

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN BOTTOM CONSERVANCY, and)
SIERRA CLUB,)
)
Co-Petitioners,)
)
v.) PCB 07-84
) (Third-Party Pollution Control
) Facility Siting Appeal)
CITY OF MADISON, ILLINOIS, and)
)
WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

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NOTICE OF FILING

Please take notice that on the 9th day of October, 2007, I have electronically filed with the Office of the Clerk of the Pollution Control Board the City of Madison's Response Brief in Support of the City of Madison's Grant of Site Location Approval for the North Milam Facility, a copy of which is herewith served upon you.

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**RESPONSE BRIEF OF CITY OF MADISON, ILLINOIS IN SUPPORT OF THE CITY
OF MADISON'S GRANT OF SITE LOCATION APPROVAL FOR THE NORTH
MILAM FACILITY**

Introduction

The City of Madison ("City") is a municipal corporation and body politic organized pursuant to the Constitution and Laws of the State of Illinois located in the County of Madison. It is governed by an Aldermanic Board of seven (7) members and a Mayor.

Having reviewed a copy of the Response Brief of Waste Management of Illinois, Inc. being filed herein, and finding the Introduction and Facts set forth therein to be accurate, the City joins in the statements and information contained in said Introduction and Facts sections.

In addition thereto the City submits that it made particular efforts to provide all interested parties an opportunity to participate in and be heard during the siting application and hearing process, thereby adhering to the principle of fundamental fairness.

The City adopted Ordinance No. 1670 on or about June 13, 2006. It clearly established the procedures which all interested parties (including the Applicant) would be

required to follow during the siting process. The procedures provided numerous opportunities to participate in various ways, so that the City Council would be able to consider multiple view points.

All interested parties were encouraged to: (1) submit documents prior to the hearings on December 21 and 22, 2006; (2) provide testimony, make statements or submit relevant documents during the hearing; (3) cross-examine witnesses appearing for the Applicant or in opposition; and (4) submit comments as to any issue deemed significant or critical to the decision making process for a period of thirty (30) days subsequent to the hearing.

The City Council also directed that the conduct of the hearing include morning, afternoon and evening hours to accommodate any and all who wished to participate in the process.

The record clearly reveals which interested parties submitted evidence or comments on the statutory issues to be considered by the City Council, as well as the quality, credibility and sufficiency of such evidence or comments.

Argument

Having reviewed the Argument set forth in the Response Brief of Waste Management of Illinois, Inc. being filed herein, the City joins in same.

In addition, the City submits that there was overwhelming, competent evidence submitted by the Applicant to support the findings made by the Hearing Officer and City Council in approving the siting application. In fact, the record is virtually devoid of competent evidence or comments submitted by American Bottom Conservancy or the Sierra Club that challenges or questions the evidence submitted by the Applicant. Although Ordinance 1670 provided many ways for objectors to submit testimony, documents or exhibits before, during and after the

hearing, Petitioners herein failed to offer any evidence or information of substance on the pertinent siting issues for the Hearing Officer or City Council to consider.

Both proponents and opponents to a siting application have an equal responsibility to the siting authority to present relevant, competent evidence and information to allow the siting authority to make an informed decision. In this case the record clearly demonstrates Waste Management of Illinois satisfied this responsibility. The Petitioners herein did not. By not taking advantage of the thirty day post hearing comment period to submit evidence or comment concerning issues they felt they were prohibited from introducing during the hearing, Petitioners effectively waived any fundamental fairness issue on those subjects. To the extent they submitted materials, their objections to not being able to do so during the hearing are moot.

The proceedings satisfied the recognized principle of fundamental fairness. T.O.T.A.L. v. City of Salem, 288 Ill. App. 3^d 565, 680 N.E. 2^d 810 (5th Dist., 1997).

The action taken by the City Council reflected in its written minutes of February 6, 2007 is also sufficient to comply with the statutory requirement of a written decision with reasons given. See Peoria Disposal Co. v. Peoria County Board, PCB 06-184 slip op. at 33-34 (June 21, 2007). At that meeting the City Council cited the written findings of the Hearing Officer as the basis for its unanimous vote to approve the Application. Given the paucity of competent information submitted by Petitioners during the lengthy siting process, there was no basis for the City Council to have voted otherwise.

CONCLUSION

When looking at the record of this Application in total, the Board will find no basis to reverse the actions of the City of Madison and deny this Application. The Petitioners have failed to satisfy their responsibility to provide relevant, competent evidence, comment or materials

upon which a decision to deny this Application could have been based. The City of Madison provided ample safeguards to protect the principle of fundamental fairness, and no interested party was prejudiced by its actions. The action of the City Council granting siting approval for North Milam should be approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of October, 2007, a complete copy of this instrument was served upon counsel for defendants by e-mail to the addresses below.

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and by regular mail

/s/ Veronica L. Pyatt