

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF
ILLINOIS, INC.,

Petitioner,

VS.

COUNTY BOARD OF
DEKALB COUNTY, ILLINOIS

Respondent,

No. PCB 10-104

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on **October 18, 2013**, we filed with the Illinois Pollution Control Board, the attached **Memorandum of Waste Management of Illinois, Inc. In Support of Its Appeal of Special Condition 32** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By:

One of Its Attorneys

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No. PCB 10-104

For the reasons described herein, Petitioner Waste Management of Illinois, Inc. ("WMII") respectfully requests that this Board strike Special Condition 32 contained in the DeKalb County Board's grant of local siting approval for expansion of the DeKalb County Landfill. Special Condition 32 is imposed under Section 39.2 (a) (vi) of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 (2008) (the "Act"), also known as criterion (vi). The evidence, however, establishes that Special Condition 32 is not reasonable and necessary to accomplish the purposes of Section 39.2 of the Act. In addition, Special Condition 32 is not supported by the record.

In its Resolution #R2010-31 approving WMII's local siting request, the County Board of DeKalb County ("County Board") included under criterion (vi) the last of 32 conditions, identified as "Additional Special Condition" and numbered "32". Special Condition 32 requires WMII to widen the shoulders and flatten the embankments of Somonauk Road, a county road leading to the expansion. It is clear, however, that criterion (vi) relates merely to the *design* of the facility's traffic patterns so as to minimize the impact on existing traffic flows, and is not

intended to require the rebuilding of roadways or infrastructure, or to address the risk of driver negligence. Moreover, even if Special Condition 32 were theoretically relevant to a showing that criterion (vi) were satisfied, the record contains no evidence that (a) the design of the traffic patterns for the expansion will cause anything but a minimal impact on existing traffic flows, (b) the current shoulders and embankments will pose a safety hazard to any vehicle, regardless of the amount or type of traffic, or (c) even if there were a safety problem, Special Condition 32 would solve it. What the record does demonstrate is that the fact of oversized farm vehicles traveling on Somonauk Road during Spring planting and Fall harvest seasons long pre-dates the proposed expansion. The problem Special Condition 32 seeks to address is not the impact of expansion traffic patterns on existing traffic flows, but, rather, the impact of oversized farm vehicles on Somonauk Road traffic flows. Thus, Special Condition 32 is not reasonable or necessary to accomplish the purpose of criterion (vi), and should be stricken.

FACTUAL BACKGROUND

On November 30, 2009, WMII submitted its Application for Site Approval for an expansion of the DeKalb County Landfill, located at 18370 Somonauk Road, DeKalb County, Illinois pursuant to Section 39.2 of the Act. WMII proposed to build the expansion on an approximately 594-acre site located northeast of the intersection of Somonauk and Gurler Roads in Cortland Township.

The County Board of DeKalb County (the "County Board") held six days of public hearing regarding the proposed expansion on March 1, 2, 3, 4, 5 and 11, 2010, during which eight witnesses testified in support of the Application on all nine Section 39.2(a) criteria.¹

¹ Transcripts of the public hearing before the County Board will be referenced by date and page (3/__/10 Tr. at __.) Transcripts of the hearing before the Illinois Pollution Control Board ("IPCB") will be referenced as (IPCB Tr. at __.)

Following the conclusion of the public hearing and the statutory 30-day period for written comment, the County Board, on May 10, 2010, expressly found that WMII met each of the nine criteria of Section 39.2(a) and passed a resolution approving the Application, subject to thirty-two (32) special conditions. A copy of the Resolution and its conditions are attached to this brief as Exhibit A.

WMII challenges one of those 32 special conditions. Specifically, WMII challenges the final condition, "Additional Condition" Number 32, which reads as follows:

The road shoulder width shall be increased to five (5) feet on either side of Somonauk Road from the I-88 overpass to Route 38 and shall be built to the standard slope for an aggregate shoulder, which is 6%. In addition, the slope of the embankments from the shoulder edge to the toe of slope shall be standard slope and fall within approved IDOT standards. In no case shall the embankment slope be steeper than 1 vertical to 3 horizontal (1V:3H). WMII shall be responsible for funding and maintaining the shoulder improvements and the slope improvements.

Ex. A at 11. The County Board claims this condition is valid under criterion (vi), which requires that "the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows." *Id.*

David Miller, a traffic engineering expert, testified at the public hearing regarding criterion (vi). He described WMII's actions to minimize the impact of the expanded facility's traffic patterns on existing traffic flows.² Mr. Miller testified that the number of vehicles

² "First we looked at the collected information on the surrounding roadways, their roadway characteristics and traffic controls, and observed the traffic operations during peak and off peak times. We conducted daily and peak hour traffic counts on the surrounding roadways and intersections. We evaluated the capacity and level of service for the surrounding roadways and intersections for existing conditions. We estimated the amount of traffic that would be generated by the site for the number of trucks and other vehicles using the site and assigned the 2013 traffic and the facility traffic to the surrounding roadways and intersections. We again evaluated the capacity and level of service for the surrounding roadways and intersections for the 2013 traffic with and without the facility traffic. We conducted a gap study, which is -- we determined the frequency and durations of the breaks in the street peak hour traffic, or these gaps, at the intersection of Somonauk and the facility drive. And lastly, we looked at the intersection sight distance to make sure that that was met at the intersection of Somonauk Road and the facility drive." (3/4/10 Tr. at 258-59.)

traveling on Somonauk Road would only increase by one percent, from sixteen to seventeen percent, and that Somonauk Road would still operate at the highest level of service.

Q: So does the expansion traffic in any way affect the level of service on Somonauk Road?

A: No.

(3/4/10 Tr. at 274.) Mr. Miller further determined that the levels of service at the Somonauk Road intersections would be unaffected by new facility traffic. (3/4/10 Tr. at 275.) As a result, "there was not a need for any additional improvements over and above what is currently at those intersections. (*Id.*) Mr. Miller concluded that the "traffic patterns to and from the proposed facility have been so designed to minimize the impact on existing traffic flows." (3/4/10 Tr. at 285.)

Mr. Miller also testified regarding the width of the road and shoulders on Somonauk Road. He stated the lanes on Somonauk Road were twelve feet in width, and the shoulders were under eight feet wide. (3/4/10 Tr. at 312-13.) Farm vehicle equipment is approximately 15 feet wide. (3/4/10 Tr. at 314.) A local resident explained that when a farm vehicle meets another vehicle, the "farm tractor has to pull off the road," which presented a safety issue because of the steepness of the shoulder. (*Id.*) Mr. Miller explained that widening the shoulders "is a DeKalb County road issue," and noted that DeKalb County upgraded Somonauk Road approximately one year before the hearing, but did not widen the shoulders or flatten the embankments. (3/4/10 Tr. at 314-15.)

At the hearing before the IPCB on September 17 2013, DeKalb County presented Nathan Schwartz, a county engineer with the DeKalb County Highway Department, "to testify regarding the technical practicability and the reasonableness of costs associated therewith," and to provide his "opinion as to whether or not it could be done." (IPCB Tr. at 9.) Although he testified that

widening the shoulders and altering the slope was feasible from a technical standpoint, he acknowledged that he "did not find the recorded documents showing a right of way" that would allow the alterations required by Special Condition 32. (IPCB Tr. at 18.) He testified that WMII might gain access to the right-of-way by "prescriptive easement" but he did not know whether a prescriptive easement existed. (IPCB Tr. at 17-18.)

In addition, Mr. Schwartz did not testify regarding the relationship, if any, between the design of traffic patterns to and from the facility and the need to widen Somonauk Road. When asked if he had "any understanding as to" the purpose of Special Condition 32, Schwartz responded, "Not a very good one." (IPCB Tr. at 21-22.) Mr. Schwartz stated that "farm equipment is . . . one culprit for causing that drop-off at the edge of the aggregate shoulder," but said, "I'm willing to argue that basically any truck is guilty of that." (IPCB Tr. at 23.) When asked whether "any kind of vehicle" would present this concern, Mr. Schwartz replied, "Any vehicle will do that, that is correct." (IPCB Tr. at 24.)

Mr. Schwartz also acknowledged that the existing landfill already has heavy trucks traveling on Somonauk Road, but said that he was not aware of any "information that suggests that there have been an unusual or notable number of such accidents on that portion of Somonauk Road over the last five years." (IPCB Tr. at 24-25.) He did not know the exact dimensions of the vehicles traveling to and from the landfill but agreed that the vehicles would not be as wide as the farm vehicles, given the width exemption for Illinois farm vehicles. (IPCB Tr. at 27.) Further, Mr. Schwartz did not dispute that "none of the vehicles going to and from the proposed expansion are going to in any way have features that would . . . call for or necessitate a widening of the shoulder of Somonauk." (*Id.*)

ARGUMENT

"In granting approval for a site, the siting authority 'may impose such conditions as may be reasonable and necessary to accomplish the purposes of [Section 39.2] and as are not inconsistent with regulations promulgated by the Board.'" *Fox Moraine, LLC v. United City of Yorkville*, 960 N.E.2d 1144, 1153 (Ill. App. Ct. 2d Dist. 2011) (citing 415 ILCS 5/39.2(e) (West 2006)). If a condition is not reasonable and necessary, the Pollution Control Board should strike it from the siting approval. *See Will County Bd. v. Illinois Pollution Control Bd. & Waste Mgmt.*, 319 Ill. App. 3d 545, 547 (Ill. App. Ct. 3d Dist. 2001). "When the issue is whether a condition is necessary to accomplish the purpose of a Section 39.2(a) siting criterion, the Board must determine whether the local government's decision to impose the condition is against the manifest weight of the evidence." *Veolia Es Zion Landfill, Inc. v. City Council of the City of Zion*, PCB 11-10, at 3 (April 2, 2011), citing *County of Lake v. PCB*, 120 Ill. App. 89, 101-102 (2d Dist. 1983).

With respect to a special condition imposed under criterion (vi), the condition accomplishes the purpose of Section 39.2 (a) (vi) where it is reasonable and necessary to demonstrate that the traffic patterns to and from the facility have been designed to minimize the impact on existing traffic flows. See Will County Board v. Illinois Pollution Control Board, 319 Ill.App.3d 545, 548 747 N.E.2d 5, 6 (3d Dist. 2001) (county board may only impose conditions that are reasonable and necessary to meet relevant siting criteria).

I. Special Condition 32 Is Not Reasonable and Necessary to Accomplish the Purpose of Criterion (vi).

Criterion (vi) requires that a landfill applicant demonstrate that "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." 415 ILCS 5/ 39.2(a)(vi). "[T]he Act talks about traffic patterns to and from the facility being designed to

minimize impact on existing traffic flow . . . testimony about traffic noise . . . and dust . . . does not relate to the effect on traffic flow." *Tate v. Pollution Control Bd.*, 188 Ill. App. 3d 994, 1024 (4th Dist. 1989); *see also FILE v. D & L Landfill, Inc.*, 219 Ill. App. 3d 897, 908 (2d Dist. 1991)("This criterion does not refer to traffic noise or dust[.]").

The County Board is limited to imposing conditions which accomplish the purposes of Section 39.2. County of Lake v. Pollution Control Board, 120 Ill.App.3d 89, 100, 457 N.E.2d 1309, 1316 (2d Dist. 1983). If the condition does not accomplish a purpose of Section 39.2 the County has exceeded its authority under the Act. 415 ILCS 5/39.2(e). In this case, therefore, Special Condition 32 may only be imposed if it is reasonable and necessary to satisfy criterion (vi). Will County Board, 319 Ill.App.3d at 548. The requirement in Special Condition 32 that the shoulders of Somonauk Road widened is neither reasonable nor necessary to satisfy criteria (vi). The purpose of Condition 32 is to address the fact that slow-moving, oversized farm vehicles traveling on Somonauk Road in Spring and Fall may slow the flow of traffic on Somonauk due to their low rate of speed and oversized widths. This concern has nothing to do with the design of traffic patterns for vehicles traveling to and from the expansion so as to minimize any impact on existing traffic flows, which flows would, of course, include the farm vehicles. This concern is created by the farm vehicles themselves, not the landfill expansion traffic. Thus, the concern cannot be remedied by a condition imposed on a landfill siting applicant whose proposed expansion has not even contributed to, much less caused, the concern.

Testimony about purportedly narrow road shoulders has nothing to do with the design of traffic patterns to and from the expansion, or their effect on traffic flows. Increasing the shoulder width on Somonauk Road will not affect the design of traffic movements to and from the expansion -- whether the shoulders are widened or not, vehicles going to and from the expansion

will still use Somonauk Road, leaving the "pattern" of traffic unaffected. Similarly, wider shoulders will not affect the volume, type, speed, or direction of expansion traffic, *i.e.*, the traffic "patterns" typically governed by criterion (vi). In other words, widening Somonauk Road will do nothing to minimize the impact of the expansion traffic patterns on existing traffic flows. Special Condition 32 is simply not relevant to the purpose of criterion (vi), and thus not reasonable or necessary to accomplish any purpose of the Act.

Further, a condition meant to combat driver error does not further the purposes of criterion (vi). *See Fairview Area Citizens Taskforce v. Pollution Control Bd.*, 198 Ill. App. 3d 541, 554 (3d Dist. 1990) ("[P]otential negligence of the truck drivers [is not] relevant to the effect on traffic flow."); *see also Tate v. Illinois Pollution Control Bd.*, 188 Ill. App. 3d 994, 1024 (4th Dist. 1989) (ruling that "potential negligence of truck drivers is not the issue" with which criterion (vi) is concerned). Special Condition 32 also stems from the concern that drivers -- whether expansion vehicles, farm equipment or regular vehicles -- will errantly drive off the shoulders and down the embankments on Somonauk Road. (3/4/10 Tr. at 314.) ("We got very steep shoulders there . . . [i]t's a safety issue.") As a result, it is inconsistent with the purposes of criterion (vi) and should be stricken.

II. Condition 32 Is Unsupported By The Record.

There is also no evidence in the record that Special Condition 32 is "reasonable and necessary" to further the purposes of the Act. *First*, there is no evidence that traffic patterns proposed for the expansion, as opposed to existing farm vehicle traffic, will pose an additional safety problem on Somonauk Road. *Second*, there is scant evidence that encounters between farm vehicles and other vehicles actually pose a safety problem. Even if such evidence existed, nothing in the record indicates that the specified width and slope in Special Condition 32 would

mitigate the purported risk. *Third*, the county engineer admitted he had no idea how WMII would acquire the additional land necessary to expand the shoulder, or how much the acquisition would cost. There is simply nothing in the record to suggest that Special Condition 32 is "reasonable and necessary," and, in fact, there is ample evidence to the contrary. As a result, the County Board exceeded its authority in imposing Special Condition 32.

First, the record is replete with evidence that the traffic patterns proposed for the expansion will have a negligible impact on existing traffic on Somonauk Road. This is important because "the statute does not require petitioners to show that the expansion will have *no* impact on existing traffic flows, but only that the design minimizes this impact." *E&E Hauling, Inc. v. Pollution Control Bd.*, 116 Ill. App. 3d 586, 616 (2d Dist. 1983); *see also Fox Moraine, LLC v. United City of Yorkville*, 960 N.E.2d 1144, 1181 (2d Dist. 2011) ("The Act does not require elimination of all traffic problems[.]"). The most prominent fact, which the County Board does not challenge, is that the landfill expansion will increase traffic on Somonauk Road by only *one percent*, leaving the "level of service" unaffected. (3/4/10 Tr. at 274.) Given this negligible effect of the expansion's "traffic pattern," no reasonable person could argue that Special Condition 32 is reasonable and necessary to "minimize" the impact on existing traffic flows.

Second, there is scant evidence in the record that the current shoulders/embankments actually pose a safety concern to farm and other vehicles on Somonauk Road. The county engineer was not aware of "any information or data that indicates that there have been any such incidents on Somonauk Road . . . in the last five years where any kind vehicle has run off the road and where some need for a 5 foot shoulder might have been established." (IPCB Tr. at 24-25.) The County Board has never cited any study or other evidence that the mixture of farm

vehicles, oncoming traffic and the current shoulders results in additional accidents.³ Requiring WMII to rebuild a road based on unsubstantiated safety concerns is unnecessary and unreasonable.

Even if the record contained evidence of a safety problem, the shoulder width (5 feet) and embankment slope (6%; no steeper than 1 vertical to 3 horizontal) specified in Special Condition 32 are arbitrary requirements. When a condition is "arbitrary" and unsupported by the record, it should be stricken. See County of Lake, 120 Ill. App. 3d at 89, 102 (affirming PCB's striking of condition where "[t]he time limitation imposed by the condition is arbitrary . . . [given that] there was no evidence to support a 20-year period"). Again, the County Board proffered no testimony, expert or otherwise, that widening the shoulder to five feet and changing the slope of the embankment would have any effect on traffic on Somonauk Road. Notably, one half of the stretch of Somonauk Road affected by Special Condition 32 (eighth-tenths of a mile between the I-88 overpass and Route 38) already has five-foot shoulders. (IPCB Tr. at 15.) The other half has shoulders that are four feet wide. *Id.* Nothing in the record demonstrates, or even suggests, that adding one foot of shoulder to four-tenths of a mile on Somonauk Road would solve the purported safety problems involving farm equipment.

³ The meager evidence to the contrary makes clear that any safety problems caused by the farm equipment and road shoulders pre-date the proposed expansion and thus are entirely unrelated to the negligible amount of traffic it would generate. A resident testified that this is an existing safety issue, as farm equipment has been traveling Somonauk Road for years. (3/4/10 Tr. at 314.) Schwartz, the county engineer, testified that "any kind of vehicle" encountering oversized farming equipment on Somonauk Road presents the same safety concerns about the shoulder and embankment. (IPCB Tr. at 24.) Given the absence of evidence that traffic patterns for the expansion pose a heightened risk, Special Condition 32 is neither reasonable nor necessary.

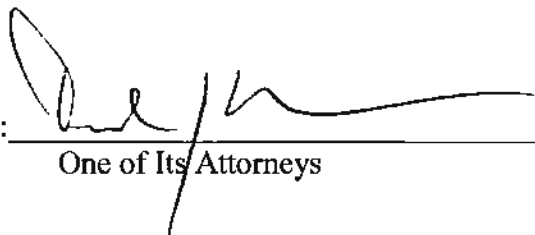
Third, Special Condition 32 is unreasonable in light of the lengths required to obtain the right-of-way necessary to widen the shoulders and rebuild the embankments. Despite being proffered as an expert on the technical and financial feasibility of Special Condition 32, Mr. Schwartz did not know how WMII could acquire the additional land for the wider shoulders. He speculated that a "prescriptive easement" might allow the land to be conveyed easily, but he had no idea if the easement existed. (IPCB Tr. at 17-18.) If no easement existed, the County would need to take the land through eminent domain, or WMII would need to purchase the land from the owners of the fields abutting the current right of way. (IPCB Tr. at 15, 20-21.) In other words, given these potential obstacles to acquiring the necessary land, Mr. Schwartz had no idea if the project was "feasible" or what its true cost would be.

CONCLUSION

Special Condition 32 is neither reasonable nor necessary to accomplish the purpose of Section 39.2(a)(vi) of the Act, that is, to meet the requirements of criterion (vi). Moreover, there is no support in the record for Special Condition 32.

For these reasons, WMII respectfully requests that the IPCB strike Condition 32 from Resolution #R2010-31.

WASTE MANAGEMENT OF ILLINOIS, INC.

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RESOLUTION #R2010-31

**APPROVING
THE REQUEST OF WASTE MANAGEMENT OF ILLINOIS, INC. FOR
SITE LOCATION OF THE DEKALB COUNTY LANDFILL EXPANSION**

WHEREAS, the DeKalb County Board has the authority pursuant to the Illinois Environmental Protection Act (415 ILCS 5/39.2) to approve or deny requests for siting pollution control facilities in DeKalb County; and

WHEREAS, the Act establishes the criteria a proposed facility must meet before a local siting authority may grant approval; and

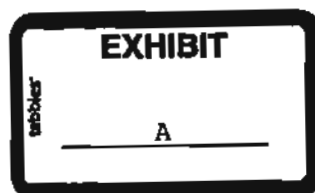
WHEREAS, the Act allows the DeKalb County Board, in granting site approval, to impose such conditions as may be reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and as are not inconsistent with Illinois Pollution Control Board regulations; and

WHEREAS, Pursuant to 50-57(c) of the DeKalb County Regional Pollution Control Facility Siting Ordinance, whether the Board approves or disapproves of the proposed site location, a resolution shall be passed to that effect, stating the reasons for the decision; and

WHEREAS, Waste Management of Illinois, Incorporated, as operator of the DeKalb County Sanitary Landfill, has submitted an Application for site approval of an expansion of that landfill; and

WHEREAS, Waste Management of Illinois, Incorporated has paid the established County Application fee; and

WHEREAS, the DeKalb County Board, having considered the Application, the record of hearing, public comments, and the recommendation of the DeKalb County



Pollution Control Facilities Committee finds that Waste Management of Illinois, Incorporated has met each of the nine siting criteria subject to the special conditions as follows:

Criterion 1: The facility is necessary to accommodate the waste needs of the area it is intended to serve, provided:

1. Provided the required permits and approvals are obtained for the expansion, WMII will guarantee disposal capacity at the Landfill for non-hazardous solid waste, as defined in the Host Community Agreement, generated in DeKalb County, for a period that equals the life of the landfill.

Criterion 2: The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected, provided:

2. WMII shall, except for the roadway bridge, avoid development on, and allow, at least 25 foot of open area on either side of Union Ditch for the purpose of maintenance.
3. Any Henry Formation found to intersect the excavation for the liner will be removed by over-excavation and replaced with a cohesive silty clay backfill up to the bottom of composite liner grades. Although the proposed waste footprint is underlain by clayey soils, there are areas where the location of the bottom recompacted clay liner would sit on a lense of sandy materials. Patrick Engineering recommends that these areas be over excavated and replaced with soil with a lower permeability material. The backfill shall be compacted to a minimum of 95% of the

Standard Proctor density and have a maximum triaxial permeability of 1×10^{-6} centimeter per second and properly documented by the CQA Officer.

4. The 20-inch drain that captures flow from the south infiltration swale shall be extended to the Union Ditch and not terminated at other drain tiles.
5. Hydrogen Sulfide Monitoring. WMII shall maintain an ongoing and continuous monitoring program for hydrogen sulfide (H_2S) emissions around the perimeter of the operating landfill. This program shall be described in a Perimeter Air Monitoring Plan (the Monitoring Plan), a document that shall be submitted to the County within 60 days of the occurrence of a non-appealable siting approval, and at least 30 days prior to submission of the developmental permit application to IEPA for the expansion. The Plan will be subject to the approval of the County Health Department staff in conjunction with appropriate professional engineers retained by the County. WMII must implement an approved Plan within 120 days of County Health Department staff approval of the Monitoring Plan.

At a minimum, the Plan must include provisions for multiple air monitoring stations around the perimeter of the operating landfill. These stations must be capable of continuously monitoring H_2S concentrations such that a concentration of 10 parts per million of H_2S will sound an alarm, immediately alerting the operator of this condition. The Monitoring Plan must also contain a Contingency Plan for addressing an

alarm condition as defined above (e.g., investigation of the emission source, remedial actions, etc.).

A contingency plan that responds to an H₂S concentration alarm shall be prepared by WMII prior to submittal of a permit for expansion to the IEPA. It shall be consistent with any Notification Protocol prepared by WMII and approved by County Health Department staff.

6. WMII shall continue to monitor the ambient levels and ground level gas constituents for at least six (6) months after any portion of the active gas system is installed and operational to verify the system is operating effectively. The County Health Department staff shall be made aware of the installation of the active system and of the monitoring data. WMII shall continue to monitor until such time after the 6-month period it demonstrates the ambient and ground levels are below levels of concern, which is a methane concentration level over 50% of the lower explosive limit in air. The County Health Department staff shall approve the reduction of frequency prior to WMII requesting a reduction with the IEPA. The County Health Department staff shall not unnecessarily withhold approval when shown adequate demonstration.
7. WMII shall notify the County Health Department staff of the need to temporarily extend the hours of operation, and that a 24-hour notification is required for waste resulting from any emergency or public benefit purpose within DeKalb County.

8. The minimum number of random load inspections shall be three per week as specified in state regulations. For any amount of tonnage received above an average of 500 tons per day, the number of inspections shall be increased based on the following basis:

For each 500 ton per day average increase, the number of random weekly inspections shall be increased by two. For example, if up to 1,000 tons per day average is accepted the previous week, the following week shall have five inspections (three inspections for the first 500 tons, and two for the next 500). If the weekly rate is between 1,000 and 1,500 tons per day, then 7 random inspections shall be scheduled. If the weekly rate is between 1,500 and 2,000 tons per day, the inspection rate is nine random inspections.

After two years of operations, WMII may request a reconsideration from the County Health Department staff for this random inspection requirement. A County Health Department representative shall have the right to inspect and to be present at any random load inspection.

9. Litter from the Landfill expansion found on adjacent property shall be removed by WMII in an expeditious manner with consent of the landowner.
10. WMII shall, at a minimum, inspect the public right of ways, and areas adjacent to these right of ways, from the landfill facility gate north to Route 38, west to the Peace Road, and then south to Interstate 88 interchange. Litter collection along these rights of ways shall be performed at least once per week. WMII shall also inspect daily Somonauk Road from the entrance south to Keslinger Road and address visible litter. WMII shall develop a procedure that ensures that all transfer

trailers are empty when leaving the facility, either from the active face or at the gatehouse through a visual observation.

11. WMII shall have a 24-hour complaint hotline established prior to submitting a development permit application to the IEPA for the proposed expansion.
12. WMII shall, upon receiving complaints from the Cortland school or residents about odor, log the complaint, and within one day work with the complainant to determine if the landfill is the source.
13. WMII shall prepare a Notification Protocol, reviewed and approved by the County Health Department staff, for the purpose of informing adjacent property owners and residences of an occurrence or a detection of exceedance of landfill gas monitoring point threshold of 10 ppm for Hydrogen Sulfide. Residences within one half (½) mile of the property boundary shall be included on the notification list. The Notification Protocol shall be submitted to the County Health Department staff for approval prior to the submittal of an IEPA development permit application to expand the landfill and shall be implemented consistent with the Hydrogen Sulfide Monitoring Plan.
14. Soil shall be the only approved daily cover permitted to be used on an exterior permanent perimeter slope in conjunction with effective operating berms. Alternative daily cover is allowed in areas that are screened by operational berms. The purpose of this condition is to minimize potential odor and litter escape from the Landfill during placement of the waste.

15. Within 4 years from receipt of the IEPA operating permit for the expansion, WMII shall construct and operate a gas to energy facility unless it can be demonstrated to the County Health Department Staff that this timing cannot be met. An alternative time frame shall be presented for review by the County Health Department Staff and approval by the DeKalb County Board.
16. During the exhumation of waste from the 24-acre old area, WMII shall not allow ponding liquid levels within any portion of the exhumed areas, at any time, to be in excess of two feet in height. In addition, during the exhumation activities, WMII shall provide sufficient leachate storage, temporary or otherwise, as is necessary to satisfy this condition.
17. If the waste exhumation and relocation process generates odor that is not controlled and subsequently drifts beyond the property boundary, the County Health Department staff shall then restrict the exhumation activity to the months of October, November, December, January, February, March and April. If and once restricted to these months, WMII may request year round exhumation only if it can demonstrate to the County Health Department staff that the process can occur without off-site odor migration or other impacts associated with the process.
18. All exhumed and relocated waste, shall be covered with a minimum of six inches of soil at the end of each working day.
19. WMII shall inspect the waste, as it is being excavated, for signs of inappropriate or hazardous materials. A site worker shall be present

during excavation that has been trained to identify asbestos materials and other hazardous materials to understand proper handling. If asbestos is identified, then it shall be carefully handled by experienced personnel such that it is contained and not allowed to become windblown on or off-site.

20. The excavated area of exhumed waste, on surfaces where waste remains, shall be covered with a minimum of twelve (12) inches of compacted soil should exhumation activities cease for a period longer than 60 days.
21. Dust from the excavation shall be controlled to prevent off-site drift of the excavated waste materials. If necessary, the operator shall utilize water spray, chemical foams, or other IEPA-approved methods.

Criterion 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, provided:

22. The Application of the operational screening berms (shown on Drawing 41 in the Application) shall be included in routine daily operations at the landfill. The operational berms may be constructed of waste and/or cover materials and be at least 8 feet in height (and within the permitted airspace) with subsequent filling to take place "inside" said operational berms, thereby providing screening of most landfill operations at most times. From time to time, for short durations of time the operational berm will be under construction and thus the waste operations will be visible these short time frames. The waste berms will be covered daily with soil.

23. WMII shall build the screening berms on the east landfill property at least 500 feet in advance of any cell construction. Vegetation shall be planted upon berm completion allowable by weather conditions, within the same season the berm is constructed. The berm shall be at least 8 feet above surrounding grade.
24. The screening berm on the east side of the eastern landfill expansion shall be built and vegetated at the time construction of Phase I of the Eastern Unit begins.
25. Trees selected as for planting on the screening berms shall be a minimum of 8 feet tall.
26. The screening berm on the east side of the east landfill expansion shall be built near the property line instead of adjacent to the Landfill unless WMII can demonstrate to the County Health Department staff that significant disadvantages result from this condition.
27. The screening berm on the north side of the east landfill expansion shall be built near the property line instead of adjacent to the Landfill unless it can be demonstrate to the County Health Department staff that significant disadvantages result from this condition. The center of the berm shall be approximately 50 feet from the property line unless site conditions warrant a greater distance.
28. WMII shall extend the Property Value Guarantee Plan as set forth in the Host Community Agreement approved by DeKalb County on March 18, 2009, to current owners of properties located at least 1 mile from the

landfill expansion footprint (this area is depicted in map attached as Exhibit C).

Criterion 4: The facility is located outside of the 100-year floodplain.

Criterion 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.

Criterion 6: The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows, provided:

29. WMII shall inform all haulers to and from the facility of the designated truck routes, in writing. WMII shall inquire of new haulers of the route taken, and provide warning to all haulers to not use roads with insufficient weight limits.
30. WMII shall develop a system whereby a WMII employee will observe the top of incoming commercial waste hauler vehicles to determine whether the cover or tarp is inadequate to contain waste. The driver of any vehicle observed to have inadequate covering shall be provided one warning and education of the importance of containment, and if a second offense occurs, that driver shall have his rights to use the Landfill terminated.

Criterion 7: The facility will not be treating, storing or disposing of hazardous waste.

Criterion 8: The facility is consistent with the county solid waste management plan.

Criterion 9: The facility is not located in a regulated recharge area.

GENERALLY APPLICABLE

31. WMII shall include these special conditions in its IEPA development and operating permit applications and shall request that IEPA include those conditions in the issued IEPA permits.

CRITERON 6: ADDITIONAL CONDITION

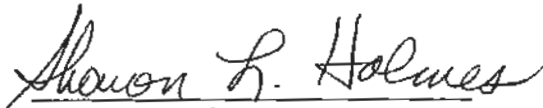
32. The road shoulder width shall be increased to five (5) feet on either side of Somonauk Road from the I-88 overpass to Route 38 and shall be built to the standard slope for an aggregate shoulder, which is 6%. In addition, the slope of the embankments from the shoulder edge to the toe of slope shall be standard slope and fall within approved IDOT standards. In no case shall the embankment slope be steeper than 1 vertical to 3 horizontal (1V:3H). WMII shall be responsible for funding and maintaining the shoulder improvements and the slope improvements.

NOW, THEREFORE, BE IT RESOLVED by the DeKalb County Board that siting approval, subject to the conditions set forth above, is hereby granted to Waste Management of Illinois, Incorporated.

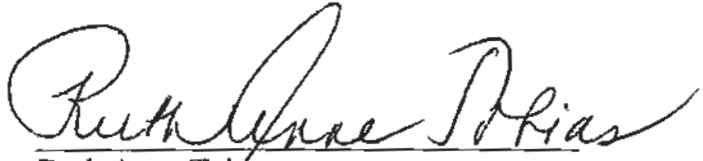
PASSED AT SYCAMORE, ILLINOIS, THIS 10th DAY OF MAY, 2010, A.D.

ATTEST:

SIGNED:



Sharon L. Holmes
County Clerk




Ruth Anne Tobias
County Board Chairman

PROOF OF SERVICE

I, Donald J. Moran, an attorney, on oath states that he served the foregoing **Memorandum of Waste Management of Illinois, Inc. In Support of Its Appeal of Special Condition 32** by electronic mail at the e-mail addresses indicated below and by enclosing same in an envelope addressed to the following parties as stated below, and by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, on October 18, 2013:

Mr. Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, IL 60601
E-mail: hallorab@ipcb.state.il.us

Stephanie P. Klein
DeKalb State's Attorney
Legislative Center
200 Main Street
Sycamore, IL 60178
Email: sklein@dekalbcounty.org



Donald J. Moran