

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 15 2003

STATE OF ILLINOIS  
Pollution Control Board

SOLID WASTE AGENCY OF NORTHERN )  
COOK COUNTY, )

Petitioner, )

v. )

CITY OF DES PLAINES, ILLINOIS and, )  
DISPOSAL MANAGEMENT SYSTEMS, INC., )

Respondents. )

PCB 03-210

(Pollution Control Facility  
Siting Facility)

To: See Attached Service List

NOTICE OF FILING

PLEASE TAKE NOTICE that on May 15, 2003, the City of Des Plaines filed with the Illinois Pollution Control Board, on the attached Service List, the attached "Special and Limited Appearance", and "Motion to Dismiss Solid Waste Agency of Northern Cook County's Petition for Hearing to Contest Site Location Approval" in the above-captioned matter. Copies were also placed in the U.S. Mail from Des Plaines City Hall, 1420 Miner Street, Des Plaines on May 15, 2003, to the persons and addresses listed on the attached Service List.

CITY OF DES PLAINES

By: David R. Wiltse  
One of its attorneys

David R. Wiltse  
City Attorney  
1420 Miner Street  
Des Plaines, IL 60016  
847/391-5302  
Attorney Number 29877

## SERVICE LIST

Patricia F. Sharkey  
Mayer, Brown, Rowe & Maw  
190 S. LaSalle Street  
Chicago, IL 60603  
Fax Number: 312/706-9113

Dorothy M. Gunn  
Illinois Pollution Control Board  
100 W. Randolph Street  
Suite 11-500  
Chicago, IL 60601  
Fax Number: 312/814-3669

Joe Anderson  
Disposal Management Systems, Inc.  
103 Sell Road  
Des Plaines, IL 60018  
630/960-2432

Joe Anderson  
Disposal Management Systems, Inc.  
420 Cutters Mill Lane  
Schaumburg, IL 60194

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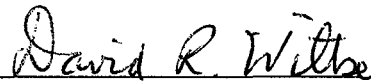
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SPECIAL AND LIMITED APPEARANCE

I, David R. Wiltse, City Attorney for the City of Des Plaines, enter my Special and Limited Appearance and "Motion to Dismiss Solid Waste Agency of Northern Cook County's Petition for Hearing to Contest Site Location Approval" as counsel on behalf of City of Des Plaines in this matter for the sole purpose of objecting to the jurisdiction of the Illinois Pollution Control Board over this case.

Respectfully submitted,



David R. Wiltse

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**MOTION TO DISMISS SOLID WASTE AGENCY  
OF NORTHERN COOK COUNTY'S PETITION FOR HEARING  
TO CONTEST SITE LOCATION APPROVAL**

NOW COMES the City of Des Plaines, an Illinois municipal corporation, and home rule entity, situated in Cook County, Illinois, and moves to dismiss the Petition of Solid Waste Agency of Northern Cook County (SWANCC) to allow the filing of its new Petition, and states as follows:

1. The Illinois Pollution Control Board is without jurisdiction to hear the Petition for Hearing to Contest Site Location Approval for the following particulars:

A. The application is for a transfer station facility. This application was dated August 5, 2002, and received in person by the Mayor's secretary, Donna Catlett, on August 6, 2002. See attached Exhibit "A" incorporated herein by reference.

B. That pursuant to regulations of the Board set forth (Section 39.2e), the timeline for action by the governing body or County Board is as follows: "If there is no final action by the County Board or governing body of the

municipality within 180 days after the filing of the request for site approval, the applicant may deem the request approved.”

C. That accordingly, applicant may, pursuant to this above-noted section, have deemed the application to be approved on or about February 3, 2003.

D. Pursuant to Section 107.204, the time for filing a petition for review must be filed within 35 days after the local authorities’ action, which would include the time frame of 180 days should the governing body fail to act within that time.

E. Although the public hearing, duly noticed, before the City Council was December 2, 2002, the decision of the City approving the site location was not issued until after February 4, 2003. According to the regulations, it then became approved within 180 days of the filing with Des Plaines.

F. The Petition of Solid Waste Agency of Northern Cook County was filed on April 29, 2003, after the 35-day jurisdictional filing period had expired. Accordingly, the filing is untimely and the Board is without jurisdiction to hear this Petition for review.

G. The issuance on March 26, 2003 of a letter confirming the Des Plaines City Council’s vote of February 18, 2003 which occurred after the 180 day period expired, is not the event which triggers the 35-day deadline. No such letter can restore a jurisdictional timeline which has already expired. (See Board Order between parties as a result of its action on April 17, 2003 determining that it did not have jurisdiction.) Once determined by Order by the Board from the

same August 5, 2002 application, the doctrine of *res judicata* bars the new Petition and the lack of jurisdiction of the Illinois Pollution Control Board to hear this Petition is clear on its face.

WHEREFORE, the City of Des Plaines requests that this matter be dismissed by the Illinois Pollution Control Board, there being no jurisdiction for the Board to entertain the Petition of the Solid Waste Agency of Northern Cook County, or any motion to amend same.

Respectfully submitted,

CITY OF DES PLAINES

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One of its attorneys

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d:\SWANCC suit\motion to contest site location approval



# DISPOSAL MANAGEMENT SYSTEMS, INC.

420 Cutters Mill Lane

Schaumburg, Illinois 60194

Dispatch 847-884-7676 or 877-4-CONTAINER

Billing 847-375-9626

Fax: 847-375-9635

www.disposalmanagement.com

Fax: 630-960-2432

August 5, 2002

The City of Des Plaines  
1420 Miner St.  
Des Plaines, Ill. 60016

Attention: Mr. Bill Schnieder

Re: 103 Sell Rd. Recycling Center

Dear Mr. Schnieder:

We, at DMS,, currently operate a 2,000 square foot recycling center for construction and demolition material at 103 Sell Rd. We unload dumpsters from construction sites and sort out the recyclable items. The sorted material is taken offsite for processing. Presently, we remove from the waste stream the following items:

- \* Pallets
- \* Wood
- \* Concrete
- \* Cardboard
- \* Bricks
- \* Asphalt
- \* Steel
- \* Aluminum
- \* Clean dirt/ gravel/ sand

The remaining material consist of mainly drywall and plastic. We currently recycle approx. 15 incoming truckloads and 30 tons of recycled material per day. This material is recovered for a good use, rather than filling up a landfill. The 25% that are not recycled go to a licensed landfill.

*Received  
Pallet  
8/6/02*

Export No. "A"

Pursuant to Section 39.2 of the Environmental Protection Act of Illinois Local Siting Review must address the following items:

a. Applicant must submit details describing the proposed facility to demonstrate compliance with the following criteria, (please see attachment for detailed description)

1. – This facility serves a great need for the surrounding area. By recycling this construction material we are not only saving landfill space for future generation, but we are improving the quality of life of all the citizens in the area. Consider the benefits we all reap when we convert brick and concrete in to gravel at Vulcan Material in Elk Grove Village. This means that now contractors do not need to drive semi trailers out to Elgin to obtain a load of gravel, they can pick it up right in Elk Grove. That seemingly minor difference, reduces truck traffic on our roads, reduces air pollution, fuel consumption, construction cost, and even broken windshields from gravel trucks on I-90. There are very few facilities that recycle construction debris. This facility is needed.
2. This state permitted facility has been operating for two years and has been inspected by the Illinois EPA. Since we are not changing the facility or its operation we believe the facility is located and operated in a manner that will protect the publics health, safety and welfare.
3. This facility is located in an area that is zoned industrial. Nearby properties include a paving company, steel company, O'Hare airport, wood recycler, and many construction storage yards. Since the operation is not changing appreciably we do not expect any change in the surrounding property values.
4. This site is located outside of a 100-year flood plain.
5. This facility has a containment dike around the entire sorting operation. This will prevent any discharge of material to the waterways when sorting a load. The sorting facility is constructed of masonry block to isolate a fire if it should occur. Additionally, because of the small size of this facility, we can not and do not store large amounts of any one material for long periods of time. This greatly reduces the risk of accidents.

*JG*  
8/5/02

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Fax: 847-375-9635

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Fax: 630-960-243

We have been operating this facility for 2 years under a permit from the state of Illinois for demolition and construction recycling centers. This permit requires us to recycle 75% of the material that comes into the facility. The permit allows us to recycle a good amount of material. However, we could be recycling more tonnage if it were not for the 75% recycle requirement.

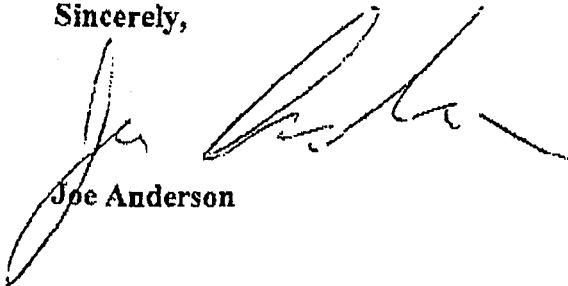
There are certain loads of material that arrive at our site that we have to reject, because the load may only have 50% recyclable material. If we were to dump the load, we would not meet our goal of 75%. A typical load like this would have 50% drywall and 50% brick or block. If we could recycle a load such as this, we would be able to greatly decrease the amount of material being sent to landfills. If we can not recycle the load, then the load is taken to a transfer station for disposal at a landfill. Instead of ½ half of this load being sent to the crusher to turn brick and block into gravel, all of it will go to the landfill.

The state of Illinois only has two categories for this type of facility. Either you are a transfer station or a recycle station with the 75% requirement.

We are proposing that the City of Des Plaines allow us to apply for and obtain a transfer station permit, from the State of Illinois, with the written understanding that the facility would only accept construction and demolition material for recycling and disposal. Essentially, we would not change our operation other than to have more flexibility in the loads that we recycle. We do not see any significant change in truck traffic, because the loads that are rejected still come to the facility and then are sent away without having been dumped.

Mr. Schnieder, to meet the state EPA requirements for permitting a transfer station we are required to have a public hearing in our city. Please let us know of what dates are available on your calendar.

Sincerely,



Joe Anderson