomplete and deficient application. It then offered untested, unexamined evidence in the guise of Public Comment, at the last possible moment. In so doing, it essentially set itself up to benefit from its improper conduct, no matter which way participants respond. If participants remain silent, Waste Management succeeds in influencing the Board with self-serving, unexamined technical data of uncertain reliability. If participants object, they thereby draw attention to Waste Management's self-serving evidence.

20. To allow Waste Management to go forward with its application for siting rewards such devious conduct and defies the County's Siting Ordinance, which expressly subjects all evidence to public scrutiny and professional review. One can only speculate whether Waste Management may soon determine that it is best to dispense altogether with hydrogeologic testing prior to the hearing, and instead perform such testing after the hearing and provide the results of that testing as "Public Comment." After all, under Waste Management's theory, hydrogeologic evidence need not be subjected to cross-examination as long as the evidence isn't developed until after the hearing has closed. Indeed, perhaps in the future all parties can follow this path and all of the technical data, from all participants, can be submitted after the public hearings have concluded. The Board can then sift through the conflicting evidence on its own without having to listen to experts opine about it. This, however, appears to conflict with the notion that public hearings serve a real and vital purpose.

21. Notably, this Applicant's predilection for avoiding the mandates of the Environmental Protection Act and the County Ordinance was presaged when it was revealed that Waste Management deliberately chose to re-draw the boundaries of its Application in the 2008 version so as to delete the borrow area, despite the fact that the borrow area (as discussed in Grundy County's earlier Motion to Dismiss) is integral to the operation of the proposed facility. By excluding an integral part of its operations from the application and the map of the facility, Waste Management gave defective Notice under the Act, and the County Board therefore, as argued in Grundy County's prior Motion to Dismiss, has at all times lacked jurisdiction to hear this siting application.

22. For all of the foregoing reasons, the untimely submitted evidence should be stricken as inadmissible. Unfortunately, however, striking the evidence in this case will not cure the fundamental fairness violation that has occurred as a result of Waste Management's conduct, since the evidence is posted on the County's website and it is highly foreseeable that Board members have already viewed it, given its ready availability and the admonition they received to monitor the materials on the website. Therefore, inasmuch as the trier of fact has already been tainted, there is no way to "unring the bell." Moreover, Counsel for the County has already relied on the improperly submitted evidence in formulating its recommendations. (*See, e.g.*, Recommendations of Siting Counsel at pp. 16-17.)

23. If siting is approved, this matter is destined for remand when appealed to the Pollution Control Board, based on a lack of fundamental fairness, on the *ex parte* presentation of evidence to the Board, on defects in Notice, on the incompleteness of Waste Management's application, and/or on Waste Management's failure to meet the burden of establishing the siting criteria of Section 39.2(a) as required both by the Act and by the County Siting Ordinance. The

Hearing Officer should, nevertheless, strike the untimely, untested, self-serving hydrogeologic evidence submitted by the Applicant on October 28, 2008 because it is entirely inadmissible.

WHEREFORE, The County of Grundy prays that the evidence filed by the Applicant on October 28, 2008, after the close of the hearing, be stricken, or in the alternative, that Waste Management's Application be denied for failure to comply with the mandates of the County Siting Ordinance and/or the Environmental Protection Act.

Dated: November 6, 2008

The County of Grundy,

By: HINSHAW & CULBERTSON LLP

Charles F. Helsten
One of Its Attorneys

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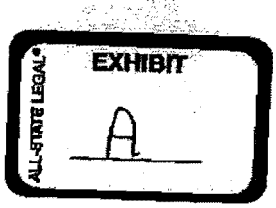

STATE OF ILLINOIS
BEFORE THE KENDALL COUNTY BOARD

IN RE:

THE APPLICATION OF WASTE MANAGEMENT OF ILLINOIS and KENDALL LAND AND CATTLE, LLC FOR SITE LOCATION APPROVAL FOR A NEW POLLUTION CONTROL FACILITY

AFFIDAVIT OF STEVEN VAN HOOK

I, Steven Van Hook, am an adult person, with personal knowledge of the facts attested to herein, and, if called upon to testify and sworn as a witness in this matter, I can competently testify to the following facts.

1. I am employed as a senior hydrogeologist and project manager at Patrick Engineering, in Springfield, Illinois, where I have been employed for the last 19 years.

2. Prior to working for Patrick Engineering, I was employed by the Illinois Environmental Protection Agency as a geologist; while employed by IEPA, I initially conducted groundwater reviews for all of the solid waste disposal facilities in Illinois, and later performed hydrogeologic investigations at Superfund sites.

3. I previously reviewed the 2008 Siting Application for compliance with Criterion (ii), and testified at the public hearings in this matter.

4. I have reviewed the materials filed with the Kendall County Board by Waste Management as "Public Comment" on October 28, 2008, pertaining to Waste Management's drilling of wells in October 2008.

5. Based on my preliminary review of the materials, it is my professional opinion that the materials noted above which submitted by Waste Management on October 28, 2008 as Public Comment offer erroneous or misleading information.

6. Among the flaws I find in Waste Management's evidence submitted as Public Comment are:

a. In order to determine if the unconsolidated soil deposits contain water, four of the five wells should have been set deeper then 7.5 feet because the soils were thicker where the depth to bedrock was approximately 12 to 15 feet.

b. The well screens are not, but should have been, set to the Illinois EPA guidance minimum of 2 feet. This would have improved the ability of the well to collect water in fine grained materials.

c. Waste Management offers no explanation as to why the borings were geoprobed and the wells were installed using hollow stem augers in a separate boring.

d. The borings were drilled substantially deeper then the bottom of the well screens. There is no explanation as to what the borehole below the bottom of the screen was backfilled with. If backfilled with sand, any water would drain down below the bottom of the well screen into the underlying sand. Since the material is fine grained, the water would likely not show up in the well screen in 3 days. In addition, if the bottom of the borehole encountered the top of the bedrock and was backfilled with sand, the water level would indicate the elevation of the confined water level in the more permeable bedrock and not the unconfined water level in the lower permeability soils.

e. The wells, if properly sealed below the bottom of the well screen and the top of the bedrock aquifer, should have been allowed to set for several weeks or even months to determine whether they yield water.

f. Because no water was added, the sand pack and bentonite would absorb much of the water from low yield soils before it could show up in the well. If the borehole below the bottom of the well screen was sealed with bentonite, water could have been added to properly construct and develop the well. The water levels could have been recorded until it stabilized. A stabilized water level above the bottom of the well would indicate saturated soils. If the water level continued to drop until it was dry, it would indicating unsaturated soils. Waste Management failed to do this.

Further Affiant sayeth naught.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

November 6, 2008

OFFICIAL SEAL
DARCY A. STATON
NOTARY PUBLIC - STATE OF ILLINOIS
My Commission Expires December 3, 2011

Steve Van Hook

SUBSCRIBED and SWORN to
before me this 10th day of November, 2008

Darcy A. Staton
Notary Public

KENDALL COUNTY
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PROOF OF SERVICE

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, Jessica Tosh, the undersigned non-attorney certifies that she served a true and correct copy of the foregoing Notice of Filing and all referenced enclosures, by (1) e-mail transmission and (2) U.S. Mail to all respective addresses as listed on the Service List from Lisle, Illinois 60532 on April 10, 2009.

/s/ Jessica Tosh

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC. and KENDALL COUNTY LAND AND CATTLE, LLC,	)	PCB 09-43
Petitioner	)	(Pollution Control Board Facility Siting Appeal)
v.	)	
COUNTY BOARD OF KENDALL COUNTY, ILLINOIS,	)	
Respondent	)	

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