BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VILLAGE OF ROBBINS and ALLIED WASTE TRANSPORTATION, INC.,	)	
Petitioner,	)	48
	)	**Case No. PCB No. 04-~~08~~**
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	**(Permit Appeal)**
Respondent.	)	

NOTICE

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PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REPLY TO RESPONDENT'S RESPONSE TO PETITIONERS MOTION FOR SUMMARY JUDGMENT, copies of which are herewith served upon you.

Respectfully submitted,

VILLAGE OF ROBBINS,
One of the Petitioners

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REPLY TO RESPONDENT'S RESPONSE TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT

NOW COMES the Petitioner, Village of Robbins, Illinois, and Allied Waste Transportation, Inc., by and through undersigned counsel of record, and hereby respectfully submit their Reply to Respondent's Response to Petitioners' Motion for Summary Judgment and states as follows:

I. RESPONDENT NOT ABLE TO FIND ISSUES OF MATERIAL FACT

There are none. The siting was approved by the Petitioner (Village) and the permits were issued by the Respondent (IEPA) concerning the Robbins Resource Recovery facility. The original siting and permitting covered a number of pollution control activities at the site including collection, processing, sorting, storing, recycling and disposing of municipal solid waste (MSW). By making a request for modification of the permit the Petitioner is not attempting to add a new activity that was not covered in the original siting; it is modifying a permit concerning a function that was a pertinent part of the original siting hearing. The issue, simply stated, is whether issuing the permit

would violate the Act. Respondent must at least reasonably identify a violation to afford the Petitioner an opportunity to respond. Respondent states that because the original siting application was not submitted with the permit application, and thus the Illinois EPA did not have the benefit of the siting application at the time of its decision under review, that it cannot determine if a violation would occur by issuing the permit requested. Respondent's Response. P. 3. In addition to the affidavit of Mayor Brodie, who served as Clerk and/or Mayor during all relevant periods, the IEPA's pleading supports the Petitioner's position that the modification would not result in a violation. The IEPA had before it all the prior information concerning both its issued permits and previous applications. The fact that these items were not physically attached to the submission does not result in the Board having to ignore the history of the application by the Petitioner. Alton Packing, 162 Ill. App. 3rd at 738, 516 N.E. 2nd at 280, quoting IEPA v. PCB, 115 Ill. 2nd 65, 70 (1986).

In his brief, counsel for the IEPA raises the "notes" of the Illinois EPA's Division of Land Pollution Control ("DLPC") as support that issues of fact exist. AR, p.55 – 56. But, rather than showing that an issue of material fact exists before the Board concerning a modification of permit for the transfer stations, it demonstrates that the modification of the permit to allow a transfer station operation is an insignificant modification to the original siting.

> Specifically, DLPC identified a potential problem involved with the possibility that the RRRC facility would **include the operation of a garbage transfer station**, and how such operation should be reconciled with a statutory set back for such operations. (Emphasis added).
>
> Thus, RRRC did not believe that any compliance with Section 22.14 of the Act (415 ILCS 5/22.14) (which imposes a set back between transfer stations and nearby dwellings) was relevant. AR p.56. Respondent's Reply, p. 3.

The IEPA's memorandum makes clear that, but for the statutory setback, the facility siting was for a transfer station and incinerator. The fact that the RRRC did not need or desire to be sited as a waste transfer station at that time, in no way negates the fact that the siting would also substantially qualify other buildings making up the facility for additional pollution control uses. Based on this admissions by the Respondent, only one issue, the setback, was not pursued concerning permitting for a transfer station. The Petitioner was fully aware of the need for statutory set back as the local zoning board permitted a zoning change that satisfied the statutory setback requirement. A new siting could not result in any different conclusion based on the proposed operation at the facility. "Surely not every single design change, however slight; requires new local siting proceedings. Such a complete lack of design flexibility is neither workable nor required by the Act." Saline County Landfill, Inc. v. Illinois EPA, April 18, 2002, PCB 02-108. In the application for modification, the Village appropriately addressed the setback issue through a change in zoning approved by the Village Zoning Committee. Because the setback issue was resolved prior to the application for modification, there would be no violations of the Act by granting a permit based on the request for modification.

II. WASTE INCINERATOR ONLY

The IEPA asserts that because the term 'transfer station" was not used in the title to the hearings conducted by the siting authority, the request for a modification to the permit must now go back through a completely new siting procedure, even though the facility already is built and has the specific building been used to receive, sort, process and treat MSW from its original day of opening. The receipt, recycling, storing, processing and ultimate removal of MSW was fully anticipated and discussed at the hearing originally conducted by the local siting authority. The waste handling activity was conducted in a building separate and apart from the power generating building. While connected by conveyor belts, there was no other significant physical connection to the buildings. All of the participants at the public hearing were aware that MSW would be received (up to 3000 tons per day) , processed, recycled (up to 25%), stored, and either burned or sent off site (up to 400 tons per day). The same issues, with the exception of the setback, that were evaluated and acted upon at the original siting would have been the same issues if the transfer station was presented as the primary function of the facility at that time. The Respondent's approach would send the Petitioners back through the costly process when the only possible issue, setback, was addressed by the Village through its Board of Zoning Review and the facility complies with the statutory setback.. No different result is possible.

If each and every activity associated with a pollution control facility had to be separately sited, it would be impossible to have functional pollution control facilities. If each time it was necessary to go back to the start of the siting process, the cost of siting would stall and impede any development of pollution control facilities in Illinois. According to the IEPA, "Generally, it takes at least three to five years to site and permit new facilities in Illinois, perhaps longer in the Chicago area. Six years of capacity for Region Two does not allow for any siting or permitting problems to arise." Nonhazardous Solid Waste Management and Landfill Capacity in Illinois: 2002. p. R2.1. Under Respondent's theory, disposal of waste ash (from incineration) would need a separate and distinct siting hearing under this interpretation because it was disposed of in a landfill and not incinerated. Waste unacceptable for fuel or recycling, which was sent to landfill daily, would have needed a specific siting approval. Finally, the recycling would have certainly needed to have been specifically sited for the permit because recycling has nothing to do with the act of incineration. "The Board notes that if each and every design change made in permitting a landfill expansion automatically meant the redesigned expansion lacks local siting approval, the result could be a nearly endless loop of siting, followed by permitting, followed by siting, *ad nauseam*". Ibid.

The scope of the siting hearing encompassed much more than merely siting an incinerator. The PCB understood the scope of the operations and aptly described the scope of operations in a 1992 proceeding before the PCB.

> RRRC originally requested (1988 Application) local siting approval from the Village in June 1988 for a **facility to recover recyclable materials** and **energy** from municipal solid waste. (Daly et al v. Village of Robbins et al. (July 1, 1993), PCB 93-52, PCB 93-54. (Emphasis added).

What facts presented by Petitioner demonstrate that no violation of the Act would occur if the permit was granted?

1. That a full siting hearing was conducted concerning the facility including all activities in the waste handling/ treatment/recycling and storage building and the electric production building. The facility, which included both these activities, received local siting approval and permits from the Respondent.
2. Those during the siting hearing, issues related to MSW receipt, handling, storage and disposal were fully before the siting authority and part of the hearing process. All elements, with the exception of the setback issue, (admitted in Respondent's pleadings), that would involve siting a transfer station were addressed.
3. The Village Zoning Board allowed a zoning change, through its public hearing process, that eliminated any barrier to permitting a transfer station.
4. That the siting authority and owner, Respondent, entered into an Agreement with Allied Waste Transportation to operate the facility as a transfer station.

The IEPA desires to add additional requirements to permit transfers not contemplated by the legislature. The examples given by Respondent in their brief are at best confusing. Petitioner is not attempting to turn the facility into a landfill or hazardous waste landfill

or to permit an activity that had not previously been legitimately performed and permitted at the facility. The magnitude of change used in the Respondent's illustration is extreme and unanticipated by the Act and the regulations. In this specific case, the modification is not of such a nature to require re-siting, as determined by the local siting agency. "An applicant that has been through local siting, an often expensive and time consuming process, should not have to return to get new local siting approval for every single design change without regard to the import of the change. Ibid. No additional siting is needed when the facility is going to be substantially and materially the same and used as originally proposed.

The Section 39.2(e) (5) agreement, entered into by the Village, is an appropriate expression of the legislative intent of that section's purpose of allowing the "appropriate govern, the Petitioner, the right to determine what activities are sited at a facility such as this.

> "However, any such conditions impose pursuant to this Section may be modified by agreement between the subsequent owner or operator and the appropriate county board or governing body. " 45 ILCS 5/1, Section 39.2(e) (5).

The Respondent wants to assume and usurp the responsibility of the local governing body relative to siting. Respondent's attempt to increase its jurisdiction over a local siting matter would clearly grant to Respondent a role never intended by the Legislature.

One interesting aspects of this matter is that within the site there were a number of pollution control activities going on at the site, but in separate buildings. While incineration was the focus and most controversial process during the siting hearing,

receiving MSW, collecting MSW, sorting of MSW, recycling MSW, storing MSW and disposal of MSW and other waste products in landfills was fully before the local siting authority..

CONCLUSION

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.

Dated: June 11, 2004

Respectfully Submitted,

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

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