

MAY 16 2007

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROCHELLE WASTE DISPOSAL, L.L.C.,)
)
 Petitioner,)
)
 v.)
)
 THE CITY OF ROCHELLE, an ILLINOIS)
 MUNICIPAL CORPORATION and THE)
 ROCHELLE CITY COUNCIL,)
)
 Respondents.)

PCB No. 07-113

NOTICE OF FILING

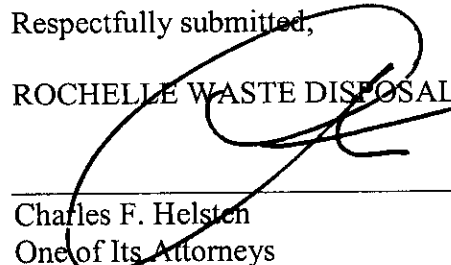
TO: All Counsel of Record (see attached Service List)

PLEASE TAKE NOTICE that on May 15, 2007, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, an original and nine copies of its Petition for Review, copies of which are attached hereto.

Dated: 5/15/07

Respectfully submitted,

ROCHELLE WASTE DISPOSAL, L.L.C.



 Charles F. Helsten
 One of Its Attorneys

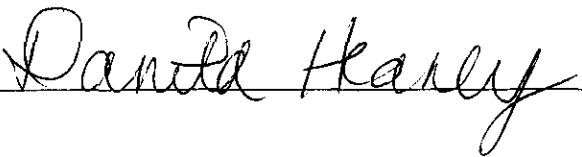
Charles F. Helsten
 Hinshaw & Culbertson LLP
 100 Park Avenue
 P.O. Box 1389
 Rockford, IL 61105-1389
 815-490-4900

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 May 15, 2007, she served a copy of the foregoing upon:

Mr. Bruce McKinney City of Rochelle 420 N. 6 th Street Rochelle, IL 61068	Alan Cooper, Esq. Attorney at Law 233 E. Route 38, Ste. 202 P.O. Box 194 Rochelle, IL 61068
Glenn Sechen, Esq. Schain Burney Ross & Citron Ltd 222 N. LaSalle St., Suite 1910 Chicago, IL 60601	David Tess, Esq. Tess & Redington 1090 N. Seventh St. P.O. Box 68 Rochelle, IL 61068
Don Moran Pedersen & Houpt 161 N. Clark St., Suite 3100 Chicago, IL 60601-3142	Emily Vivian David Wentworth II Hasselberg, Williams, Grebe 124 S.W. Adams St., Ste. 360 Peoria, IL 61602-1320
John McCarthy 45 East Side Square, Suite 301 Canton, IL 61520	

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



HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900

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CLERK'S OFFICE

MAY 16 2007

STATE OF ILLINOIS
Pollution Control Board

ROCHELLE WASTE DISPOSAL, L.L.C.,)
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Petitioner,)
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vs.)
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THE CITY OF ROCHELLE, an ILLINOIS)
MUNICIPAL CORPORATION and THE)
ROCHELLE CITY COUNCIL,)
)
Respondents.)

PCB No. 07-113

PETITION FOR REVIEW

NOW COMES Rochelle Waste Disposal, L.L.C., Participant in the above-mentioned local siting matter, and petitions this Honorable Board for review of certain actions taken by the Rochelle City Council in this matter, and, in support thereof, states as follows:

1. That on or about October 16, 2006, the City of Rochelle ("City") filed an application for local siting approval for the expansion of Rochelle Municipal Landfill in the City of Rochelle, Illinois.

2. As defined by Section 39.2(c) of the Illinois Environmental Protection Act ("Act"), the City Council of the City of Rochelle ("City Council") was the governing body who considered that request for local siting approval for a new pollution control facility within the City of Rochelle, Illinois.

3. Rochelle Waste Disposal, LLC, is the current operator of the Rochelle Municipal Landfill. Moreover, pursuant to the terms of the Host Agreement executed by and between Rochelle Waste Disposal and the City, Rochelle Waste Disposal would continue to be the operator of the expanded facility, that facility contemplated to be developed in part on certain land owned by the Petitioner herein. Further, a true and accurate copy of the Host Agreement

that was attached to the Application filed in this siting proceeding by the City is marked Exhibit “A” and attached hereto and incorporated herein by this reference.

4. Hearing on such application for local siting approval was held in timely fashion, and, thereafter, the Rochelle City Council met to consider action on such application for local siting approval pursuant to Section 39.2(e) of the Act, and rendered certain findings in that regard, whereby site location approval was granted for the facility, but with numerous conditions. Further, that a true and accurate copy of Resolution R-07-10 (passed by the City Council of the City of Rochelle on the 11th day of April, 2007 and subsequently published in pamphlet form by the City Council of the City of Rochelle on April 12, 2007) and is marked Exhibit “B” and attached hereto and incorporated herein by this reference.

5. The City of Rochelle had also adopted a siting ordinance for pollution control facilities (“Local Siting Ordinance”). This Local Siting Ordinance applies to this process to the extent it sets out procedures and requirements that are consistent with the Act, and supplements, (rather than supplants) the requirements of the Act.

6. That Local Siting Ordinance, in pertinent part, at Section 78-77(c) provides for reconsideration of the City Council’s decision on an application for local siting approval. In that regard, Rochelle Waste Disposal, LLC, a Participant in this proceeding, filed its Motion for Reconsideration in timely fashion. Further, that a true and accurate copy of that Motion is marked as Exhibit “C”, and attached hereto and incorporated herein by this reference.

7. Several responses to the Motion for Reconsideration were also filed; one by the Applicant in this matter, and one by the Concerned Citizens of Ogle County, an objector’s group. Further, that true and accurate copies of such responses are (respectively) marked as Exhibits “D” and “E” and attached hereto and incorporated herein by this reference.

8. Subsequent thereto, the Rochelle City Council reconvened in timely fashion to consider Rochelle Waste Disposal's Motion for Reconsideration. The City Council considered Petitioner's Motion, but failed to grant the relief requested by the Petitioner. Upon information and belief, Petitioner asserts that a formal Resolution memorializing such action was passed by the City Council on May 14, 2007, but such Resolution has not and will not be signed by the Mayor of Rochelle for several more days. Upon receipt of a duly executed copy of such Resolution, the Petitioner will supplement this pleading.

9. With the passing of the resolution memorializing the City's action on the Petitioner's Motion for Reconsideration, the City has now taken final action on the Application for Local Siting Approval as provided by Section 39.2(e) of the Act.

10. Such final action taken by the Rochelle City Council is not supported by the underlying record made in this proceeding, and is contrary to the express terms of the Host Agreement executed between the Petitioner and the City relating to such proposed expansion (thereby being fundamentally unfair). Moreover, Conditions 8, 13, 22, 23, 26, 28, 33 and 34 attached to such siting approval are, in addition, not reasonable and necessary to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act, and are inconsistent with the regulations promulgated by this Honorable Board. As such, this Honorable Board should refuse to affirm these conditions placed upon site location approval.

11. This Petition is neither duplicitous or frivolous, and directly affects the Petitioner herein.

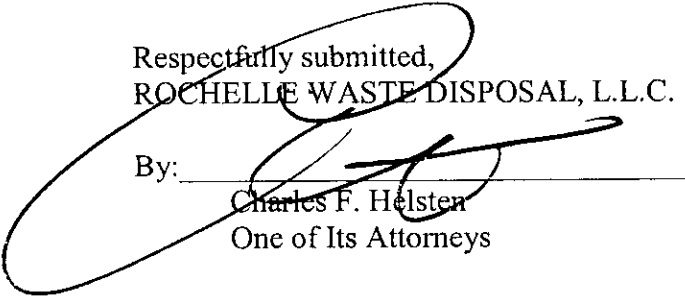
WHEREFORE, Petitioner, ROCHELLE WASTE DISPOSAL, LLC, prays that:

- a. This Honorable Board accept this Petition for Review and set such matter for hearing;

- b. That upon such review and after such hearing, this Honorable Board refuse to affirm those special conditions placed upon site location approval referenced herein and strike the same from any grant of site location approval;
- c. For such other and further relief as this Honorable Board deems appropriate in the circumstances.

Respectfully submitted,
ROCHELLE WASTE DISPOSAL, L.L.C.

By: _____


Charles F. Helsten
One of Its Attorneys

Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
Phone: 815-490-4900
Fax: 815-490-4901

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CITY OF ROCHELLE

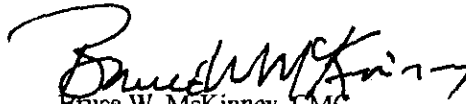
STATE OF ILLINOIS)
COUNTY OF OGLE)

CERTIFICATE

I, the undersigned, hereby certify that I am the duly qualified and acting City Clerk of the City of Rochelle, County of Ogle and State of Illinois, and as such City Clerk, I am the keeper of the journals, records and files of the City of Rochelle.

I do hereby certify that the attached Ordinance, Number 06-3472 presented to the City Council on the 28th day of August, 2006 and as signed by the Mayor of the City of Rochelle on the 29th day of August, 2006 and attested by the City Clerk, all as appears from the official records of the City in my care and custody.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the corporate seal of the City of Rochelle, Illinois this _____ day of AUG 31 2006


Bruce W. McKinney, CMC
City Clerk, City of Rochelle

An Ordinance Approving Restatement of Host Agreement for City Landfill.



ORDINANCE NO. 06-3472
Date Passed: August 28, 2006

**AN ORDINANCE APPROVING RESTATEMENT OF HOST AGREEMENT
FOR CITY LANDFILL**

WHEREAS, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

WHEREAS, a petition for annexation has been filed by the owners of certain property described as follows:

TRACT A (25-22-300-003 and part of 25-22-400-001)

Part of Section Twenty-Two (22) and Section Twenty-Seven (27), all in Township Forty (40) North, Range Two (2) East of the Third Principal Meridian, bounded and described as follows: Commencing at the Southeast Corner of the Southwest Quarter of said Section 22; thence South 88 degrees 59 minutes 45 seconds West, along the South line of said Section 22, a distance of 1327.77 feet to the West line of the Southeast Quarter of the Southwest Quarter of said Section 22; thence North 01 degrees 14 minutes 09 seconds West, along said line, a distance of 1319.14 feet to the South line of the North Half (1/2) of the Southwest Quarter of said Section 22; thence North 89 degrees 02 minutes 24 seconds East, along said line, a distance of 1328.13 feet to the East line of the Southwest Quarter of said Section 22; thence North 01 degrees 13 minutes 12 seconds West, along the East line of the Southwest Quarter of said Section 22 and along the East line of the Northwest Quarter of said Section 22, a distance of 1480.19 feet to the Southerly Right of Way line for the Union Pacific Railroad; thence North 82 degrees 12 minutes 03 seconds East, along said line, a distance of 935.91 feet; thence South 00 degrees 00 minutes 00 seconds West, a distance of 2909.27 feet to the South line of said Section 22; thence South 88 degrees 58 minutes 59 seconds West, along the South line of said Section 22, a distance of 867.80 feet to the point of beginning. Also, all that part of the Creston Road Right-of-Way lying South of and adjacent to the above described premises. Situated in the County of Ogle, and the State of Illinois. Containing 100.70 acres more or less.

TRACT B (25-22-300-004)

Part of the Southwest Quarter (1/4) of Section Twenty-Two (22), and part of the Northwest Quarter (1/4) of Section Twenty-Seven (27), all in Township Forty (40) North, Range Two (2) East of the Third Principal Meridian, bounded and described as follows: Commencing at the Southwest corner of the Southwest Quarter of said Section 22; thence North 88 degrees 59 minutes 45 seconds East, along the South line of said Section 22, a distance of 272.99 feet to the point of beginning for the following described tract; thence North 00 degrees 25 minutes 53 seconds East, a distance of 228.93 feet; thence South 89 degrees 28 minutes 15 seconds East, a distance of 177.29 feet; thence South 02 degrees 28 minutes 15 seconds East a distance of 224.19 feet to the South line of said Section 22; thence South 88 degrees 59 minutes 45 seconds West along said line a distance of 188.70

feet to the point of beginning. Also, all that part of the Creston Road Right-of-Way lying South of and adjacent to the above described premises. Situated in the County of Ogle, and the State of Illinois. Containing 1.09 acres more or less, (collectively, the "Property"); and

WHEREAS, it is anticipated that an application for an expansion of the City landfill will be filed in the near future, pursuant to authorization given to the City Manager on March 6, 2006, and that the proposed expansion will be located on the Property; and

WHEREAS, the existing Host Agreement between the City and the Operator of the landfill, Rochelle Waste Disposal, LLC, as previously amended, contains no provisions authorizing the City to initiate an application for an expansion of the landfill, and no terms relating to any such application by the City, and it is appropriate for the Host Agreement to be restated and revised accordingly; and

WHEREAS, following a public hearing convened after due notice to the public, the City Council deems it appropriate to authorize and direct the City Manager to execute the Restatement of Host Agreement between the City and Rochelle Waste Disposal, LLC, as presented to the City Council;


NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS, as follows:

1. That the City Manager is authorized and directed to execute the Restatement of Host Agreement between the City of Rochelle and Rochelle Waste Disposal, LLC; and
2. That the adoption of this Ordinance is with the express reservation of, and without prejudice to, all of the Rochelle City Council's rights and duties as the local siting authority under Section 39.2 of the Illinois Environmental Protection Act, and with the express understanding that any decision by the City Council in any proceeding for local siting approval would be based solely on the record established in that proceeding.

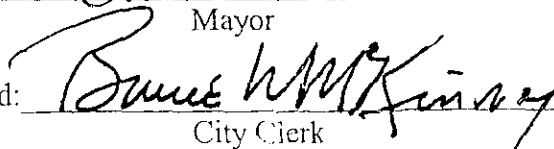
This ordinance shall become effective after its passage, approval and publication as provided by law.

PASSED AND APPROVED this 28th day of August, 2006.

Ayes: 7 Nays: 0 Abstain: 0



Mayor

Attested: 

City Clerk

RESTATEMENT
OF
HOST AGREEMENT and AGREEMENT FOR
OPERATION/DEVELOPMENT
OF
CITY OF ROCHELLE LANDFILL NO. 2

This Agreement is executed September 26, 2006, by the CITY OF ROCHELLE, ILLINOIS ("CITY") and ROCHELLE WASTE DISPOSAL, L.L.C., ("OPERATOR") and amends and restates in its entirety that certain HOST AGREEMENT and AGREEMENT FOR OPERATION/DEVELOPMENT OF CITY OF ROCHELLE LANDFILL NO. 2 (the "Original Agreement") dated April 26, 1995.

RECITALS:

The CITY is the owner of the City of Rochelle Sanitary Landfill No. 2 which, at the time that the Original Agreement was executed, was located approximately one mile east of the eastern most boundary of the City of Rochelle on Mulford Road in southern Ogle County, Illinois. The property which comprises the Rochelle Sanitary Landfill No. 2 has subsequently been annexed to the CITY.

The Original Agreement recites that:

(a) CITY is interested in negotiating an agreement with a qualified landfill development and operations firm for the lease and operation of the existing landfill (until all present capacity and any capacity permitted in an expansion of the facility under the terms of this agreement have been filled), as well for the obtaining siting authority for an expansion of the existing landfill (all consistent with the terms and conditions included set forth in this Agreement);

(b) OPERATOR desires to lease, operate and further develop the above described sanitary landfill, and under the terms and conditions set forth in this Agreement.

The Original Agreement was subsequently amended by amendments dated December 19, 1998, and January 21, 1999, respectively (the "Initial Amendments"). The Original Agreement as amended by the Initial Amendments is referred to in this agreement as the "Amended Host Agreement."

Under the terms of the Amended Host Agreement, the OPERATOR leased from the CITY the real property and improvements known as Rochelle Landfill Number 2 (the "Landfill") and agreed to operate the Landfill on the terms and conditions provided in the Amended Host Agreement. Under the terms of the Amended Host Agreement, the OPERATOR was granted the sole right to expand the landfill and continue its operation.

On January 21, 2000, the OPERATOR filed an application with the CITY seeking site location approval pursuant to Section 39.2 of the Illinois Environmental Protection Act (the "Act") for an expansion of the Landfill to encompass a parcel of approximately 226 acres with a total capacity of approximately 38,000,000 cubic yards, a waste disposal capacity of approximately 28,500,000 cubic yards, and a maximum elevation of 1130 feet mean sea level (MSL). That application was withdrawn by the OPERATOR.

On November 22, 2002, the OPERATOR filed a second application with the CITY seeking site location approval pursuant to Section 39.2 of the Act for an expansion of the Landfill to encompass a parcel of approximately 211 acres with a total capacity of approximately 23,000,000 cubic yards, a waste disposal capacity of approximately 17,600,000 cubic yards, and a maximum elevation of 960 feet MSL. That application was denied by the CITY on April 24, 2003.

On December 27, 2005, the City Council of the CITY adopted a resolution which authorized the City Manager and the staff of the CITY to investigate the advantages or disadvantages of an expansion of the Landfill. Based on the results of that investigation, on March 6, 2006, the City Manager recommended to the City Council that the staff of the CITY prepare an application for local siting approval for an expansion of the Landfill, working with such independent environmental and other consultants as they determine to be necessary.

Based on the recommendation of the City Manager, on March 6, 2006, the City Council authorized the City Manager and the staff of the CITY to prepare and file an application for local siting approval for an expansion of the Landfill (the existing landfill and any expansion thereof being hereafter referred to as "the Expanded Facility"). The City Council took this action with the express reservation of, and without prejudice to, all of its rights and duties as the local siting authority under section 39.2 of the Act, and with the express understanding that any decision by the CITY Council in any proceeding for local siting approval would be based solely on the record established in that proceeding.

The CITY has advised the OPERATOR that in any proposed expansion of the Landfill, it is the intention of the CITY to provide for the exhumation of the waste previously disposed of in "Unit 1" of the Landfill and the re-disposal of that waste in the Expanded Facility. Additionally, representatives of the OPERATOR have provided certain operational and design information and recommendations to representatives of the CITY staff to assist them in developing design concepts and to clarify the position of the OPERATOR as the OPERATOR responsible for the operation of the Landfill and any expansion that may be approved.

The OPERATOR is willing to cooperate with the CITY in planning and designing an expansion which will provide cost effective, long-term landfill disposal capacity and other waste management services for residents, businesses and institutions located in the CITY, and to donate certain real property to the CITY to facilitate an expansion which will accommodate the re-disposal of waste from Unit 1.

The parties desire to amend the Amended Host Agreement for the sole and limited purpose of allowing the CITY to prepare and file an application for local siting for an expansion of the Landfill on certain terms and conditions, including the donation and annexation of certain real property to the CITY to facilitate such an expansion.

The parties desire to reduce to writing the terms of the amendments to the Amended Host Agreement on which they have agreed and to completely restate the Host Agreement as amended in its entirety in a single document.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and in reliance upon the recitals set forth above which are incorporated herein by reference, it is hereby agreed that the CITY and the OPERATOR amend and restate the HOST AGREEMENT and AGREEMENT FOR OPERATION/ DEVELOPMENT OF CITY OF ROCHELLE LANDFILL NO. 2 in its entirety to read as follows:

1. PREMISES.

1.1 Description. CITY hereby leases to OPERATOR, and OPERATOR leases for the term, upon all of the conditions set forth herein, as well as all of the conditions in the documents set forth in **Exhibit A** (which are attached hereto and incorporated herein by this reference), the real property and improvements commonly known as the City of Rochelle Sanitary Landfill (as described in **Exhibit B** attached hereto and incorporated herein by this reference).

2. TERM.

2.1 Lease Term. The term of this lease shall commence on the date of the Original Agreement and shall continue for: a) as long as any capacity permitted for the disposal of solid waste remains in the real property described on Exhibit B or in any expansion sited by the OPERATOR pursuant to the terms of this Agreement or in any expansion sited by the CITY pursuant to the terms of this Agreement which is consistent with the terms of this Agreement; or b) for a period of twenty years if the period described in clause (a) above is less than twenty (20) years. The term of this lease shall continue during any temporary periods in which the permitted capacity is not available due to the termination or lapse of any necessary permit if the OPERATOR is pursuing the necessary permits in a reasonable manner and is otherwise in compliance with all other provisions of this agreement.

2.2 Disposal Capacity Period. OPERATOR shall provide CITY with disposal capacity for at least a twenty (20) year period or for as long as capacity remains in this facility or in any expansion that is (a) sited by the OPERATOR pursuant to the provisions of this Agreement or (b) sited by the CITY pursuant to the terms of this Agreement which is consistent with the terms of this Agreement, for all residential solid waste generated within the City of Rochelle (as the boundaries of such municipality may be adjusted from time in the future during the term of this Agreement) and all nonhazardous solid waste generated by the CITY from its own activities (governmental/institutional waste).

OPERATOR's obligation to provide the capacity outlined above shall continue during the term of this Agreement without regard to whether siting and/or permit approval for an expansion of the existing facility is obtained by OPERATOR or by CITY.

3. OPERATIONS.

3.1 Waste Limits. As long as any capacity permitted for the disposal of solid waste remains in the real property described on Exhibit B or in any expansion sited by the OPERATOR pursuant to the terms of this Agreement or in any expansion sited by the CITY pursuant to the terms of this Agreement which is consistent with the terms of this Agreement, OPERATOR shall dispose of CITY's residential and governmental/institutional waste at no charge so long as such amounts collected do not exceed ten thousand six hundred (10,600) tons per year in the first five (5) years under the Original Agreement. For purposes of this Agreement, the term "governmental/institutional waste" shall include POTW sludge generated by the CITY's sewage treatment plant. Thereafter, CITY shall be entitled to increase the initial, base annual cumulative waste generation figure for which no charge for disposal is assessed by a maximum of ten percent (10%) of the initial base annual waste generation figure for every subsequent five (5) year period included within the Host Agreement. In the event that residential and governmental/institutional waste is accepted in an amount which exceeds the yearly waste disposal figure exempt from disposal charges set forth herein, then the charge for acceptance of the incremental waste volume above the yearly amount exempt from disposal charge shall be assessed at the lowest disposal rate which is actually being charged and/or received by the OPERATOR at that time for similar municipal solid waste. In the event that the OPERATOR provides or obtains disposal capacity for the CITY pursuant to section 2.2 at any other facility, the charge or fee to the CITY shall not exceed the lowest charge which the OPERATOR or any member of the OPERATOR then charges for the disposal of municipal solid waste (in the case of a facility owned or controlled by the OPERATOR or a member of the OPERATOR) and in the case of disposal capacity provided at any other facility, shall be determined by the mutual agreement of the parties.

3.2 Standards. The existing facility shall be operated so as to comply with all provisions of the Illinois Environmental Protection Act, rules and regulations of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, the provisions of Subtitle D of The Resource Conservation and Recovery Act of 1976 (RCRA), as well as all conditions and requirements of any significant modification permit issued by the State of Illinois to the CITY, and any other applicable rules or regulations now in effect or enacted hereafter. In addition, the proposed expansion of the facility shall be designed, constructed and operated so as to comply with all provisions of the Illinois Environmental Protection Act, rules and regulations of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, the provisions of Subtitle D of RCRA, and any other applicable rules or regulations now in effect or enacted hereafter.

3.3 Flow Quantity. (a) As part of the Fee Arrangement, OPERATOR guarantees a minimum fee payable under paragraph 4.5 below which is equivalent to a flow quantity of three hundred (300) tons per day for each full day that the facility is open to accept waste, and guarantees payment of all required Host Agreement fees or royalties on this minimum amount for the term of this Agreement. In this regard, the OPERATOR and the CITY intend that, subject to holidays, the facility will be open to accept waste Monday through Friday and may be open for one-half day on Saturday. The minimum daily flow quantity shall be pro-rated for Saturdays and shall not apply to any day on which the facility would otherwise be closed but on which the OPERATOR opens the facility at the request of a third party to accept a specific load or loads of waste under unusual circumstances. Payment of such fees shall be made by OPERATOR to CITY on or before the 10th day of each month.

(b) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this Agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, the Expanded Facility will be permitted to receive not more than 300,000 tons of waste per year; provided, however, that the CITY may grant a waiver of this volume limitation in the event of major emergencies or other unusual local projects requiring significant waste disposal.

3.4 County Criterion. To the extent applicable, the Expanded Facility shall meet all duly enacted County siting criteria developed pursuant to the Ogle County Solid Waste Management Plan.

3.5 Waste Streams. (a) The Expanded Facility shall accept no new special waste streams generated from outside a 100-mile radius of the City of Rochelle without first receiving prior written approval by CITY so as to ensure that receipt of such special waste streams will not cause or threaten to cause a violation of any applicable federal, state and/or local law designed and/or intended to protect the human health, safety, welfare and/or the environment.

(b) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this Agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, the Expanded Facility will not be permitted to accept knowingly waste generated in the CITY of Chicago without the prior written approval of the CITY. The OPERATOR will maintain accurate records which are reasonably sufficient to allow the CITY to verify its compliance with the provisions of this paragraph.

(c) No free liquids may be accepted at the Expanded Facility without the prior written approval of the CITY.

(d) Upon reasonable suspicion of non-compliance with this section 3.5, the CITY may require the inspection of specific loads designated by the CITY.

3.6 Inspection. OPERATOR shall insure adequate means to insure compliance with all terms and conditions of the Agreement, including (a) CITY compliance inspection access to the Expanded Facility, as well as access to records of operation and financial records, (b) reports on compliance with state post-closure trust fund contributions and all other ongoing financial assurance obligations.

3.7 Assignment or transfer of Interest. (a) OPERATOR shall not be allowed to sell, convey or otherwise assign its interest in or transfer operation of the Expanded Facility without prior written approval by CITY (which approval shall not be unreasonably withheld or delayed following submission of information sufficient to justify such sale, assignment or transfer), and further provided that CITY shall have the right to consider the ability of the proposed transferee (financially and operationally), to comply with all terms and conditions of this Agreement.

(b) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this Agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, if the OPERATOR transfers the Expanded Facility, the CITY shall have the option to increase the Host Fee otherwise payable under this Agreement by ten cents (\$0.10) per ton, effective as of the date of the transfer. For this purpose, a "transfer" of the Expanded Facility will be considered to have occurred if: (a) there is a conveyance of the real property which comprises the Expanded Facility to any person or firm which is not controlled by or under common control with the OPERATOR or one of the current owners of the equity membership interests in the OPERATOR; or (b) there is an assignment of this Agreement to any person or firm which is not controlled by or under common control with the OPERATOR or one of the current owners of the equity membership interests in the OPERATOR; or (c) there is a change in the ownership of over 50% of the equity ownership interests in the OPERATOR, other than a change resulting from a transfer to a member of the transferor's family or to a corporation or other business entity which is owned by the transferor or under common control with the transferor. The OPERATOR shall notify the CITY in writing promptly upon the occurrence of a transfer. The notice shall include the effective date of the transfer and the name and address of any new owner, assignee or transferee. The option provided for in this subparagraph shall be exercised by a written notice to the then OPERATOR of the facility within thirty (30) days after the CITY first has knowledge of the transfer.

3.8 Wage Compliance. OPERATOR must comply with all applicable prevailing wage provisions (if any) under state and/or federal law, as well as any and all other applicable wage and/or workplace provisions under state and/or federal law.

3.9 Disposal Space. During every year period under this Agreement that landfill capacity exists at the facility or under any expansion thereof, the OPERATOR shall reserve sufficient capacity at the landfill facility for and give first priority to disposal of that volume of waste generated within the City of Rochelle which is exempt from disposal charges under Section 3.1 above; however, the reservation of disposal capacity

for CITY's waste shall not be cumulative, and should the reserved annual disposal capacity not be utilized by CITY during any year term under this Agreement, that capacity may be utilized by the OPERATOR for other than CITY waste. The Expanded Facility shall accept no new special waste streams outside a 100-mile radius of the City of Rochelle without first receiving prior written approval by CITY.

3.10 Acceptable Waste. The landfill facility shall not knowingly accept, treat, or dispose of any waste which is defined as "hazardous" by the Illinois Environmental Protection Act; the OPERATOR shall comply with all regulations of the Pollution Control Board relative to load checking, and shall immediately inform the City of Rochelle orally and in writing of any hazardous waste that has been accepted, received, stored, treated, disposed, or transported to or from the facility, and shall immediately take any and all steps necessary to properly remove such hazardous waste from the facility in accord with all applicable federal, state and/or local laws.

3.11 Landfill Design and Operating Standards. (a) The existing facility shall be operated so as to comply with all provisions of the Illinois Environmental Protection Act, rules and regulations of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, the provisions of Subtitle D of RCRA, as well as all conditions and requirements of any significant modification permit issued by the State of Illinois to the CITY and any other applicable rules or regulations now in effect or enacted hereafter. In addition, the proposed expansion of the facility shall be designed, constructed and operated so as to comply with all provisions of the Illinois Environmental Protection Act, rules and regulations of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, the provisions of Subtitle D of RCRA, any other applicable rules or regulations now in effect or enacted hereafter, as well as all documents referred to in Exhibit A to this Agreement.

(b) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this Agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, the following terms shall apply, effective as of the date of such final and non-appealable local siting approval:

(i) no waste will be received by rail;

(ii) an appropriate Quality Assurance/Quality Control program which complies with all applicable regulations under the Act will be in place for the construction of new units and for the transfer and re-disposal of Unit 1;

(iii) the overnight storage of waste in transfer trailers, collection trucks or other vehicles will not be allowed without the prior written approval of the City;

(iv) no burning of waste will be allowed (other than the flaring of landfill gas, subject to appropriate permits);

(v) no composting of landscape waste materials will be allowed without the prior written approval of the CITY; provided, however, that this prohibition will not restrict the continuation of the current practice of land application of landscape waste;

(vi) the vertical and lateral extent of the actual waste placement will not exceed the boundaries and elevations for which the facility has obtained local siting approval and all necessary permits;

(vii) final cover will be placed within sixty (60) days after the placement of the final lift, weather permitting;

(viii) the OPERATOR will direct transfer trailers using the facility to use the interstate system as much as possible;

(ix) the property value protection plan provided for in the Host County Agreement dated December 19, 1995, between Ogle County and Rochelle Waste Disposal (the "Host County Agreement") will apply to all property within one mile from the Expanded Facility property boundary;

(x) the well protection plan provided for in the Host County Agreement will apply to all property within one mile from the Expanded Facility property boundary and will cover the municipal wells of the Village of Creston;

(xi) the facility will not re-circulate leachate without the CITY's approval (unless leachate recirculation is required by law or regulation);

(xii) the maximum elevation of the Expanded Facility will not exceed 940 feet MSL;

(xiii) the maximum operating hours that the Expanded Facility may be open to accept waste will be the currently permitted hours (6:00 a.m. to 6:00 p.m.).

3.12 Costs Assumed by OPERATOR. (a) Subject to the provisions of subparagraph (b) below, after the date of the Original Agreement, all costs (present and future) associated with the design, construction, development, operation, closure and postclosure phases of the Landfill and the Expanded Facility, and any and all costs, fees, fines, penalties, and/or expenses that may arise in any way from the design, construction, development, operation, closure and postclosure of the Landfill and the Expanded Facility, are to be paid by, and are the sole responsibility of OPERATOR. OPERATOR shall also be responsible to pay any engineering, monitoring, and other professional fees and necessary expenses associated with the Significant Modification process which were incurred by the CITY subsequent to the date of public notice of the Request for Proposal for bids (RFP) for the operation/development of City of Rochelle Landfill No. 2, which are related to ensuring that the existing facility and all expansions thereto comply with all

applicable and relevant state, federal, and local statutes, rules, regulations, or ordinances. OPERATOR shall make adequate provision for and guarantee proper collection, handling, treatment and/or disposal of leachate generated at the Landfill and the Expanded Facility at its own expense. In the event that OPERATOR elects to send leachate to the CITY publicly owned treatment works for treatment and/or disposal, OPERATOR shall pay for all charges incurred in the treatment of constituents contained in the leachate. To the extent practicable, CITY agrees to charge OPERATOR for leachate treatment and disposal in a manner consistent with user treatment charges assessed to other users who generate leachate/waste stream which include the same type and level of constituents as are found in the leachate collected by the OPERATOR from the Landfill and the Expanded Facility.

(b) In the event that the CITY applies for local siting approval for an expansion of the Landfill, the CITY shall be responsible for all of the costs incurred in connection with the application and the local siting process, including the fees of any consultants, engineers, and other experts, filing fees, hearing officer fees, expenses of hearings and transcripts, and all other costs associated with the application or any appeal; provided, however, that the CITY shall not be responsible for any of OPERATOR'S costs related to the siting application or any siting appeal, including the fees of consultants, engineers and other experts, and OPERATOR shall be responsible for payment of the fees set forth in section 4 of this Agreement.

3.13 Supplemental and Special Permits. The OPERATOR shall be entitled to obtain, at the expense of the OPERATOR, any state or federal Supplemental Permits, Significant Modification Permits, Renewal Permits, special waste stream permits, adjusted standards, variances, and other permits or authorizations, and any amendments or modifications to any of the foregoing, which the OPERATOR determines to be necessary or appropriate for the operations, development, expansion, or closure of the landfill or for any corrective or remedial action relating to the landfill. The OPERATOR will provide the CITY with reasonable prior notice of any such applications intended to be filed by the OPERATOR and the OPERATOR shall not seek any permit, variance, or standard which would have a material adverse effect on the CITY without the prior written approval of the CITY. The CITY will cooperate with the OPERATOR in all such applications or petitions filed by the OPERATOR.

3.14 Hauling Agreement. Simultaneously with the execution of the Original Agreement, the CITY and Rochelle Disposal Services, Inc., a corporation, executed an agreement for the collection and transport of municipal solid waste in the form attached to the Original Agreement as **Exhibit C** (the first page of which is attached hereto) which took effect when the Original Agreement was executed and the Significant Modification was issued. Upon their execution, each such agreement was independent of the other and a default under either agreement shall not constitute a default under the other.

4. RENT, FEES, TAXES, ETC.

4.1 Initiation and Continuation Fees. In consideration for the exclusive right to operate CITY landfill facility until such time that the currently permitted air space is exhausted, and in further consideration for OPERATOR being granted the sole right to expand the landfill (subject to the provisions of subparagraph 3.12(b) above) and continue operation of the same, OPERATOR shall pay to CITY an Initiation fee of Two Hundred Thousand Dollars (\$200,000), at such time as the Agreement is executed, the receipt of which is acknowledged by the CITY, as well as a Supplemental Continuation fee of Two Hundred Thousand Dollars (\$200,000) at such time as siting approval for any expansion of the landfill facility operations is obtained. In the event that CITY is the local siting authority by which siting approval for any expansion of the landfill facility operations is obtained, OPERATOR shall pay to CITY an additional Two Hundred Thousand Dollars (\$200,000.00) at the time siting approval is obtained. In addition to the fees provided for in the preceding provisions of this subparagraph, in the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, the OPERATOR shall pay the CITY an additional Thirty-Eight Thousand Dollars (\$38,000.00).

4.2 Miscellaneous Costs. Subject to the provisions of subparagraph 3.12(b) above, the OPERATOR must pay for any and all engineering, monitoring and other professional fees, costs, and other necessary expenses incurred to insure that the existing facility (and all expansions thereto) comply with any and all applicable and relevant state, federal and local statutes, rules, regulations or ordinances (including but not limited to Part 811 regulations and applicable provisions of Subtitle D of RCRA). In addition, OPERATOR shall specifically reimburse CITY for engineering fees and costs incurred during the Significant Modification Application process from the date of issuance of the Request for Proposal for bids (RFP) for the operation/development of City of Rochelle Landfill No. 2 forward, the receipt of which is acknowledged by the CITY.

4.3 Taxes. OPERATOR assumes responsibility for and shall make proper payment of any and all taxes, fees, and levies made by all state, local and federal governmental entities with respect to operation of the landfill from the effective date of the Original Agreement forward.

4.4 Base Fee; Additional Fee; Supplemental Host Fee. a) In each calendar year of the term of this agreement, the OPERATOR agrees to pay to the CITY a Base Fee of Seventy-Five Thousand dollars (\$75,000.00) per year payable in equal quarter-annual installments.

b) In each calendar year of the term of this agreement OPERATOR agrees to pay CITY an Additional Fee of One 50/100 Dollars (\$1.50) on each ton of waste received and disposed of at the facility or at any expansion of the facility whether located on the property described on **Exhibit B** or any other site selected by the OPERATOR for expansion siting pursuant to Article 7 below, including the Expanded Facility (excluding residential and governmental/institutional waste exempt from disposal charge) or six and

one-tenth percent (6.1%) of the annual gross revenues received on an accrual basis by the OPERATOR during the year under this Agreement (whichever amount is greater). Payments of such Fees shall be made on a quarter-annual basis. For each year under this Agreement subsequent to the first five (5) years, the OPERATOR agrees that the six and one-tenth percent (6.1%) percentage fee will not be less than Two and 25/100 Dollars (\$2.25) on each ton of waste received and disposed of at the facility or at the Expanded Facility (excluding residential and governmental/institutional waste exempt from disposal charge) during the balance of this Agreement. Such Fees are in the nature of general revenues, and are not a fee, tax, or surcharge with regard to the permanent disposal of solid waste to be utilized for solid waste management purposes, but, rather, are general revenue fees which are to be collected under this Agreement in addition to any and all such other solid waste management/disposal fees, assessments and/or levies required by any state and/or local governmental entities. For the term of this agreement, the one and 50/100 dollar (\$1.50) fee shall increase in direct proportion to any increase in the posted "tipping fee" charged over the posted "tipping fee" in effect during the first year of the Agreement (not to exceed 10% per annum).

c) The OPERATOR and Ogle County, Illinois (the County) entered into an Agreement dated December 19, 1998 (the County Agreement), which addresses certain issues raised by the County concerning development and operation of an expansion of the Rochelle Landfill facility on property owned by the CITY and property owned by the OPERATOR. Subsequent to the Original Host Agreement and the County Agreement, the CITY, the County, and the Village of Creston (the Village) have entered one or more agreements (the Intergovernmental Agreements) which address certain governmental issues relating to the development and operation of an expansion of the Rochelle Landfill facility. In addition to the fees and other charges payable by the OPERATOR under the preceding provisions of this paragraph, the OPERATOR shall pay the CITY a Supplemental Host Fee equal to the lesser of: a) one-half the amount which the CITY and the County are obligated to pay to the Village under the existing Intergovernmental Agreements in connection with the operation of any expansion of the Rochelle Landfill Facility; or b) twenty-one cents (\$0.21) per ton of waste subject to the Host Fee payable under paragraph 4.4(b) above (Covered Waste). The obligation of the OPERATOR to pay the fee payable under this subparagraph (c) shall commence on the date on which the OPERATOR first accepts Covered Waste outside the present Rochelle Landfill boundaries as permitted under the existing local siting or zoning approvals applicable to the facility. In addition to the fees payable by the OPERATOR to the CITY pursuant to paragraph 4.1 of the CITY Host Agreement, the OPERATOR agrees to pay the County the Host Benefit Fee provided for in paragraph 16(c) of the County Host Agreement in the event that the CITY conducts the local siting process for the expansion of the Rochelle Landfill.

4.5 Tipping/Disposal Fees for Non-Exempt CITY Users. During the first and all subsequent years of operation of the landfill facility and the Expanded Facility, OPERATOR shall charge a "tipping fee" (the fee charged by the OPERATOR for the disposal of waste at the facility) for all commercial solid waste and non-hazardous special waste originating from the City of Rochelle which is not exempt from disposal/tipping

fees at a fee no greater than the average fee actually charged for similar waste at comparable landfill facilities located within a seventy-five (75) mile radius of the City of Rochelle.

4.6 Additional Revenues to be received by CITY. a) It is expressly understood and agreed that this lease is subject to the terms of an existing Lease Agreement relating to the communication tower located upon the existing landfill facility and the CITY will continue to receive all benefits and be responsible for all obligations under that Lease Agreement. In the event that the OPERATOR reasonably determines that the tower lease will interfere with the development, operation, expansion, closure, or post-closure care of the landfill, the OPERATOR will promptly notify the CITY of that fact and the CITY will use its best diligent efforts to terminate the tower lease within three years without cost to the OPERATOR. In the event that any activities of the OPERATOR in connection with the development of the facility prior to the termination of the tower lease damage any growing crops on the premises subject to that lease, the OPERATOR will compensate the tower lease tenant for the damage.

(b) OPERATOR currently owns a 220 acre (more or less) parcel immediately adjacent to the existing landfill facility (the "OPERATOR's Property"). The parties acknowledge that the OPERATOR's Property is not presently part of the landfill facility. Except as otherwise set forth in this Agreement, the OPERATOR will not permit or allow any development or uses on the OPERATOR'S Property which are not compatible with its eventual use as a landfill. Additionally, the OPERATOR will not permit or allow any use on the OPERATOR'S Property which is not complementary to the eventual use of the OPERATOR'S Property as a landfill.

(c) To facilitate the expansion of the Landfill, the OPERATOR has filed a petition to annex to the CITY on the terms set forth in this Agreement a parcel of approximately 1.09 acres located approximately 273 feet east of the intersection of Creston Road and Mulford Road, and a parcel of approximately 100.70 acres which adjoins the existing landfill property on the south and east, as depicted on the Site Plan which is attached as **Exhibit D** ("Additional Land."). In connection with the annexation of the Additional Land:

(i) The City shall cause the Additional Land to be classified or designated under the City's zoning ordinance in zoning classifications which are consistent with the development, use, and operation of a municipal solid waste landfill and ancillary uses on the Additional Land.

(ii) The CITY shall not assess any fees or charges with respect to the annexation of the Additional Land or any development, construction, or other activities on the Additional Land in connection with the expansion of the Landfill which are in excess of the fees or charges which would be payable by the OPERATOR if the property had remained in an unincorporated area of Ogle County.

(iii) The CITY shall not impose any sales, use, occupation, or other taxes applicable to any business conducted on the Additional Land or any utility charges, connection fees, monitoring charges, testing charges, or other governmental fees or charges on any activity conducted on the Additional Land which is not in effect on the date of this Agreement unless the fee or charge in question is generally applicable to all businesses in the CITY .

(iv) In consideration of the agreement of the OPERATOR to grant the CITY the option to purchase the Additional Land for One Dollar (\$1.00), the CITY agrees not to assess or impose any stormwater or other impact fees in connection with the annexation of the Additional Land.

(d) The OPERATOR hereby grants the CITY the option to purchase the Additional Land for One Dollar (\$1.00) if and when the CITY receives final and non-appealable site location approval for an expansion of the Landfill which is consistent with and in accordance with the terms of this Agreement. In the event that the CITY annexes the Additional Land, the Additional Land will be zoned by the CITY in zoning classifications which are consistent with the development, use, and operation of a municipal waste landfill and ancillary uses on the Additional Land and the adjoining land owned by the CITY.

(e) If the CITY is not successful in obtaining the approval of the appropriate local siting authority for an expansion which is consistent with and in accordance with the terms of this Agreement prior to November 1, 2007, or if the CITY is not successful in obtaining a final and non-appealable local siting approval for an expansion of the Landfill which is consistent with and in accordance with the terms of this Agreement within forty-eight (48) months after the date of this Agreement, the OPERATOR will be entitled to disconnect the Additional Land by a written notice to that effect to the CITY and the CITY's option to purchase the Additional Land will terminate. Notwithstanding the preceding provisions of this subparagraph, in the event that the CITY has obtained from the appropriate local siting authority the approval of an expansion which is consistent with and in accordance with the terms of this agreement prior to November 1, 2007, if the CITY is in good faith diligently defending or prosecuting an appeal of that approval, the CITY shall be entitled to extend the deadline provided in the preceding sentence for the duration of the appeal process. The provisions of this subparagraph shall survive the termination of this Agreement.

(f) Without charge, in the event that the CITY acquires the Additional Land, the OPERATOR and its tenants, licensees, subcontractors, and assignees shall be entitled to use any parts of the Additional Land which are not then required to be used for landfill purposes for any temporary uses which are not incompatible with the eventual use of the Additional Land in connection with the expansion of the Landfill and are permitted under the applicable zoning ordinance of the governmental body having jurisdiction, or constitute the temporary use of the Additional Land for the installation, maintenance, and operation of facilities used by contractors in the ordinary course of construction activities,

and to retain any rents, profits, or proceeds derived from their use. The term "landfill purposes" as used in this subparagraph, shall include uses such as set-backs, stormwater conveyances or detention areas, roadways, and other ancillary uses in addition to waste disposal areas. For purposes of this paragraph, any use which would be a permitted use under the I-2 zoning classification of the CITY zoning ordinance or under the zoning ordinance of the County applicable to the property prior to its annexation will be deemed to be a use permitted under the applicable zoning ordinance.

(g) OPERATOR shall indemnify and hold harmless the CITY, and CITY's agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the use or development of the Additional Land by the OPERATOR (the "OPERATOR's Alternative Uses"), provided that any such claim, damage, liability, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent or willful act or omission of OPERATOR, or anyone directly or indirectly employed by the OPERATOR or anyone for whose acts any of them may be liable. The obligations of OPERATOR under this subparagraph shall not extend to any liability, claim, cost, loss, or expense which arises out of the willful or wanton conduct of the CITY or any person for whose acts the CITY is responsible.

(h) The OPERATOR shall be entitled to incorporate any stormwater conveyances or detention areas in the Additional Land in the development of the OPERATOR's adjoining land as long as such development does not adversely affect their use in connection with the Expanded Facility and to utilize any wetlands which may be created in connection with the expansion of the Landfill for wetlands banking, wetlands credits, or similar purposes, in each case at the expense of the OPERATOR.

(i) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, the OPERATOR agrees to allow certain other improvements to its adjoining land to facilitate the expansion of the Landfill in accordance with this agreement. These additional improvements are: (a) the OPERATOR will allow the waterway located on its adjoining land to be relocated at the expense of the OPERATOR.

(j) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, the OPERATOR will encumber its adjoining property with a restrictive covenant that would prohibit its use as a landfill without the CITY's approval as long as waste disposal capacity which has received final and non-appealable local siting approval remains in the Expanded Facility. The terms of the restrictive covenant provided for in this paragraph shall be determined by the mutual agreement of the CITY and the OPERATOR.

(k) Commencing on the date of this Agreement, the OPERATOR and the CITY will attempt in good faith to negotiate the terms of the annexation to the CITY of the parcel of real property which is owned by Operator and is adjacent to the Expanded Facility (the "Development Parcel") pursuant to a "mixed use" land development plan acceptable to both of the parties. The development plan and the annexation agreement will address such matters as the nature of the uses permitted, zoning classifications, fee waivers, and other matters typically addressed in annexations. In the event that the parties are able to reach an agreement on the terms of annexation and the development plan for the Development Parcel, including the waiver of fees, the OPERATOR will file a petition for annexation of the property to the CITY, subject to approval of the annexation agreement containing the terms of the development plan, within thirty (30) days after an expansion of the Landfill receives final and non-appealable local siting approval.

4.7 Verified Records of Waste Received. The OPERATOR shall have a certified scale at the gate and all incoming waste shall be weighed. Further, OPERATOR shall maintain a true and accurate copy of all records of waste received at the Expanded Facility for the benefit of the CITY and shall provide a copy of all such records to the CITY on a monthly bases.

4.8 Utilities. OPERATOR shall pay for all water, gas, heat, light, power, telephone, sewerage, and other utilities and services which are supplied to the Expanded Facility, together with any taxes, fees, or assessments thereon.

4.9 Forbearance and Cancellation of Prior Arrangement. [intentionally deleted]

4.10 MAINTENANCE. OPERATOR shall keep all buildings and other improvements upon the Expanded Facility (and any expansion thereof) in good condition and repair, and shall make and maintain all additional improvements upon the existing facility (and any expansion thereof) in good condition and repair for the term of this Agreement.

5. CITY OF ROCHELLE OBLIGATIONS.

5.1 Public Information. CITY shall make every reasonable effort to insure that factual and technically accurate information concerning the landfill facility and the Expanded Facility is made available to the public.

5.2 Cooperative Guarantee. CITY will cooperate with the OPERATOR in all matters relating to the operation of the facility or the Expanded Facility. The CITY and its officers, council members and employees will not take any action which has the intended or probable effect of interfering unreasonably with the operation or expansion of the facility or the Expanded Facility including, for example and not in limitation of the preceding general provisions such actions as the following: a) the approval of zoning, siting, or otherwise in the CITY of any transfer station, composting facility, waste incinerator, landfill, or other facility for the treatment, storage, or disposal of solid waste provided, however, that if under applicable law the CITY may not lawfully fail or refuse to approve the zoning or siting of such a facility, then the provisions of this clause shall

be construed in such a manner as to require the CITY to prohibit or restrict such uses to the maximum extent allowed by law; b) the ownership or operation of any facility described in clause (a) by the CITY; c) the solicitation or recruitment of any facility described in clause (a) above; d) the discriminatory adoption, promulgation, or modification after the date of this agreement of any CITY ordinance, code, tax, fee, or regulation, d) the referral of inquiries relating to solid waste disposal to a site other than the facility without reasonable grounds. The provisions of this subparagraph shall not restrict in any way the ability of the CITY to enforce the terms of this agreement, or to perform its duties under Section 39.2 of the Act to decide any any application for local siting approval filed with the City.

5.3 Expansion. CITY will cooperate with OPERATOR in its efforts to obtain siting approval for an expansion of the existing landfill facility. This provision shall not affect the City's obligation to decide a site location application under Section 39.2 of the Act.

5.4 Highway Maintenance. CITY shall suitably maintain all highways within its maintenance jurisdiction which are utilized by the landfill OPERATOR in its operation.

5.5 Representations of the CITY. The CITY represents and warrants that:

a) The CITY has the full power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by the CITY (i) have the requisite approval of all governmental bodies, (ii) will not violate any judgment, order, law or regulation applicable to the CITY and (iii) do not (A) conflict with, (B) constitute a default under or (C) result in the creation of any lien, charge, encumbrance or security interest upon any assets of the CITY under any law, agreement or instrument to which the CITY is a party or by which the CITY or its assets may be bound or affected.

b) This Agreement has been duly authorized, executed and delivered by the CITY; this Agreement constitutes a legal, valid and binding obligation of the CITY, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, or by general equitable principles concerning remedies.

c) There is no litigation, administrative action, site investigation, or similar action proceeding, pending or, to the knowledge of the CITY threatened against or affecting the CITY or the facility (i) challenging the validity of this Agreement or any agreements contemplated hereby, (ii) seeking to enjoin the performance by the CITY of its respective obligations hereunder or thereunder or (iii) which, if adversely determined, would materially adversely affect the ability of the CITY or the OPERATOR to perform its obligations.

d) As of the date of this agreement, the CITY holds merchantable fee simple title to the property described on Exhibit B subject only to the tower lease described in paragraph 4.7 above.

5.6 Quiet Enjoyment. Upon payment of the fees and other payments and charges to be paid by the OPERATOR under the terms of this agreement and the performance by the OPERATOR of all of its other obligations under this agreement, the OPERATOR will lawfully and quietly hold, occupy and enjoy the Property described on Exhibit B during the term of this Agreement.

5.7 Memorandum. The CITY and the OPERATOR shall execute and record a memorandum of this agreement in the Ogle County Recorder's Office.

6. OVERSIGHT RESPONSIBILITIES.

6.1 Monitoring and Review. The CITY'S designee shall monitor landfill activities and review user fee structures.

6.2 Cooperative Guarantee. OPERATOR shall be required to cooperate in all manner and in prompt fashion with CITY, its authorized agents and representatives in allowing access to the site, in allowing access to records and in complying with all other requirements concerning CITY landfill monitoring and inspection program.

6.3 Document Access. OPERATOR shall provide CITY, free of charge, copies of the following documents in any manner connected with the landfill property:

- a) those documents contemplated to be submitted by OPERATOR or its agents or consultants to any state or federal environmental regulatory agency; and
- b) correspondence with any state or federal environmental regulatory agency;
- c) those documents filed with or received from any state or federal regulatory agency relevant to charges, complaints or citations of environmental violations made by any governmental authority, and
- d) those documents reflecting charges to customers at OPERATOR's facility.
- e) any and all other documents related to operation of the landfill facility and the disposal/recycling programs described herein in accord with all federal, state and local laws, regulations, rules and/or ordinances.

The CITY shall keep confidential all such documents which are entitled to confidentiality or an exemption from disclosure under the applicable provisions of the Freedom of Information Act. Whenever practicable, all such documents described herein above shall be provided to CITY a reasonable time prior to their anticipated submittal by OPERATOR and/or its agents and consultants to any state, local and/or federal regulatory

agency, and CITY shall have a reasonable opportunity to review any such anticipated submitted and make comments and/or suggested changes and modifications to the same. OPERATOR will provide CITY with any documents received by OPERATOR from any state, local and/or federal regulatory agency within ten (10) days of receipt thereof.

6.4 Inspection. CITY, its authorized agents and representatives shall:

a) have the right to inspect at any reasonable time all of the operations of the facility,

b) be permitted to inspect the books and records, pursuant to Section 6.5, which OPERATOR agrees to maintain on a daily basis pertaining to the weight of waste accepted at the landfill and the daily traffic count of vehicles utilizing the landfill (setting forth the size of each vehicle, the weight of waste each vehicle contains, the classification of waste, and its County of origin);

c) be permitted to inspect reports concerning compliance with any and all applicable federal, state and/or local laws, statutes, regulations, rules and/or ordinances relating to operation of the landfill facility and the disposal/recycling programs described herein.

6.5 Records and Books. OPERATOR shall maintain on a daily basis books and records pertaining to the weight of waste accepted at the landfill and the daily traffic count of vehicles utilizing the landfill (setting forth the size of each vehicle, the weight of waste each vehicle contains, the classification of waste, and its County of origin), and make available to the CITY for inspection on a daily basis copies of all such documents.

7. EXPANSION.

7.1 [Intentionally deleted]

7.2 [Intentionally deleted]

7.3 CITY Option. (a) Notwithstanding the provisions of subparagraph 4.1 above, during the period of one year which commences on the date of this Restatement, the CITY shall be entitled to prepare and file an application for local siting approval for an expansion of the Landfill pursuant to Section 39.2 of the Act; provided, however, that the design, operational requirements, and other terms of any local siting approval sought by the CITY shall be consistent with the terms of this Agreement.

(b) The OPERATOR, at its expense, will make its staff, consultants, and the work product from prior applications for site location approval available to the CITY for use in the preparation of any designs, plans, or studies relating to an application for site location approval for an expansion of the Landfill pursuant to this Agreement and for use in connection with the preparation of such an application. The OPERATOR will also cooperate with the CITY in providing any other information relating to the operation of

the facility for use by the CITY or its consultants in the preparation of any such design and/or application.

7.4 Unit 1. (a) In the event that the CITY prepares and files an application for local siting approval for an expansion of the Landfill pursuant to Section 39.2 of the Act in accordance with the provisions of paragraph 7.3 above, the CITY may in its discretion determine to provide in its application that Unit 1 of the existing Landfill will be excavated and re-disposed of in a new Subtitle D unit, with the excavation to be commenced and completed within a commercially reasonable time. Subject to the provisions of this subparagraph, the timing, sequence, and manner of excavation and re-disposal will be determined by the mutual agreement of the CITY and the OPERATOR, subject to any applicable requirements of the Illinois Environmental Protection Agency (the "IEPA").

(b) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this Agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, if the local siting approval requires the excavation and re-disposal of Unit 1: (i) the CITY will be responsible for the first eight hundred fifty thousand dollars (\$850,000.00) of the cost of excavating and re-disposing the Unit 1 waste; (ii) the OPERATOR will be responsible for all costs of excavating and re-disposing the Unit 1 waste in excess of that amount; and (iii) the OPERATOR will be responsible for obtaining any permits necessary for the excavation and re-disposal of the Unit 1 waste, and for the selection of contractors, consultants, and engineers to be utilized in the design, permitting, and performance of the excavation and re-disposal of the Unit 1 waste.

(c) In the event that IEPA requires that the closure of Unit 1 be completed before the waste in Unit 1 is excavated and re-disposed, the provisions of this section 7.4 shall no longer apply.

(d) The OPERATOR shall comply with the Illinois Prevailing Wage Act in the performance of any of the work required under this section 7.4 which is subject to that act.

(e) In the event that the CITY determines to provide in its application that Unit 1 of the existing Landfill will be excavated and re-disposed of in a new Subtitle D unit, the Expanded Facility may be designed so that the entire area of Unit 1 will be incorporated in the area of the Expanded Facility permitted for the disposal of waste (the "Waste Footprint") in such a manner as to create a single integrated waste disposal unit; provided, however, that the CITY may, in its discretion, determine to exclude up to 12.51 acres of the area of Unit 1 from the Waste Footprint.

(f) Notwithstanding any other provision of this agreement to the contrary, in the event that the CITY elects to exclude more than 12.51 acres of the area of Unit 1 from the Waste Footprint in any application for local siting approval for an expansion of the

Landfill prepared and filed by the CITY pursuant to this agreement, or in the event that the siting authority imposes conditions in its approval of local siting which have the effect of excluding more than 12.51 acres of the area of Unit 1 from the Waste Footprint, then in either event, at the written request of the OPERATOR, the CITY and the OPERATOR shall prepare an analysis to determine the "Cost Differential." The "Cost Differential" shall mean the excess of the present value of the estimated capital costs of the development, construction, and financial assurance of the proposed or approved expansion during its initial twenty (20) year term over the present value of such costs for an expansion of reasonably comparable volume which did not exclude more than 12.51 acres of the area of Unit 1 from the Waste Footprint (the "Alternative Footprint Expansion"), in the following manner:

- (i) the parties shall first attempt to reach an agreement on the estimated costs;
- (ii) in the event that the parties are unable to agree on the estimated costs within thirty (30) days following the OPERATOR'S request, the parties shall appoint an independent financial analyst experienced in the evaluation and analysis of non-hazardous solid waste management disposal facilities to conduct the comparison and determine the Cost Differential, whose fees shall be paid by the parties in equal shares;
- (iii) if the parties are unable to agree on the appointment of a financial analyst within sixty (60) days after the OPERATOR's request, then the OPERATOR and the CITY may each appoint, at each party's own expense, a qualified independent financial analyst experienced in the evaluation and analysis of non-hazardous solid waste management facilities
- (iv) if only one party appoints a qualified financial analyst within the sixty (60) days, that financial analyst shall determine the Cost Differential;
- (v) if each party appoints a qualified financial analyst and the difference in the Cost Differential between the two comparisons is not more than twenty percent (20%) of the lower of the two comparisons, the Cost Differential shall be deemed to be the average of the two comparisons;
- (vi) if the difference in the Cost Differential between the two comparisons is more than twenty percent (20%) of the lower of the two comparisons, the two financial analysts shall (within thirty (30) days of completion of their comparisons) together appoint a third similarly qualified financial analyst, the cost of whose comparison will be split equally between the parties, and the written opinion of the third financial analyst shall establish the Cost Differential;
- (vii) at any point in the foregoing process, the parties may agree on a Cost Differential;

(viii) in the event that the Cost Differential agreed upon by the parties or determined in the manner set forth herein is more than ten per cent (10%) of the estimate for the Alternative Footprint Expansion, the fees provided for in paragraph 4.4 above shall be reduced by an equitable amount sufficient to reduce the Cost Differential to zero.

7.5 CITY Siting Authority. No provision of this Agreement shall be deemed to affect or limit the authority and responsibility of the CITY to decide an application for local siting approval under Section 39.2 of the Act.

8. CLOSURE/POST CLOSURE.

8.1 Responsibility. OPERATOR shall assume responsibility for any and all closure/post closure responsibilities (financial and otherwise) as listed in approved closure/post closure plans for both the existing facility and any expansion of the same; provided, however that the OPERATOR shall not be responsible for the cost of or financial assurance for closure or post closure of any expansion pursuant to an application for local siting approval filed by the CITY unless the expansion is consistent with the terms of this agreement.

9. INSURANCE & INDEMNIFICATION.

9.1 Hold Harmless and Indemnification Clause. OPERATOR agrees to indemnify, hold harmless and defend the City of Rochelle, its agents, servants, and employees, and each of them against and hold it and them harmless from and against any and all lawsuits, claims, demands, liabilities, losses and expenses (including court costs, litigation expenses and attorney's fees) for or on account of any injury to any person or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of or in connection with operation, construction and development of the landfill and any expansion thereof as well as in connection with the rendering of all other services covered by this Agreement. The foregoing indemnity shall not apply if such injury, death or damage is caused directly by the willful and wanton conduct of the City of Rochelle, its agents, servants, or employees or any other person indemnified hereunder.

9.2 Insurance. OPERATOR shall purchase and maintain such insurance as is necessary to fully protect OPERATOR and CITY from claims set forth below which may rise out of or result from OPERATOR's operations, conduct or activities. Such insurance shall include the City of Rochelle as an additional insured and, if such coverage is commercially available, shall include "Occurrence" basis wording issued by a company or companies qualified to do business in the State of Illinois, in the following type and minimum amounts:

9.2.01 Claims under Worker's Compensation, disability benefit and other similar employee benefit acts.

9.2.02 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.

9.2.03 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees.

9.2.04 Claims for costs and damages resulting from environmental hazards caused by operations (both on site and off site).

9.2.05 Claims for damages because of injury to or destruction of tangible property, including loss and use resulting therefore of all buildings on the site.

9.2.06 Any other source of liability is not excluded by the enumeration of the above.

9.2.07 To ensure compliance with the indemnity clause, OPERATOR shall agree to carry liability insurance not less than the following initial limits of liability:

Minimum Limits of Liability

Per Occurrence/Aggregate

Automobile Liability \$ 500,000/\$ 500,000

Worker's Compensation Statutory

General Liability

Premises and Operations (a) \$1,000,000/\$ 1,000,000

Contractual Liability \$2,000,000/\$ 2,000,000

Completed Operations \$1,000,000/\$ 1,000,000

Personal Injury \$1,000,000/\$ 1,000,000

Environmental Impairment \$ 500,000/\$ 500,000

Umbrella Liability \$10,000,000/\$20,000,000

(a) Includes damage caused by lasting, collapse, or structural injury, or damage to underground utilities.

9.2.08 So as to ensure maintenance of adequate levels of future insurance coverage during term of this Agreement, OPERATOR shall adjust and increase such levels of insurance coverage outlined above each five (5) year period included in the Host Agreement to account for increases in the CPI-U-US price index over the preceding five (5) years.

9.2.09 OPERATOR agrees that with respect to the above required insurance, the City of Rochelle shall:

(a) Be named as additional insured as their interest may appear;

(b) Be provided with thirty (30) days advance notice, in writing, of any proposed policy cancellation or change;

(c) Be provided with Certificates of Insurance evidencing the above required insurance, prior to commencement of the Host and Operation Agreement, and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. Said Notices and Certificates of Insurance shall be provided to:

Office of the CITY Clerk
Rochelle Municipal Building
420 North 6th Street
Rochelle, IL 61068-0601

9.3 Contractor Responsibility. OPERATOR shall assume responsibility for all services offered in this proposal. CITY shall consider OPERATOR to be a point of contact with regard to all insurance matters, including payment of any and all charges resulting from the contract.

9.4 Third Party Claims.

9.4.01 Third Party Claims. Promptly after the receipt by any party hereto of notice of any claim, action, suit or proceeding by any Person who is not a party to this Agreement (collectively, an "Action") which is subject to indemnification hereunder, such party (the "Indemnified Party") shall give reasonable written notice to the party from whom indemnification is claimed (the "Indemnifying Party"). At the sole expense and liability of the Indemnifying Party and within a reasonable time after the giving of such notice by the Indemnified Party, the Indemnifying Party shall: (i) notify the Indemnified Party in writing of the Indemnifying Party's intention to assume the defense of such action, and (ii) retain legal counsel reasonably satisfactory to the Indemnified Party to conduct the defense of such Action. The Indemnified Party and the Indemnifying Party shall cooperate with the party assuming the defense in defending, compromising or settling any such Action in any manner that such party reasonably may request. If the Indemnifying Party so assumes the defense of any such Action, the Indemnified Party shall have the right to employ separate counsel and to participate in (but not control the defense, compromise, or settlement thereof, but the fees and expenses of such counsel shall be the expense of the Indemnified Party. No Indemnified Party shall settle or compromise any such Action for which it is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party, unless the Indemnifying Party shall have failed, after reasonable notice thereof, to undertake control of such action in the manner provided above in this Paragraph 11.2. No Indemnifying Party shall settle or compromise any such Action in which any relief other than the payment of money damages is sought against any Indemnified Party unless the Indemnified Party consents in writing to such compromise or settlement.

9.5 Payment Bonds. The OPERATOR shall provide the CITY with a payment bond prior to the performance of any substantial improvements at the facility; provided, however, that the OPERATOR shall not be required to provide a payment bond for any contract or subcontract under the terms of which the Contractor or subcontractor waives

any rights which it would otherwise have to a lien or claim on the property against the CITY.

10. GENERAL COVENANTS.

10.1 Maintenance of Bonds, Licenses, Etc. OPERATOR shall maintain in full force and effect all licenses, bonds, franchises, leases, patents, contracts, and all other rights necessary to the profitable conduct of its business, including, without limitation, all notices, permits, or licenses, if any, filed or obtained with regard to compliance with all applicable federal, state and local statutes, rules, regulations and ordinances which are in any way related to the development or operation of the landfill or related to the rendering of all other services provided herein. OPERATOR shall comply with all applicable laws, statutes, rules, regulations and/or ordinances of all federal, state, and/or local governmental authorities, including, without limitation, all Environmental Laws.

10.2 Compliance with Environmental Laws. OPERATOR shall conduct its respective business so as to comply in all material respects with all applicable Environmental Laws, statutes, rules, regulations and/or ordinances in any way related to the operation of the landfill or related to the rendering of all other services described herein; provided, however, that nothing contained in this Paragraph shall prevent OPERATOR from contesting, in good faith and by appropriate legal proceedings, any such laws, statutes, rules, regulations and/or ordinances or interpretation or application thereof; provided, further, that OPERATOR shall comply with the order of any court or other governmental body of applicable jurisdiction relating to such Environmental Laws pending prosecution of an appeal or proceedings for review, and shall have secured any necessary order, stay of enforcement, execution or other arrangement postponing enforcement or execution pending such appeal or proceedings for review.

10.3 Notices. If OPERATOR shall receive with respect to the facility: (a) notice that any violation of any Environmental Law, statute, rule, regulation and/or ordinance may have been committed or is about to be committed, (b) notice that any administrative or judicial complaint or order has been filed or is about to be filed against OPERATOR alleging violation of any Environmental Law, statute, rule, regulation and/or ordinance or requiring OPERATOR to take any action in connection with the release or threatened release of "hazardous substances" (as defined by law) into the environment, or c) any notice from a federal, state, or local governmental agency, court or private party alleging that OPERATOR may be liable or responsible for costs associated with a response, cleanup of a release or disposal of a "hazardous substance" into the environment or any damages caused thereby (including without limitation any notice that OPERATOR is a "potentially responsible party" as defined by CERCLA). OPERATOR shall provide the CITY with a copy of such notice within ten (10) days of the CITY's receipt thereof. In addition, OPERATOR shall provide the CITY with notice of the enactment or promulgation of any Environmental Law, statute, rule, regulation and/or ordinance which may result in a material adverse change in the business, financial condition, or operations of OPERATOR as promptly as is reasonably possible after OPERATOR obtains knowledge thereof.

11. GUARANTEE OF PERFORMANCE. The OPERATOR is an Illinois Limited Liability Company comprised of both Winnebago Reclamation Service, Inc. (WRS) and Rochelle Disposal Services, Inc. (RDS). WRS shall cause its parent corporation, William Charles, Ltd., to execute a Guarantee in the form attached to this agreement as Exhibit E, (a true and accurate copy of which is attached hereto and incorporated herein by this reference).

12. DEFAULTS/REMEDIES.

12.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by OPERATOR:

12.1.01 The failure by OPERATOR to make any payment of rent or any other payment required to be made by OPERATOR hereunder, after ten (10) days written notice thereof.

12.1.02 The failure of the OPERATOR to correct or remedy promptly any alleged violation by the OPERATOR of any law, regulation, approval, condition or permit relating to the development, operation, closure or post-closure care of the facility or the Expanded Facility. For this purpose, the OPERATOR shall be deemed to have acted promptly if it corrects or commences the correction of the violation in question within the time allowed by the governmental agency in question. The OPERATOR shall not be deemed to be in default under this agreement for any such alleged violations for which the agency in question seeks a fine, civil penalty, or other similar imposition unless the agency in question establishes the OPERATOR's willful, persistent and repeated violation of the law, regulation or permit conditions.

12.1.03 The failure by OPERATOR to observe or perform any of the other covenants, conditions or provisions of this Agreement to be observed or performed by OPERATOR, where such failure shall continue for a period of thirty (30) days after written notice thereof from CITY to OPERATOR; provided, however, that if the nature of OPERATOR's default is such that more than thirty (30) days are reasonably required for its cure, then OPERATOR shall not be deemed to be in default if OPERATOR commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.1.04 (i) The making by OPERATOR of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against OPERATOR of a petition to have OPERATOR adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against OPERATOR, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of OPERATOR's assets located at the Premises or of OPERATOR's interest in this Agreement, where possession is not restored to OPERATOR within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of OPERATOR's assets located at the

Premises or of OPERATOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

12.2 Remedies. In the event of any default by the OPERATOR hereunder, CITY may at any time thereafter, by a written notice and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such default or breach:

12.2.01 Pursue, make claim under and/or recover on any and all outstanding bonds obtained and/or posted to insure the proper development and construction of the existing facility and any expansions thereof during the term of this Agreement.

12.2.02 Elect to re-enter, or take possession pursuant to legal proceedings and to terminate this Agreement; in which event CITY may recover from OPERATOR all damages it may incur by reason and consequence of OPERATOR's default including costs of recovering the premises, attorney's fees, court costs and litigation expenses as well as the present value at the time of such termination of the balance of any payments and/or charges reserved in this Agreement for the remainder of the stated original term, as well as any and all other damages and losses incurred by CITY as a consequence of OPERATOR's default, all of which amounts shall be immediately due and payable from OPERATOR to CITY;

12.2.03 Re-enter, or take possession pursuant to legal proceedings and without terminating this Agreement, make such modification and/or improvements or take such other measures as may be necessary in order to relet the Premises for the remainder of the then-existing term for the highest bid reasonably obtainable. Upon such reletting, all payments and other sums received by the CITY from such reletting shall be applied first to the payment of the costs and expenses of such reletting, and the costs of such modifications and/or improvements or such other measures as may be necessary; and second to the payment of all other charges otherwise reserved and unpaid under this Agreement. In the event such sums received from the reletting are less than those amounts to be paid by OPERATOR hereunder, OPERATOR shall immediately pay any such deficiency to CITY as such deficiency amounts arise.

12.2.04 Maintain OPERATOR's right to possession, in which case this Agreement shall continue in effect whether or not OPERATOR shall have abandoned the Premises. In such event, CITY shall be entitled to enforce all of CITY's rights and remedies under this Agreement, including the right to recover past due payments and charges as well as future payments and charges as they become due hereunder.

12.2.05 Pursue any other remedy now or hereafter available to CITY under the laws or judicial decisions of the State of Illinois.

12.2.06 In the event that the CITY elects to re-enter and take possession of the facility or the Expanded Facility upon a default by the OPERATOR, whether or not the CITY elects to terminate this agreement:

a) In the event that the CITY closes the facility or the Expanded Facility upon re-entry, the CITY shall be entitled to apply any closure/post closure financial assurances which the OPERATOR has provided to cover the costs of closure, post-closure care, and any corrective action, and the OPERATOR shall take all steps necessary to enable the CITY to utilize any and all developmental, operational, closure/post closure and/or other financial assurances which the OPERATOR has provided; however, that the use of any such financial assurances shall not relieve the OPERATOR from liability for any shortfall;

b) If the CITY does not close the facility or the Expanded Facility upon re-entry: i) the OPERATOR shall be entitled to a credit against all amounts otherwise then due from the OPERATOR as a result of its default, in an amount equal to the fair market value as of the date of termination of then permitted, developed, constructed, and available air space capacity at the facility plus the fair market value of any improvements constructed at the facility by the OPERATOR which will be available for future cells or units at the facility; and (ii) the CITY shall not be entitled to utilize any closure/post-closure/corrective action financial assurances provided by the OPERATOR to cover any costs of closure, post-closure care, or corrective action which are attributable to the operation of the facility or the Expanded Facility after re-entry by the CITY determined as if the CITY had closed the facility or the Expanded Facility on the date of its re-entry.

c) In the event of uncured default by the OPERATOR, OPERATOR shall take all steps necessary to enable the CITY to utilize any and all developmental, operational, closure/post closure or other performance/financial assurances and/or bonds which the OPERATOR has posted or provided in connection with the terms and conditions of this agreement.

12.3 Default by CITY. In the event of any failure of CITY to perform any of its obligations under this Agreement, OPERATOR shall give written notice to the CITY of the claimed default, and in the event CITY does not cure the default within thirty (30) days, OPERATOR shall have the option either of curing the default, advising CITY of the cost of curing the default and reducing its payment obligations by the amount paid by OPERATOR to cure the default, or to pursue any other remedy now or hereafter available to the OPERATOR under the laws or judicial decisions of the State of Illinois.

12.4 Default Expenses. In the event of default by either party under the terms of this Agreement or the breach of any covenant of this Agreement, and the nondefaulting party brings legal proceedings to enforce and protect its rights and remedies under this Agreement, the defaulting party shall pay the reasonable attorneys' fees, court costs and expenses of the nondefaulting party should it prevail.

12.5 Interest on Past Due Obligations. Except as expressly herein provided, any amount due to CITY not paid when due shall bear interest at four percent (4%) over the Base Rate (the most favorable rate charged by Amcore for its most credit-worthy commercial customers) charged by Amcore Bank, N.A. Rockford from time to time.

Payment of such interest shall not excuse or cure any default by OPERATOR under this Agreement.

13. GENERAL PROVISIONS.

13.1 Severability. The invalidity of any provision of this AGREEMENT as determined by a court of competent jurisdiction shall in no way affect the validity of any other provisions hereof.

13.2 Incorporation of Prior Agreements; Amendments. This AGREEMENT contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This AGREEMENT may be modified in writing only, signed by the parties in interest at the time of the modification.

13.3 Waivers. No waiver by CITY of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by OPERATOR of the same or any other provision. CITY's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of CITY's consent to or approval of any subsequent act by OPERATOR. The acceptance of payments hereunder by CITY shall not be waiver of any preceding breach by OPERATOR of any provision hereof, other than the failure of OPERATOR to pay the particular payment so accepted, regardless of CITY's knowledge or such preceding breach at the time of acceptance of such payment. Prior to the execution of this Agreement, each of the parties has asserted or identified claims against the other arising under the Amended Host Agreement prior to the date of this Restatement. Except to the extent that this Agreement expressly provides for a waiver or release of a claim, this Agreement shall not affect any such claims and shall not constitute a waiver or release of any such claims.

13.4 Uncontrollable Circumstances. Notwithstanding anything to the contrary contained in this Agreement, neither the CITY nor the OPERATOR shall be liable to the other for any failure or delay in performance of any obligation under this Agreement, other than an obligation to pay money, due to the occurrence of an Uncontrollable Circumstance and any such failure or delay shall not constitute an Event of Default under this Agreement, "Uncontrollable Circumstance" means any act, event or condition (other than labor strikes) that has had, or may reasonably be expected to have but requiring present action, a material adverse effect on the rights or the obligations of the parties under this Agreement, or a material adverse effect on the facility or the ownership, possession or operation by the OPERATOR of the facility, if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. Such acts or events may include, but shall not be limited to, the following:

a) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence; acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

b) the order and/or judgment of any federal, state or local court, administrative agency or governmental body, excepting decisions of federal courts interpreting the federal tax laws and decisions of state courts interpreting state tax laws, if it is not also the result of the willful or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order and/or judgment nor the failure to so contest shall constitute or be construed as a willful or negligent action or inaction of such party;

c) the failure to issue, suspension, termination, interruption, denial or failure of renewal of or the imposition of any new conditions upon any permit, license, consent, authorization or approval essential to the operation of the facility; provided that such act or event shall not be the result of the willful or negligent action or inaction of the party relying thereon and that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as a willful or negligent action or inaction of such party;

d) a Change in Law; provided, however, that a Change in Law shall excuse performance for only the period of time which is reasonably necessary to allow the OPERATOR to comply and shall not excuse all further performance by the OPERATOR unless the Change in Law is such that it effectively prohibits performance. For example, the OPERATOR's performance under this agreement would be excused if a Change in Law made it unlawful to dispose of municipal waste by kind filling or imposed taxes or other requirements which have the same effect.

e) the failure of any appropriate federal, state, county or Community public agency or private utility having operational jurisdiction in the area in which the facility is located, to provide and maintain utilities, services, water and sewer lines and power transmission lines to the facility which are required for and essential to the operation of the facility;

f) the failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to; provided that such failure is caused by an act, event or condition that would be an Uncontrollable Circumstance if it directly affected the OPERATOR and that materially adversely affects the OPERATOR's ability to perform its obligations, and that the OPERATOR is not able reasonably to obtain substitute labor, services, materials or equipment on the agreed-upon dates;

g) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the facility, or any material portion or part thereof by the action of any federal, state or local government or governmental agency or authority.

“Change in Law” means (a) the adoption, promulgation or modification or reinterpretation (including any change in enforcement policy) after the date of this agreement of any federal, state, county, local municipal, or CITY statute, ordinance, permit, code or regulation not adopted, promulgated, modified and/or officially published on or before the date of this agreement; or (b) the imposition after the date of this agreement of any material conditions or change in government or judicial policy in connection with the issuance, renewal, modification or enforcement of any official permit, license or approval, which in the case of either (a) or (b) establishes requirements affecting the obligation of either party under this Agreement (other than payment obligations) or the design, construction, startup, operation, maintenance, cost or construction of the facility more burdensome than the most stringent requirements (i) in effect as of the date of this agreement, (ii) agreed to in any applications of the OPERATOR for official permits, licenses or approvals, or (iii) contained in any official permits, licenses, or approvals with respect to the facility obtained as of the date of this agreement or; c) the failure of any applicable federal, state or local governmental agency or unit having jurisdiction over the facility to issue any permit, license or approval necessary for the operation of the Facility after the date of this agreement, which permit, license or approval was not issuable on or before this agreement. A change in federal, or state law affecting the taxation of income of the Company shall not be a change in law.

13.5 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

13.6 Covenants and Conditions. Each provision of this Agreement performable by OPERATOR shall be deemed both a covenant and a condition.

13.7 Binding Effect. Subject to any provisions hereof restricting assignment or subletting by OPERATOR and subject to the provisions of Paragraph 3.7, this Agreement shall bind the parties, their personal representatives, successors, and assigns.

13.8 Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

13.9 Notice. Notice shall be provided in writing by certified mail to the respective parties as follows:

CITY: Office of the City Clerk
Rochelle Municipal Building
420 North 6th Street
Rochelle, IL 61068-0601

with a copy to: Rochelle City Manager
Rochelle Municipal Building

420 North 6th Street
Rochelle, IL 61068-0601

OPERATOR: Rochelle Waste Disposal, Inc.
1161 S. Seventh St.
Rochelle, IL 61068

with a copy to: William Charles, Ltd.
4920 Forest Hills Road
Loves Park, IL 61111

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF ROCHELLE

ROCHELLE WASTE DISPOSAL, INC.

By: Ken Albeits
City Manager

By: [Signature]

Attest: James Williams
City Clerk

Its: VP

EXHIBIT A

to

Host Agreement and Agreement

for

Operation/Development

of

City of Rochelle Landfill No. 2.

Exhibit A incorporates by reference the Application for Significant Permit Modification, City of Rochelle, Illinois, dated July 1994, filed by Foth & Van Dyke on behalf of the City of Rochelle, Illinois, and all modifications, amendments, or revisions to that Application.

EXHIBIT "B"

Parcel A

$\frac{1}{4}$ of 160 = 40 ac except for 1 ac.

The Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 22, in Township 40 North, Range 2 East of the 3rd. P.M., EXCEPT a tract described as follows: Beginning at a point on the South line of said Section 22, said point being 272.99 Feet East of the Southwest corner of said Section, as measured along said South line, thence continuing East (assumed bearing) along said South line, 188.70 feet, thence North 01 degrees 28 minutes West, 224.19 feet, thence North 88 degrees 28 minutes West 177.29 feet, and thence South 01 degrees 26 minutes West 228.93 feet to the point of beginning, in Ogle County, Illinois. lac

Parcel B

All that part of the North $\frac{1}{2}$ of the South West $\frac{1}{4}$ of Section 22, lying South of the Chicago and Northwestern Railroad right-of-way; all that part of the North West $\frac{1}{4}$ of Section 22, lying South of the Chicago and Northwestern Railroad right-of-way; all in Township 40 North, Range 2 East of the 3rd Principal Meridian, Dement Township, Ogle County, Illinois.

EXHIBIT "C"

WASTE COLLECTION AGREEMENT

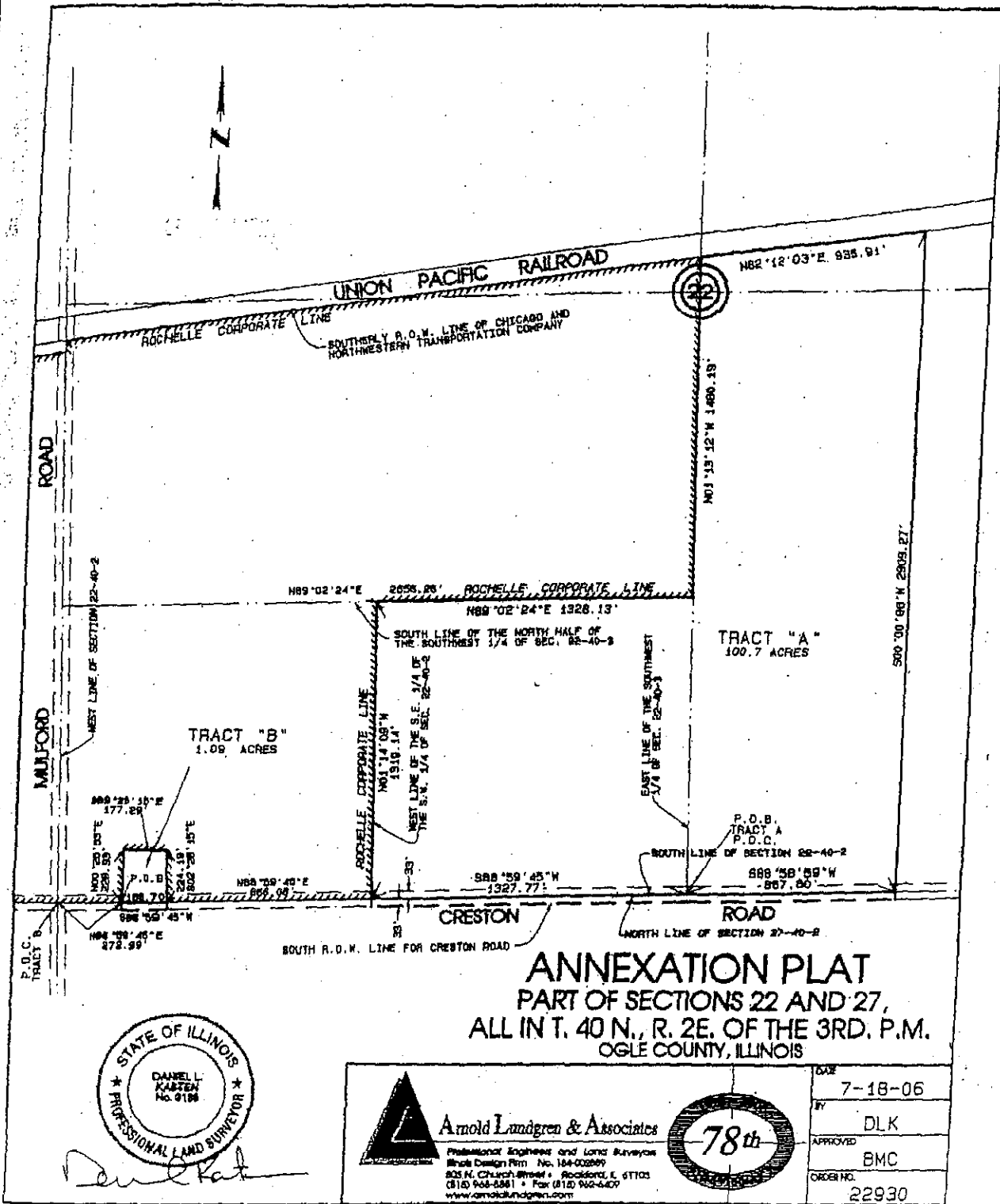
THIS AGREEMENT is made and entered into this ___ day of April, 1995, by and between the CITY OF ROCHELLE, ILLINOIS, a Municipal Corporation, (hereinafter called the "City"), and ROCHELLE DISPOSAL SERVICE, INC., an Illinois Corporation, (hereinafter called the "Contractor").

RECITALS:

A. The City is interested in negotiating an agreement for the collection and hauling of all residential, commercial, institutional, governmental and industrial solid waste and non-hazardous special waste of the type that Contractor hauls from time to time; all residential landscape waste; and all residential recyclables which are generated within the City (meaning and intending to include the City as the boundaries of the City may be adjusted from time to time in the future during the term of this Agreement);

B. The Contractor is interested in providing for the collection and hauling of all residential, commercial, institutional, governmental and industrial solid waste and non-hazardous special waste of the type that Contractor hauls from time to time; all residential landscape waste; and all residential recyclables which are generated within the City as

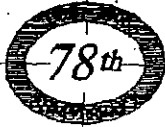
EXHIBIT "D"



Daniel Karzen



Arnold Lundgren & Associates
 Professional Engineers and Land Surveyors
 Shedd Design Firm No. 184-002899
 803 N. Church Street • Rockford, IL 61103
 (815) 968-5841 • Fax (815) 962-6409
 www.arnoldlundgren.com



CITY OF ROCHELLE



RESOLUTION R07-10

A RESOLUTION OF THE ROCHELLE CITY COUNCIL
CONCERNING APPLICATION FOR LOCAL SITING
APPROVAL FOR THE EXPANSION OF ROCHELLE
MUNICIPAL LANDFILL #2

PASSED BY THE

CITY COUNCIL

OF THE

CITY OF ROCHELLE

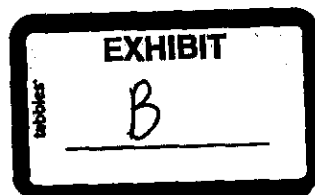
THIS 11TH

DAY OF APRIL 2007

WITH 7 YEARS AND 0 DAYS

ABSENT OR NOT VOTING: 0

Published in pamphlet form by authority of the City Council of the City
of Rochelle, Ogle County, Illinois, this 12TH of APRIL, 2007.



CITY OF ROCHELLE

STATE OF ILLINOIS)
COUNTY OF OGLE)
COUNTY OF LEE)

CERTIFICATE

I, the undersigned, hereby certify that I am the duly qualified and acting City Clerk of the City of Rochelle, Counties of Ogle & Lee and State of Illinois, and as such City Clerk, I am the keeper of the journals, records and files of the City of Rochelle.

I do hereby certify that the attached Resolution, Number R07-10, presented to the City Council on the 11th day of April, 2007 and as signed by the Mayor of the City of Rochelle on the 12th day of April, 2007 and attested by the City Clerk, all as appears from the official records of the City in my Care and custody.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the corporate seal of the City of Rochelle, Illinois this _____ day of _____ 20__.

Bruce W. McKinney, CMC
City Clerk, City of Rochelle

Resolution of the Rochelle City Council Concerning Application for Local Siting Approval for the Expansion of Rochelle Municipal Landfill #2.

RESOLUTION NO. R07-10

Date passed: April 11, 2007

RESOLUTION OF THE ROCHELLE CITY COUNCIL CONCERNING APPLICATION FOR LOCAL SITING APPROVAL FOR THE EXPANSION OF ROCHELLE MUNICIPAL LANDFILL #2

WHEREAS, Section 39 (c) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/39 (c)) provides, in part, that no permit for the development or construction of a new pollution control facility may be granted by the Illinois Environmental Protection Agency unless proof is submitted that the location of the facility has been approved by the governing body of the municipality if in an incorporated area in accordance with Section 39.2 of the Act; and

WHEREAS, Section 39.2 of the Act provides that an applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance with, and local siting approval shall be granted only if the proposed facility meets, the following criteria:

- (i) the facility is necessary to accommodate the waste needs of the area that it is intended to serve;
- (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- (iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;
- (iv) the facility is located outside the boundary of the 100-year flood plain or the site is flood-proofed;
- (v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;
- (vi) the traffic patterns to and from the facility are so designed to minimize the impact on existing traffic flows;
- (vii) if the facility will be treating, storing, or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
- (viii) if the facility is to be located in a county where the county board has adopted a solid waste plan, the facility is to be consistent with that plan; and
- (ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met; and

WHEREAS, the City Council may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under Section 9.2; and

WHEREAS, the City Council has adopted a Landfill Siting Ordinance for Pollution Control Facilities which establishes certain rules and regulations relating to the filing, form and content of applications, hearing procedures, hearing officer duties, decisions and other matters concerning the local siting process; and

WHEREAS, on October 16, 2006, the City of Rochelle filed an Application for Local Siting Approval for the Rochelle Municipal Landfill #2 Expansion with the City of Rochelle City Clerk, and

WHEREAS, the Rockelle City Council conducted public hearings on the Application on January 22, 23, 24, 25 and 26 and February 3, 2007, at which hearings the applicant, interested parties, concerned citizens and members of the public were afforded full opportunity to present testimony and evidence, cross-examine witnesses, present motions and argument, and provide oral and written comment; and

WHEREAS, additional public comment, summary of evidence, proposed findings of fact and conclusions of law, and other written filings were submitted during the hearings and the post-hearing public comment period; and

WHEREAS, subsequent to the close of the public hearing public comment period, the City Council's technical consultant, Patrick Engineering, issued its Report to the Rockelle City Council, and the Hearing Officer, John McCarthy, issued Hearing Officer's Findings of Fact, Conclusions of Law and Recommendations; and

WHEREAS, the Rockelle City Council finds that the Hearing Officer properly ruled on the motions and evidentiary issues raised during the hearing; and

WHEREAS, the Act requires that the Rockelle City Council take final action on the Application within 180 days from the date of its filing; and

NOW, THEREFORE, BE IT RESOLVED, after review of the Application, all testimony, all exhibits, all public comment, the entire filing record, the Technical Consultant Report, and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendations, and after considering all relevant and appropriate factors and matters, the Rockelle City Council HEREBY FINDS as follows:

I The Rockelle City Council has jurisdiction to consider and decide the Application for Local Siting Approval for the Rockelle Municipal Landfill #2 Expansion filed October 16, 2006, by the City of Rockelle, based upon applicant's pre-filing notification of property owners and members of the Illinois General Assembly, and publication of such notice, in accordance with Section 39.2 (b) of the Act.

Aye 7 Absain 0
Nay 0

II The public hearing on the Application was conducted in a fundamentally fair manner.

Aye 7 Absain 0
Nay 0

III CRITERION (I): THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE AREA IT IS INTENDED TO SERVE.

The Applicant has demonstrated compliance with Criterion (I):

Aye 7 Absain 0
Nay 0

The Rockelle City Council finds that one condition relating to criterion (I) should be imposed as necessary and reasonable to accomplish the purpose of Section 39.2 of the Illinois Environmental Protection Act, and that such condition is not inconsistent with regulations promulgated by the Illinois Pollution Control Board. (See Attachment A, Special Condition 35).

CRITERION (II): THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED THAT THE PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED.

The Applicant has demonstrated compliance with Criterion (II):

Aye 6 Absain 0
Nay 1

The Rochelle City Council finds that certain conditions relating to criterion (ii) should be imposed as necessary and reasonable to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act, and that such conditions are not inconsistent with regulations promulgated by the Illinois Pollution Control Board. (See Attachment A, Special Conditions 1-32).

CRITERION (iii): THE FACILITY IS LOCATED SO AS TO MINIMIZE INCOMPATIBILITY WITH THE CHARACTER OF THE SURROUNDING AREA AND TO MINIMIZE THE EFFECT ON THE VALUE OF THE SURROUNDING PROPERTY.

The Applicant has demonstrated compliance with Criterion (iii):

Aye 7 Abstain 0
Nay 0

The Rochelle City Council finds that one condition relating to criterion (iii) should be imposed as necessary and reasonable to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act, and that such condition is not inconsistent with regulations promulgated by the Illinois Pollution Control Board. (See Attachment A, Special Condition 37).

CRITERION (iv): THE FACILITY IS LOCATED OUTSIDE THE BOUNDARY OF THE 100-YEAR FLOODPLAN OR THE SITE IS FLOOD-PROOFED.

The Applicant has demonstrated compliance with Criterion (iv):

Aye 7 Abstain 0
Nay 0

CRITERION (v): THE PLAN OF OPERATIONS FOR THE FACILITY IS DESIGNED TO MINIMIZE THE DANGER TO THE SURROUNDING AREA FROM FIRES, SPILLS, OR OTHER OPERATION ACCIDENTS.

The Applicant has demonstrated compliance with Criterion (v):

Aye 7 Abstain 0
Nay 0

CRITERION (vi): THE TRAFFIC PATTERNS TO OR FROM THE FACILITY ARE SO DESIGNED AS TO MINIMIZE THE IMPACT ON EXISTING TRAFFIC FLOWS.

The Applicant has demonstrated compliance with Criterion (vi):

Aye 6 Abstain 0
Nay 1

The Rochelle City Council finds that certain conditions relating to criterion (vi) should be imposed as necessary and reasonable to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act, and that such conditions are not inconsistent with regulations promulgated by the Illinois Pollution Control Board. (See Attachment A, Special Conditions 33-35).

CRITERION (vii): IF THE FACILITY WILL BE TREATING, STORING OR DISPOSING OF HAZARDOUS WASTE, AN EMERGENCY RESPONSE PLAN EXISTS FOR THE FACILITY WHICH INCLUDES NOTIFICATION, CONTAINMENT, AND EVACUATION PROCEDURES TO BE USED IN CASE OF AN ACCIDENTAL RELEASE.

The Applicant has demonstrated compliance with Criterion (vii):

Aye 7 Abstain 0
Nay 0

CRITERION (vii): IF THE FACILITY IS TO BE LOCATED IN A COUNTY WHERE THE COUNTY BOARD HAS ADOPTED A SOLID WASTE MANAGEMENT PLAN CONSISTENT WITH THE PLANNING REQUIREMENTS OF THE LOCAL SOLID WASTE DISPOSAL ACT OR THE SOLID WASTE PLANNING AND RECYCLING ACT, THE FACILITY IS CONSISTENT WITH THAT PLAN.

The Applicant has demonstrated compliance with Criterion (vii):

Aye 7 Abstain 0
Nay 0

CRITERION (ix): IF THE FACILITY WILL BE LOCATED WITHIN A REGULATED RECHARGE AREA, ANY APPLICABLE REQUIREMENTS SPECIFIED BY THE BOARD FOR SUCH AREAS HAVE BEEN MET.

The Applicant has demonstrated compliance with Criterion (ix):

Aye 7 Abstain 0
Nay 0

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Rochelle that, based on its findings concerning the above nine criteria, the Rochelle City Council hereby:

Approves the Application for Local Siting Approval.

Aye 7 Abstain 0
Nay 0

PRESENTED, PASSED AND APPROVED this 11th day of April, 2007.

ATTEST:

Erin M. King
City Clerk

By: *Chet Olson*
Mayor



Attachment A

SPECIAL CONDITIONS

1. In order to adequately secure the facility, and to assist in litter control, a perimeter fence, with a minimum height of eight (8) feet, shall be constructed.
2. Landfill Advisory Committee ("Committee") may be established by the City Council, which shall consist of up to five (5) members. The City's mayor, with the advice and consent of the City Council, shall appoint the following to serve on the Committee: one (1) county representative, one (1) resident from each of the county, the City and the Village of Creston who has demonstrated an interest in the landfill, and one (1) representative or member of the Operator's company. The Operator shall provide a summary of all technical and operating reports, monitoring data, correspondence or communication submitted to the IEPA pertaining to the expansion. The Committee may establish a schedule for meetings to review, discuss, or address facility operation, construction, compliance and citizen complaints. Recommendations for any action by the Committee shall be by majority vote of approval or disapproval of the request by this Committee. Any recommendation of the Committee shall be presented to the City Manager.
3. Any high permeability lenses found to intersect the excavation for the liner will be removed by over-excavation and replaced with a minimum of five (5) feet of cohesive silty clay backfill. The backfill shall be compacted to 95% of the Standard Proctor density and have a maximum triaxial permeability of 1×10^{-7} cm./sec., in accordance with the approved Construction Quality Assurance Program and properly documented by the CQA Office.
4. Waste shall not be placed at a depth that allows less than a total of 15.3 feet of low permeability silty clay between the liner invert and the top of the uppermost aquifer, as depicted on the Design Drawings (Sheets C4 through G15 of the Application).
5. If, during the excavation of waste in Unit 1, additional structural fill is required to maintain a minimum total thickness of 15.3 feet of low permeability silty clay between the bottom of the new liner invert and the top of the uppermost aquifer, the structural backfill will be constructed of a cohesive silty clay and compacted to 95% of the Standard Proctor density and have a maximum triaxial permeability of 1×10^{-7} cm./sec., in accordance with the approved Construction Quality Assurance Program and properly documented by the CQA Office.
6. Litter from the expansion found on adjacent property shall be removed by the Operator in an expeditious manner with consent of the landowner. The collection of litter shall be initiated and completed on the same day that it is generated.
7. The Operator shall employ temporary litter fences near the active face. Landfill operations should be suspended under the following conditions to minimize the potential for blowing litter:
 - When sustained winds reach 35 miles per hour.
 - When the Applicant determines that the Operator has not or is not able to adequately control blowing litter from leaving the facility.
8. The Operator shall, at a minimum, inspect on a daily basis the public rights of way, and areas adjacent to these rights of way, from the landfill facility gate North on Mainford Road and along Route 38 West to the Interstate 39 interchange and Route 38 East through Creston to Woodlawn Road. Litter collection along these rights of way shall be performed at least once per week, and more often if the City Manager determines from review of evidence that the Operator is responsible for the litter.

9. The Operator shall construct an elevated platform at the existing scale house in order to inspect waste trucks within 60 days of receipt of final and non-appealable City Council siting approval.
10. The existing facility scale house shall be equipped with a radiation detector which shall be utilized for screening all loads entering the facility for radiological wastes within 60 days of receipt of final and non-appealable City Council siting approval.
11. The facility operations shall occur between the hours of 6:00 a.m. and 6:00 p.m. Monday to Saturday. If operations are ineffective at controlling odor, noise, dust and litter, and the Operator is unable to control or remedy these problems within 24 hours, the City Manager may require that active waste placement operating hours cease prior to 3:30 p.m. during weekdays and noon on Saturdays until the problems are corrected.
12. During the exhumation of waste in Unit 1, the Operator shall not allow leachate levels within any portion of the exhumed areas, at any time, to be in excess of one foot in height. In addition, during the exhumation activities, the Operator shall provide sufficient leachate storage, temporary or otherwise, as is necessary to satisfy this condition.
13. The Operator shall complete the exhumation and redisposal of waste from Unit 1 as soon as practicable, but in no event later than six (6) years from the date an IEPA permit is issued for the expansion, except as otherwise provided by the City Council for good cause shown. The waste exhumation and redisposal shall be restricted to the months of November, December, January, February and March unless it is demonstrated to the City Council that the process can occur in other months without off-site odor migration or other impacts associated with the process.
14. All exhumed and relocated waste, and the active face of the excavated area, shall be covered with a minimum of six inches of soil at the end of each working day. Permitted alternative daily cover may be utilized only if approved in writing by the City Manager and the IEPA, and which alternative daily cover has proven to be effective at containing odor.
15. The excavated area of exhumed waste shall be covered with a minimum of twelve (12) inches of compacted soil on April 1 of each year, and at any time exhumation activities cease for a period longer than sixty (60) days.
16. Within five (5) years of the issuance of an IEPA permit for the expansion, the entrance to the landfill shall be built and completed at the proposed new entrance.
17. The Operator shall construct and maintain, at a minimum, a paved access road between the facility entrance and the scale as identified on Drawing D9 dated October 2006 of the Application. Moreover, waste collection or transfer vehicles will be required to traverse the whole of this paved roadway prior to leaving the facility in order to minimize the potential for the tracking of mud onto surrounding public roadways.
18. Overnight stacking of trucks at the existing entrance shall not be allowed. Overnight stacking may only be allowed after the proposed new entrance is constructed, and only within the perimeter fence on the proposed trailer parking area. No trucks shall be allowed to enter the parking area after 8:00 p.m. No trucks shall be allowed to be staged outside the landfill gate prior to the opening of the landfill or its expansion.
19. If transfer trailers are to be located at the site overnight, the facility will be staffed with security personnel at all times the entrance gate is open.

20. The Operator shall confirm that the city wastewater treatment plant has adequate leachate management capacity to handle the anticipated generation of leachate during precipitation events (the management capacity to handle the anticipated generation of leachate during precipitation events (the 25-year, 24-hour storm event equalling 3.6 inches) and during the condition when a thin lift of waste is in place over the liner, and that any shortfall of leachate management capacity shall be met with leachate storage tanks on the landfill site. The leachate management system, at the time of approved closure, including storage and treatment plant acceptance of leachate, shall be capable of handling at least 40,000 gallons of leachate per day (the applicant calculated the post-closure rate from 353 gallons per acre and 111 acres, for an estimated 39,200 gallons per day generated after the cap is placed at closure).
21. The applicant shall install leachate drainage material that encourages rapid leachate drainage while not adversely impacting the membrane liner.
22. The plan of operations shall include the construction of operational screening berms of between six (6) and eight (8) feet in height along the Southern edge and partially along the East and West edges of operating cells to help to block the operations from view from Creston Road as well as help contain liner and reduce noise impacts. The Operator shall propose, and the City Manager shall consider for approval, the placement and limits of the operational berms prior to each cell's development. Final approval must be obtained prior to new cell construction. The City Manager shall consider the height of the active face, the distance from the site boundary, and the presence of other visual barriers (such as Unit 2) and the effectiveness of other liner and noise control strategies (such as liner fences and permanent perimeter berms) in making its determination.
23. Perimeter berms shall be built in advance of the cells in order to screen operations to a reasonable extent. It is recommended to require the berms to be built at least 500 feet in advance of the Eastern-most edge of the cell being constructed. By way of example, prior to completion of Cell 3's liner, the Southern berm along Creston Road shall be constructed from B 4,200 to E 6,500, which extends approximately 600 feet East of the cell. The vegetation shall be established (with at least a one-year growing period) prior to waste being placed within 400 feet of a cell with active waste placement. The berm shall be at least 14 feet in height, placed between the waste footprint and Creston Road, and located between E 4,500 and E 7,500.
24. As part of the cap system, the applicant shall install a geocomposite drainage layer over the expansion's 40-mil membrane to enhance and ensure long-term drainage from the cap, minimize infiltration through the cap, and enhance long-term slope stability.
25. The upper cap membrane and bottom liner membranes shall be connected to create a seal against landfill gas migration away from the landfill.
26. The City Manager, and its legal and technical consultants, shall have the right to be involved in the permitting for the horizontal and vertical expansion of the Rochelle Municipal Landfill. As part of this involvement, the City Manager and its consultants may attend meetings between the Operator and its consultants and the IERPA. The City Manager and its consultants may also review and comment on the Operator's applications (provided such technical review and comment is conducted within 30 days of receipt of the information) prior to the Operator's submission of the applications to the IERPA. The technical review comments shall be incorporated into the applications or addressed to the satisfaction of the City Manager. The Operator agrees to reimburse the City for reasonable costs of its consultants to review and comment on the Operator's applications and submissions.
27. In applying for the IERPA permit for the expansion, the Operator shall include all special conditions from the siting approval.

28. The Operator shall submit the groundwater impact assessment (GIA) planned to be submitted to the IEPA as a permit application to the City Manager for review. The City Manager and its consultants may provide the Operator comments (within 30 days of receipt of the information) that must be incorporated or addressed prior to submitting the GIA to the IEPA as a permit application.
29. The Operator agrees to provide at no cost to the City Council, all documents submitted to the IEPA in regard to the expansion.
30. The maximum height and lateral expansion shall not extend beyond those in the siting application.
31. The facility shall not accept more than an annual daily average of 1,000 tons of waste per day with a maximum of 1,500 tons on any given operating day (absent special written consent given by the City Manager to exceed these levels on a limited basis to address emergency circumstances or public benefit purposes).
32. The Operator shall be responsible for the cleanliness of Mulford Road and routinely sweep Mulford Road between Creston Road and Route 38.
33. The following roadway improvement shall be made to Mulford Road, at the expense of the Operator, prior to acceptance of waste within the expanded facility waste footprint.
 - The reconstruction of Mulford Road between Route 38 and the existing landfill entrance shall be designed to a rural standard with a dust free, all weather surface, provide a design weight limit of 80,000 pounds and shall be at least two lanes wide.
34. The improvement to Mulford Road as described in special condition 33 above shall be completed from the existing landfill entrance to Creston Road, at the expense of the Operator, no later than the date on which the proposed new entrance for the expansion is built and completed as required in Special Condition 16.
35. Transfer trailers going to and from the facility shall be contractually obligated to do so utilizing Route 38 West of Mulford Road to the Interstate 39 interchange. It shall also be the obligation of the Operator to enforce such obligation. Video camera shall be installed at the existing site entrance and at the proposed new entrance to monitor facility traffic entering and leaving the expansion on Mulford Road.
36. The expansion shall not accept any waste generated outside the service area defined in the siting application, except as specifically approved otherwise by the City Council in writing.
37. The landscape plan, including the berm and plantings along Mulford and Creston Roads, shall be implemented prior to and during construction of the expansion, as described in the siting application and by the testimony of Applicant's land use and engineering experts.

BEFORE THE ROCHELLE CITY COUNCIL
OGLE COUNTY, ILLINOIS

IN RE: THE APPLICATION FOR LOCAL)
SITING APPROVAL FOR THE ROCHELLE) ROCHELLE WASTE DISPOSAL'S
MUNICIPAL LANDFILL #2 EXPANSION) MOTION FOR RECONSIDERATION
)

MOTION FOR RECONSIDERATION

NOW COMES Rochelle Waste Disposal, L.L.C., by and through its undersigned counsel of record, and pursuant to Section 78-77(c) of the City Siting Ordinance adopted herein requests reconsideration of special conditions imposed by the City Council as follows:

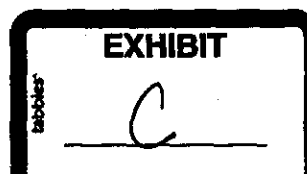
1. On April 11, 2007, the City Council met to consider its decision on the siting application filed in this proceeding.

2. At that time, the City Council approved the application, but imposed additional special conditions. Further, a true and accurate copy of the resolution memorializing such action taken by the City Council is marked Exhibit "A", attached hereto and incorporated herein by this reference.

3. Pursuant to Section 78-77(c), Rochelle Waste Disposal L.L.C. hereby moves for consideration of those Special Conditions for the reasons set forth below.

4. Special Condition 8 requires that the Operator effectuate litter control along Route 38 east through Creston to Woodlawn Road. However, this requirement is entirely inconsistent with Condition 35, which does not permit the Operator to transport waste along this segment of road, thereby negating the possibility of litter problems being caused along this road segment as a result of operation of the facility. As a result, Special Condition 8 is inconsistent and unnecessary.

5. Special Condition 13 provides that the Operator must, within six (6) years of the date of issuance of an IEPA permit for expansion of the facility, exhume all of the waste



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deposited in old Unit 1 between 1972 and 1995, during which time waste was deposited continuously throughout the year. Moreover, Special Condition 13 permits the removal of waste from old Unit 1 only during the months of November through March, thereby requiring the Operator to effectively remove 276 months (23 years x 12 months) of accumulated waste within, at most, and under optimal conditions, 30 months (6 years x 5 months); notably, the months during which waste may be removed are those months most likely to include substantial periods of inclement weather. As a result, Special Condition 13 is both financially and technically impracticable, not reasonable and necessary to accomplish the purposes of Section 39.2 of the Act, and are inconsistent with regulations promulgated by the Pollution Control Board. In addition, such condition runs contrary to the spirit, intent, force and effect of other Special Conditions included in Exhibit A.

6. Special Condition 22 calls for the erection of six (6) to eight (8) foot high inside operational screening berms. However, Condition 23 already calls for the Operator to erect a fourteen (14) foot high permanent perimeter berm. As a result, Special Condition 22 is unnecessarily duplicative and redundant, offers no additional benefit to the public health, safety and welfare, and serves in part to make the project financially and technically impracticable, and infeasible.

7. Special Condition 23 requires the erection of a fourteen (14) foot permanent perimeter berm. Based upon and given existing physical site conditions, as well as certain operating considerations, it is technically and financially impracticable to construct a fourteen (14) foot perimeter berm.

8. Special Conditions 26 and 28 allow the City's engineers to review whatever plans and permit applications the Operator submits to IEPA, with the Operator being required to

reimburse the City for all such costs incurred. This requirement is financially burdensome, impracticable, redundant and unnecessarily duplicative, effectively requiring the Operator to pay the City's oversight costs. In addition, these requirements run counter to the terms of the Host Agreement, inasmuch as such costs were not included in the financial terms negotiated with the City concerning oversight of the facility going forward.

9. Special Conditions 33 and 34 call for certain road improvements being undertaken. While such improvements are arguably necessary, again, there is no basis in the record to solely impose the cost of such improvements upon the Operator. Given the limited scope of the expansion allowed, imposing these road improvement costs on the Operator makes the project financially infeasible and impracticable, and is, moreover, inconsistent with the financial terms of the Host Agreement.

10. Moreover, the City Council has imposed a total of thirty-seven (37) conditions on the application filed in this matter. Given the limited scope of the project approved, as well as certain restrictions imposed upon development and operation of the expansion, both by virtue of the terms and conditions of the application filed herein and the Host Agreement heretofore negotiated between the City and the Operator, the cumulative effect of satisfying and reconciling all of these siting conditions makes the project technically and financially impracticable.

WHEREFORE, ROCHELLE WASTE DISPOSAL, L.L.C., requests that the City Council reconsider its April 11, 2007 decision to impose the Special Conditions described above.

Respectfully submitted,
ROCHELLE WASTE DISPOSAL, L.L.C.

By: 

Charles F. Helsten
One of Its Attorneys

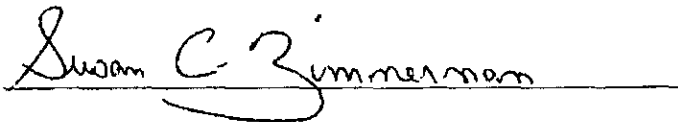
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
Phone: 815-490-4900
Fax: 815-490-4901

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 April 20, 2007, she served a copy of the foregoing upon:

Mr. Bruce McKinney City of Rochelle 420 N. 6 th Street Rochelle, IL 61068	Alan Cooper, Esq. Attorney at Law 233 E. Route 38, Ste. 202 P.O. Box 194 Rochelle, IL 61068
Glenn Sechen, Esq. Schain Burney Ross & Citron Ltd 222 N. LaSalle St., Suite 1910 Chicago, IL 60601	David Tess, Esq. Tess & Redington 1090 N. Seventh St. P.O. Box 68 Rochelle, IL 61068
Don Moran Pedersen & Houpt 161 N. Clark St., Suite 3100 Chicago, IL 60601-3142	Emily Vivian David Wentworth II Hasselberg, Williams, Grebe 124 S.W. Adams St., Ste. 360 Peoria, IL 61602-1320
John McCarthy 45 East Side Square, Suite 301 Canton, IL 61520	

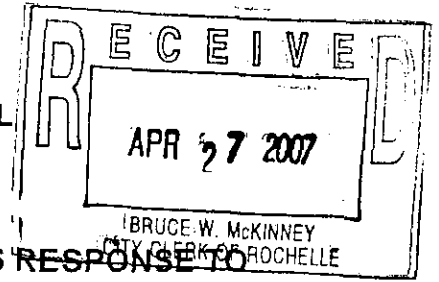
By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900

APR 30 2007

BEFORE THE ROCHELLE CITY COUNCIL
OGLE COUNTY, ILLINOIS



IN RE: THE APPLICATION FOR)
APPROVAL OF A POLLUTION)
CONTROL FACILITY OF THE)
CITY OF ROCHELLE)

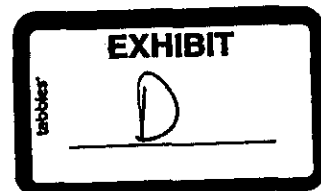
**APPLICANT'S RESPONSE TO
OPERATOR'S MOTION FOR
RECONSIDERATION**

The City of Rochelle, by its City Manager, as applicant ("Applicant" or "City"), hereby submits its response to the motion for reconsideration filed by Rochelle Waste Disposal, LLC ("Operator"), pursuant to the provisions of Section 78-76(n) of Chapter 78, Article III of the Rochelle Municipal Code ("Siting Ordinance"), and Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 ("Section 39.2").

I. INTRODUCTION

In formulating its response to the Operator's motion, the City was guided by one overriding concern--assuring that the City Council's decision is firmly grounded in the record established at the public hearing, so that it will withstand a challenge on appeal. A decision which is seen as being unsupported by the record would invite an appeal and a reversal by the Illinois Pollution Control Board.

In that light, the City deems it appropriate to provide its comments with respect to two preliminary matters: (1) the legal standards which would apply if any conditions were challenged on appeal; and (2) the City's view of the adequacy of its application, standing alone without any conditions.



A. Applicable Legal Standards

As amended in April of 2006, Section 78-77(c) of the Siting Ordinance provides that the City Council may consider any motion for reconsideration, and any responses to the motion, filed within the specified time periods. The Operator's motion for reconsideration, which was timely filed, requests the City Council to reconsider its decision to impose certain conditions on siting approval.

The City Council's discretion to grant or deny any of the requests in the motion, like its decision to impose conditions in the first place, is not unbounded, but is limited by certain rules included in Section 39.2, and in court decisions interpreting Section 39.2.

Any condition, in order to be a legally valid condition, must be "...reasonable and necessary to accomplish the purposes of this Section...." 415 ILCS 5/39.2(e). A condition which may be reasonable for accomplishing some other legitimate purpose, if it is not also reasonable and necessary to accomplish the purposes of Section 39.2, would be invalid and subject to being overturned on appeal.

The purposes of Section 39.2 are the nine criteria which must be met for siting approval. Accordingly, in order for a condition to pass legal muster, the imposition of that condition must be "reasonable and necessary" in order for one or more of the criteria to be met.

In determining whether a particular condition is, or is not, reasonable and necessary, Illinois Courts will examine the record made in the public hearing. If there is no evidence in the record to support a finding that the condition is

reasonable and necessary in order to satisfy one or more of the nine criteria, the condition will be overturned on appeal. Moreover, even if there is some evidence to support such a finding, but the manifest weight of the evidence is to the contrary, the condition will be overturned.

In considering an appeal of conditions in *Will County Board v. Illinois Pollution Control Board*, 319 Ill. App. 3d 545 548 (3rd Dist. 2001), the Illinois Appellate Court described the applicable legal rules in these words:

"When reviewing the board's decision on a siting location application, this court must determine whether it is against the manifest weight of the evidence. A decision is against the manifest weight of the evidence if the opposite result is clearly evident or indisputable [citation omitted]. The board may only impose conditions that are reasonable and necessary to meet the waste needs of the area. 415 ILCS 5/39.2(West 1998)." (emphasis supplied).

The City Council should consider the Operator's motion carefully in light of these legal rules, and in light of the testimony and evidence in the record. Even if a condition might have merit for other reasons, if the record fails to establish that it is "reasonable and necessary" to accomplish the goals of any of the nine criteria set forth in Section 39.2, it should be reconsidered and deleted.

B. Adequacy of the City's Application

The City's Application was the product of exhaustive research, investigation, and creative effort by the City's consulting engineers, Shaw Environmental, in consultation with the City staff, the City Manager's own consultant, and the Operator's representatives. The end result, in the City's opinion, was an application for a landfill expansion which met all of the nine criteria without the necessity of any additional conditions, and which was

consistent with the Host Agreement between the City and the Operator. The provisions of the application relating to the landfill design, the operational plan and the traffic plan all impose conditions which are considerably more rigorous than previous requirements, and which will result in a high-quality landfill. Additionally, the City, through the testimony of its City Manager, has committed to more vigorous oversight of operations, and a more open-door policy to neighbors who might have complaints.

Notwithstanding its firm belief in the adequacy of its application, the City is cognizant of concerns in certain areas which came to light during the public hearing—primarily concerns about litter and daily cover, traffic flows by large trucks and security at the facility. To the extent the City Council feels that additional conditions are reasonable and necessary in any of these areas in order for one or more of the nine criteria to be met, the City believes that, given the comprehensive nature of the conditions already imposed in the application, only minimal additional conditions would be reasonable and necessary.

With the foregoing considerations in mind, the City takes the following positions with respect to the specific requests contained in the Operator's motion for reconsideration.

II. CONDITION 13 (EXHUMATION OF UNIT 1 WITHIN SIX YEARS)

The City believes that Condition 13 (requiring exhumation of Unit 1 within six years, subject to extension by the City Council) very likely does not meet the applicable legal standards, and would invite a successful appeal because it is not supported by the record.

The record in this case contains considerable evidence that the exhumation of Unit 1 is reasonable and necessary to accomplish the purposes of Criterion 2 (public health, safety and welfare). However, there is, to the best of the City's knowledge, no testimony or evidence whatsoever that supports the proposition that it is necessary to complete the exhumation in six years in order for the public health, safety and welfare to be protected. If the City is correct, then it can reasonably be anticipated that Condition 13 will simply invite an appeal to the Illinois Pollution Control Board, which will inevitably overturn it as being unsupported by any evidence, or against the manifest weight of the evidence.

What the record does support is a more flexible requirement, consistent with the application and the testimony. In Section 2.6 of the City's application (pages 2.6-24 through 28), Shaw Environmental discussed the proposed exhumation at length. Copies of those pages are attached to this response as **Exhibit A**. The application sets forth plans and procedures for the exhumation, including the equipment to be used, the method of excavation and cover, the proposed hours and times of the year when exhumation would occur, the nature and quantity of cover used, procedures to be used in the event hazardous waste is encountered, the air monitoring program that would be required to avoid dangers from explosive gases and VOCs, stormwater management requirements during exhumation, and additional safety procedures to be implemented and safety equipment to be utilized during exhumation.

Taking into account what is presently known about Unit 1, and the additional requirements that the application would impose, Shaw Environmental has concluded that "[i]t is anticipated that relocation of Unit 1 will be performed over a 5-10 year period." (Application, Section 2.6, page 2.6-24).

The only witness who testified concerning the timing of the exhumation was Devin Moose of Shaw Environmental. Mr. Moose's testimony on this point, in answer to questions from the City Council's attorney, is found on pages 321-323 of the transcript for January 25, 2007. A copy of that portion of the transcript is attached to this response as **Exhibit B**. Mr. Moose's testimony describes the sequencing of the exhumation and concludes that "we think that that's going to take on the order of about 10 years to achieve that."

To the best of the City's knowledge, the Shaw analysis of the detailed requirements of exhumation and the anticipated time reasonably necessary to complete that task, is the only testimony in the record of this case addressing those issues in any thoroughgoing and analytical manner. To the extent that public comment may have requested the City Council to impose a firm deadline shorter than Shaw's anticipated time period, such comments were not supported by any detailed analysis like that contained in the application. Accordingly, Condition 13 does not meet the legal standards of Section 39.2, and is likely to be overturned on appeal.

The flexibility included in the application's suggested 5 to 10-year completion exhumation period is consistent with the language of the Host Agreement, which provides, in Section 7.4, that the exhumation shall

“...be commenced and completed within a commercially reasonable time.”

Condition 13, by imposing an arbitrary six-year completion date, is contrary to the evidence. The proviso that the Operator may come back to a future City Council and ask for an extension “for good cause” does not solve the problem because it does not provide any standards for the City Council’s decision as to what constitutes “good cause”. While a more definite timetable might seem to be desirable, it is simply impractical under the circumstances

For the reasons set forth, the City respectfully suggests that Condition 13 be reconsidered and that, upon reconsideration, it be deleted. Should the City Council see fit to impose any condition in this regard, it should impose a condition that the exhumation “be commenced and completed within a commercially reasonable time”.

Such a condition might read as follows:

“13. The exhumation of waste in Unit 1 shall be commenced and completed ***within a commercially reasonable time***. The waste exhumation and redisposal....”

Alternatively, if a deadline for completion is desired that has some basis in the record, the condition might read as follows:

“13. The exhumation of waste in Unit 1 shall be commenced and completed ***within a commercially reasonable time, but in no event later than ten (10) years from the date an IEPA permit is issued for the expansion, except as otherwise provided by the City Council upon a showing that the exhumation could not be completed within that time period despite the Operator’s commercially reasonable efforts***. The waste exhumation and redisposal....”

III. CONDITIONS 33 AND 34 (COST OF MULFORD ROAD IMPROVEMENTS)

Conditions 33 and 34 impose upon the Operator the obligation to improve Mulford Road, at the Operator's sole cost and expense, in two phases. The first phase requires improvements between Route 38 and the existing landfill entrance before any waste is accepted at the expanded facility. The second phase requires the improvements to be extended from the existing landfill entrance to Creston Road no later than the date on which the proposed new entrance for the expansion is built and completed as required in Condition 16, which is five years from the issuance of an IEPA permit for the expansion.

The Operator has conceded, at least for the sake of its motion, that these road improvements may be necessary, but has argued that there is no basis in the record to show that it is either reasonable or necessary that the entire cost of these improvements be borne by the Operator.

The City believes that the record supports the allocation of all of the costs of the first phase to the Operator, and therefore opposes the Operator's request for reconsideration of Condition 33. The City also believes that the record supports the allocation to the Operator of the costs to extend the improvements from the existing landfill entrance to the new landfill entrance to be located some 1,500 farther south.

However, the City is concerned that the record may not support the allocation to the Operator of all of the cost of extending the improvements from

the new landfill entrance south to Creston Road. Accordingly, the City suggests that Condition 34 be reconsidered and modified.

The evidence suggests that Mulford Road south of Route 38 presently serves primarily the landfill, but that very little traffic uses the portion of Mulford Road between the landfill entrance and Creston Road. Figure 2 in Section 6 of the application (“Existing Peak Hour Volumes”) is attached hereto as **Exhibit C**. It shows that 12 vehicles travel south from Route 38 during the morning peak hour, but no vehicles approach the intersection of Mulford Road and Creston Road from the north, while 22 vehicles travel south from Route 38 during the evening peak hour, but only 2 vehicles approach the intersection during that peak hour. Likewise, only 6 vehicles travel north on Mulford Road from Creston Road in the morning peak hour, and the same number in the evening peak hour.

On the other hand, should the area around the expanded landfill facility develop as an industrial zone, as is currently planned, it can be anticipated that Mulford Road would become a more important traffic route, due to its connection to Creston Road, which becomes First Avenue in Rochelle, and its connection north all the way to Rockford. In that event, there would be a necessity for Mulford Road to be improved from Route 38 all the way to Creston Road, but the necessity would not arise solely from traffic generated by the landfill.

Given the anticipated growth in the area, residential and industrial, the improvement of Mulford Road certainly makes sense. However, the allocation of all costs of the second phase improvement of Mulford Road to the Operator, when only a portion of the need would be attributable to this landfill expansion,

does not seem to be supported by the record. The City's expert, Michael Werthmann, did not suggest that the landfill expansion would necessitate the second-phase improvements of Mulford Road south of the new landfill entrance, and no other witnesses testified to the contrary. Absent such evidence in the record, the City is concerned that Condition 34 may invite an appeal and reversal.

The most rational manner to allocate the second-phase costs of improving Mulford Road south of the new landfill entrance, in the City's view, would be based upon a traffic study which would determine the percentage of traffic using that section of the road which is generated, or can reasonably be expected to be generated, by the expanded landfill, and an allocation of a portion of the costs for that section to the Operator based on the results of the study.

For these reasons, the City suggests that Condition 34 be reconsidered and modified in a manner similar to the following:

"34. The improvements to Mulford Road as described in special condition 33 above shall be completed from the existing landfill entrance to Creston Road no later than the date on which the proposed new entrance for the expansion is built and completed as required in Special Condition 16. ***The Operator shall pay all costs of said improvements to the new landfill entrance, and a portion of the cost of the improvements from the new landfill entrance to Creston Road proportionate to the anticipated traffic attributable to the expanded facility, as determined by a traffic study.***"

IV. CONDITIONS 8, 22, AND 23 (ADDITIONAL LITTER CONTROL AND BERMING)

Conditions 8, 22 and 23 impose upon the Operator certain requirements for litter control and berming which were not required in the City's application. The City believes that its application includes requirements for litter control and

berming which are entirely adequate to produce a neighbor-friendly landfill expansion. The testimony of Shaw Environmental and Chris Lannert established that these requirements were carefully considered. To the best of the City's recollection, there was no testimony that the requirements set forth in the application were inadequate, and no testimony with respect to any necessity for additional litter control or berming requirements beyond those set forth in the application and testified to by the City's witnesses.

The City respectfully suggests that the City Council consider whether there was any evidence to support a finding that the additional requirements are "reasonable and necessary" (or that the requirements set forth in the application are not themselves sufficient) to accomplish the purposes of any of the nine criteria in Section 39.2. Should there be doubt on these matters, the City respectfully suggests that these conditions be reconsidered and deleted.

V. CONDITIONS 26 AND 28 (COSTS OF CITY REVIEW OF PLANS AND PERMIT APPLICATIONS)

The Operator's request that the City Council delete Conditions 26 and 28, insofar as they require the Operator to reimburse the City's costs for reviewing plans and permit applications, could perhaps withstand a challenge on appeal because of the Operator's conceded poor operating history.

Nevertheless, the City can understand the Operator's position that imposing these costs upon the Operator is unnecessary and somewhat unfair. All things considered, while it does not consider this to be a major issue, the City would

have no objection to this condition being reconsidered and modified to delete the provisions that impose such costs on the Operator.

CONCLUSION

For the reasons set forth in this response, the City respectfully requests that the City Council grant the Operator's motion, in part, and deny it in part, by reconsidering Conditions 8, 13, 22, 23, 26, 28 and 34, and upon reconsideration, deleting or modifying those conditions in conformity with this response. By so doing, the City Council would effectively preclude a successful appeal of its decision. The overall result would still incorporate all of the requirements of the City's application, resulting in a high-quality and neighbor-friendly landfill.

Dated: April 27, 2007

CITY OF ROCHELLE, Applicant

BY: 
ALAN H. COOPER

BY: 
GLENN C. SECHEN

Its Attorneys

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PROOF OF SERVICE

The undersigned certifies that a true copy of the foregoing Response to Motion for Reconsideration was served by electronic mail or fax and regular mail upon each of the following attorneys of record at the addresses shown, on April 27, 2007:

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A list of groundwater parameters and sampling frequencies has been developed in accordance with IEPA regulations. The groundwater monitoring wells will be sampled on both a quarterly basis and an annual basis during the operating life of the landfill and post-closure care period. All sampling results will be submitted to the IEPA. A more detailed description of the groundwater monitoring program is provided in Section 2.8 of this application.

Stormwater and Erosion Control

A Stormwater Management Plan has been developed for the Rochelle Municipal Landfill #2 Expansion to ensure the safe and efficient conveyance of stormwater runoff. Runoff from the completed landform will flow into a series of perimeter ditches. These perimeter ditches will convey the stormwater into detention basins. All drainage ditches and culverts will safely convey the minimum 100-year, 24-hour storm flows without overtopping as described in Section 2.4 of this application.

A comprehensive erosion control plan has also been developed that will utilize a variety of techniques to prevent erosion including temporary and permanent seeding, straw bales, fabric filters, sodding and terrace berming. Wet-bottomed detention basins planted with aquatic grasses will be used to facilitate sedimentation and improve water quality prior to discharge. A complete description of the stormwater management plan and erosion control plan is included in Section 2.4 of this application.

Waste Relocation Procedures

Introduction

Unit 1 of the Rochelle Municipal Landfill #2 will be excavated so that the waste is placed within a landfill that has a composite liner, leachate collection system, landfill gas management system, and a groundwater monitoring system.

The following plan and procedures are intended to supplement the current/proposed operating plan at the Rochelle Municipal Landfill #2 and include a generalized operating plan for the waste relocation procedures.

Unit 1 was filled over a 20 year period. It is anticipated that relocation of Unit 1 will be performed over a 5-10 year period.

Equipment

The list of equipment required for waste relocation will vary occasionally depending on equipment availability, seasons, and waste relocation rates. Waste relocation is anticipated to be accomplished with the equipment listed in Table 2.6-2. Equipment capable of performing comparably to the listed equipment is expected to be maintained on site throughout the operational life of the landfill. Additional equipment will be leased or purchased as necessary.



EXHIBIT A

**TABLE 2.6-3
PROPOSED EQUIPMENT LIST**

1 Bulldozer	Air Monitoring Equipment
1 Front End Loader	1 Grizzly Feeder
1 Excavator	Portable Light System
2 Haul Trucks	Other as necessary

Excavation Operations

The proposed excavation method will be using a front end loader similar to earth excavating procedures. Final cover and clean soil may be stockpiled near the excavation for use as cover or fire prevention.

The proposed hours of operation for waste relocation will be between 6:00 am to 5:00 pm, Monday through Saturday. This will allow adequate time for all the reclaimed waste to be landfilled. Waste relocation will typically not occur on Sundays and certain holidays unless otherwise approved by the City of Rochelle and the IEPA.

Waste relocation will not occur during months where the average daily temperature is above 65°F, unless it is demonstrated that odors will not be an issue. Based on existing temperature data, it is anticipated that waste relocation will only be conducted between October 1st and March 1st absent express written approval by the City of Rochelle Council.

Reclaimed Soil and Soil Cover

The final cover material will be stripped off and will be stockpiled for future use as daily cover, vegetative layer, and/or berm construction provided it is free of waste. The soil from the relocated waste may be reused as daily cover as permitted by the IEPA.

A minimum of six inches of daily cover material will be placed over the any exposed waste at the end of each working day. A minimum of one foot of intermediate cover will be utilized on all areas not actively excavated within 60 days or more. All areas of the landfill will have intermediate cover during the summer months when excavation ceases due to high temperatures. Intermediate cover will be sloped to provide adequate drainage and prevent ponding of water. The placement of daily and intermediate cover also serves to control litter, dust, odor, vector, and potential fire problems.

Liquid Wastes

Any barrels found during excavation that could potentially contain liquid wastes will be carefully removed and taken to a hazardous waste treatment facility, where the contents of the barrel will be tested and properly disposed of. Leachate will be removed from the excavation trench using an explosion-proof pump to an existing leachate storage tank or shipped directly to a treatment facility for the current landfill. It is anticipated that the leachate will be treated at a wastewater treatment plant that accepts leachate in compliance with the existing permits for the current operating landfill.



Air Monitoring Program

An air monitoring program will be developed in conjunction with the IEPA, NESHAP, and OSHA regulations for the excavation area and the waste separation facility when in use. Monitoring will be performed for explosive gases and VOCs. All persons will wear respirators until it is shown that the workers are not at risk from harmful gases. Continuous sampling of combustible gases will occur during any excavating operations, and will be compared to OSHA exposure limits. If levels of combustible gases reach 50% of the LEL (lower explosive limit) then any exposed waste will be covered and excavation operations will cease until levels return to background levels. If this becomes a recurring problem then a gas extraction system will be implemented.

Stormwater and Erosion Control

A Stormwater Management Plan has been developed for the Rochelle Municipal Landfill #2 Expansion to ensure the safe and efficient conveyance of stormwater runoff. To supplement this plan, temporary perimeter berms will be constructed around the waste relocation areas to minimize surface run-on. The temporary berms will be constructed from on-site soils and sloped 2H:1V. If possible all stormwater runoff will be directed to the site's stormwater management system. However, the initial relocation of Unit 1 will be performed prior to the relocation of the existing drainage ditches and the development of the stormwater basins. As such, the operator will ensure that stormwater is managed through the use of best management practices as described in Section 2.4.

During waste relocation the operator will be responsible for ensuring stormwater is diverted away from waste or it is contained and managed as leachate. The operator will also take all reasonable efforts to minimize standing water and promote natural drainage of stormwater. Erosion control measures will be employed around disturbed areas to minimize sediment. All erosion control structures will be routinely inspected and maintained to function properly in accordance with the NPDES permit and the Stormwater Plan identified in Section 2.4.

Safety Procedures

It will be the responsibility of the Site Manager to ensure adherence with site safety procedures by all personnel working on the waste relocation project. The following text outlines steps designed to help minimize hazards that may be present during the waste relocation operations.

- Waste Characterization. Prior to any waste excavation, borings may be placed into the waste to determine the depth of waste and general waste composition by a company that has experience drilling into closed landfills.
- Excavation. Before any excavating begins, temporary berms will be constructed around the planned excavation trench. A front end loader will then scrape off the final cover and stockpile the soil for future daily cover use or fire prevention. The mined waste will be loaded into a dump truck then hauled to the active face of the landfill.
- Hazardous Waste. To supplement the health and safety plan (Section 5.0), the following precautions will limit exposure to any hazardous waste that is encountered in the excavation area.
 - ▶ Prior to beginning work each day, a safety meeting will be held to address potential hazards.



- ▶ During the excavation, the work area will be monitored periodically for explosive gases and VOCs.
- ▶ Gloves, pants, and long sleeves will be worn when working with waste or contaminated media.
- ▶ Contact with potential contaminated substances will be avoided.
- ▶ The number of ground personnel in the work area will be limited.
- ▶ Approved respiratory protective devices and protective clothing will be available.
- ▶ In the case of injuries medical assistance will be identified and arranged for. The location, telephone number, and transportation capabilities of the nearest emergency medical facilities will be posted at the site.

- Safety Equipment. Previous waste relocation projects have shown that level "C" personal protection equipment (PPE) was required during excavation operations. Level "C" PPE consists of a chemical canister, full-face respirator, chemical splash protection, gloves, and boots. If it is demonstrated that no hazardous chemicals are present in the waste or air, then level "D" PPE (standard work uniform, hard hat, gloves, and steel-toed boots, no respiratory protection) will be allowed. The excavation equipment (excavator, dump trucks, and bulldozer) will be required to have a five minute emergency escape breathing apparatus mounted on the machinery (e.g., Scott Escape Pak). The landfill facility will also maintain extra safety equipment, fire extinguishers, first aid kits, radio communicators, and an eye washing station.

The following will be kept on site and used by all employees at the excavation area:

- ▶ Hard hats worn when near moving or mechanical equipment, or if working in confined spaces or where overhead hazards may exist (e.g., in excavations or around scaffolding).
- ▶ Steel-toed shoes, or other appropriate protective footwear.
- ▶ Safety glasses and/or face shields, as appropriate.
- ▶ Chemical resistant gloves and clothing for working with wet solid waste or when exposure to leachate or condensate is expected.
- ▶ Hearing protection for working conditions as described by OSHA.

Other protective equipment available for use as necessary:

- ▶ Chemically protective overalls (e.g., Saranex, Tyvek, etc.).
- ▶ Steel-toed, steel shank neoprene boots.
- ▶ Chemically protective gloves (e.g., Viton, neoprene, nitrile).



- ▶ Respiratory protection, as appropriate for the level of hazard (e.g., half-face and/or full-face APRs with NIOSH-approved organic vapor/acid gas (OV/AG) cartridges or canisters and appropriate dust/mist/fume capability).
- ▶ A pressure demand SCBA, fitted with a pressure-demand type regulator and 20-minute bottle or a supplied air system.

The following safety equipment, if applicable, will be provided at the excavation site in quantities sufficient to cover all employees:

- ▶ Clean water, soap and paper towels.
- ▶ First aid kit, eye wash station, stretcher and blanket.
- ▶ Two fire extinguishers - 20:A-80:BC.
- ▶ "No smoking" signs and/or barrier tape.
- ▶ Two parachute-type harnesses and safety line (for use in excavations, manholes, trenches, vaults, etc.)
- ▶ Combustible gas analyzer (CGA)/oxygen indicator.
- ▶ Hydrogen sulfide indicator (direct reading instrument).
- ▶ Additional monitoring equipment for toxic vapors and aerosols.
- ▶ Barricades and/or barrier tape.
- ▶ Air-moving equipment that can provide ventilation if working in substandard air environments (excavations, trenches, etc.).
- ▶ Fire-resistant blanket suitable for extinguishing a small fire or providing heat to personnel in shock.
- ▶ Construction equipment equipped with vertical exhaust or spark arrestors.
- ▶ Workers will remove and decontaminate protective equipment at the end of each work day and prior to leaving the site or entering landfill offices.



1 be deposited and disposed of in Unit 1?

2 A. Absolutely.

3 Q. And with respect to Unit 1 are you aware of any
4 information or facts that would indicate that
5 Unit 1 has in any way affected or impacted any
6 groundwater in the area?

7 A. Nothing in the aquifer.

8 Q. Does that fact suggest to you anything about
9 the nature of the design of that unit and how it
10 has functioned over these 30-some years?

11 A. Well, I guess design might be a strong word for
12 that unit, but it does -- it is empirical
13 evidence that the natural geological materials
14 are providing protection to some degree to the
15 aquifer below.

16 Q. Now, we've talked about the fact that the waste
17 in that unit is proposed to be exhumed as part
18 of this proposal; is that correct?

19 A. Yes.

20 Q. Can you describe for us what is anticipated by
21 way of the scheduling and the implementation,
22 exhumation of that waste in conjunction with the
23 operation of the proposed expansion?

24 A. Sure. Leah, can you go to the phasing diagram.

1 As I testified and contained in the
2 application, the intention is to begin with
3 exhumation in the initial portions of the
4 expanded facility. The waste that is
5 currently -- or Unit 1 currently sits in a
6 portion of Cell One and a portion of this
7 northeast detention basin. The thought would be
8 that we would exhume that waste, excavate it out
9 of this cell and use it for the vertical
10 expansion in Unit 2 and in Cell One all of the
11 waste would be in a lined facility. We would
12 start that in the initial years of operation and
13 part of the reason we selected this location is
14 really two-fold; 1) to minimize haul distance,
15 the amount of distance that we have to move that
16 waste into a secure facility. That reduces our
17 operating costs and make this -- makes this
18 facility more competitive. It also reduces the
19 environmental -- or potential environmental
20 impact, the shorter distance we have to move
21 this, the less probability we have for impact.

22 We're also doing it in the initial years
23 because the sooner we get that waste into a
24 lined cell the less stress there is to the

1 environment and we think that that's going to
2 take on the order of about 10 years to achieve
3 that.

4 Q. Are there any procedures proposed to control
5 any odors that may be brought about as a result
6 of the exhumation and redisposal of this waste
7 in Unit 1?

8 A. The best procedures that I found are daily
9 covering and use of intermediate covers. I did
10 a project in Indiana where we exhumed some waste
11 at two facilities, in Newton County and
12 (Inaudible) County and we were able to use a
13 vertical wall of limited height when we exhumed
14 the waste. We exhumed it with a backhoe, the
15 vertical wall stayed stable and we used a
16 sprayed-on daily cover for that portion and in
17 one area we left it sprayed on all summer long.
18 It worked out very well, actually, created a
19 nice seal of the vertical wall, made it a nice
20 small active working phase and it was
21 impermeable, no odor and no water was able to
22 infiltrate and we just needed to worry about
23 stability of that wall. So we would use daily
24 covers and I would use soil daily covers and I

8

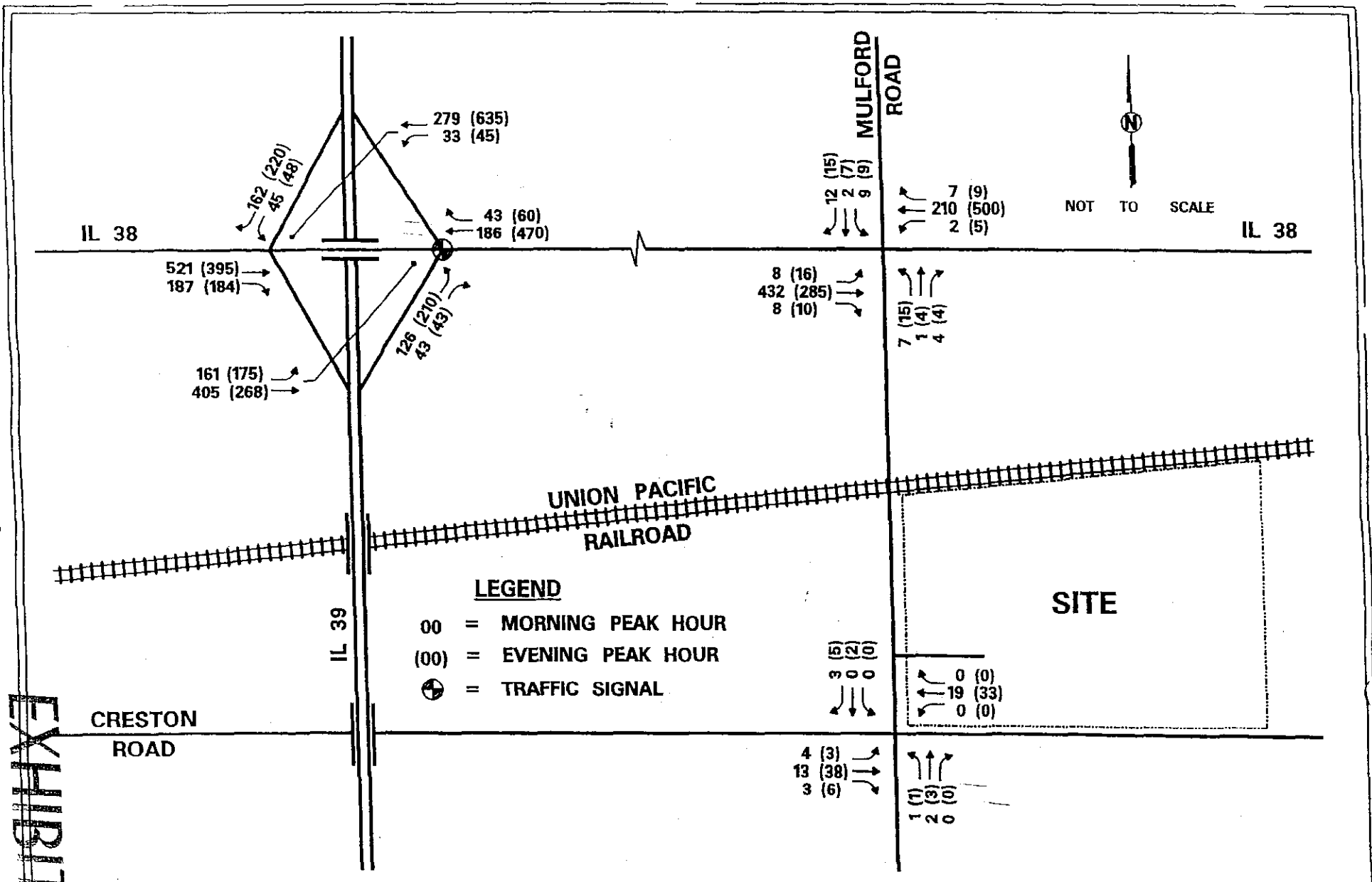


EXHIBIT C

PROJECT:

ROCHELLE LANDFILL EXPANSION
ROCHELLE, ILLINOIS

TITLE:

EXISTING PEAK HOUR VOLUMES

PROJECT NO: 06-209

KLOAN

FIGURE NO: 2

BEFORE THE ROCHELLE CITY COUNCIL
OGLE COUNTY, ILLINOIS

IN RE: THE APPLICATION FOR LOCAL)
SITING APPROVAL FOR THE ROCHELLE)
MUNICIPAL LANDFILL #2 EXPANSION)

RESPONSE TO MOTION FOR RECONSIDERATION

NOW COMES Concerned Citizens of Ogle County ("CCOC"), participant in the above-captioned matter, by and through its attorneys, HASSELBERG, WILLIAMS, GREBE, SNODGRASS & BIRDSALL, and states as follows:

1. On April 11, 2007, the Rochelle City Council ("City Council") met to consider its decision on the siting application filed in the aforementioned proceeding.
2. On April 11, 2007, the City Council voted to approve the Application subject to thirty-seven (37) special conditions ("Special Conditions").
3. Pursuant to Section 78-77(c) of the Rochelle Ordinance ("Ordinance"), on April 20, 2007, Rochelle Waste Disposal, L.L.C. ("Operator") filed a Motion for Reconsideration of those Special Conditions ("Motion for Reconsideration").
4. Your Applicant, the City Manager of the City of Rochelle, did not timely file a motion to reconsider or otherwise timely join in the Operator's Motion for Reconsideration.
5. For the reasons set forth below, the City Council should not reconsider its initial decision of April 11, 2007, or if it does, strengthen the Special Conditions, not further water them down.
6. The Hearing Officer, pursuant to Sections 78-76(n) and (o) of the Ordinance, filed his Findings of Fact, Conclusions of Law and Recommendations, stating, in part, as follows:



"IV. PREVIOUS OPERATING EVIDENCE

Section 39.2(a) of the Act provides, in part, that the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under this Section. The siting ordinance contains similar language.

The landfill facility is owned by the City of Rochelle and is operated by Rochelle Waste Disposal, L.L.C. Rochelle Waste Disposal has operated the existing landfill facility since July, 1995 through an operating agreement with the City of Rochelle.

There can be little doubt that the operator has had a less than ideal compliance history. CCOC is correct when it takes the position that there have been a large number of violations at the site.

At the public hearing, the operator called Mr. Thomas Hilbert to testify concerning the operating history of Rochelle Waste Disposal. Mr. Hilbert has been the engineering manager of Winnebago Reclamation Service for fourteen years and, in that capacity, has been responsible for the construction, permitting and compliance of the Rochelle Municipal Landfill. He holds a master's degree in environmental engineering from the University of Arizona and a bachelor's degree in geophysics from the University of Western Washington. He is a licensed landfill operator in the State of Illinois and holds a certification from the Solid Waste Association

of North America as a manager of landfill operations. In his testimony, Mr. Hilbert candidly conceded that the operator was not happy with its operating record and had made some changes to make improvements in the future. These changes include recently hiring a new site manager to insure compliance.

In its report to the Rochelle City Council, Patrick Engineering, Inc. has recommended a *substantial number of special conditions which will encourage compliance by the operator* and assist in minimizing the concerns of CCOC. **I find all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the experience.**

(Hearing Officer's Findings of Fact, Conclusions of Law at (Emphasis added).

Have all
37 conditions
thrown out??

7. In bold fashion, the Operator seeks to have all thirty-seven (37) Special Conditions thrown out because their "cumulative effect" causes some purported technical and financial impracticability when compared to the terms of the Host Agreement and the 9-26-06 letter between the Applicant and Operator. (Motion for Reconsideration, paragraph 10; see also, prayer for relief ("reconsider its April 11, 2007 decision to impose the Special Conditions described above")). The Operator's not-so veiled threat to walk away from the Host Agreement should not be countenanced by this City Council in the face of the dismal operating experience of this Operator over the last decade, as admitted by Mr. Hilbert and established as fact by the Hearing Officer. It is

inconceivable that the Operator claims that these Special Conditions be thrown out because the purported expansion is of "limited scope" where the facility with its relatively tiny current facility is undoubtedly "less than id

8. Paragraph 10 of the Motion for Reconsideration because it seeks an impermissible renegotiation of the Host Application process. Alternatively, it should be denied as saber-rattling.

9. After establishing a specter of uncertainty regarding the continued viability of the entire Host Agreement, the Operator then tries to pick off a few separate Special Conditions. However, the Operator's arguments are without merit and attempt to confuse and otherwise camouflage the true "spirit, intent, force and effect" of the Motion for Reconsideration: to contractually intimidate the City Council to relax the Special Conditions.

10. The Operator argues that Special Condition 8 is inconsistent with Special Condition 35. However, the Operator is incorrect. Rather, the two conditions are entirely consistent with each other. Special Condition 8 requires, in part, the Operator to control litter along Route 38 east through Creston to Woodlawn Road. Special Condition 35 prohibits **transfer trailers** going to and from the facility from traversing east along Route 38 through Creston to Woodlawn Road. However, neither **packer trucks** nor **roll-off container haulers** are prohibited from traversing that route. Special Condition 8 should not be limited, but rather, it should be expanded to include Creston Road from Mulford Road to Locust Road to cover packer trucks because the City Council did not adopt CCOC proposed condition 1(i), which stated that the Operator would mandate that all traffic leaving the landfill would travel north on Mulford Road, not

south out of the landfill. (Concerned Citizens of Ogle County Evidentiary Summary and Proposed Findings of Fact and Conclusions of Law, March 9, 2007).

11. In addition, the Operator alleges that Special Condition 13 is “both financially and technically impracticable, not reasonable and necessary to accomplish the purposes of Section 39.2 of the Act, and are (sic) inconsistent with regulations promulgated by the Pollution Control Board.” Special Condition 13 requires the removal of waste from Unit 1 to be completed within six (6) years from the date an IEPA permit is issued for the expansion, “*except as otherwise provided by the City Council for good cause shown.*” The Operator’s contention with this Special Condition is without merit for several reasons. First, the Operator notes that with respect to Unit 1, 276 months of accumulated waste must be exhumed over 30 months. However, “276 months” is a red herring. The daily volume, demand, and rate of disposal are irrelevant. In fact, 100% of the waste in Unit 1 is there right now; it will not be brought to the site over 276 months. Furthermore, there is no evidence that Special Condition 13 is “technically impracticable.” This statement is pure hyperbole. Although Devin Moose testified that he *thought* it would take about ten years to exhume Unit 1 (Tr. 1/24/07, p. 322-323)¹, he also stated, “we don’t know how much is in there (Unit 1), we don’t have exact records.” (Tr. 1/24/07, 176). Thus there could be less waste than expected. In addition, Mr. Moose testified, “We want to get that waste out of that unlined area **as soon as possible.**” (Tr. 1/24/07, p. 177) (Emphasis added). Thus, Special Condition 13 is entirely consistent with the Application and the testimony of Devin Moose.

¹ Citations to the various transcripts of hearings will generally be in this format: “Tr. [date of hearing], [page number].”

In addition, both the Hearing Officer and Patrick Engineering, Inc., ("Patrick Engineering") technical consultant to the City Council, recommended that the exhumation of Unit 1 be completed within 6 years. Patrick Engineering has the technical expertise, and the Hearing Officer has years of experience in landfill siting procedures, to determine the length of time necessary to exhume waste from a designated area. There is no engineering claim that this cannot be done. Thus, the fact that the Operator believes six years is impracticable is not a sufficient basis to modify Special Condition 13. Moreover, the Operator fails to acknowledge that if good cause is shown, the City Council may extend the amount of time allowed for the exhumation. Thus, if once the exhumation process gets underway, the Operator determines that it will be absolutely, technically impossible to exhume the waste within six years, the Operator may request additional time from the City Council. Therefore, the Operator's argument that Special Condition 13 is technically and financially impracticable is without merit.

12. The Operator argues that Special Condition 22 is "unnecessarily duplicative and redundant" in light of Special Condition 23. However, Special Condition 22 concerns operational screening berms around each cell, while Special Condition 23 requires permanent perimeter berm around the entire footprint. Therefore, Special Conditions 22 and 23 are necessary, separate, and distinct, albeit complementary of each other.

13. The Operator contends that Special Condition 23 is technically and financially impracticable. However, the Operator provides no basis for such contention. Rather, the Operator simply states, "based upon given and existing physical site

conditions, as well as certain operating conditions . . . ,” Special Condition 23 is impracticable. This general conclusion is not a sufficient basis for which the City Council should reconsider its initial decision. In fact, the Application states that the landscape plan is “based on the objectives of providing an attractive visual buffer along the Facility perimeter and at the entrance.” (City Application – Volume 1, Section 3.1, p. 8). The landscape plan calls for a ten to twelve foot screening berm to be planted adjacent to Creston Road with a variety of plant material. (City Application – Volume 1, Section 3.1, p. 8). Such plantings will be installed to provide “immediate impact and mature over time.” (City Application – Volume 1, Section 3.1, p. 8). Mr. Lannert’s testimony at the hearing was consistent with such landscape plan. (Tr. 1/22/07, p. 98, 103 (“I think the things we are proposing in terms of the buffering treatment, the end uses and the plantings at the foundation, those are things that tend to make it even more compatible than in its natural state.”)). Furthermore, the landfill is going to increase in height by 70 feet. (Tr. 1/22/07, p. 109). Thus, a fourteen (14) foot perimeter berm is anything but impracticable.

Contrary to the Operator’s belief, the existing physical site conditions necessarily *require* the imposition of such a perimeter berm. Given the extensive testimony and information in the Application about the need for buffers, the Operator cannot possibly be complaining that the site does not need a perimeter berm, rather, the Operator is complaining about the size and time required to build to such berm. However, there is no evidence that a fourteen (14) foot perimeter berm is either technically or financially impracticable.

14. In addition, the Operator argues that Special Conditions 26 and 28, which allow the City Manager and its legal and technical consultants to review and comment on any applications the Operator submits to the IEPA, at the Operator's expense, is "financially burdensome, impracticable, redundant and unnecessarily duplicative." However, given the "less than ideal" operating record of the Operator, such condition is not only practicable, but is also certainly necessary to ensure the Operator performs in a satisfactory manner. As aforementioned, the Hearing Officer found all of the conditions recommended by Patrick Engineering to be "reasonably necessary, supported by the record and ***necessitated by the previous operating history.***" (Hearing Officer's Findings of Fact, Conclusions of Law and Recommendations) (Emphasis added).

Furthermore, the Operator's statement that the requirements of Special Conditions 26 and 28 "run counter to the terms of the Host Agreement" is a not-so veiled threat to walk, which essentially amounts to blackmail. (See, 9-26-06 letter between the Applicant and the Operator). The City Council should note that such threat is entirely inappropriate.

15. Lastly, while the Operator admits that the road improvements noted in Special Conditions 33 and 34 are necessary, it challenges the fact that the costs for such road improvements should be imposed upon the Operator. However, such improvements would not have to be made but for the expansion of the landfill. The road improvements are required because of the volume of transfer trailers traversing such roadway. If use of the roadway was limited to packer trucks, the road improvements would probably not be necessary. Thus, because the road improvements are required

because of the presence of transfer trailers, which are present solely at the request of the Operator, it is only fair that the Operator bear the cost of such improvements.

In addition, the Operator claims that the expansion is limited in scope. However, this is a huge expansion: big enough to serve the entire Ogle County until 2104. (See, Concerned Citizens of Ogle County, Evidentiary Summary and Proposed Findings of Fact and Conclusions of Law, March 9, 2006, p. 11). Again, the Operator threatens to walk by alleging that Special Conditions 33 and 34 are inconsistent with the terms of the Host Agreement. Such behavior is entirely inappropriate.

WHEREFORE, CONCERNED CITIZENS OF OGLE COUNTY, respectfully requests that the City Council not reconsider its initial decision of April 11, 2007, or in the alternative, strengthen the Special Conditions approved in such decision.

Respectfully submitted,
CONCERNED CITIZENS OF
OGLE COUNTY,

By: 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the RESPONSE TO MOTION FOR RECONSIDERATION was served upon the following parties via electronic mail and also at the following addresses, by depositing a copy of said document in the U.S. Mail at Peoria, Illinois, postage pre-paid, this 27th day of April, 2007.

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The undersigned hereby certifies that a true and correct copy of the RESPONSE TO MOTION FOR RECONSIDERATION was served by the Defendant to the following party via electronic mail and also by hand delivery at the following address this 27th day of April, 2007.

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By: Emily R. Vivian
Emily R. Vivian