

ILLINOIS POLLUTION CONTROL BOARD  
October 29, 2015

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
Petitioner,	)	PCB 16-56
	)	(Third-Party Pollution Control
v.	)	Facility Siting Appeal)
	)	
VILLAGE OF ROCKDALE, BOARD OF	)	
TRUSTEES OF VILLAGE OF ROCKDALE	)	
and ENVIRONMENTAL RECYCLING AND	)	
DISPOSAL SERVICES, INC.,	)	
	)	
Respondents.	)	

**MOTION TO CONSOLIDATE**

**NOW COMES** Environmental Recycling and Disposal and Services, Inc., by its attorney, George Mueller, and moves to consolidate this cause with PCB 16-54, entitled Will County v. Village of Rockdale, Board of Trustees of Village of Rockdale, and Environmental Recycling and Disposal Services, Inc. and in support thereof states as follows:

1. On September 3, 2015, the Village Board of Trustees of Rockdale, Illinois unanimously granted local siting approval, subject to conditions to Environmental Recycling and Disposal Services, Inc., for the Moen Transfer Station proposed to located in Rockdale, Illinois. The only participants in the siting hearing other than the Village and the Applicant, were Will County, Waste Management of Illinois, Inc., and the City of Joliet.
2. Will County and Waste Management of Illinois both filed timely Petitions for Review of local siting approval pursuant to 415 ILCS 5/40.1.
3. Attached hereto and made a part hereof is the Petition for Review filed in case PCB 16-54, by Waste Management of Illinois, Inc.

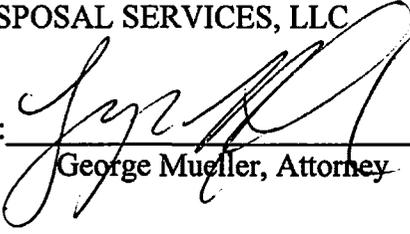
4. Petitions for Review in the two cases are substantially similar and raise essentially the same issues, mainly an alleged defect in the statutory pre-filing notice, improper amendment of the siting application and that the substantive decision on the statutory siting criteria was against the manifest weight of the evidence. Neither Petition for Review raises fundamental fairness issues.
5. Based upon the fact that both Petitions arise out of the same local siting hearing, with the same evidence, the similarity of the parties and the similarity of the issues raised by the respective Petitioners, the interests of judicial and administrative economy would support consolidation of these two cases.

**WHEREFORE**, Environmental Recycling and Disposal Services, Inc. prays that this cause be consolidated with PCB 16-54.

Respectfully submitted,

ENVIRONMENTAL RECYCLING AND  
DISPOSAL SERVICES, LLC

By: \_\_\_\_\_

  
George Mueller, Attorney

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WILL COUNTY, ILLINOIS )

Petitioner, )

v. )

VILLAGE OF ROCKDALE, BOARD OF )  
TRUSTEES OF VILLAGE OF ROCKDALE )  
and ENVIRONMENTAL RECYCLING AND )  
DISPOSAL SERVICES, INC., )

Respondents. )

PCB No. \_\_\_\_\_  
(Pollution Control Facility  
Siting Appeal)

**PETITION FOR REVIEW OF LOCAL SITING APPROVAL FOR  
NEW POLLUTION CONTROL FACILITY**

NOW COMES the Petitioner, Will County, Illinois by and through its attorneys HINSHAW & CULBERTSON, LLP, and hereby petitions the Illinois Pollution Control Board ("PCB") to review the decision of the Board of Trustees of the Village of Rockdale ("Village Board") granting site location approval to Environmental Recycling and Disposal Services, Inc. ("ERDS" or "Applicant") for the proposed Moen Transfer Station to be located at 2277 Moen Avenue in the Village of Rockdale. In support hereof, Will County states as follows:

1. This Petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act, 415 ILCS 5/40.1 ("Act"), in accordance with Sections 107.200 through 107.208 of the PCB procedural rules, 35 Ill. Admin. Code §§ 107.200-.208.

2. On December 12, 2014, ERDS filed an Application for Siting Approval ("Application") with the Village of Rockdale requesting approval for a proposed municipal solid waste transfer station to be located at 2277 Moen Avenue, Rockdale, Illinois (the "Facility").

3. Will County appeared at and participated in the hearings held before the Village Board. Will County filed motions and responses to motions, cross examined witnesses, and presented its own witnesses.

4. The proposed Facility is located in Will County, so Will County is a party situated so as to be directly affected by the proposed Facility. Will County therefore has standing to file

this Petition pursuant to Section 107.200(b) of the PCB procedural rules. 35 Ill. Admin. Code § 107.200(b). In addition, this Petition is not duplicative or frivolous.

5. Prior to filing its application, the Applicant sent a pre-filing notice representing, as part of the nature and size of the Facility, that the proposed average throughput would be 200 tons per day.

6. On the first day of the public hearing, counsel for the Applicant provided an "errata" to the Application. This "errata" included new data and made significant changes to the Application. Therefore, the hearing officer determined that the Application had been *de facto* amended.

7. On the last day of the public hearing, after the Application had already been amended, the Applicant "clarified" that the "average" throughput stated in the pre-filing notice was actually a minimum throughput, that there was no proposed maximum throughput, and that the Facility was proposed to handle significantly more than the 200 tons per day set forth in the pre-filing notice.

8. Because the pre-filing notice, which is a jurisdictional requirement of Section 39.2(b), did not set forth the "nature of the activity proposed," that notice was fatally flawed so as to divest the Village Board of jurisdiction. The Village Board's decision to grant siting approval should therefore be reversed.

9. On September 3, 2015, the Village Board "conditionally" approved the Application. A true and correct copy of the Village Board decision granting same is attached hereto as Exhibit A. A "conditional" approval in the manner employed by the Village Board is not authorized by Section 39.2 of the Act.

10. The substantial change in projected throughput numbers also amounted to a second amendment of the Application, in violation of Section 39.2(e) of the Act, and, accordingly, the Village Board's decision to grant siting approval should be reversed.

11. The Village Board's decision to grant siting approval should also be reversed because the Applicant failed to establish that it met the following criteria as required by Section 39.2(a) of the Act:

- (i) The Facility is necessary to accommodate the waste needs of the area it is intended to serve;
- (ii) The Facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- (iii) The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

WHEREFORE, Will County requests that the PCB enter an Order:

- (a) Setting for hearing this contest of the Village Board's siting decision;
- (b) Reversing the Village Board siting approval decision; and
- (c) Providing such other and further relief as the Board deems appropriate.

Dated: October 6, 2015 Respectfully submitted,

On behalf of WILL COUNTY, ILLINOIS

/s/ Charles F. Helsten

Charles F. Helsten  
One of Its Attorneys

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**AFFIDAVIT OF SERVICE**

STATE OF ILLINOIS                    )  
                                                  ) SS  
COUNTY OF WINNEBAGO            )

The undersigned certifies that on **October 6, 2015**, a copy of the foregoing **PETITION FOR REVIEW OF LOCAL SITING APPROVAL FOR NEW POLLUTION CONTROL**

**FACILITY** was served upon the following:

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