BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PETITION OF BRICKYARD DISPOSAL & RECYCLING, INC.,	)	
	)	PCB No. 16-66
	)	(Permit Appeal- Land)
Petitioner,	)	
	)	
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Petitioner's Reply to Respondent's Response To Petitioner's Motion For Summary Judgment. Copies of these documents are hereby served upon you, via electronic filing or service.

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Dated: November 4, 2016

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Respectfully submitted,

BRICKYARD DISPOSAL & RECYCLING, INC

By: /s/Claire A. Manning

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
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PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, BRICKYARD DISPOSAL & RECYCLING, INC. ("Brickyard") and for its Reply to Respondent's, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("IEPA" OR "Agency") RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT states as follows:

In this permit appeal Petitioner seeks regulatory certainty regarding its proposal to redesign an area of the Brickyard landfill known as the wedge, which area is the subject of a current IEPA permit, but which permit limits Petitioner to filling the area with inert material. Petitioner desires to fill the area with municipal solid waste. While the Agency's filings unnecessarily complicate the issues before the Board (and raise new issues that were not part of the application or the Agency's decision on the application), there is but one overarching issue: does the Application propose a new pollution control facility as defined in Section 3.330(b)(2) of the Act, here an "area of expansion beyond the boundary of a currently permitted pollution control facility". If it does, siting is required pursuant to Section 39(c) of the Act. If it does not, the Agency's decision must be remanded to it for a determination on the technical merits of the application; those technical

merits are not currently before the Board – as the Agency's decision was to deny for incompleteness, the incompleteness being lack of siting.

In essence, the question before the Board is a legal one, perfectly appropriate for a summary judgment ruling. Moreover, the key, essential, material facts necessary to decide this overarching issue are uncontroverted and are contained in the permit application submitted by the Petitioner to the Agency in this matter; other key facts have been cited in Petitioner's prior filings. Nonetheless, simultaneous with this filing the Petitioner and the Agency have filed a Joint Statement of Facts which outlines certain uncontroverted facts the parties agreed to present in joint fashion. As articulated therein: "The parties have endeavored to cooperate to the greatest extent possible in drafting this Joint Statement to facilitate efficient resolution of these issues by the Board; however, the parties do not intend that the absence of a Joint Statement on a particular topic to be an admission or an agreement as to whether the underlying fact is relevant, material, or disputed."

A. Preliminary Matters

1. <u>The Agency Misconstrues the Parties Respective Roles in a Permit Appeal; the Board Should Address these Roles Consistent with its Precedent.</u>

In its Response, the Agency argues that the Petitioner has failed to meet its burden for summary judgment and "failed to satisfy its burden of production". In reply, Petitioner states the following: the role of the Petitioner in a permit appeal is well established: to demonstrate that the permit application presented to the Agency will not, if granted, violate the Illinois Environmental Protection Act ("Act") or a regulation of the Board promulgated pursuant thereto. The Board articulated that standard as follows:

> The sole issue before the Board in a permit review is whether the applicant has proven that the application, as submitted to the Agency, demonstrates that no violation of the Act and regulations would occur if the permit were granted. (*Joliet Sand & Gravel v. IPCB*, 163 Ill. App. 3d 830, 516 N.E.2d 955, 958 (3d Dist. 1987).) "The burden of proof is placed upon the applicant, [in a permit appeal review before

> the Board], to demonstrate that the reasons for denial detailed by the Agency are inadequate to support a finding that permit issuance will cause a violation of the Act or Board rules." (*Technical Services Co., Inc. v. IEPA*, PCB 81-105 at 2 (November 5, 1981).)
>
> *Centralia Environmental Services, Inc. v. IEPA ("Centralia"),* PCB 89-170 (May 10, 1990), 1990 WL 271325 at *5.

Yet, as the Board recognized in *Centralia*, and as is keenly plain in this case, "[i]n order for an applicant to adequately prepare its case in a permit review before the Board the applicant must be given notice of what evidence it needs to establish its case" because "[p]rinciples of fundamental fairness require that an applicant be given notice of the statutory and regulatory bases for the permit denial." *Id*. See also Wells *Mfg. Co. v. Illinois E.P.A.*, 195 Ill. App. 3d 593, 552 N.E.2d 1074 (1990).

Here, Brickyard submitted a permit application that seeks to redesign a discreet area of the permitted landfill in a manner that would allow Brickyard to accept municipal solid waste instead of inert material. The IEPA rejected that permit application without technical review, and without specifically articulated legal analysis, concluding that siting was required. It also rejected the permit application for the reason that certain technical information, such as a new Groundwater Impact Assessment, required by Sections 811.317 of the Board's rules for new landfill units, was not included. Given the context of this case, the Board is well placed to make its decision on one or the other of the parties' motions. Contrary to the Agency's assertions in its Response to Petitioner's Motion for Summary Judgment, Brickyard has supported its position with sufficient factual references (and citations) for its motion to be granted – should the Board agree that the proposed application does not involve an "area of expansion beyond the boundary of a currently permitted pollution control facility."

2. <u>The Board Must Reject the Two Arguments Made by the Agency Related to the 1992 Siting.</u>

a. Agency's Arguments Related to Notice Concerning the 1992 Siting.

One of the most egregious arguments made by the Agency in this proceeding calls into question the original 1992 local siting, via a notice argument that belies all prior permit actions that the Agency has previously (and correctly) made in reliance on the duly authorized Vermilion County ordinance that was the outcome of the siting proceeding. The issue is entirely unrelated to the Agency's permit decision here, and is raised for the first time on appeal. For that reason alone, it should be rejected by the Board. As the Board stated in *Centralia*:

> In order for an applicant to adequately prepare its case in a permit review before the Board the applicant must be given notice of what evidence it needs to establish its case.
>
> * * *
>
> Principles of fundamental fairness require that an applicant be given notice of the statutory and regulatory bases for permit denial. Fundamental fairness would be violated if the Board were to supply this missing information on its own initiative at the permit-review level. Such action by the Board would be not only inconsistent with the plain language of section 39(a), but would also require that the applicant anticipate what the Board will construe as the statutory and regulatory bases for the Agency's permit denial. The Act's permit provisions do not provide for a system where the applicant is given the statutory and regulatory bases for permit denial after the applicant has argued the merits of that denial.
> *Id*.

Additionally, the Agency's argument is legally incorrect and without any evidentiary basis whatsoever. As Petitioner has adequately addressed this issue in its Response to the Agency's Motion for Summary Judgment, at pages 11 – 13, we do not do so again here. However, in order to preserve the propriety of the local government decision made in 1992, given that the Agency raised this issue in this proceeding, Petitioner requests that the Board soundly address and debunk the arguments made by the Agency on this point.

b. The Agency's Arguments Related to Previous Siting of the Wedge Area.

The Agency wrongly asserts that a discreet portion of the wedge area was somehow not authorized to accept waste via the 1992 siting, calling into question (again, for the first time on appeal) the facts presented in Brickyard's permit application. There are two major flaws with this argument. First, it is directly contradicted by the record evidence. The notes and opinions of the Agency permit review staff squarely support the assertions of Petitioner in its permit application and in it motion for Summary Judgment:

> R. at 47549: The siting application ultimately approved by the [Vermilion County Board] included a conceptual design that would join Unit I and Unit II into one contiguous waste mass.
>
> R. at 47549: It appears that the proposed modification is not anything outside of that (sic) was proposed in the siting application in 1991.
>
> R at 47547: Based on the copy of the siting application included in this addendum, I must say that the drawings from the siting app do indicate Unit 2 is essentially a lateral expansion of Unit 1.
>
> R. at 46988: I found nothing in these 'siting' plan sheets (drawings and notes) that prohibits waste disposal in the 'wedge fill' that is the subject to this file review.

Second, the argument is without factual basis and is flat out wrong.[1] The Board must not allow the Agency to come up with arguments on appeal that are not articulated in its decision letter, nor consistent with the Agency permit reviewers' opinions contained in the administrative record

[1] In its legal filings, the Agency opines, without anything to support such opinion but for the drawings that were the subject of the permit reviewers' notes mentioned above, that there was a small area of the wedge that was under 675 feet previous to siting and therefore when the siting expansion was authorized to expand beyond 675 some of that area was missed. In addition to the drawings reviewed by the permit reviewers, which led to the Reviewers' opinions, the drawings that accompanied the 1981 permit application and were incorporated into that permit (the permit that existed prior to siting) demonstrate that the landfill was authorized to fill waste up to a ceiling of 675 foot prior to siting and the siting decision simply expanded that ceiling. While these drawings are referred to in the 1981 permit, at R. 6535, the Agency did not include the 1981 permit application in the record. Presumably then, the Agency permit staff did not consider the original drawings relevant, likely because they buttressed the opinions set forth above.

itself. That siting authorized the placement of waste in the entire landform, as legally described at siting, is simply not a disputed fact on the basis of the administrative record.

3. <u>The Agency Misinterprets Its Statutory and Regulatory Obligations Related to an Administrative Record.</u>

The Agency provides a lengthy response regarding its administrative record obligations in a permit appeal. Agency Response, pp. 23-30. In reply, Petitioner suggests that the Board is itself in the best position to determine the propriety of the Agency's compliance with its procedural rules, since it is the Board on review (and any court thereafter), along with the petitioner in a permit appeal, that has to ascertain from such record the actual basis of (and support for) the Agency's decision. Here, the length and order of the documents in this record, together with the sparsity of analysis in the Agency's permit decision letter, has made that job almost impossible.

In justification of the propriety of its 47,578 page record submittal here, the Agency cites *AmerenEnergy Medina Valley Cogen, LLC* v. *Illinois Envtl. Prot. Agency*, PCB 14-041 (Mar. 20, 2014). There, the issue concerned a dispute over an internal Agency memorandum that was included in its administrative record in support of its denial of a Beneficial Use Determination ("BUD"). *AmerenEnergy* sought to strike the memorandum from the administrative record. The Board examined its procedural rule regarding Agency records in permit appeals[2], which requires the inclusion of:

> 1) Any permit application or other request that resulted in the Agency's final decision;
> 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;

[2] The Agency response is correct that Petitioner's pleading erroneously included a procedural rule regarding underground storage tank appeals. However, Petitioner's pleading also discussed the correct rule, and is on point legally. Petitioner does however regret any confusion it may have caused with this error.

> 3) The permit denial letter . . . of the issued permit or other Agency final decision;
> 4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
> 5) Any other information the Agency relied upon in making its final decision.
>
> *35 Ill. Adm. Code 105.212(b).*

The Board agreed with the Agency that the Section 105.212(b) applied in the context of a BUD and included the internal memorandum, correctly interpreting Section 105.202(b) as allowing for the inclusion of anything the Agency relied upon or "should have relied upon" in its decision.

The Agency's use of *AmerenEnergy* to justify this record is misplaced. Petitioner does not here challenge the Agency's inclusion of internal memoranda (here the permit review notes); indeed, the notes of the Agency's permit staff *should have informed* the Agency's decision, especially as it relates to the drawings contained in Petitioner's application.[3] Page 5, herein. The Agency has interpreted the Board's dicta in *AmerenEnergy* as justifying the inclusion of anything within its "collective knowledge" regarding a permitted site. Agency Response, footnote 7, p. 25. While that may be appropriate in certain circumstances, it certainly is not here – where the Agency's determination was essentially a legal one and the Agency's statutorily-required permit decision letter does not contain the specificity required by the Act. 415 ILCS 5/39(a). Petitioner's point is simply that when the Agency submits such an unwieldly record, without tethering any documents in that record to any specified rationale for its decision prior to review, the Agency is in a position to utilize those documents post-decision to create arguments out of whole cloth, as

[3] In prior pleadings, Petitioner has only pointed to the inclusion of the Adjusted Standard documents as inappropriate for inclusion, but certainly that is not the only inappropriate document submitted to the Board as part of this administrative record. Petitioner has simply chosen not to exert its resources in objecting to them via motion to strike. One such example is the final page of this record, R. 47,578, which post-dated the IEPA decision by two months and which can only be described as unreliable hearsay irrelevant to the important statutory interpretation questions present in this proceeding. Neither the Board nor IEPA can appropriately rely on such "document" as justification for an appropriate decision on the Petitioner's application.

it did here. The record simply does not comply with the language or spirit of the Act and the Board's rules; prejudice therefrom need not be specifically pled for the Board to address this issue in a manner that aids the Agency, the regulated community, and the Board, in future permit proceedings.

B. The Permit Application Does Not Propose a New Pollution Control Facility as Defined in Section 3.330 of the Act and, therefore, Siting is Not Required.

As stated above, there is but one overarching issue in this matter, and it is a legal one, specific to the expertise of the Board and where appropriate the courts on review: does the application propose a new pollution control facility as defined in Section 3.330(b) (2) of the Act, here an "area of expansion beyond the boundary of a currently permitted pollution control facility". If it does, siting is required pursuant to Section 39(c) of the Act. If it does not, the Agency's decision must be remanded to it for a determination on the technical merits of the application; those technical merits are not currently before the Board – as the Agency's decision was to deny for incompleteness, the incompleteness being lack of siting.

The Agency's Response suggests that the referenced sections above are somehow mutually exclusive. They are not. In relevant part, Section 39(c) mandates that:

> no permit for the development or construction of a *new pollution control facility* may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act.
>
> 415 ILCS 5/39.2(c)

While the Agency has implicated this mandate in its decision letter here, such mandate is only applicable if the permit application in question proposes a "new pollution control facility" as defined in Section 3.330 of the Act. 415 ILCS 5/3.330 In evaluating whether something is or is

not a new pollution control facility, the Board and courts examine whether one of the three statutory prongs of the definition fit the proposed application; here, the relevant prong is whether the permit redesign application proposes an "area of expansion beyond the boundary of a currently permitted pollution control facility." 415 ILCS. 5/330(b)(2). *M.I.G. Investments v. IEPA*, 122 Ill.2d 392 (Ill. 1988) (M.I.G); *Bi-State Disposal, Inc. v. IEPA*, 203 Ill. App. 3d 1023 (Fifth Dist., 1990) (Bi-State); *Saline County Landfill v. IEPA*, PCB 02-108, 2002 WL 1040333 (Saline); and *Waste Management v. IEPA*, 1994 WL 394695 (July 21, 1994). (Waste Management).

Petitioner has thoroughly discussed the above cases in its prior pleadings and will not do so in detail again. Motion, at 13 – 20; Response to Agency Motion, at 1-18. The two court cases set forth above (*M.I.G.* and *Bi-State*) appear to be the only court cases relevant to the Section 3.330 analysis required here. Neither is directly on point though, as each involved a situation where there was no previous siting – and the court had to determine, without previous siting for context, what is an "expansion beyond the boundary of a currently permitted pollution control facility"? To do so, the courts examined the legislative policies related to siting which, here, have already been effectuated.

As the *M.I.G.* and *Bi-State* courts had no previous siting decisions as a referential starting point for triggering the question of an "expansion beyond" the courts of course looked to existing Agency permitting as the starting point – to determine what constitutes "beyond". The Supreme Court in *M.I.G.* utilized the initial permit issued by the Agency as the starting point, holding that Section 3.330 was there triggered by a proposal which would "increase vertically the waste disposal capacity of a landfill *beyond the limits set out in the initial permit issued by the Agency*" (emphasis added). *M.I.G. Investments*, at p. 397. The only difference in *Bi-State* was that the facility had reduced its previously permitted fill area (from that initially permitted), but then

sought to fill that area; unlike here however, Bi-State sought to do so *without* siting and *after* the siting law had taken effect. Thus, unlike here, the fill area had not previously been the subject of siting; when it was authorized again, siting applied. Thus, neither court case involved the situation here before the Board.

The Agency cites to a third court case, *City of Waukegan v. IEPA*, 339 Ill. App. 3d 963, 975-76 (2d Dist. 2003) (Waukegan) for the proposition that the Act requires use of the "Agency-approved permit boundaries" as the relevant "facility" boundaries as set forth in Section 3.330. Agency Response at. 18. Yet, that case holds no such thing. *Waukegan* involved a declaratory and injunctive relief claim made by the City of Waukegan against the Agency, for having issued a permit to the North Shore Sanitary District ("District") for the construction of a biosolids reuse facility at District's waste water treatment facility. The City argued that the District needed to achieve local siting prior to permitting; the Agency disagreed and allowed the permit to issue without siting. The court dismissed Waukegan's claim, finding that the question of siting as a precursor to permitting was a question within the Agency's statutory wheelhouse (*i.e.,* authority). Here, Petitioner does not question the Agency's *authority* under Section 39 of the Act to make the decision it did; it questions the decision itself, a question now rightfully within the jurisdiction of the special expertise of the Board on appeal.[4]

In terms of the two prior Board cases with some relevance here, *Saline* and *Waste Management*, Petitioner discussed both in its prior pleadings – and distinguished each. Motion, at 17-20 and Response, at 17-18. In each case the Board discussed the potential relevance of the

[4] The Agency's extrapolation of the *Waukegan* case for support that it "must be [the] Agency's own permit boundaries" that are relevant here, as opposed to "any set by local siting" is especially perplexing, given the context of that case (which did not involve boundaries at all). Agency Response, at 19. Certainly, Petitioner does not challenge the expertise of the Agency's permit staff to review maps and drawings, as suggested by the Agency's Response. In fact, had they utilized this expertise here by incorporating the review notes concerning the siting maps into the permit decision, instead of making up contrary factual and legal arguments on review related to those maps, we would not be quibbling about what it is that Brickyard had achieved at siting. See also footnote 2 herein.

Section 39.2 factors in the context of a decision as to siting. The Petitioner does not intend to revisit those cases here, but will respond to the Agency's claims related to volumetric expansion, in response to the Agency's arguments regarding those cases and the question of expansion.

Respondent misrepresents Petitioner's prior statements related to volumetric capacity, as Petitioner never intended to deny or mislead the Board related to the fact that waste placement in the wedge area would result in an increase in the waste calculation that is currently set forth in the 1994-419 permit. Indeed, the permit application reflects such. R at 47069. However, in the context of the facts present here, Petitioner asserts that the volumetric calculation negotiated between Petitioner and the Agency in prior permitting decisions is not relevant to the statutory language defining "new pollution control facility" and the parties' focus on such is inconsistent with this language where, as here, siting has already occurred – and where the local government has already authorized placement of waste in the very area subject now to redesign via permitting.

Indeed, as sited, volumetric capacity at this landfill was defined by the dimension of the landform, not by cubic yards of waste. The statutory language of Section 3.330 focuses on the boundary of the "facility" and so should the Board. The vertical and horizontal boundaries of the facility were established in 1981 (which even then included two units). R. at 6535. The 1992 siting authorized a lateral and vertical expansion of those facility boundaries, continuing under one landform, with both units. This fact is not reasonably disputed on this administrative record. Page 5 herein.

Such is the "facility" relevant to the Section 3.330 analysis; the Petitioner does not here seek to expand the boundaries of that facility. The actual vertical and horizontal boundaries of the pollution control facility have not been changed since siting, even though the allocation of waste placement within those boundaries may have been modified by permit from time to time. Here, it

has been the Agency that has defined volume of waste within the respective units of this facility, by quantity, though permitting; such has nothing to do with the local government's 1992 siting authorization.

The Agency's authorized volumetric calculations have always been the subject of post-siting permitting. And those calculations have been subject to change, also via permitting. As one example, in Permit Log 1999-001 Brickyard was allowed to modify the fill area between Units 1 and 2, subject to the IEPA's requirement that trade airspace from the then approved Unit 2 design. R. at 00023 (for 1992-188); 0399; 04132; 04142 (for 1999-001) and 05140 (for 1994-419).

The point is that previous redesign decisions did not trigger siting, and it should not do so here either. Given its "collective knowledge" of this facility, if IEPA believed that the increased volumetric calculation in this application triggered siting[5], it should have articulated such in its permit decision letter, as it is required to do by the Act (*i.e.*, "…the specific type of information, if any, which the Agency deems the applicant did not provide the Agency"; and "a statement of specific reasons why the Act and the regulations might not be met if the permit were granted."). 415 ILCS 5/39(a). But here, the "facility" had been sited subsequent to the creation of a unit that contemplated waste placement in the very area contemplated here. Furthermore, the vertical and horizontal extent of that area is consistent with the area proposed in the application. Accordingly, siting should not be triggered. Nothing in the language of Section 3.330, as applied to *these* facts, suggests that the legislature intended that Agency permitting could serve to limit that which an entity had achieved via siting.

[5] While the Agency's pleadings also assert that siting should be triggered by increase in landfill life, it does not articulate that in its decision letter either and, from Petitioner's perspective, the point is the same: the local siting decision did not articulate any specific landfill life, but authorized the location of a facility (and waste within that facility) within the same three-dimensional landform that is currently permitted.

Section 3.330 defines a new pollution control facility as one that represents an "area of expansion beyond the boundary of a currently permitted pollution control facility." Boundary is not defined in the Board's landfill rules, but facility is:

> "Facility" means a site and all equipment and fixtures on a site used to treat, store or dispose of solid or special wastes. A facility consists of an entire solid or special waste treatment, storage, or disposal operation. All structures used in connection with or to facilitate the waste disposal operation will be considered a part of the facility. *A facility may include, but is not limited to, one or more solid waste disposal units, buildings, treatment systems, processing and storage operations, and monitoring stations*.
>
> 35 Ill. Adm. Code 810.103

Given this definition, Brickyard's proposal does not seek to expand any relevant boundary of the facility, as the wedge area is (and has been since its initial permitting, as expanded by siting) within this facility. Moreover, this facility has been the subject of numerous permits. Indeed, as the Board's landfill rules define "permit area" the wedge is part of the currently permitted area:

> "Permit area" means the entire horizontal and vertical region occupied by a permitted solid waste disposal facility.

Thus, the wedge area is already part of the "currently permitted pollution control facility" as set forth in Section 3.330 of the Act.

Even considering the Board's landfill rules, the Petitioner's permit application does not seek to create a new facility (or a new unit) – beyond that which was already created via the 1992 siting:

> "New facility" or "New unit" means a solid waste landfill facility or a unit at a facility, if one or more of the following conditions apply:
>
> > It is a landfill or unit exempt from permit requirements pursuant to Section 21(d) of the Act [415 ILCS 5/21(d)] that has not yet accepted any waste as of September 18, 1990;

> It is a landfill or unit not exempt from permit requirements pursuant to Section 21(d) of the Act [415 ILCS 5/21(d)] that has no development or operating permit issued by the Agency pursuant to 35 Ill. Adm. Code 807 as of September 18, 1990; or
>
> It is a landfill with a unit whose maximum design capacity or lateral extent is increased after September 18, 1990

As Section 3.330 does not utilize the terminology "lateral expansion" or "horizontal expansion" or "unit" the above regulations (which track the federal Subtitle D rules) are not relevant to our inquiry here as it regards Section 3.330 of the Act. Nevertheless, even if the above rules were relevant, they were relevant *prior* to the 1992 siting. That siting already triggered the expansion beyond the then permitted waste boundaries – into the area that is the subject of Brickyard's application:

> *"Lateral expansion" means a horizontal expansion of the actual waste boundaries of an existing MSWLF unit occurring on or after October 9, 1993. A horizontal expansion is any area where solid waste is placed for the first time directly upon the bottom liner of the unit, excluding side slopes on or after October 9, 1993.* [415 ILCS 5/3.275]

Here, Petitioner's application simply seeks to modify the waste disposal area currently configured in Unit 2 so that it incorporates the wedge area, which is already part of the currently permitted area (albeit for purposes of placement of inert material, not municipal solid waste). The modification would simply take the waste up the side slopes of Unit 1, with an appropriate separation layer between the two units, which would allow for independent groundwater monitoring of the respective units, and continued separate and distinct regulation of the two units.

Here, Petitioner suggests that Section 3.330 provides the appropriate focus for the Board's decision. What is before the Agency and the Board here is a redesign of a permitted area that has already been the subject of siting – and that has always been contemplated, by the local government, to accept waste. The local government created no limitations on the life of the landfill

or the volumetric capacity, except that such capacity was within one landform, articulated via actual measurements. Brickyard's proposal maintains all of those previously sited parameters. The proposed area for waste placement is entirely within the three-dimensional profile of this facility as sited *and* as currently permitted. The issues relevant to placement of waste in this area are highly technical in nature, appropriate for Agency review through permitting, not local government siting, where the legislative policy focus is location of the landfill area itself – not waste placement within the permitted boundaries of the landfill facility.

CONCLUSION

The Petitioner respectfully requests the Board to grant its Motion for Summary Judgment on the question of siting, remanding it for the Agency's consideration of the technical aspects of the proposed redesign of the wedge and, in ordering any such remand, provide the parties with sufficient direction for moving this application forward to decision as the Board believes appropriate under the circumstances.

Respectfully submitted,

BRICKYARD DISPOSAL & RECYCLING, INC.

By /s/Claire A. Manning

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 4th day of November, 2016, I have served by the manner indicated below the attached PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT upon the following persons:

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