BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF SOUTH ELGIN,	}	
	}	
Complainant,	}	
	}	No. PCB 03-106
v.	}	
	}	(Enforcement)
WASTE MANAGEMENT OF ILLINOIS, INC.;	}	
	}	
Respondent.	}	

NOTICE OF FILING

To: Donald J. Moran
Loren Blair
Pedersen & Houpt
161 North Clark Street-Suite 3100
Chicago, IL 60602

PLEASE TAKE NOTICE that on **June 15, 2004,** I have caused to be filed with the Illinois Pollution Control Board; Thompson Center; Chicago, Illinois, nine (9) copies of the attached **VILLAGE OF SOUTH ELGIN's REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT,** a copy of same being served upon you.

By _____
One of its attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that she served a copy of this Notice of Filing together with its attachment by sealing a copy of same in a duly-addressed envelope, with proper first-class postage prepaid, and depositing said envelope in the US Mail at 140 South Dearborn; Chicago, Illinois, at or before the hour of 5:00 p.m., on **June 15, 2004.**

Under penalties as provided by law pursuant to735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

_____

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF SOUTH ELGIN, a Municipal Corporation, Complainant, vs. WASTE MANAGEMENT OF ILLINOIS, INC., Respondent.	)	No. PCB 03-106 (Enforcement)

VILLAGE OF SOUTH ELGIN'S REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

The Village of South Elgin (the "Village"), by and through its attorneys, Ancel, Glink, Diamond, Bush, DiCianni & Rolek, P.C., hereby submits its reply memorandum in further support of it's motion for summary judgment:

I. INTRODUCTION

All of the briefing boils down to two inexorable conclusions: 1) the material facts are undisputed; and 2) the Herculean effort of Waste Management of Illinois, Inc. ("WMI") to simultaneously write new meanings for common words, cut and paste Kane County Resolution 88-155, and juggle snippets of various statutes is insufficient to overcome the simple fact that WMI's application for a transfer station on the Woodland Site was an attempt to expand that site in violation of the plain and ordinary language of the conditions of approval imposed by Kane County—conditions that prohibited any expansion "on" or "of" the site and did so in contemplation of WMI's promised end use plan in which the entire site is to become a passive recreation area.

II. ARGUMENT

A. WMI's Geographic Boundary Argument Contradicts the Plain Language of the Conditions.

Frustrated by the meaning of the term "expansion" in both common parlance and in the case law, WMI argues, instead, that Resolution 88-155 prohibits only expansions of the landfill operations and, because the proposed transfer station sits outside the geographic boundaries of the landfill operations (I, II and III), it cannot constitute an "expansion" of any of them. But this geographic boundary argument ignores the plain and ordinary language of Resolution 88-155 that differentiates between the "site" and the proposed Woodland III expansion, and that also prohibits any expansion "on" the "site" not just expansions "of" the site.

Donald Price's letter—made an express part of the conditions--states: "Waste Management of Illinois, Inc. agrees and stipulates that this expansion will be the last expansion that we will attempt to do *on* this site, which is commonly known as the Woodland Landfill site." (Exhibit A-5, page 14, emphasis added). In order to give the terms of this condition full meaning and effect, as required, it cannot be limited to prohibiting expansions of the geographic boundaries of the landfill operations but must also prohibit any expansion on the Woodland Landfill site.

More specifically, WMI's argument that the representation in Price's letter limits only geographic boundaries of the landfills impermissibly equates the term "expansion" with the meaning of the term "site." In other words, by saying only that Price promised no further geographic expansions (something Price himself contradicts), WMI would re-write the last sentence as "this expansion will be the last expansion that we will attempt to do on this

expansion." But this is a tautology that renders the condition without meaning. Because Resolution 88-155 must be construed in its entirety and must be construed to give effect to every part, WMI's proposed interpretation cannot stand.

B. WMI's Geographic Boundary Argument Also Contradicts the Representations Made About the Site And the Nature of Its Use.

WMI's geographic limits argument further rests on the false premise that each parcel of the site exists in a discreet vacuum unrelated to the whole of the entire site. First, each of the applications for the landfill operations involve, by law, considerations of the airspace and geology of the entire site. Indeed, the specific representations and exhibits that are a part of the record for the Woodland III expansion refer to the full Woodland Landfill site in its entirety not just the geographic limits of the landfill.

Second, the case law holds that "expansion" includes intensity of use—a concept that requires reference to the entire site. Here, there is no dispute that the proposed transfer station would increase the intensity of the *entire* 130-acre Woodland Landfill Site by doubling the current number of pollution control facilities, increasing truck traffic, extending the overall operating life of the site, and adding septic, well and waste management systems. Though WMI attempts to factually distinguish the case law relied upon by the Village, WMI cannot distinguish the sound legal principal that a significant increase in use constitutes an expansion. *Continental Waste Industries of Illinois, Inc. v. Mt. Vernon,* PCB 94-138; *People v. Treim Steel & Processing*, 5 Ill.App.2d 371, 125 N.E.2d 678 (1st Dist. 1995).

Third, WMI's cut and paste job on the words "area of expansion" from the Environmental Protection Act is similarly unavailing. WMI—again—refuses to take the statute

in its entirety and read all parts of 415 ILCS 5/3.330 together so that every part has meaning and effect. When properly construed, the terms "area of expansion" are seen as only one of several recognized forms of expansion contemplated by the Act. As the case law interpreting the Act makes clear, a change in the nature or intensity of use will also constitute an "expansion" In sum, doubling the number of "pollution control facilities" on a site is an expansion.

C. WMI's Geographic Boundary Argument Contradicts the Testimony.

WMI's continued reliance on the testimony of Price and Rolando is in error. First, Price did not testify that he meant his July 8, 1988 letter to allow for building of a waste transfer facility. Although Price explained that WMI intended to build a transfer station, he acknowledged that this intention was *never documented or followed through in any way.* (Price Dep. 22). According to Price's testimony, his July 8, 1988 was clear. (Price Dep. 26-27). It is disingenuous for WMI to now claim that by agreeing to not seek any further expansion of the Woodland Landfill site, it did not preclude the building of a second pollution control facility on the site as WMI clearly promised not to expand further development *on* the entire Woodland Landfill site.

Likewise, neither does Mayor Rolando's testimony support WMI's arguments. Rolando testified that the July 8, 1988 letter articulated the agreement between the Village and WMI that WMI would seek no further expansion on the Woodland Landfill Site. (Rolando Dep. 29). According to Mayor Rolando, WMI was therefore prohibited from expanding the site by building any new pollution control facility. (Rolando De. 35). Furthermore, the Mayor testified that if the issue of a waste transfer station had been specifically raised, the Village would have objected.

The addition of a waste transfer station to the Woodland Landfill Site would clearly be an expansion on and of the site. The undisputed facts unequivocally show that WMI expressly agreed that is would seek no such expansion, thus, it is prohibited from doing so now. As such, the Village is entitled to summary judgment.

D. Building a Waste Transfer Station Violates Condition 2 of Resolution 88-155

Condition 2 provides that the site "will be developed and operated in a manner consistent with the representations made at the public hearing in this matter held on July 26, 1988 and to all applicable laws, statutes, rules and regulations of the Illinois Environmental Protection Agency and the Pollution Control Board..." At the July 26, 1988 public hearing, WMI was asked to explain the difference between its final use plan for Woodland III in comparison to Woodland I and II. (Exhibit A-7, page 54, attached to the Village's Motion for Summary Judgment). WMI's witness explained that the Woodland III proposal "encompasses the entire site and looks at a final land use plan on that land form that is a passive recreational use." *Id.* Similarly, in its 1988 siting application for Woodland III, WMI detailed its proposed end-use plan for the site, representing that "upon completion the site will be comprised of a combination of filled land and unfilled land, which will be left, essentially, in a natural state...A major component of the end use proposal is to allow for hiking and bicycle riding across this large open space..." (Exhibit A-6, attached to the Village's Motion for Summary Judgment).

WMI asks this Pollution Control Board to ignore these facts. Instead, WMI argues that because Condition 2 did not explicitly refer to its end use plan, its proposal to build a waste transfer station is not in violation. WMI further argues that it cannot be in violation of Condition 2 because it still intends to implement an end use plan. It is irrelevant whether WMI plans to

implement an end use plan in the future. The point is that WMI promised to apply its plan upon completion of Woodland III. Erecting a waste transfer facility that will process, consolidate, store and transfer non-hazardous municipal waste, including landscape waste and general construction or demolition debris from residential, commercial and industrial waste generators" does not meet this objective. As such, WMI's argument fails and the Village is entitled to summary judgment.

WHEREFORE, the Village of South Elgin respectfully requests that this Honorable Board enter and order (a) denying WMI's motion for summary judgment; (b) granting summary judgment in favor of the Village; (b) find that WMI's attempt to site a transfer station on the Woodland Site violates the Act and rules, regulations, permits and terms and conditions imposed by the Kane County Board in Resolution 88-155; (c) ordering WMI to cease and desist from its attempt to site a transfer station; and (d) providing any such other and further relief as the Board deems equitable and just.

Respectfully submitted,

VILLAGE OF SOUTH ELGIN

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