BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VILLAGE OF ROBBINS and ALLIED WASTE TRANSPORTATION, INC.,	)	
Petitioners,	)	
vs.	)	Case No. PCB No. 04-48
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

REPLY TO THE IEPA'S RESPONSE TO THE PETITIONERS' MOTION FOR SUMMARY JUDGMENT

NOW COME the Petitioners, VILLAGE OF ROBBINS, ILLINOIS, and ALLIED WASTE TRANSPORTATION, INC., by and through undersigned counsel of record, and hereby respectfully submit their Reply to the IEPA's Response to the Petitioners' Motion for Summary Judgment for modification of a solid waste management facility permit and, in support thereof, state as follows:

I. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT.

The Respondent, Illinois Environmental Protection Agency ("IEPA"), argues that there are genuine issues of material fact that preclude the entry of summary judgment in this case. In support of this argument, the Respondent alleges that there is some question regarding the type of facility that was approved by the Village of Robbins in 1993. However, the evidence contained in the record unequivocally shows otherwise, as the record clearly establishes that the facility approved by the Village of Robbins on February 9, 1993 was intended to be a "pollution control facility," which can, by legal definition, include components of a waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility and/or a waste incinerator. *See* 415 ILCS 5/3.330.

Despite the clear language set forth in the Village of Robbins ordinance, the Respondent contends that there is somehow a question of fact regarding what type of facility was intended by the Village of Robbins because (1) a copy of the application was not provided to the IEPA or the PCB, (2) the 1993 Village of Robbins ordinance makes a minimal reference to a "waste-to-energy facility" and the generation of electricity, (3) the 1989 ordinance passed by the Village of Robbins refers to a "solid waste energy facility", and (4) documents relating to the 1989 ordinance state that the facility is not intended to act as a waste transfer station. All of these arguments must fail, as none of them establish that a genuine issue of material fact exists with respect to the facility approved by the Village of Robbins in 1993.

Respondent's first contention (that there is a question of fact because the application for the facility was not provided) is completely unfounded. The language of a statute itself is the most reliable indicator of the legislator's objectives in enacting a particular law. *In re D.D.*, 196 Ill.2d 405, 752 N.E.2d 1112 (Ill. 2001). It is a well-established principle of statutory construction that the words used in a legislative enactment are to be given their plain meaning. *People ex. rel. Department of Professional Regulation v. Manos*, 202 Ill.2d 563, 782 N.E.2d 237 (Ill. 2002). When the words are unambiguous, there is no need to look to extrinsic sources to determine their meaning. *Id.* This principle is applicable to this case and the ordinance at issue. Based on the plain language set forth in the ordinance itself, it is clear that the Village of Robbins intended to approve a "pollution control facility." In fact, the February 9, 1993 ordinance specifically makes reference to the facility as a "pollution control facility" in four different locations, most notably in the title of the ordinance itself. R. 064-70. Nowhere in the ordinance is the facility referred to as any other type of facility. *See id.* Because there is no question that the Village of Robbins intended to approve a "pollution control facility", a

specifically defined term in the Illinois Environmental Act, there is no need to resort to the application to interpret what the Village of Robbins approved.

Additionally, the Respondent is simply incorrect in asserting that the Village of Robbins somehow intended to approve only an incinerator through its 1993 ordinance simply because the ordinance makes a parenthetical reference to a "waste-to-energy facility" and indicates that the facility will "generate electricity from the combustion of municipal waste." R. 069, 070. It is well-settled that when interpreting a legislative enactment, a court must give effect to the entire statutory scheme, rather than looking at words and phrases in isolation from other relevant portions of the statute. *Carrol v. Paddock*, 199 Ill.2d 16, 764 N.E.2d 1118 (Ill. 2002). In this case, reading the ordinance as a whole establishes that the Village of Robbins intended to approve a "pollution control facility." While there is a parenthetical reference to a "waste-to-energy facility" and one reference to electricity generation, there is no evidence contained in the ordinance that the Village of Robbins intended only to approve a facility that would be used exclusively as an incinerator, as suggested by the Respondent. In fact, the ordinance does not even contain the word "incinerator." *See* R. 064-070. When read as a whole, it is clear that the ordinance intended that the facility be used as a "pollution control facility" and did not intend it to be limited in its use in the manner suggested by the Respondent.

The Respondent's further contention that the facility must have been intended to be approved as only an incinerator because of references contained in the 1989 ordinance is also entirely without merit. While it is true that the 1989 facility did refer to the approved facility as a "solid waste energy facility," this does not prove that the facility approved in 1993 was intended to be operated solely as an incinerator, for two reasons. First, the 1989 ordinance does not define a "solid waste energy facility", and there is no definition for such a phrase contained in the

Illinois Environmental Protection Act. Therefore, there is no support for the Respondent's presumption that this description of the facility somehow implies that the facility approved by the Village of Robbins was for an incinerator and an incinerator only. Furthermore, even if the Village of Robbins intended such a meaning to be attached to the phrase "solid waste energy facility" in its 1989 ordinance, the fact that the 1993 ordinance does not include such a phrase actually clearly supports Petitioners' argument that the 1993 facility was intended to be more than an incinerator. Had the Village of Robbins intended the 1993 facility to only be an incinerator or solid waste energy facility, it would have expressly so stated in the 1993 ordinance. *See Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 203 Ill.App.3d 799, 561 N.E.2d 135 (5th Dist. 1990) (explaining that the legislature uses terms in a statute that convey its intent). It is particularly telling that the Village Board specifically excluded any descriptive term for the facility, other than "pollution control facility", particularly in light of the inclusion of a more descriptive term in the 1989 ordinance. The fact that the 1993 ordinance is devoid of a reference to the facility as a "solid waste energy facility", or any similar term establishes that the Village did not intend for the facility to be limited to only solid waste energy operations when it approved the facility in 1993. Consequently, Respondent's argument that the 1989 ordinance somehow establishes that the 1993 ordinance approves only an incinerator is also entirely without merit.

Moreover, the Respondent's assertion that a document provided by the applicant in May of 1989 somehow defines the parameters of the approval provided by the Village in 1989 or 1993 is simply ludicrous. In fact, the very document that the Respondent relies upon its attempt to establish that the facility at issue was not granted approval to act as a waste transfer station

conclusively proves that the facility is a waste transfer station, as was explicitly found the Illinois Environmental Protection Agency. The very document cited by the Respondent provides:

> **DLPC has also determined that the facility will be a regional pollution control facility used as a garbage transfer station** during periods when one or more of the Refuse Derived Fuel trains or a Fluidized Bed Boiler is down. Section 22.14 of the Illinois Environmental Protection Act requires than [sic] such facilities be located more than 1000 feet from any dwelling or property zoned for primarily residential use. A written certification of the compliance with this provision of the Act is required as part of this permit application.

R. 55 (emphasis added). This statement makes clear that the Illinois Environmental Protection Agency concluded that the facility, as sited by the Village of Robbins, would be used a transfer station. Despite the fact that the IEPA clearly believed that the sited facility was a waste transfer station several years ago, the IEPA now disingenuously (and bordering on bad faith) argues that the facility is not a waste transfer station. Clearly, such an argument is without merit because the Agency's own interpretation of the siting approval granted to the facility establishes that the facility would serve as a waste transfer station.

Furthermore, the Respondent's reliance on the applicant's 1989 response to the IEPA's inquiry about the facility serving as a waste transfer station is misplaced. In fact, the applicant's response to the IEPA's comments in 1989 is completely irrelevant to the issue at hand because, pursuant to section 39.2 of the Illinois Environmental Protection Act, the local governing body approves or disapproves site location approval. See 415 ILCS 5/39.2. As such, the local siting authority determines the scope of the approval. Based on the application supplied by the applicant, the Village of Robbins clearly believed (just as the IEPA did) that it was granting siting approval to a facility that would act in part as a transfer station. Therefore, it is irrelevant that the applicant later suggested that it was not intending to operate a transfer station after the siting approval had already been granted.

Finally, the Respondent's reliance on the document presented by the applicant to the IEPA in 1989 is irrelevant because the facility approved in 1989 was an entirely different facility than the one approved in 1993. In fact, the siting approval for the 1989 facility was reversed and a new application was provided in 1992 and approved by the Village of Robbins in 1993. It was approval of that facility that is at issue here. Although the Respondent assumes that the scope and description of the proposed facility did not change between 1989 and 1993, the Respondent has no support for such an assumption. Consequently, it is entirely improper for the Respondent to assert that information provided by the applicant related to the facility proposed in 1989 (which was not sited) has any bearing whatsoever on the scope of Village's approval in 1993.

For the reasons set forth above, there is no issue of material fact in this case. Rather, it is completely clear that in 1993, the Village of Robbins approved the operation of a pollution control facility, which would encompass the operation of, among other things, a waste transfer station. *See* R. 076. Consequently, Petitioners' Motion for Summary Judgment for modification of a solid waste management facility permit should be granted.

II. THE PETITIONERS HAVE CORRECTLY APPLIED SECTION 39.2(e-5), WHICH REQUIRES THAT THE REQUESTED PERMIT MODIFICATION BE GRANTED.

The Respondent unconvincingly argues that section 39.2(e-5) of the Illinois Environmental Protection Act does not apply to this case because the Village of Robbins is attempting to "change" its siting approval to an entirely new and different facility. However, that is clearly not what the Petitioners are attempting to accomplish. Rather, the Petitioners are simply establishing that as the local siting authority, the Village of Robbins possesses the authority to make clear that the approval granted to Robbins Resource Recovery Company many years ago was meant to allow the facility to operate, in part, as a solid waste transfer station.

Furthermore, the Village is asserting its clear right to allow the new operator of the facility, Allied Waste Transportation, Inc., to operate the facility primarily as a waste transfer station because the siting approval previously granted to the pollution control facility was "sufficiently broad to cover the proposed use of the Property and the Facility." R. 076. Such acts are not only improper, as asserted by the Respondent, but, rather, they are expressly allowed by section 39.2(e-5).

The Respondent employs a circular, strained argument to support its conclusion that section 39.2(e-5) is inapplicable. The Respondent's entire argument is flawed, however, because it is based on the presumption that the siting approval granted by the Village of Robbins in 1993 was for a waste incinerator. Such a presumption is entirely unfounded because there is absolutely no support for the Respondent's assertion "that the 1993 ordinance granted siting approval for a municipal waste incinerator, and not a waste transfer station." Respondent's Response, p. 8. In fact, as set forth above in Part I, the 1993 ordinance never makes any mention of the term incinerator but, rather, repeatedly refers to a "pollution control facility." As such, it is inappropriate for the Respondent to assume and base its entire argument on the assumption that the facility was approved exclusively as an incinerator.

Based on the Respondent's erroneous assumption that the Village of Robbins approved only an incinerator in 1993, the Respondent asserts that the Village's decision to allow Allied Waste Transportation, Inc. would be "wholesale change" in the approval granted by the Village in its 1993 ordinance. However, it is clear that the Petitioners are not seeking such a "wholesale change" because the facility, as approved in 1993, was not to act exclusively as a waste incinerator but was to have many transfer station components, as is made clear by the IEPA

permits issued to the facility.[1] Therefore, the Petitioners are not attempting to change the "type of facility," as asserted by the Respondent. Rather, the Petitioners are simply attempting to have the facility operate within the parameters of the approval granted to the facility in 1993, but with a slightly different focus.

Because the Respondent clearly misunderstands the Petitioners arguments, the Respondent asserts that it is unimportant that the siting authority granted by the Village of Robbins for the facility encompassed waste transfer components. However, such a fact is entirely relevant because it establishes that the Petitioners are not attempting to entirely change the type of facility approved, but are merely intending to slightly modify the focus of the operations at that facility. Because the 1993 approval by the Village of Robbins clearly allowed that facility to act as a transfer stations in many aspects of its operation, the modification being sought by the Petitioners is clearly allowed by section 39.2(e-5), and should be granted.

Finally, the Respondent asserts that it is irrelevant that the facility to be operated by Allied Waste Transportation, Inc. is less damaging to the environment than the facility envisioned by the Village when it granted approval in 1993. However, that is clearly a relevant consideration, as set forth by this Board in *Waste Management of Illinois, Inc. v. IEPA*, PCB 94-153 (July 21, 1994). In *Waste Management*, this Board found that no additional siting approval was required where a requested permit modification would result in decreased potential impact to the environment. *See id.* at 7. Likewise, in this case, no new siting approval should be required because the impacts to the environmental will actually be reduced by the permit modification sought by the Petitioners.

[1] The Respondent asserts that there are genuine issues of material fact because these permits are not contained in the record. In order to clearly establish that no genuine issue of material fact exists, the Respondent is filing a request to supplement the record to include these permits, which is forthcoming.

For the reasons set forth above, section 39.2(e-5) explicitly allows the modification sought by the Petitioners because the Petitioners are seeking a modification that comes within the scope of the original siting approval granted to the facility. Consequently, Petitioners' Motion for Summary Judgment for modification of a solid waste management facility permit should be granted.

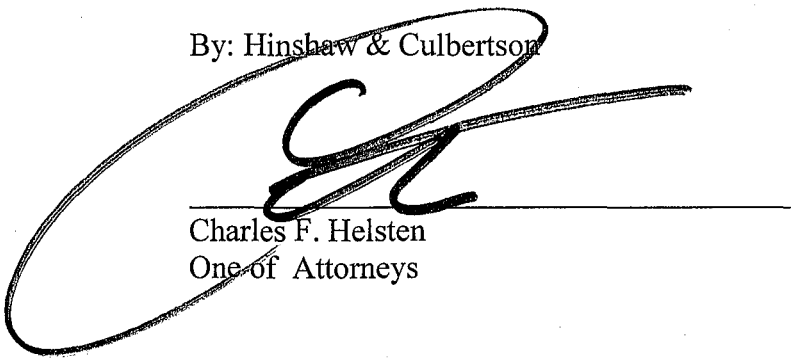
WHEREFORE, the Petitioners, VILLAGE OF ROBBINS and ALLIED WASTE TRANSPORTATION, INC. request this Honorable Board grant its Motion for Summary Judgment and for such other and further relief as this Honorable Board deems just and appropriate in the circumstances.

Dated: June 11, 2004

Respectfully Submitted,

VILLAGE OF ROBBINS and ALLIED WASTE TRANSPORTATION, INC., Petitioners

By: Hinshaw & Culbertson



Charles F. Helsten
One of Attorneys

HINSHAW AND CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on June 11, 2004 , a copy of the foregoing was served upon:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

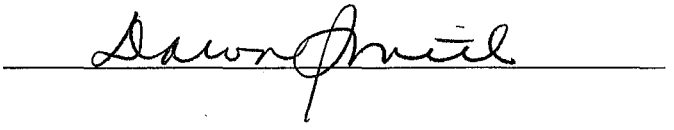
John J. Kim
Renee Cipriano
Special Assistant Attorney General
Division of Legal Counsel
1021 N. Grand Avenue, East
Springfield, IL 62794-9276

Mr. Brad Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, 11th Floor
Chicago, Illinois 60601

Mr. William Mansker
Village of Robbins
3327 W. 137th Street
Robbins, IL 60472

Steve Smith
Allied Waste Transportation, Inc.
13701 South Kostner
Crestwood, IL 60445

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Chicago, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.



HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1369
Rockford, IL 61101
(815) 490-4900