

Electronic Filing - Received, Clerk's Office, March 5, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROCHELLE WASTE DISPOSAL, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 07-113
THE CITY OF ROCHELLE, an Illinois)	(Third-Party Pollution Control Facility
municipal corporation, and THE)	Siting Appeal)
ROCHELLE CITY COUNCIL,)	
)	
Respondents.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on March 5, 2008, the undersigned electronically filed with the Clerk of the Illinois Pollution Control Board **ROCHELLE CITY COUNCIL'S MOTION TO RECONSIDER** in the above entitled matter, a copy of which is attached hereto.

ROCHELLE CITY COUNCIL

By: /s/ Donald J. Moran
One of Its Attorneys

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_____)	

ROCHELLE CITY COUNCIL'S MOTION TO RECONSIDER

Respondent, Rochelle City Council ("City Council"), by its attorneys, Pedersen & Houpt, and pursuant to Sections 101.520 and 101.902 of the Illinois Pollution Control Board ("Board") Procedural Rules ("Rules"), moves the Board to reconsider and modify that portion of its ruling in the January 24, 2008 Opinion and Order ("Opinion") affirming Special Condition 23. In support thereof, the City Council states as follows:

1. In the Opinion, the Board, *inter alia*, affirmed Special Condition 23 imposing a 14-foot perimeter berm requirement.
2. The Board gave no explanation or basis to support this ruling. Rather, the Board lumped the grounds for its affirmance of Special Condition 23 with its affirmance of Special Condition 22 for operational screening berms, which was based on the generalized testimony of Mr. Devin Moose regarding operational screening berms (he testified that operational screening berms can help to screen operations from view as well as control litter). *See Rochelle Waste Disposal, L.L.C. v. The City of Rochelle*, PCB 07-113, slip op. at p. 52 (January 24, 2008).
3. The Board affirmed Special Condition 23 despite the fact that neither the applicant, the City of Rochelle ("City"), nor the operator, Rochelle Waste Disposal, LLC

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(RWD"), nor the City Council dispute the fact that there is no evidentiary support in the record for the imposition of a 14-foot perimeter berm in order to satisfy criterion (ii) of Section 39.2(a) of the Illinois Environmental Protection Act ("Act"). *Id.*, PCB 07-113, slip op. at pp. 34-37.

4. In reviewing a condition to a site location approval, the Board must determine whether the condition is reasonable and necessary to accomplish the purposes of the Act. *See* 415 ILCS 5/39.2(e); *see also Peoria Disposal Co., v. Peoria County Board*, PCB No. 06-184, slip op. at 14 (December 7, 2006). The Board also must apply its technical expertise in examining the record to determine if the decision to impose the condition is supported by the record. *See Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 123-24, 866 N.E.2d 227, 238-39 (2007).

5. A motion to reconsider is proper where it seeks to bring to the Board's attention clear errors in the Board's application of the law. *See Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

6. This Motion asks the Board to reconsider whether it correctly applied the proper legal standard of review when it affirmed the imposition of Special Conditions 23, even though it was undisputed that the 14-foot perimeter berming requirement had no evidentiary support.

7. No witnesses testified that a 14-foot perimeter berm was necessary for this particular facility. Mr. Moose specifically testified that he did not see the need for berms surrounding the entire perimeter of the facility, and that where they are necessary, the 8-foot undulating berms proposed by the applicant's expert, Mr. J. Christopher Lannert, were sufficient:

On the bottom we increased the setback on Creston Road to about 400 feet from the waste boundary. That allowed us additional buffering along Creston Road. It did allow us there to build buffers and those buffers include, as Mr. Lannert talked about, berms of a minimum of 8-foot height but an undulating berm, not just a row berm, but an undulating landscape berm and fence.

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(C-20 at p. 139; 1/24/07.)

8. There is absolutely no evidentiary support for the imposition of Special Condition 23. On the other hand, the record does support the modification of Special Condition 23 to require an undulating perimeter berm 8 to 10 feet in height with plant material on the top of the berm, including plant material in excess of 6 feet in height. (C-20 at p. 92, 100, 139, 153; 1/22/07.)

WHEREFORE, Respondent, Rochelle City Council, respectfully requests that the Board:

- A. Reconsider that portion of its ruling in the Opinion and Order entered on January 24, 2008 affirming Special Condition 23 requiring a 14-foot perimeter berm;
- B. Apply the proper standard of review and determine that the record does not contain evidence sufficient to support the requirement of a 14-foot perimeter berm;
- C. Modify Special Condition 23 to require an undulating perimeter berm 8 to 10 feet in height with plant material on the top of the berm, including plant material in excess of 6 feet in height; and
- D. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,
THE ROCHELLE CITY COUNCIL

By: /s/ Donald J. Moran
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Donald J. Moran, an attorney, on oath certify that I caused to be served the foregoing, **ROCHELLE CITY COUNCIL'S MOTION TO RECONSIDER**, upon the following:

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via electronic mail before 5:00 p.m. on this 5th day of March, 2008.

/s/ Donald J. Moran
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