

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RECEIVED
CLERK'S OFFICE
MAR - 3 2016
STATE OF ILLINOIS
Pollution Control Board

PCB 16-56
(Third-Party Pollution Control
Facility Siting Appeal)

(Consolidated)

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on March 3, 2016, I filed the **Response of Village of Rockdale and Board of Trustees of Village of Rockdale to Briefs of Will County and Waste Management of Illinois, Inc.**, a copy of which is hereby served upon you.

On behalf of **VILLAGE OF ROCKDALE**

By: /s/ Dennis G. Walsh
One of its Attorneys

Michael R. Stiff
Spesia & Ayers
1415 Black Road
Joliet, IL 60435
(877) 722-5294

Dennis G. Walsh
Klein, Thorpe & Jenkins, Ltd
20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
(312) 984-6400
ARDC No. 6193279

CERTIFICATE OF SERVICE

I, Dennis G. Walsh, an attorney, certify that I caused a copy of the Response of Village of Rockdale and Board of Trustees of Village of Rockdale to Briefs of Will County and Waste Management of Illinois, Inc. to be served via First Class Mail, postage paid, from 20 N. Wacker Drive, Chicago, Illinois, 60606, and by electronic service, on the 3rd day of March, 2016, to the individuals listed on the attached service list.

/s/ Dennis G. Walsh

SERVICE LIST

Attorneys for the County of Will:

Charles F. Helsten
Peggy L. Crane
Hinshaw & Culbertson, LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
chelsten@hinshawlaw.com

Mary M. Tatroe
Matthew Guzman
Will County State's Attorney's Office
121 N. Chicago Street
Joliet, IL 60432
MTatroe@willcountyillinois.com
MGuzman@willcountyillinois.com

Attorney for Waste Management of Illinois, Inc.

Donald J. Moran
Pedersen & Houpt
161 N. Clark Street, Suite 2700
Chicago, IL 60601
dmoran@pedersenhaupt.com

Illinois Pollution Control Board Hearing Officer:

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph Street
Chicago, IL 60601
Brad.Halloran@illinois.gov

Attorney for Environmental Recycling and Disposal Services, Inc.

George Mueller
Mueller Anderson & Assoc., P.C.
609 E. Etna Road
Ottawa, IL 61350
George@muelleranderson.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WILL COUNTY, ILLINOIS)	
)	
Petitioner,)	
)	
v.)	PCB 16-54
)	(Third-Party Pollution
)	Control Facility Siting Appeal)
)	
VILLAGE OF ROCKDALE, BOARD OF TRUSTEES OF VILLAGE OF ROCKDALE and ENVIRONMENTAL RECYCLING AND DISPOSAL SERVICES, INC.)	
)	
Respondents.)	
)	
<hr style="width: 40%; margin-left: 0;"/>		
WASTE MANAGEMENT OF ILLINOIS, INC.)	
)	
Petitioner,)	
)	
v.)	PCB 16-56
)	(Third-Party Pollution Control
)	Facility Siting Appeal)
)	
VILLAGE OF ROCKDALE, BOARD OF TRUSTEES OF VILLAGE OF ROCKDALE and ENVIRONMENTAL RECYCLING AND DISPOSAL SERVICES, INC.)	(Consolidated)
)	
)	
Respondents.)	

RECEIVED
CLERK'S OFFICE
MAR - 3 2016
STATE OF ILLINOIS
Pollution Control Board

**RESPONSE OF VILLAGE OF ROCKDALE AND BOARD OF
TRUSTEES OF VILLAGE OF ROCKDALE TO BRIEFS OF
WILL COUNTY AND WASTE MANAGEMENT OF ILLINOIS, INC.**

Now Come the Respondents, VILLAGE OF ROCKDALE (“Village”), and BOARD OF TRUSTEES OF THE VILLAGE OF ROCKDALE (“Village Board”), by and through their attorneys, Michael R. Stiff of Spesia & Ayers and Dennis G. Walsh of Klein, Thorpe and Jenkins, Ltd., and in response to the briefs filed by Will County and Waste Management of Illinois, Inc., state as follows:

The Village of Rockdale and the Board of Trustees of the Village of Rockdale hereby adopt, and incorporate herein by this reference, the legal and factual analysis set forth in Village

Ordinance No. 1026 “An Ordinance Conditionally Approving the Application for Local Siting Approval of Environmental Recycling and Disposal Services, Inc. for the Moen Transfer Station Facility” and in addition, adopt and incorporate herein by this reference, the response made by Environmental Recycling and Disposal Services, Inc. (“ERDS”) to the briefs of Will County and Waste Management of Illinois, Inc. and the arguments presented therein as to whether the Village of Rockdale has jurisdiction to consider the siting application and whether the Applicant has met the applicable criteria set forth in Section 39.2 of the Illinois Environmental Protection Act (the “Act”), except to the extent that ERDS suggests in its response (without any supporting arguments or citations to authority), that the application and evidence supports unconditional approval and that ERDS (which elected not to appeal the Village’s special conditions) has not waived its claim that the application and evidence conclusively supported an unconditional approval.

In reviewing the local siting authority’s imposition of special conditions, the Pollution Control Board (“PCB”) must determine whether the special conditions to a site approval are reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and are not inconsistent with PCB regulations. Peoria Disposal Co. v. Peoria County Board, PCB 06-184, slip op. at 6 (December 7, 2006), citing 415 ILCS 5/39.2(e). Generally, the applicant has the burden of proving that the conditions are not necessary to accomplish the purposes of the Act and, therefore, were imposed unreasonably. Rochelle Waste Disposal, LLC v. City of Rochelle and the Rochelle City Council, PCB 07-103 slip op. at 21 (June 24, 2008). Here, ERDS freely concedes that it has not challenged any of the special conditions on any grounds. It has also failed to establish, or even argue, that any one of the special conditions is unsupported by the record; against the manifest weight of the evidence; standardless; vague; not within the Village’s authority to impose; not reasonable and necessary to accomplish the purposes of Section 39.2 of

the Act; potentially in conflict with permit conditions imposed by the Illinois Environmental Protection Agency; or inconsistent with the regulations promulgated by the PCB. For those reasons, any argument based on the foregoing grounds or any other grounds that could have been raised by ERDS but were not, are forfeited and deemed waived. However, the Village and Village Board do adopt all other arguments and citations to authority that are set forth in ERDS' brief that address the actual points and issues that were raised on appeal by each of the Petitioners.

Beyond adopting the arguments by co-Respondent ERDS, the Village and Village Board further suggest that the "manifest weight of the evidence" standard is probably the most common standard of review. It is applied in review of everything from jury verdicts to administrative decisions. 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. Turlek v. PCB, (1st Dist. 1995), 274 Ill.App.3d 244, 653 N.E.2d 1288 (1st Dist. 1995); Harris v. Day, 115 Ill.App.3d 762, 451 N.E.2d 262 (4th Dist. 1983). In administrative proceedings such as those undertaken pursuant to Section 39.2 of the Act, it is the province of the local hearing body to weigh the evidence, assess the credibility of witnesses and resolve conflicts in the evidence. See 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, 53, 743 N.E.2d 188, 197 (3rd Dist. 2000). Where there is conflicting evidence, the PCB cannot reverse merely because the local authority could have drawn different inferences or credits one group of witnesses and does not credit the other. Sierra Club v. City of Wood River, PCB 95-175 (October 5, 1995). Simply put, it is axiomatic, that the PCB is not in a position to reweigh the evidence or credibility of the witnesses, but must determine whether the decision is against the manifest weight of the evidence. See Tate v. PCB, 188 Ill.App.3d 994, 1022, 544 N.E.2d 1176 (4th Dist. 1989), Land

and Lakes Co. v. PCB, 198 App.3d 41, 743 N.E.2d 188; and Fairview Area Citizens Taskforce v. PCB, 198 App.3d 541, 555 N.E.2d 1178 (3rd Dist. 1990). In performing its duties under the Act, the Village Board here made its own independent evaluation and judgment of the credibility of witnesses, weighed the evidence, and determined that the Applicant had met its burden, despite the existence of less credible, conflicting testimony by witnesses for the opponents. In this case, as set forth in Ordinance No. 1026 and ERDS' response, the Record contains substantial and persuasive evidence in support of the Village Board's conclusion not only that it had jurisdiction over ERDS' Application but also its finding that ERDS met the requirements of all applicable criteria of Section 39.2 of the Act. The Village Board's decision is well supported by the Record, and Will County and Waste Management have failed to prove that the opposite result is clearly evident, plain or indisputable. At best, the Petitioners have merely offered an alternative view of the evidence. The Village Board's decision must, therefore, be affirmed.

For the reasons set forth above and in the ERDS' response to the briefs of Will County and Waste Management of Illinois, Inc., the Village of Rockdale and the Board of Trustees of the Village of Rockdale respectfully request that Petitioners' Petitions for Review be denied and the Village Board's decision to grant siting approval be upheld.

On behalf of **VILLAGE OF ROCKDALE**

By: /s/ Dennis G. Walsh
One of its Attorneys

Michael R. Stiff
Spesia & Ayers
1415 Black Road
Joliet, IL 60435
(877) 722-5294

Dennis G. Walsh
Klein, Thorpe & Jenkins, Ltd
20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
(312) 984-6400
ARDC No. 6193279