

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2003

LOWE TRANSFER, INC. and MARSHALL)	
LOWE,)	
)	
Petitioners,)	
)	
v.)	PCB 03-221
)	(Pollution Control Facility
COUNTY BOARD OF MCHENRY)	Siting Appeal)
COUNTY, ILLINOIS,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

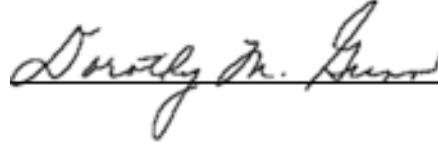
On August 18, 2003, petitioners filed a motion asking the Board to schedule a visit to the proposed Northwest Highway Transfer Facility location, pursuant to 35 Ill. Adm. Code 101.632. Petitioners assert that the ability of the Board to observe the site will assist the Board in understanding the testimony in the record. Mot. at 1. On August 22, 2003, McHenry County Board filed a response in opposition to the motion.

In the response, McHenry County Board asks that the Board deny the motion for three reasons. First, McHenry County Board asserts that any site visit would constitute an improper *de novo* review of the decision by the McHenry County Board. Resp. at 1. Second, McHenry County Board argues that even though the Board's rules allow for site visits, any such site visit is inappropriate, if not expressly prohibited in a proceeding, where the Board's review is based on the manifest weight of the evidence. *Id.* Third, given time constraints in this decision deadline case, the request for a site visit should be waived as untimely. Resp. at 2.

This case is before the Board on petitioners' appeal of a denial of siting by the McHenry County Board for a waste transfer station. Section 101.632 allows the Board to make a site visit to establish a more comprehensive record. 35 Ill. Adm. Code 101.632. However, when reviewing a decision by a governing body to deny siting of a pollution control facility, the Board's decision is based exclusively on the record before the McHenry County Board. 415 ILCS 5/40.1(a) (2002). Only if there is a question regarding jurisdiction or fundamental fairness does the Board look outside the record before the governing body. In this petition for review, the petitioners only raise issues concerning the denial by McHenry County Board based on the criterion of Section 39.2 of the Act (415 ILCS 5/39.2 (2002)); therefore, the Board finds that a site visit would be inappropriate in this proceeding, and the motion is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 4, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board