

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

OCT 18 2010

STATE OF ILLINOIS  
Pollution Control Board

VEOLIA ES ZION )  
LANDFILL, INC., )  
 )  
Petitioner, )  
 )  
v. )  
 )  
CITY COUNCIL OF THE )  
CITY OF ZION, ILLINOIS, )  
 )  
 )  
Respondent. )

PCB 11-10  
(Pollution Control Facility Siting Appeal)

NOTICE OF FILING

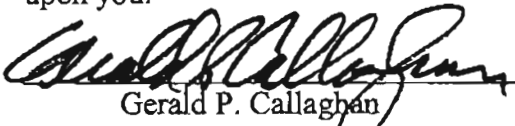
To:

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
Chicago, Illinois 60601

Adam Simon  
Ancel, Glink, Diamond, Bush, DiCianni &  
Krafthefer  
175 E. Hawthorn Parkway, Suite 145  
Vernon Hills, Illinois 60061

Larry Clark  
700 N. Lake Street, Suite 200  
Mundelein, Illinois 60060

PLEASE TAKE NOTICE that on October 18, 2010 I have filed with the Office of the Clerk of the Pollution Control Board the original and nine copies of Veolia ES Zion Landfill, Inc.'s Response To Section 101.506 Motion To Dismiss, 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

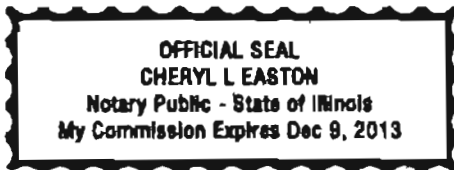
**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on October 18, 2010, I have served the attached Response To Section 101.506 Motion To Dismiss, on the persons to whom the foregoing Response is addressed by U.S. Mail, postage prepaid.

*Laura M. Kenzel*

SUBSCRIBED AND SWORN TO BEFORE ME  
this 18<sup>th</sup> day of October, 2010.

*Cheryl L. Easton*  
Notary Public



RECEIVED  
CLERK'S OFFICE

OCT 18 2010

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VEOLIA ES ZION )  
LANDFILL, INC., )  
 )  
Petitioner, )  
 )  
v. )  
 )  
CITY COUNCIL OF THE )  
CITY OF ZION, ILLINOIS, )  
 )  
 )  
Respondent. )

PCB 11-10  
(Pollution Control Facility Siting Appeal)

**RESPONSE TO SECTION 101.506 MOTION TO DISMISS APPEAL**

NOW COMES Petitioner VEOLIA ES ZION LANDFILL, INC. ("Veolia"), by and through its attorneys, Freeborn & Peters LLP, and for its response to the Section 101.506 Motion To Dismiss of Respondent City of Zion ("Motion"), states as follows:

1. On August 3, 2010, the City of Zion approved local siting of the expansion of Veolia's Zion Landfill pursuant to Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 ("Section 39.2"). The siting approval was subject to several conditions. On September 2, 2010, Veolia filed its timely appeal of Condition 2.2 to the siting approval. On September 29, 2010, the City of Zion ("Zion") filed the Motion, asserting that Veolia waived any objection to Condition 2.2 and should be estopped from appealing the condition. However, the Motion is not permitted under 35 IAC 107.502. Moreover, it is based on a tortured analysis of the facts and an extreme misapplication of case law. For the reasons stated below, the Motion should be denied.

**The Motion is not permitted under 35 IAC 107.502**

2. The regulations governing appeals of local siting decisions under Section 39.2 are set forth in Part 107 of Title 35 of the Illinois Administrative Code. Section 107.502 thereof provides the reasons for which a motion to dismiss may be granted in a siting appeal. Specifically, a petition for appeal may be dismissed if it is untimely, fails to name all required parties, fails to include the required fee and other information required by Section 107.208, or was not properly filed or served as required by Subpart C of Part 101 of Title 35. These are the only reason for which a petition for appeal may be dismissed. The City has not asserted any of these reasons in its Motion. Therefore, the Motion must be denied.

**Veolia did not waive objection to Condition 2.2**

3. The City's waiver argument is based on the fact that Veolia consented to an earlier version of Condition 2.2 that was recommended in the City Staff's memorandum of June 8, 2010. Both Veolia's consent and the staff memorandum are attached as Exhibit A of the Motion. The problem with the City's waiver argument is that the staff's version of Condition 2.2 is substantially different from the version that was imposed in the final siting decision. The version that was the subject of Veolia's consent contains only one-half the amount of the text of the final version. Nevertheless, the City surprisingly contends that the two versions are "materially and substantially identical." The mere difference in the amount of text in each version demonstrates that the two versions are not close to being identical. Of more significance, however, is that the subject matter addressed by the two versions is considerably different.

4. In the staff version of Condition 2.2, Veolia would be required to submit draft plans and designs relating to the landfill gas collection and control system prior to submitting its

development permit application to the IEPA. This would be a one-time review by the City of Veolia's design.

5. In contrast, the version of Condition 2.2 that was included in the City Council's final siting approval decision requires Veolia to submit for the City's review and approval much more than the original gas system design prior to filing a development permit application. In addition to the submittal required by the staff's version, final Condition 2.2 requires Veolia to submit to the City for the its "approval or conditional approval," "any and all pertinent permit applications to the IEPA for modification to the landfill gas collection and control system." The final condition also requires Veolia to submit an operations and maintenance plan for the City's review and approval. In short, the final condition adds the following requirements that are not in the staff's version: 1) the City's review and approval of an operations and maintenance plan; 2) the City's review and approval or conditional approval of any and all pertinent permit applications for modification of the gas system, which presumably would include all significant modification permit applications to the IEPA's Land Division and all permit applications to the Air Division; and 3) the opportunity for the City to impose conditions on each and every permit and permit modification for the gas system, which presumably would include all future Land Division and Air Division Permits.

6. Clearly, the breadth and scope of the final condition are considerably greater than in the staff version. Final Condition 2.2, which is the subject of this appeal, will inject the City into all aspects of the facility's gas system until closure. There is no way that one could consider the staff version and the final version of Condition 2.2 to be "materially and substantially identical," as argued by the City.

7. In addition to its misguided consent argument, the City contends that Veolia waived its right to appeal Condition 2.2, or induced the City Council to approve siting, because it did not object to the final version of Condition 2.2. The City does not cite any cases involving siting appeals to support its argument. In fact, the only cases cited by the City in support of this argument are cited generally and have nothing to do with the issues in this case or local siting appeals. More significantly, however, is that there was no opportunity for Veolia to object to the final condition.

8. The final siting decision, and therefore the final version of Condition 2.2, was not approved by the City Council until August 3, 2010, which was 40 days after the comment period required by Section 39.2 and 70 days after the hearing closed, indicating that an objection could not have been made at the siting hearing. After the 30-day comment period, any objection would not have been appropriate even if an objection could have been made. But Veolia could not have objected to Condition 2.2 because it was prohibited from doing so by the City's siting ordinance, which governed the procedures for the local siting hearing and decision. Section 31-8(d) of Ordinance 08-0-21 (An Ordinance Establishing Pollution Control Facility Siting Standards And Procedures) prohibits motions to reconsider. (A copy of the ordinance was included as Appendix A.2 in the Siting Application and is attached hereto as Exhibit A.) A motion to reconsider would have been the only way for Veolia to object to Condition 2.2 because the condition did not exist until the City Council made its final siting decision. Under these circumstances, it is clear that there was no opportunity for Veolia to object to the final condition.

9. Finally, there is no requirement that a party to a siting proceeding must object to a condition in order to file an appeal of the condition. An objection is not

required by the Environmental Protection Act, including Section 39.2 thereof, the regulations or any case law. The City has not cited any relevant authority to support its motion.

WHEREFORE, for the reasons stated above, the City's Section 101.506 Motion To Dismiss should be denied.

Respectfully submitted,

VEOLIA ES ZION 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

2153087v1

## **EXHIBIT A**



**APPENDIX A.2**

**CITY OF ZION POLLUTION  
CONTROL SITING STANDARDS  
AND PROCEDURE**



# City of Zion



Lane Harrison  
MAYOR

Commissioners

L. Howard Bennett      Frank A. Flammini  
Lloyd E. DeTienne      Jim E. Taylor

2828 Sheridan Road  
Zion, Illinois 60099

(847) 746-4000  
(847) 746-7167 FAX

"Historic Past - Dynamic Future"

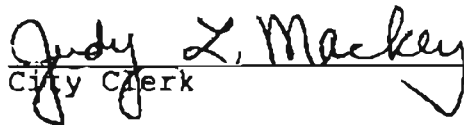
State of Illinois    )  
                          ) ss  
County of LAKE     )

I, Judy L. Mackey, do hereby certify that I am duly appointed, qualified and acting City Clerk of the City of Zion, a municipal corporation of the County of Lake, State of Illinois; and as such I have in my custody the records, proceedings and ordinances of the said City of Zion.

I further certify that attached hereto is a true and exact copy of a certain Ordinance (08-0-21) Establishing Pollution Control Facility Siting Standards and Procedure, and that said Ordinance was duly passed by the City Council of the City of Zion by roll call vote at a regular meeting thereof held on March 4, 2008.

That a quorum was present at said meeting and that all members of the Council present voted in favor thereof and no one voted against it.

IN WITNESS THEREOF I have hereunto set my hand and affixed the Corporate Seal of said City of Zion this 10th day of March, 2008.

  
\_\_\_\_\_  
City Clerk

(S E A L)

**CITY OF ZION**

---

**ORDINANCE NO.**

**08-0-21**

**AN ORDINANCE ESTABLISHING POLLUTION CONTROL  
FACILITY SITING STANDARDS AND PROCEDURE**

---

**ADOPTED BY THE  
CITY COUNCIL  
OF THE  
CITY OF ZION**

---

**Published in pamphlet form by authority of the City Council of the City of Zion,  
Lake County, Illinois this 5th day of March, 2008.**

**ORDINANCE NO. 08-0-21**

**AN ORDINANCE ESTABLISHING POLLUTION CONTROL  
FACILITY SITING STANDARDS AND PROCEDURE**

**WHEREAS**, the City of Zion desires to establish pollution control facility siting standards and procedures;

**WHEREAS**, the City Council believes that the approval of this ordinance will enhance the City's ability to process applications for pollution control facilities;

**WHEREAS**, the City Council finds and determines that this ordinance will provide protection to the City and its residents and set forth specific standards and procedures which are to the benefit of the City and its residents;

**WHEREAS**, this ordinance is in compliance with the Environmental Protection Act, 415 ILCS 5/1 *et seq.*

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of Zion, Lake County, Illinois as follows:

**Section One:** The above stated recitals are incorporated by reference.

**Section Two:** A new Chapter 31 of the Zion City Code is hereby created as follows:

**CHAPTER 31 POLLUTION CONTROL FACILITY SITING**

**Section 31-1. DEFINITIONS**

Whenever the following terms are used in this Chapter, they shall have the meanings respectively ascribed to them hereafter provided:

**ACT:** "The Environmental Protection Act," 415 ILCS 5/1 *et seq.*

**APPLICANT:** Any person, partnership, firm, association, corporation, municipal corporation or unit of local government, company or organization of any kind that files a request for siting approval of a pollution control Facility pursuant to the Act and this Ordinance.

**CITY:** The City of Zion, County of Lake, State of Illinois.

**CITY CLERK:** The City of Zion City Clerk.

**CITY COUNCIL:** The City of Zion City Council.

**FACILITY:** A pollution control Facility as defined in the Act.

**08-0-21**

**PETITION:** The application filed by the Applicant requesting siting approval for a Facility.

In addition, all other words used in this Chapter and defined in the Act shall have the same definitions and meanings as set forth in the Act.

**Section 31-2. NOTICE OF REQUEST FOR SITING APPROVAL**

(a). No later than 14 days before the date on which the City Clerk receives a request for siting approval, the Applicant shall cause written notice of such request to be served either in person or by registered in mail, return receipt requested, on owners of all property within the subject area that is not solely owned by the Applicant and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of Lake County; provided that the number of feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

(b). Such written notice shall also be served upon members of the Illinois General Assembly from the legislative district in which the proposed Facility is located and shall be published in a newspaper of general circulation.

(c). Such notice shall state the name and address of the Applicant, the location of the proposed Facility, the nature and size of the Facility, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a statement that persons have the right to comment on such request.

**Section 31-3. APPLICATION FOR SITING APPROVAL**

(a). An original Application, 2 paper, and a minimum of 40 electronic copies of the entire Application, including all plans, exhibits, reports, maps and other submittals (other than the materials on file at the IEPA at time of the filing of the application), shall be delivered to the office of the City Clerk. Upon receipt of any such Application, the City Clerk shall date stamp, retain and preserve the original Application as the start of the public record on this matter. The Clerk shall also date stamp and retain the 2 paper copies of the Application and, with respect to the electronic copies of the Application, deliver one to the Mayor and each City Council Member. The Clerk shall also deliver 12 copies to the City Attorney's office.

The date on the stamp of the City Clerk shall be considered the official filing date for all purposes relating to the time of filing. Receipt and acceptance of a Petition by the City

**08-0-21**

Clerk is pro forma, and does not constitute an acknowledgment that the applicant has complied with the Act or this Article. Should the Petition be presented to the City Clerk without the correct number of copies, in the incorrect form, or without the sections and fee described in this subsection, the Petition shall be rejected by the City Clerk.

(b). A copy of the Application shall be made available at City Hall for public inspection in the office of the City Clerk or such other location as may be convenient to the operation of the City government. Another copy of the Application shall be made available for purposes of fulfilling copy requests submitted to the City. The Clerk may employ an outside copy service for this purpose and said service may be furnished a copy of the Application for purposes of reproduction. Members of the public shall be allowed to obtain a copy of the Application or any part thereof upon payment of the actual costs of reproduction. All copying requests shall be fulfilled by the City Clerk within a reasonable time and in conformance with the Freedom of Information Act.

(c). Applications shall include the following:

(1). A written petition on recycled 8 ½" x 11" paper setting forth or including the following:

- a. The identification of the applicant, owner of the subject property and the proposed operator of the Facility. If the subject property is owned in a trust, then also identify the beneficiary(ies) of the trust(s). Also indicate for each whether the Applicant, the landowner and the operator is an individual, partnership, limited liability company, corporation or unit of government. In the case of an individual, list his or her address. In the case of a partnership, submit the names of all partners. In the case of a limited liability company, submit the names and addresses of all members and managers and attach a certificate of good standing for the LLC from the Secretary of State's office. In the case of a corporation, submit the names and addresses of all officers and directors, and the names and addresses of all shareholders owning 10% or more of the capital stock of the corporation; together with certified copies of the articles of incorporation in the State of Illinois or, if not incorporated in the State of Illinois, its certificate of authority to do business in the State of Illinois.
- b. The legal description of the proposed site of the Facility and a street address or some other reasonable description of where the Facility is to be located.
- c. A description of the proposed Facility, its operation and the anticipated longevity thereof.
- d. The area to be served by the proposed Facility and a statement of the needs in such area for such a Facility.

**08-0-21**

- e. The expected types, amounts and methods of treatment or storage of all wastes proposed for the site and the origins of these wastes.
  - f. The monitoring plan (including background analyses) for ground water and the procedure by which surface water and air will be monitored (including procedure by which the applicant will establish background levels).
  - g. The plans for closure of the site and continued monitoring thereafter.
  - h. Proof of notice pursuant to Section 39.2(b) of the Act.
- (2). Site plans showing details of the proposed Facility including, but not limited to:
- a. Engineering cross-sections;
  - b. All existing wells within 1,000 feet of the subject property;
  - c. All monitoring systems, including, but not limited to, ground water, surface water, and air;
  - d. Fences, buildings and other structures;
  - e. Roads, entrances and driveways;
  - f. All core sample locations on the subject property; and
  - g. Location and purpose of any other drill-holes on the subject property.
  - h. Any information to demonstrate that the proposed Facility is so designed, located and proposed to be operated in such a manner that the public health, safety and welfare will be protected, in addition to that which has been provided already pursuant to this article.
  - i. Whether any existing uses will be continued.
- (3). A detailed topographic survey of the subject property and the surrounding area—within 500 feet of the property line—indicating: topographical variations in no greater than 2 foot intervals for the subject property and USGS data for the property within 500 feet of the property line (unless otherwise required); existing land uses; existing zoning; and, if applicable, the boundary of any floodway or flood plain. For all purposes related to any siting application, “floodway” and “flood plain” shall mean the regulatory “floodway” and regulatory “flood plain” as defined by the Federal Emergency Management Agency (FEMA). These features may shown on one or more exhibits.
- (4). A statement of the plan of operation for the proposed Facility including, but not limited to, the following:
- a. Method of landfilling, incineration, composting, resource recovery or other process;
  - b. Hours of operation;
  - c. Personnel and their training;
  - d. Litter, vector, dust and odor control;
  - e. Surface drainage and erosion control (this information shall include proof from the Lake County Storm Water Management Committee that the proposed; design of the Facility has obtained technical compliance with

- the Watershed Development Ordinance and/or the U.S. Clean Water Act);
- f. Fire control;
- g. Corrective actions for spills and other operational accidents; and
- h. Coordination of operations with any other pollution control facility and/or recycling facility operated on, adjacent to, or within 500 feet of the Facility.

(5). Intentionally omitted.

(6). A report analyzing the projected traffic impacts attributable to the proposed Facility and describing how the proposed Facility has been designed to minimize the impacts on existing traffic flows. The report shall include, but not be limited to the following:

- a. Description of the anticipated number, type, size, origin, routing and expected distribution of arrival and departure times of all vehicles accessing the Facility site. If any of these factors are expected to vary significantly over the expected life of the Facility, details of the expected variance shall be presented along with the anticipated peak traffic data;
- b. Description of any changes in traffic volumes or patterns to or from any existing development on the site that may be altered as a result of construction of the Facility;
- c. Description of the roadway network adjacent to and surrounding the proposed Facility, including number of lanes, turning lanes at intersections, traffic controls, and vehicle turning and classification counts at the site entrances and exits, all signalized intersections and significant unsignalized intersections along principal routes of access. The area of detailed study shall extend along principal routes of access until the site traffic represents an insignificant percentage of the overall traffic stream. Traffic counts shall be taken during the expected daily peak periods of operation of the proposed Facility as well as the existing peak traffic periods on the surrounding roadways.
- d. Descriptions of any traffic concerns identified by roadway jurisdictions within the area of detailed study;
- e. Operational capacity analysis during peak periods at principal intersections within the area of detailed study for a minimum of two scenarios: (1) existing traffic volumes, and (2) with the addition of site traffic. If projected traffic volumes are analyzed, the report shall include the basis for the projections and the analysis should consider both build and no-build scenarios;



08-0-21

- f. Analysis of vehicle accidents at intersections within the area of detailed study;
  - g. Detailed analysis of anticipated traffic at the entrance(s) and exit(s) to and from the proposed Facility, including either a traffic signal warrant analysis or gap study, and an intersection design study meeting the requirements of the agency having jurisdiction over the route providing access to the proposed Facility. This information should include information on traffic for any pollution control facility and/or recycling facility located on, adjacent to or within 500 feet of the Facility.
- (7). A written commitment (by Host Agreement or otherwise) to obtain certificates of insurance from companies having a Best rating of A VI or better that shall, at such time as the Facility is permitted, cover accidents such as fires, explosions, nonsudden accidental occurrences and pollution impairment.
- (8). If the site is a proposed hazardous waste Facility, a copy of the Resource Conservation and Recovery Act Contingency Plan.
- (9). A statement describing the past operating experience of the Applicant and, if different, the Operator of any solid waste or gas handling operations on any active unit or any proposed expansion of any active unit (and, for each, any subsidiary, member, manager or parent corporation) in the field of solid or hazardous waste management. Also include a statement describing the past operating experience of subsidiaries of the parent corporation operating or licensed in Illinois in the field of solid or hazardous waste management. For purposes of this paragraph, the term "active" means available to receive additional waste.
- (10). A statement setting forth a complete record of actual or alleged violations from the last 10 years of the Applicant and any proposed Operator of any solid waste or gas handling operation on any active unit or any proposed expansion of any active unit (and any subsidiary, member, manager, parent corporation or subsidiary of the Applicant or proposed Operator) of any with environmental laws and regulations governing solid or hazardous management operations or activities. Said statement shall include, but not be limited to, a citation of the applicable statute or ordinance violated or alleged to be violated and a brief written summary of the activities or operations giving rise to the actual or alleged violations and the ultimate outcome of the matter, including whether any fines or penalties were imposed. For purposes of this paragraph, the term "active" means available to receive additional waste.
- (11). A description of the following (if applicable):
- a. Leachate collection system.
    - 1. Type, location and construction of the subsurface collection system;

**08-0-21**

2. Written narrative describing methods and processes of the collection, management and treatment of the leachate;
  3. Program for monitoring effectiveness of the collection, management and treatment of the leachate; and
  4. Discharge points of effluent
- b. Final cover system, including proposed soil and/or geomembrane specifications if applicable.
  - c. Facility construction quality assurance and quality control program;
  - d. Personnel requirements for Facility operation and the training requirements for those personnel.
  - e. Gas collection system.
    1. Type, location and construction of the subsurface collection system;
    2. Written narrative describing methods and processes of the collection, management and utilization of the gas;
    3. Program for monitoring effectiveness of the collection, management and utilization of the gas; and
    4. Manner, method, and design of system to utilize the gas for energy.
- (12). The Application Fee for a request for siting approval is required and shall be administered as follows:
- a. The Applicant shall deposit the sum of \$250,000.00 in the form of a certified or cashier's check, to cover the costs associated with the siting process, including (but not limited to) court reporter costs, transcript costs, City legal and consultant costs, and other expenses incurred by the City in conducting the review of the request for siting approval, the subsequent public hearing and the siting approval decision; provided, however, that any portion of the application fee that remains unexpended at the conclusion of the siting approval decision shall be returned to the applicant. An accounting of expenses attributed to the hearing process shall be provided monthly.
  - b. In the event that, at any time prior to the conclusion of the siting approval process, the City has expended such sums as to reduce the balance of the application fee to a figure less than \$50,000.00, the Applicant will be notified in writing. The Applicant would then have 14 days to deposit with the City Clerk an additional \$50,000.00 in the form of a certified or cashier's check, unless the Director determines, in his/her sole discretion, that additional funds in excess of \$50,000.00 are necessary based upon the status of the siting process, in which case the Applicant shall deposit that amount. In no event shall any demand for additional fees exceed \$100,000.00 per each additional funding request. Any portion of the fees,

08-0-21

including any additional fees, that remain unexpended at the conclusion of the siting approval decision shall be returned to the Applicant.

(13). A table of contents shall be provided that readily identifies all sections and subparts of the application, including all accompanying appendices, exhibits, tables, and illustrations. The pages, appendices, exhibits, tables, and illustrations shall be denoted in logical sequence.

(14). The Applicant shall also produce a copy of the entire Application in .pdf or other searchable electronic format such that the Application may be uploaded to the City website and that read-only copies of the Application may be provided to members of the public that request same.

(d). An Application may not be filed that is substantially the same as an application that was disapproved within the preceding two years pursuant to a finding under any of the criteria of subsection 8B of this Ordinance.

(e). Although date stamped at the time of delivery, the Application shall be subject to further review to assure compliance with the requirements of this Ordinance concerning the content of the Application. Following receipt of the Application, the City Clerk shall cause the publication of a black border notice stating that said Application and supporting evidence have been filed and are available in the City Clerk's office for public inspection. The City Clerk shall cause such notice to be published no later than 30 days from the Date of Filing.

(f). In order to give members of the public an opportunity to make informed written comment and to give members of the public and the City an opportunity to prepare adequately and fairly for the public hearing hereinafter described, the Applicant must fully comply with all requirements of this Section of the Ordinance and failure to submit the required information as of the Date of Filing shall, absent good cause shown in the judgment of the Hearing Officer, render such information inadmissible at the public hearing.

(g). At any time prior to the completion by the Applicant of the presentation of the Applicant's factual evidence and opportunity for cross-examination by the City Council and any participants, the Applicant may file not more than one amended application containing substantive amendments or revisions upon payment of additional fees in the sum of \$25,000.00--unless the Director determines, in his/her sole discretion, that funds in excess of the \$25,000.00 are required due to the nature of the changes of the amended application, in which case that greater amount shall be the sum due. Upon the filing of an Amended Application, the time limitations for final action by the City Council shall be extended for an additional period of 90 days.

(h). Other amendments may be made if, in the opinion of the Hearing Officer, any such proposed amendment is nonsubstantive and the Hearing Officer otherwise allows such amendments.

**Section 31-4. REVIEW OF APPLICATION**

(a). The Director of Public Works ("Director") together with the assistance of Special Counsel to the City, shall be responsible for coordinating the review of the Application by the City Staff and its consultants and to render such reports, advice or recommendations to the Mayor and City Council as the Director shall deem prudent to assisting the Mayor and City Council in making their decision. The Director is authorized to call meetings and set deadlines for the submittal of reports and recommendations in preparation for submission through the public hearing process. The Director, Special Counsel, the City Staff and the City's consultants shall not discuss the Application or the review thereof with, nor submit reports or recommendations to, the Mayor, City Council or the City Attorney except in accordance with the public hearing process set forth below.

(b). Should the Director desire to enter any reports, testimony or other evidence into the record of the public hearing, such shall be entered in accordance with the procedures set forth in this Ordinance and such shall also be available for copying by the public upon the payment of the actual costs of reproduction.

**Section 31-5. PARTICIPATION AND INFORMATION FROM OTHER PARTIES.**

(a). The Applicant is a Participant.

(b). The City is a Participant. For purposes of the Act, the City and its employees and staff, and any experts, consultants, investigators or attorneys hired by the City to review, investigate, present at hearing, or otherwise work for the City concerning the Petition, all constitute one Participant. To the extent the City employees and staff wish to participate in the public hearings outside their roles or employment with the City, they must submit a Notice of Participation, as do other members of the public.

(c). Any person other than described in (A) and (B), above, must file a written "Notice of Participation" on a form supplied by the City Clerk notifying the City Clerk and counsel for the Applicant of that person's or entity's intent to participate.

(1). Every Notice of Participation must be filed with the City Clerk before the adjournment of the first day of public hearing. In the case of counsel of record for

any Participant, said counsel shall, on or before the 80<sup>th</sup> day from the Date of Filing, serve a letter upon the City Clerk and upon counsel for the Applicant entering his or her appearance for the Participant.

(2). Every Notice of Participation shall provide the following information: the name, address daytime phone number and, if available, facsimile number of the Participant or counsel; whether the Participant will be participating on his/her own behalf or as a representative/spokesperson of another person or entity (and if on behalf of another person or entity, identify the name of that person or entity); whether the person (or the entity or association he/she represents) will be represented by an attorney during the public hearings; and whether the person intends on providing oral testimony or comment during the public hearing. All members of the public who desire to present sworn testimony, unsworn comment, or submit written questions to the Hearing Officer must file a Notice of Participation.

(3). No person may become a Participant after the first day of the hearing except for good cause shown. The Hearing Officer shall liberally interpret this limitation if the additional participation shall not delay the process or unfairly prejudice a prior Participant. No late Participant shall be entitled to re-call a witness who has previously testified.

(d). Participant rights. Participants have the right to present sworn testimony and witnesses. Participants represented by counsel have the right to cross-examine or question witnesses who provide sworn testimony. Participants who are not represented by counsel may provide witnesses, evidence and sworn testimony subject to cross-examination by others; provide unsworn testimony or comment during the public hearing (subject to the Hearing Officer's judgment and consistent with fundamental fairness); or, as is the case for members of the public generally, submit written questions to the Hearing Officer who, in his/her sole discretion, shall decide whether such questions shall be posed and the manner of posing such questions. Participants who are not represented by counsel shall not cross-examine witnesses directly.

(e). Any attorneys acting as counsel and representing a Participant must be licensed and in good standing to practice law in the State of Illinois, or if licensed and in good standing to practice law in another State which is part of the United States, shall be allowed to serve as a counsel for a Participant upon motion made to and granted by the Hearing Officer.

(f). All witnesses (other than those called purely for purposes of rebuttal) and the subject matter on which they will testify shall be disclosed, and all reports, studies, exhibits or other evidence, or copies thereof, that any person, other than the Applicant, desires to submit as evidence for the record at the public hearing must be filed with the

City Clerk and with counsel for the Applicant no later than 80 days after the Date of Filing of the Application. In the event that the 80<sup>th</sup> day after the Date of Filing falls on a Saturday, Sunday or legal holiday, the next business day shall be considered the date by which all such information must be filed. Copies of all such information shall also be available for copying by the public upon the payment of the actual costs of reproduction. Evidence or witnesses not so disclosed by the required date shall be admissible at the hearing only where the Hearing Officer shall find that the admission of such evidence is necessary to provide fundamental fairness to the parties.

**Section 31-6. PUBLIC HEARING**

(a). The Public Hearing shall be held no sooner than 90 days from the Date of Filing and shall not commence any later than 120 days from the Date of Filing. The Public Hearing shall be at such times and places as is convenient for the public generally but shall be conducted so as to comply with the statutory requirement that the City render a decision prior to the 180<sup>th</sup> day from the Date of Filing, and accounting for the 30 day period for written comment following the close of the public hearing, with due time for the corporate authorities to deliberate and render a decision. The Director shall determine the date(s), time(s) and location(s) for the Public Hearing as soon as is practical but in no event later than 30 days after the Date of Filing.

(b). Once determined by the Director, the Director shall notify the Applicant of the date, time and location of the Public Hearing and shall request that the Applicant cause notice of the Public Hearing to be made as follows:

(1). Publish 2 legal notices in a newspaper of general circulation published in the City or Lake County. The first such notice shall be published no sooner than 50 days from the Date of Filing and no later than 60 days from the Date of Filing; the second such notice shall be published no sooner than 65 days from the Date of Filing nor later than 75 days from the Date of Filing. Said notices, which may be in lower case, shall consist of the following:

- a. The name and address of the Applicant;
- b. The owners of the site and, if ownership is in a land trust, the names of the Beneficiaries of said trust;
- c. Legal descriptions of the Property and the Facility Boundary, with each depicted on a Plat of Survey;
- d. The street address of the Property and, if there is no street address for the Property, a description of the site with reference to location, ownership or occupancy or in some other manner that will reasonably identify the property to the residents of the neighborhood;
- e. The nature and size of the proposed Facility;

08-0-21

- f. The Date of Filing and the time and date of the public hearing;
  - g. The location of the public hearing;
  - h. A statement that the Application with all required information is available in electronic format from the City Clerk's office and further that all witness lists and copies of reports and other evidence must, absent good cause, be filed with the City Clerk and all counsel of record no later than the 80<sup>th</sup> day from the Date of Filing.
- (2). Certified mail to all members of the Illinois General Assembly from the district in which the proposed site is located.
- (3). Certified mail to the Illinois Environmental Protection Agency.
- (4). Certified mail to the County of Lake and all municipalities or townships within 1 and ½ miles of the proposed Facility.
- (5). Public hearing notice in a newspaper of general circulation in Lake County published as a display at least once during the week preceding the public hearing. Such notice shall consist of all items described in subsection B1 above except for item B.1.C.
- (c). Hearing Procedures:
- (1). The Mayor shall appoint a Hearing Officer to preside over the public hearing and the Hearing Officer shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted, subject to this Ordinance. The Hearing Officer shall make all decisions and rulings in accordance with fundamental fairness. The Hearing Officer may exclude irrelevant, immaterial, incompetent or unduly repetitious testimony or other evidence. All testimony and all public meetings concerning the Petition shall be in the presence of a certified court reporter who shall report all proceedings regarding consideration of the Petition. The Hearing Officer shall have the following powers or duties:
- a. Administer oaths and affirmations;
  - b. Conduct a public meeting, prior to the start of the public hearings, to explain the public hearing procedure and site location review process.
  - c. Arrange for the presence of a certified court reporter to attend and transcribe the conduct of all public hearings for the public record.
  - d. Regulate the course of the hearing, including, but not limited to, controlling the order of proceedings, consistent with this Ordinance, and to grant recesses for good cause shown. For example, good cause may be found when

08-0-21

issues, facts, data or other pieces of evidence arise in the course of the hearing that were not reasonably foreseeable to the party requesting the recess. No recess may extend past 5 days except due to the availability of a suitable forum for the hearing.

e. Require a witness or person presenting unsworn public comment to state his/her position either for, against, or undecided with respect to the proposed Facility.

f. Examine a witness and direct a witness to testify.

g. Establish reasonable limits on the duration of public hearing consistent with the Act and this Ordinance, including but not limited to the reasonable limitation of sworn testimony, unsworn oral comment, direct and cross-examination of any witnesses, and the limitation of repetitive or cumulative testimony and questioning.

h. Rule upon objections and evidentiary questions, with the understanding that such rulings must be consistent with fundamental fairness, but need not be in strict compliance with the Illinois Supreme Court, Illinois Code of Civil Procedure, or any local rules of evidence governing a civil judicial trial in the State of Illinois.

i. Allow the introduction of late-filed evidence, be it written or testimonial, on behalf of any Participant, provided good cause is shown for the late-filing, the evidence is offered in and is relevant to the rebuttal portion of the Applicant's or Participant's case, and evidence was filed with the City Clerk at least one day before the public hearing at which it is offered, and fundamental fairness to all parties will be preserved.

j. The Hearing Officer shall be an attorney, licensed to practice in Illinois. The Hearing Officer shall confer with the City Council concerning the Petition, between the Date of Filing of the Petition and the Council's decision on the Petition. Given the Hearing Officer's role of communicating with the City Council, the Hearing Officer may not confer with the Participants (members of the public, Applicant and City included) concerning the Petition, unless such conference takes place during the public hearing, is through correspondence which is filed with the City Clerk (and, thus, available for everyone to view), or concerns location, time or other similar scheduling aspects of the public meeting or public hearing, or the notices for same. The only additional exception from this restriction is that the Hearing Officer may confer with the City Clerk about the upkeep or status of the public record, make a request to review or copy the public record, or confer with the City Clerk regarding the scheduling or location of the



public meeting or hearing, or arrangements for the notices of the public meeting and hearing.

k. At the conclusion of the public hearing and after consideration of all timely-filed written comments, the Hearing Officer shall submit draft written findings (of law or fact) to the City Council and file a copy of such findings with the City Clerk.

l. The Hearing Officer does not have the right or the power to vote, as a City Council Member votes, on the Petition.

(2). Conduct of the public hearing shall be substantially as follows:

- a. Call to order;
- b. Introduction of the City Council Members who are present together with the City Attorney who is acting as Counsel for the Corporate Authorities;
- c. Introduction of the Hearing Officer;
- d. Recognition of the Applicant and identification of the Petition;
- e. Recognition of fees, notices, and date of filing of the Petition;
- f. Recognition of the City staff and Special Counsel that are present;
- g. Recognition of all other Participants who have filed the Notice of Participation;
- h. Recognition of all reports, exhibits, maps or documents of record;
- i. Applicant, Participants represented by Counsel, and Special Counsel for the City Staff may then make an opening statement.
- j. The City Council shall then hear testimony from the Applicant and/or any witnesses the Applicant may wish to call. Upon the close of the Applicant's testimony, Participants represented by counsel may present sworn testimony, including any witnesses and evidence they wish to present. Upon the close of all such testimony, the City may present sworn testimony, including witnesses and evidence it may wish to present. The Hearing Officer, in the exercise of his or her discretion, may then permit rebuttal testimony and sur-rebuttal testimony.

08-0-21

- k. All witnesses shall testify under oath and be subject to reasonable questioning as follows: direct examination by counsel; cross-examination by counsel for other Participants or the City Staff, the City Council and/or the Hearing Officer (including the use of written questions submitted by the Public to the Hearing Officer); redirect examination; re-cross examination.
  - l. Following the testimony outlined in subparagraph (j) above, any Participant not represented by counsel that wishes to provide sworn testimony subject to cross-examination by others may proceed.
  - m. Following the testimony, if any, outlined in subparagraph (l) above, any Participant that has not otherwise presented testimony may provide unsworn testimony or comment, subject to the Hearing Officer's judgment concerning content and duration and consistent with fundamental fairness.
  - n. Closing statements, if any, by counsel for the Applicant, Participants represented by counsel, and counsel for the City Staff.
  - o. Rebuttal statement, if any, by the applicant, subject to limitations as imposed by the Hearing Officer.
  - p. Hearing declared closed.
- (3). Public comment: written and oral:
- a. Any person has the right to file written comment concerning the appropriateness of the proposed Facility, or its compliance with the requirements of Section 39.2 of the Act, with the City Clerk, at any time after the filing of a Petition and within the time limitation provided in subsection (d), below. Likewise, the Applicant, City Staff, the City Attorney and/or any Participant may file draft proposed findings of fact within the same time limitation.
  - b. The City Clerk, on behalf of the City Council, shall receive written comment or draft findings of fact and the Clerk shall date stamp same, shall serve copies of the same on counsel for the Applicant and counsel for the City, City Staff and counsel of record for all participants; and shall file written comment and the postmarked envelope in which comment is received.
  - c. Copies of such written comments shall be made available for public inspection in the offices of the City Clerk, and members of the public shall be allowed to obtain a copy of any written comment upon payment of actual cost of reproduction.

d. Any written comment received by the City Clerk or postmarked not later than thirty (30) days after the date of the last public hearing shall be made part of the record at the public hearing as hereinafter described and the City Council shall consider any such timely written comments in making its final determination concerning said Petition. In the event that the thirtieth day falls on a Sunday or a Federal holiday, the next day on which mail is delivered shall be considered the thirtieth day for purposes of this subsection.

e. Any person has the right to provide oral, unsworn comment during the course of the public hearing, upon reasonable notice to the Hearing Officer that the person desires to provide such comment and consistent with the Hearing Officer's judgment concerning the conduct of the hearing. All oral testimony may be submitted in written form if the Hearing Officer so directs. This type of comment, since it is not provided under oath, is not subject to cross-examination.

(4). **Ex-Parte Communication Prohibited:**

In recognition of the quasi-judicial role of the Mayor and each Member of the City Council, and the City Attorney, ex-parte communications with persons other than the Mayor, Council Members or the City Attorney concerning the Application are prohibited between the Date of Filing and the date of the final decision of the City Council (or the 180<sup>th</sup> day after the Date of Filing).

**Section 31-7. RECORDS KEPT**

(a). The City Clerk shall be responsible for keeping the records of said hearing. The records shall consist of the following:

- (1). The Application and all amendments thereto;
- (2). Proofs of the required notices;
- (3). Notices of Participation;
- (4). Written comments filed by the public (either received by the City Clerk's office or postmarked between the Date of Filing and 30 after the close of the hearing);
- (5). All reports, studies, exhibits, documents or statements received in evidence at the public hearing;
- (6). The transcript of the public hearing;
- (7). Any motions filed during the public hearing;

- (8). All transcripts, when available, or disclosures of meetings, other than the public hearings held pursuant to this Article, at which the Mayor or a City Council Member was in attendance and the Application was discussed.
- (9). The Hearing Officer's proposed findings of fact and recommendations to the City Council (including any conditions of approval).
- (10). The resolution containing the final decision of the City Council.
- (b). The City Clerk shall be responsible for certifying all copies of the record of the public hearing.

**Section 31-8. SITING APPROVAL DECISION**

- (a). On or before the 180<sup>th</sup> day following the Date of Filing, or on or before the 270<sup>th</sup> day following the Date of Filing if the Applicant filed an amendment to the Application in compliance with the timing requirements of the Act, the City Council shall, by written resolution, upon the vote of a majority of its members, decide whether to:
  - (1). Grant the Petition, without any conditions; or
  - (2). Grant the Petition, but with conditions on such approval, provided such conditions are reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and are not inconsistent with the regulations promulgated by the Illinois Pollution Control Board; or
  - (3). Deny the Petition.
- (b). In making its recommendation on the request for siting approval, the City Council shall base its decision on the following criteria:
  - (1). The Facility is necessary to accommodate the waste needs of the area it is intended to serve;
  - (2). The Facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
  - (3). 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;
  - (4). The Facility is located outside the boundary of the 100-year flood plain;

**08-0-21**

- (5). The plan of operations for the Facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;
  - (6). The traffic patterns to or from the Facility are so designed as to minimize the impact on existing traffic flows;
  - (7). 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;
  - (8). If a solid waste management plan was previously adopted for Lake County prior to the filing of the petition, the Facility is consistent with that plan; and
  - (9). If the Facility will be located within a regulated recharge area, any and all applicable requirements specified by the Illinois Pollution Control Board for such area have been met.
- (c). In its evaluation of statutory criteria (ii) and (v) as set forth in 415 ILCS 5/39.2, the City Council may also consider as evidence the previous operating experience and past record of violations and penalties of the Applicant and, if different, the Owner or Operator of any solid waste or gas handling operations (and, for each, any subsidiary, member, manager or parent corporation) in the field of solid or hazardous waste management.
- (d). No determination by the City Council of a siting approval request may be reconsidered.
- (e). A local siting approval granted under this Chapter shall expire at the end of 2 calendar years from the date upon which it was granted, unless the local siting approval granted under this Chapter is for a sanitary landfill operation, in which case the approval shall expire at the end of three (3) calendar years from the date upon which it was granted, and unless within that period the applicant has made application to the Illinois Environmental Protection Agency for a permit to develop the site. In the event that the local siting decision has been appealed, such expiration period shall be deemed to begin on the date upon which the appeal process is concluded.

**Section 31-9. ADMINISTRATION OF FEES AND COSTS**

- (a). Upon termination of any proceedings under this Chapter, a final accounting and summary of all authorized expenditures and reimbursements shall be presented to the City Council.

08-0-21

(b). Any portion of an application fee not required for reimbursement to the City for costs and expenses incurred by the City under this Chapter shall be returned to the applicant. Should there be costs and/or expenses in excess of the amount paid by the applicant in the application fee, the applicant shall bear any and all additional costs.

(c). In order to properly administer the application fee received with respect to this Chapter, the Finance Director is hereby authorized and directed to receive and hold such application fees for administration subject to the review and approval of the City Council.

(d). In order to expedite payment of all bills incurred as a result of administering this Chapter, all bills and questions concerning billing should be directed to the Finance Director.

**Section 31-10. REPEALER**

All prior siting ordinances for Pollution Control Facilities are hereby repealed.

**Section 31-11. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.


**Section Three:** This Ordinance shall be in full force and effect from and after its passage and approval.

**Section Four:** All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Approved this 4th day of March, 2008, in Zion, Lake County, Illinois.

AYES: Commissioners DeTienne, Bennett, Taylor, Flammini and Mayor Harrison  
NAYS: None  
ABSENT: None  
ABSTAIN: None

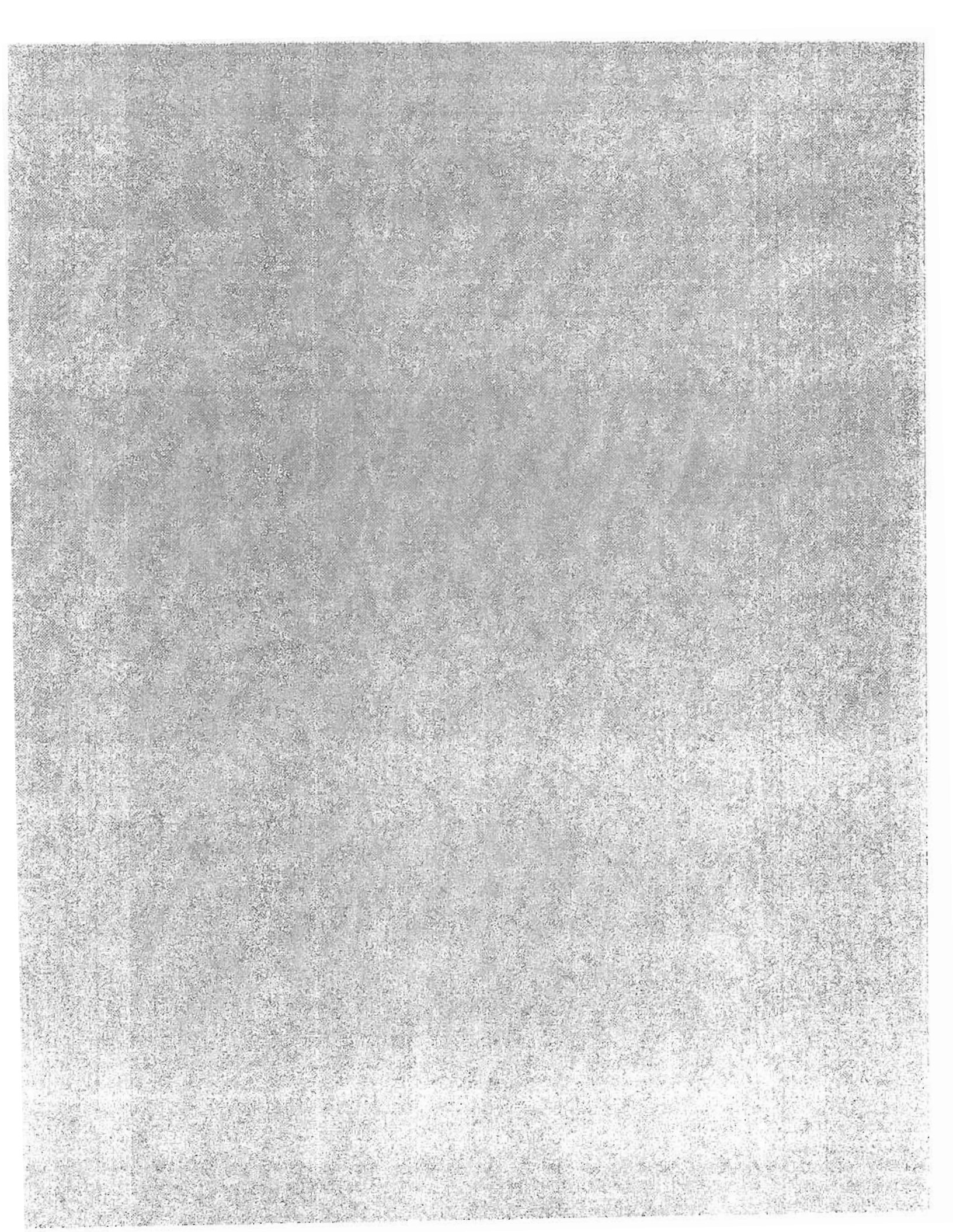
APPROVED:

  
\_\_\_\_\_  
Lane Harrison, Mayor

ATTEST:

  
\_\_\_\_\_  
Judy Mackey, City Clerk





---

**THE CITY OF ZION**

LAKE COUNTY, ILLINOIS

---

**ORDINANCE  
NUMBER 10-O-2**

---

**AN ORDINANCE AMENDING 08-O-21,  
POLLUTION CONTROL FACILITY SITING STANDARDS AND PROCEDURE  
OF THE CITY OF ZION MUNICIPAL CODE**

---

LANE HARRISON, Mayor  
JUDY MACKEY, City Clerk

JIM E. TAYLOR  
LLOYD DeTIENNE  
FRANK FLAMMINI  
SHANTAL TAYLOR  
City Commissioners



**AN ORDINANCE AMENDING 08-O-21,  
POLLUTION CONTROL FACILITY SITING STANDARDS AND PROCEDURE  
OF THE CITY OF ZION MUNICIPAL CODE**

**WHEREAS**, the City of Zion (the "City") is a non-home rule municipality organized and operating under the authority of the Constitution and Laws of the State of Illinois;

**WHEREAS**, the City enacted Ordinance 08-O-21 establishing pollution control facility siting standards and procedure in order to enhance the City's ability to process applications for pollution control facilities; and

**WHEREAS**, the Mayor and Commissioners find that an amendment to Ordinance 08-O-21 will provide further protection to the City and its residents by setting forth specific standards and procedures which are beneficial to the City and its residents.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Board of Commissioners of the City of Zion, Lake County, Illinois, as follows:

**Section 1.** The foregoing recitals are hereby incorporated by reference and adopted as the findings of the City of Zion as though set forth herein.

**Section 2.** Section 31-3 Application for Siting Approval, subparagraph (c)(4)(e) of the City of Zion Municipal Code is hereby amended to include the following sentence at the end of said subparagraph:

If such proof is not available on the date of filing, then compliance with this requirement may be made a condition of siting approval.

10-O-2

**Section 3. Severability.** In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**Section 4. Repeal and Savings Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or causes of action which shall have accrued to the City of Zion prior to the effective date of this ordinance.

**Section 5. Effectiveness.** This ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

**SO ORDAINED** this 19<sup>th</sup> day of January, 2010, at Zion, Lake County, Illinois.


AYES: Comms. Shantal Taylor, Flammini, Jim Taylor, Mayor Harrison

NAYS: None

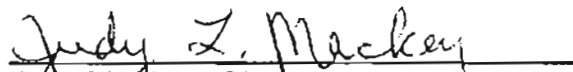
ABSENT: Commissioner DeTienne

ABSTAIN: None

CITY OF ZION

  
Lane Harrison, Mayor

ATTEST:

  
Judy Mackey, Clerk