

ILLINOIS POLLUTION CONTROL BOARD

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

RESPONSE OF ERDS TO MOTION TO RECONSIDER

Now comes Environmental Recycling and Disposal Services (“ERDS”) by its attorney, George Mueller, and for its response to the motion to reconsider filed by the petitioners herein, states as follows:

1. The PCB is created by statute, and as such has no powers other than the powers expressly delegated by statute. Unlike a Circuit Court, it does not have common law powers. Motions to reconsider are addressed in section 101.902 of the Rules of the Board. This states, “In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board’s decision was in error.” Accordingly, there are two, and only two, narrow and defined bases for motions to reconsider.
2. The purpose of reconsideration is not to reargue issues previously raised or to express general disagreement with the Board’s decision and opinion. *Fox Moraine v. Yorkville, PCB 07-146 (Dec. 3, 2009)*. See also *Citizens Against Regional Landfill v. County Bd. Of Whiteside County, PCB 92-156 (April 22, 1993)*, where the Board denied

reconsideration, “because the arguments presented ...are the same as those” previously presented and considered by the Board.

3. WMII argued that the Board misapplied the manifest weight of the evidence standard, although it fails to offer an explanation of how the standard was misapplied. WMII offers no evidence or law indicating that the standard has changed, and in fact does not take issue with the description of the manifest weight standard in the Board’s opinion. Instead WMII argues that the Board should not be a rubber stamp, again without proof that the Board actually rubber stamped anything in this case. WMII then gets to the crux of its argument – that the Board should have applied its technical expertise. This is nothing more than a thinly veiled way of suggesting that the Board should have substituted its opinion for that of the Rockdale Village Trustees, that the Board should have *reweighed* the evidence. It is presumptuous, to say the least, for WMII to even infer that the Board had a different opinion than the Trustees, and such an inference evidences a profound misreading by WMII of the Board’s opinion.
4. So WMII’s motion is nothing more than an unapologetic re-hash of arguments previously made and rejected. As such, their substantive arguments do not require further response.
5. Will County’s motion is even more presumptuous and insulting to the Board. The County explicitly says that despite issuing a detailed, single spaced 40-page unanimous opinion, the Board ‘did not fulfill its role on review.’ In keeping with a pattern established in the County’s post hearing brief, its argument is based on an incorrect legal standard based upon a blatant and intentional misstatement of the holding in an appellate case claimed to be controlling. In its motion to reconsider the County goes even beyond misstatement of an appellate holding, and actually misquotes the holding. The County

cites *Korogluyan v. Chicago Title & Trust* as follows: “ The purpose of a motion to reconsider is to bring to the (PCB’s) attention newly discovered evidence which was not available at that time of the hearing, changes in the law or errors in the (Board’s) previous application of existing law.’ “213 Ill.App 3rd at 626. Actually the quoted section does not mention the PCB or the Board and refers instead to a circuit court. Errors in the application of existing law, contrary to the County’s assertion, are *not* a basis for reconsideration, and are instead a classic basis for appeal to the next level.

6. The remainder of the County’s motion is, like the WMII motion, nothing more than a re-hash of arguments already made and rejected. That re-hash requires no further specific response other than to note that the allegation the Board failed to consider the mandate in *Town & Country* is entirely unsupported by any evidence.

WHEREFORE, ERDS respectfully prays that the Board deny the motion to reconsider filed by the petitioners herein.

Respectfully submitted,
ENVIRONMENTAL RECYCLING AND
DISPOSAL SERVICES, LLC

By: 
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January 12, 2016

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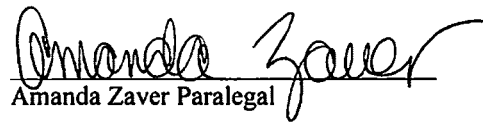
PROOF OF SERVICE

I, Amanda Zaver, on oath certify that I caused to be served the foregoing, **Response of ERDS to Motion to Reconsider** upon the following:

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| <p><u>Attorneys for the Village of Rockdale:</u> Mike Stiff Spesia & Ayers 1415 Black Road Joliet, IL 60435 mstiff@spesia-ayers.com</p> <p>Dennis G. Walsh Klein, Thorpe & Jenkins, Ltd. 20 North Wacker Drive, Suite 1660 Chicago, IL 60606 dgwalsh@ktjlaw.com</p> | <p><u>Illinois Pollution Control Board Hearing Officer:</u> 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</p> |
| <p><u>Attorneys for the County of Will:</u> Charles F. Helsten Peggy L. Crane Hinshaw & Culberston LLP 100 Park Avenue P.O. Box 1389 Rockford, IL 61105-1389 chelsten@hinshawlaw.com</p> | <p><u>Attorneys for the County of Will:</u> Mary M. Tatroe Matthew Guzman Will County State's Attorney's Office 121 North Chicago Street Joliet, IL 60432 MTatroe@willcountyillinois.com Mguzman@willcountyillinois.com</p> |

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| <p><u>Illinois Pollution Control Board Clerk:</u> John T. Therriault Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street, Suite 11-500 Chicago, IL 60601 John.Therriault@illinois.gov</p> | <p><u>Attorney for Waste Management of Illinois, Inc.</u> Donald J. Moran Pedersen & Houpt 1612 North Clark Street, Suite 2700 Chicago, IL 60601 dmoran@pedersenhoupt.com</p> |
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Via email transmission, to the above listed parties, at e-mail addresses listed above, and via regular mail on June 6, 2016, before the hour of 5:00pm.


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