

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                                  |   |   |
|----------------------------------|---|---|
| STOP THE MEGA-DUMP,              | ) |   |
|                                  | ) |   |
| Petitioner,                      | ) |   |
|                                  | ) |   |
| v.                               | ) | PCB 10-103                              |
|                                  | ) | (Third-Party Pollution Control Facility |
| COUNTY BOARD OF DEKALB COUNTY    | ) | Siting Appeal)                          |
| ILLINOIS and WASTE MANAGEMENT OF | ) |   |
| ILLINOIS, INC.,                  | ) |   |
|                                  | ) |   |
| Respondents                      | ) |   |

**THE COUNTY BOARD OF DEKALB COUNTY, ILLINOIS' RESPONSE TO STOP THE MEGA-DUMP'S MOTION FOR RECONSIDERATION**

Respondent, the County Board of DeKalb County, Illinois, by and through its attorneys, responds to the Motion for Reconsideration filed by Petitioner Stop the Mega-Dump ("STMD") by stating the following:

1. STMD has filed a Motion to Reconsider asking this Board to change its March 17, 2011 Opinion and Order ("March 17 Opinion"), and find that (a) the local siting proceedings were not fundamentally fair, and (b) the DeKalb County Board's decision to grant siting was against the manifest weight of the evidence.
2. Section 101.902 of the Pollution Control Board Procedural Rules states that in ruling on a motion to reconsider, this Board "will consider factors, including new evidence, or a change in the law, to conclude that the Board's decision was in error." 35 Ill. Admin. Code §101.902.

3. In support of its Motion, however, STMD cites no new evidence or change in the law. Rather, STMD merely reargues claims it made previously, which the Board considered and determined to be without merit. In fact, the Board extensively described these claims and STMD's arguments in support, carefully analyzed them, and denied them based on the evidence of record and the application of well-established law. Those claims are described as follows:

| <b><u>Point Argued in Motion for Reconsideration</u></b>   | <b><u>Point Previously Argued by STMD</u></b>                | <b><u>Point Considered and Ruled Upon by IPCB</u></b> |
|--|--|---|
| Section 5 of the County Siting Ordinance unfairly restricts public participation and had chilling effect. (Motion at 1-3.) | STMD Opening Brief at 8-9, 11-14; STMD Reply Brief at 3-7.   | Mar. 17 Opinion at 15, 32-36.                         |
| IPCB erred by finding that <u>ex parte</u> contacts cannot take place prior to filing of application. (Motion at 3.)       | STMD Opening Brief at 16-19; STMD Reply Brief at 9-10.       | Mar. 17 Opinion at 40-46.                             |
| Private Tours of Prairie View landfill were fundamentally unfair. (Motion at 3-4.)   | STMD Opening Brief at 7-9<br>STMD Reply Brief at 7-9, 11-12. | Mar. 17 Opinion at 41-46.                             |
| Pre-filing review of siting application by R. Cipriano and R. Bockman violate fundamental fairness. (Motion at 4.)         | STMD Opening Brief at 7-8, 26-27.                            | Mar. 17 Opinion at 42- 46.                            |
| IPCB erred by creating new and unwarranted standard for prejudgment and bias. (Motion at 5.)                               | STMD Opening Brief at 47;<br>STMD Reply Brief at 15.         | Mar. 17 Opinion at 52-54.                             |

| <b><u>Point Argued in Motion for Reconsideration</u></b>   | <b><u>Point Previously Argued by STMD</u></b>        | <b><u>Point Considered and Ruled Upon by IPCB</u></b> |
|--|--|---|
| IPCB declined to apply its technical expertise to the substantive evidence received on criterion (ii). (Motion at 6-7.)  | STMD Opening Brief at 34-39; STMD Reply Brief at 16. | Mar. 17 Opinion at 55, 61-70.                         |
| IPCB erred by applying "reasonably convenient" and not "urgent need" standard in reviewing criterion (i). (Motion at 6.) | STMD Opening Brief at 42-45; STMD Reply Brief at 17. | Mar. 17 Opinion at 55-60.                             |
| IPCB failed to credit evidence regarding peak acceleration standard submitted by STMD. (Motion at 7.)                    | STMD Opening Brief at 41-42                          | Mar. 17 Opinion at 62-63, 66, 70.                     |

4. The purpose of a motion for reconsideration is to bring to this Board's attention "newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Fox Moraine LLC v. United City of Yorkville City Council, PCB 07-146, Order at 1 (December 2, 2009), citing Citizens Against Regional Landfills v. County Board of Whiteside County, PCB 93-156 (March 11, 1993).

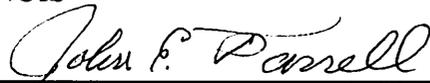
5. STMD has presented no new evidence, a change in the law, or an error in this Board's application of existing law that would indicate that the March 17 Opinion and Order was in error. On this basis alone, the motion for reconsideration should be denied. See Fox Moraine LLC, Order at 1 (as Fox Moraine provided no new evidence or change in the law that would indicate that the Board's opinion was in error, motion to reconsider was denied).

6. This Board carefully considered all of the arguments presented by STMD. The March 17 Opinion and Order was based on a thorough analysis of the record evidence and a proper application of the governing law. STMD has not presented new evidence or law to demonstrate otherwise, and its motion should be denied.

Dated: May 4, 2011

Respectfully submitted,

COUNTY BOARD OF DEKALB COUNTY,  
ILLINOIS

By:   
One of Its Attorneys

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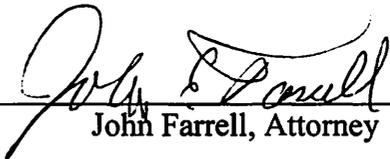
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| OF ILLINOIS, INC.,      | ) |   |
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**NOTICE OF FILING AND PROOF OF SERVICE**

**PLEASE TAKE NOTICE** that on the 4<sup>th</sup> day of May, 2011, I electronically filed with the Clerk of the Illinois Pollution Control Board **Respondent, COUNTY BOARD OF DEKALB COUNTY, ILLINOIS' Response to STOP THE MEGA-DUMP'S Motion for Reconsideration**, a true and correct copy of which is attached hereto and served upon you.

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John Farrell, Attorney

**CERTIFICATE OF SERVICE**

THE UNDERSIGNED CERTIFIES THAT THE FOREGOING INSTRUMENT-DOCUMENT WAS SERVED UPON THE AFOREMENTIONED PARTIES, BY ELECTRONIC FILING AND DEPOSITING A TRUE AND CORRECT COPY OF SAME INTO THE U.S. MAIL LOCATED AT 106 E. STATE STREET, SYCAMORE, ILLINOIS 60178, IN A PROPERLY ADDRESSED, FIRST CLASS POSTAGE PREPAID ENVELOPE, THIS 4<sup>TH</sup> DAY OF MAY, 2011, AT OR BEFORE THE HOUR OF 5:00PM.

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Legal Secretary