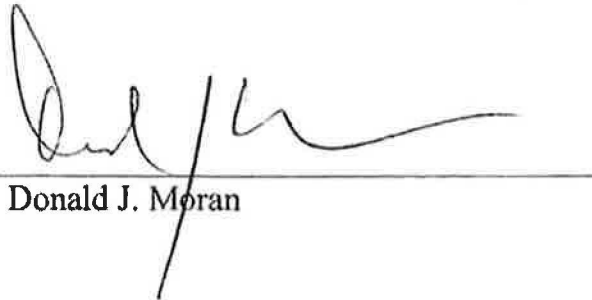


CERTIFICATE OF MAILING

The undersigned, an attorney, states that on August 31, 2016, he caused to be filed by U.S. Mail at or before 5:00 p.m., the foregoing WASTE MANAGEMENT OF ILLINOIS, INC.'S RESPONSE BRIEF IN SUPPORT OF THE DECISION OF THE WILL COUNTY BOARD APPROVING SITE LOCATION FOR THE LARAWAY RDF EXPANSION and this Certificate of Mailing by depositing the same in the U.S. Mail located at 161 N. Clark St., Chicago, Illinois, enclosed in a sealed envelope with First Class postage fully prepaid and addressed to the Illinois Pollution Control Board Clerk:


John Therriault
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph Street
Chicago, IL 60601



Donald J. Moran

CERTIFICATE OF SERVICE

I, Donald J. Moran, an attorney, certify that I have served the attached WASTE MANAGEMENT OF ILLINOIS, INC.'S RESPONSE BRIEF IN SUPPORT OF THE DECISION OF THE WILL COUNTY BOARD APPROVING SITE LOCATION FOR THE LARAWAY RDF EXPANSION on the named parties by electronic service and by depositing same in the U.S. mail at 161 N. Clark Street, Chicago, Illinois 60601, at 5:00 p.m. on August 31, 2016.



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ENVIRONMENTAL RECYCLING AND)	
DISPOSAL SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 16-76
)	(Third-Party Pollution Control
COUNTY BOARD OF WILL COUNTY,)	Facility Siting Appeal)
ILLINOIS and WASTE MANAGEMENT OF)	
ILLINOIS, INC.,)	
)	
Respondents.)	

**WASTE MANAGEMENT OF ILLINOIS, INC.’S RESPONSE BRIEF IN SUPPORT OF
THE DECISION OF THE WILL COUNTY BOARD APPROVING SITE LOCATION
FOR THE LARAWAY RDF EXPANSION**

Respondent, Waste Management of Illinois, Inc. (“WMII”), by its attorneys, Pedersen & Houpt, P.C., submits this response brief in support of the Will County Board’s (“County Board”) Resolution 15-380 approving the request of WMII for site location of the Laraway Recycling and Disposal Facility (“Laraway RDF”) expansion (“Expansion” or “Facility”).

I. ARGUMENT

A. The Decision Granting Site Location Approval Is Supported By Clear and Compelling Evidence; Cross-Examination of WMII Witnesses Is Insufficient to Support Reversal of Site Location Approval on Manifest Weight Review.

Petitioner Environmental Recycling and Disposal Services, Inc. (“ERDS”) contends that the County Board’s findings on criteria (i), (ii) and (vi) are against the manifest weight of the evidence. However, neither ERDS nor the other objector parties presented any evidence that contradicted or refuted WMII’s factual and expert testimony demonstrating that criteria (i), (ii) and (vi) were met. ERDS’s manifest weight argument is based entirely on its cross-examination of WMII witnesses. The argument must fail because it is the exclusive province of the County Board to determine the credibility of witnesses. The County Board did that here and found, after

extensive cross-examination by objectors' counsel, that the WMII witnesses were credible and their testimony sufficient to prove that criteria (i), (ii) and (vi) were satisfied.

The decision of a local siting authority regarding compliance with the statutory criteria will not be disturbed unless the decision is contrary to the manifest weight of the evidence. Land and Lakes Company v. Pollution Control Board, 319 Ill.App.3d 41, 53, 743 N.E.2d 188, 197 (3rd Dist. 2000). It is the province of the county board to weigh the evidence, resolve conflicts in testimony and determine the credibility of witnesses. Fox Moraine LLC v. United City of Yorkville, No. PCB 07-46, slip op. at 5 (Oct. 1, 2009). Simply because there may be some evidence which, if accepted, would have supported a contrary conclusion does not mean that this Board may reweigh the evidence and substitute its judgment for that of the County Board. Tate v. Illinois Pollution Control Board, 188 Ill.App.3d 994, 1026, 544 N.E.2d 1176, 1197 (4th Dist. 1989); Landfill 33 v. Effingham County Board, Nos. PCB 03-43, 03-52 (cons.), slip op. at 3 (Feb. 20, 2003).

As ERDS points out, the Illinois Supreme Court has made it clear that this Board is to apply its "technical expertise in examining the record, to determine whether the record supported the local authority's decision", citing Town & Country Utilities, Inc. v. Pollution Control Board, 225 Ill.2d 103, 123 (2007). (Opening Brief of Petitioner ("ERDS Br."), p. 2.) When the Board applies its technical expertise and finds any facts or evidence which supports the county board decision, and this Board finds that the county board could have reasonably reached its conclusion, the decision must be affirmed. Will County v. Village of Rockdale Board of Trustees, et al., Nos. PCB 16-54 and 16-56 (cons.), slip op. at 2-3 (July 7, 2016); File v. D&L Landfill, No. PCB 09-94, slip op. at 3 (Aug. 30, 1990).

This Board may not reweigh the evidence or reassess witness credibility on the siting criteria to substitute its judgment for that of the local siting authority. Roxana Landfill, Inc. v.

Village Board of the Village of Caseyville, et al., Nos. PCB 15-65 and 15-69 (cons.), slip op. at 23 (Dec. 18, 2014); Fairview Area Citizens Taskforce v. Pollution Control Board, 198 Ill.App.3d 541, 550 (3rd Dist. 1990); Tate, 188 Ill.App.3d at 1022. By basing its argument for reversal of the County Board decision on its cross-examination of WMII witnesses, ERDS is asking this Board to do what the case law expressly forbids: reweigh the evidence and reassess witness credibility.

Where there is conflicting evidence or cross-examination challenging witness credibility, this Board is not free to reverse because it is the local siting authority that resolves conflicts in the evidence and assesses witness credibility. Waste Management of Illinois, Inc. v. Pollution Control Board, 187 Ill.App.3d 79, 82 (2d Dist. 1989). Merely because the local siting authority drew different inferences and conclusions from the applicant's testimony than urged by the objectors is not a basis for this Board to reverse. File v. D&L Landfill, Inc., 219 Ill.App.3d 897, 905-906 (5th Dist. 1991). That a different decision might also be reasonable is insufficient for reversal; the opposite conclusion must be clear and indisputable. Willowbrook Motel v. Pollution Control Board, 135 Ill.App.3d 343, 481 N.E.2d 1032 (1st Dist. 1985).

WMII presented fact and expert opinion testimony and evidence which established criteria (i), (ii), and (vi) by the clear and compelling weight of the evidence. No fact or opinion testimony or evidence was presented that contradicted or refuted WMII's evidence demonstrating compliance with the siting criteria. ERDS's sole basis for its argument that the County Board decision is against the manifest weight of the evidence was its cross-examination of WMII expert witnesses. In making this argument, ERDS is asking the Board to reweigh the evidence and reassess witness credibility, which the Board may not do. Accordingly, the decision granting site location approval is supported by, and not in any way against, the manifest weight of the evidence, and should be affirmed.

1. Criterion (i): The Expansion is Necessary to Accommodate the Waste Needs of the Service Area.

Need is established where an applicant shows that a proposed facility is reasonably required by the disposal needs of the service area, taking into account the waste production and waste disposal capacity of the area. Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 112 Ill.App.3d 639, 461 N.E.2d 542, 546 (3d Dist. 1984). WMII is not required to show absolute necessity to satisfy criterion (i). Landfill 33, Nos. PCB 03-43, 03-52 (cons.), slip op. at 26.

WMII presented credible evidence and expert opinion establishing that the Expansion is necessary to accommodate the waste needs of the area it is intended to serve. Ms. Sheryl Smith testified that the Expansion is reasonably required by the 33 million ton disposal capacity shortfall over the 10-year operating period of the Facility. (10/14 Tr. at 87.) In addition, the high and increasing market demand for the Facility since 2012 is further evidence of the service area's need for the Expansion. (10/14 Tr. at 88-89.)

No testimony or evidence was presented that contradicted or impeached WMII's evidence that the Expansion is necessary. Because there is ample evidence supporting the County Board's finding of need, the decision of the County Board is not against the manifest weight of the evidence and must be affirmed. Tate, 188 Ill.App.3d at 1023-1024, 544 N.E.2d at 1195-1196; Fairview Area Citizens Taskforce, 198 Ill.App.3d at 551-552; Landfill 33, Nos. PCB 03-43, 03-52 (cons.), slip op. at 26; Industrial Fuels & Resources v. Pollution Control Board, 227 Ill.App.3d 533, 544-545, 592 N.E.2d 148, 156 (1st Dist. 1992).

ERDS challenges Ms. Smith's testimony and conclusions not with facts or evidence, but by attacking her credibility. ERDS contends that her waste generation rates and disposal capacity analysis are speculative, and that the former are overstated while the latter is understated. (ERDS

Br., pp. 4-7.) ERDS's contentions, however, are either inaccurate or not relevant to criterion (i). At best, they merely reflect a disagreement with Ms. Smith's method; they do not disprove or refute her conclusions.

ERDS initiates its attack on Ms. Smith's credibility by asserting that she is not an engineer, for the reason that she is not currently licensed. (ERDS Br., p. 3; 10/14 Tr. at 91-92.) In fact, Ms. Smith is an experienced engineer who holds a Bachelor of Science degree in Civil Engineering from the University of Illinois and a Masters of Engineering from Cornell University. (10/14 Tr. at 74.) Further, ERDS suggests that her work on behalf of WMII is "tired and repetitive." (ERDS Br., p. 4.) To the contrary, she is an expert in her field, having prepared or reviewed 35 need reports for solid waste facilities (of which 10 were performed for WMII) and testified 30 times as an expert witness on Criterion 1, including as a criterion (i) witness presented by Mr. Mueller, counsel for ERDS. (10/14 Tr. at 74, 79, 92; Pet. Ex. 5.)

ERDS claims that Ms. Smith's approach to ascertaining need for the Expansion was a traditional approach, "generally accepted for ascertaining need for a new or expanded municipal solid waste landfill" and that "she simply didn't have the knowledge or information to accurately compute either future generation of waste, or future disposal capacity to the service area." (ERDS Br., p. 4.) This is simply not true. Ms. Smith performed the Needs Analysis for Laraway RDF, which obtained Will County Board site location approval in 2006, utilizing the same methodology to arrive at her conclusion and opinion, and which included acceptance of the same waste stream proposed for the Expansion. Her approach was consistent with the previous evaluation of need for the Laraway RDF. (10/14 Tr. at 166-168.) With her history of evaluation for the Laraway RDF, its service area, and its consistent waste streams, ERDS's argument that "her testimony revealed that the data needed to make her calculations is not available for the

special waste streams received” at the Expansion is unfounded. (ERDS Br., p. 4.) The Expansion will accept the same waste streams proposed in 2006. (10/14 Tr. at 166-168, Pet. Ex. 3, Criterion 1, p. 1-1.)

With regard to the types of wastes generated in the service area, ERDS complains that Ms. Smith did not know what volumes of wastes were generated in the service area, nor how much was received at the Laraway RDF, in particular fly ash and treatment plant sludges. (ERDS Br., p. 5.) However, ERDS does not disclose that Ms. Smith testified that she could answer the questions if she were allowed to access the information on her office server, which she was not. (10/14 Tr. at 99.)

In addition, ERDS misrepresents Ms. Smith’s testimony regarding various other industrial wastes. ERDS claims Ms. Smith had very little knowledge about contaminated soils. (ERDS Br., p. 5.) However, Ms. Smith’s testimony included responses to the questioner’s speculative questions to which she would not concede regarding MGP waste and its characterization. (10/14 Tr. at 101-102.) Ms. Smith never testified that she did not know what a manufactured gas plant was. (10/14 Tr. 100-101.) She never testified that MGP waste volumes would continue to be generated at the same rate. To the contrary, she testified that the volume of contaminated soils (which can be created by MGP waste and also by leaking underground storage tanks) was evaluated using historic data collected over the past five years, and data generated by IEPA from information reported by landfill operators. She then projected a volume requiring disposal based on the historic and IEPA data. (10/14 Tr. at 102-105.) ERDS presented no evidence or testimony contradicting the validity of Ms. Smith’s analysis using historic and IEPA data to evaluate the volume of contaminated soils requiring disposal, but simply rests its argument on a contorted line of questioning that proves nothing.

In its cross-examination of Ms. Smith regarding the volume of industrial soils coming to the Laraway RDF for disposal, ERDS challenged Ms. Smith for not relying on actual data to project incoming industrial waste, while it criticized her for relying on actual data to project incoming contaminated soils. (10/14 Tr. at 109-110.) It then proceeded to challenge her use of county-generated solid waste plans to generate estimated volumes of construction and demolition debris. (ERDS Br., p. 6.) ERDS swings back and forth on its criticisms of Ms. Smith's method. First, it complains of using historic data, then it complains of not using historic data, then it complains of county-generated data. (ERDS Br., pp. 5-6.) Ms. Smith uses a consistent approach to evaluate disposal volumes for the Expansion, as she did for Laraway RDF in 2006. (10/14 Tr. at 166-167.)

ERDS next misrepresents Ms. Smith's knowledge and approach in projecting construction and demolition debris waste generated in the service area. (ERDS Br., p. 6.) ERDS suggests that construction and demolition debris waste is mandated by state statute to be recycled at a rate of 75%. (ERDS Br., p. 6.) However, the reference to this statute, 415 ILCS Section 22.38, is misplaced. This statute (a copy of which ERDS would not provide to Ms. Smith despite its continuing cross-examination of her on the statute) requires construction and demolition debris facilities, which exclusively accept "general construction or demolition debris for transfer, storage or treatment," to limit the percentage of incoming non-recyclable general construction or demolition debris to 25%. ERDS then suggests that all construction and demolition debris going to "construction and demolition debris recycling facilities in the state of Illinois" must be recycled at a rate of 75%. (ERDS Br., p. 6; 10/14 Tr. at 115, 165.)

Based on that percentage, ERDS contends that Ms. Smith's projected construction and demolition debris volume requiring disposal over the service life of the Expansion of 44%, which

is calculated based on the current county solid waste plans, is significantly overstated, because it is higher than the 25% volume that would result if the 75% statutory recycling requirement were applicable. (ERDS Br., p. 6; 10/14 Tr. at 110-116.) ERDS's contention is wrong. The facilities that ERDS references are not required to report how much waste they take in or process, or how much waste they dispose of. Had this information been available, Ms. Smith would have evaluated it. (10/14 Tr. at 116-117.)

ERDS complains that she did not consider these facilities in her analysis. (ERDS Br., p. 6.) However, she testified that the "C and D recycling facilities" that ERDS references take clean separated materials, and do not typically receive a building that has been demolished that has a mixture of construction debris. (10/14 Tr. at 114.) Her analysis looked at the projected volume to be generated by each county, not by any individual facility, because the individual facility numbers were not available. She relied upon county population numbers that were available and county plan generation and recycling goals that were available. She presented every calculation in her report and provided all citations to her sources. (10/14 Tr. at 115-117; Pet. Ex. 3, Criterion 1, pp. 3-4.) ERDS attempts to suggest that Ms. Smith admitted that the county numbers she relied upon varied widely. (ERDS Br., p. 6.) However, Ms. Smith testified that each county prepares its plan and some base their projections on a per capita basis (per person) or on a per employee basis, which would result in different generation rates applied for the calculation. (10/14 Tr. at 128-129.)

Finally, as a last attempt to discredit Ms. Smith's expert evaluation and calculations, ERDS attacks her available disposal capacity analysis. (ERDS Br., p. 6.) In doing so, it mischaracterizes her testimony. (ERDS Br., p. 6.) ERDS attempted to have Ms. Smith concur that *any available capacity* that had final non-appealable siting approval was "legally able" to take

industrial waste. (ERDS Br., pp. 6-7, emphasis added.) Ms. Smith responded by stating that “a landfill could legally take more industrial waste than it’s taking now.” (10/14 Tr. at 132.) ERDS, however, ignores the balance of her response. In the remaining four pages of her testimony, Ms. Smith testifies that she does not rely upon airspace, even if the facility has received final on-appealable siting approval, because she cannot determine what the final capacity will be, when the capacity will be available, or if there may be any kind of restrictions on the amount of the capacity. (10/14 Tr. at 134.) Ms. Smith relies upon historic data at the various landfill sites in the service area and within 25 miles of the service area, restrictions in host agreements, percentage trends of various waste streams at the 26 sites she evaluated, and permitted available disposal capacity. She also evaluated transfer stations in the same area and considered the possible impact of those 63 facilities. (10/14 Tr. at 84-86; Pet. Ex. 3, Criterion 1, Section 4.)

Her analysis is not “arbitrary” nor is it the only way to “make her need equation work.” (ERDS Br., p. 7.) Ms. Smith applied consistent methods, evaluating historic data, IEPA-reported data, county plans, host agreements, and appeal status at 89 facilities. All of her data is contained in her report, presented in numerous tables and neither contradicted or rebutted. (Pet. Ex. 3, Criterion 1, Section 4.) ERDS’s claim that WMII and Ms. Smith should have performed a generation and capacity analysis for all waste streams, including municipal solid waste, is unfounded. (ERDS Br., p. 7.) The Expansion is not a municipal solid waste landfill. Ms. Smith evaluated the generation and capacity of all waste types currently accepted at Laraway RDF and that will continue to be accepted at the Expansion. (Pet. Ex. 3, Criterion 1, p. 1-1.)

2. Criterion (ii): The Expansion is Designed, Located and Proposed to be Operated to Protect the Public Health, Safety and Welfare.

Criterion (ii) requires a demonstration that the proposed facility does not pose an unacceptable risk to the public health and safety. Industrial Fuels, 227 Ill.App.3d at 547, 592

N.E.2d at 157. It does not, however, require a guarantee against any risk or problem. Clutts v. Beasley, 185 Ill.App.3d 543, 541 N.E.2d 844, 846 (5th Dist. 1989).

WMII presented persuasive evidence from three expert witnesses to establish criterion (ii), that the Expansion is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. ERDS did not present or offer any evidence to demonstrate that the design of the Expansion is flawed from a public safety standpoint or that its proposed operation poses an unacceptable risk to public health or safety.

ERDS begins its discussion of criterion (ii) referencing a 1983 PCB opinion regarding the proposed expansion of the ESL landfill. (ERDS Br., p. 8.) ERDS cites to the County Board's conclusion that the proposed ESL expansion "appears to be unsuitable for landfill purposes" and therefore not compliant with criterion (ii). (ERDS Br., p. 8.) Of course, the implication is irrelevant. When a local siting application requests approval to expand an existing facility, the relevant inquiry is whether the proposed expansion, not the existing site, satisfies the statutory criteria. American Bottom Conservancy v. Village of Fairmont City, No. PCB 01-159, slip op. at 25, 27 (Oct. 18, 2001); Citizens Opposed to Additional Landfills v. Greater Egypt Regional Environmental Complex, No. PCB 97-29, slip op. at 2 (Dec. 5, 1996). Alleged prior problems with the design, location or operational features of an existing facility are not relevant or probative in determining whether a proposed expansion satisfies criterion (ii). Hediger v. D&L Landfill, Inc., No. PCB 90-163, slip op. at 13 (Dec. 20, 1990).¹

¹ Even if the closed ESL landfill were somehow deemed relevant to the Laraway RDF Expansion, there is no indication that the design elements of the Expansion and the hydrogeologic conditions on which they are based are the same as the design elements of the proposed ESL expansion which were found wanting by the County Board. (ERDS Br., pp. 8-9.) But even more notably, ERDS neglected to point out that the County Board decision denying criterion (ii) was reversed by the PCB. Waste Management of Illinois, Inc. v. County Board of Will County, No. PCB 82-141, slip op. at 9, 17 (April 7, 1983).

ERDS next misstates the record about incoming waste volumes. It alleges that Dale Hoekstra testified that the maximum daily waste volume received at Laraway RDF was 19,000 tons, and that such a volume and its resulting host fees became more important than protecting a precious aquifer. (ERDS Br., pp. 8-9.) This is inflammatory speculation without any support in the record.

ERDS references past issues associated with ESL, which is obviously not a part of nor relevant to this Expansion, nor was it part of or relevant to the Laraway RDF 2006 expansion. (10/21 Tr. at 338-342, 375-376.) ERDS states that the Expansion is situated above “a major regional ground water aquifer in close proximity to the bottom of the proposed site” with “little by way of natural barriers to leachate migration, and the inevitable leakage will quickly migrate into the ground water.” (ERDS Br., p. 9.) This is another mischaracterization of the evidence. The Expansion design includes engineered systems to collect and remove leachate from the landfill. It includes a composite liner, consisting of three feet of compacted low permeability soil overlain by a 60-mil HDPE geomembrane. Additional protection is provided under the leachate collection pipes with the addition of a geosynthetic clay liner. (10/21 Tr. at 312-313; Pet. Ex. 3, Criterion 2, p. 5-6; Drawing No. 13.) The landfill base is sloped to remove leachate at numerous extraction points. (10/21 Tr. at 313; Pet. Ex. 3, Criterion 2, p. 6-2.) These engineered systems collect and allow for removal of leachate from the landfill. (10/21 Tr. at 302, 310.) Leachate leakage is not remotely likely, much less “inevitable”. (ERDS Br., p. 9.)

The subsurface geology beneath the engineered liner and leachate collection system consist of glacial deposits and then the uppermost bedrock at the site, Silurian dolomite. (10/21 Tr. at 410-411; Pet. Ex. 3, Criterion 2, Section 2.6.) The uppermost aquifer, or that portion of the subsurface where materials are completely saturated, is the lower portion of the unconsolidated

material that is saturated and the upper portion of the bedrock. It is located, on average, approximately 10 feet below the composite liner, which in some places beneath the Expansion is not even in the Silurian Dolomite but in the Henry Formation. (10/21 Tr. at 412-414, 426.) Groundwater flow in the uppermost aquifer is to the northwest, discharging along the bluff line, not to the Des Plains River. (10/21 Tr. at 422-423.) The discharge at the bluff line is so small that it does not reach the river. (10/21 Tr. at 423.) This is contrary to ERDS's assertion that the site is over a "major regional groundwater aquifer." (ERDS Br., p. 9.) The flow in the uppermost aquifer at the site is to the northwest of the Expansion, along a bluff line. (10/21 Tr. at 423.) It is not regional in nature.

Further, because the flow direction of groundwater in the uppermost aquifer has been defined, it is monitorable. (10/21 Tr. at 414-417.) The proposed groundwater monitoring system will supplement the existing system that currently monitors the uppermost aquifer. Its spacing is sufficient to monitor performance of the landfill. (10/21 Tr. at 416-418, 432.)

ERDS claims that exceedances have been reported at multiple monitoring wells on the site for the existing Laraway RDF, in particular, G-188. (ERDS Br., p. 9.) This claim is irrelevant. Releases or operational occurrences at an existing site are not relevant or probative of whether the design and operational elements of a proposed expansion comply with criterion (ii). Hediger, slip op. at 13. Notwithstanding the irrelevance of this claim, there have been no contaminant releases from the existing Laraway RDF.

Ms. Underwood testified that there is a process through which groundwater monitoring standards are developed at a site. (10/21 Tr. at 420-421.) Exceedances can occur prior to waste being placed in an area. This is what occurred at G-188. As a result, a significant modification permit application was submitted to the IEPA, following a groundwater monitoring confirmation

process to determine the source of the one exceedance. In the case of existing monitoring well G-188, of which ERDS complains, the exceedance was caused by naturally occurring groundwater conditions. This confirmation finding was submitted to IEPA, who confirmed and approved the alternative source as background conditions. As a result, an adjusted standard was determined for background conditions at that location. This scenario happens on many landfills as groundwater monitoring standards are established. (10/21 Tr. at 410-422.)

ERDS is wrong in its complaints about Ms. Underwood's one-dimensional groundwater impact assessment model. (ERDS Br., p. 9.) As part of the Application, Ms. Underwood performed and included a one-dimensional groundwater model, POLLUTE. (10/21 Tr. at 427-428; Pet. Ex. 3, Criterion 2, Section 10.) This model was performed for the Laraway RDF and approved by the IEPA. (10/21 Tr. at 428.) It is performed using site-specific information and conservative assumptions to look at the conditions of the landfill. (10/21 Tr. at 428-430; Pet. Ex. 3, Criterion 2, Section 10.) She testified that using a more complex model could be performed, but would also require using estimates because of the complexity of a hydrogeologic system. (10/21 Tr. at 429.) Using conservative model inputs in POLLUTE will overestimate the impact of conditions of the landfill. (10/21 Tr. at 429-430.) She also performed a sensitivity analysis to evaluate the range of input values that would be expected at the site. (10/21 Tr. at 430.) She did not testify, as ERDS alleged, that site specific conditions are too complex to model in a three-dimensional space. (ERDS Br., p. 9; 10/21 Tr. at 427-430.)

3. Criterion (vi): The IL 53/Laraway Road Traffic Pattern to and from the Expansion Minimizes Effect on Existing Traffic Flows.

Criterion (vi) was satisfied because WMII showed that the IL 53/Laraway Road traffic pattern to or from the Expansion minimizes impact on existing traffic flows, and the County Board, as it did in 2006 for the existing Laraway RDF, so found. WMII was not required to

demonstrate no impact or eliminate any problems; an applicant need only show that any impact has been minimized. Fairview Area Citizens Taskforce, 198 Ill.App.3d at 554-555. The key is to minimize impact on traffic because it is impossible to eliminate all problems. Id.

Rather than demonstrating that there is a traffic pattern that better minimizes impact on existing traffic flows than the IL 53/Laraway Road traffic pattern, ERDS challenges the County Board's finding on criterion (vi) by cross-examining WMII's traffic expert and calling her "incompetent." (ERDS Br., pp. 10-15.)

ERDS begins by claiming that "neither the application nor the testimony documented or described existing traffic flows." (ERDS Br., p. 10.) That claim is false. ERDS selectively presents in its brief that portion of page 5 of the Criterion 6 report which supports its claim, but omits the portion stating that existing facility traffic is included in the traffic counts, *the very first sentence on the page*. (ERDS Br., p. 10; Pet. Ex. 3, Criterion 6, p. 5, emphasis added.) The Application includes documentation of existing traffic flows; all traffic counts performed for evaluation of existing traffic flows are included in Appendix B of the Criterion 6 report. As Ms. Means stated in her report and ERDS omitted, "It should be noted that the current traffic volumes include traffic associated with the existing site." (Pet. Ex. 3, Criterion 6, pp. 4-5; Appendix B.) She testified that the amount of traffic going to the existing Laraway RDF was based upon 10,000 tons per day ("tpd"), as provided to her by the Applicant based upon historical operations and actual facts and data. (10/19 Tr. at 185, 278.) Further, she testified that the amount of traffic going to the existing Laraway RDF is the same amount of traffic that is proposed for the Expansion. (10/19 Tr. at 185-186.)

In her evaluation of existing traffic, Ms. Means did remove existing Laraway RDF traffic in order to perform a conservative analysis, by considering the traffic to and from the Expansion as

if it were a new facility. However, that analysis did not exclude the existing Laraway RDF traffic. Ms. Means first presented an analysis for existing traffic without existing Laraway RDF traffic. She then presented an analysis for existing traffic, *plus traffic associated with a 10,000 tpd volume*, which is the average volume for the existing Laraway RDF. The results are presented in Table 10 of her report. (Pet. Ex. 3, Criterion 6, p. 14, emphasis added.) This represents the existing traffic condition, as the existing Laraway RDF accepts an average of 10,000 tpd, and as she testified, will continue for the Expansion. (Pet. Ex. 3, Criterion 6, p. 5, Table 10; 10/19 Tr. at 185-186.) The existing conditions are not “fiction” as claimed by ERDS, because they include existing site traffic. (ERDS Br., p. 10; Pet. Ex. 3, Criterion 6, p. 5.) To suggest that “real current traffic conditions” was “intentionally withheld” is false. (ERDS Br., pp. 10, 13.)

Ms. Means then performed an analysis of levels of service (“LOS”) for traffic movements at all relevant intersections and road segments for existing traffic conditions, including existing Laraway RDF traffic. (Pet. Ex. 3, Criterion 6, Tables 9, 10.) The results show acceptable LOS for all movements and road segments, contrary to the misrepresentations of ERDS. (Pet. Ex. 3, Criterion 6, Tables 9, 10.) Ms. Means testified that the acceptable LOS for all analyses as an industry standard is an LOS D. (10/19 Tr. at 188-189; Pet. Ex. 3, Criterion 6, p. 5.) All of her analyses demonstrate an LOS D or higher during the AM and PM Street Peak Hours at 10,000 tons per day.

In fact, this is true for all analyses she performed. (10/19 Tr. at 189-191; Pet. Ex. 3, Criterion 6, Tables 9, 10.) All road segments operated at LOS C for existing traffic and for existing Laraway RDF traffic at 10,000 tpd. (10/19 Tr. at 189-190.) All intersections operated at LOS C or higher. The only exception is at IL 53 and Laraway Road. That intersection performed at a LOS C for the AM Peak Street Hour and a LOS D in the PM Street Peak Hour, for

both existing traffic and for existing Laraway RDF 10,000 tpd traffic. (10/19 Tr. at 190-191.)

Ms. Means testified that the threshold for LOS C is 35 seconds. Above 35 seconds is LOS D. ERDS did not address the information presented in the Application, instead falsely claiming that current traffic conditions at relevant intersections was “already unacceptable.” (ERDS Br., p. 11.) To the contrary, the delay for existing traffic which included existing Laraway RDF 10,000 tpd traffic was 36.7 seconds (LOS D), an increase of 1.0 second over the 35.7 second delay (LOS D) for existing traffic without existing Laraway RDF 10,000 tpd traffic. (10/19 Tr. at 190-191; Pet. Ex. 3, Criterion 6, Table 10.) None of these analyses demonstrate any unacceptable LOS. (ERDS Br., p. 11.) The delay for existing traffic and existing Laraway RDF 10,000 tpd traffic is 0.7 seconds to 1.7 seconds above the LOS C threshold. (Pet. Ex. 3, Criterion 6, Table 10.) Despite ERDS’s suggestion that existing Laraway RDF traffic was not presented, Ms. Means’ testimony and report proves the ERDS suggestion false.

ERDS then calls Ms. Means “incompetent.” (ERDS Br. p. 11.) This characterization is both false and absurd. ERDS criticizes the testimony of Ms. Means regarding her sensitivity analysis as “counter-intuitive,” brushing aside the very content of her explanation. (ERDS Br., pp. 11-12.) Ms. Means performed a sensitivity analysis of the impact on traffic flows for Expansion traffic in 2018, the anticipated opening date for the Expansion. She evaluated a 50% and 100% increase in Expansion tonnages, to 15,000 tpd and 20,000 tpd. (Pet. Ex. 3, Criterion 6, p. 8.) The sensitivity analysis shows a decrease in traffic delay at relevant intersections with an increase in traffic. ERDS finds this decrease “nonsensical”, but only after completely ignoring Ms. Means’ testimony, *even after citing it in its brief*. (ERDS Br., pp. 11-13.)

Ms. Means explains in her testimony that a resulting decrease in delay with an increase in traffic volume is a likely result from an actuated system, such as what exists at the intersection of

IL 53 and Laraway Road. (10/19 Tr. at 218-221.) She testified that an actuated system accounts for the distribution of traffic and its movements, accounting for the differences and adjusting delays accordingly, unlike a controlled pre-timed signal. As such, she would expect to see a decrease in delays because of the actuated system, which is what occurred. (10/19 Tr. at 219-220.)

Further, to suggest that Ms. Means failed to present the increased Expansion traffic numbers associated with her sensitivity analysis is plainly wrong. Tables 5, 6 and 7 of her report clearly present the total Expansion traffic associated with each sensitivity analysis performed, including her increase of Expansion traffic by 50% and 100%. (ERDS Br., p. 12; Pet. Ex. 3, Criterion 6, Tables 5, 6, 7.) Despite the ERDS misrepresentations of Ms. Means' sensitivity analysis and its suggestion that her results of future traffic are "nonsensical," the LOS results of the sensitivity analysis demonstrate that conditions remain at an acceptable LOS. (ERDS Br., p. 13; Pet. Ex. 3, Criterion 6, Tables 9, 10.)

ERDS's attack on Ms. Means' credibility is relentless, with continued, repetitive statements that Ms. Means' omitted existing Laraway RDF traffic, which is false. (ERDS Br., p. 13.) ERDS ventures into the area of Ms. Means' consideration of future developments in the area of the Expansion, an analysis not even required for a criterion (vi) review. (ERDS Br., p. 13.) ERDS claims that the reason two of three evaluated projects included in the area of the Expansion were considered are because "the significant improvements were needed in order to make the traffic analysis work." (ERDS Br., pp. 13-14.) This too is incorrect. For completeness, Ms. Means evaluated three roadway projects proposed in the area of the Expansion. Two of the projects were evaluated for the anticipated 2018 opening of the Expansion, but the third private-public partnership project, while evaluated, was not considered because no construction

date was scheduled and no funding has been secured. (Pet. Ex. 3, Criterion 6, p. 16.) Ms. Means properly evaluated the impact on existing traffic flows, not on future traffic flows. Accordingly, the LOS evaluation for existing traffic flows, including the existing Laraway RDF 10,000 tpd traffic, does not need the 2018 improvements to “make the traffic analysis work.” Acceptable LOS exists for existing traffic, including the existing Laraway RDF 10,000 tpd traffic. (Pet. Ex. 3, Criterion 6, Tables 9, 10.)

II. CONCLUSION

The County Board granted site location approval for the Laraway RDF Expansion, finding that criteria (i), (ii) and (vi) were met after the presentation of evidence and the direct and cross-examination of five WMII expert witnesses at the public hearing. No fact or opinion evidence was offered to contradict or refute WMII’s proof of criteria (i), (ii) and (vi) compliance. In arguing for reversal of the County Board decision based on witness credibility, ERDS asks this Board to reassess credibility, which the Board cannot do. Rather than being against the manifest weight of the evidence, the County Board decision was supported, and indeed compelled, by the manifest weight of the evidence. Accordingly, the decision should be affirmed.

Respectfully submitted,

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