

Electronic Filing - Received, Clerk's Office, March 6, 2008

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 March 6, 2008, the undersigned filed electronically with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, the Petitioner Rochelle Waste Disposal's Motion for Reconsideration, a copy of which is attached hereto.

Dated: March 6, 2008

Respectfully submitted,

ROCHELLE WASTE DISPOSAL, L.L.C.

s/Charles F. Helsten

Charles F. Helsten

One of Its Attorneys

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROCHELLE WASTE DISPOSAL, L.L.C.,)

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**THE CITY OF ROCHELLE, an ILLINOIS
MUNICIPAL CORPORATION and the
ROCHELLE CITY COUNCIL,**)

Respondents.)

**PETITIONER ROCHELLE WASTE DISPOSAL'S
MOTION FOR RECONSIDERATION**

NOW COMES the Petitioner, Rochelle Waste Disposal, L.L.C. ("RWD"), by and through its attorneys, pursuant to 35 Ill. Admin. Code §§101.502 and 101.902, and for its Motion for Reconsideration of the January 24, 2008 Opinion and Order entered by the Pollution Control Board concerning Special Conditions 13 and 23, states as follows:

1. On March 5, 2008, both the local siting authority, the Rochelle City Council ("City Council" or "local siting authority") and the applicant, City of Rochelle ("City"), filed Motions for Reconsideration asking this Board to reconsider its January 24, 2008 Opinion and Order.

2. RWD commends the local siting authority's careful weighing of the factual evidence in the case, as memorialized in its Response Brief filed on December 10, 2007, and its Motion for Reconsideration filed on March 5, 2008. The diligence shown by the siting authority in its review of the evidence is admirable, and its Motion for Reconsideration reflects a sincere intent to fulfill its responsibilities under the Environmental Protection Act.

3. The City's diligent review of the factual evidence in the record as memorialized in its Response Brief filed December 10, 2007, and in its Motion for Reconsideration filed on March 5, 2008, is similarly commendable.

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4. RWD accordingly joins in and adopts the Motions for Reconsideration filed by the local siting authority and by the City, incorporating those Motions herein by reference. RWD also seeks reconsideration of the Board's January 24, 2008 for the additional reasons set forth below, while expressly reserving its right to appeal the Board's Opinion and Order.

RWD's Additional Arguments in Support of Reconsideration

5. After carefully weighing the evidence in the record, the local siting authority determined there is no factual evidence to support Special Condition 13 (the period of time to be allotted for exhumation and relocation of waste from "Unit 1" to a new Subtitle D unit), as originally drafted. City Council's Response Brief at 2, 10, 14; Board's Order of January 24, 2008 ("Board's Order") at 27, 37.

6. The local siting authority found that the only credible, factual evidence concerning Special Condition 13 was the testimony given by Devin Moose, who testified that exhumation would take on the order of "about 10 years." City Council's Response Brief at 10. The local siting authority accordingly determined that the factual evidence in the record would support Condition 13 *only* if that condition was amended to require that exhumation be completed as soon as practicable, but, in any event, in no more than ten (10) years from the date an IEPA permit is issued for the expansion, except for good cause shown. City Council's Response brief at 10, 14. No party has challenged this finding by the local siting authority.

7. The local siting authority further found, after weighing the factual evidence, that with respect to Special Condition 23 (the 14 foot perimeter berm), "[n]o witnesses testified and no other evidence was introduced that operational screening berms, or a fourteen-foot perimeter berm, were necessary." City Council's Response Brief at 11; *see also* City Council's Motion for Reconsideration at ¶¶ 7, 8. The local siting authority found that the evidence would support Special Condition 23 *only* if that condition was modified to reflect the testimony concerning

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construction of an undulating perimeter berm of eight (8) to (10) feet in height, with plant material, including trees no less than six feet in height, on top of the berm. City Council's Response Brief at 12; City Council's Motion for Reconsideration at ¶ 8. No party has challenged this finding by the local siting authority.

8. Based upon the local siting authority's determination that the factual evidence would support Special Conditions 13 and 23 *only* if certain modifications were made, the siting authority drafted the modifications necessary to conform the conditions to the evidence in the case. City Council's Brief at 2, 15; Board's Order of January 24, 2008 ("Board's Order") at 27, 37; City Council's Motion for Reconsideration at ¶ 8. No party has challenged the local siting authority's determination that, as modified, Special Conditions 13 and 23 are supported by evidence in the record.

9. On January 24, 2008, this Honorable Board disregarded the local siting authority's findings with respect to the lack of evidence for Special Conditions 13 and 23, which have never been challenged by any party to the appeal, and entered an order affirming Special Conditions 13 and 23 as originally drafted, thereby rejecting the siting authority's unchallenged findings.

10. In *Waste Management of Illinois v. Bounty Bd. of Kankakee County*, PCB 04-186 (Jan. 24, 2008), a case decided the same day as this one, the Board explained that it "may not reweigh the evidence on the siting criteria to substitute its judgment for that of the local siting authority." *Id.* at 25 (emphasis added) (citing *Fairview Area Citizens Taskforce v. PCB*, 198 Ill. App. 3d 541, 550, 555 N.E.2d 1178, 1184 (3d Dist. 1990); *Waste Management of Illinois, Inc. v. PCB*, 187 Ill. App. 3d 79, 81-82, 543 N.E.2d 505, 507 (2d Dist. 1989); *Tate v. PCB*, 188 Ill. App. 3d 994, 1022, 544 N.E.2d 1176, 1195 (4th Dist. 1989)). This doctrine of deference to the siting authority's findings is in keeping with the well-established principle that it is up to the local

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siting authority to weigh the evidence presented. *See, e.g. Land and Lakes Co. v. Illinois PCB*, 319 Ill.App.3d 41, 53, 743 N.E.2d 188, 197 (3rd Dist. 2000).

11. A Motion for Reconsideration may be used to afford the Board an opportunity to correct errors brought to its attention by the movant. *See Philip Morris USA, Inc. v. Byron*, 226 Ill.2d 416, 423 (2007).

12. Here, in the Board's January 24, 2008 Opinion and Order, the Board reweighed the evidence and abrogated the unchallenged findings of the local siting authority as to the evidence.

WHEREFORE, for the reasons set forth above and for those presented by the local siting authority and by the City in their Motions for Reconsideration, incorporated herein by reference, Rochelle Waste Disposal, LLC, requests that this Honorable Board reconsider its Opinion and Order of January 24, 2008 and revise the Order with respect to Special Conditions 13 and 23 to reflect that the local siting authority found, after weighing the evidence, that there is no support for Special Conditions 13 and 23 as drafted.

Dated: March 6, 2008

Respectfully submitted,

ROCHELLE WASTE DISPOSAL

By: s/ Charles F. Helsten
Charles F. Helsten
One of Its Attorneys

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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 March 6, 2008, she served a copy of the foregoing upon:

Hon. John McCarthy 45 East Side Square, Suite 301 Canton, IL 61520 jjm718@sbcglobal.net	Donald J. Moran Pedersen & Houpt 161 N. Clark St., Suite 3100 Chicago, IL 60601-3142 dmoran@pedersenhaupt.com
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via electronic mail before the hour of 5:00 p.m., at the addresses listed above.

/s Joan Lane

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