

ILLINOIS POLLUTION CONTROL BOARD
January 24, 2008

ROCHELLE WASTE DISPOSAL, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-113
)	(Third-Party Pollution Control Facility
THE CITY OF ROCHELLE, an Illinois)	Siting Appeal)
municipal corporation, and THE ROCHELLE)	
CITY COUNCIL,)	
)	
Respondents.)	

CHARLES F. HELSTEN OF HINSHAW & CULBERTSON, LLP, APPEARED ON BEHALF OF PETITIONER ROCHELLE WASTE DISPOSAL, L.L.C.;

ALAN H. COOPER APPEARED ON BEHALF OF RESPONDENT THE CITY OF ROCHELLE; and

DONALD J. MORAN OF PEDERSEN & HOUP APPEARED ON BEHALF OF RESPONDENT THE CITY COUNCIL OF THE CITY OF ROCHELLE.

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On October 16, 2006, the City of Rochelle (City) filed an application with the Rochelle City Council (City Council) for local siting approval of a proposed expansion of the Rochelle Municipal Landfill in Rochelle, Ogle County. Rochelle Waste Disposal, L.L.C. (RWD), operates the existing landfill and, under the term of a host agreement with the City, would operate an expanded facility. The City Council granted siting approval, subject to a number of special conditions, on April 11, 2007.

RWD appealed the City Council's determination to impose eight of the special conditions. RWD argues that the conditions are not reasonable, supported by the record, or necessary to accomplish the purposes of Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (2006)).

Today, the Board concludes that the City Council's determination to impose challenged Special Conditions 8, 13, 22, 23, 26, and 28 is not against the manifest weight of the evidence. The Board also concludes that Special Conditions 33 and 34 lack support in that record and modifies those conditions as proposed by the City Council and based on the record, as described in the opinion below.

Below, the Board first provides the procedural history and the factual background of this proceeding. The Board then addresses the statutory background, standard of review, and burden

of proof. The Board then proceeds to address the special conditions imposed under siting criterion (ii), relating to protection of public health, safety, and welfare, and criterion (vi), relating to minimizing the impact on existing traffic flows. The Board reviews the parties' arguments regarding those conditions before summarizing the *amicus curiae* brief filed by the Concerned Citizens of Ogle County (CCOC). The Board then discusses the contested issues before reaching its conclusion.

PROCEDURAL HISTORY

On May 16, 2007, RWD filed a third-party petition for review (Pet.) under Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2006)). In an order dated June 7, 2007, the Board accepted RWD's petition for hearing. In the same order, the Board on its own motion consolidated this case for hearing with Concerned Citizens of Ogle County v. The City of Rochelle, the City Council of the City of Rochelle, Illinois, and Rochelle Waste Disposal, L.L.C., PCB 07-116 (hereinafter PCB 07-116).

On June 26, 2007, the City filed a "Motion for Extension of Time for Filing Record and for Leave to File Reduced Number of Copies." In an order dated July 6, 2007, the hearing officer granted the motion by extending the deadline for filing the record to July 13, 2007, by allowing the City to file an original and two copies of the record, and by allowing the City to file an original and one copy of correspondence filed as part of the application.

On July 5, 2007, in PCB 07-116, with which this case had been consolidated, petitioner CCOC filed a motion to withdraw its petition for review. On the same date, CCOC also filed a motion for leave to file an *amicus curiae* brief in this proceeding. On July 12, 2007, the Board granted CCOC's motion to withdraw its petition for review in PCB 07-116 and closed that docket. In the same order, the Board granted CCOC's motion for leave to file an *amicus curiae* brief in this proceeding.

On July 11, 2007, the City filed the administrative record (C_) in this proceeding.

Board Hearing Officer Bradley P. Halloran conducted a hearing (Tr.) on July 16, 2007 at the Rochelle Municipal Building. None of the parties offered testimony or exhibits. At hearing, the Board received oral public comment from Mr. Frank Beardin (Tr. at 7-11), Ms. Janet Stahlheber (Tr. at 11-14), Ms. Shirley Kersten (Tr. at 14-15), Ms. Ellen Hill (Tr. at 16-17), Mr. Roger Thuestad (Tr. at 17-19), Mr. Hugh McDermitt (Tr. at 19-21), and Ms. Laronda Thuestad (Tr. at 22-23).

On July 27, 2007, the Board received a public comment from Mr. Hugh A. McDermitt (PC 1). On July 30, 2007, the Board received public comments from Ms. Shirley Kersten (PC 2), Ms. Janet Stahlheber (PC 3), and Ms. Ann McDermitt (PC 4). On July 31, 2007, the Board received public comments from Mr. Frank Beardin (PC 5), Ms. Charlotte Berg (PC 6), and Mr. Lyle G. Headon (PC 7).

On November 20, 2007, RWD filed a motion for leave to file a motion for partial summary judgment. On November 21, 2007, RWD filed a supplement to its motion for leave.

On November 27, 2007, the Rochelle City Council filed a response voicing no objection to RWD's motion for leave. On November 29, 2007, the City of Rochelle also filed a response voicing no objection to RWD's motion for leave. On November 30, 2007, RWD filed a motion for partial summary judgment, accompanied by a memorandum in support of the motion. On December 4, 2007, RWD filed an amended motion for partial summary judgment. In an order dated December 6, 2007, the Board denied RWD's motion for leave to file a motion for partial summary judgment.

On August 1, 2007, RWD filed its opening brief (RWD Brief). On December 10, 2007, the Board received three filings: a response brief from the City of Rochelle (City Resp.), a response brief from the Rochelle City Council (Council Resp.), and the *amicus curiae* brief from CCOC (CCOC Brief). On December 17, 2007, RWD filed its reply brief (Reply).

FACTUAL BACKGROUND

In this section of the opinion, the Board sets forth the background facts of this case. Facts pertinent to each argument will be provided in subsequent sections of the opinion.

Site Location

The Rochelle Municipal Landfill #2 is located at 6513 Mulford Road in the City of Rochelle, Ogle County. C-1 at 2; *see* C-2 at Appendix D.1 (legal description and plat), C-2 at Appendix D.2 (annexation ordinance). The landfill is owned by the City of Rochelle and began operation in 1972. C-1 at E-1. Under the terms of a host agreement with the City, RWD has operated the landfill since 1995. *Id.*; *see* C-2 at Appendix C.1 (host agreement) The landfill occupies an 80-acre site with a waste footprint of 61.4 acres. C-2 at Appendix A.1. Permitted capacity at the existing landfill is expected to be exhausted in 2009. *Id.*

The Application

On October 16, 2006, the City, as landfill owner, filed an application for expansion of the Rochelle Municipal Landfill #2. C-1 at 1; *see also infra* at 6-7 (host agreement). The City proposes to expand the landfill to 219.874 acres with a waste footprint of 110.741 acres. C-2 at Appendix A.1 The City proposes to accept into the expanded landfill general municipal waste, construction and demolition debris, and non-hazardous special waste. *Id.* The City expects a waste stream of 1,000 tons per day and exhaustion of the expanded capacity after 23.3 years in 2031. *Id.*

Siting Procedures

On October 10, 2006, the City Council adopted Ordinance No. 06-3483 amending Chapter 78 of the Municipal Code of the City of Rochelle, which addresses pollution control facilities. C-2 at Appendix A.2 (siting ordinance). On October 16, 2006, the City filed its application for expansion. *See* C-1 – C-7.

The Rochelle City Council issued a “Notice of Public Hearing” with regard to the City’s application for expansion. C-1650-51. The public hearing began on January 22, 2007, and continued to January 25, 2007. *See* C-20 (transcripts). The public hearing resumed on February 8, 2007, in order to address RWD’s operating history. *See* C-21 (transcript). At hearing, the City presented 7 witnesses: Mr. J. Christopher Lannert (C-20 at 85-182 (January 22, 2007 transcript)), Mr. Walter S. Willis (C-20 at 186-200 (January 22, 2007 transcript)), Mr. Gary DeClark (C-20 at 202-256 (January 22, 2007 transcript)), Ms. Christina Seibert (C-20 at 256-302 (January 22, 2007 transcript)), Mr. Michael A. Werthman (C-20 at 15-181 (January 23, 2007 transcript)), Mr. Daniel Drommerhausen (C-20 at 198-358 (January 23, 2007 transcript), (C-20 at 5-93 (January 24, 2007 transcript)), Mr. Devin Moose (C-20 at 123-366 (January 24, 2007 transcript), (C-20 at 5-220 (January 25, 2007 transcript)). CCOC presented the testimony of one witness, Mr. Charles Norris. C-20 at 251-327 (January 25, 2007 transcript), C-20 at 5-210 (January 26, 2007 transcript). RWD presented the testimony of one witness, Mr. Thomas Hilbert. C-21 at 8-168 (February 8, 2007 testimony). In addition, the City presented the testimony of one rebuttal witness, Mr. Ken Alberts. C-21 at 168-181 (February 8, 2007 testimony).

The City introduced ten hearing exhibits. The City’s application for landfill expansion comprises its Exhibit 1. *See* C-1 – C-7 (application). Materials regarding the City’s notice of public hearing comprise its Exhibit 2. *See* C-24 (hearing notices by publication and certified mail). Power Point presentations by J. Christopher Lannert, Walter S. Willis, Gary DeClerk, Christina M. Seibert, Michael A Werthmann, Daniel J. Drommerhausen, and Devin A. Moose were admitted as the City’s Exhibits 3, 4, 5, 6, 7, 9, and 10, respectively. C-25 at Applicant’s Exhibits 3-10. Also, a letter from Curtis D. Cook, County Engineer of Ogle County, was admitted as the City’s Exhibit 8. *Id.*

RWD introduced two hearing exhibits: articles of organization and financial reports as Operator’s Exhibit 1, and a summary of inspections by the Ogle County Solid Waste Management Department as Operator’s Exhibit 2. C-25 at Operator’s Exhibits 1-2.

CCOC introduced 7 hearing exhibits. Photographs taken December 17, 2006 comprise both CCOC Exhibit 1 and 1A. C-25 at CCOC Exhibits 1-6 (including Exhibit #1A). CCOC Exhibit 2 consists of three photographs of a December 9, 2006 truck accident. *Id.* CCOC Exhibit 3 consists of various photographs of the landfill. *Id.* CCOC Exhibit 4 is a map of the landfill site showing the points from which photographs were taken. *Id.* CCOC Exhibits 5 and 6 are the resume of Charles H. Norris and his Power Point presentation, respectively. *Id.* The City Council introduced one hearing exhibit, a study of alternate landfill liner systems. C-25 at City Council Exhibit 1.

The City Council received oral public comment in the course of the hearing. *See* C-20 at 7-15, 181-97, 324-26 (January 23, 2007 transcript); C-20 at 93-122, 198-99, 255-72, 318-19 (January 24, 2007 transcript); C-20 at 72-110, 231-50, 327-37 (January 25, 2007 transcript); C-21 at 184-204, 275-77 (February 8, 2007 transcript); *see also* C-1648-49 “Public Comment Sign-Up Sheet”).

In addition, the City received written comments 30 days after the conclusion of the hearing, until March 10, 2007. *See* C-21 at 278-79; C-24 (City's Notice of Public Hearing); C-1650-51 (same). The record includes 50 written public comments. C-26 –145.

On March 9, 2007, the City filed "Applicant's Proposed Findings of Fact and Conclusions of Law." C-821-82; *see* C-2 at Appendix A.2 (siting ordinance Section 78-76(n) regarding proposed findings); C-21 at 279. The City proposed finding that that the application satisfied both criteria (ii) and (vi). C-854, C-870.

On March 9, 2007, CCOC filed its "Evidentiary Summary and Proposed Findings of Fact and Conclusions of Law." C-271-332. CCOC proposed finding that the application did not satisfy criteria (ii) or (vi). C-308, C-317. CCOC suggested that, in the event the City Council found that the application satisfied the siting criteria, eighteen special conditions should be imposed. C-322-25.

The City Council retained Patrick Engineering, Inc. (Patrick Engineering) as a technical consultant under the terms of the City's siting ordinance. C-253; *see* C-2 at Appendix A.2 (Rochelle siting ordinance). On March 23, 2007, Patrick Engineering issued to the City Council a report on the application for siting approval. *See* C-251-70. Patrick Engineering stated that it had "reviewed the application, the transcripts of the public hearings, and other materials submitted into the record." C-253. With regard to criterion (ii), the report concluded that "the design, operation and location of the expansion is designed and proposed to be operated to be protective of the public health safety and welfare" subject to 37 special conditions pertaining to design, operation, and location. C-262-66. The report did not specifically review or address criterion (vi). *See* C-253.

On March 30, 2007, the local hearing officer filed his findings of fact, conclusions of law, and recommendations. C-206-50. The hearing officer concluded, based on his review of the record, that the application satisfied the siting criteria and recommended that the City Council approve the request for siting subject to special conditions. C-210; C-243-48. In addressing the operator's previous operating experience, the hearing officer found "all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the previous operating experience." C-242-43.

On April 11, 2007, the City Council convened a special meeting to consider the application. *See* C-22 (transcript). The City Council voted with six in favor and one opposed that the application demonstrated compliance with criterion (ii) with the attachment of Special Conditions 1-32. C-22 at 117-18 (transcript); *see* C-1655-56 (Resolution 07-10). The City Council voted with six in favor and one opposed that the application demonstrated compliance with criterion (vi) with the attachment of Special Conditions 33-35. C-22 at 55-56 (transcript); *see* C-1656 (Resolution 07-10). With seven voting in favor and none voting against, the City Council approved Resolution 07-10 approving the application for local siting approval. C-22 at 119-20; *see* C-1652-61.

On April 20, 2007, RWD filed a motion to reconsider the City Council's imposition of specified special conditions. C-180-82. On various grounds, RWD requested that the City

Council reconsider its decision to impose Special Conditions 8, 13, 22, 23, 26, 28, 33, and 34. *Id.* On April 27, 2007, CCOC filed its response to the motion to reconsider, which requested that the City Council not reconsider its April 11, 2007 decision or, in the alternative, strengthen the special conditions. C-168-78. On April 27, 2007, the City filed its response to the motion to reconsider. C-146-57. The City requested “that the City Council grant the Operator’s motion, in part, and deny it in part, by reconsidering Special Conditions 8, 13, 22, 23, 26, 28, and 34, and upon r4econsideration, deleting or modifying those conditions” according to its response. C-157.

On May 8, 2007, the City Council convened a special meeting to address RWD’ motion for reconsideration. C-23 at 1-4. The City Council voted with six in favor and one opposed to grant RWD’s motion for reconsideration. C-23 at 5-6; *see* C-1664 (Resolution 07-18). With seven voting in favor and none opposed, the City Council upon reconsideration voted to affirm Special Condition 8 as imposed. C-23 at 15-16; *see* C-1664. With six voting in favor and one opposed, the City Council upon reconsideration voted to affirm Special Condition 13 as imposed. C-23 at 31-32; *see* C-1664. With four voting in favor and three opposed, the City Council upon reconsideration voted to affirm Special Condition 22 as imposed. C-23 at 43-46; *see* C-1664. With six voting in favor and one opposed, the City Council upon reconsideration voted to affirm Special Condition 23 as imposed. C-23 at 52-53; *see* C-1664. With seven voting in favor and none opposed, the City Council upon reconsideration voted to affirm Special Conditions 26 and 28 as imposed. C-23 at 64-65; *see* C-1664. With seven voting in favor and none opposed, the City Council upon reconsideration voted to affirm Special Condition 33 as imposed. C-23 at 81; *see* C-1664. With five voting in favor and two opposed, the City Council upon reconsideration voted to amend Special Condition 34. C-23 at 85-86; *see* C-1665. With seven voting in favor and none voting against, the City Council approved Resolution 07-18, which modified Special Condition 34, affirmed all other conditions, and in all other respects maintained in effect Resolution 07-10. C-1662-66 (Resolution 07-18).

Host Agreement

On August 28, 2006, the City Council passed, and on August 29, 2006, the mayor signed Ordinance No. 06-3472, entitled “An Ordinance Approving Restatement of Host Agreement for City Landfill.” C-2 at Appendix C.1. That ordinance authorized and directed the City Manager to execute a restatement of the existing host agreement between the City and RWD. *Id.* On September 26, 2006, the City and RWD executed a “Restatement of Host Agreement and Agreement for Operation/Development of City of Rochelle Landfill No. 2.” *Id.*

Paragraph 3.12 of the restated host agreement, regarding costs assumed by the operator, provides in pertinent part that

- (a) [s]ubject to the provisions of subparagraph (b) below, after the date of the Original Agreement, all costs (present and future) associated with the design, construction, development, operation, closure and postclosure phases of the Landfill and the Expanded Facility, and any and all costs, fees, fines, penalties, and/or expenses that may arise in any way from the design, construction, development, operation, closure and postclosure of the Landfill and the Expanded

Facility, are to be paid by, and are the sole responsibility of OPERATOR. OPERATOR shall also be responsible to pay any engineering, monitoring, and other professional fees and necessary expenses associated with the Significant Modification process which were incurred by the CITY subsequent to the date of public notice of the Request for Proposal for bids (RFP) for the operation/development of the City of Rochelle Landfill No. 2, which are related to ensuring that the existing facility and all expansions thereto comply with all applicable and relevant state, federal, and local statutes, rules, regulations, or ordinances

(b) In the event that the CITY applies for local siting approval for an expansion of the Landfill, the CITY shall be responsible for all of the costs incurred in connection with the application and the local siting process, including the fees of any consultants, engineers, and other experts, filing fees, hearing officer fees, expenses of hearings and transcripts, and all other costs associated with the application or any appeal; provided, however, that the CITY shall not be responsible for any of OPERATOR'S costs related to the siting application or any siting appeal, including the fees of consultants, engineers and other experts C-2 at Appendix C.1.

Paragraph 3.13 of the restated host agreement, regarding supplemental and special permits, provides in its entirety that

[t]he OPERATOR shall be entitled to obtain, at the expense of the OPERATOR, any state or federal Supplemental Permits, Significant Modification Permits, Renewal Permits, special waste stream permits, adjusted standards, variances, and other permits or authorizations, and any amendments or modifications to any of the foregoing, which the OPERATOR determines to be necessary or appropriate for the operations, development, expansion, or closure of the landfill or for any corrective or remedial action relating to the landfill. The OPERATOR will provide the CITY with reasonable prior notice of any such applications intended to be filed by the OPERATOR and the OPERATOR shall not seek any permit, variance, or standard which would have a material adverse effect on the CITY without the prior written approval of the CITY. The CITY will cooperate with the OPERATOR in all such applications or petitions filed by the OPERATOR. C-2 at Appendix C.1

Paragraph 7.4 of the restated host agreement, pertaining to Unit 1 of the existing landfill, provides in pertinent part that

(a) [i]n the event that the CITY prepares and files an application for local siting approval for an expansion of the Landfill pursuant to Section 39.2 of the Act in accordance with the provisions of paragraph 7.3 above, the CITY may in its discretion determine to provide in its application that Unit 1 of the existing landfill will be excavated and re-disposed of in a new Subtitle D unit, with the excavation to be commenced and completed within a commercially reasonable

time. Subject to the provisions of this subparagraph, the timing, sequence, and manner of excavation and re-disposal will be determined by the mutual agreement of the CITY and the OPERATOR, subject to any applicable requirements of the Illinois Environmental Protection Agency (the 'IEPA').

(b) In the event that an expansion of the Landfill which is consistent with the terms of this Agreement is applied for by the CITY in accordance with the provisions of this Agreement and such an expansion of the Landfill receives final and non-appealable local siting approval, if the local siting approval requires the excavation and re-disposal of Unit 1: (i) the CITY will be responsible for the first eight hundred fifty thousand dollars (\$850,000.00) of the cost of excavating and re-disposing the Unit 1 waste; (ii) the OPERATOR will be responsible for all costs of excavating and re-disposing the Unit 1 waste in excess of that amount; and (iii) the OPERATOR will be responsible for obtaining any permits necessary for the excavation and re-disposal of the Unit 1 waste, and for the selection, of contractors, consultants, and engineers to be utilized in the design, permitting, and performance of the excavation and re-disposal of the Unit 1 waste. C-2 at Appendix C.1.

Siting Criteria

Criterion (ii)

Litter Control. RWD's application contains provisions addressed to litter control. C-1 at 2.6-6-7. The application first requires incoming vehicles either to be fully enclosed or to have covers or tarps. C-1 at 2.6-6. Second, the application states that RWD will maintain the active disposal area as small as possible and will cover it at the end of each day. *Id.* Third, the application provides that a perimeter fence and exterior berm will surround the entire facility. *Id.* Fourth, the application states that RWD will also erect temporary litter fences near the active face of the landfill. *Id.* Fifth, the application indicates that RWD will modify its activities during periods of high winds. *Id.* Sixth, the application requires RWD to suspend operations when there is a tornado alert, when sustained winds reach 35 miles per hour, or when the City determines that RWD has been or is not able adequately to control blowing litter from the facility. *Id.*

The application further provides that "[l]aborers will patrol the facility and surrounding property to collect any litter escaping the active fill area, including litter caught by the portable and perimeter fencing." C-1 at 2.6-6. The application states that laborers on a daily basis will, at a minimum, inspect the right-of-way and adjacent areas along Mulford Road from the landfill entrance north to Illinois Highway 38 and along Illinois Highway 38 from the intersection of Mulford Road west to the Interstate Highway 39 interchange. C-1 at 2.6-7. The application also states that litter collection will occur along these routes at least once per week or as requested by the City. *Id.*

Waste Exhumation from Unit 1. The application provides that Unit 1 "will be excavated so that the waste is placed within a landfill that has a composite liner, leachate

collection system, landfill gas management system, and a groundwater monitoring system.” C-1 at 2.6-24. The application lists equipment with which RWD expects to accomplish the relocation. C-1 at 2.6-25 (Table 2.6-3). The application states that relocation operations will take place between 6 AM and 5 PM Monday through Saturday and that it will not generally take place on Sundays and certain holidays without written approval by the City Council. C-1 at 2.6-25. Because the application provides that RWD will not perform waste relocation during months in which the average daily temperature is above 65 degrees Fahrenheit, RWD expects to conduct relocation only between October 1st and March 1st without written approval by the City Council. *Id.* The application states that “Unit 1 was filled over a 20 year period. It is anticipated that relocation of Unit 1 will be performed over a 5-10 year period.” C-1 at 2.6-24.

The application provides procedures and standards regarding removal of final cover from Unit 1 and the application of daily and intermediate cover during the relocation process. *See* C-1 at 2.6-25; C-20 at 178-79, 319-29 (January 24, 2007 transcript). The application also specifies procedures regarding the removal and handling of liquid wastes found during the relocation. C-1 at 2.6-25. The application requires the development of an air monitoring program for the excavation area and the waste separation facility and describes circumstances triggering the implementation of a gas extraction system. C-1 at 2.6-26. In addition, the application notes that a stormwater management plan has been developed for the proposed expansion. *Id.* The application further notes that temporary perimeter berms around the relocation areas will supplement this plan. *Id.* The application also requires the employment of erosion control measures. *Id.* Finally, the application describes safety procedures with regard to various elements of the relocation and also requires the use or the availability of various safety equipment. C-1 at 2.6-26, 27-28.

Perimeter Berms. The Application states that “[f]acility operations will be screened from view along South Mulford Road, East Creston Road, South Locus[t] Road, and Illinois Route 38 by a vegetated earthen berm or fence with a total height no less than eight feet.” C-1 at 2.1-13; *see* C-20 at 110 (January 21, 2007 transcript).

The application includes a land use and planning analysis prepared for RWD by The Lannert Group, Inc. of Geneva, Illinois, a community planning and landscape architecture firm. C-1 at 3.1-1 *et seq.*; C-20 at 86-87 (January 21, 2007 transcript). The analysis includes a landscape plan with the objective of “providing an attractive visual buffer along the Facility perimeter and at the entrance.” C-1 at 3.1-8; *see* C-1 at 3.1, Exhibits 5,6 (landscape plan and enlargement). A screening berm along Creston Road will be reach a height of ten to twelve feet and will feature a variety of trees. C-1 at 3.1-8; *see* C-1 at 3.1, Exhibits 5,6; C-20 at 106-07 (January 21, 2007 transcript); C-20 at 178 (January 24, 2007 transcript) (Moose testimony); C-20 at 159-60 (January 25, 2007 transcript); C-25 at Applicant’s Exhibit 3 (slides 22, 23). At their maturities, ornamental trees will reach a height of 15 to 25 feet, conifers will reach a height of 35 to 50 feet, and deciduous shade trees will reach a height of 40 to 50 feet. C-1 at 3.8. Around the base of conifer trees, clusters of grasses will be planted for additional screening. *Id.*

Mr. Moose testified that, because the proposed expansion would rise to a height of 100 feet at some points, it would not be practical to screen the landfill completely from view from all locations. C-20 at 202 (January 24, 2007 transcript). He further testified that it would be a more

appropriate approach in particular circumstances to erect an operation screening berm on top of the wastes in the landfill and conduct landfilling activities screened from view by that berm. *Id.*; *see also* C-20 at 66-69 (January 25, 2007 transcript) (Moose testimony).

Witnesses' Conclusions. Mr. Devin Moose of Shaw Engineering testified that, in his opinion, the expansion is “so designed, located, and proposed to be operated so as to protect the public health, safety and welfare.” C-20 at 195 (January 24, 2007 transcript). Testifying for CCOC, Mr. Norris stated that he would render no opinion whether the application for the proposed expansion satisfies criterion (ii). C-20 at 156 (January 26, 2007).

Criterion (vi)

RWD’s siting application contains a report prepared by Michael Werthmann and summarizing the findings and recommendations of a traffic impact analysis conducted by Kenig, Lindgren, O’Hara, Aboona, Inc. (KLOA), a traffic and transportation engineering firm. C-1 at 6-1; C-20 at 16 (January 23, 2007 transcript); *see* C-6 at Appendix V (Werthmann resume). The report concerns Mr. Werthmann’s study as to whether proposed traffic patterns to and from the expanded facility are so designed as to minimize the impact on existing traffic flows. C-1 at 6-1; C-20 at 17 (January 23, 2007 transcript).

KLOA conducted a three-phase study to evaluate the traffic impact of the proposed expansion. C-1 at 6-2; C-20 at 17 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 3). In the first phase, KLOA examined the existing physical and operational characteristics of the roadway system that might affect access to the proposed expansion. C-1 at 6-2; C-20 at 17 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 3). This first phase involved field surveys and discussions with agencies including the Illinois Department of Transportation (IDOT) and the City. C-1 at 6-2; C-20 at 18-19 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 5). KLOA also obtained data including “existing traffic volumes, approved or proposed developments, planned or proposed roadway improvements, and accident data.” *Id.* In addition, KLOA conducted traffic counts at intersections and on roads in the vicinity and a gap study along Illinois Highway 38 at the intersection of Mulford Road. *Id.*

In the second phase, KLOA determined the type and volume of traffic that would be generated by the proposed expansion and the routes that will be used to travel to and from it. C-1 at 6-2; C-20 at 17-18 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 3). In the third phase, KLOA evaluated the impact that traffic generated by the proposed expansion will have on the existing roadway system. C-1 at 6-3; C-20 at 18 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 3).

Site Access. KLOA’s report describes the major roadways serving the area in the vicinity of the landfill. First, Interstate Highway 39 is a limited access highway with two lanes traveling both north and south. C-1 at 6-4; C-20 at 19 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 6). Interstate Highway 39 has full access interchanges with both Illinois Highway 38 and Interstate Highway 88. *Id.*

Second, Illinois Highway 38 is an east-west major arterial roadway. C-1 at 6-6; C-20 at 19 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 7). East of Interstate Highway 39, it is a two-lane roadway with a posted speed limit of 55 miles per hour. *Id.* West of Interstate Highway 39, it is a four-lane divided highway with a posted speed limit of 45 miles per hour. *Id.* Illinois Highway 38 provides separate left-turn lanes at its intersections with Mulford Road, the Interstate 39 on-ramps, and Dement Road. C-1 at 6-6; C-20 at 19-20 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 7). It provides separate right-turn lanes at its intersections with Mulford and Dement Roads. C-1 at 6-6; C-20 at 20 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 7). Illinois Highway 38 is under the jurisdiction of IDOT and is classified as a Class II Highway with a weight limit of 80,000 pounds. C-1 at 6-6; C-20 at 20 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 7).

Third, Mulford Road is a north-south two-lane roadway including an at-grade crossing with the Union Pacific Railroad tracks. C-1 at 6-6; C-20 at 20 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 8). The access drive to the existing landfill is situated approximately 150 feet south of those tracks. C-1 at 6-6. At its intersections with Illinois Highway 38 and Creston Road, Mulford Road is under stop-sign control. C-1 at 6-6; C-20 at 20 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 8). Mulford Road falls under the jurisdiction of Dement Township, except between the railroad tracks and Creston Road, where it is under the jurisdiction of the City, and it has a weight limit of 73,280 pounds. C-1 at 6-6; C-20 at 20 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 8); *see also* C-25 at Applicant's Exhibit 8 (letter from Ogle County Highway Department engineer). Fourth, Creston Road is an east-west two-lane roadway. It falls under the jurisdiction of the City and also has a weight limit of 73,280 pounds. C-1 at 6-6; C-20 at 20 (January 23, 2007 transcript); C-20 at 20 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (slide 9).

KLOA's report notes that Mulford Road has an at-grade crossing with Union Pacific railroad tracks. C-1 at 6-7; C-20 at 21 (January 23, 2007 transcript). The crossing provides both passive control devices such as signs and active control devices, including gates, lights, and bells. *Id.* While the Federal Railroad Administration reports that 32 trains per day travel through this crossing (C-1 at 6-7), the Union Pacific reports that 50 to 60 trains per day travel through it. C-20 at 76-77, 111-16 (January 23, 2007 transcript); *see also* C-25 at Applicant's Exhibit 8.

KLOA's report refers to proposed and completed roadway improvements in the vicinity of the proposed expansion. First, "Mulford Road is proposed to be reconstructed and upgraded to a two-lane road with a weight limit of 80,000 pounds" from Illinois Highway 38 to a point just south of the site access drive. C-1 at 6-6; C-20 at 21, 45-48, 109-11 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 11). In his testimony, Mr. Werthmann stated his belief that this proposed improvement "will help minimize the impact on the existing traffic flow." C-20 at 138 (January 23, 2007 transcript). Second, IDOT recently improved the intersection of Interstate Highway 39 and Illinois Highway 38. C-20 at 22 (January 23, 2007 transcript). These improvements include adding a separate left-turn lane on the northbound ramp, increasing intersection radii to accommodate turning truck traffic, and installing a new traffic signal. C-1 at 6-6; C-20 at 22 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 11).

IDOT has also improved the intersection of Illinois Highway 38 and Mulford Road. C-20 at 22 (January 23, 2007 transcript). These improvements included adding separate left-turn and right-turn lanes on Illinois Highway 38, increasing intersection radii, and improving approaches on Mulford Road. *Id.* These improvements “provided deceleration lanes and stacking lanes on Illinois [Highway] 38 for the truck traffic that was turning to and from Mulford Road.” *Id.* at 22-23; *see also id.* at 106-07 (lacking warrant for traffic signal).

Existing Traffic Volumes. During July and August of 2006, KLOA conducted manual counts of the traffic at the intersections of Illinois Highway 38 and Mulford Road, Illinois Highway 38 with the Interstate Highway 39 ramps, and Mulford and Creston Roads. C-1 at 6-6; C-20 at 23 (January 23, 2007 transcript). KLOA conducted these counts between 6:00 and 9:00 AM and between 3:00 and 6:00 PM in order to evaluate the peak hours of traffic. C-1 at 6-6; C-20 at 23-24 (January 23, 2007 transcript). During these counts, the existing landfill was open and processing between 600 and 1200 tons of waste per day. C-1 at 6-6; C-20 at 24 (January 23, 2007 transcript). KLOA had performed traffic counts in 2001 and 2002 at all of these three intersections as part of a traffic study for a 2003 landfill expansion application. C-1 at 6-7. “To provide a conservative analysis, the 2001, 2002, and 2006 traffic counts at each intersection were compared and the highest traffic volume for each particular movement for each peak hour were used for this evaluation.” *Id.*; *see* C-1 at 6-8 (Figure 2: Existing Peak Hour Volumes), C-25 at Applicant’s Exhibit 7 (Slide 12).

In August of 2006, KLOA also conducted 24-hour machine counts of traffic on Illinois Highway 38 just west of Mulford Road and on Mulford Road just south of Illinois Highway 38. C-1 at 6-7; C-20 at 26 (January 23, 2007 transcript). This count determined that Illinois Highway 38 had a daily traffic volume of approximately 8,700 vehicles, 87 percent of which were cars and light trucks and 13 percent of which were single unit and heavy trucks. C-1 at 6-7; C-20 at 26 (January 23, 2007 transcript). The count also determined that Mulford Road had a daily traffic volume of approximately 330 vehicles, 60 percent of which were cars and light trucks and 40 percent of which were single unit and heavy trucks. *Id.*; *see* C-6 at Appendix T (Existing Traffic Counts).

Development Traffic Characteristics. In the second phase of its study, KLOA performed a directional distribution analysis, which is intended to determine the routes used to travel to and from the proposed expansion. C-1 at 6-9; C-20 at 26 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 13). KLOA also determined the volume of traffic generated by the proposed expansion during periods of peak traffic. *Id.* In addition, KLOA assessed future growth in the vicinity of the proposed expansion in order to estimate patterns of traffic generated by other developments near the site. *Id.*

In its study, KLOA developed two directional distributions based on the intended service area of the proposed facility. The first distribution addresses local waste, “that is collected within the general area and is delivered to the landfill directly to the landfill via the single-unit collection trucks.” C-20 at 27 (January 23, 2007 transcript). KLOA expects this distribution to be similar to the distribution for the existing facility. C-1 at 6-9. KLOA projects that 80 percent of this traffic “will arrive to and from the landfill via Illinois [Highway] 38 south on Mulford Road to the site access drive.” C-20 at 27 (January 23, 2007 transcript). KLOA expects the

remaining 20 percent to be distributed on Mulford Road to and from the north and south and on Creston Road to and from the east and west. *Id.* at 28.

The second distribution addresses wastes arriving from transfer stations in transfer trailers or larger semi trailers. C-1 at 6-9; C-20 at 28 (January 23, 2007 transcript). Because those transfer stations are located some distance from the proposed expansion, the majority of that traffic will arrive via Interstate Highway 39 and then travel east on Highway 38 and south on Mulford Road to the site access drive. *Id.* KLOA's distribution shows that no transfer trucks will reach the proposed expansion on Mulford Road to and from the north and south and on Creston Road to and from the east and west. C-1 at 6-10; C-20 at 28 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 14).

KLOA also estimated, based on the magnitude and character of the proposed facility and its service area, the volume of traffic generated by the proposed expansion. C-1 at 6-10. Although KLOA noted projections that the proposed expansion would process an average of 1,000 tons of waste pre day, it based part of its study on a volume of 1,500 tons per day in order to provide a more conservative analysis. C-1 at 6-10; C-20 at 29 (January 23, 2007 transcript). KLOA projects that, on an average day processing 1,000 tons of waste, the landfill will generate 92 round-trip truck trips. C-1 at 6-10, 11; C-20 at 29 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 15). KLOA further projects that, on a day processing 1,500 tons of waste, the landfill will generate 117 round-trip truck trips. *Id.*

In his testimony, Mr. Werthmann referred to a projected hourly distribution of the truck traffic, which is based on expected schedules of landfill customers and on previous surveys at existing facilities. C-1 at 6-10; C-25 at Applicant's Exhibit 7 (Slide 15). Mr. Werthmann stated that the landfill is projected to generate 11 to 14 round-trip truck trips during peak morning traffic and eight to 11 round-trip truck trips during the peak afternoon traffic. C-1 at 6-11; C-20 at 30, 97-99 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 15). Mr. Werthmann also testified that, since July 2006, the existing landfill has processed an average of more than 600 tons of waste per day and has processed more than 1,000 tons of waste on many days. C-20 at 30 (January 23, 2007 transcript); *see* C-1 at 6-11. Mr. Werthmann further testified that the majority of the projected round-trip truck trips "is already generated by the existing landfill and is already on the existing roadway systems." C-20 at 30 (January 23, 2007 transcript).

Future Growth. KLOA performed two future traffic assignments. The first addresses existing traffic plus the traffic generated specifically by the proposed expansion. C-1 at 6-12; C-20 at 32 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 16). Mr. Werthmann testified that this first traffic assignment is based on processing 1,500 tons of waste per day at the proposed expansion. C-20 at 33 (January 23, 2007 transcript).

Mr. Werthmann first testified regarding traffic volumes generated during peak traffic hours by the proposed expansion. From Illinois Highway 38 south to Mulford Road, he stated that the expansion "will generate 12 left turn movements [during the morning peak hour] and 3 right turn movements during the evening peak hour." C-20 at 33 (January 23, 2007 transcript); C-1 at 6-14; C-25 at Applicant's Exhibit 7 (Slide 17). The same projection shows 13 right turn

movements during the morning peak hour and six right turn movements during the evening peak hour. *Id.* Mr. Werthmann characterized this as “not a significant volume of traffic” in light of the capacity of the roadway system. C-20 at 33-34 (January 23, 2007 transcript).

Mr. Werthmann next testified regarding the addition of expansion-generated traffic to existing volumes at peak hours. After comparing the volume at the intersection of Illinois Highway 38 and Mulford Road with the greater volume at the intersection of Illinois Highway 38 and the southbound ramp from Interstate Highway 39, Mr. Werthmann stated that “the volume of traffic on Mulford Road is not significant by any means.” C-20 at 34-35 (January 23, 2007 transcript); *see* C-1 at 6-15; C-25 at Applicant’s Exhibit 7 (Slide 18).

KLOA also projected traffic volumes in 2013, five years after the proposed expansion is expected to begin receiving waste. This projection increases existing traffic volumes by 21 percent to account for background growth in the area and also accounts for a proposed 250-home residential development in Creston. C-1 at 6-12; C-20 at 32, 65-66 (January 23, 2007 transcript). Mr. Werthmann testified that the 2013 traffic projection shows traffic volumes similar to the other projection. C-20 at 35 (January 23, 2007 transcript); C-1 at 6-16; C-25 at Applicant’s Exhibit 7 (Slide 19).

Evaluations and Recommendations. In this phase of its analysis KLOA conducted an analysis of intersection capacity in the vicinity of the proposed expansion. C-1 at 6-17-21; C-20 at 35-36 (January 23, 2007 transcript); C-25 at Applicant’s Exhibit 7 (Slide 21); *see* C-6 at Appendix T (capacity analyses). Mr. Werthmann testified that intersection capacity is rated “A” to “F” on level of service, which is based on delay as a measure of driver discomfort and lost travel time. C-20 at 35-36 (January 23, 2007 transcript); C-1 at 6-18. The analysis found that, with existing traffic volumes, “all of the intersections are operating at a very good level of service with minimal delay.” C-20 at 37 (January 23, 2007 transcript); *see* C-25 at Applicant’s Exhibit 7 (Slide 21); C-1 at 6-19. The analysis projected that, with the addition of expansion-generated traffic, all intersections would continue to operate at an acceptable level of service. C-20 at 37 (January 23, 2007 transcript); *see* C-25 at Applicant’s Exhibit 7 (Slide 21); C-1 at 6-19.

The analysis also projected that, with 2013 traffic volumes, the intersections would continue to operate at an acceptable level of service, with the exception of the intersection of Illinois Highway 38 and the southbound ramp from Interstate Highway 39, which is now controlled by a stop sign. C-1 at 6-19-21; C-20 at 37 (January 23, 2007 transcript); *see* C-25 at Applicant’s Exhibit 7 (Slide 21). Mr. Werthmann testified that traffic levels at this intersection will warrant installation of a traffic signal, one of which is already in service for the northbound ramp. C-20 at 37-38 (January 23, 2007 transcript). The analysis attributes the need for this traffic signal to projected background growth. C-1 at 6-21; C-20 at 38, 61 (January 23, 2007 transcript); *see* C-25 at Applicant’s Exhibit 7 (Slide 21). Mr. Werthmann concludes that expansion-generated traffic will account for less than one percent of total 2013 traffic volumes at this intersection. -C-20 at 38 (January 23, 2007 transcript).

KLOA also referred to a sight distance analysis of the intersection of the intersection of Illinois Highway 38 and Mulford Road. C-1 at 6-21; C-20 at 38-39, 105-06 (January 23, 2007 transcript); *see* C-25 at Applicant’s Exhibit 7 (Slide 21); *see* C-6 at Appendix T (Sight Distance

Analysis). Mr. Werthmann testified that this analysis determines whether a vehicle waiting on Mulford Road can see for a distance sufficient for determining if it wants to make its maneuver onto Illinois Highway 38. C-20 at 38-39 (January 23, 2007 transcript). He further testified that IDOT's analysis demonstrated that "there's more than sufficient sight distance" for the vehicles that will be exiting from Mulford Road. *Id.*; see C-1 at 6-21; C-25 at Applicant's Exhibit 7 (Slide 21).

As another element of its analysis, KLOA examined accident data for the years 2000 to 2004 for three specific roadway sections: Illinois Highway 38 from Illinois Highway 251 to Beck Road, Creston Road from Illinois Highway 251 to Locust Road, and Mulford Road from Twombly Road to Creston Road. C-1 at 6-21; C-20 at 39-40, 85 (January 23, 2007 transcript); see C-25 at Applicant's Exhibit 7 (Slide 23) C-6 at Appendix T (accident data). KLOA obtained this data from IDOT and the Ogle County Sheriff's Department. *Id.* Based on the area traffic and proposed improvements, KLOA "concluded that the additional traffic generated by the expanded landfill *will not* measurably contribute to conditions resulting in accidents on area roadways." C-1 at 6-22 (emphasis in original); see C-20 at 40, 70-71 (January 23, 2007 transcript); see C-25 at Applicant's Exhibit 7 (Slide 23).

KLOA also conducted a gap study at the intersection of Illinois Highway 38 and Mulford Road. Because Mulford Road is controlled by a stop sign at its intersection with Illinois Highway 38, vehicles waiting on Mulford Road must wait for an adequate gap in traffic in order to enter the roadway. C-20 at 40 (January 23, 2007 transcript). These study measured gaps in September 2006 by surveying the number and duration of available gaps in the traffic stream. C-1 at 6-22; see C-20 at 40 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 22). The study concluded that, during the peak morning and evening hours, there is more than an adequate number of gaps in the Illinois Highway 38 traffic stream to accommodate vehicles turning to and from Mulford Road. C-1 at 6-23; C-20 at 40-41, 52-55 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 22).

As the final element in its analysis, KLOA addressed access to the site of the proposed expansion. The application provides that the expanded landfill will be served by a new access drive situated approximately 1,800 feet south of the Union Pacific railroad tracks on the east side of Mulford Road. C-1 at 6-24; C-20 at 41 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 23). The analysis states that neither projected traffic volumes nor IDOT guidelines require a separate right-turn lane or separate left-turn lane on Mulford Road to serve this new access drive. C-1 at 6-24; C-20 at 41 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 23). The analysis further states that, because the scale house is approximately 1,100 feet inside the site from Mulford Road, there is "more than sufficient" distance to prevent waiting trucks from stacking out onto Mulford Road. C-1 at 6-24; see C-20 at 42 (January 23, 2007 transcript); C-25 at Applicant's Exhibit 7 (Slide 23).

KLOA's Conclusions. KLOA's analysis reaches three chief conclusions. First, "[t]he traffic generated by the proposed expansion of the Rochelle Landfill will not have a significant impact on the existing roadway network." C-1 at 6-25; C-20 at 44 (January 23, 2007 transcript); see C-25 at Applicant's Exhibit 7 (Slide 24). Second, "[t]he proposed design of the site access drive will be more than adequate to serve the facility and ensure the traffic demands will be

accommodated.” *Id.* Third “[t]he proposed demands of the expanded landfill can be accommodated safely and efficiently on the existing roadway system and, therefore, no roadway improvements are required other than those currently proposed or committed to as part of the proposed expansion and by IDOT along IL 38.” *Id.* KLOA’s professional opinion is that “the proposed expansion [of the] Rochelle Landfill has been designed to meet the sixth siting criterion provided in Section 39.2 of the Illinois Environmental Protection Act. Therefore, it is our opinion that the ‘traffic patterns to and from the facility are so designed as to minimize the impact on the existing traffic flow.’” *Id.*; C-20 at 44 (January 23, 2007 transcript); *see also* 415 ILCS 5/39.2(a)(vi) (2006).

RWD’s Operating History

Background. The proposed expansion will take place on property owned by the City and will be operated by RWD. C-1 at 10-1 (Previous Operating Experience). On January 21, 1995, the City and RWD entered into an operating agreement, which transferred operational responsibility of the Rochelle Municipal Landfill #2 to from the City to RWD. *Id.*; C-21 at 11 (Hilbert testimony). Although RWD began operating the landfill on July 1, 1995, the official transfer of operating authority did not occur until January 26, 1996. C-1 at 10-1. Before the operating agreement, the City operated the landfill. *Id.*

Pursuant to the Rochelle Municipal Siting Ordinance, RWD filed with the application a listing of violation notices or administrative citations received by RWD since 1995. C-1 at 10-1, C-21 at 11 (February 8, 2007 transcript); *see* C-2 at Appendix A.2 (Siting Ordinance), C-6 at Appendix U (Company Information). That listing was prepared by Mr. Thomas Hilbert, who has been the engineering manager for Winnebago Reclamation Service since approximately 1993 and whose duties include construction, permitting, and compliance at the Rochelle Municipal Landfill. C-20 at 228-31 (January 24, 2007 transcript); C-21 at 9, 11-12. Mr. Hilbert testified that he included in the summary every separate violation notice received from either Ogle County or the IEPA since 1995. C-21 at 28, 137; *see* C-1 at 10-1.

Mr. Hilbert described three separate enforcement mechanisms under the Act. C-21 at 23-25. He first referred to an administrative citation, which a respondent may appeal to the Board and which involves a specified fine. C-21 at 24; *see* 415 ILCS 5/31.1, 42(b)(4) (2006). Second, he described a violation notice as notifying an operator that a violation has been observed and offering an opportunity to account for it and propose a resolution. C-21 at 24. Mr. Hilbert testified that RWD responds to a violation notice by notifying the Ogle County Solid Waste Management Department to describe the basis of the violation and action taken to address it. C-21 at 120. If the department accepts that description and resolution, the letter reflecting that agreement forms the basis of a compliance commitment agreement. *Id.* at 120-21. Third, described a warning notice as a notification of apparent violations that may need to be addressed. *Id.*

In addition, Mr. Stephen Rypkema, the Director of the Ogle County Solid Waste Management Department prepared for filing as a public comment a document entitled “Summary of Inspections and Apparent Violations Noted by Ogle County Solid Waste Management Department during Inspections at the Rochelle Municipal #2 Landfill April 1991 – December

2006.” C-25 at Operator’ Exhibit 2; C-31 – 38 (filed public comment0; *see* C-21 at 12. He prepared this document at the request of the parties after the hearing recessed on January 25, 2007. C-21 at 66; *see* C-20 at 37-39, 220-230 (January 25, 2007 testimony). Mr. Rypkema stated that the county began inspecting the landfill in 1991 under a delegation of authority from the Agency. C-25 at Operator’s Exhibit 2. His department generally conducts these inspections on a monthly basis. *Id.* Mr. Rypkema noted that the information in his table may be different from what is required by Rochelle’s ordinance to be submitted with a siting application. *Id.*

January 10, 1996 and January 22, 1996. During an inspection on January 10, 1996, Mr. Rypkema observed at the landfill site two apparent violations regarding the size and location of the leachate storage tank installed there. Specifically, the tank differed from specifications in permit # 1994-547LFM. C-9 (Narrative Inspection Report Document); *see* C-6 at Appendix U, C-25 at Operator’s Exhibit 2. Although the permit specified that a 35,000-gallon tank was to be installed directly south of the scale house on the northwestern corner of the site, RWD had installed a 10,000-gallon tank on the southwestern corner of the site without prior Agency approval. C-9. A January 22, 1996 pre-operational inspection to certify construction of a liner and leachate collection system revealed the same apparent violations. *Id.*; C-25 at Operator’s Exhibit 2.

Mr. Hilbert stated that RWD had intended to include these changes in size and location in its application for an operating permit but had not done so. C-9. He further stated that RWD would submit a letter and drawings to the Agency, which was expected to determine whether the changes that had been made required a significant modification permit. *Id.* This inspection resulted in an Administrative Warning Notice issued on February 13, 1996. *Id.* A permit modification approved on February 23, 1996 disposed of this issue. *Id.*

June 14, 1996. As a result of an inspection on June 14, 1996, RWD received violation notice # 1996-1002. C-6 at Appendix U; C-25 at Operator’s Exhibit 2; *see* C-21 at 55, 161 (Hilbert testimony). The site had received heavy rainfall, which generated difficulties with leachate management. *See* C-21 at 115-17. The violation notice addressed issues including inadequate stormwater controls, failure to comply with leachate recirculation requirements, and improper use of alternative daily cover. C-6 at Appendix U, C-25 at Operator’s Exhibit 2; *see* C-20 at 234-237 (January 24, 2007). Disposition of this action resulted from a May 5, 1997 permit modification allowing addition of leachate storage capacity over time. C-25 at Operator’s Exhibit 2.

July 29, 1998. As a result of an inspection on July 29, 1998, RWD received violation notice # OCSWMD-1998-1001. C-6 at Appendix U; C-25 at Operator’s Exhibit 2. The notice indicated that RWD had not installed gas monitoring probe GP14 and had failed to report the detection of methane at levels greater than 50% of the lower explosive level. *Id.* A permit modification approved August 27, 1999 approved deletion of GP14. C-25 at Operator’s Exhibit 2. A verified correction on February 9, 1999 disposed of the methane issue. *Id.*

October 29, 1998. As a result of an inspection on October 29, 1998, RWD received violation notice # OCSWMD-1998-1002. C-6 at Appendix U; C-25 at Operator’s Exhibit 2. That notice referred to the violations listed in the previous notice and also raised stormwater

runoff erosion. *Id.* A correction verified on February 9, 1999 disposed of the erosion issue. C-25 at Operator's Exhibit 2.

November 1, 1999. As a result of an inspection on November 1, 1999, RWD received violation notice # L-1999-OG-02. C-11 (December 16, 1999 letter); C-6 at Appendix U; C-25 at Operator's Exhibit 2. The notice referred to lateral expansion of the facility without permitting or siting approval, leachate flows into the waters of the state, and failure to comply with requirements relating to litter fencing. *Id.* A permit modification approved February 8, 2000 disposed of the expansion issue. C-25 at Operator's Exhibit 2. Both the leachate and litter fencing issues were disposed of with a correction verified on December 8, 1999. *Id.*

March 30, 2000. As a result of an inspection on March 30, 2000, RWD received violation notice # L-2000-OG-1. C-6 at Appendix U; C-25 at Operator's Exhibit 2. The notice referred to improper construction of a berm, failure to notify of methane levels, failure to submit required reports, and allowing refuse to remain uncovered from a previous operating day. *Id.* A permit modification approved June 2, 2000 disposed of the berm construction issue. C-25 at Operator's Exhibit 2. Beginning by October 23, 2000, regular notification of gas levels and regular filing of reports disposed of those two issues. *Id.* A correction verified April 24, 2000, disposed of the issue of uncovered refuse. *Id.*

October 29, 2001. As a result of an inspection on October 29, 2001, RWD received an administrative citation warning notice. C-6 at Appendix U; C-25 at Operator's Exhibit 2. The notice first referred to failure daily to apply cover to all uncovered refuse at the end of the operating day. It also referred to failure to contain litter from the site by the end of each operating day. *Id.* A correction verified on November 29, 2001 disposed of both issues. C-25 at Operator's Exhibit 2.

March 20, 2003. As a result of an inspection on March 20, 2003, RWD received administrative citation # OC-2003-1001. C-6 at Appendix U; C-25 at Operator's Exhibit 2; *see County of Ogle v. Rochelle Waste Disposal, Clyde A Gelderloos, and City of Rochelle*, AC 03-30 (May 19, 2003). The citation alleged that the respondents had operated the landfill resulting in refuse in standing or flowing waters. C-6 at Appendix U; C-25 at Operator's Exhibit 2; *see* 415 ILCS 5/21(o)(1) (2006). The citation also alleged that RWD has allowed refuse to remain uncovered from a previous operating day. C-6 at Appendix U; C-25 at Operator's Exhibit 2; *see* 415 ILCS 5/21(o)(5) (2006). The citation also alleged that RWD had failed to collect and contain litter from its site by the end of each operating day. C-6 at Appendix U; C-25 at Operator's Exhibit 2; *see* 415 ILCS 5.21(o)(12) (2006). RWD failed to timely appeal the citation and was directed to pay the statutory fine of \$1,500. C-25 at Operator's Exhibit 2; C-21 at 83; *see County of Ogle v. Rochelle Waste Disposal, Clyde A Gelderloos, and City of Rochelle*, AC 03-30 (Nov. 6, 2003). Disposition of the issues occurred with a correction verified on April 21, 2003. C-25 at Operator's Exhibit 2.

July 3, 2003. As a result of an inspection on July 3, 2003, RWD received an administrative warning notice regarding "operation of gas collection system prior to completion of all equipment and reports." C-25 at Operator's Exhibit 2; *see* C-6 at Appendix U. A correction verified on August 6, 2003 disposed of this issue. *Id.*

May 7, 2004. As a result of an inspection on May 4, 2004, RWD received an administrative citation warning notice. C-6 at Appendix U; C-25 at Operator's Exhibit 2. The notice raised issues of site surface drainage management, operation of surface water control structures, surface water drainage problems, and inadequate intermediate cover. *Id.* The first three issues were disposed of by a correction verified on July 20, 2004, and the intermediate cover issue was disposed of by a correction verified on October 8, 2004. C-25 at Operator's Exhibit 2.

June 15, 2004. As a result of an inspection on June 15, 2004, RWD received violation notice # L-2004-OG-001. C-6 at Appendix U; C-25 at Operator's Exhibit 2.; *see* C-21 at 87-95, 117-19, 142, 161-62 (noting rainfall). The notice addressed a number of violations: leachate entering an unlined sedimentation basin, leachate flows leaving the confines of the landfill, recalculating leachate without a permit, failure to apply intermediate cover, failure to grade intermediate cover to facilitate drainage of runoff, and failing to maintain intermediate cover. C-25 at Operator's Exhibit 2; *see* C-20 at 242-44 (January 24, 2007 transcript). Each of these violations was disposed of by a correction verified on either July 20, 2004, September 3, 2004, October 8, 2004, or March 22, 2005. *Id.*

April 11, 2005. As a result of an inspection by the Agency on April 11, 2005, RWD received violation notices # M-2005-01024 and # M-2005-01025. C-25 at Operator's Exhibit 2. The notice referred to violations related to maintaining groundwater monitoring well G113 and to not following procedures for sampling groundwater. *Id.* With regard to those violations, the Agency accepted a compliance commitment letter on October 21, 2005 and performed field verification of compliance on January 10, 2006. *Id.*; C-21 at 121-22.

July 7, 2005. As a result of an inspection by the Agency⁶, RWD received violation notice # M-2005-01025. C-6 at Appendix U; C-21 at 102. The notice referred to violations related to inconsistencies in boring logs for wells. C-21 at 103.

April 20, 2006. As a result of inspection, RWD received an administrative warning notice. C-6 at Appendix U; C-20 at 250-51 (January 24, 2007 transcript); C-21 at 51. A continuous monitoring device for detection of methane became unplugged in the shop building at the site. C-21 at 51-52.

July 28, 2006. As a result of an inspection on July 28, 2006, RWD received violation notice L-2006-OG02. C-6 at Appendix U. The notice refers both to failure to inspect loads of contaminated soil to be used as daily cover and to failure to maintain a log of these inspections. *Id.*; C-21 at 72-73, 122-24. Although RWD's compliance commitment letter was rejected on October 31, 2006, a correction verified on November 14, 2006 disposed of the violation notice. C-6 at Appendix U; C-21 at 122-23.

September 15, 2006. As a result of an inspection on September 15, 2006, RWD received violation notice # L-2006-OG005. C-6 at Appendix U. The notice addressed a number of violations: use of construction and demolition debris that had not been shredded as alternate daily cover, use of material with varying amounts of construction and demolition debris as

alternate daily cover, application of alternate daily cover leaving voids and open passages to waste, and use of daily cover that did not maintain its integrity to prevent vector and odor nuisance. C-6 at Appendix U; C-20 at 252-53 (January 24, 2007 transcript); C-21 at 69-77. After a correction verified on November 14, 2006, acceptance of a compliance commitment agreement on January 5, 2007 disposed of this notice. C-6 at Appendix U; C-21 at 124-26.

STATUTORY BACKGROUND

Section 39.2(a) of the Act provides in pertinent part that

[t]he county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, shall approve or disapprove the request for local siting approval for each pollution control facility which is subject to such review. An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets the following criteria:

* * *

(ii) the facility is so designed, located and proposed to be operate that the public health, safety and welfare will be protected; [and]

* * *

(vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows[.]

* * *

The county board or the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under this Section. 415 ILCS 5/39.2(a) (2006).

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

[i]n 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) (2006).

BURDEN OF PROOF AND STANDARD OF REVIEW

In reviewing the local siting authority's imposition of a special condition, the Board must determine whether the special condition to a site approval is reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and not inconsistent with Board regulations. Peoria Disposal Co. v. Peoria County Board, PCB 06-184, slip op. at 6 (Dec. 7, 2006), citing 415 ILCS 5/39.2(e) (2004); *see* 415 ILCS 5/39.2 (2006). "When the issue is whether a condition is necessary to accomplish the purpose of a Section 39.2(a) citing criterion, the Board must determine whether the local government's decision to impose the condition is against the

manifest weight of the evidence.” Waste Mgmt. of Ill., Inc. v. Will County Board, PCB 99-141, slip op. at 3 (Sept. 9, 1999) (citation omitted), *aff’d sub nom. Will County Board v. PCB*, 319 Ill. App 3d 545, 747 N.E.2d 5 (3rd Dist. 2001).

“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.” Fairview Area Citizens Taskforce v. PCB, 198 Ill. App. 3d 541, 550, 555 N.E.2d 1178, 1184 (3rd Dist. 1990) (citation omitted). The Board is not in a position to reweigh the evidence, but it must determine whether the decision of the City Council is against the manifest weight of the evidence. *Id.* (citations omitted). The petitioner bears the burden of proving that the conditions are not necessary to accomplish the purposes of the Act and therefore were imposed unreasonably. IEPA v. PCB, 118 Ill. App. 3d 772; 780, 455 N.E.2d 188, 194 (1st Dist. 1983); 415 ILCS 5/40.1(a) (2006); 35 Ill. Adm. Code 107.506. The Board has authority to modify conditions imposed by the local siting authority to the extent that they are not supported by the record or would be inconsistent with the purposes of the Act. *See Browning Ferris Industries of Illinois v. Lake County Board of Supervisors and IEPA*, PCB 82-101, slip op. at 14-15 (Dec. 2, 1982).

SECTION 39.2 CRITERIA

RWD states that the Council did not impose special conditions with regard to its findings on criteria (iv), (v), (vii), (viii), and (ix). RWD Brief at 6; *see* 415 ILCS 5/39.2(a) (2006). RWD notes that, although the Council imposed conditions with regard to criteria (i) and (iii), those specific Special Conditions 36 and 37 are not contested in this proceeding. RWD Brief at 6. Consequently, the contested conditions pertain only to criteria (ii) and (vi). *Id.*

Below, the Board separately addresses criteria (ii) and (vi), each of the conditions imposed by the Council with regard to them, and the parties’ arguments on those issues.

Criterion (ii)

Section 39.2(a)(ii) of the Act provides that an applicant must demonstrate compliance with, and local siting approval shall be granted only if the proposed facility meets, the criterion that “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.” 415 ILCS 5/39.2(a)(ii) (2006).

RWD’s General Arguments

Generally, RWD argues that data in its application “establishes that the proposed expansion complies fully with Criterion (ii).” RWD Brief at 8. RWD further argues that the record in this case shows that its application for a proposed expansion “demonstrated compliance with all of the siting criteria of Section 39.2(a) *without* the Special Conditions.” RWD Brief at 7 (emphasis in original). RWD claims that the eight contested conditions are not reasonable, are not necessary to achieve compliance with the Act, are not supported by the record, are not consistent with Board regulations, and are contrary to the Host Agreement executed by RWD and the City. *Id.* at 1, 7-8, citing Waste Mgmt. of Ill., Inc. v. Will County Bd., PCB 99-141, slip

op. at 1 (Sept. 9, 1999), *aff'd sub nom. Will County Bd. v. PCB and Waste Mgmt. of Ill., Inc.*, 319 Ill. App. 3d 545, 548 (3rd Dist. 2001).

Location. RWD claims that its application shows that land use in the area surrounding its proposed expansion is primarily agricultural and planted with row crops. RWD Brief at 8, citing C-1 at 2.2-3. RWD argues that its application demonstrates that “[t]he nearest airport to the proposed expansion is a municipal airport that is over 10,000 feet from the site.” RWD Brief at 8, citing C-1 at 2.1-4; *see* 49 U.S.C. 44718(d) (limiting construction of landfills), 35 Ill. Adm. Code 814.302(c) (providing airport safety requirements); C-2 at Appendix F.1 (Airports). RWD further claims that its application shows that “[t]he proposed expansion will be located more than 500 feet from all occupied dwellings, schools, retirement homes, hospitals, or like institutions unless written permission for a closer distance from the owner is provided prior to permit approval.” RWD Brief at 9-10, citing C-1 at 2.1-14; *see* 35 Ill. Adm. Code 811.302(d), 814.302(a). RWD also states that its application shows that the proposed expansion will be screened from view along specified roads “by a vegetated earthen berm or fence with a total height of no less than eight feet.” RWD Brief at 9, citing C-1 at 2.1-13; *see* 35 Ill. Adm. Code 811.302(c).

RWD further claims that its application shows that the proposed expansion will not affect any potentially endangered or threatened species. RWD Brief at 9, citing C-1 at 2.1-10; *see* 35 Ill. Adm. Code 811.102(d); C-2 at Appendix F.7 (Endangered Species). RWD further argues that its application shows that archaeological surveys of the existing landfill and the proposed expansion area “found no evidence of materials” protected by the Illinois State Agency Historic Resources Preservation Act. RWD Brief at 9, citing C-1 at 2.1-10; *see* 20 ILCS 3420/1 *et seq.* (2006). In addition, RWD states that its application shows that “[d]evelopment of the expansion area will not proceed without confirmation from the I[llinois] H[istoric] P[reservation] A[gency] that there are no significant historical, architectural, or archeological resources located in the proposed expansion area.” C-1 at 2.1-10; *see* 35 Ill. Adm. Code 811.102(c), RWD Brief at 9; C-2 at Appendix F.6 (Historic and Natural Areas).

Geology and Hydrogeology. RWD states that its application includes an analysis of the site’s geology and hydrogeology based upon “a total of 73 continuously sampled boring locations, and installation of 66 monitoring wells.” RWD Brief at 10, citing C-1 at 2.2-1 *et seq.* (Hydrogeologic Analysis); *see* C-20 at 206 (Drommerhausen testimony); *see also* C-3 at Appendix G.1 (Boring Logs); C-3 at Appendix G.2 (As-Built Diagrams). RWD argues that its application shows that its site “features a low-permeability cohesive soil (Tiskilwa Formation) which is present across the site and which will separate the proposed landfill from the uppermost aquifer.” RWD Brief at 10, citing C-1 at 2.2-1 *et seq.* RWD further argues that its application shows that “[t]he average thickness of the clay between the base of the liner and the uppermost aquifer is approximately 23.5 feet across the expansion area.” RWD Brief at 10, citing C-1 at 2.2-47. RWD claims that its geologic and hydrogeologic analyses demonstrate that “this soil will effectively restrict vertical and horizontal movement of groundwater.” RWD Brief at 10, citing C-1 at 2.2-47.

RWD claims that the record shows that, within 200 feet of its landfill site, “[t]here are no known faults that have displaced during the Holocene Epoch.” RWD Brief at 8, citing C-1 at

2.1-7. RWD further claims that “[t]he proposed expansion site is not located within a seismic impact zone that has a 10% chance of exceeding .10 g in 250 years.” RWD Brief at 9, citing C-1 at 2.1-8; *see* C-1 at 2.2-21-22 (Seismic Risk), C-2 at Appendix F.4 (Seismic Impact Zone). RWD further claims that the site’s design includes “a safety factor greater than 1.3 against slope failure under seismic conditions.” RWD Brief at 9, citing C-1 at 2.1-8; *see* 35 Ill. Adm. Code 811.304(d). In addition, RWD argues that the proposed facility boundary includes no reported karst areas or areas of known underground mining. RWD Brief at 8-9, citing C-1 at 2.1-7; *see* C-1 at 2.2-21 (Coal Mining), C-3 at Appendix G.6 (Coal Mine Directory). RWD further claims that “[t]here are no documented unstable areas beneath the excavation.” RWD Brief at 8, citing C-1 at 2.1-7.

Water Safety. RWD claims that its application shows that “[t]he expansion area is not located within the FEMA [Federal Emergency Management Agency] 100-year floodplain.” RWD Brief at 8, citing C-1 at 2.1-5; *see* 415 ILCS 5/39.2(a)(iv) (2006), 35 Ill. Adm. Code 811.102(b), C-2 at Appendix F.2 (Floodplain). RWD states that a wetland determination and delineation have been performed for the area of the proposed expansion. RWD Brief at 8, citing C-1 at 2.1-6. RWD further states that “the expansion has been designed and located to minimize disturbance potential to wetland areas.” RWD Brief at 8, citing C-1 at 2.1-6; *see* 35 Ill. Adm. Code 811.102(e); C-2 at Appendix F.3 (Wetlands). RWD claims that the record shows that the area of the proposed expansion “does not encompass any rivers designated for protection under the Wild and Scenic Rivers Act.” RWD Brief at 9, citing C-1 at 2.1-9; *see* 35 Ill. Adm. Code 811.102(a), C-2 at Appendix F.5 (Wild and Scenic Rivers).

RWD argues that the record shows that “[t]he proposed expansion will not violate any area-wide or state-wide water quality management plan.” RWD Brief at 9, citing C-1 at 2.1-11; *see* 35 Ill. Adm. Code 811.102(f). RWD states that “the extensive stormwater management features constructed during landfill development will reduce the potential for downstream flooding and improve the quality of runoff when compared to existing conditions.” RWD Brief at 9, C-1 at 2.1-11; *see* C-1 at 2.4-1-2.4-19 (Stormwater Management Plan). RWD also states that the record shows that there are no community water supply wells situated within 2,500 feet of the waste boundary. RWD Brief at 9, citing C-1 at 2.1-12; *see* 415 ILS 5/14.2, 14.3 (2006) (setback zones), 35 Ill. Adm. Code 811.302(a), 814.302(a); C-1 at 2.2-9-2.2-10; C-1 at Drawing G-2 (Water Well Location Map); C-3 at Appendix G.5 (Regional ISGS and ISWS Water Well Logs). RWD also argues that “[n]o sole source aquifer or regulated recharge area is located within the proposed expansion site.” RWD Brief at 9, citing C-1 at 2.1-13; *see* 415 ILCS 5/39.2(a)(ix) (2006), 35 Ill. Adm. Code 811.302(b); C-2 at Appendix F.8 (Sole-Source Aquifer/Regulated Recharge Area). RWD argues that its proposed groundwater monitoring network will consist of 34 wells. RWD Brief at 10, citing C-1 at 2.8-1. Finally, RWD argues that this system will “adequately verify that groundwater resources are not being impacted by the landfill.” RWD Brief at 10, citing C-1 at 2.8-1 *et seq.* (Monitoring).

Operating Procedures/Litter Control. RWD claims that its application “establishes that the site will feature a number of operating procedures to minimize and control litter.” RWD Brief at 11, citing C-1 at 2.6-6. First, RWD states that “[i]ncoming refuse vehicles will be required to be fully-enclosed or to have covers or tarps to prevent waste from blowing out of the vehicles.” RWD Brief at 11, citing C-1 at 2.6-6. Second, RWD claims that it will keep the

active disposal area as small as possible and will cover it at the end of each day with material such as soil, synthetic covers, and alternate materials as approved by the FDA. RWD Brief at 11, citing C-1 at 2.6-6. Third, RWD indicates that “[t]he entire facility will be surrounded with a perimeter fence and exterior berm to collect litter that may escape beyond the active face.” RWD Brief at 11, citing C-1 at 2.6-6. Fourth, RWD states that it will employ temporary litter fences as additional protection near the active face. RWD Brief at 11, citing C-1 at 2.6-6. Fifth, RWD indicates that it will suspend operations under specified conditions: if sustained winds reach 35 miles per hour, in the event of a tornado warning alert, or if the City determines that the operator has not been or is not able to control blowing litter. RWD Brief at 11, citing C-1 at 2.6-6.

In addition, RWD states that “[l]aborers will patrol the facility and the surrounding property to collect any litter that escapes the active fill area.” RWD Brief at 11, citing C-1 at 2.2-6. RWD further states that laborers will daily inspect public rights-of-way along specified routes in the vicinity of the landfill and areas adjacent to those rights-of-way. RWD Brief at 11, C-1 at 2.2-7. RWD’s application also provides that “[l]itter collection activities on these routes will be undertaken on an as needed basis, at a minimum of once per week, or at the request of the City.” C-1 at 2.2-7.

Expert Testimony. RWD argues that Daniel Drommerhausen and Devin Moose testified as expert witnesses at the public hearing that the proposed expansion complies with the requirements of criterion (ii). RWD Brief at 8. RWD further argues that Mr. Charles Norris, testifying on behalf of the objector CCOC, declined to render an opinion as to whether the application satisfies criterion (ii). *Id.*

Drommerhausen Testimony. RWD argues that expert testimony offered by Mr. Daniel Drommerhausen at the local siting hearing demonstrates that the proposed expansion complies with the requirement of criterion (ii) to protect the public health, safety, and welfare. RWD Brief at 8; *see* C-20 at 198-248 (January 23, 2007 transcript); C-20 at 5-92 (January 24, 2007 transcript). RWD states that “Mr. Drommerhausen is a profession geologist at Shaw Environmental who holds a master’s degree in hydrogeology.” RWD Brief at 12, citing C-20 at 199. RWD notes that Mr. Drommerhausen testified concerning his geologic and hydrogeologic analysis of the site. RWD Brief at 12.

RWD states that Mr. Drommerhausen’s testimony included “a detailed explanation of the geology of the landfill site and the role of geology on the landfill’s design.” RWD Brief at 12, citing C-20 at 200-05, 214-15; *see also* C-25 at Exhibit 9 (Power Point presentation). RWD states that this role includes the identifying potential contamination migration pathways and the design of appropriate groundwater monitoring systems. RWD Brief at 12, citing C-20 at 200-05, 214-15; *see also* C-25 at Exhibit 9. RWD states that Mr. Drommerhausen also “discussed the boring sampling and analysis performed to ascertain whether the site is appropriate for the proposed landfill expansion.” RWD Brief at 12, citing C-20 at 205-8; *see also* C-25 at Exhibit 9. RWD also states that Mr. Drommerhausen specifically addressed soil sampling, rock core sampling, establishing the type and quality of soil and rock at the site, and determining whether there is fracturing in the rock there. RWD Brief at 12, citing C-20 at 209-13; *see also* C-25 at Exhibit 9.

RWD notes that Mr. Drommerhausen's testimony "described the extensive testing that was done to determine conductivity at the site." RWD Brief at 12, citing C-20 at 216-26; *see also* C-20 at 2.2-35-37 (In-Situ Hydraulic Conductivity Testing), C-25 at Exhibit 9. RWD also states that Mr. Drommerhausen described potentiometric monitoring performed at the site. RWD Brief at 12, citing C-20 at 235-36; *see also* C-25 at Exhibit 9. RWD states that, in summarizing his analysis of the site, Mr. Drommerhausen stated that its "formation will effectively restrict vertical and horizontal movement of groundwater." RWD Brief at 12, C-20 at 237; *see* C-1 at 2.2-47 (Geologic and Hydrogeologic Conclusions). He further testified that "the geology and hydrogeology at the site is uniform and predictable, and is consistent with findings that have been approved and reviewed by IEPA at the existing permitted landfill." RWD Brief at 12, C-20 at 237. RWD concludes by citing Mr. Drommerhausen's testimony that, "even using very conservative parameters, the modeling done for the site showed that the proposed design would be in compliance with IEPA standards for groundwater impact." RWD Brief at 12-13, citing C-20 at 241; *see also* C-25 at Exhibit 9.

Moose Testimony. RWD argues that expert testimony offered by Mr. Devin Moose at the local siting hearing demonstrates that the proposed expansion complies with the requirement of criterion (ii) to protect the public health, safety, and welfare. RWD Brief at 8; *see* C-20 at 123-97 (January 24, 2007 transcript). RWD states that "Mr. Moose is a civil engineer with more than 20 years of experience in landfill design, who is the director of the St. Charles, Illinois office of Shaw Environmental." RWD Brief at 13; *see* C-25 at Exhibit 10 (Power Point presentation).

RWD argues that Mr. Moose's testimony demonstrates that RWD's application "complies with the relevant regulations pertaining to seismic impact zones, flood plains, wetlands, endangered species and setback requirements." RWD Brief at 13, citing C-20 at 146-50; C-25 at Exhibit 10; C-1 at 2.1-1-14. RWD states that Mr. Moose also testified regarding the site's geology and RWD's proposed composite liner system consisting of "three feet of compacted clay beneath a 60-mil high-density polyethylene (HDPE) liner." RWD Brief at 13, citing C-20 at 154-55; C-25 at Exhibit 10, C-1 at 2.3-4 (Design Report). RWD states that Mr. Moose also testified with regard to an additional engineered clay liner, the final cover system, and wells for removal of landfill gas. RWD Brief at 13, citing C-20 at 161-62, 167-72; *see also* C-25 at Exhibit 10. RWD also states that Mr. Moose noted an evaluation showing that the landfill will generate no groundwater impact 100 feet from the waste boundary 100 years after closure. RWD Brief at 13, citing C-20 at 172-73; C-25 at Exhibit 10 (screen 51); C-1 at 2.7-1 *et seq.* (Groundwater Impact Evaluation). RWD further states that Mr. Moose emphasized the installation of a groundwater monitoring well program for the detection of releases. RWD Brief at 13, citing C-20 at 173-75; C-25 at Exhibit 10 (screens 52-53). Concluding, RWD states that Mr. Moose testified that the proposed expansion includes exhuming unlined landfill Unit 1 and placing the waste there into a lined cell in the expansion area. RWD Brief at 13-14, citing C-20 at 177-79.

Norris Testimony. RWD notes that Mr. Charles Norris was retained by and testified on behalf of CCOC. RWD Brief at 14; *see* C-20 at 251-327 (January 25, 2007 transcript); C-20 at 5-210 (January 26, 2007 transcript). RWD claims that Mr. Norris is not an engineer and that the

offered “no opinion concerning the engineered components of the proposed expansion.” RWD Brief at 14, citing C-20 at 255-56, 259 (January 25, 2007 transcript); *see also* C-25 at CCOC Exh. 5 (Norris resume). RWD argues that, “[m]ost importantly, Mr. Norris testified that he would not render an opinion as to whether the proposed expansion satisfies Criterion (ii).” RWD Brief at 14, citing C-20 at 156 (January 26, 2007 transcript).

In addition, RWD notes that Mr. Norris expressed the opinion that Unit 1 could be safely managed without exhuming waste from it and encouraged the City Council to consider alternatives to exhumation. RWD Brief at 14, citing C-20 at 324-25 (January 25, 2007 transcript). RWD further notes that Mr. Norris made no recommendation to the City Council for dealing with Unit 1. RWD Brief at 14, citing C-20 at 195 (January 26, 2007 transcript).

RWD’s Conclusion on Expert Testimony. RWD concludes by arguing that, when one considers the Application itself and the expert testimony offered in support of it, they conclusively demonstrate that RWD meets criterion (ii) “without the need for imposition of the Special Conditions at issue in this appeal.” RWD Brief at 14.

City of Rochelle’s General Arguments

The City argues “that its Application, prepared by Shaw Environmental, Inc., and supported by lengthy, detailed and persuasive testimony, provides a comprehensive, thorough and wholly adequate plan for a small, environmentally sound and neighbor-friendly landfill, without the imposition of the challenged conditions.” City Resp. at 2. The City claims that the contested conditions originated not from evidence at hearings but instead from a report by Patrick Engineering, Inc, a technical consultant retained by the City Council. *Id.*, citing C-251 – C-270 (review of application and report). The City states that this report “was submitted to the City Council after the close of evidence,” that “[n]o one from the Patrick firm testified,” and there “there was no opportunity to cross-examine a representative from the Patrick firm.” City Resp. at 2. The City argues that the hearing officer in his findings of fact, conclusions of law, and recommendations adopted the conditions proposed by Patrick Engineering “with no analysis as to what evidence in the record supported them.” *Id.*, *see* C-243 – C-248 (recommending imposition of 37 conditions). The City further argues that the City Council then adopted the conditions “either *verbatim*, or with minor modifications, again with no analysis as to any evidentiary foundation.” City Resp. at 2.

The City expresses the belief “that the relief sought by the Operator with respect to all of the conditions in question . . . should be granted.” City Resp. at 1. The City argues that some of the contested conditions could have been drafted in a manner consistent with the evidence in the record and with the concerns that generated them. *Id.* The City further argues that, as the City Council imposed them, “the challenged conditions find no support in the record, are not necessary for any of the required criteria to be met, and should be stricken.” *Id.*

Rochelle City Council’s General Arguments

The City Council argues that “the evidence in the record demonstrates that Special Conditions 8, 26 and 28 as written are reasonable and necessary to accomplish the purposes of

the Act and are not inconsistent with Board regulations.” Council Resp. at 2. The City Council further argues that “the evidence warrants the modification of Special Conditions 13, 23, 33, and 34” as set forth in the City Council’s response brief. *Id.* The City Council further argues that the evidence warrants deletion of Special Condition 22. *Id.* If the Board determines that it lacks authority to modify the contested condition, however, “then the City Council concedes that the evidence in the record does not support Special Conditions 13, 22, 23, 33 and 34 as written, and would acknowledge that in such case these five conditions should be stricken.” *Id.* at 15.

Special Condition 8

RWD’s Arguments. RWD states that Special Condition 8 requires that

[t]he Operator shall, at a minimum, inspect on a daily basis the public rights of way, and areas adjacent to these rights of way, from the landfill facility gate North on Mulford Road and along Route 38 West to the Interstate 39 interchange and Route 38 East through Creston to Woodlawn Road. Litter collection along these rights of way shall be performed at least once per week, and more often if the City Manager determines from review of evidence that the Operator is responsible for the litter. RWD Brief at 14-15, citing C-1658 (Rochelle City Council Resolution R07-10 approving expansion).

RWD further states that the Rochelle City Council imposed Special Condition 8 pursuant to its consideration of criterion (ii) “as necessary and reasonable to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act.” RWD Brief at 15; *see* 415 ILCS 5/39.2 (2006); C-1656.

RWD argues that its application “delineates numerous, detailed operating procedures that will minimize and control litter.” RWD Brief at 15, citing C-1 at 2.6-6; *see supra* p. 8 (Litter Control). Specifically, RWD argues that laborers will daily inspect Mulford Road from the landfill entrance north to Route 38 and will also inspect Route 38 west from Mulford Road to the Interstate 39 interchange. RWD Brief at 16, citing C-1 at 2.6-7. RWD notes that Special Condition 8 “expands the area for litter control to include all public rights of way and areas adjacent to those rights of way, along Route 38 East through Creston to Woodlawn Road.” RWD Brief at 16.

RWD emphasizes that Special Condition 35, which it has not contested, provides that

[t]ransfer trailers going to and from the facility shall be contractually obligated to do so utilizing Route 38 West of Mulford Road to the Interstate 39 interchange. It shall also be the obligation of the Operator to enforce such obligation. Video camera shall be installed at the existing site entrance and at the proposed new entrance to monitor facility traffic entering and leaving the expansion on Mulford Road. C-1661 (Rochelle City Council Resolution R07-10 approving expansion).

RWD argues that “waste hauling cannot even occur along the expanded route required by Special Condition 8.” RWD Brief at 16.

RWD states that, during the city council’s initial consideration of its application, one council member addressed this condition. RWD Brief at 17. RWD suggests that this council member justified the condition not as a way to make RWD responsible for litter attributable to the operation of its landfill but instead “as a sort of public relations measure.” *Id.*, citing C-22 at 83. Specifically, RWD cites the council member’s statement that

[i]t’s a perception issue. I mean, anybody who drives [Route] 38, who’s the first person you’re going to think of if you see a bunch of garbage out there? You’re going to think of the landfill. You’re going to think of the trucks that go to that landfill. That’s why they indeed have the onus on them to keep it clean. RWD Brief at 17 (emphasis in original), citing C-22 at 83.

After RWD filed a motion for reconsideration of the City Council’s decision to impose specified conditions (C-180-83), the City of Rochelle filed its response to that motion (C-146-67). RWD claims that the City’s response states “that litter control was carefully considered in the formulation of the Application.” RWD Brief at 15, citing C-155-56. RWD further claims that “the City did not believe the additional litter control measures described in Special Condition 8 were necessary.” RWD Brief at 15, citing C-155-56. RWD stresses the City’s statement that “there was no testimony that the requirements [for litter control] set forth in the [A]pplication were inadequate, and no testimony with respect to any necessity for additional litter control [measures] . . . beyond those set forth in the [A]pplication and testified to by the City’s witnesses.” RWD Brief at 15, citing C-155-56. On the basis of the City’s response to its motion for reconsideration, RWD claims that “the City found there is no support in the record for this condition.” RWD Brief at 15.

After RWD filed a motion for reconsideration of the City Council’s decision to impose specified conditions (C-180-83), the City Council granted the motion and considered the request to modify or delete those conditions. RWD Brief at 16; *see* C-23 at 2-6 (transcript of May 8, 2007 special council meeting). RWD claims that, in reconsidering Special Condition 8, one city council member “stated that she believed it was a good idea to expand the area of required litter patrol because it would show that the City wanted to be a ‘good neighbor’ to Creston.” RWD Brief at 16, citing C-23 at 8-9. RWD further claims that another city council member supported Special Condition 8 because of the operator’s history and a need to “hold their feet to the fire on it.” RWD Brief at 16, citing C-23 at 9-10.

RWD argues that a third council member appeared to cast some doubt on the condition:

[m]y question is how – how would one determine that they’re respons – that the operator or the transfer company is responsible for any particular route? . . . [Y]ou go on routes, which I do on a fairly regular basis, where there is no – there are no trucks, there are no landfills and the trash is still

in the trees along those roads, and who makes that determination? . . . I don't know how all the trash on a certain route can be deemed to be the responsibility of the operator of the site.” RWD Brief at 16-17 (emphasis in original), citing C-23 at 13-14.

RWD concludes its arguments by arguing that “the record contains no evidentiary support for requiring the expanded litter control requirements imposed by Special Condition 8.” RWD Brief at 17. Specifically, RWD claims that “[t]here is no evidence to show it is necessary for compliance with Criterion (ii).” *Id.* RWD further claims that Special Condition 8 should be deleted because it “is not necessary to accomplish the purposes of Section 39.2 of the Act and is not consistent with the Board’s regulations.” *Id.*, citing 415 ILCS 5/39.2 (2006).

City of Rochelle’s Arguments. The City argues that its application includes a litter control plan making the operator responsible for a number of specified duties. City Resp. at 3, citing C-1 at 2.6-6 – 2.6-7. The City states that those duties include inspecting “public rights-of-way and adjacent areas along Mulford Road from the landfill entrance to Route 38, and along Route 38 from Mulford Road west to the Interstate 39 exchange, on at least a daily basis, with litter collection activities along these routes undertaken as needed.” City Resp. at 3, citing C-1 at 2.6-6 – 2.6-7.

The City argues that Special Condition 8 requires inspections and litter collection in addition to those described in the application. Specifically, the City argues that the condition requires the operator to perform a daily inspection of Route 38 east from Mulford Road to Woodlawn Road, to conduct litter collection at least weekly along the named rights-of-way, and to conduct litter collection more frequently if the City Manager determines that the operator is responsible for the litter. City Resp. at 3-4. The City further argues that, “[w]hile these additional burdens do not seem significant, there is nonetheless nothing in the record that supports the City Council’s finding that they are reasonable and necessary in order for the requirements of Criterion (ii) to be met.” *Id.* at 4.

The City opines that concern with the operator’s operating history underlies the requirements in Special Condition 8. City Resp. at 4. The City notes that the record includes a document prepared by Stephen Rypkema, Director of the Ogle County Solid Waste Management Department, and entitled ““Summary of Inspections and Apparent Violation Noted by Ogle County Solid Waste Management Department during Inspections at the Rochelle Municipal Landfill #2 Landfill April 1991 – December 2006.”” *Id.*, citing C-25 (Operator’s Exhibit #2); *see* C-6 at Appendix U (operating history). The City argues that, although it received lengthy consideration at hearing, “[n]either Mr. Rypkema’s report nor any of the testimony about it support the conclusion that there has been a significant litter problem at the landfill, or that litter from the landfill would not be adequately controlled by the requirements set forth in the Application.” City Resp. at 4, citing C-21 at 8-166 (testimony of operator’s engineering manager).

The City argues that Mr. Rypkema’s summary appears to include only two violations related to litter and attributable to the current operator. City Resp. at 4, citing C-21 at 110, C-25 (Operator’s Exhibit #2). The City also argues that, to the best of its recollection and review, “no

evidence that the landfill had allowed litter to blow onto the rights-of-way anywhere on Route 38, or that refuse trucks going to and from the landfill had caused a litter problem there.” City Resp. at 4. The City concludes that the application contains requirements “sufficient to protect the public health, safety and welfare from any litter problems originating from the landfill.” *Id.*

Rochelle City Council’s Arguments. The City Council cites Section 39.2(a) of the Act:

[t]he county board or the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under this Section. Council Resp. at 6, citing 415 ILCS 5/39.2(a) (2006).

The City Council claims that “RWD has operated the Landfill since July 1995 through an operating agreement with the City.” Council Resp. at 6, citing C-20 at E-1, E-16, 10-1. The City Council states that the application includes information regarding RWD’s operating history. Council Resp. at 6, citing C-6 at Appendix U, C-21 at 9-165 (February 8, 2007 transcript). The City Council further states that the record includes a summary of landfill inspections by the Ogle County Solid Waste Management Department. Council Resp. at 6, citing C-21 at 66; *see* C-25 at Operator’s Exhibit 2 (1991-2006 summary). The City Council argues that “[b]ased on the evidence, RWD has received at least eight administrative citations for ‘insufficient daily cover,’ ‘intermediate cover,’ ‘uncovered refuse,’ ‘lack of litter fencing in above grade areas,’ ‘and ‘litter from pervious operating day.’” Council Resp. at 6, citing C-6 at Appendix U, C-21 at 66, 69-72.

The City Council argues that an inspection report prepared by Mr. Stephen Rypkema and addressing litter at the landfill recommended installation of perimeter fencing or hiring laborers to pick up litter. Council Resp. at 6, citing C-21 at 85. The City Council claims that RWD has not followed this recommendation by installing secondary fencing or by incorporating it into its application. Council Resp. at 6-7, citing C-1 at 2.6-6. The City Council also claims that Mr. Moose testified for the City on criterion (v) with regard to litter control. Council Resp. at 7, citing C-20 at 219, 224 (January 24, 2007 transcript), C-20 at 50, 70 (January 25, 2007 transcript). The City Council argues that Mr. Moose characterized inspection and collection as the bases of a successful litter control plan. Council Resp. at 7, citing C-20 at 70 (January 25, 2007).

The City Council argues that the application’s litter control plan does not include “daily inspections and weekly litter collection for the public rights-of-way and adjacent area along Route 38 east through Creston to Woodlawn Road.” Council Resp. at 5.; *see* C-1 at 2.6-7. The City Council further argues that “[t]he evidence in the record about RWD’s operating history and the litter control problems at the Landfill demonstrate the reasonableness and need for daily inspections and weekly litter collection along these additional public rights of way and adjacent areas.” Council Resp. at 5.

RWD Reply. RWD expresses the belief that “the modifications proposed by the City Council with respect to Special Conditions 13, 22, 23, 33, and 34 are supported by the evidence and, if affirmed by the Board *as so modified*, would be proper.” Reply at 7 (emphasis in original); *see* Council Resp. at 13-14. RWD states that “[i]n the event the Board sees fit to modify these conditions in the manner proposed by the City Council, or, in the alternative, to strike them,” then it “is prepared to withdraw its appeal with respect to Special Condition 8.” Reply at 7.

Special Condition 13

RWD’s Arguments. RWD states that Special Condition 13 requires that

[t]he Operator shall complete the exhumation and redisposal of waste from Unit 1 as soon as practicable, but in no event later than six (6) years from the date an IEPA permit is issued for the expansion, except as otherwise provided by the City Council for good cause shown. The waste exhumation and redisposal shall be restricted to the months of November, December, January, February and March unless it is demonstrated to the City Council that the process can occur in other months without off-site odor migration or other impacts associated with the process. RWD Brief at 18, citing C-1659 (Rochelle City Council Resolution R07-10 approving expansion)

RWD states that Unit 1 accepted waste on a year-round basis from 1972 to 1995. RWD Brief at 18. Because Special Condition 13 would limit exhumation to six months of the year, RWD argues that the condition would require it to remove 276 months of waste in no more than 30 months over a six-year period. *Id.* RWD notes that “the months during which exhumation is permissible under this Condition are those most likely to include substantial periods of inclement weather.” *Id.*

In addition, RWD argues that its application provides plans and procedures for the exhumation of Unit 1,

including the equipment to be used, the method of excavation of cover, the proposed hours and times of year for the exhumation, the nature and quantity of cover to be used, the procedures to be used in addressing any hazardous waste that may be encountered, and air monitoring program, stormwater management requirements, and other safety procedures. RWD Brief at 18-19; *see generally* C-1 at 2.6-24-28 (Waste Relocation Procedures).

RWD further argues that its application estimates that a period of five to ten years will be necessary for the process of relocating Unit 1. RWD Brief at 19, citing C-1 at 2-6.24. RWD also cites the testimony of Devin Moose that “the full exhumation process would take ‘on the order of *about 10 years*’ to complete.” RWD Brief at 19 (emphasis in original), citing C-20 at 321-23 (January 24, 2007 transcript).

RWD further argues that the Host Agreement it negotiated with the City provides that “exhumation is to be ‘commenced and completed within a commercially reasonable time,’ with the City to bear the first \$850,000.00 of the cost and the Operator to bear the balance of the cost.” RWD Brief at 19, *see* C-2 at Appendix C-1 (Host Agreement). RWD claims that it and the City negotiated this allocation of costs “on the parties’ clear and unequivocal agreement that exhumation would be performed in a *commercially reasonable* timeframe.” RWD Brief at 19 (emphasis in original). RWD further claims that the Host Agreement requires the timing, sequence, and manner of the exhumation to be determined through the agreement of RWD and the City and subject to Agency requirements. RWD Brief at 19; *see* C-2 at Appendix C-1.

RWD argues that, during the City Council meeting that culminated in imposing the contested conditions, the City Council’s attorney expressed the assumption that Unit 1 contains between two and two-and-one-half million yards of waste. RWD Brief at 20, citing C-22 at 87. RWD further argues that the City Council’s attorney addressed exhumation by stating the opinion that “[i]t would be *difficult to certainly complete it within six years.*” RWD Brief at 20 (emphasis in original), citing C-22 at 85. RWD further argues that the City’s Council attorney also stated that “testimony at the hearing indicated that the applicant, the operator believed that a 10-year period was the appropriate period over which this waste could be exhumed and later then redisposed.” RWD Brief at 20, citing C-22 at 86.

RWD states that, while commenting on a deadline for exhumation during the same City Council meeting, one council member expressed the view that “our *paid* consultant and the *paid* Hearing Officer said six years, so why don’t we give them six.” RWD Brief at 20 (emphasis in original), citing C-22 at 88. RWD characterizes this view as “a sentiment that surfaces repeatedly during the course of the Council’s meetings.” RWD Brief at 20. In addition RWD, claims that a second city council member supported this six-year deadline only with the statement that “I like that idea.” RWD Brief at 20, citing C-22 at 88.

RWD states that, when the City Council reconsidered its decision to impose conditions, one council member appeared to express doubts about the six-year deadline on exhumation. *See* RWD Brief at 20. That member stated that “*there’s not one person out here that has a clue how long this is going to take. . . . We’re sitting here trying to make a decision that frankly we don’t have the knowledge to make as far as how long it’s going to take.*” *Id.* (emphasis in original), citing C-23 at 23. RWD argues that another council member expressed a similar view: “I don’t have the expertise to make this decision, but the fact of the matter is *we don’t need it to be done any faster to make it more risky to the health, safety, and welfare of the people. . . . We have to allow some flexibility, because no one knows what we’re getting into when we get there.*” RWD Brief at 20-21 (emphasis in original), citing C-23 at 27-28. RWD further argues that, although the Council referred to the requirement in the Host Agreement that waste must be exhumed from Unit 1 within a commercially reasonable time, the Council declined to incorporate that requirement of commercial reasonableness into Special Condition 13. *See* C-23 at 29-32. RWD claims that Council members referred to the standard as “undefined” (C-23 at 30) and as “too big of a gray area” (C-23 at 29). *See* RWD Brief at 21.

RWD argues that Special Condition 13 wrests from the Agency “its regulatory authority to determine the permit conditions under which exhumation and relocation of the waste will occur.” RWD Brief at 21. RWD continues by claiming that “[i]t is the IEPA, not the City Council, that should decide the methodology and timeframe for the exhumation.” *Id.* Noting that two members of the City Council publicly expressed doubt about a six-year deadline, RWD claims that “[t]he Council clearly lacks the expertise to make this type of determination.” *Id.*

Concluding its argument on Special Condition 13, RWD first argues that the six-year deadline in that condition would increase its costs of operation and would jeopardize its ability to expand the landfill. RWD Brief at 21. Second, RWD contends that the condition conflicts with the terms of the parties’ Agreement, which the application includes. *Id.* Third, RWD argues that the condition conflicts with the Board’s regulations by providing the City Council with authority to set conditions on the exhumation process. *Id.* at 21-22. Fourth, RWD argues that the record does not support imposition of the condition: “[t]he timeframe proposed in Condition 13 was not established as a result of a risk assessment, feasibility study, or health and safety analysis, and did not arise pursuant to any investigation into the nature, quality, and quantity of waste in Unit 1.” *Id.* at 19. Finally, RWD claims that the condition is not required to satisfy criterion (ii): “[p]ublic clamor for acceleration of the exhumation timeframe, unaccompanied by any scientific or professional analysis establishing the necessity, or even the feasibility, of performing such accelerated exhumation fails to establish that the acceleration is necessary to protect the public health, safety and welfare.” *Id.*; see 415 ILCS 5/39.2(a)(ii) (2006).

City of Rochelle’s Arguments. The City argues that its Host Agreement with the operator provides that the City may require in an application for approval of a landfill expansion that the exhumation of Unit 1 be “completed within a commercially reasonable time.” City Resp. at 5, citing C-2 at Appendix C-1. The City further argues that this standard “was intended to take into account the significant uncertainties associated with exhumation, while still imposing an obligation on the Operator to proceed as promptly as circumstances allow.” City Resp. at 5.

The City argues that its application includes a detailed plan for exhumation. City Resp. at 6, citing C-1 at 2.6-24 – 2.6-28. The City notes Shaw Engineering’s anticipation “that relocation of Unit 1 will be performed over a 5-10 year period.” City Resp. at 6, citing C-1 at 2.6-24. Specifically, the testimony of Devin Moose concludes that exhumation would take approximately ten years. City Resp. at 6, citing C-20 at 323 (January 24, 2007 transcript). The City argues that Mr. Moose was “[t]he only witness who testified regarding the time needed for the exhumation.” City Resp. at 6.

The City argues that “[t]he evidence does not support a finding that exhumation can be completed within six years, or that a firm deadline of six years is appropriate.” City Resp. at 6. The City further argues that no testimony establishes that the exhumation requires only six years and that any comments recommended such a deadline are “not based on [the] kind of informed, expert analysis that would render them competent or credible.” *Id.* at 7. The City further argues that allowing the operator to seek an extension for good cause does not “substitute for the missing evidence, because it does not provide any standards for the City Council’s determinations as to what constitutes ‘good cause.’” *Id.*

Rochelle City Council's Arguments. The City Council states that the application provides detailed procedures for exhuming waste from Unit 1 of the landfill. Council Resp. at 9, citing C-1 at 2.6-24 – 2.6-28. The City Council further states that the report of Shaw Environmental anticipates that completing exhumation will require five to ten years. Council Resp. at 10, citing C-1 at 2.6-24. The City Council claims that “Mr. Moose, the only witness who testified about the timing of the exhumation of the waste from Unit 1, also testified that the exhumation process would take ‘about 10 years.’” Council Resp. at 10, citing C-20 at 321-23 (January 24, 2007 transcript). The City Council claims that “there was no other credible information introduced into evidence on the issue of the timing of the exhumation process” and that any public comment proposing less time for exhumation “was not based on reliable information.” Council Resp. at 10. The City Council also claims that the Host Agreement “provides that the exhumation be commenced and completed within a commercially reasonable time.” *Id.*, citing C-2 at Appendix C-1 (Host Agreement ¶7.4). The City Council does not dispute that the record supports a ten-year period for exhuming and relocating waste from Unit 1 and states that this condition should be modified accordingly. Council Resp. at 10; *see id.* at 13-14 (proposed modification).

RWD's Reply. RWD notes that the City has conceded that Special Condition 13 is not supported by the record and should be struck. Reply at 3, citing City Brief at 1. RWD further notes that the City Council concedes that only Mr. Moose, who testified that exhumation would take approximately ten years, provided credible evidence on the time required to exhume Unit 1 of the landfill. Reply at 3, citing Council Resp. at 10. RWD states that the City Council proposed amending Special Condition 13 “to require that exhumation be completed as soon as practicable, but, in any event, in no more than ten (10) years from the date an IEPA permit issued for the expansion, except for good cause shown.” Reply at 3, citing Council Brief at 10, 13-14. RWD claims that the City Council’s proposed modification of Special Condition 13 “would alter the condition such that it would thereby enjoy at least minimal support in the record.” Reply at 3. RWD argues that the Board should accept the amended Special Condition 13 as proposed by the City Council. *Id.*, citing Council Resp. at 13-14.

Special Conditions 22 and 23

RWD's Arguments. RWD states that Special Condition 22 requires that

[t]he plan of operation shall include the construction of operational screening berms of between six (6) and eight (8) feet in height along the Southern edge and partially along the East and West edges of operating cells to help block the operations from view from Creston Road as well as help contain litter and reduce noise impacts. The Operator shall propose, and the City Manager shall consider for approval, the placement and limits of the operational berms prior to each cell’s development. Final approval must be obtained prior to new cell construction. The City Manager shall consider the height of the active face, the distance from the site boundary, and the presence of other visual barriers (such as Unit 2) and the effectiveness of other litter and noise control strategies (such as litter fences and permanent perimeter berms) in making its determination. C-1660.

RWD also states that Special Condition 23 requires that

[p]erimeter berms shall be built in advance of the cells in order to screen operations to a reasonable extent. It is recommended to require the berms to be built at least 500 feet in advance of the Easternmost edge of the cell being constructed. By way of example, prior to completion of Cell 3's liner, the Southern berm along Creston Road shall be constructed from E 4,200 to E 6,500, which extends approximately 600 feet East of the cell. The vegetation shall be established (with at least a one-year growing period) prior to waste being placed within 400 feet of a cell with active waste placement. The berm shall be at least 14 feet in height, placed between the waste footprint and Creston Road, and located between E 4,500 and E 7,500. C-1660

RWD states that the Board's regulations provide "that a facility located within 500 feet of a township or county road or state or interstate highway shall have its operations screened from view by a barrier no less than 8 feet in height." RWD Brief at 23, citing 35 Ill. Adm. Code 811.302(c). RWD argues that it has consequently proposed "to screen the facility's operations from view along South Mulford Road, East Creston Road, South Locus Road, and Illinois Route 38 by a vegetated earthen berm or fence with a total height of not less than 8 feet." RWD Brief at 23, citing C-1 at 2.1-1. RWD further argues that testimony by Mr. J. Christopher Lannert and representatives of Shaw Engineering establish that the City carefully considered the proposed berms in drafting the application. RWD Brief at 23; *see* C-20 at 85-182, C-25 at Exhibit 3 (Lannert Power Point presentation).

RWD opposes these two conditions on various grounds. First, RWD argues that "Condition 22 vests excessive, arbitrary discretion in the City Manager to decide berming requirements on an *ad hoc* basis, creating the potential for disruption of operation at the site." RWD Brief at 22. Second, RWD argues that the conditions extend berm height and placement both for the screening berm addressed in Special Condition 22 and the perimeter berm addressed in Special Condition 23. *Id.* at 22-23. Third, RWD argues that it is "unnecessarily duplicative and redundant" for Special Condition 23 to require construction of an operational screening berm up to eight feet in height in addition to a 14-foot perimeter berm. *Id.* at 23. Finally, RWD argues that the record does not support a 14-foot perimeter berm, particularly considering the agricultural areas surrounding the landfill. *Id.*

In support of these arguments, RWD first claims that, while the conditions would not in any way improve public health, safety, or welfare, "these additional berm requirements would have a serious, deleterious effect on the economic feasibility of the project." RWD Brief at 23. Specifically, RWD argues that higher berms require larger bases. *Id.* RWD claims that these larger bases are necessary both as a matter of engineering and to limit the slope of the berm for the protection of maintenance and landscaping workers. *Id.* Consequently, argues RWD, "a higher berm consumes a substantial amount of footprint area, making that area unavailable for waste disposal." *Id.* at 23-24. RWD further argues that the additional berms required by the two conditions conflict with the terms of the Host Agreement. *Id.* at 24.

RWD argues that, in the course of reconsidering its decision to impose conditions, the City Council revealed the motives underlying those conditions. RWD Brief at 24. RWD states that one council member at that meeting expressed doubt that an operational berm “would do much” to obstruct views of landfill operations. *Id.*, citing C-23 at 36-37. RWD also argues that members of the city council erroneously believed that striking Special Conditions 22 and 23 would eliminate berms from the landfill. RWD Brief at 24-25, citing C-23 at 35, 37. RWD further claims that one council member explained and another member agreed that the operational berm was “*more of a punitive measure* to the operator than it is an operational advantage to anybody. It’s saying you have done a bad job, we’re going to make you put another berm in.” RWD Brief at 25 (emphasis in original), citing C-23 at 38.

RWD argues that City Council members have relied unjustifiably on the opinion of its own consultant. RWD Brief at 26. RWD claims that the City Council’s attorney confirmed that the proposed 14-foot height of the proposed berm originated with that consultant. *Id.* at 25-26, citing C-23 at 42. RWD further claims that the City Council’s attorney could not point to a specific part of the record that supported the proposed 14-foot height. RWD Brief at 26. RWD argues that one city council member explained his vote to affirm Special Condition 23 by stating that “*I have to go with the experts that I hired.*” RWD Brief at 26 (emphasis in original), citing C-23 at 52. RWD also argues that one city council member suggested that the consultant may have had punitive motives. RWD Brief at 26, citing C-23 at 41. RWD concludes by claiming that “the transcripts make clear that there was a determined attempt to use RWD’s past operational shortcomings as a whipping boy to justify the imposition of conditions entirely unrelated to those shortcomings or violations” RWD Brief at 27. RWD further claims that Special Conditions 22 and 23 have no support in the record and do nothing to protect public health, safety, and welfare. *Id.*

City of Rochelle’s Arguments. With regard to Special Condition 22, the City claims that the application includes various operational requirements. City Resp. at 8, citing C-1 at 2.6-17 – 2.6-19. The City also claims that, while the application requires a perimeter screening berm (C-1 at 3.1-8), neither the application nor the host agreement requires operational screening berms. City Resp. at 8. The City argues that “[t]he stated purpose of the operational screening berms is ‘to block the operations from view from Creston Road as well as help contain litter and reduce noise impacts.’” *Id.*

The City argues that the record contains no testimony that this “condition requiring operational screening berms was reasonable and necessary in order to ensure compliance with criterion (ii).” City Resp. at 8. The City further argues that, to the extent Mr. Moose commented on operational screening berms, he did so only briefly while responding to questions on other issues. *Id.* at 9, citing C-20 at 65-68 (January 24, 2007 transcript), 201-02 (January 25, 2007 testimony). The City emphasizes Mr. Moose’s testimony that the application met the requirements of criterion (ii) without requiring operational screening berms. City Resp. at 9, citing C-20 at 195 (January 24, 2007 transcript). The City claims that, “[w]hile screening berms might be desirable, and might be included in a future plan or permit application, there is no legal foundation for imposing them as a condition for siting approval.” City Resp. at 9.

With regard to Special Condition 23, the City claims that the application requires a perimeter berm ten to twelve feet in height. City Resp. at 9, citing C-1 at 3.1-8. The City cites to the testimony of Mr. J. Christopher Lannert, who stated “that the berms and plantings were designed to filter and screen the existing operations at the landfill from view along Mulford and Creston Roads.” City Resp. at 10, citing C-20 at 110 (January 22, 2007 transcript). The City emphasizes Mr. Lannert’s opinion that the application complies with the Act’s requirements and claims that “[n]o one testified to the contrary.” City Resp. at 10; *see* C-20 at 102 (January 22, 2007 transcript).

The City argues that Special Condition 23 lacks support on two bases. First, the City claims that there was no testimony that the berm should be fourteen feet high. City Resp. at 10. Second, the City claims that “there was no testimony that such a berm was necessary to meet the requirements of criteria (ii).” *Id.* at 10-11.

Rochelle City Council’s Arguments. The City Council notes that, while the application proposes a perimeter berm no less than eight feet in height, it does not propose operational screening berms. Council Resp. at 11, citing C-1 at 3.1-8. The City Council further notes that Mr. Lannert described the application’s proposed “undulating perimeter berm eight to ten feet in height with plant material on top of the berm, including trees with a minimum height of six feet.” Council Resp. at 11, citing C-20 at 92, 100, 153 (January 22, 2007 transcript). Although the City Council states that Mr. Moose referred to operational screening berms in addressing soil cover during the exhumation process (Council Resp. at 11 n.3), the City Council claims that “[n]o witnesses testified and no other evidence was introduced that operational screening berms, or a fourteen-foot perimeter berm, were necessary.” Council Resp. at 11. The City Council accordingly argues that “[S]pecial Condition 22 should be stricken in its entirety and Special Condition 23 should be modified to require an undulating perimeter berm eight to ten feet in height with plant material on the top of the berm, including plant material in excess of six feet in height.” *Id.*; *see id.* at 14 (proposed modification).

RWD’s Reply. With regard to Special Condition 22, RWD notes that its opening brief argued that it lacks support in the record and offers no additional benefit to public health, safety, and welfare. Reply at 2; *see generally* RWD Brief at 22-27. RWD notes that the City’s brief concurs that Special Condition 22 should be struck. Reply at 2, citing City Resp. at 8-9. RWD also claims that “[t]he City Council also concurs that Special Condition 22 enjoys no support in the record, and agrees that this condition should be ‘stricken in its entirety.’” Reply at 2, citing Council Resp. at 12. RWD argues that, since the petitioner and both respondents agree that this condition has no support in the record and should be struck, “the Board should strike this condition in its entirety.” Reply at 2.

With regard to Special Condition 23, RWD notes that the City concedes that Special Condition 23 is not supported by the record. Reply at 3, citing City Brief at 1. RWD notes that the City Council concedes that “[n]o witnesses testified and no other evidence was introduced that operational screening berms, or a fourteen-foot perimeter berm, were necessary.” Reply at 3, citing Council Resp. at 11. RWD argues that the City Council does “provide minimal record support for a proposed amendment to Special Condition 23, citing testimony concerning the construction of an undulating perimeter berm of eight (8) to (10) feet in height, with plant

material, including trees no less than six feet in height, on top of the berm.” Reply at 4, citing Council Resp. at 12. RWD notes that the City Council proposes a modification of this condition that would “have at least minimal support in the record” (Reply at 4, citing Council Resp. at 14) and argues that the Board should adopt that amendment. Reply at 4.

Special Condition 26

RWD’s Arguments. RWD states that Special Condition 26 provides that

[t]he City Manager, and its legal and technical consultant, shall have the right to be involved in the permitting for the horizontal and vertical expansion of the Rochelle Municipal Landfill. As part of this involvement, the City Manager and its consultant may attend meetings between the Operator and its consultants and the IEPA. The City Manager and its consultants may also review and comment on the Operator’s applications (provided such technical review and comment is conducted within 30 days of receipt of the information) prior to the Operator’s submission of the applications to the IEPA. The technical review comments shall be incorporated into the applications or addressed to the satisfaction of the City Manager. *The Operator agrees to reimburse the City for reasonable costs of its consultants to review and comment on the Operator’s applications and submissions.* RWD Brief at 27 (emphasis in original), citing C-1660.

RWD characterizes the effect of this condition as requiring it to pay the City’s costs of oversight. RWD Brief at 27.

RWD argues that the Host Agreement includes negotiated terms relating to the City’s review and oversight. RWD Brief at 27-27; *see* C-2 at Appendix C-1 (Host Agreement). Specifically, RWD claims that the Host Agreement “provides that the City shall have the opportunity to review all plans and permit applications prior to their being submitted, but imposed no obligation on RWD to reimburse the City for costs incurred in doing so.” RWD Brief at 28. RWD further claims that the condition merely seeks to change the financial terms of the Host Agreement. *Id.* RWD argues that the record includes no basis for imposing the costs of the City’s oversight on RWD and further argues that this cost-shifting “is hardly necessary to establish that the facility is so designed, located, and proposed to be operated that public health, safety and welfare will be protected” *Id.* at 27. RWD concludes by arguing that Special Condition 26 is not necessary to accomplish the purposes of criterion (ii). *Id.* at 27, 28; *see* 415 ILCS 5/39.2(ii) (2006).

City of Rochelle’s Arguments. The City argues that, although it may be desirable to be involved in the permitting of the landfill expansion, the requirements of Special Condition 26 is “not included in the Host Agreement and, to the best of the City’s knowledge, there was simply no evidence presented” in support of those requirements. City Resp. at 11. The City surmises that the condition stems from the report from Patrick Engineering and argues that it should be struck for lack of evidentiary support. *Id.*

Rochelle City Council's Arguments. The City Council argues that RWD has objected to Special Condition 26 “only in that it requires it to pay the City’s oversight costs.” Council Resp. at 8. The City Council argues that the Board “has held that local governments have the right to discuss and recommend administrative and remedial measures relating to landfill operation as a proper means of addressing concerns regarding the public health and safety.” *Id.*, citing Browning Ferris, PCB 82-101, slip op. at 15 (Dec. 2, 1982). The City Council emphasizes that this condition limits the City reimbursement to “reasonable” costs. Council Resp. at 8. The City also claims that “the necessity of the City’s review and comment on RWD’s permitting applications has been amply demonstrated by the evidence in the record of RWD’s operating history.” *Id.*

RWD Reply. RWD expresses the belief that “the modifications proposed by the City Council with respect to Special Conditions 13, 22, 23, 33, and 34 are supported by the evidence and, if affirmed by the Board *as so modified*, would be proper.” Reply at 7 (emphasis in original); *see* Council Resp. at 13-14. RWD states that “[i]n the event the Board sees fit to modify these conditions in the manner proposed by the City Council, or, in the alternative, to strike them,” then it “is prepared to withdraw its appeal” of condition 26. Reply at 7.

Special Condition 28

RWD's Arguments. RWD states that Special Condition 28 requires that

[t]he Operator shall submit the groundwater impact assessment (GIA) planned to be submitted to the IEPA as a permit application to the City Manager for review. The City Manager and its consultant may provide the Operator comments (within 30 days of receipt of the information) that must be incorporated or addressed prior to submitting the GIA to the IEPA as a permit application. RWD Brief at 28, citing C-1661.

RWD states that the Host Agreement provides that, if RWD must file “any state or federal Supplemental Permits, Significant Modification Permits, Renewal Permits, special waste stream permits, adjusted standards, variances, and other permits or authorization . . . necessary or appropriate for the operations, development, expansion, or closure of the landfill,” then “[t]he City will cooperate with the Operator in all such application or petitions filed by the Operator.” RWD Brief at 28-29; *see* C-2 at Appendix C.1 (¶3.13). RWD further states that the host agreement also requires RWD to provide the City with reasonable prior notice of such applications “and that the Operator will not seek any permit, variance or standard that will have a material adverse effect on the City without the City’s prior written approval.” RWD Brief at 29; *see* C-2 at Appendix C.1 (¶3.13). RWD describes these provisions as signs of a “cooperative relationship” resulting from extensive negotiations with the City. RWD Brief at 29.

RWD argues that Special Condition 28 would change that cooperative relationship by giving the City “carte blanche, unilateral authority to alter the content of any GIA permit filed by the Operator.” RWD Brief at 29. RWD further argues that relevant provisions of the Host Agreement, which it included with its application for expansion, are more than necessary to ensure protection of public health, safety, and welfare. *Id.* RWD concludes that Special

Condition 28 “is clearly not necessary” to comply with the requirement of criterion (ii) and should therefore be struck. *Id.*

City of Rochelle’s Arguments. The City argues that, although it may be desirable to be involved in the permitting of the landfill expansion, the requirements of Special Condition 28 are “not included in the Agreement and, to the best of the City’s knowledge, there was simply no evidence presented” in support of those requirements. City Resp. at 11. The City surmises that the condition stems from the report from Patrick Engineering and argues that it should be struck for lack of evidentiary support. *Id.*

Rochelle City Council’s Arguments. The City Council argues that its “right to discuss and confer with RWD on a matter of public health and safety is well-established.” Council Resp. at 9, citing Browning Ferris, PCB 82-101, slip op. at 14-15 (Dec. 2, 1982). The City Council disputes RWD’s claim that this condition should be struck “because it would undermine the cooperative arrangement contemplated by the Host Agreement.” Council Resp. at 9. The City Council argues that this claim fails to meet the burden of demonstrating that the application without this condition would not violate the Act or Board regulations. *Id.* The City Council further argues that “[i]n light of the evidence of RWD’s operating history, the requirement that RWD incorporate or address the City’s comments on the GIA prior to submitting it to the IEPA is not unreasonable or unnecessary.” *Id.* at 8.

RWD Reply. RWD expresses the belief that “the modifications proposed by the City Council with respect to Special Conditions 13, 22, 23, 33, and 34 are supported by the evidence and, if affirmed by the Board *as so modified*, would be proper.” Reply at 7 (emphasis in original); *see* Council Resp. at 13-14. RWD states that “[i]n the event the Board sees fit to modify these conditions in the manner proposed by the City Council, or, in the alternative, to strike them,” then it “is prepared to withdraw its appeal” of Special Condition 28.” Reply at 7.

Criterion (vi)

Section 39.2(a)(vi) of the Act provides that an applicant must demonstrate compliance with, and local siting approval shall be granted only if the proposed facility meets the criterion that “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.” 415 ILCS 5/39.2(a)(vi) (2006).

Special Conditions 33 and 34

RWD’s Arguments. RWD states that Special Condition 33 provides that

[t]he following roadway improvement shall be made to Mulford Road, at the expense of the Operator, prior to acceptance of waste within the expanded facility waste footprint:

The reconstruction of Mulford Road between Route 38 and the existing landfill entrance shall be designed to a rural standard with a dust-free, all weather surface, provide a design weight limit of

80,000 pounds and shall be at least two lanes wide. RWD Brief at 29, citing C-1661.

RWD further states that Special Condition 34, as amended upon reconsideration by the Rochelle City Council on May 14, 2007, provides that

[t]he improvement to Mulford Road as described in special condition 33 above shall be complete from the existing landfill entrance to Creston Road no later than the date on which the proposed new entrance for the expansion is built and completed as required in Special Condition 16. The Operator shall pay all costs of said improvements to the new landfill entrance, and a portion of the cost of the improvements from the new landfill entrance to Creston Road proportionate to the anticipated traffic attributable to the expanded facility, as determined by a traffic study. RWD Brief at 29-30, citing C-1665.

RWD argues that the hearing officer's findings and conclusions "reflect that the sole evidence concerning Criterion (vi) was presented by [Mr. Michael A.] Werthmann," a traffic expert. RWD Brief at 30, citing C-233-39. RWD states that Werthmann testified on existing plans to improve Mulford Road and stated that "most of the traffic that can be expected to use the landfill is already using it, since the expansion is simply a continuation of existing operations." RWD Brief at 30, citing C-20 at 23-24, 29-31 (January 23, 2007 transcript). RWD argues that, although Werthmann relied on cautious estimates of waste volume, his "studies showed that the increased volume of traffic on Mulford Road would be '*not significant by any means.*'" RWD Brief at 30 (emphasis in original), citing C-20 at 34-35 (January 23, 2007 transcript). RWD also argues that the hearing officer echoed these conclusions by stating that "the majority of the traffic generated by the proposed expansion is already on the roadway system. *There will be little new traffic generated by the expansion.*" RWD Brief at 30, citing C-236.

Noting that Mulford Road upgrades have already been proposed, RWD argues that Special Condition 33 largely duplicates those upgrades. RWD Brief at 30, citing C_20 at 21 (January 23, 2007 transcript). RWD further argues that, although the evidence shows that the landfill would increase traffic only to a degree that would be "not significant by any means," "Condition 33 requires that the Operator bear the *full* cost of the road improvements to the Mulford Road upgrades." RWD Brief at 21 (emphasis in original). RWD also argues that the condition "adds a requirement that the road improvements must be completed *prior to acceptance of any waste within the expanded facility waste footprint.*" *Id.* (emphasis in original).

RWD states that Special Condition 34 requires RWD to upgrade "Mulford Road *south* from the landfill entrance to Creston Road." RWD Brief at 31 (emphasis in original). RWD argues that that record contains no support for this requirement, "particularly in light of the fact that inbound transfer trucks can not even use the southbound-to-Creston route, since it is not rated for 80,000 pound trucks." *Id.*, citing C-20 at 170 (January 23, 2007 transcript). RWD also characterizes this condition as "unusual" because the City requires RWD to improve *a township road.*" RWD Brief at 31 (emphasis in original).

RWD claims that the geographical area addressed in Special Condition 34 “is one that is already targeted for growth as a commercial/industrial area.” RWD Brief at 31. RWD notes that one council member noted that a new landfill entrance “won’t be built for several years . . . and by that time there could be additional industry using Creston Road and Mulford Road.” *Id.*, citing C-23 at 70. RWD argues that “[w]arehouses and industrial sites generate far more traffic per acre than a landfill.” RWD Brief at 31. RWD further notes that another city council member observed that persons situated across Mulford Road from the landfill are likely to benefit from the improvements required by Special Condition 34. RWD Brief at 31, citing C-23 at 72. RWD argues that “it is clearly inequitable to force the Operator to make road improvements before it even opens the new entrance, and to bear the cost of road improvements for the benefit of other entities.” RWD Brief at 31-32.

RWD again argues with regard to these conditions that members of the city council were inclined to overlook evidence and give undue deference to their consultants. RWD Brief at 32. RWD concludes by arguing that the evidence does not show that upgrades to Mulford Road required to be performed at RWD’s expense are necessary to comply with criterion (vi). *Id.* Accordingly, RWD argues that they should be struck. *Id.*

City of Rochelle’s Arguments. The City notes that its application requires reconstruction of Mulford Road “to a two-lane road with a weight limit of 80,000 pounds from Illinois Route 38 to just south of the site access drive.” City Resp. at 12, citing C-1 at 6-6 (proposed roadway improvements). Although the City acknowledges that “it was virtually undisputed that Mulford Road should be upgraded as part of the landfill expansion, there were two associated matters that were not addressed in the Application or in the Host Agreement.” City Resp. at 12. First, the City argues that there was no agreement to improve Mulford Road south from the landfill entrance to Creston Road. Second, the City argues that “there was no agreement as to who was going to pay the cost of the improvements.” *Id.*

The City states that it introduced into the record a letter from the Ogle County Highway Engineer suggesting that Mulford Road improvements should include the Creston Road intersection. City Resp. at 12, citing C-25 at Exhibit 8. The City further states that Mr. Michael Werthman testified “that the Application provides for improvements only to the new landfill entrance because the impact of the expansion on the portion of Mulford Road south of the new entrance is minimal and that portion of the road would be used only by collection trucks whose weight is below 80,000 pounds.” City Resp. at 12-13, citing C-20 at 48 (January 23, 2007 transcript). The City argues that both Mr. Werthman and Mr. Moose testified with regard to the costs of those improvements “that they did not know who was to pay the costs.” City Resp. at 13, citing C-20 at 110-11 (January 23, 2007 transcript), C-20 at 135 (January 25, 2007 transcript).

The city argues that “[t]he City Council’s allocation of costs is not supported by any evidence in the record.” City Resp. at 13. The City further argues that “these conditions appear to be an attempt to impose on the Operator, in the form of a siting condition, costs which should have been negotiated and included in the Host Agreement.” *Id.* Although the City states that the record would have supported a condition obligating the City and the operator to allocate costs equitably, “the specific allocation contained in Special Conditions 33 and 34 is simply without foundation in the record.” *Id.*

Rochelle City Council's Arguments. The City Council notes that the application proposes upgrading Mulford Road from Illinois Route 38 to just south of the landfill access drive. Council Resp. at 12, citing C-1 at 6-6. The City Council argues that Mr. Werthman, the only witness regarding road improvements, testified that it was necessary to reconstruct and improve Mulford Road to accommodate transfer trailers. Council Resp. at 13, citing C-20 at 21, 110-11 (January 23, 2007 transcript). The City Council further argues that Mr. Werthman “testified that the increased volume of traffic on Mulford Road as a result of the expansion would not be significant because the expansion is a continuation of existing operations and most of the traffic is already using that road.” Council Resp. at 13, citing C-20 at 23-24, 29-31, 34-35 (January 23, 2007 transcript).

The City Council claims that there was no testimony or other evidence on the issue of costs to improve Mulford Road. Council Resp. at 13. The City Council further claims that “[t]here is no evidence supporting the conclusion that RWD should bear the entire cost of improving Mulford Road between Route 38 and the Landfill entrance.” *Id.* Accordingly, the City Council concedes that the record does not support allocating all costs of improving Mulford Road to RWD. *Id.* The City Council argues that “the evidence supports a condition that the cost of improving Mulford Road between Illinois Route 38 and Creston Road should be allocated between the operator and the City on an equitable basis to be agreed upon between them and incorporated in the Host Agreement.” *Id.*; *see id.* at 14 (proposed modification).

RWD Reply. RWD notes that the City concedes the record contains no support for Special Conditions 33 and 34 as drafted. Reply at 4, citing City Resp. at 1. RWD claims that the City Council acknowledges that only Mr. Werthman testified regarding road improvements and the necessity of them. Reply at 4, citing Council Resp. at 13. RWD further claims that “[t]he City Council further acknowledges there was no testimony or evidence to support the conclusion that the entire cost of such road improvements should be borne by RWD.” Reply at 4, citing Council Resp. at 13.

RWD notes that the City Council proposed to modify these conditions to “reflect that the cost of improvements will not be borne by the Operator alone, but instead be allocated between the Operator (RWD) and the City ‘on an equitable basis to be agreed upon between them and incorporated in the Host Agreement.’” Reply at 4, citing Council Resp. at 14. RWD expresses the belief that the City Council’s “proposed modification to Special Conditions 33 and 34 are consistent with the record in the case” and states that the Board should adopt the amendments. Reply at 4-5.

AMICUS CURIAE BRIEF BY CCOC

CCOC argues that “all of the Special Conditions imposed by the City Council, including the eight (8) contested by Petitioner, should be upheld by this Board.” CCOC Brief at 2. CCOC claims that “[t]he City Manager’s testimony during the hearing was a *de facto* invitation for the City Council to impose conditions.” *Id.*, citing C-21 at 168-180 (City Manager’s testimony). CCOC further claims that “[a]s a result, Petitioner has waived the ability to now object to the imposed Special Conditions.” CCOC Brief at 2. CCOC states that, “[f]or this Operator, with its

operating history, to quibble about the nature and extent of admittedly necessary and reasonable conditions is remarkable.” CCOC Brief at 2

Below, the Board summarizes the arguments made by CCOC in its *amicus curiae* brief and RWD’s reply to those arguments.

Previous Operating Experience of RWD

CCOC argues that, whether through “oversight or deliberate omission,” RWD’s brief did not cite the concluding sentence of Section 39.2(a) of the Act:

The county board or the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under this Section. CCOC Brief at 4; *see* 415 ILCS 5/39.2(a) (2006).

CCOC claims that RWD acknowledges that Special Conditions 8, 13, 22, 23, 26, and 28 concern criterion (ii), making operating history relevant to analysis of them. CCOC Brief at 4, citing RWD Brief at 7. CCOC further argues that, although Special Conditions 33 and 34 concern criterion (vi), they also concern criteria (ii) and (v) because of a truck accident on the roadway addressed in those conditions. CCOC Brief at 4-5, citing C-20 at 213-14 (January 26, 2007 transcript), C-25 at CCOC Exhibit 2 (accident photographs). CCOC claims that “[i]n other words, the Special Conditions can be associated with more than one (1) criterion.” CCOC Brief at 5.

CCOC claims that, in preparing the Application and during the hearings, “the Applicant and Operator attempted to conceal past violations of the Operator.” CCOC Brief at 5. CCOC argues that RWD’s required documentation of its operating experience “failed to incorporate all of its violations in its summary table and failed to provide accurate descriptions of several of the disclosed violations.” *Id.*; *see* C-2 at Appendix A.2 (City of Rochelle Siting Ordinance); C-6 at Appendix U (RWD operating history). CCOC describes this summary table as “deceptive.” CCOC Brief at 5.

CCOC notes that Patrick Engineering, as consultants for the City Council, drafted the special conditions. CCOC Brief at 6, 8; *see* C-251 – C-270 (Patrick Engineering report). CCOC further notes that the hearing officer’s recommendation stated that “*I find all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the previous operating experience.*” CCOC Brief at 6 (emphasis in original), citing C-243. CCOC argues that, given RWD’s “previous operating experience, past record of convictions and admissions of violations, the City Council was certainly justified in implementing the Special Conditions.” CCOC Brief at 8.

Special Condition 8

CCOC characterizes as “incorrect” RWD’s allegation that “waste hauling cannot even occur along the expanded route required by Condition 8.” CCOC Brief at 9, citing RWD Brief at 16. CCOC argues that Special Condition 35 requires “*transfer trailers* going to and from the facility shall be contractually obligated to do so utilizing Route 38 West of Mulford Road to the Interstate 39 interchange.” CCOC Brief at 9 (emphasis in original), citing RWD Brief at 16. CCOC further argues that Special Condition 35 “does not prohibit waste hauling by packer trucks and roll-off container haulers along the ‘expanded route.’” CCO Brief at 9. CCOC claims that, because RWD benefits from having these vehicles traveling on that expanded route, “it should be the responsibility of the Operator to ensure that the roads traveled upon by trucks frequenting its facility are kept clean and free of litter.” *Id.*

CCOC states that the testimony of Mr. Moose provides evidentiary support for the litter control requirements in Special Condition 8. CCOC Brief at 10. CCOC argues that Mr. Moose stated that

[o]n a well-run landfill that garbage should be contained to the landfill site and should not go off property. It does happen occasionally. If it does it should immediately be picked up which means *they should deploy their own litter pickers* that day and if it’s overwhelming for them *they’re going to have to call in some temporary work force and get it taken care of quickly.*” *Id.* (emphasis in original), citing C-20 at 75 (January 25, 2007 transcript).

CCOC further argues that Mr. Moose suggested that litter monitoring requires no technical background and can be performed by elected officials and the general public. CCOC Brief at 10, citing C-20 at 50-51 (January 25, 2007 transcript). CCOC concludes that “Mr. Moose, Petitioner’s own expert, *suggested* that a condition similar to Special Condition 8 be implemented. Thus, the Record contains sufficient information to support the imposition of Special Condition 8, and it should, therefore, be upheld.” CCOC Brief at 10 (emphasis in original).

Special Condition 13

CCOC notes that Shaw Environmental, the firm that designed the landfill expansion, expected that exhumation of Unit 1 could be accomplished in a period of five to ten years. CCOC Brief at 10-11, citing C-1 at 2.6-24, RWD Brief at 19. Accordingly, CCOC argues on the basis of this expectation that “it would have been entirely reasonable for the City Council to require the Operator to have Unit 1 exhumed within six (6) years.” CCOC Brief at 11. CCOC notes that the condition allows RWD to request additional time for exhumation from the City Council if good cause is shown. *Id.* CCOC suggests that this alternative makes it unnecessary for RWD to seek to strike this condition. *See id.* CCOC argues that RWD “should not be excused from meeting the initial deadline before the impracticability of meeting such deadline has been adequately shown.” *Id.* at 12.

CCOC disputes RWD’s argument that this condition conflicts with the Host Agreement providing that the Agency determines the process of exhumation. CCOC Brief at 12; *see* RWD

Brief at 19. CCOC argues that, “if the IEPA determines that six (6) years is not a sufficient amount of time in which to complete the exhumation, or if it determines additional safeguards are required which will slow down the exhumation, such a finding is *de facto* ‘good cause,’ and the Operator will be granted additional time.” CCOC Brief at 12. CCOC argues that, because the City claims that exhumation will benefit public health, safety, and welfare, and because of RWD’s operating history, Special Condition 13 should be upheld. *Id.* at 12-13, citing C-21 at 220-21.

Special Conditions 22 and 23

CCOC disputes RWD’s argument that the City Council imposed Special Conditions 22 and 23 to punish RWD for its operating history. CCOC Brief at 14, citing RWD Brief at 27. CCOC argues that, under Section 39.2(a) of the Act, the City Council is allowed to consider RWD’s operating history when considering criterion (ii). CCOC Brief at 14; *see* 415 ILCS 5/39.2(a) (2006). CCOC further argues that, given RWD’s record, “the additional berm requirements would offer an ‘additional benefit to the public health, safety and welfare,’ and the imposition of a fourteen (14) foot berm *is* necessary to protect the public health, safety and welfare.” CCOC Brief at 14 (emphasis in original).

CCOC also disputes RWD’s claim that that Special Condition 22 duplicates Special Condition 23. *See* RWD Brief at 23. CCOC argues that “Special Condition 22 concerns operational screening berms around each *cell*, while Special Condition 23 requires a permanent perimeter berm around the *entire footprint*. Therefore, Special Conditions 22 and 22 (sic) are necessary, separate, and distinct, albeit complementary of each other.” CCOC Brief at 14 (emphasis in original).

CCOC also disputes RWD’s claim that a 14-foot berm exceeds the requirements of the Board’s regulations. *See* RWD Brief at 23. CCOC argues that “the law requires a barrier ‘*no less than 8 feet in height.*’” CCOC Brief at 14 (emphasis in original), citing 35 Ill. Adm. Code 811.302(c). CCOC further argues that RWD’s inadequate operating record should require a higher berm “as its operations are less protective of the public health, safety and welfare.” CCOC Brief at 14-15. In addition, CCOC states that must be in place only between the waste footprint and Creston Road on the southern boundary of the landfill. *Id.* at 15. CCOC further argues that “there is no evidence that a fourteen (14) foot perimeter berm is either technically or financially impracticable.” *Id.*, citing Waste Mgmt. of Ill., Inc. v. Will County Bd., PCB 99-141 (Sept. 9, 1999).

Special Condition 26

CCOC claims that RWD’s operating history makes Special Condition 26 necessary. CCOC Brief at 16. CCOC argues that, if RWD had a better operating history, “it may be less necessary for the City Manager to be as actively involved in any permitting procedures.” *Id.* CCOC further argues that

[b]y requiring the Operator to reimburse the City for the reasonable costs of its consultants to review and comment on any applications and

submissions, Special Condition 26 provides an incentive for the Operator to comply with any and all rules and regulations. The more complete and thorough the Operator's applications and submissions, the less time and money the City will have to spend reviewing and evaluating such documents. *Id.*

CCOC further argues that it is appropriate for the City Council to impose technical conditions, which "can be used by a community as a means to continue to play a role in facility development after the siting process has concluded." *Id.* at 16-17 (citations omitted). CCOC claims that the City Council has authority to impose this condition regardless of RWD's operating history. *Id.* at 17.

CCOC claims that, because the Host Agreement predates the hearings in this proceeding, "the prior operating history of the Operator was not fully exposed until after the Host Agreement was executed." CCOC Brief at 17. CCOC argues that "[i]t is inconceivable that the City Council should be prevented from imposing additional costs upon the Operator that were not specifically included as part of the Host Agreement when the Operator deliberately concealed the facts that necessitated the imposition of such costs." *Id.*

Special Condition 28

CCOC renews its argument that RWD's operating history "was not exposed until the hearings, which was after the Host Agreement had been executed." CCOC Brief at 17. CCOC claims that the operating history justifies additional oversight and will not jeopardize the relationship established in the host agreement. *Id.* CCOC further argues that this condition "directly affects the public health, safety and welfare by requiring additional assurance that the groundwater impact assessment is satisfactory." *Id.* (citations omitted).

Special Conditions 33 and 34

CCOC notes that RWD has acknowledged that Special Conditions 33 and 34 relate to criterion (vi). CCOC Brief at 18, citing RWD Brief at 7. CCOC first argues that Special Conditions 33 and 34 also relate to criteria (ii) and (v), "as the road improvements were imposed, in part, to minimize traffic backing up along the railroad tracks, which concerns the public safety." CCOC Brief at 18, citing C-20 at 91-93 (January 23, 2007 testimony). CCOC further argues that "Petitioner's operating history may also be considered in analyzing Special Conditions 33 and 34." *Id.*

Noting that RWD has challenged the City Council's decision to make RWD accountable for road improvement costs, CCOC argues that "the road improvements to Mulford Road would not have to be made *but for* the expansion of the landfill." CCOC Brief at 18 (emphasis in original). CCOC concludes that "it is only fair and reasonable that the Operator bear the cost of such improvements." *Id.*

Noting that RWD objects to Special Condition 34 in part "because 'transfer trucks' cannot use the stretch of road from Mulford Road southbound to Creston Road," CCOC argues

that RWD “fails to acknowledge that packer trucks can and will use such route.” CCOC Brief at 19. CCOC stresses that the condition “only requires the Petitioner to *pay that portion* of the cost of improvements from the new landfill entrance to Creston Road that it proportionate to the anticipated traffic attributable to the expanded facility.” *Id.* (emphasis in original).

RWD’s Reply

Generally, RWD argues that CCOC’s position in its *amicus curiae* brief “consists almost entirely of an exaggerated portrayal of RWD’s operating history, and a legally unsound argument” based upon that exaggeration. Reply at 5. RWD first disputes CCOC’s claim that the summary of violations prepared by RWD is incomplete. RWD notes that Mr. Hilbert testified that his own summary included every violation notice included in the summary prepared by Mr. Rypkema of the Ogle County Solid Waste Management Department. *Id.*, citing C-6 at Appendix U, C-21 at 137 (February 8, 2007 transcript), C-25 at Operator’s Exhibit 2. RWD argues that “[a] review of the two documents confirms the accuracy of Mr. Hilbert’s testimony.” Reply at 5.

Second, RWD disputes CCOC’s claim that an oversight or deliberate omission led RWD to omit citation to a second sentence of criterion (ix) relating to operating history. Reply at 5, citing CCOC Brief at 4. RWD suggests that the language CCOC refers to is in effect an unnumbered tenth criterion and “is not a part of criterion (ix) at all.” Reply at 5; *see* 415 ILCS 5/39.2(a) (2006).

Third, RWD disputes CCOC’s claims that the record includes “direct, conflicting evidence” regarding the contested conditions. Reply at 6, citing CCOC Brief at 3-4. RWD argues that “CCOC fails to include any record cites whatsoever to this supposed ‘evidence.’” Reply at 6. RWD claims that CCOC appears to argue “that a record of past violations dispenses with the well-established requirements that a condition to siting approval be supported by evidence in the record.” *Id.*

Special Condition 13. RWD characterizes CCOC’s argument on this condition as “fatally flawed.” Reply at 6. RWD claims that a six-year deadline for exhumation of Unit 1 overlooks testimony that the process may take as long as ten years. *Id.* Also, RWD disputes CCOC’s claim that the condition is reasonable because it allows the City Council to extend the deadline. *Id.* RWD argues that the condition contains no standards on which to determine whether to grant a request for an extension, giving the City Council “unfettered discretion.” *Id.*

Special Conditions 22 and 23. RWD notes CCOC’s argument that a 14-foot perimeter berm is justified by RWD’s operating history and by conflicting testimony in the record. Reply at 6. RWD disputes CCOC’s claim that there is conflicting testimony on this issue as “totally unsupported by the record.” *Id.* at 6-7. RWD further argues that “CCOC’s exaggerated allegations concerning the operator’s history do not obviate the need for a condition to find support in the record.” *Id.* at 7.

Special Conditions 33 and 34. RWD claims that CCOC’s allegations regarding the evidence supporting these conditions “conveniently fail[] to include any citations whatsoever to the record to support those allegations.” Reply at 7. RWD notes Mr. Werthman’s testimony

regarding Mulford Road that “the expansion of the landfill is a continuation of existing operations and most of the traffic is already using that road.” *Id.* RWD argues that “[t]here was no evidence to the contrary, and there was no testimony concerning an appropriate allocation of costs.” *Id.*

RWD’s Conclusion. RWD restates its position that “the modifications proposed by the City Council with respect to Special Conditions 13, 22, 23, 33, and 34 are supported by the evidence and, if affirmed by the Board *as so modified*, would be proper.” Reply at 7 (emphasis in original); *see* Council Resp. at 13-14. RWD also restates that, “[i]n the event the Board sees fit to modify these conditions in the manner proposed by the City Council, or, in the alternative, to strike them,” then it “is prepared to withdraw its appeal” of Special Conditions 8, 26 and 28.” Reply at 7.

DISCUSSION

Special Condition 8

In its recommendation, Patrick Engineering, the City Council’s consultant, agreed that “the design, operation and location of the expansion is designed and proposed to be operated to be protective of the public health safety and welfare” with special conditions including the following:

[t]he Operator shall, at a minimum, inspect on a daily basis the public right of ways, and areas adjacent to these right of ways, from the landfill facility gate north to Mulford Road and along Route 38 west to the Interstate 39 interchange. Litter collection along these rights of ways shall be performed at least once per week, and more often if the Landfill Advisory Committee determines from review of evidence that the Operator is responsible for the litter. C-263 (recommended condition 8) *see also* C-322 (proposed CCOC special condition 1(d)); *see generally* Fairview Area Citizens Taskforce v. PCB, 198 Ill. App. 3d 541, 555 N.E.2d 1178, 1182 (3rd Dist. 1990) (stating record supports Board findings on consultant’s report).

In his recommendation, the local hearing officer found “all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the previous operating experience.” C-243. The hearing officer recommended imposition of the same special condition, proposing only technical, non-substantive changes to its language. C-244 (recommended condition 8).

As imposed by the City Council, Special Condition 8 also requires daily litter inspection on Illinois Route 38 east from Mulford Road through Creston to Woodlawn Road and weekly litter collection along that route. C-1658 (Rochelle City Council Resolution R07-10 approving expansion); C-1664 (reconsideration). In his testimony regarding traffic, Mr. Werthmann testified that 40 percent of the direct haul trucks delivering local waste to the landfill will travel to and from the east on Illinois Highway 38. C-20 at 27-28 (January 23, 2007 transcript); C-25 at Operator’s Exhibit 7 (slide 14). Mr. Werthmann’s testimony distinguishes between these local

trucks and the transfer trailers addressed by Special Condition 35, which obligates those transfer trailers to follow Illinois Route 38 west from its intersection with Mulford Road. *Id.*; *see* C-1661 (special condition 35).

In his testimony, Mr. Moose acknowledged that garbage will not always be contained to the landfill site. C-20 at 70 (January 25, 2007). He testified that, if it does leave the site, the operator should immediately deploy a crew to pick it up and that it should hire temporary workers if necessary to address the problem quickly. *Id.* The Board notes that RWD's operating history includes references to improper use and application of cover, allowing refuse to remain uncovered, and failure to collect and contain litter from its site. C-6 at Appendix U; C-25 at Operator's Exhibit 2.

In light of the recommendations from Patrick Engineering and the hearing officer, the testimony of Mr. Werthmann and Mr. Moose, and RWD's operating record, the Board finds that Special Condition 8 is not against the manifest weight of the evidence. The Board affirms the requirements of that Special Condition 8 as imposed by the City Council.

Special Condition 13

In its recommendation, Patrick Engineering agreed that "the design, operation and location of the expansion is designed and proposed to be operated to be protective of the public health safety and welfare" with special conditions, including the following:

[t]he Operator shall complete the exhumation and relocation of the waste from Unit 1 within six (6) years from the IEPA permit approval for the expansion. The waste exhumation and relocation shall be restricted to the months of November, December, January, February and March unless it is demonstrated to the City Council that the process can occur in other months without off-site odor migration or other impacts associated with the process. C-264 (recommended condition 13).

In his recommendation, the hearing officer found "all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the previous operating experience." C-243. The hearing officer recommended imposition of the same recommended Special Condition 13. C-245 (recommended condition 13); *see also* C-323 (proposed CCOC special condition 7).

As imposed by the City Council, Special Condition 13 provides that

[t]he Operator shall complete the exhumation and redispal of waste from Unit 1 as soon as practicable, but in no event later than six (6) years from the date an IEPA permit is issued for the expansion, except as otherwise provided by the City Council for good cause shown. The waste exhumation and redispal shall be restricted to the months of November, December, January, February and March unless it is demonstrated to the City Council that the process can occur in other months without off-site odor migration or other impacts associated with the process. C-1659.

The application anticipates that the relocation of Unit 1 will be performed over a period of five to ten years. C-1 at 2.6-24. The Host Agreement requires the exhumation and relocation process to be completed within a commercially reasonable time. C-2 at Appendix C.1. Mr. Moose testified that waste relocation is “going to take on the order of about 10 years to achieve.” C-20 at 323 (January 24, 2007 transcript).

The Board finds that the 6-year deadline contained in Special Condition 13 falls within the time estimated in the application for completion of the exhumation and relocation. The Board further finds that the condition allows RWD to demonstrate to the City Council that good cause exists for an extension of that six-year deadline. The special condition does not limit the number or duration of any extensions. In light of these considerations and the recommendations from Patrick Engineering and the hearing officer, the Board finds that Special Condition 13 is not against the manifest weight of the evidence. The Board affirms the requirements of that special condition as imposed by the City Council.

Special Conditions 22 and 23

In its recommendation, Patrick Engineering agreed that “the design, operation and location of the expansion is designed and proposed to be operated to be protective of the public health safety and welfare” with special conditions including the following:

[t]he plan of operations shall include the construction of operational screening berms of between six (6) and eight (8) feet in height along the southern edge and partially along the east and west edges of operating cells to help block the operations from view from Creston Road as well as help contain litter and reduce noise impacts. The Operator shall propose, and the Landfill Advisory Committee shall consider for approval, the placement and limits of the operational berms prior to each cell’s development. Final approval must be obtained prior to new cell construction. The Committee shall consider the height of the active face, the distance from the site boundary, and the presence of other visual barriers (such as Unit 2) and the effectiveness of other litter and noise control strategies (such as litter fences and permanent perimeter berms) in making its determination. C-265 (recommended condition 23).

Patrick Engineering also recommended a special condition providing that

[p]erimeter berms shall be built in advance of the cells in order to screen operations to a reasonable extent. It is recommended to require the berms to be built at least 500 feet in advance of the eastern-most edge of the cell being constructed. By way of example, prior to completion of Cell 3’s liner completion, the southern berm along Creston Road shall be constructed from E 4,200 to E 6,500, which extends approximately 600 feet east of the cell. The vegetation shall be established (with at least a one-year growing period) prior to waste being placed within 400 feet of a cell with active waste placement. The berm shall be at

least 14 feet in height, placed between the waste footprint and Creston Road, and located between E 4,500 and E 7,500. C-265 (recommended condition 24).

In his recommendation, the hearing officer found “all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the previous operating experience.” C-243. The hearing officer recommended imposition of the same special condition, proposing only technical, non-substantive changes to its language. C-246-47 (recommended conditions 23, 24). Although the City Council in Special Condition 22 substituted “the City Manager” for “the Landfill Advisory Committee,” it otherwise adopted the special conditions substantively as proposed by Patrick Engineering and the hearing officer. *See* C-1660; *see also* C-322 (CCOC recommended special condition 1(c)).

With regard to these special conditions, Mr. Moose testified that an operational screening berm is an appropriate approach when landfill activities rise above grade level. C-20 at 202 (January 24, 2007 transcript). He further testified that these berms help to screen operations from view and control litter. C-20 at 66-68 (January 25, 2007). In light of the recommendations from Patrick Engineering and the hearing officer, the testimony of Mr. Moose, and RWD’s operating record, the Board finds that Special Conditions 22 or 23 are not against the manifest weight of the evidence. The Board affirms the requirements of Special Conditions 22 and 23 as imposed by the City Council.

Special Conditions 26 and 28

In its recommendation, Patrick Engineering agreed that “the design, operation and location of the expansion is designed and proposed to be operated to be protective of the public health safety and welfare” with special conditions including the following:

[t]he City Council, and its legal and technical consultants, shall have the right to be involved in the permitting for the horizontal and vertical expansion of the Rochelle Landfill. As part of this involvement, the City Council and its consultants may attend meetings between the Operator and its consultants and the Illinois EPA. The City Council and its consultants may also review and comment on the Operator’s applications (provided such technical review and comment is conducted within 30 days of receipt of the information) prior to the Operator’s submission of the applications to the Illinois EPA. The technical review comments shall be incorporated into the applications or addressed to the satisfaction of the City Council. The Operator agrees to reimburse the City for the reasonable costs of its consultants to review and comment on the Operator’s applications and submissions. C-266 (recommended special condition 27).

Patrick Engineering also recommended a special condition providing that

[t]he Operator shall submit the groundwater impact assessment (GIA) planned to be submitted to the IEPA as a permit application to the City Council for review. The City Council and its consultants may provide the Operator comments (within

30 days of receipt of the information) that must be incorporated or addressed prior to submitting to the GIA to the IEPA as a permit application. C-266 (recommended special condition 29).

In his recommendation, the hearing officer found “all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the previous operating experience.” C-243. The hearing officer recommended imposition of substantively identical special conditions. C-247 (recommended conditions 27, 29).

In adopting Special Conditions 26 and 28, the City Council replaced references to the “the City Council” with references to “the City Manager.” The City Council otherwise adopted both of the special condition substantively as proposed by Patrick and the hearing officer. *See* C-1660.

The restated Host Agreement provides that RWD will provide the City with prior notice of various permit applications and petitions related to the landfill, that RWD will not seek any permit or other relief having an material adverse effect on the City without the City’s prior approval, and that the City will cooperate with RWD in all such applications or petitions. C-2 at Appendix C.1 (¶3.13). In light of the recommendations from Patrick Engineering and the hearing officer and RWD’s operating record, the Board finds that the additional oversight embodied in Special Conditions 26 and 28 are not against the manifest weight of the evidence. The Board affirms the requirements of Special Conditions 26 and 28 as imposed by the City Council.

Special Conditions 33 and 34

In its recommendation, Patrick Engineering did not address criterion (vi) (*see* C-253), the basis on which the City Council imposed Special Conditions 33 and 34 (C-1656). Nonetheless, Patrick Engineering recommended under criterion (ii) that RWD incur the expense of specified roadway improvements in order that “the design, operation and location of the expansion is designed and proposed to be operated to be protective of the public health safety and welfare.” Patrick Engineering proposed the following special condition:

[t]he following roadway improvements shall be made to Mulford Road, at the expense of the Operator, prior to acceptance of waste within the expanded facility waste footprint: - The reconstruction of Mulford Road between Illinois Route 38 and Creston Road shall be designed with a dust free, all weather surface, provide a design weight limit of 80,000 pounds and shall be at least two lanes wide. C-266 (recommended special condition 35).

While the hearing officer’s consideration of criterion (vi) generally addressed the issue of improving Mulford Road, it did not specifically address the cost of that improvement. *See* C-238. In his recommendation, the hearing officer found “all of the special conditions recommended by Patrick Engineering, Inc. to be reasonably necessary, supported by the record and necessitated by the previous operating experience.” C-243. The hearing officer

recommended imposition of a special condition substantively identical to that proposed by Patrick. C-248 (recommended conditions 35).

At its April 11, 2007 meeting, the City Council addressed this issue in two special conditions. Special Condition 33 provided that

[t]he following roadway improvement shall be made to Mulford Road, at the expense of the Operator, prior to acceptance of waste within the expanded facility waste footprint: - The reconstruction of Mulford Road between Illinois Route 38 and the existing landfill entrance shall be designed to a rural standard with a dust free, all weather surface, provide a design weight limit of 80,000 pounds and shall be at least two lanes wide. C-1661.

In addition, Special Condition 34 provided that

[t]he improvement to Mulford Road as described in special condition 33 above shall be completed from the existing landfill entrance to Creston Road, at the expense of the Operator, no later than the date on which the proposed new entrance for the expansion is built and completed as required in Special Condition 16. C-1661.

On reconsideration, the City Council amended Special Condition 34 to provide

[t]he improvements to Mulford Road as described in special condition 33 above shall be completed from the existing landfill entrance to Creston Road no later than the date on which the proposed new entrance for the expansion is built and completed as required in Special Condition 16. The Operator shall pay all costs of said improvements to the new landfill entrance, and a portion of the cost of improvements from the new landfill entrance to Creston Road proportionate to the anticipated traffic attributable to the expanded facility, as determined by a traffic study. C-1665 (Resolution 07-18).

Mr. Werthmann testified that the proposed expansion would not add a significant volume of traffic to Mulford Road. C-20 at 34-35 (January 23, 2007 transcript); *see* C-238 (hearing officer's findings of fact). Although the application includes upgrading Mulford Road (C-C-1 at 6.6, C-20 at 21 (January 23, 2007 transcript)), the Host Agreement does not specifically address the cost of that improvement (*see* C-2 at Appendix C.1), and both Mr. Werthmann and Mr. Moose testified that they were not certain who would pay those costs. C-20 at 110-11 (January 23, 2007 transcript); C-20 at 135-36 (January 25, 2007 transcript).

The Board concludes that Special Conditions 33 and 34 assigning road improvement costs to RWD lack support in the record. Furthermore, the Act does not permit the City Council to consider RWD's operating experience in considering these conditions imposed under criterion (vi). *See* 415 ILCS 5/39.2(a) (2006).

The Board notes that the City Council concedes that the allocation of costs in these two special conditions lacks record support. Council Resp. at 13. The City, as siting applicant, concurs in this conclusion. City Resp. at 13-14. The City Council argues that “the evidence supports a condition that the cost of improving Mulford Road between Illinois Route 38 and Creston Road should be allocated between the operator and the City on an equitable basis to be agreed upon between them and incorporated into the Host Agreement.” Council Resp. at 13.

Accordingly, the City Council proposes to amend Special Condition 33 simply by striking the language “at the expense of the operator.” *Id.* at 14. The City Council proposes to amend Special Condition 34 as follows:

[t]he improvements to Mulford Road as described in special condition 33 above shall be completed from the existing landfill entrance to Creston Road no later than the date on which the proposed new entrance for the expansion is built and completed as required in Special Condition 16. The costs of improvements to Mulford Road shall be allocated between the Operator and the City on an equitable basis to be agreed upon between them and incorporated in the Host Agreement. *Id.*

RWD argues that the City Council’s modifications are consistent with the record and that the Board should adopt those amendments. Under these circumstances, the Board finds that Special Conditions 33 and 34 should be modified to conform to the record, as proposed by the City Council and as described in the Board’s order below. *See Browning Ferris Industries of Illinois v. Lake County Board of Supervisors and IEPA*, PCB 82-101, slip op. at 14-15 (Dec. 2, 1982).

This opinion constitutes the Board’s findings of fact and conclusions of law.

ORDER

1) The Board’s review of the City Council’s record of decision demonstrates that the City Council’s decision to impose Special Conditions 8, 13, 22, 23, 26, and 28 is not against the manifest weight of the evidence. The Board affirms the requirements of those special conditions as imposed by the City Council.

2) The Board finds that Special Conditions 33 and 34 lack support in that record and modifies those conditions as proposed by the City Council as follows:

Special Condition 33. The following roadway improvements shall be made to Mulford Road prior to acceptance of waste within the expanded facility waste footprint: - The Reconstruction of Mulford Road between Route 38 and the existing landfill entrance shall be designed to a rural standard with a dust free, all weather surface, provide a design weight limit of 80,000 pounds and shall be at least two lanes wide.

Special Condition 34. The improvements to Mulford Road as described in Special Condition 33 above shall be completed from the existing landfill entrance to Creston

Road no later than the date on which the proposed new entrance for the expansion is built and completed as required in Special Condition 16. The Costs of improvements to Mulford Road shall be allocated between the Operator and the City on an equitable basis to be agreed upon between them and incorporated in the Host Agreement.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 24, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board