ILLINOIS POLLUTION CONTROL BOARD
April 21, 2016

WILL COUNTY, Petitioner, v. VILLAGE OF ROCKDALE, BOARD OF TRUSTEES OF VILLAGE OF ROCKDALE and ENVIRONMENTAL RECYCLING AND DISPOSAL SERVICES, INC., Respondents.	)	PCB 16-54 (Third-Party Pollution Control Facility Siting Appeal)
WASTE MANAGEMENT OF ILLINOIS, INC., Petitioner, v. VILLAGE OF ROCKDALE, BOARD OF TRUSTEES OF VILLAGE OF ROCKDALE and ENVIRONMENTAL RECYCLING AND DISPOSAL SERVICES, INC., Respondents.	)	PCB 16-56 (Third-Party Pollution Control Facility Siting Appeal) (Consolidated)

CHARLES F. HELSTEN, HINSHAW & CULBERTSON AND MATTHEW L. GUZMAN, WILL COUNTY STATE'S ATTORNEY OFFICE APPEARED ON BEHALF OF WILL COUNTY;

DONALD J. MORAN, PEDERSEN & HOUPT APPEARED ON BEHALF OF WASTE MANAGEMENT OF ILLINOIS;

DENNIS G. WALSH, KLEIN, THORPE & JENKINS, LTD. AND MICHAEL STIFF, SPESIA & AYERS APPEARED ON BEHALF OF VILLAGE OF ROCKDALE;

GEORGE MUELLER, MUELLER ANDERSON, P.C. APPEARED ON BEHALF OF ENVIRONMENTAL RECYCLING AND DISPOSAL SERVICES.

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On September 3, 2015, the Village of Rockdale (Village) granted Environmental Recycling and Disposal Services, Inc. (ERDS) application to site a pollution control facility at 2277 Moen Avenue in Rockdale, Will County. On October 6, 2015, Will County timely filed a petition (Pet.) asking the Board to review the Village's decision. On October 7, 2015, Waste Management of Illinois (WMI) also filed a petition (WMI Pet.) asking the Board to review the Village's decision. On October 25, 2015, the Board accepted both petitions for review and on November 19, 2015, the Board consolidated these matters on a motion of ERDS. Will County and WMI challenge the siting arguing that: 1) the Village lacked jurisdiction to rule on the siting application and, 2) that the statutory criteria for siting a transfer station were not met.

Today the Board finds that the Village of Rockdale's decision approving the siting of the Moen Transfer Station is not against the manifest weight of the evidence. Specifically, the Board finds that the application as submitted and subject to the conditions imposed meets the nine statutory criteria of Section 39.2(a) of the Environmental Protection Act (Act) (415 ILCS 5/39.2(a) (2014)). In so finding, the Board was unpersuaded by the arguments of Will County and WMI that the Village's decision on criteria I, II, V, and VIII was against the manifest weight of the evidence. In addition, the Board finds that the Village had jurisdiction to review the siting application as ERDS properly provided notice of the application to the public pursuant to Section 39.2(b) of the Act (415 ILCS 4/39.2(b) (2014)). The Board disagrees with the contention of Will County and WMI that inclusion of a specified throughput number in the notice can divest the Village of jurisdiction.

The Board will begin its opinion detailing the background of this proceeding, including action before the Board. Next, the Board provides the legal background for the siting of new pollution control facilities. The Board will then summarize the facts relevant to the Board's decision before moving on to the Board's analysis of the case.

BACKGROUND

Will County's Petition

Will County appeals on the grounds that the jurisdictional requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)) were not met and conditional approval of the application is contrary to Section 39.2 of the Act (415 ILCS 5/39.2 (2014)). Specifically Will County challenges the prefiling and hearing notices sent by ERDS under Section 39.2(b) of the Act, claiming that the notices did not set forth the "nature of the activity proposed". Pet. at 1-2. Will County claims that because ERDS failed to state the "nature of the activity proposed", the Village lacked jurisdiction to decide the request for siting. *Id*. Will County also argues that the Village "conditionally" approved the application for siting and such an approval is not authorized by the Act. *Id*. at 2.

Will County also challenges the Village's decision on criteria I (need), II (design), and V (operations) of Section 39.2 of the Act (415 ILCS 39.2(a) (i), (ii), and (v) (2014)). Pet. at 2. Will County argues that ERDS failed to establish that those criteria were met. *Id*.

WMI's Petition

WMI appeals on the ground that the jurisdictional requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)) were not met because the public notice provided by ERDS was insufficient to confer jurisdiction on the Village. WMI also challenges the Village's conditional approval of the application. WMI Pet. at 2. In addition WMI challenges the Village's decision on criteria I (need), II (design), V (operations), and VIII (solid waste management plan) of Section 39.2 of the Act (415 ILCS 39.2(a) (i), (ii), (v) and (viii) (2014)). *Id*. WMI argues that ERDS failed to establish that those criteria were met. *Id*.

Board Proceeding

A hearing was held before Hearing Officer Bradley Halloran on January 12, 2016. Will County and WMI filed opening briefs on February 11, 2016 (County Br. and WMI Br.). ERDS filed its response brief on March 3, 2016 (ERDS Br.) and the Village also filed a response brief (Resp.). Replies were filed by Will County and WMI on March 14, 2016 (Reply and WMI Reply).

In addition, the Board received 21 public comments from various individuals and companies, in support of the Village's decision to site the transfer station. The Board received comments from:

Joliet Suspension (PC 1),
Carpenter Liquid Transporters, Inc. (PC 2),
A Storage Place, LLC (PC 3),
K & D Enterprise Landscape Management, Inc. (PC 4),
Flood Brothers Disposal/Recycling Services (PC 5),
K. Hoving Recycling & Disposal Inc. (PC 6),
Barreca Blacktop Sealcoat (PC 7),
Affordable Plumbing, Inc. (PC 8),
Darryl A. Dupre, Inc. (PC 9),
Marino Truck & Equipment Repair, Inc. (PC 10),
Clear Channel Outdoor - Joliet (PC 11),
Equipment Repair Inc. (PC 12),
Lesmark Tool Company (PC 13),
Berryman Transfer & Storage Co., Inc. (PC 14),
Plotke Asphalt Inc. (PC 15),
Aqua Designs Lawn Sprinkler Systems (PC 16),
Wes Kochel Inc. Towing & Recovery (PC 17),
Flesh and Gear, Inc. Tattoo & Piercing (PC 18),
Flood Brothers Disposal/Recycling Services (PC 19),
Economy Disposal Service (PC 20),
Kaluzny Bros, Inc. (PC 21).

LEGAL BACKGROUND

Statutory Provisions

Section 3.330(a) of the Act defines a pollution control facility as "any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator." 415 ILCS 5/3.330(a) (2014). Section 3.330(b) defines a new pollution control facility to include "the area of expansion beyond the boundary of a currently permitted pollution control facility." 415 ILCS 5/330(b) (2014).

Section 39.2(a) of the Act requires that an applicant seeking approval for siting a pollution control facility must provide evidence demonstrating that the nine criteria listed in subsections (i) through (ix) are met. 415 ILCS 5/39.2(a) (2014). The specific criteria at issue in this proceeding are criteria (i), (ii), (v), and, (viii) which provide:

> (i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;
>
> (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
>
> * * *
>
> v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;
>
> * * *
>
> (viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed. 415 ILCS 5/39.2(a)(i), (ii), (v), and (viii) (2014).

Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)) requires that notice be given to specified persons no later than 14 days before the date the applicant files the application. Section 39.2(b) of the Act requires the notice to:

> state the name and address of the applicant, the location of the proposed site, the nature and size of the development, 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 description of the right of persons to comment on such request as hereafter provided. 415 ILCS 5/39.2(b) (2014).

Section 39.2(d) of the Act provides, in part:

> At least one public hearing is to be held by the county board or governing body of the municipality no sooner than 90 days but no later than 120 days after the date on which it received the request for site approval. No later than 14 days prior to such hearing, notice shall be published in a newspaper of general circulation published in the county of the proposed site, and delivered by certified mail to all members of the General Assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located, to the county board of the county where the proposed site is to be located, if the proposed site is located within the boundaries of a municipality, and to the Agency. 415 ILCS 5/39.2(d) (2014).

Section 39.2(e) of the Act provides in pertinent part:

> . . . In granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board.
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> * * *
>
> At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the county board or governing body of the municipality and any participants, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection (k); in which case the time limitation for final action set forth in this subsection (e) shall be extended for an additional period of 90 days. 415 ILCS 5/39.2(e) (2014).

Section 40.1(a) of the Act provides:

> If the county board or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, refuses to grant or grants with conditions approval under Section 39.2 of this Act, the applicant may, within 35 days after the date on which the local siting authority disapproved or conditionally approved siting, petition for a hearing before the Board to contest the decision of the county board or the governing body of the municipality. *** In making its orders and determinations under this Section the Board shall include in its consideration the written decision and reasons for the decision of the county board or the governing body of the municipality, the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2, and the fundamental fairness of the procedures used by the county board or the governing body of the municipality in reaching its decision. 415 ILCS 5/40.1(a) (2014).

Siting approval is to be granted only if a proposed facility meets all nine of the criteria set forth in Section 39.2(a) of the Act (415 ILCS 5/39.2(a) (2014)). *See* Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 117, 866 N.E.2d 227, 235 (2007); *see also* Concerned Adjoining Owners v. PCB, 288 Ill. App. 3d 565, 576, 680 N.E.2d 810, 818 (5th Dist. 1997); Land and Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3rd Dist. 2000).

Legal Standards for Board Review of Criteria

In reviewing the decision of a local government on siting a landfill or transfer station, the Board must apply the "manifest weight of the evidence" standard of review. Town & Country Utilities v. PCB, 225 Ill. 2d 103, 866 N.E.2d 227 (2007); Land and Lakes Co. v. PCB, 319 Ill. App. 3d at 48, 743 N.E. 2d at 197; Waste Management of Illinois, Inc. v. PCB, 160 Ill. App. 3d 434, 513 N.E.2d 592 (2nd Dist. 1987); City of Rockford v. PCB, 125 Ill. App. 3d 384, 465 N.E.2d 996 (2nd Dist. 1984). A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. Land and Lakes, 319 Ill. App. 3d at 53, 743 N.E.2d at 197; Harris v. Day, 115 Ill. App. 3d 762, 451 N.E.2d 262 (4th Dist. 1983). The province of the hearing body is to weigh the evidence, resolve conflicts in testimony, and assess the credibility of the witnesses. Merely because the Board could reach a different conclusion is not sufficient to warrant reversal. City of Rockford, 125 Ill. App. 3d 384, 465 N.E.2d 996; Waste Management of Illinois, Inc. v. PCB, 122 Ill. App. 3d 639, 461 N.E.2d 542 (3rd Dist. 1984); Steinberg v. Petta, 139 Ill. App. 3d 503, 487 N.E.2d 1064 (1st Dist. 1985); Willowbrook Motel Partnership v. PCB, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985).

The Board will not disturb a local siting authority's decision regarding the applicant's compliance with the statutory siting criteria unless the decision is contrary to the manifest weight of the evidence. *See* Concerned Adjoining Owners, 288 Ill. App. 3d at 576; 680 N.E.2d at 818; *see also* Land and Lakes, 319 Ill. App. 3d at 53, 743 N.E.2d at 197. "That a different conclusion may be reasonable is insufficient; the opposite conclusion must be clearly evident, plain or indisputable." Concerned Adjoining Owners, 288 Ill. App. 3d at 576, 680 N.E.2d at 818, quoting Turlek v. PCB, 274 Ill. App. 3rd 244, 249, 653 N.E.2d 1288, 1292 (1st Dist. 1995). The Board may not reweigh the evidence on the siting criteria to substitute its judgment for that of the local siting authority. *See* Fairview Area Citizens Taskforce v. PCB, 198 Ill. App. 3d 541, 550, 555 N.E.2d 1178, 1184 (3rd Dist. 1990); Waste Management of Illinois, Inc. v. PCB, 187 Ill. App. 3d 79, 81-82, 543 N.E.2d 505, 507 (2nd Dist. 1989); Tate v. PCB, 188 Ill. App. 3d 994, 1022, 544 N.E.2d 1176, 1195 (4th Dist. 1989). "[T]he manifest weight of the evidence standard is to be applied to each and every criteria on review." *See* Concerned Adjoining Owners, 288 Ill. App. 3d at 576, 680 N.E.2d at 818.

The local siting authority weighs the evidence, assesses witness credibility, and resolves conflicts in the evidence. *See* Concerned Adjoining Owners, 288 Ill. App. 3d at 576, 680 N.E.2d at 818; *see also* Land and Lakes, 319 Ill. App. 3d at 53, 743 N.E.2d at 197; Fairview, 198 Ill. App. 3d at 550, 555 N.E.2d at 1184; Tate, 188 Ill. App. 3d at 1022, 544 N.E.2d at 1195. Where there is conflicting evidence, the Board is not free to reverse merely because the local siting authority credits one group of witnesses and does not credit the other. *See* Waste Management, 187 Ill. App. 3d at 82, 543 N.E.2d at 507. "[M]erely because the [local siting authority] could

have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the [local siting authority's] finding." File v. D & L Landfill, Inc., 219 Ill. App. 3d 897, 905-906, 579 N.E.2d 1228, 1235 (5th Dist. 1991).

FACTS

ERDS operates a facility on Moen Avenue in Rockdale for approximately 15 years. C0045[1]. ERDS is proposing a transfer station to be located at 2277 Moen Avenue in Rockdale on approximately 2.16 acres of property. *Id*. The transfer station is "anticipated to accept approximately 200 tons per day" of municipal solid waste. *Id*. The transfer station is located in the central to western portion of Will County. C0053.

Mr. John Hock testified for ERDS; he was the lead design engineer for preparing the application. C2449. Mr. Hock has 27 years of experience in the solid waste industry and is a professional engineer in six states, including Illinois. C2450. The ERDS transfer station is the fifth design he has led over the past 10 years. *Id*.

Notice of Application Being Filed

Notice of the intent to file an application for the siting of a pollution control facility must be given to landowners within 250 feet of the lot line of the property on which the facility will be located as well as members of the General Assembly from the district in which the proposed site is located. 415 ILCS 5/39.2(b) (2014); C1469. Such notice must be provided no later than 14 days prior to the application being filed. *Id*. On November 18, 2014, certified mail notices were sent to the appropriate persons, and ERDS provided either the signed receipts or copies of returned envelopes. C1471. Additionally, notice of the filing was published in the *Herald News* newspaper on November 21, 2014. *Id*. The siting application was filed on December 12, 2014. *Id*.

The notice provided under Section 39.2(b) of the Act (415 ILCS 5/39/2(b) (2014)) included an address as well as a legal description of the property. C1474. The notice indicated that the applicant would seek to site a transfer station at that location and was asking the village of Rockdale for approval. *Id*. The notice continued that the facility would be a non-hazardous transfer station accepting non-hazardous waste for temporary storage, consolidation and transfer to a waste disposal or treatment facility. C1475. The notice states that the waste will be general municipal waste, landscape waste, recyclables and construction and demolition debris generated by residential, commercial and industrial sources. *Id*. The notice further states:

> The facility proposes to handle an average of 200 tons per day of solid waste. The facility will not accept liquid or hazardous waste. The facility is projected to have an operating life of at least 20 years. *Id*.

The notice includes the date the application will be filed and notes that the request "will include the substance for the Applicant's proposal and supporting documents." *Id*.

[1] The Village's record is cited as "C0000".

Notice of Public Hearing on the Application

On March 2, 2015, notice of a public hearing being held on the siting application was published in the *Herald-News*, a newspaper of general circulation in Will County. C1539. In addition, notice was provided to public officials and entities, including members of the General Assembly who are entitled to notice under Section 39.2(d) of the Act (415 ILCS 5/39.2(d)(2014)). C1539. The notice included the time and place of the hearing as well as how members of the public can participate either by testimony or in writing. C1542. The notice included the location of the facility and explains the "Nature of the Activity" as follows:

> Develop and operate a non-hazardous waste Transfer Station to accept, on average, approximately 200 tons of municipal solid waste during a typical operating day. Waste materials will be temporarily stored, consolidated, for further transfer to approved disposal sites. No treatment, storage, or disposal of liquid or hazardous waste will occur at the Transfer Station. C1543.

The probable life of the facility was noticed as "twenty years to indefinite". *Id.*

ERRATA

At the Village hearing, ERDS submitted an ERRATA that included various attachments. C2427-28; C1568-1618. The ERRATA included new calculations and corrections to stormwater modeling. *Id*. The Village hearing officer, Mr. Derek Price, placed the ERRATA into the record as Exhibit 5. *Id*.; C1568-1618. Will County objected to the admission of the ERRATA, arguing that substantial changes were made to the application by the ERRATA and that the ERRATA was really an amendment to the application. C3431-33.

After allowing participants to ask questions regarding the ERRATA and hearing arguments from the participants, Mr. Price determined that the ERRATA was a "*de facto*" amendment of the application. C2536; C2365. Mr. Price granted parties additional time to review the amendment and extended the decision deadline for the Village by 90 days. *Id*.

Criterion I

Criterion I requires an applicant to demonstrate that the transfer station is necessary to accommodate the waste needs of the service area. C0052; 415 ILCS 5/39.2(a)(i). ERDS provided information in the application (*see generally* C0052-108) and testimony at the public hearing (*see generally* C2604-24).

Siting Application

In order to evaluate the need for the transfer station, ERDS first defined the service area. C2604. The service area for the transfer station includes the northern and western portions of Will County and adjoining communities partially located in surrounding counties. C0053-54. ERDS based the service area for the transfer station on ERDS's current service area for waste hauling and the intended service area of the Prairie View RDF. C0054. ERDS used the intended

service area of the Prairie View RDF because it is the primary disposal option for Will County residents and businesses. *Id*.

ERDS provided waste generation and disposal volumes for Will, Kendall, and Grundy counties and included information from the Illinois Department of Commerce and Economic Opportunity for those counties as well as DuPage, Cook, and Kane counties. C0054-59; 2604. The total population growth in the transfer station's service is expected to increase by 62% by 2040. C0059. The recycling rate, according to the Will County Solid Waste Management Plan (SWMP) of 2007 is estimated at 27% from 2001 to 2005, and information from Will County suggested that from 2007 to 2012 recycling was "in the range of 40%". *Id*.

The transfer station service area has three operational landfills and three operational transfer stations. C0060. Additional transfer stations are located north and east of the service area, although Kendall and Grundy counties have no transfer stations. C0065.

Regarding the landfills in the service area, Prairie View RDF has an operational life expectancy of 13 years and based on one day of observations receives 188 loads, with 111 being transfer trailers. C0061. Prairie View RDF is "really" a "transfer station landfill". C2609. The Laraway RDF is located in Elwood and has approximately 10 years of life. C0062. Laraway RDF does not accept municipal solid waste. C2610. Environtech Landfill is located in Morris and has approximately one year of life remaining. C0062-63.

Regarding the transfer stations located in the service area, the Rockdale Transfer Station began operations in 1993 and is located 0.3 miles east of the proposed transfer station. C0063. Rockdale Transfer Station takes only recyclables and takes in around 200 tons per day (tpd). C2611-12. Citiwaste Transfer Station began operation in 1994 and is located 4.5 miles east of the proposed transfer station. C0063. This transfer station receives only clean construction and demolition debris, landscape waste, and recyclables including glass. *Id*. Citiwaste takes in around 100 tpd. C2612. Joliet Transfer Station began operation in 1996 and is located in Joliet, 1.25 miles west of the proposed transfer station. C0064. The Joliet Transfer Station has been observed overflowing with waste, and large amounts of waste remained on the tipping floor at the beginning of the operating day. *Id*. The Joliet Transfer Station has accepted 1,000 to 1,300 tpd in the past, but is now accepting 2,400 to 3,700 tpd. C2613.

ERDS explains that transfer stations "play an important role in a community's total waste management system" and the proposed transfer station offers several benefits. C0066-69. The benefits include an increase in competition, operational flexibility, and increased transfer capacity. *Id*. ERDS has executed a host agreement with the Village that will provide an economic benefit to the Village. C0068. ERDS will commit its "best efforts" to dispose waste from the transfer station in Prairie View RDF, thus providing an economic benefit to Will County. *Id*. Finally, the transfer station will reduce environmental impacts to the Village and the area by saving fuel, reducing emissions, and wear on roads. C0069.

ERDS Testimony

The Joliet Transfer Station is the only transfer station in the service area as defined by ERDS. C2618. Mr. Hock has personally observed the Joliet Transfer Station to be operating "at or beyond capacity at certain times". *Id.* ERDS compared the maximum average volume for Joliet Transfer Station of 1,300 tpd with the current rate of generation of 2,400 to 3,700 tpd. *Id.* Assuming that 10% of the waste within the service area is hauled directly to Prairie View RDF, Mr. Hock opined that there is a shortfall of 850 to 2,000 tpd of transfer station capacity. C2618-19.

Mr. Hock explained that the proposed transfer station will provide another option for haulers in the service area. C2619. Mr. Hock stated that some haulers have been "cut off at times when waiting in line at the end of the day and not allowed to dump" at other sites. *Id.* ERDS is proposing longer operating hours "which should allow more waste" from the service area to come to the transfer station. C2620.

In rebuttal, Mr. Hock testified that 200 tpd is the "realistic initial volume", but that ERDS wanted to allow for growth and so the 600 tpd number was also evaluated. C3382.

Mr. Hock also explained that he did look at other transfer stations outside the service area and did so in connection with waste taken to Prairie View RDF. C3384-86. As a result of the review, Mr. Hock opined that it was clear that other than Joliet Transfer Station, no other transfer station took waste to Prairie View RDF on "any regular basis". C3385.

WMI Witnesses

Disagreeing with ERDS's needs assessment, Sheryl Smith and Kurt Nebel testified on behalf of WMI. Ms. Smith is an environmental consultant and developed need reports for nine transfer stations. C2777-78. Mr. Nebel is a 32-year employee of WMI and oversees ten operations for WMI including the Joliet Transfer Station. C2833-34.

Ms. Smith opined that a transfer station is not needed in Will County based on five facts. C2781. First, there is sufficient disposal capacity in Will County to meet the needs of Will County. *Id.* Second, there is available capacity in or near Will County. Third, there are already two transfer stations within 1.1 miles of the proposed transfer station that can accept waste from Will County. Fourth, transporting waste out of Will County to "more distant landfills will be more expensive." *Id.* Fifth, Ms. Smith opines that the Will County SWMP indicates that if transfer stations are needed in Will County, the transfer station development is to occur in the northern and eastern parts of the county. *Id.*

Mr. Nebel provided testimony detailing the Joliet Transfer Station. C2835. Waste receipts from 2014 indicate that the Joliet Transfer Station accepted around 1,240 tpd, with the 852 tpd being the lowest and 1,800 tpd the highest in 2014. C2841-43.

Will County Witness

Mr. Devon Moose is an environmental engineer with CB&I, with 30 years of experience providing consulting services for solid waste. C3218. Mr. Moose was lead engineer for 18 transfer stations in Illinois. C3222. Mr. Moose was contacted by Will County and offered testimony on Criterion I, II, V and VIII. C3223. His testimony on Criterion II, V, and VIII will be summarized below.

Mr. Moose opined that the application lacked sufficient information to establish the need for the transfer station. C3223. Mr. Moose criticized the decisions on the service area, stating there was no logic to the choices made. C3224. Mr. Moose found a lack of consideration of facilities surrounding the service area and a lack of explanation for not considering those facilities. C3225.

Mr. Moose opined that a needs analysis is used to demonstrate the need for a facility, and the size and capacity of that facility at a specific location. C3235. Mr. Moose believes that the ERDS application does not address any of those factors. C3235-36. Some of Mr. Moose's concerns relate to the throughput analysis, whether it is 200 tpd or 600 tpd. C3236. Mr. Moose considers that there are already three transfer stations in the area "all working under their allowed capacity", and he finds it difficult to demonstrate need. C3236-37. Mr. Moose does not believe the application for the proposed transfer station provides sufficient detail to find that the facility is necessary to accommodate the waste needs of the service area. C3285.

Criterion II

Criterion II requires an applicant to demonstrate that the transfer station is designed, located, and proposed to be operated such that the public health, safety and welfare will be protected. C0111; 415 ILCS 5/39.2(a)(ii). ERDS provided information in the application (*see generally* C0111-31) and testimony at the public hearing (*see generally* C2453-81).

Location

The proposed transfer station is not in a 100-year floodplain and is located approximately 2,100 feet from the nearest residentially zoned property. C0113. The location is a commercial/industrial area that has been commercially developed since at least 1974 and has been operated as a refuse hauling company since 1999. *Id*. There are no wetlands, archaeological or historical sites, presence of any threatened or endangered species, or wild or scenic rivers in the vicinity of the transfer station. C0113-15. The nearest airport is 1.85 miles to the northwest.

Design

The site is designed to include an 8,000-square foot transfer station building with an approximately 6,300-square foot tipping floor. C0115. The building will include a drive through loading pit. *Id*. The site will include a scale house and two above grade stormwater detention ponds and one below grade stormwater detention pond. *Id*. Access will be along

Moen Avenue and the access drive will be 63 feet wide and is able to accommodate two lanes of traffic. *Id*. Collection vehicles enter the site and proceed to the scale house to be weighed. C0116. Disposal vehicles proceed to unload in the transfer station or wait in the queuing area where the vehicle will be alerted once it is clear to proceed to the building. *Id*. The facility is designed to allow two trucks to unload concurrently. *Id*. Similarly, transfer trailers will enter the site and form a queue to be informed when the trailer can proceed to the building. C0117.

ERDS modeled for different traffic pattern scenarios with both the collection vehicles and the transfer trailers. C2461-65. ERDS modeled using its current longest trailer and then considered larger trailers in the models. *Id*. The modeling included queuing of the trucks, but normally, a large majority of the time, queuing will not be necessary. C2462.

Stormwater Management

The surface water management system is designed to control and manage run-off from developed areas for the 25-year, 24-hour storm event, manage a 100-year, 24-hour storm event, and control discharge from the two-year and 100-year critical duration storm events. C0117. The design and operating plan for stormwater will "improve the quality of stormwater runoff" from the proposed transfer station. C0118. All three detention ponds have small outlet orifices and provide extended detention of captured stormwater. *Id*. It will take over three days for captured water to be fully released from the detention ponds. *Id*. Further, all stormwater from the developed portion of the site drains to one pond that is equipped with a 1.5 inch diameter discharge pipe and a shut-off valve that can be closed in case of a significant spill at the site. *Id*. The storm drainage system is designed to meet Illinois and Will County requirements. *Id*.

Operation

The initial operating hours at the transfer station are from 5 a.m. to 3 p.m. Monday through Friday and 5 a.m. to 12 p.m. on Saturdays. C0120. Those hours may increase to 24 hours, seven days a week, with a one-hour shut down to clean the tipping floor. *Id*. The transfer station will accept municipal waste for transfer to off-site disposal locations and will reject material not compatible with the operations of the proposed transfer station. C0121. Mobile equipment will be used to handle material for storage and load out processing. C0122.

Unloading and loading of waste will take place only inside the building and the tipping floor will be swept at least once per 24 hours. C0123. The tipping floor and barrier walls will be cleaned with a pressure washer as needed. *Id*. To control litter, fencing will surround the property, and tarps will be used on loads both coming and going. C0124. Vector control measures will be implemented, and to control dust and mud, all roads, parking areas, storage areas, and vehicle maneuvering areas will be paved. *Id*.

The design of the facility includes odor control measures and minimizes noise associated with the transfer station. C0125. Records will be kept up-to-date and on site. C0126.

The transfer station is "initially anticipated to receive approximately 200 tons per day (tpd) of waste, and is designed to efficiently manage this volume." C0127. Site and operating

features that determine the daily throughput capacity include incoming waste flow, capacity to queue vehicles, time needed to empty vehicles and exit the building, time to load transfer trailers, tipping floor capacity, and hours of operation. *Id*. ERDS may accept more than 200 tpd depending on market conditions. *Id*. Pursuant to the host agreement between ERDS and Will County, a fee is paid to Will County for waste accepted over 600 tpd. The transfer station design allows operational "flexibility and incorporates features to allow larger volumes" of waste to be efficiently managed. *Id*.

To evaluate throughput, the first step was to estimate the incoming waste collection vehicle distribution by hour and vehicle type. C2471. After establishing what comes in, a balance between what is coming in versus what is leaving is needed to determine how much storage is needed at the transfer station. C2471-72. The site has the capacity to queue 12 waste collection vehicles, and unloading takes approximately 15 minutes. The tipping floor capacity is about 142 tons, which is about three-quarters of the anticipated 200 tpd initial volume. C2473.

ERDS looked at the 600 tpd scenario because it is the volume included in the host agreement with Will County. ERDS "thought it was an appropriate number to use". C2477. If the transfer station were to accept up to 600 tpd, the assumption is that there would be a need for 100 tons of storage, which is 70% of available capacity. *Id*.

Mr. Hock opined that the transfer station could "easily manage" the initial 200 tpd and "readily manage" 600 tpd if the operating hours were extended. C2480.

WMI Witness Andy Nickodem

WMI presented Mr. Andy Nickodem, a civil engineer specializing in the design of solid waste facilities, to contrast the evidence and testimony by ERDS. C3142. Mr. Nickodem is employed by Golder Associates and is licensed in Illinois. C3142-43. In designing a transfer station, Mr. Nickodem looks at the management of waste, the safety and efficiency of managing the volume of waste, traffic movements, containing and controlling the waste, and stormwater management. C3143-44.

Mr. Nickodem testified regarding the design of the proposed transfer station and indicated concern about aspects of the design and opined that the proposed transfer station was not designed to protect the public health, safety and welfare. C3148-3163. Mr. Nickodem expressed concern that the proposed design did not provide sufficient space for safe maneuvering of the traffic delivering to and leaving from the proposed transfer station. C3148-52. He also expressed concern about the availability of space for queueing trucks. C3152. Mr. Nickodem also opined that there is not a designated area for separating materials on the tipping floor. *Id*. Mr. Nickodem explained that this is "a very small site and very crowded". C3153.

Mr. Nickodem expressed concern with the stormwater management plans for the proposed transfer station, finding that the application lacked sufficient detail to determine if the stormwater management plan was adequate. C3155-58.

Will County Witness Mr. Moose

Mr. Moose began his testimony challenging the findings in the application concerning its proximity to both residential areas and airports. C3238-40. Mr. Moose expressed concern with the design criteria because "we don't know what size" the facility is, so he assumed the 600 tpd throughput. C3243. Mr. Moose opined that it "is hard to do an analysis" because the throughput numbers are changing. *Id*. This creates a concern for him, and Mr. Moose offered that "the designer apparently considers the design of the transfer station" and the vehicle movements and volume of waste unrelated. *Id*.

Mr. Moose expressed trepidation at the proposed small physical size of the facility. C3244. Mr. Moose explained that when you have a small facility it increases the potential for problems because of the lack of space. C3245. Mr. Moose claimed that at 600 tpd "this facility is too small" and is dangerous. C3248.

Mr. Moose believes that the facility will be unable to queue trucks as described by the application and Mr. Hock. C3254. He also believes that there is a lack of space on the tipping floor for sorting. C3260. Mr. Moose elaborated on his concern with traffic and expressed concern that safety may not have been taken into account in the design of the facility. C3267. Mr. Moose stated that "this is an unsafe facility as designed and nothing could be more evident when you look at 600 tons a day and all these vehicle conflicts." C3268.

Mr. Moose also challenged the design for stormwater management, asserting that the application does not provide sufficient details on the stormwater management plan. C3274-75. Mr. Moose explained he found "significant errors and problems" with the stormwater management plan and he detailed those in his testimony. C3281.

In summary Mr. Moose opined that the site is too small, the activities proposed are undefined, many aspects of the design lack detail, the building is too small to accommodate 600 tpd throughput, and setbacks have not been established. C3286-87. Mr. Moose opined that the transfer station is not designed, located and proposed to be operated such that the public health, safety and welfare will be protected. C3287.

Rebuttal by Mr. Hock

Mr. Hock rebutted the testimony of Mr. Moose. *See generally* C3385-3406. Mr. Hock reiterated his opinion that the facility could safely handle the traffic involved with a 600 tpd volume at the facility and pointed out that some of the calculations were conservative. C3406. Mr. Hock also testified that there is adequate time and space to move multiple vehicles on site and that there is adequate space for transfer trailers to turn at the site. C3412-13, 3420.

On the issue of stormwater, Mr. Hock also took issue with Mr. Moose's testimony and pointed to misunderstandings in that testimony. C3420-29.

Criterion V

Criterion V requires an applicant to demonstrate that the transfer station is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. C0358; 415 ILCS 5/39.2(a)(v). ERDS provided information in the application (*see generally* C0358-64) and testimony at the public hearing (*see generally* C2483-87).

Application

The transfer station includes design and operational features that will minimize the danger to the surrounding area from fire, spills or other operational accidents and notes that those features are detailed under Criterion II. C0359. An incident prevention and response plan (plan) addresses fire, spill, and accident prevention and responses from the transfer station. *Id*. The transfer station will have a safety officer and the building is proposed to be a "pre-engineered metal building" equipped with a sprinkler system. *Id*. Employees will be trained to be alert for signs of burning waste from incoming loads, and equipment will be cleaned to remove any combustible waste. *Id*.

The transfer station will not accept liquid waste. C0360. The tipping floor will be sloped such that any liquid that does accumulate in the incoming waste will drain and be processed through a separator before discharge to a sewer system. *Id*. No liquid from the tipping floor will be discharged to the stormwater management system. *Id*.

All employees will be trained and a monthly safety meeting held. C0361. Only trained employees will be authorized to operate heavy equipment. *Id*.

Will County Witness Mr. Moose

Mr. Moose opined that the transfer station is not designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. C3288. His opinion is based on the lack of detail on storage, queueing, and flooding. C3288-89.

Criterion VIII

Criterion VIII requires an applicant to demonstrate that the transfer station is consistent with Will County's SWMP. C0650; 415 ILCS 5/39.2(a)(viii). ERDS provided information in the application (*see generally* C0650-56) and testimony at the public hearing (*see generally* C2601-04).

Will County approved its first SWMP in 1991 and updated the plans in 1996, 2001, and 2007. C0652. The 2007 SWMP supersedes and replaces the prior plans. *Id*. Will County "intends to rely upon existing and potentially new transfer stations" operated by the private sector to facilitate transportation of waste to the Prairie View RDF. C0653. New transfer stations are allowed as long as a host agreement is negotiated with Will County. C0654. On October 17, 2014, ERDS and Will County executed a host agreement. C0655.

The Will County SWMP of 2007 states that "[a]dditional transfer stations may be sited for either refuse or landscape waste in the future." The plan allows for additional transfer stations siting to be considered as the need arises. C0681.

During cross-examination by WMI, Mr. Hock acknowledged that the SWMP from 2001 allowed a "selected contractor" to develop a transfer station in the northern or eastern part of Will County. C2684. He interprets "selected contractor" to be WMI as the company allowed to operate Prairie View RDF. *Id*. The 2007 SWMP indicated that the 2001 recommendation should continue. C2685. Mr. Hock opined that the proposed transfer station was consistent with the SWMP as the documents do not say only WMI can develop and site transfer stations. C2685-86.

Ms. Smith reviewed the Will County SWMP and agreed that the private sector would be responsible for developing transfer stations. C2787. However, she opines that the development of those stations must occur in the northern or eastern part of the county to be consistent with the Will County SWMP.

Mr. Moose testified that because the application is insufficient to establish that the statutory criteria have been met, the application is inconsistent with the Will County SWMP. C3283. Mr. Moose specifically notes that the needs analysis "did not take into account competing facilities", and insufficient detail was provided on stormwater management, the Federal Aviation Administration review regarding proximity of airports, and the impacts of 600 tpd throughput. C3289-90.

Motion to Dismiss

Will County and WMI filed motions to dismiss the siting application before the Village. C2292-2335. ERDS responded to the motion. C2336-44. Will County argued that the prefiling notice and hearing notice indicated that the transfer station would process 200 tpd throughput, but at hearing ERDS indicated the transfer station could receive "anywhere from 600 to 700 tons per day". C2296. Will County argued that the notices were therefore insufficient and did not satisfy the requirements of the Act. *Id*. Likewise, WMI argued that the notice requirements of the Act had not been satisfied because the prefiling notice misrepresented the "nature and size" of the transfer station. C2315-16.

ERDS responded that the motions were legally and factually incorrect. C2336. ERDS argued that the prefiling notice was sufficient in describing the nature and size of the development and the nature of the activity. C2337. ERDS argued that the application is consistent with the prefiling notice, and the Village has jurisdiction. C2339, 2344.

Hearing Officer Report

Mr. Price provided a detailed report on his legal and factual findings. C2363-90. Mr. Price found that the Village had jurisdiction to hear the siting application and that the evidence in the record failed to establish compliance with all the Section 39.2 criteria. C2366. Specifically,

Mr. Price found that criteria I, II, and V were not met, but recommended adding special conditions to the siting approval, that would result in criteria II and V being met. C2367.

Mr. Price found that criterion VIII was met and that the testimony and evidence supported that finding. C2385.

Village's Decision

On September 3, 2015, the Village approved siting of the transfer station and imposed specific conditions on the siting approval. C2400-09. After deliberation and consideration of the testimony and evidence, the Village found that the prefiling notice requirements were met and that criteria I, III, IV, VI, VII, and VIII were met without conditions. C2402. The Village further found that ERDS "met criterion (2) and (5) of Section 39.2 subject to special conditions" provided in the siting approval. *Id*. The Village states that it "conditionally approves the request" provided the conditions are not inconsistent with Board rules or any terms of a permit issued by the Illinois Environmental Protection Agency. *Id*. Except for Mr. Price's decisions on criteria I, II, and V, the Village adopted the report of the hearing officer. C2403. With regards to criteria I, II, and V, the Village set forth findings. C2403-09. The Board will summarize the Village's findings on those criteria below.

Criterion I

The Village found that ERDS met its burden establishing that the facility was necessary to accommodate the waste needs of the service area. C2403. The Village pointed to the testimony of Mr. Hock and his evaluation of the other transfer stations in the service area. C2403-04. The Village found that the testimony and comments support a finding that the Joliet Transfer Station is over-extended and even found support in Mr. Nebel's testimony for this finding. C2403. The Village did not find persuasive the testimony of Ms. Smith, noting she is not an engineer nor licensed in any profession, and that her testimony focused on whether a new landfill was necessary. C2405. The Village specifically rejected the position that the needs analysis by ERDS was "defective" because Mr. Hock failed to "conduct a traditional comprehensive transfer capacity analysis that analyzed, specifically, waste production and waste disposal capacities". *Id*. The Village found the "interrelated factors of transportation, environmental and economic matters to be worthy of proper consideration" in performing a needs analysis under criterion I. C2406. The Village stated that ERDS presented evidence that the transfer station was also necessary to divert material that "would otherwise burden existing transfer stations". *Id*.

Criterion II

The Village found that Mr. Hock's testimony on criterion II was "more thorough and credible" than other testimony. C2406. Therefore, the Village found that ERDS "met its burden of proof" on criterion II, "provided that" ERDS "operates" the transfer station "in accordance with" specified conditions. C2406-07. The conditions added to the siting approval are:

1. A limitation on throughput of 300 tons per day,

2. Limiting the types of material to be accepted,

3. Requiring load checking,

4. Requiring the transfer station to be run consistent with the information in the application, and

5. Requiring the Village engineer to review and approve the final design on the stormwater management system. C2407-08.

Criterion V

The Village notes that, at any industrial site, a potential for harm exists both to the environment and the residents. C2408. The Village further notes that guaranteeing an accident-proof facility is not required. *Id.*, citing Industrial Fuels & Resources v. PCB, 227 Ill. App. 3d 533, 547; 592 N.E.2d 148, 157-58 (1st Dist. 1992). The Village found that ERDS "met its burden of proof as to Criterion 5" subject to specific conditions. C2408. The Village imposed the following conditions:

1. Limiting the throughput to 300 tons per day, with the ability to temporarily exceed that throughput as well as the ability to raise the limits up to 600 tons per day by resolution or ordinance,

2. Adding additional personnel to direct traffic during peak hours,

3. Requiring the Village engineer to review and approve the final site plan, traffic circulation design, signage and plan of operation to minimize the danger from traffic conflicts. *Id.*

BOARD ANALYSIS

The Board analyzes the issues in this case beginning with notice requirements and closing with the criteria.

Will County and WMI raise issues on appeal of the siting approval regarding jurisdiction and the siting criteria. Regarding jurisdiction, Will County challenges the sufficiency of the prefiling notice of the application by ERDS, required by Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)). Will County also challenges what it characterizes as the "conditional approval" of the siting application, and that the application was amended twice. Likewise, WMI asserts that the prefiling notice was inadequate to confer jurisdiction on the Village and that the Village lacked authority to impose conditions to ensure that the criteria are met. As discussed in more detail below the Board finds the arguments of Will County and WMI unpersuasive and finds that the Village had jurisdiction, that the siting approved with conditions and that the siting application was not amended a second time.

On the criteria, Will County argues that the Village's decision that criteria I, II, and V were met is against the manifest weight of the evidence. WMI also argues that the Village's decision on criteria I, II, and V is not supported by the record and argues that criterion VIII was not met. The Board is likewise unpersuaded by the arguments of Will County and WMI on the criteria and for the reasons discussed below affirms the Village's decision granting siting.

Inclusion of Throughput in the Notice Does Not Divest the Village of Jurisdiction
Will County Arguments

Will County states that the notices prepared by ERDS and required under Section 39.2 of the Act indicated that the transfer station would handle "an average" of 200 tpd of material at the site. County Br. at 2-3. However, the presentation of the application by ERDS made clear that the intent was for the transfer station to handle far more material and in fact could accept up to 600 tpd. *Id*. at 3. Will County sought dismissal of the application before the Village arguing that the Village lacked jurisdiction, but the motion was denied by the Village. *Id*.

Will County argues that the procedural requirements of Section 39.2 of the Act must be complied with in order for the local siting authority to obtain jurisdiction. County Br. at 8. In this case, Will County argues that the prefiling notice must include a description of the nature of the activity proposed, and the description provided by ERDS in the notices indicated that the transfer station would handle on average 200 tpd of material. *Id*. at 9. At hearing, ERDS indicated that it could handle up to 600 tpd and 200 tpd was the initial amount of material that the transfer station would accept. *Id*. Will County maintains that the disparity between the notices and the information at hearing provided by ERDS renders the notices "misleading and essentially meaningless". *Id*. at 10.

Will County reminds that the notice requirements of Section 39.2 are jurisdictional prerequisites to siting and must be followed in order for the siting authority to have jurisdiction over the siting application. County Br. at 10. Will County argues that the courts and the Board have "thoroughly discussed" the notice requirements. *Id*. Will County maintains that the statute requires the notice to include both the "nature and size of the development" and the "nature of the activity proposed". Will County opines that the language of the statute requires more than simply stating that the application is for a transfer station. *Id*. at 11. Will County argues that the plain and ordinary meaning of "nature" is "the basic or inherent feature of something". *Id*., citing *Oxford English Dictionary*. Will County maintains that throughput is an inherent feature integral to the nature of the proposed activity and that ERDS must have agreed because it included the 200 tpd information in the notices. *Id*.

Will County maintains that the notices did not include an accurate description of the nature of the activity and therefore did not reflect the potential adverse impacts. County Br. at 12. Will County maintains that the Illinois Supreme Court held that the potential for increased adverse effects requires strict adherence with the Act. *Id*., citing M.I.G. Investments, Inc. v. IEPA, 122 Ill. 2d 392, 523 N.E.2d 1 (1988). Will County argues that in M.I.G. Investments, the court found that the nature of the landfill contemplates more than mere surface utilization of the land and that an increase in capacity is significant. *Id*. Will County argues that like M.I.G.

Investments the transfer station should not be allowed to go forward because the notice provided by ERDS does not place persons that the legislature intended to be noticed on proper notice. *Id*.

Will County asserts that ERDS relied on two cases before the Village and that reliance is misplaced. County Br. at 13. In Daubs Landfill, Inc. v. PCB, 166 Ill. App. 3d 778, 527 N.E.2d 977 (5th Dist. 1988), the court held that the narrative description was sufficient to identify the location of the facility and thus put parties on notice. *Id*. In Bishop v. PCB, 235 Ill. App. 3d 925, 601 N.E.2d 310 (5th Dist. 1992), the court found that the applicant's reliance on tax records in the county clerk's office rather than the treasurer's office was consistent with the statute. *Id*. Will County maintains that here ERDS only included the minimal throughput number, which was "materially inconsistent" with the presentation at hearing. *Id*. at 14. Will County asserts that notice was therefore void and never effective. *Id*.

In reply, Will County asserts that ERDS relies on cases that are factually and legally distinguishable. Will County maintains that unlike in Daubs, here the notice was not accurate regarding the throughput at the transfer station. Reply at 1. Furthermore, M.I.G. Investments is instructive because the court was specifically concerned with the impacts caused by increases associated with expansion of a landfill. *Id*. at 2.

Will County takes issue with ERDS reliance on Tate v. PCB, 188 Ill. App. 3d 994, 544 N.E.2d 1176 (4th Dist. 1989), arguing that it supports Will County's position in this instance. Reply at 3. In Tate, the court found the notice sufficient if it places potentially interested persons on notice as to the details of the activity; Will County asserts the notice by ERDS did not do that. *Id*.

WMI Arguments

WMI argues that the Village lacked jurisdiction to decide the siting application because ERDS "misrepresented" the nature and size of the proposed transfer station in the notices required by the statute. WMI Br. at 4. WMI states that jurisdiction is a threshold issue and strict compliance with the notice requirements must be had for jurisdiction to be conferred on the siting authority. *Id*. at 5, citing City of Kankakee v. County of Kankakee, PCB 03-125, 03-133, 03-134, 03-135 (consld.) slip op. at 15 (Aug. 7, 2003). WMI opines that the notice provided by ERDS misrepresented the nature and size of the development as the notice indicated that the transfer station would accept an average of 200 tpd of material, and the testimony at hearing indicated that the amount of material would be 600 tpd. *Id*. at 6-7. WMI asserts that substantial compliance with notice requirements is not sufficient where statutory provisions are not merely technical. *Id*. at 6-7, quoting Tate v. PCB, 188 Ill. App. 3d 994, 1019, 544 N.E.2d 1176, 1193 (4th Dist. 1989).

WMI argues that ERDS "ensured that no one receiving" the notice would know what the proposed facility might accept. WMI Br. at 8. WMI opines that no one would argue that a landfill applicant could misrepresent its size and the outcome should be no different here. *Id*. at 8-9.

In reply, WMI asserts that Daubs, 166 Ill. App. 3d 778, supports its argument that the prefiling notice was insufficient. WMI Reply at 4. WMI argues that the language in Daubs is clear: "Substantial compliance with notice provisions has been held to be insufficient where the statutory provisions are not merely technical requirements, but are jurisdictional." *Id*. WMI distinguishes Daubs from the instant case because in Daubs, the inaccurate legal description was cured by accurate information in the same notice. *Id*.

WMI further argues that ERDS reads Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)) to allow misrepresentations of the facility's throughput volume. WMI Reply at 5. WMI alleges that ERDS claims both the "'nature of the development' and the 'nature of the activity' requirements can be satisfied with the same information: 'solid waste transfer station.'" *Id*.

WMI argues that "at minimum, ERDS cannot misrepresent the designed capacity or the scope of the facility's activities (intended volume) in its public notice." WMI Reply at 6, citing Bishop, 235 Ill. App. 3d 925. WMI alleges Bishop does not suggest that a local siting applicant can misrepresent the facts in its public notice. *Id*. at 7. WMI also argues that ERDS should not be able to rely on Tate, 188 Ill. App. 3d 994, because Tate was wrongly decided. *Id*. WMI alleges that despite excusing the failure to describe the size of a vertical landfill expansion in pre-filing notice, Tate is not persuasive authority. *Id*. WMI bases this argument on the allegations that Tate does "not consider the statutory "nature and size" language and, instead, focused entirely on the technical nature of flood plain descriptions." *Id*.

Lastly, WMI argues that it is not clear whether "distinguishing 'capacity' from actual, intended 'volume' actually makes a difference for purposes of Section 39.2(b)'s notice." WMI Reply at 9. WMI reiterates that the intended size of the facility is much greater than ERDS's prefiling notice demonstrated. *Id*. WMI reasons that the Village Board's special condition to Section 39.2(b) criteria (ii) and (v) helped push the problem of notice to a later date when fewer people would be paying attention. *Id*. at 10. WMI concludes that the Notice "fails to explain that the proposed facility in fact is capable of processing 600 - or, indeed, as many as 2,200 [tons per day]" – and therefore does not notice the public of the true intended "size" of the facility. *Id*. at 9.

ERDS Arguments

ERDS couches Will County's and WMI's arguments as claiming that the prefiling notice in this case "specified an incorrect anticipated waste volume, and that this causes the Village Board to lose jurisdiction." ERDS Brief at 4. ERDS opines that this argument is both legally and factually incorrect. *Id*. ERDS concedes that the notice requirements in Section 39.2 of the Act (415 ILCS 5/39.2 (2014)) are jurisdictional as to timing and who must receive service. *Id*. However, ERDS argues that an assertion that the content requirement must also be strictly complied with is a "matter of first impression". *Id*.

ERDS claims that strict compliance with content requirements is not necessary. ERDS Brief at 4. ERDS bases its claim on Daubs, 166 Ill. App 3rd 778 (5th Dist. 1998). In that case, ERDS states that the court found that even having the wrong legal description of property is not enough to invalidate prefiling notice, where the additional narrative description is sufficiently

accurate. *Id*. ERDS asserts that the Act requires the notice to include the "nature and size of the development, [and] the nature of the activity proposed". *Id*., quoting 415 ILCS 5/39.2(b) (2014). ERDS alleges that 39.2(b) does not require a notice of the anticipated throughput of the transfer facility. *Id*. at 5.

ERDS maintains that Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)) does not demand an exact statement of the anticipated throughput of the transfer facility. ERDS Brief at 5. ERDS claims that WMI and Will County take issue with the notice's reference to throughput. As to WMI, ERDS opines that WMI's arguments overlook the word "development" in the Act. *Id*. ERDS states that the nature of the activity is a transfer station, the size is 2.16 acres and the property will be developed as a nonhazardous waste transfer station. *Id*. ERDS further argues that the notice of 200 tons per day anticipated throughput is "surplusage, offered in good faith, but not required in the prefiling notice." *Id*. ERDS alleges that waste transfer stations typically have no volume restrictions aside from host agreement commitments or siting conditions. *Id*.

ERDS takes issue with Will County's reliance on M.I.G. Investments, 122 Ill. 2d 392. ERDS Br. at 5. ERDS claims that contrary to Will County's assertion, M.I.G. Investments does not mention prefiling notices or call for strict construction of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)). *Id*. at 6. According to ERDS, "M.I.G. Investments simply resolves the issue of whether vertical expansion of a landfill is a change in boundaries, thereby necessitating a new siting hearing." *Id*.

ERDS relies on Bishop, 235 Ill. App. 3rd 925 (5th Dist. 1992), which held that "the language in the prefiling notice requirement is to be given its ordinary meaning and not expanded to require more than what is written." ERDS Br. at 6, citing Bishop, 235 Ill. App. 3rd at 933 ("Generally, as long as notice is in compliance with the statute and places those potentially interested persons on inquiry, it is sufficient to confer jurisdiction on the County Board.") ERDS argues that the best guidance to the Board is Tate, 188 Ill. App. 3d 994. ERDS quotes Tate extensively and notes that the court stated that the "purpose of the notice is obviously to notify interested persons of the intent to seek approval to develop a new site or to expand an existing facility." *Id*. ERDS argues that, based on Tate, "it is indisputably obvious" that inclusion of throughput or volume for a nonhazardous transfer station is not required in prefiling notices. *Id*. at 8.

ERDS maintains that the Board recently favorably cited Tate and Daubs when deciding an issue regarding the description of a site location in a prefiling notice. ERDS Br. at 8, citing Roxana Landfill, Inc. v. Village Board of Village of Caseyville, PCB 15-65, 15-69 (consld.), slip op. at 18 (Dec. 18, 2014) (*appeal pending*). ERDS asserts that in Roxana, the Board found the notice sufficient even though information was missing from the notices, because that information could be found in the application. *Id*. ERDS asserts that even though the throughput volume of the facility is not required in the prefiling notice, the 200 tpd is accurate. *Id*. at 9. ERDS opines that the siting application is consistent with the prefiling notice. *Id*. ERDS clarifies its position, noting that volume is the amount of waste that comes through the facility, while capacity is the maximum volume that a facility can safely handle. *Id*. at 10. ERDS claims that 200 tpd is the intended volume, while 600 tpd is the potential maximum capacity. *Id*.

ERDS argues that the applicant proposed an initial volume of 200 tpd. ERDS Brief at 12. At trial, expert witness Mr. Hock stated that the facility could safely handle up to 600 tons per day. *Id*. ERDS argues that Mr. Hock's statement should not be taken as invalidating the prefiling notice of 200 tpd. *Id*. ERDS states that the 600 tpd estimate demonstrates the maximum safe capacity and is linked to the secondary host agreement between Will County and ERDS, whereby host fee payments to the Will County would occur if volume exceeded 600 tpd. *Id*.

Village Arguments

The Village incorporates the legal and factual analysis from its ordinance approving siting and the arguments of ERDS. Resp. at 1-2.

Board Analysis

The Act (requires the landfill siting application notice to include "the nature and size of the development, [and] the nature of the activity proposed,." 415 ILCS 5/39.2(b) (2014). "Section 39.2(b)'s notice requirements are jurisdictional prerequisites that the applicant must follow in order to vest the county board with the power to hear a landfill proposal." Maggio v. PCB, 2014 IL App (2d) 130260, ¶15 (2nd Dist. 2014), citing Kane County Defenders v. PCB, 139 Ill. App. 3d 588, 593 (2nd Dist. 1985). The basic principle in construing Section 39.2(b) "is to ascertain and give effect to the legislature's intent. The language of the statute is the most reliable indicator of the legislature's objectives in enacting a particular law." Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 117, 866 N.E.2d 227, 235 (2007). The role assigned by the Act to the Village "clearly reflects a legislative understanding that the county board hearing, which presents the only opportunity for public comment on the proposed site, is the most critical stage of the landfill site approval process." Kane County Defenders, 139 Ill. App. 3d at 593.

The only challenge to the notice by Will County and WMI is that ERDS included a throughput of 200 tpd, which Will County and WMI claim misrepresented the nature and size of the development. Will County relies on the definition of "nature" and argues that M.I.G. Investments supports its position because the court found that the nature of the landfill contemplates more than mere surface utilization of the land and that an increase in capacity is significant. WMI's concerns relate to the "misleading" nature of the notice and thus the failure to comply with the statutory notice.

The Board is unconvinced by the arguments of Will County and WMI and finds that the inclusion of the 200 tpd throughput, while including in the application and at hearing the possibility of a 600 tpd maximum throughput, did not divest the Village of jurisdiction. Will County's reliance on M.I.G. Investments is misplaced. That case involved a decision regarding a permit appeal, where the Board and the courts reviewed the meaning of Section 39.2(c) of the Act (415 ILCS 5/39.2(c) (2014)). In examining that language, the Board and the courts decided what constitutes a new pollution control facility given the language of that section. M.I.G. Investments, 122 Ill. 2d at 399. Under M.I.G. Investments, the Supreme Court reviewed a reversal of the Board's decision by the Appellate Court and examined whether or not a vertical expansion of a landfill resulted in an expansion of the boundaries of a currently permitted landfill such that the landfill was a new pollution control facility. *Id*. at 392. It is in this context that the

Supreme Court reflected on the nature of a landfill. Given the facts of M.I.G. Investments, the Board is not persuaded by Will County's argument that M.I.G. Investments is instructive.

Rather, the Board finds more persuasive the decisions in Daubs and Tate, both of which considered the language of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)). In Daubs, the court found that an incorrect legal description, while including a correct narrative description, was sufficient notice under the Act. Daubs, 166 Ill. App. 3d at 779. The Daubs court found the narrative description sufficient to give notice to adjoining landowners and the general public. *Id*. at 782. In Tate, the court reviewed a notice that did not include specific information including the flood plain location, height of the expansion or the special waste activity. Tate, 188 Ill. App. 3d at 1017. The court stated:

> The purpose of the notice is obviously to notify interested persons of the intent to seek approval to develop a new site or to expand an existing facility. The notice is sufficient if it is in compliance with the statute and it places potentially interested persons on inquiry about the details of the activity. The notice itself need not be so technically detailed as to raise unnecessary concerns among local residents and the general public. Clearly, the statute does not require the notice to be so technical that only an engineer would understand it. *Id*. at 1019.

In this instance, the Board finds that the notice provided by ERDS accomplished the purposes of the Act and provided the public with sufficient notice of the nature and size of the activity. The notice described the nature of the activity, a transfer station, the size of the proposed facility, 2.16 acres, the location, 2277 Moen Avenue in Rockdale, and the operating life, 20 years. Simply because ERDS added the phrase "an average of 200 tons per day" and then included in the application and at hearing the possibility of 600 tpd maximum throughput, the Board will not find that the notice was insufficient.

Recently in Roxana, the Board reviewed a challenge to the description of the site in the public notice for transfer station. The Board found the description sufficient to meet the notice requirements and relied on Tate and Daubs to support its finding. Roxana, PCB 15-65, 15-69 (consld), slip op at 18-19. The Board understands that in Roxana, Tate, and Daubs, the Board and courts were examining the language of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)) in light of the location of the facility and not in relation to throughput. However, the Board is convinced that these decisions support a finding that for a transfer station including a throughput number does not render the notice invalid if another throughput number is discussed at hearing or chosen by the siting authority.

As further support for the Board's finding, the Board notes that under Section 39.2(e) of the Act (415 ILCS 5.39.2(e) (2014)), an applicant may amend its application at hearing, without providing additional notice under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2014)). And in this case the hearing officer found that the application was amended. Thus, the Act contemplates that changes in the application may occur that are not subject to the public notice requirements. Therefore, the Board finds that the inclusion of a throughput number in the notice, while accurately describing the activity and physical size of the development, does not divest the Village or the Board of jurisdiction.

Conditions on Siting Approval

Will County Arguments

Will County asserts that the Village improperly imposed conditions to ensure that criteria II and V were met. County Br at 5. Will County maintains that the statute and cases place the burden of proving the criteria are met on the applicant and that the Village Board cannot offer conditions that bring the application into compliance with the criteria. *Id*. Will County argues that the statute requires the applicant to provide sufficient detail for the approval of the siting application and present a *prima facia* case. *Id*. at 5-6, citing Peoria Disposal Co. v. Peoria County Board, PCB 06-184, slip op. at 8, 25 (June 21, 2007). Will County further relies on Waste Management of Illinois, Inc. v. PCB, 122 Ill. App. 3d 639, 461 N.E.2d 542 (3rd Dist. 1984) to underscore that the burden is on the applicant. *Id*.

Will County argues that the applicant proposes the siting, and the siting authority approves or disapproves the siting; the siting authority is in a quasi-judicial role and should not be a co-author of the application. County Br. at 6. Will County argues that such a role by the siting authority would be an impermissible shifting of the statutory burden. *Id*. Will County acknowledges that Section 39.2(e) of the Act (415 ILCS 5/39.2(e) (2014)) allows the siting authority to add conditions to the siting approval. *Id*. at 7. However, Will County argues that the authority to place conditions is separate and distinct from the language that requires the demonstration of compliance with the criteria. *Id*. Will County opines that the use of "may" in Section 39.2(e) of the Act "underscores the impermissibility" of the Village's actions in this case; because the use of "may" underscores that the purpose of the language is to allow special conditions to further compliance already established. *Id*.

In reply, Will County asserts that none of the cases cited by ERDS support the position that conditions can be imposed on an application to "bootstrap an application into compliance". Reply at 5.

WMI Arguments

WMI asserts that the Village lacks authority to "amend" the application through the imposition of special conditions. WMI Br. at 32. WMI maintains that the Village must determine that the application as filed by ERDS proves that the criteria are met, not that some facility that may be built will meet the statutory criteria. *Id*. WMI argues that nothing in the statute allows the Village to determine that a facility not proposed by ERDS satisfies the criteria. *Id*. WMI opines that if the Board approves the Village's decision, the Board will be expanding the grant of authority in the Act. *Id*. at 33.

In reply, WMI alleges that ERDS does not deny that the Village Board found that ERDS failed to prove compliance with criteria (ii) and (v). WMI Reply at 11. WMI argues that ERDS ignored Peoria Disposal Co. v. Peoria County Board, PCB 06-184, slip op. at 36-38 (June 21, 2007), "which expressly treated the County Board's finding that the applicant 'met siting criterion v only if certain special conditions were imposed' as a finding that the applicant 'did

not meet its burden on criterion v.'" *Id*. at 12. WMI argues that none of ERDS's citied cases support its conclusion. WMI Reply at 12. WMI concludes that "no authority supports ERDS's claim that special conditions can be used to cure an applicant's failure to carry its burden of proof." WMI Reply at 14.

ERDS Arguments

ERDS rejects petitioners' argument that Section 39.2 of the Act (415 ILCS 5/39.2 (2014)) requires proof of compliance with all siting criteria, without conditions. ERDS Brief at 14. ERDS argues that it is within the power of the Village to impose conditions to achieve compliance with statutory siting criteria. *Id* at 14. ERDS maintains that the Village expressly found that with the conditions, criteria II and V were met. *Id*. ERDS continues that placing conditions on siting to ensure compliance with the criteria is proper. *Id*. at 15, citing Lake County v. PCB, 120 Ill. App. 3d 89, 99, 457 N.E.2d 1309, 1315 (2nd Dist. 1983) ("Conditions can be imposed 'to accomplish the purposes' of section 39.2"). In Lake County, ERDS explains that conditions were imposed on the application to ensure that criteria II and V were met. *Id*., citing Lake County, 120 Ill. App. 3d at 92. Furthermore, ERDS asserts that Lake County is cited often as authority for the proposition that "establishing the siting criteria is a reasonable and necessary purpose of imposing conditions for approval." *Id*.

ERDS argues that subsequent cases establish that conditions may be used to attain compliance with the statutory criteria. ERDS Br. at 15, citing Rochelle Waste Disposal, L.L.C., v. City of Rochelle, and the Rochelle City Council, PCB 07-113, 07-116 (consld.) slip op. at 49 (Jan. 24, 2008) (*reversed in part on appeal* City of Rochelle v. PCB, *et al*., Nos. 2-08-0427, 2-08-0433 (cons.) and Veolia ES Zion Landfill v. City Council of the City of Zion, Illinois, PCB 11-10, slip op. at 8-9 (Apr. 21, 2011). ERDS claims that the legal precedent is clearly allows the imposition of conditions to establish the siting criteria.. *Id*. at 17, citing Lake County, 120 Ill. App. 3d at 92. ERDS also points to Will County Board v. PCB, 319 Ill. App. 3d 545, 548, 747 N.E.2d 5, 6, (3rd Dist. 2000), where the appellate court discussed the necessity of the added conditions, not the legality of their use. *Id*.

Village Arguments

The Village incorporates the legal and factual analysis from its ordinance approving siting and the arguments of ERDS. Resp. at 1-2. Further, the Village claims that in reviewing the imposition of special conditions the Board must determine if the conditions are reasonable and necessary to meet the requirement of the Act. Resp. at 2, citing Peoria Disposal Co. v. Peoria County Board, PCB 06-184, slip op. at 6 (Dec. 7, 2006). ERDS has not challenged the conditions. *Id*.

Board Analysis

Section 39.2(e) of the Act states:

> . . . In granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to

accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board . . .. 415 ILCS 5/39.2(e) (2014).

Here WMI and Will County argue that the Village did not find that criteria II and V were met and instead "conditionally approved" the criteria and added conditions to ensure that the criteria are met. The Board disagrees with WMI and Will County. The Village states unequivocally that ERDS "met Criterion (1), (3), (4), (6), (7), (8), and (9) of Section 39.2 without conditions, and that the Applicant [ERDS] met Criterion (2) and (5) of Section 39.2 subject to special conditions." C2402. Further, as will be discussed in more detail below, the Village's decisions on criteria II and V are supported by the evidence in the record, and thus ERDS did meet its burden. The unambiguous language of the Act allows a siting authority to include conditions on a siting approval that may be "necessary to accomplish the purposes" of Section 39.2 of the Act (415 ILCS 5/39.2 (2104)). The Village did find that the criteria were met, and subjected the approval to certain conditions. The Village specified that those conditions applied as long as those conditions are not inconsistent with the Board's rules or any terms of a permit issued by the Illinois Environmental Protection Agency. The Board finds that the Village's imposition of conditions is consistent with prior Board and court decisions. *See e.g.* Lake County, 120 Ill. App. 3d at 92; Rochelle Waste Disposal, PCB 07-113, 07-116 (consld.); and Veolia ES, PCB 11-10.

Amendment of Application

Will County Arguments

Will County argues that ERDS amended the application twice at hearing contrary to Section 39.2(e) of the Act (415 ILCS 5/39.2(e) (2014)), which allows for only one amendment of the application. County Br. at 14-15. Will County argues that the ERRATA sheet provided at the beginning of the hearing was an amendment, and the hearing officer agreed allowing for additional time to review the changes. *Id*. However, Will County maintains that the presentation of evidence relating to the 600 tpd throughput significantly altered the proposed size and nature of the facility and "amounted to a second amendment" of the application. *Id*. at 15. Will County asserts that because the application was amended twice, the application should be dismissed. *Id*.

ERDS Arguments

ERDS argues that there was no second amendment to the application. ERDS Br. at 13. ERDS asserts that all the information regarding throughput was in the application, and Mr. Hock testified before the hearing officer found that the application had been amended. *Id*.

Village Arguments

The Village incorporates the legal and factual analysis from its ordinance approving siting and the arguments of ERDS. Resp. at 1-2.

Board Analysis

The Board disagrees with Will County's argument. Clearly under Section 39.2(e) of the Act (415 ILCS 5/39.2(e) (2014)) the applicant may amend its application once. Here, the hearing officer determined that the presentation of the ERRATA sheet amended the application and allowed additional time for preparation for cross examination. Will County argues that the evidence relating to 600 tpd throughput was also an amendment, but the record does not support such a finding. As discussed in the facts, the application discussed the possibility of a 600 tpd throughput, and the testimony provided by Mr. Hock prior to Mr. Price's ruling on the amended application also discussed the possibility of a 600 tpd throughput. The Board finds that the record simply does not support Will County, and the Board finds that the application was amended only once.

Criteria

The Board begins by summarizing briefly general arguments on the criteria by the parties and then the Board analysis of those general issues. Next the Board will summarize the arguments on each of the challenged criteria. The Board explains its reasoning for finding that each of the criteria was met by ERDS under those arguments.

General

WMI Arguments. WMI argues that because ERDS did not specify the throughput of the facility, ERDS failed to provide sufficient details to satisfy the statutory criteria. WMI Br. at 9. WMI opines that this lack of specificity made any meaningful evaluation impossible and therefore the application was legally insufficient. *Id*. WMI argues that the application is insufficient as a matter of law because an essential design element is missing and no decisionmaker can evaluate compliance without that information. *Id*. at 10-11.

In reply, WMI asserts that ERDS incorrectly cites Timber Creek Homes, Inc. v. Village of Round Lake Park, PCB 14-99 (Aug. 21, 2014), for the proposition that throughput capacity or volume are not, generally, considered relevant to criterion (ii). WMI Reply at 11. WMI alleges that ERDS "cites to an April 7, 2014 procedural order in that case, instead of this Board's actual, August 21, 2014, decision." *Id*. WMI argues that the Board had previously considered a transfer station's "throughput capacity and volume in connection with criterion ii" in Roxana Landfill, Inc. v. Village Board, PCB 15-65, 15-69 (cons.), slip op. at 28, 33 (Dec. 18, 2014) (criteria ii and vi); and Continental Waste Industries v. City of Mt. Vernon, PCB 94-138, slip op. at 9 (Oct. 27, 1994) (criterion ii). WMI Reply at 11.

WMI reminds that the standard of review when the Board reviews the local siting authority's decision is a manifest weight of the evidence standard. WMI Br. at 13. WMI further notes that the Board must determine if the Village's decision is based on evidence that is competent, sufficient, and presented by competent witnesses. *Id*., citing Industrial Fuels, 227 Ill. App. 3d at 543-50.

ERDS Arguments. ERDS argues that the "Board is to review the siting authority's decision under the manifest weight of the evidence standard and is not to reweigh the evidence." ERDS Brief at 17, citing Fox Moraine, LLC v. United City of Yorkville, 960 N.E.2d 1144, 1173 (2nd Dist. 2011). ERDS argues that on criterion II, the determination is based on an assessment of the credibility of the witnesses. *Id*., citing File v. D & L Landfill, Inc., 219 Ill. App. 3d 897, 907, 579 N.E.2d 1228 (1991). ERDS quotes a discussion from the Board in Timber Creek Homes, Inc. v. Village of Round Lake Park, Round Lake Park Village Board, and Groot Industries, Inc., PCB 14-99 slip op. at 12 (Aug. 21, 2014) reciting the Board's standard of review in reviewing a challenge to a local siting authority's decision on the criteria. *Id*. at 18. ERDS contends that "merely because the Board could reach a different conclusion is not sufficient to warrant reversal." *Id*., citing, City of Rockford, 125 Ill. App. 3d 384, 465 N.E.2d 996; Waste Management of Illinois, 122 Ill. App. 3d 639, 461 N.E.2d 542 (3rd Dist. 1984); Steinberg, 139 Ill. App. 3d 503, 487 N.E.2d 1064 (1st Dist. 1985); Willowbrook, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985).

In addition to arguing the standard of review, ERDS addresses the finding of Mr. Price. ERDS alleges that "Derke Price, the hearing officer for the local hearing issued a report in which he found that criterion 1 had not been proven, that criteria 2 and 5 required conditions, and that all other criteria has been proven." ERDS Brief at 19. ERDS argues that a staff report, such as a hearing officer's report, is not evidence. *Id*., citing Fairview, 198 Ill. App. 3d at 548, 555 N.E.2d at 1182. Furthermore, ERDS claims that it "is undisputed that a hearing officer in proceedings" before the local authority is not a decisionmaker. Citizens Against Regional Landfill v. PCB, 255 Ill. App. 3d 903, 907, 627 N.E.2d 682, 685 (3rd Dist. 1994). *Id*. Therefore, ERDS concludes that Mr. Price's report has no evidentiary value. *Id*. at 20.

Village Arguments. The Village argues that the manifest weight of the evidence standard is the "most common standard of review", and the Board cannot substitute its judgment for the Village's. Resp. at 3. The Village made its own evaluation and judgment on credibility of witnesses and weighed the evidence. *Id*. at 4. The Village maintains that the record contains "substantial and persuasive evidence in support" of the Village's conclusions. *Id*. (emphasis in original). The Village argues that Will County and WMI have failed to prove the opposite result is clearly evident, plain or indisputable. *Id*.

Board Analysis. The Board disagrees that the application "failed" to specify throughput. The application provided details on the operation of the facility under both 200 tpd and 600 tpd. Thus, the application did include information regarding operation of the proposed facility at 600 tpd. The sufficiency of those details will be discussed more completely below regarding each specific criterion.

The Board agrees with the standard of review articulated by both ERDS and WMI. However, as to the argument by ERDS that Mr. Price's hearing report is not evidence, the Board must clarify the point. While it is correct that a hearing officer's report is not evidence and that the hearing officer is not the decisionmaker, where the decisionmaker adopts the findings as its own, the report does become an important part of the record. However, where the decisionmaker rejects the hearing officer's findings, it is the findings of the decisionmaker that must be examined by the Board.

Criterion I: The Facility is Necessary to Accommodate the Waste Needs of the Area it is Intended to Serve

Will County Arguments. Will County notes that the hearing officer found that criterion I was not met and that the Village rejected that finding. County Br. at 16. Will County opines that the Village's generalized analysis was not sufficient to establish that the criterion was met. *Id*. Will County argues that the Village acknowledges that ERDS did not conduct a "traditional" analysis, analyzing waste production and waste disposal capacities, but rather the Village found that there would be more waste generated than is presently being transferred out of the service area. *Id*. Will County asserts that the Village relies on economic, environmental and competitive benefits of the proposed transfer station and "anecdotal" evidence regarding the existing transfer capacity. *Id*. Will County opines that such an analysis does not equate to an analysis of available transfer capacity. *Id*. at 16-17.

Will County maintains that the law is clear that to establish need, the applicant must demonstrate "an urgent need for a new facility as well as the reasonable convenience of establishing it." County Br. at 18, quoting Waste Management of Illinois, Inc. v. PCB, 175 Ill. App. 3d 1023, 1031, 530 N.E.2d 682, 689 (2nd Dist. 1988). Will County asserts that an applicant must analyze the capacity of existing facilities to determine need. *Id*., citing Waste Management of Illinois, Inc. v. PCB, 234 Ill. App. 3d 65, 69, 600 N.E.2d 55, 57 (1st Dist. 1992); File v. D&L Landfill, Inc., 219 Ill. App. 3d 897, 906-7, 579 N.E.2d 1228, 1235-36 (5th Dist. 1991). Will County opines that it is impossible to consider waste production and disposal capabilities of the facilities in the area, without specifically examining them. *Id*. Will County argues that because ERDS did not quantify, weigh or even consider the waste production and disposal capacity in the service area, ERDS did not meet its burden to show that the facility met criterion I. *Id*.

In reply, Will County asserts that ERDS attempts to throw out well-settled legal precedent concerning what must be done to establish that criterion I is met. Reply at 6. Will County notes that ERDS attempts to distinguish cases related to landfills from those related to transfer stations arguing that transfer stations are subject to a different standard for need. *Id*. Will County opines that this is misplaced as courts apply the same standard for criterion I. *Id*. Will County notes that in Waste Management, 234 Ill. App. 3d 65, a case involving a transfer station, the court set forth the same standard. Thus, Will County maintains that comparison of waste production and disposal capabilities is relevant to establishing need for a transfer station. Reply at 7.

Will County argues that the inclusion of economic benefit by ERDS in consideration of criterion I is not proper. Reply at 7. Will County agrees that it can be considered, but prior cases have made clear that economic benefit is not relevant to siting criteria. *Id*., citing Fairview, 198 Ill. App. 3d at 547.

WMI Arguments. WMI asserts that for ERDS to establish that criterion I is met, ERDS must show that the transfer station is reasonably required by the waste needs of the service area, considering the waste production of the area and the waste disposal capacity available to the

area. WMI Br. at 14, citing Waste Management, 175 Ill. App. 3d at 1031. WMI argues that need involves consideration of costs of transportation and disposal of waste as well as whether the waste will be disposed of in an environmentally sound and cost-effective manner. *Id*., 14-15, citing Wabash & Lawrence Counties Taxpayers and Water Drinkers Association v. PCB, 198 Ill. App. 3d 388, 393, 55 N.E.2d 1081, 1086 (5th Dist. 1990). WMI continues that the failure to consider available disposal or transfer capacity is fatal to a request to find need. *Id*. at 15, citing A.R.F. Landfill, Inc. v. PCB, 174 Ill. App. 3d 82, 91-92, 528 N.E.2d 390, 396 (2nd Dist. 1988).

WMI reviews the evidence before the Village and challenges the testimony of Mr. Hock, while highlighting the testimony of Ms. Smith, Mr. Nebal and Mr. Moose. WMI Br. at 15-21. WMI argues that Mr. Hock failed to perform an actual capacity analysis for any transfer station serving the service area including the Joliet Transfer Station and Rockdale. WMI Br. at 17. WMI claims he therefore did not consider the capacity at those two transfer stations or the capacity at a new transfer station in Plano. *Id*. WMI further claims that Mr. Hock only provided anecdotal testimony concerning Joliet based on a single visit to that transfer station. *Id*. WMI notes that Ms. Smith testified that the Prairie View RDF has sufficient capacity for disposal of all waste in the proposed service area and therefore no transfer station is needed for the Will County service area. WMI Br. at 19. Mr. Nebal testified that Joliet Transfer Station was not at capacity. *Id*. at 20. Finally, WMI notes that Mr. Moose testified that the application did not prove need and that the failure to evaluate available transfer station capacity was fatal to ERDS. *Id*. at 21.

WMI asserts that because ERDS did not conduct an analysis to determine the disposal or transfer capacity available to the service area, the application failed to demonstrate the need for the transfer station. WMI Br. at 22. WMI claims that the needs analysis performed by ERDS is "riddled with errors, speculation and unfounded assumptions". *Id*. Furthermore, ERDS failed to consider any transfer stations outside the proposed service area that accept waste from the service are. *Id*. WMI opines that case law requires a capacity analysis, because without such an analysis a claim of need is speculative. *Id*. WMI argues that the Village cannot reference "irrelevant" statements by Mr. Hock to support its finding. *Id*.

In reply, WMI reiterates its arguments and challenges to Mr. Hock's testimony. In sum, WMI attacks Mr. Hock's analysis on three points: "(a) it contained no disposal capacity analysis; (b) it wrongly excluded from its transfer capacity analysis those transfer stations physically located outside the service area but providing transfer capacity to the service area; and (c) it relied on speculative assumptions that various economic and environmental benefits will result from the proposed facility's construction." WMI Reply at 14-15.

ERDS Arguments. ERDS reviews the testimony of Mr. Hock, Ms. Smith, Mr. Nebal, and Mr. Moose. ERDS Br. at 21-34. ERDS argues that Mr. Hock's testimony indicated that between the waste generation in the area and the daily volume at the Joliet Transfer Station, there is a shortfall of transfer capacity of 853 to 2,046 tpd. *Id*. at 21. Mr. Hock testified that the Joliet Transfer Station is dangerously overextended. *Id*. ERDS disagrees with Ms. Smith, who concluded that "if there is no need for landfill in a service area, there would generally be no need for a new transfer station." *Id*. at 22. ERDS reasoned that Ms. Smith was unaware of the relevant facts needed in the analysis such as the composition of solid municipal waste, the locations of the facilities, current and projected transfer capacities, and the distinction between

waste transfer and waste disposal. *Id* at 22, 23. ERDS opines that the Village was correct in finding that Mr. Hock was more credible than Ms. Smith. *Id*. at 24.

ERDS argues that Mr. Moose's assertions are flawed because he does not properly address the fact that the Joliet Transfer Station consistently violated its permit conditions. ERDS Br. at 25. Whereas Mr. Moose relied on the fact that the Joliet Transfer Station permit is not based on an upper capacity limit, ERDS concludes that Will County did not issue violations based on overuse because the County knew that Joliet Transfer Station needed to violate permit conditions for garbage to be picked up from homes and businesses. *Id*. ERDS again opines that the Village could properly find that Mr. Hock was more credible than Mr. Moose. *Id*.

ERDS takes issue with the claim that "the only way to do a needs analysis is the way" it was done in the past. ERDS Br. at 25. ERDS acknowledges that in landfill siting the accepted methodology is analyzing whether the conventional waste generation exceeds or shortly will exceed disposal capacity. *Id*. However, ERDS opines transfer stations are not like landfills and the determination of need is "fundamentally different". *Id*. at 26. ERDS offers that a transfer station allows for more efficient transfer of garbage to landfills and in this context efficiency includes consideration of road wear, carbon emissions, vehicle wear and tear and man hours. *Id*. ERDS opines that the necessity analysis for a transfer station should be "fundamentally different" than for a landfill. *Id*.

ERDS argues that the hearing officer wrongly relied on landfill cases in accepting Ms. Smith and Mr. Moose's landfill based analytical approaches. *Id*. at 26. ERDS points out the hearing officer "erroneously" relied on A.R.F. Landfill, 174 Ill. App. 3d at 91-92. *Id*. at 27. ERDS alleges that A.R.F Landfill only applies to denial of a landfill expansion. *Id*. However, ERDS asserts that the instant case regards the addition of a transfer facility and subsequently the consideration of capacity in surrounding areas. *Id*. As ERDS states, because transfer stations only transfer waste, they do not dispose of it; disposal capacity is not relevant to siting of transfer stations. *Id*.

ERDS recognizes that the courts and the Board examined the need criterion in connection with a transfer station in Waste Management of Illinois, 234 Ill. App. 3d 65. ERDS Br. at 28. However, ERDS asserts that based on the standard enunciated by the court in that case, ERDS meets the standard. ERDS argues it did consider available transfer capacity and waste generation in the service area as well as performing an economic analysis of benefit to the service area. *Id*.

ERDS argues that there is a distinction between cases appealing a denial of siting and those that approved siting. ERDS Br. at 29. ERDS opines that the fact that local siting denials based on need were not reversed is not an indication that a local approval would not also have been affirmed. *Id*. ERDS notes that the Board has observed this distinction and reminded that the Board must use a manifest weight of the evidence standard to determine whether the Village properly determined that the criteria were met. *Id*., quoting Turlek v. Village of Summit, PCB 94-19, 94-21, 94-22 (consld.) slip op. at 17 (May 5, 1994).

ERDS alleges that the manifest weight of the evidence standard creates a presumption in favor of the validity of the underlying decision. To support this presumption, ERDS asserts that there are no reported cases where a "local finding of need" has been reversed as against the manifest weight of the evidence, even when the local finding failed to consider all available considerations. ERDS Br. at 30.

ERDS argues that "the proper inquiry before the Board is whether the County Board's decision is against the manifest weight of the evidence, not whether there is another landfill that could serve the intended service area." ERDS Br. at 31, quoting Gallatin National Company, v. Fulton County Board and County of Fulton, PCB 91-256, slip op at 22-23 (June 15, 1992). ERDS relies on this rational in Gallatin to support Mr. Hock's testimony that increased competition from siting the transfer station supports the conclusion that there is a need. *Id*. at 32. ERDS therefore concludes that economic considerations are relevant and properly considered as part of the need determination. *Id*.

Lastly, ERDS argues that poor operations at nearby facilities are legitimate arguments for the necessity of a new or expanded facility. ERDS Brief at 32, citing Wabash and Lawrence Counties Taxpayer and Water Drinkers Association v. County of Wabash and K/C Reclamation, Inc., PCB 88-110 (May 25, 1989). Therefore, ERDS reasons that the overextension of the Joliet Transfer Station is a legitimate reason to conclude that the transfer station is needed. *Id*.

Village Arguments. The Village incorporates the legal and factual analysis from its ordinance approving siting and the arguments of ERDS. Resp. at 1-2.

Board Analysis. Section 39.2(a)(i) of the Act (415 ILCS 5/39.2(a)(i) (2014)) does not provide a specific formula or tests to establish whether or not a facility is necessary. Case law has provided guidance and indicates that although an applicant need not show absolute necessity, it must demonstrate an urgent need for the new facility as well as the reasonable convenience of establishing it. Fox Moraine, 2011 IL APP (2d) 10017 ¶110; Waste Management, 234 Ill. App. 3d at 69; Waste Management, 175 Ill. App. 3d at 1031. The applicant must show that the landfill is reasonably required by the waste needs of the area, including consideration of its waste production and disposal capabilities. *Id*. It is the province of the hearing body to weigh the evidence, resolve conflicts in testimony, and assess the credibility of the witnesses. Merely because the Board could reach a different conclusion is not sufficient to warrant reversal. City of Rockford, 125 Ill. App. 3d 384, 465 N.E.2d 996; WMI, 122 Ill. App. 3d 639; Steinberg, 139 Ill. App. 3d 503; Willowbrook, 135 Ill. App. 3d 343.

Also "local siting authorities may consider such economic benefit if they find that the statutory criteria have been met." Stop the Mega-Dump v. DeKalb County Board, 2012 IL App (2d) 110579 ¶62, citing Fairview, 198 Ill. App. 3d at 546–47, *abrogated on other grounds by* Town & Country, 225 Ill. 2d at 116–17.

The Board is unpersuaded by the arguments and characterization of the evidence in the record by Will County and WMI. The Board notes that the Village found the testimony of Mr. Hock credible and was unpersuaded by Ms. Smith's testimony. C2403-04, 2405. The Village also specifically rejected a finding that the need analysis was defective because Mr. Hock failed

to conduct a "traditional comprehensive transfer capacity analysis that analyzed, specifically, waste production and waste disposal capacities" agreeing that there are other ways to establish need. C2405. In this instance the Board agrees.

While case law provides guidance on how need is determined, case law also requires the Board to review the record and find whether the siting authority's decision was against the manifest weight of the evidence. ERDS provided evidence regarding the disposal capacity of landfills in the service area. *See generally* C0061-63. ERDS also provided a discussion in the application regarding transfer stations in the area including Joliet Transfer Station and discussed the amount of waste accepted daily. *See generally* C0063-64, 2612-13. The application listed transfer stations outside the service area and provided information on some of those facilities. *Id*. Additionally, Mr. Hock testified about his personal observations that the Joliet Transfer Station was overburdened and that at the current rate of generation there was a shortfall of transfer station capacity. C2618-19. ERDS also provided evidence that the siting of the transfer station would offer benefits.

Based on this record, the Board finds that the Village's decision is supported by evidence in the record. Therefore, the Board finds that the Village's decision is not against the manifest weight of the evidence and affirms the Village's decision on criterion I.

Criterion II: The Facility is so Designed, Located and Proposed to be Operated that the Public Health, Safety and Welfare Will Be Protected

Will County Arguments. Will County argues that the Village conditionally approved criterion II, imposing its own special conditions. County Br. at 19. Will County notes that the hearing officer found that the criterion was not met and recommended special conditions "that would, arguably, allow the Applicant to bring the facility into compliance" with criterion II. *Id*. Will County notes that the hearing officer found, and the Village Board adopted as its own finding, that at 600 tpd the application does not meet criterion II, but with a more modest amount could be acceptable. *Id*. at 20. Will County maintains that the Village then placed a condition limiting the throughput to 300 tpd and explicitly allowed for the possibility of 600 tpd. Will County asserts this finding is against the manifest weight of the evidence. *Id*.

Will County notes that the hearing officer and the Village also expressed concern about the production of leachate, but found this could be addressed with a special condition requiring approval of the stormwater discharge plan. County Br. at 20. Will County asserts that the Village's action of finding that ERDS did not demonstrate compliance with criterion II, "conditionally approving" the application and imposing conditions were against the manifest weight of the evidence. *Id*.

Will County argues that the condition that ERDS operate and maintain the transfer station in substantial compliance with the application is impossible, because the application discusses a throughput of 200 tpd while the testimony made clear that the throughput could be up to 600 tpd. County Br. at 21. Therefore, Will County asserts at the outset the transfer station will not be in substantial compliance with the application. *Id*.

Will County argues that the Village's actions were inconsistent with Section 39.2 of the Act (415 ILCS 5/39.2 (2014)) as the statute requires the applicant to demonstrate compliance with the criteria. County Br. at 21. The Village "explicitly" found that ERDS had not demonstrated compliance with criterion II, but added conditions to the application that will allow ERDS to prove compliance at some future date. *Id*. Will County maintains that the Village's action was contrary to the statute and against the manifest weight of the evidence.

In reply, Will County argues that the Village's explicit finding on the absence of proof is a fatal flaw to the siting approval. Reply at 8.

WMI Arguments. WMI argues that to establish that this criterion is met an applicant must demonstrate that the proposed facility is not flawed from a public safety standpoint and that its operations are not unacceptably risky. WMI Br. at 24, citing Industrial Fuels, 227 Ill. App. 3d at 546. WMI notes that the determination of whether a proposed facility meets this criterion is purely a matter of assessing witness credibility. *Id*., citing Fairview, 198 Ill. App. 3d 541,552); File, 219 Ill. App. 3d at 907; Those Opposed to Area Landfills v. City of Salem, PCB 96-79, 96-82 (consld.) slip op. at 22 (Mar. 7, 1996); Fox Morraine, LLC v. United City of Yorkville, PCB 07-146, slip op. at 81 (Oct. 1, 2009).

WMI reviews the testimony of Mr. Hock and notes that Mr. Nickodem and Mr. Moose testified as well. WMI Br. at 24-29. WMI noted Mr. Nickodem identified problems with traffic flow, stormwater, and the failure to allow any margin of error. *Id*. WMI noted that Mr. Moose identified the throughput capacity as a threshold problem asserting that a throughput of 600 tpd was not safe. *Id*.

WMI argues that the hearing officer and "implicitly" the Village found that ERDS did not sustain its burden as to criterion II. WMI Br. at 29. WMI argues that the findings of the hearing officer included that the facility could not handle 600 tpd and identified problems with the stormwater plans. *Id*. at 30. WMI maintains that the Village's approval adopted the "core" of the hearing officer's findings that criterion II is met provided certain conditions are adhered to. *Id*. WMI opines that both the hearing officer and the Village found the application on its own did not meet the criteria and thus that ERDS had not met its burden of proof. *Id*. at 31. WMI maintains that because ERDS failed to prove compliance with the criterion, the Village's decision is against the manifest weight of the evidence. *Id*. at 32, citing Town & Country, 225 Ill. 2d at 117.

In its reply, WMI claims that "no-one, including ERDS or the Village, has conducted any analysis whatsoever to establish that the proposed facility is designed and can be operated in compliance with criteria (ii) and (v) while accepting 300 tons per day." WMI Reply at 28. Further, WMI alleges that Mr. Hock was unable to respond to criticisms of the facility's stormwater management design. *Id*. WMI argues that vague assertions, such as those made by Mr. Hock, are insufficient for the party bearing the burden of proof. *Id*. WMI concludes that ERDS is willing to address matters of public health and safety on "another day." *Id*.

ERDS Arguments. ERDS advocates for reliance on its expert witness, Mr. Hock, in regards to the design, location and operation of the proposed facility. ERDS Brief at 34-37. Mr.

Hock indicated that the facility was compliant with all location standards: wetlands, archeological sites, threatened species, wild and scenic rivers and residential setback. *Id*. Mr. Hock approved the site's receiving capacity, hours of operation, truck maneuvering facilitation, stormwater management plan, and plans to minimize damage to the surrounding area from fire, spills, or other operational accidents. *Id*. Mr. Hock concluded that the facility is "located, designed and proposed to be operated that the public health, safety and welfare will be protected and that the plan of operations for the facility is designed to minimize the danger to the surrounding area from fires, spills or other operational accidents." *Id*. at 37.

ERDS urges the Board to disregard the entire testimony of expert witness Andy Nickodem, an engineer who works for WMI. ERDS Br. at 37. ERDS asserts that Mr. Nickodem's testimony mistakes basic facts, such as the size of the load-out bay available to truck drivers. *Id*. ERDS alleges that Mr. Nickodem made his assertions without knowing the specifications of the facility, and was unable to propose sufficient adjustments. *Id*. at 38.

ERDS also urges the Board to disregard Mr. Moose's testimony. ERDS Br. at 38. ERDS alleges that Mr. Moose deflected all cross examination questions by claiming that he "didn't study" the issue. *Id*. at 39. ERDS also points out that Mr. Hock sufficiently rebutted all of Mr. Moose's concerns. *Id*. First, Mr. Hock "pointed out that the conveyance pipes, swales and trench drains depicted on the site plans have been analyzed and will be adequately sized." *Id*. at 40. Second, Mr. Hock "pointed out that overflow scenarios had been accounted for in the design, so that there would be normal above-ground sheet flow from a higher basin to a lower basin in the event that a conveyance or an orifice failed." *Id*. Third, Mr. Hock "pointed out that the two above ground basins did in fact have the required freeboard, and that the freeboard requirement did not apply to the below ground vault, because the purpose of freeboard is to guard against wind driven wave action." *Id*. at 41.

On public health, safety, and welfare, ERDS claims there are two points of disagreement: 1) maximum daily capacity; and 2) stormwater management design. ERDS Brief at 43. First, ERDS alleges that Mr. Moose and Mr. Nickodem argued that 600 tpd was too large an estimate for the maximum daily amount. *Id*. ERDS argues that this issue is resolved by the "Village's imposition of a 300 tons per day maximum." *Id*. at 43. Second, ERDS alleges that no one questioned the design of the stormwater management system or opined that it would not work. *Id*. Furthermore, ERDS points out that "conditioning approval on compliance with the County Storm water management ordinance, which demands significantly more detail, solves the problem in its entirety." *Id*.

Village Arguments. The Village incorporates the legal and factual analysis from its ordinance approving siting and the arguments of ERDS. Resp. at 1-2.

Board Analysis. The determination of whether criterion II is met "is purely a matter of assessing the credibility of expert witnesses." D & L Landfill, 219 Ill. App. 3d at 907, citing Fairview, 198 Ill. App. 3d at 552. It is not the Board's place to reweigh the evidence. *Id*., citing McHenry County Landfill, Inc. v. IEPA, 154 Ill. App. 3d 89, 100, 506 N.E.2d 372, 379 (2nd Dist. 1987).

As to the concerns raised by Will County and WMI that the Village "conditionally approved" criterion II, the Board discussed that issue above and will not reiterate its finding here. Nor will the Board revisit the issue of Mr. Price's report or the weight that report should be given.

The Village found that Mr. Hock's testimony was the "more thorough and credible testimony on this issue" and that ERDS "met its burden of proof" as to criterion II, provided certain special conditions are followed. C2406-07. In addition to Mr. Hock's direct testimony, Mr. Hock also testified in rebuttal and addressed the concerns raised by Mr. Moose. Thus, the Village was presented with conflicting testimony on this issue and found Mr. Hock more credible. The Board finds the Village's decision supported by the evidence. Mr. Hock provided extensive direct testimony supporting the design of the facility including traffic flow and stormwater management. Mr. Hock then responded to the testimony of Mr. Moose and specifically addressed the issues raised by Mr. Moose. Thus, the record provides support for the Village's decision.

Further, the conditions provided in the siting approval address some of the specific concerns raised by opponents to the siting. The Village limited throughput to 300 tpd, required operation of the facility to be in compliance with the application and testimony at hearing, which included evidence on throughput of 600 tpd. C2407. The Village also required submittal of the stormwater management plan to the Village engineer. C2408.

The Board finds that the Village's decision is not against the manifest weight of the evidence. The Village weighed the credibility of the witnesses and found Mr. Hock more persuasive and credible. The Board does not reweigh the evidence; therefore, the Board affirms the Village's decision. D & L Landfill, 219 Ill. App. 3d at 907, citing Fairview, 198 Ill. App. 3d at 552; McHenry County Landfill, Inc. v. IEPA, 154 Ill. App. 3d at 100.

Criterion V: The Plan of Operations for the Facility is Designed to Minimize the Danger to the Surrounding Area From Fire, Spills, or Other Operational Accidents

Will County Arguments. Will County maintains that like criterion II, the hearing officer and the Village found that ERDS had not demonstrated that criterion V was met and added special conditions to the application. County Br at 22. The conditions include the Village engineer approve the final site plan. *Id*. Will County argues that despite the admitted deficiencies in the application the Village approved the siting, allowing for future demonstration of compliance. *Id*. Will County argues that the Village's decision was contrary to the law and against the manifest weight of the evidence. *Id*. at 23.

In reply, Will County argues that the Village's explicit finding on the absence of proof is a fatal flaw to the siting approval. Reply at 8.

WMI Arguments. WMI argues that the Village's decision on criterion V is unreasonable and not based on the evidence and is therefore against the manifest weight of the evidence. WMI Br. at 34, citing Maple v. Gustafson, 151 Ill. 2d 445, 454 (1992). WMI points to the hearing officer's finding that ERDS did not meet the burden on criterion V noting that the

site had not been designed to minimize the danger from operation accidents due to on-site traffic movements. *Id*. WMI asserts the Village cited no evidence in support of its finding that ERDS had met criterion V, subject to conditions. *Id*. WMI offers that imposition of conditions is problematic as discussed under criterion II. *Id*. WMI maintains that the hearing officer cited flaws in the evidence and the Village rejected those findings without explanation or pointing to support in the record. *Id*. at 35.

In reply, WMI argues that ERDS is not able to justify disregarding objecting experts' testimony regarding traffic. WMI Reply at 22. WMI argues that ERDS is unable to challenge Mr. Nickodem's qualifications. *Id*. at 24. WMI also argues that ERDS is unable to attack the substance of Mr. Nickodem's arguments regarding the design or capacity of the Moen Transfer Station. *Id*. at 22-23. WMI alleges that Mr. Moose never conceded that Mr. Hock's traffic analysis was correct, as ERDS allegedly implies. WMI Reply at 24.

ERDS Arguments. ERDS argues that the issues of on-site traffic flow were contested under an assumption of 600 tpd volume. ERDS Brief at 44. ERDS notes that reducing the daily maximum volume to 300 tpd would remove any safety concerns. *Id*. at 43. ERDS concludes that the Village, who is both interested and knowledgeable, should be given deference by the Board. *Id*. at 44.

Village Arguments. The Village incorporates the legal and factual analysis from its ordinance approving siting and the arguments of ERDS. Resp. at 1-2.

Board Analysis. In determining that criterion V is met, the issue is one of safety with an emphasis on planning to avoid or minimize the danger from catastrophic accidents. Industrial Fuels, 227 Ill. App. 3d at 547. In any industrial setting, there is a potential for harm, both to the environment and to the residents of the area. *Id*. Minimizing the danger is the key to demonstrating that criterion V is met. *Id*., citing Wabash & Lawrence, 198 Ill. App. 3d at 394. A guarantee of an accident proof environment is not required. *Id*.

As to the concerns raised by Will County and WMI that the Village "conditionally approved" criterion V, the Board discussed that issue above and will not reiterate its finding here. Nor will the Board revisit the issue of Mr. Price's report or the weight that report should be given.

The evidence before the Village consisted of the application and testimony by Mr. Hock and Mr. Moose. Mr. Hock testified that the design of the facility met criterion V and Mr. Moose disagreed. The Board does not reweigh the evidence. D & L Landfill, 219 Ill. App. 3d at 907, citing Fairview, 198 Ill. App. 3d at 552; McHenry County Landfill, Inc. v. IEPA, 154 Ill. App. 3d at 100. The Village added conditions including a requirement that additional personnel be hired to address some of the traffic flow concerns. The Board finds that the Village's decision has support in the record and therefore, the Board finds the Village's decision was not against the manifest weight of the evidence. The Board affirms the Village's decision on criterion V.

Criterion VIII: The Facility is Consistent with Will County's SWMP

WMI Arguments. WMI argues that the Village's decision on criterion VIII cannot stand, because the Village ignored key provisions in the SWMP. WMI Br. at 36. WMI argues that Will County's intent with the SWMP was that any new transfer station be sited in the northern or eastern part of Will County, not the central part where ERDS is proposing its transfer station. *Id*. WMI asserts that the Village was not free to ignore these provisions. *Id*.

WMI argues that an evaluation of criterion VIII consists of two parts: 1) assessing the intent of the SWMP and 2) the factual determination of consistency with the SWMP. WMI Br. at 37. WMI argues that assessing the intent presents a legal question of statutory construction. *Id*., citing County of Kankakee v. PCB, 396 Ill. App. 3d 1000, 1020, 955 N.E.2d 1, 19 (3rd Dist. 2009). WMI argues that the intent of the SWMP is for any new transfer stations to be located in the northern or eastern part of the county, and ERDS cannot explain how locating a new transfer station in the central part of the county is consistent with the SWMP. *Id*. at 39.

In its reply, WMI argues that "ERDS failed to demonstrate the proposed facility is consistent with Will County's Solid Waste Management Plan." WMI Reply at 28. WMI further argues that the "Village failed to interpret the Plan prior to finding in favor of local siting." *Id*. at 28. WMI alleges that ERDS does not contest that the Plan requires all transfer stations to be developed "pursuant to the terms of the Host and Operating Agreement for the Prairie View RDF," which provides that WMI, in particular, shall be responsible for developing a network of transfer stations to serve Will County's needs." WMI Reply at 29. WMI concludes that Will County must follow the language of the officially adopted plan. *Id*.

ERDS Arguments. ERDS contends that WMI's argument concerning consistency with the SWMP is waived because "the evidence of plan consistency presented by ERDS was unrebutted." ERDS Brief at 45, citing Industrial Fuels, 227 Ill. App. 3rd 533 (The trier of fact and the Board are not free to disregard unrebutted evidence). ERDS claims WMI can only rely on brief testimony from Ms. Smith to argue that because the "County solid waste management plan called for additional transfer stations in the northern or eastern part of the County, a new transfer station in the central part of the County was not needed." *Id*.

ERDS points to the most recent SWMP, which calls for Will County to "allow the private-sector to develop a transfer station network as it deems appropriate and pursuant to the terms of the host and operating agreement for Prairie View RDF." ERDS Brief at 45. ERDS alleges that Mr. Hock interpreted this to mean Prairie View had to be the preferred disposal destination for waste from a new transfer station. *Id*. ERDS claims that this provision was a key component of the secondary host agreement between Will County and ERDS.

Village Arguments. The Village incorporates the legal and factual analysis from its ordinance approving siting and the arguments of ERDS. Resp. at 1-2.

Board Analysis. The Board does not reweigh the evidence, and the Village Board's decision must be left undisturbed unless against the manifest weight of the evidence. *See* Town & Country, 225 Ill. 2d 103; Tate, 188 Ill. App. 3d at 1022. The solid waste management plan

need not be followed "to the letter". City of Geneva v. Waste Management of Illinois, PCB 94-58 slip op. at 22 (July 21, 1994; *see also* Citizens United for a Responsible Environment v. Browning-Ferris Industries of Illinois *et al.*, PCB 96-238 slip op. at 7 (Sept. 19, 1996). It is within the decisionmakers' authority to determine consistency as long as the approval is "not inapposite" the solid waste management plan. *Id*.

ERDS provided testimony from Mr. Hock that the siting of the transfer station was consistent with the SWMP. *See generally* C2684. The actual language of the SWMP indicates that additional transfer stations may be sited as long as host agreements with Will County are executed. C0654. A host agreement was executed between ERDS and Will County. C0655.

This evidence is sufficient for the Village to find that the siting of the transfer station is consistent with the SWMP. While WMI argues that the plan requires siting in only the eastern or northern parts of Will County, the record indicates that that provision applies only to a "selected contractor". C2684. The Board finds that the record supports the Village's finding that the transfer station siting is consistent with the SWMP and affirms the Village's decision.

CONCLUSION

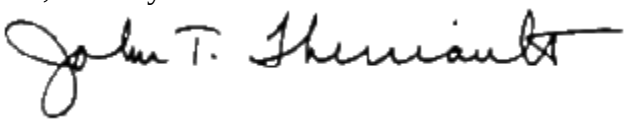
The Board finds that the Village of Rockdale's decision approving the siting of the Moen Transfer Station is not against the manifest weight of the evidence. Specifically, the Board finds that the application as submitted and subject to the conditions imposed meets the nine statutory criterion of Section 39.2(a) of the Environmental Protection Act (Act) (415 ILCS 5/39.2(a) (2014)). In so finding, the Board was unpersuaded by the arguments of Will County and WMI that the Village's decision on criteria I, II, V, and VIII was against the manifest weight of the evidence. In addition, the Board finds that the Village had jurisdiction to review the siting application as ERDS properly provided notice of the application to the public pursuant to Section 39.2(b) of the Act (415 ILCS 4/29.2(b) (2014)). The Board disagrees with the contention of Will County and WMI that inclusion of a specified throughput number in the notice can divest the Village of jurisdiction.

ORDER

The Board affirms the decision by the Village of Rockdale approving Environmental Recycling and Disposal Services, Inc. proposed transfer station to be located at 2277 Moen Avenue in Rockdale.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 21, 2016 by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board