BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VEOLIA ES VALLEY VIEW LANDFILL, INC.,	)	
Petitioner,	)	
v.	)	PCB 10-31
	)	(Pollution Control Facility Siting Appeal)
COUNTY BOARD OF MACON COUNTY, Illinois,	)	
Respondent.	)	

NOTICE OF FILING

To:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

Randy Waks
Assistant State's Attorney
Macon County State's Attorney's Office
253 E. Wood Street
Decatur, Illinois 62523-1408

Larry Clark
Attorney For Macon County Board
700 N. Lake Street, Suite 200
Mundelein, Illinois 60060

PLEASE TAKE NOTICE that on June 7, 2010 I have filed with the Office of the Clerk of the Pollution Control Board one original and nine copies of the Brief of Petitioner Veolia ES Valley View Landfill, Inc., a copy of which is herewith served upon you.

Gerald P. Callaghan
Attorney For Petitioner

Gerald P. Callaghan
Freeborn & Peters LLP
Attorneys for Petitioner
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606-6677
Telephone: (312)360-6000

CERTIFICATE OF SERVICE

I, the undersigned, certify that on June 7, 2010, I have served the attached Brief of Petitioner Veolia Valley View Landfill, Inc. on the persons to whom the foregoing Notice of Filing is addressed by U.S. Mail, postage prepaid.

Lyn M. Kenyee

SUBSCRIBED AND SWORN TO BEFORE ME
this 7th day of June, 2010

Notary Public

1976809v1

OFFICIAL SEAL
ILDA HERNANDEZ
Notary Public - State of Illinois
My Commission Expires Aug 4, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VEOLIA ES VALLEY VIEW LANDFILL, INC.,	)	
Petitioner,	)	
v.	)	PCB 10-31
	)	(Pollution Control Facility Siting Appeal)
COUNTY BOARD OF MACON COUNTY, Illinois,	)	
Respondent.	)	

BRIEF OF PETITIONER VEOLIA ES VALLEY VIEW LANDFILL, INC.

Petitioner Veolia ES Valley View Landfill, Inc. ("Veolia") submits this brief in support of its appeal of five conditions imposed by the Respondent County Board of Macon County ("County") in granting siting approval of the expansion of Veolia's Valley View Landfill ("Expansion"). For the reasons stated in this brief, the contested conditions should be stricken.

I. INTRODUCTION

On May 1, 2009, Veolia filed with the County a request for siting approval for the Expansion ("Application"). (C2-4; C3-2) The Application was filed pursuant to Section 39.2 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39.2. The Application, which is voluminous (C1-1 to C1-48587), addressed the siting criteria that are set forth in subsection (a) of Section 39.2 of the Act. The site, which began operations in 1957 (C1-1457), was acquired by Veolia in 1998 (C1-1459). The Expansion proposed by Veolia would be both vertical and horizontal (C1-1459).

The hearing on the Application was conducted by the County's EEHW (Environmental, Education, Health and Welfare) Committee on August 5, 6 and 15. At the hearing, Veolia

presented the following witnesses to address the nine siting criteria in Section 39.2(a) of the Act: John Bossert testified regarding Criteria 2, 4, 5, 7 and 9 (C2-26 to C2-201); Joseph D. Miller testified regarding Criterion 2 (C2-201 to C2-262); Sheryl R. Smith testified regarding Criteria 1 and 8 (C2-263 to C2-293); Jim Ash testified regarding the first part of Criterion 3 (C2-359 to C2-398); Peter Poletti testified regarding the second part of Criterion 3 (C-2 399 to C C-2 428); and Lee Austin testified regarding Criterion 6 (C2-430 to C2-457). These were the only witnesses who testified. No members of the public elected to participate in the hearing. And the County's independent review team did not present any witnesses or other evidence. However, the County's independent review team's attorney cross-examined the witnesses presented by Veolia.

After the close of the hearing on August 15, Veolia's counsel submitted Proposed Findings Fact and Conclusions of Law (C3-40 to C3-60). Counsel for the County's review team submitted proposed findings and recommendations, which included 41 proposed siting conditions (C3-21 to C3-39). Veolia filed a response to the review team's proposed conditions in which Veolia agreed to be bound by most of the conditions, proposed revisions to eight conditions, rejected three conditions and provided reasons for its proposed revisions and objections (C3-9 to C3-20). Because Veolia and the review team had used different numbering sequences for the conditions, the parties filed a stipulation with a table that correlates the condition numbers used by the parties (C361 to C3-64).

On September 30, the EEHW Committee met to formulate a recommendation to the full County Board. The Committee used the review team's recommendation, including the review team's proposed conditions, to guide its deliberations (C6-13). Counsel for the Committee noted that Veolia agreed to 34 of the recommended conditions and did not agree to Conditions 8, 9, 11, 19, 27, 30 and 33. During the course of its deliberations, the Committee struck Condition 30

(C6-45) and adopted Veolia's version of Condition 33 (C6-50). At the conclusion of their discussion, the Committee members voted to approve the Application, subject to the findings and conditions recommended by the County's review team as modified by the Committee (C6-56 to C6-58). On October 8, 2009, the County Board voted to pass a resolution approving the Application, subject to the findings and conditions recommended by the EEHW Committee on September 30, which were attached to the resolution. (C6-69; C8-3 to C8-23). The resolution was filed of record by the County Clerk on October 13, 2009.

On November 9, 2009, Veolia filed with the Pollution Control Board ("Board") its Petition For Hearing To Contest Siting Conditions. The conditions that are contested in this appeal are Conditions 8, 9, 11, 19 and 27. Those conditions are as follows:

> 8. Pumping. The gradient control system located inside of the slurry wall and well MS-13 (or its replacements) shall be pumped for a minimum of 100 years unless otherwise released from this obligation by the Macon County Board.
>
> 9. Financial Assurance. A perpetual care trust fund should be established to address the long term pumping required at this site, and the rate of $0.20 per ton or an annual payment of $50,000, whichever is greater, shall be placed into such fund during the 28 years of landfill operation. This fund is to be used for the required pumping from year 58 (at the end of the 30-year post-closure) until year 128 as predicted in the GIA (the GIA models 100 years following closure). More specifically, assuming a 2011 start date, the expected closure is in 2039 and the GIA pumping will run to 2139). Alternately, this requirement may be met by the inclusion of such costs, for the specified period of time (year 2139), in the applicant's Financial Assurance for Closure and Post-Closure Costs as identified in Subpart F: Financial Assurance for Closure and Post-Closure Care (35 Ill.Admin.Code 807.600 *et seq*). If the Illinois EPA proposes to release the applicant's Financial Assurance, then the applicant (or their successor) shall either maintain such financial assurance as identified above or shall petition the Macon County Board to release such financial assurance requirements.
>
> 11. Leachate Elevations. The Applicants shall install and operate, at a minimum, the proposed number of leachate extraction wells and other leachate collection points to reduce the leachate elevation in Sections 1, 2 and 3 to a height no greater than the leachate elevations illustrated in the GIA model for future conditions (reference Hydrogeologic Characterization Report, Volume IV, Attachment 12b, Drawing Sheet 1, Predictive Model Landfill Potentiometric Contours) unless the Applicant can demonstrate that higher levels are acceptable by providing a revised GIA model to the County and

Illinois EPA for review and approval. Leachate elevations shall be measured from at least 3 leachate piezometers, installed in each of Sections 1, 2 and 3 (located in the northern, central and southern portions), at points equidistant from leachate extraction points to minimize the influence of leachate extraction wells on the measured leachate elevation. Leachate elevation and leachate extraction well operation data shall be recorded at least quarterly and be readily available for County review.

19. Gradient Control System. The Gradient Control System to be used to de-water the horizontal expansion shall not be dismantled at the point in time when sufficient waste has been placed atop the base liner to discontinue its use, but shall be maintained such that a sample of the groundwater in the system can be extracted and tested once per year. The testing parameters shall be at least six (6) common leachate indicator parameters.

27. Visual Barriers. The development of the landfill shall be built in such a manner that perimeter and operational berms shall be placed to minimize view of the landfill operations and to assist in minimizing possible offsite impact. Perimeter berms shall be vegetated immediately after they are constructed. The east perimeter berm shall be constructed prior to waste exhumation and other operations that expose waste within 500 feet of the east property boundary. The east perimeter berm shall be no less than 8 feet in height and shall extend, at a minimum, from point 5800 N to point 4800 N shown on Drawing A4, and shall be built wide enough to support vegetation as described on the application's landscape plan. Operational berms shall be used such that waste is not seen on the west, north or east. In areas where there is insufficient room to construct a separate berm, the elevated roadway may be horizontally extended and the plantings may be installed adjacent to the roadway surface or upon the sideslopes of such roadway/berm. The elevation of such a combination roadway/berm shall be 8 feet above the adjacent grade except where existing localized conditions are prohibitive and such determination is approved by the Macon County Solid Waste Department.

Conditions 8, 9, 11 and 19 were imposed under Criterion 2 of Section 39.2(a) of the Act, which states that: "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected." Condition 27 was imposed under Criterion 3, which states that: "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."

II. STANDARD OF REVIEW

Section 39.2(e) allows the County to impose conditions on a decision to grant site approval, subject to the following limitations: "In granting approval for a site the county board ... may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with the regulations promulgated by the Board." In determining whether a condition is necessary to accomplish the purposes of Section 39.2(a), the Board must determine whether the condition is against the manifest weight of the evidence. *Rochelle Waste Disposal, LLC, v. City of Rochelle*, PCB 07-113, slip op. at 20-21 (Jan. 24, 2008). A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain or indisputable from a review of the evidence. *Rochelle Waste Disposal*, PCB 07-113, slip op. at 21 (Jan. 24, 2008). In making this determination, the Board ("Board") may not reweigh evidence. *Id.* Moreover, the Board must base its decision exclusively on the record before the local siting authority. *Waste Management of Illinois, Inc. v. Will County Board,* PCB 99-141, slip op. at 2 (September 14, 1999). The Board should strike conditions if they are standardless, vague and unspecific. *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 13-16 (Dec. 2, 1982). And the Board should strike or modify a condition that may conflict with a condition to a permit of the Environmental Protection Agency. *Browning Ferris Industries*, PCB 82-101, slip op. at 15 (Dec. 2, 1982). It should also strike a condition that is not supported by the record. *Browning Ferris Industries*, PCB 82-101, slip op. at 17 (Dec. 2, 1982).

III. ARGUMENT

Conditions 8, 9, 11, 19 and 27, which are contested in this appeal, were proposed by the County's review team after the siting hearing was closed. At the hearing, the review team did not present any witnesses to discuss the proposed conditions and did not offer any testimony or other evidence to support the conditions. For this reason, it was impossible for Veolia to present testimony to critique or offer modifications to the conditions. Nevertheless, in an attempt to cooperate with the review team, Veolia proposed modifications to the contested conditions in its Response (C3-11 to C3-18) and its Amended Response (C3-73 to C3-79). However, the contested conditions were not modified, leading to this appeal.

A. Condition 8

Condition 8 to the County's siting approval states as follows:

> **8. Pumping. The gradient control system located inside of the slurry wall and well MS-13 (or its replacements) shall be pumped for a minimum of 100 years unless otherwise released from this obligation by the Macon County Board.**

Veolia's objection to this condition is that it could conflict with the IEPA permit issued for the Expansion. This is why Veolia proposed a modification of the condition that would enable Veolia to cease pumping if approved by the IEPA. In fact, this approach is consistent with the Application filed by Veolia, which states that "Veolia proposes to operate the slurry wall groundwater gradient control system for 100-years following closure consistent with the assumptions of these transport analyses unless otherwise approved by the IEPA" (emphasis added) (C1-45268). The County's condition could put Veolia in the irreconcilable position of being required by the IEPA to cease pumping of the gradient control system, while being in violation of this condition if it ceased pumping without the consent of the County.

In *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 3, 15 (Dec. 2, 1982), this Board struck the portion of a condition that authorized the Lake County Department of Public Health to require, rather than recommend, "additional measures to control vectors, dust, odors, blowing and erosion problems." The Board found that it was proper for the Health Department to discuss and recommend additional measures "but not to 'require' measures which might conflict with permit conditions." For the same reason, condition 8 should be stricken.

B. Condition 9

Condition 9 to the County's siting approval states as follows:

> **9. Financial Assurance. A perpetual care trust fund should be established to address the long term pumping required at this site, and the rate of $0.20 per ton or an annual payment of $50,000, whichever is greater, shall be placed into such fund during the 28 years of landfill operation. This fund is to be used for the required pumping from year 58 (at the end of the 30-year post-closure) until year 128 as predicted in the GIA (the GIA models 100 years following closure). More specifically, assuming a 2011 start date, the expected closure is in 2039 and the GIA pumping will run to 2139). Alternately, this requirement may be met by the inclusion of such costs, for the specified period of time (year 2139), in the applicant's Financial Assurance for Closure and Post-Closure Costs as identified in Subpart F: Financial Assurance for Closure and Post-Closure Care (35 Ill.Admin.Code 807.600 *et seq*). If the Illinois EPA proposes to release the applicant's Financial Assurance, then the applicant (or their successor) shall either maintain such financial assurance as identified above or shall petition the Macon County Board to release such financial assurance requirements.**

Veolia objects to this condition on several grounds. First, the County does not have the authority to impose this condition under Section 39.2 of the Act. In *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 4 (Dec. 2, 1982), Lake County imposed a condition that required the applicant to "provide proof of financial responsibility by means of bond, escrow agreement or insurance policy for life of site plus 20 years in the amount of $3 million." The Board held that "(a)bsent legislative authorization,"

Lake County had no authority to require the applicant to provide financial security to the county. *Id.* slip op. at 17. Macon County has no more authority to require financial assurance in the present case than Lake County did in *Browning Ferris Industries*. Because the County does not have the authority to impose this condition, it should be stricken by the Board.

In addition, there is no support in the record for the amount of the financial assurance required by Condition 9. In *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 17 (Dec. 2, 1982), the Board also struck the financial security condition imposed by Lake County because "the record does not explain or support choices as to the amount and period of time included in the requirement, and provides for no standards to govern the 'payment to a person authorized by Lake County to determine and execute the remedies necessary.'" In *County of Lake v. Illinois Pollution Control Board,* 120 Ill.App.3d 89, 457 N.E.2d 1309 (2d Dist. 1983), the Second District Appellate Court upheld the Board's striking of the financial security condition imposed by the Lake County Board in the *Browning Ferris Industries* case. The Appellate Court held that: Section 39.2 of the Act did not authorize Lake County to require financial responsibility; such authority was not implied; and the time limit and amount of the financial security required by the condition were arbitrary and unsupported by the record.

The problems with Lake County's decision that were identified by this Board in *Browning Ferris Industries* and by the Appellate Court in *County of Lake* are present in the instant case. There is no evidence in the record to explain how the County established a rate of the greater of $0.20 per ton or $50,000 per year. Absent support in the record, these numbers are completely arbitrary. Moreover, there are no standards in Condition 9 to guide Veolia on who

will establish the trust fund or who should be paid. Therefore, the condition should be stricken as being unsupported by the record and against the manifest weight of the evidence.

C. Condition 11

Condition 11 to the County's siting approval provides as follows:

> **11. Leachate Elevations. The Applicants shall install and operate, at a minimum, the proposed number of leachate extraction wells and other leachate collection points to reduce the leachate elevation in Sections 1, 2 and 3 to a height no greater than the leachate elevations illustrated in the GIA model for future conditions (reference Hydrogeologic Characterization Report, Volume IV, Attachment 12b, Drawing Sheet 1, Predictive Model Landfill Potentiometric Contours) unless the Applicant can demonstrate that higher levels are acceptable by providing a revised GIA model to the County and Illinois EPA for review and approval. Leachate elevations shall be measured from at least 3 leachate piezometers, installed in each of Sections 1, 2 and 3 (located in the northern, central and southern portions), at points equidistant from leachate extraction points to minimize the influence of leachate extraction wells on the measured leachate elevation. Leachate elevation and leachate extraction well operation data shall be recorded at least quarterly and be readily available for County review.**

Veolia objects to this condition because it is not supported by the record. Veolia noted in its response to this condition that piezometers cannot be installed or maintained effectively in a waste mass in an active landfill (C3-74). There is no evidence in the record that suggests otherwise. No one testified about the efficacy of piezometers to measure leachate levels under the conditions specified by the County. In fact, the record is so devoid of evidence to support this condition that one of the EEHW Committee members admitted during deliberations on the condition that he did not know what a piezometer is when he posed this question: "Could I ask the Engineers or Applicant's counsel to explain to me what a piezometer is?" (C6-28) Counsel for the review team answered that it was too late to provide that information because "(t)he testimony is all in." (C6-28) Clearly, if there is no evidence in the record to explain the purpose and function of a piezometer, there is no evidence to support the use of a piezometer in the way

required by Condition 11. This condition is unsupported by the record and is against the manifest weight of the evidence.

In *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 13 (Dec. 2, 1982), the Board struck a similar condition that addressed leachate levels in a landfill, noting that conditions imposed by local siting authorities can be "technically infeasible." In its response to Condition 11, Veolia objected on the basis that the condition requiring piezometers in the waste mass of an active landfill is technically infeasible (C3-74). For such a condition to have any validity, it would have to be supported by qualified, competent testimony. No such evidence was presented.

Although not explained in the condition, the apparent reason piezometers are required is that the County wants to make sure leachate levels do not rise above those assumed in the groundwater impact assessment (GIA) model for future conditions. However, there is nothing in the record to suggest that there is any chance that leachate levels will exceed the levels assumed in the model. In fact, the Application clearly shows that the leachate levels used in the GIA model are extremely conservative in that they were determined by deactivating the pumps at each measurement location (leachate extraction well) until leachate levels reached equilibrium (C1-45194). These equilibrated levels, which are graphically depicted in the Application, were reached only after months of not pumping (C1-47252 to C1-47261). Therefore, the leachate levels used in the model are worst case levels because Veolia will pump leachate continuously, and the unpumped condition assumed in the model will never exist. In fact, Joseph Miller, Veolia's hydrogeologist, testified that Veolia will maintain leachate levels at the bottoms of the extraction wells (C2-256 to C2-258).

The final reason Condition 11 should be stricken is that it could conflict with the IEPA permit for the Expansion. *See Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 15 (Dec. 2, 1982) (improper for a condition "to 'require' measures which might conflict with permit conditions"). If the IEPA were not to permit Veolia to install the piezometers specified in Condition 11, which would not be surprising given the technical infeasibility of doing so, the condition would conflict with the IEPA permit. Condition 11 should be stricken.

D. **Condition 19**

Condition 19 to the County's siting approval states as follows:

> **19. Gradient Control System. The Gradient Control System to be used to de-water the horizontal expansion shall not be dismantled at the point in time when sufficient waste has been placed atop the base liner to discontinue its use, but shall be maintained such that a sample of the groundwater in the system can be extracted and tested once per year. The testing parameters shall be at least six (6) common leachate indicator parameters.**

In its response to this condition, Veolia agreed to keep the gradient control system in place after it ceases pumping, but it objected to the apparent requirement that water extracted from the system must be tested once per year for certain unnamed leachate indicator parameters. (3C-73) The sampling and testing requirement of Condition 19 should be stricken for several reasons.

Condition 19 is vague and standardless. The condition can be read to require that water from the gradient control system should be tested once per year (although the condition also can be read to require only that the water be capable being tested). Nevertheless, the condition does not describe the type of testing that should be done or the leachate indicator parameters that should be tested. In *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 15 (Dec. 2, 1982), the Board struck a similar condition on

grounds of vagueness. In that case, Lake County imposed a condition that authorized the Health Department "to test water for pollutants before pumping" the water off-site. The Board struck on grounds of vagueness the portion of the condition requiring testing for "unspecified" pollutants. The Board also struck a condition that required the applicant "to test the waters of private wells located within 500 feet of the site on a quarterly basis," finding that "the condition is so vague as to be unenforceable" because the record did not support the 500 foot limit or specify the tests to be performed. *Id.* at 15-16. Condition 19 is equally vague and unenforceable. It does not identify the leachate parameters to be tested and does not describe the tests to be performed. The condition should be stricken.

Furthermore, there is no evidence that testing of water in a gradient control system for leachate parameters is necessary or that such testing would provide a valid result.. *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 17 (Dec. 2, 1982) (condition that was unsupported by the record was stricken). In fact, it is likely that testing would provide invalid results since gradient control systems are not designed, constructed or operated for the purpose of providing meaningful groundwater samples. Indeed, requiring water from the gradient control system to be tested is "not consistent with regulations promulgated by the Board," in violation of Section 39.2(e) of the Act. Section 811.318 (35 Ill. Admin Code 811.318) describes in detail the standards for locating, designing and constructing monitoring wells and collecting and analyzing the samples taken from monitoring wells. Section 811.319 (35 Ill. Admin Code 811.319) provides standards for selecting the chemical constituents to be monitored. The purpose of these regulations is to ensure the validity of the monitoring program, the integrity of the samples and the reliability of laboratory test results. In contrast,

Condition 19 does not contain any standards whatsoever. In particular, it does not contain any standards for selecting the so-called "leachate indicator parameters."

Condition 19 is a far cry from the highly technical and precise discipline circumscribed by the Board's regulations. Condition 19 should be stricken as vague, unsupported by the record, against the manifest weight of the evidence and inconsistent with the regulations promulgated by the Board in violation of Section 39.2(e) of the Act.

E. Condition 27

Condition 27 to the County's siting approval states as follows:

> **27. Visual Barriers. The development of the landfill shall be built in such a manner that perimeter and operational berms shall be placed to minimize view of the landfill operations and to assist in minimizing possible offsite impact. Perimeter berms shall be vegetated immediately after they are constructed. The east perimeter berm shall be constructed prior to waste exhumation and other operations that expose waste within 500 feet of the east property boundary. The east perimeter berm shall be no less than 8 feet in height and shall extend, at a minimum, from point 5800 N to point 4800 N shown on Drawing A4, and shall be built wide enough to support vegetation as described on the application's landscape plan. Operational berms shall be used such that waste is not seen on the west, north or east. In areas where there is insufficient room to construct a separate berm, the elevated roadway may be horizontally extended and the plantings may be installed adjacent to the roadway surface or upon the sideslopes of such roadway/berm. The elevation of such a combination roadway/berm shall be 8 feet above the adjacent grade except where existing localized conditions are prohibitative and such determination is approved by the Macon County Solid Waste Department.**

In its response to Condition 27, Veolia agreed to install perimeter berms, provided the language of the condition pertaining to perimeter berms is revised as proposed by Veolia (3C-77). However, Veolia objected to the portion of Condition 27 that states: "Operational berms shall be used such that waste is not seen on the west, north or east."

The term "operational berm" is not defined in Condition 27 or in the record. In fact, there is only one reference to an "operational screening or barrier berm" in the record and that

was in a question to Mr. Bossert (C2-56). Condition 27 does not provide any specifications concerning size, shape, materials or location of the so-called operational berms. In the words of the Board in *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, slip op. at 13 (Dec. 2, 1982), the definition of an operational berm is "left to the unfettered discretion of the County inspector." Clearly, the condition is vague, standardless and against the manifest weight of the evidence.

In addition, requiring that operational berms be used "such that waste is not seen on the west, north or east" is vague and unsupported by the record. *Id.* at 15-16. If the intent of the condition is that Veolia must operate the site so that waste can never be seen from properties to the west, north and east, the condition is contrary to the record. John Bossert, Veolia's landfill design engineer, was asked about temporary screening berms, but he testified that he is not aware of any landfills that have them (C2-56 to C2-57), even though he has worked on 19 new landfills or landfill expansions and prepared permit applications for dozens more (C2-27 to C2-28). Jim Ash, Veolia's landscape architect, was also asked about screening berms, not operational berms, and he testified that a screening berm would have minimal impact on screening surrounding areas (C2-380. In fact, Mr. Ash testified it would not be possible to screen the landfill, testifying that "anything of that size is difficult or impossible to completely screen." (C2-371)

Finally, there was no testimony or other evidence that operational berms can be constructed on the side of a landfill. The only testimony was by Mr. Bossert, a landfill design engineer, who stated on cross examination that he has never seen them and is not aware of them having been installed on other landfills (C2-27 to 28, 57).

The portion of Condition 27 requiring operational berms is vague, standardless, unsupported by the record and against the manifest weight of the evidence. It should be stricken

for those reasons. *Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors*, PCB 82-101, (Dec. 2, 1982)

IV. CONCLUSION

For the reasons stated in this brief, Conditions 8, 9, 11, 19 and 27, which were imposed on the County's siting decision, should be stricken.

Respectfully submitted,

VEOLIA ES VALLEY VIEW LANDFILL, INC.

By: _____
One of its Attorneys

Gerald P. Callaghan
Freeborn & Peters LLP
Attorneys for Petitioner
311 S. Wacker Drive,
Suite 3000
Chicago, IL 60606-6677
Telephone: (312)360-6000

2049404v1/09036-0026