

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN BOTTOM CONSERVANCY, and)	
)	
SIERRA CLUB,)	
)	
Co-Petitioners,)	
)	
v.)	PCB 07-84
)	(Third-Party Pollution Control
)	Facility Siting Appeal)
CITY OF MADISON, ILLINOIS, and)	
)	
WASTE MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondents.)	

RESPONSE OF CITY OF MADISON, ILLINOIS TO PETITIONERS' MOTION FOR RECONSIDERATION

Respondent, City of Madison, Illinois ("City"), submits this Response to the Motion to Reconsider Order of December 6, 2007 ("Motion to Reconsider") filed by Petitioners American Bottom Conservancy and Sierra Club ("Petitioners").

INTRODUCTION

Petitioners have requested that the Illinois Pollution Control Board ("Board") reconsider its December 6, 2007 Order affirming the City's decision granting site location approval for the expansion of the existing Milam Recycling and Disposal Facility ("North Milam"). The basis for the Motion to Reconsider is very limited and narrow. Petitioners claim new evidence has come to light indicating a possibility that by May 2009, the area where North Milam is located will be determined to be within a 100 year flood plain and not "flood-proofed," and therefore, criteria (ii) and (iv) of Section 39.2(a) of the Illinois Environmental Protection Act ("Act") have not been met in this proceeding. (See Motion to Reconsider, pp. 2-3, ¶¶ 7-10.)

The Motion to Reconsider is without merit and should be denied. The City is aware the Respondent, Waste Management of Illinois, Inc., is filing a Response to the Motion to Reconsider, as well. The City hereby adopts the Response of Waste Management in its entirety in that it accurately sets forth the pertinent legal authorities and correctly applies those authorities to the factual situation before the Board. In particular, the City would join in the representations that the facts and circumstances relied upon by Petitioners concerning the possibility of a deaccreditation of the levee systems in the Metro East area of southern Illinois is not "new evidence." As clearly expressed in the Response of Waste Management, information about this possibility was well known and publicly available during the siting process. Petitioners failure to present any evidence concerning this issue at any hearing or during any comment period absolutely waives their right to seek a reconsideration of the Board's decision because of such information.

In further Response to Petitioner's Motion the City submits that it has taken action to address any possible levee deaccreditation. In Petitioner's Exhibit 2 the FEMA Director explains a mechanism to prevent a deaccreditation by mapping any affected area as a Restoration Zone (Zone AR).

At its Regular Meeting on December 26, 2007 the Mayor and City Council for the City adopted a Resolution requesting that FEMA designate the City as a Zone AR. On January 8, 2008 the Mayor and City Council also established a Corporate Boundary Map as part of the process to produce new FEMA flood risk maps.

While the basis for the Petitioner's Motion to Reconsider is clearly prohibited by virtue of their own waiver of the issue it is clear the *possible* levee deaccreditation upon which they rely is very remote given the actions on the part of the City to timely address the concerns of FEMA.

For the reasons set forth herein and those submitted by Respondent Waste Management in their Response, the City respectfully requests that the Board deny Petitioner's Motion to Reconsider, and grant such other relief as it deems fair and reasonable.

Respectfully submitted,

/s/ John T. Papa

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of February, 2008, a complete copy of this instrument was served upon counsel for defendants by e-mail and regular U.S. Mail to the addresses below.

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