

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2011

VEOLIA ES ZION LANDFILL, INC.,)
)
 Petitioner,)
)
 v.) PCB 11-10
) (Pollution Control Facility
CITY COUNCIL OF THE CITY OF ZION,) Siting Appeal)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On September 2, 2010, Veolia ES Zion Landfill, Inc. (Veolia) filed a petition asking the Board to review an August 3, 2010 decision of the City Council of the City of Zion (Zion) approving the expansion of an existing landfill in Zion, Lake County. Zion placed 25 conditions on the approval and Veolia appeals the imposition of only one condition. The condition, Special Condition 2.2, allows Zion to review and approve, conditionally approve or deny approval of “draft plans, designs, and an operations and maintenance plan” relating to the landfill gas collection and control system.

For the reasons discussed below, the Board finds that the imposition of Special Condition 2.2 is beyond the purview of Zion and even if modified, the imposed condition is against the manifest weight of the evidence. Therefore, the Board strikes Special Condition 2.2.

The Board will begin this opinion with a brief procedural history, followed by the legal background used in reviewing a condition. The Board will then set forth the facts followed by the parties’ arguments. The Board will then proceed to a discussion of the Board’s findings.

PROCEDURAL BACKGROUND

On September 2, 2010, Veolia filed a petition (Pet.) asking the Board to review an August 3, 2010 decision of Zion concerning Veolia’s proposed expansion of an existing landfill. The Board accepted Veolia’s petition for hearing on September 16, 2010.

On September 29, 2010, Zion filed a motion to dismiss this landfill siting appeal and on October 18, 2010, Veolia timely filed a response to the motion. On November 4, 2010, the Board denied the motion to dismiss. Also on November 4, 2010, Zion filed the record in this proceeding (CX-XXXX).

On January 13, 2011, hearing was held before Board hearing officer Bradley P. Halloran in Waukegan, Lake County (Tr.). On February 4, 2011, Veolia filed an opening brief (Br.), and on February 28, 2011, Zion filed a response brief (Resp.). Veolia filed a reply brief (Reply) on

March 7, 2011. On February 7, 2011, the Solid Waste Agency of Lake County, Illinois (SWALCO) filed a public comment (PC1).

LEGAL BACKGROUND

The following sections delineate the specific statutory provisions at issue in this proceeding and discuss the legal standards to be applied by the Board when deciding the issues.

Statutory Provisions

Section 3.330(a) of the Environmental Protection Act (Act) defines a pollution control facility as “any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator.” 415 ILCS 5/3.330(a) (2008). Section 3.330(b) defines a new pollution control facility to include “the area of expansion beyond the boundary of a currently permitted pollution control facility.” 415 ILCS 5/3.30(b) (2008).

Section 39.2(a) of the Act requires that an applicant seeking approval for siting a pollution control facility must provide evidence demonstrating that the nine criteria listed in subsections (i) through (ix) are met. 415 ILCS 5/39.2(a) (2008). In addition to the nine enumerated criteria, Section 39.2 (a) allows the siting authority to consider prior history of the operators. The criterion relevant to this case is:

* * *

- (ii) 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) (2008).

* * *

Section 39.2(e) 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) (2008).

Legal Standards for Board 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. Veolia ES Valley View Landfill, Inc. v. County Board of Macon County, Illinois, PCB 10-31 (Sept. 2, 2010), citing 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 (2008). “When the issue is whether a condition is necessary to accomplish the purpose of a Section 39.2(a) siting

criterion, the Board must determine whether the local government's decision to impose the condition is against the manifest weight of the evidence." Waste Management. of Illinois, Inc. v. Will County Board, PCB 99-141, slip op. at 3 (Sept. 9, 1999), citing County of Lake v. PCB, 120 Ill. App. 3d 89, 101-102; 457 N.E.2d 1309, 1317-1318 (2nd Dist. 1983), *aff'd sub nom. Will County Board v. PCB*, 319 Ill. App 3d 545, 747 N.E.2d 5 (3rd Dist. 2001); *see also Town & Country Utilities, Inc. v. PCB*, 225 Ill. 2d 103, 119, 866 N.E.2d 227, 236 (2007) (a reviewing court must determine whether the Board's decision in a landfill siting appeal was against the manifest weight of the evidence).

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. Land and Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3rd Dist. 2000); Fairview Area Citizens Taskforce v. PCB, 198 Ill. App. 3d 541, 550, 555 N.E.2d 1178, 1184 (3rd Dist. 1990). The Board is not in a position to reweigh the evidence, but it must determine whether the decision of the local siting authority is against the manifest weight of the evidence. *Id.* (citations omitted). The applicant bears the burden of proving that the conditions are not necessary to accomplish the purposes of the Act and therefore were imposed on the siting approval unreasonably. Rochelle Waste Disposal, LLC v. the City of Rochelle, and the Rochelle City Council, PCB 07-113, slip op. at 21 (Jan. 24, 2008) *aff'd in part, dismissed in part, sub nom. City of Rochelle v. PCB*, Nos 2--08--0427 & 2--08--0433, cons. (2nd Dist. Sept. 4, 2009) (Rule 23 order), citing 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).

FACTS

In this section, the Board will detail some general facts concerning the siting application, but only specific facts related to the contested condition will be delineated. The Board will begin with the facts surrounding the application and then present an overview of the hearings before Zion. The Board will summarize the testimony and comments from the hearing and follow with a summary of the findings of facts and conclusions of law presented to Zion. The Board will finish a recitation of the facts by summarizing Zion's decision and setting forth the contested condition.

Siting Application

On February 8, 2010, Veolia filed an application for siting approval for expansion of the facility known as Veolia ES Zion Landfill (facility). C1-0001 - C1-5398. Veolia is seeking to expand the existing facility both horizontally and vertically. C5-0001. The expansion will extend horizontally to the east on approximately 26.47 acres adjoining the existing facility. *Id.* The vertical expansion will extend above approximately 53.75 acres of the existing facility. *Id.* The resulting footprint of the expanded facility will be approximately 80.22, acres and the property that constitutes the existing facility contains 317.9 acres. *Id.*

The application describes the landfill gas management plan for the expansion, noting that landfill gas is a natural byproduct of the decomposition of waste. C1-0203. Currently landfill gas is captured and converted to energy at the facility and the expansion will tie into the current system. *Id.* Veolia indicates that landfill gas quality is an important determinant of the end use for the collected landfill gas and the quality of the gas can vary widely. *Id.* The composition of the landfill gas will be different at different times and can include carbon dioxide, methane, oxygen, and nitrogen. C1-0204.

Landfill gas monitoring will be conducted pursuant to 35 Ill. Adm. Code 811.310 and as required by the Clean Air Act (CAA) New Source Performance Standards for air monitoring. C1-0205. Four types of landfill gas monitoring devices will be used:

- 1) devices placed within the waste disposal unit;
- 2) devices placed below ground around the perimeter of the disposal unit;
- 3) ambient air monitoring devices; and
- 4) continuous air monitoring devices in on-site buildings. *Id.*

Specifically, landfill gas monitoring within the waste unit will be conducted using active landfill gas collection system wellheads. *Id.* The landfill gas collection wells will be equipped with sampling ports from which the pressure can be measured and a sample collected. *Id.* Gas extraction wells will be drilled with minimum 36 inch diameter augers to a depth no lower than ten feet from the landfill base. C1-0300.

The below ground monitoring will be conducted at locations outside the waste boundary using below ground landfill gas probes. C1-0206. The monitoring zone will extend from just below the ground surface to the top elevation of the most permeable geologic zone. *Id.* At a minimum, the parameters that will be monitored are methane, pressure, nitrogen (Balance gas), oxygen, and carbon dioxide. *Id.*

Ambient air monitoring will be conducted for methane at a minimum of three downwind locations. C1-0206. The sampling locations will be chosen on the day the samples are collected and will only be taken when the average wind velocity is less than five miles per hour. *Id.* On-site buildings are equipped with continuous methane detection devices which sound an audible alarm if methane is detected at a concentration greater than 25% of the lower explosive limit. *Id.*

Veolia will control landfill gas emissions from the expansion in accordance with applicable regulations, including the CAA New Source Performance Standards (*see, e.g.*, 35 Ill. Adm. Code 203). C1-0206. One method considered is an active gas collection system, with vertical collection well spacing with a radius of influence of 125-150 feet within the centre landfill area and 125 feet along the perimeter. C1-0207. Extraction wells will be interconnected through a wellhead piping system and will transport landfill gas to a central location for processing at a landfill gas flare, gas-to-energy facility, or other approved processing method. *Id.* The piping will be composed of noncorrosive materials and the entire system will be designed to meet the requirements of 35 Ill. Adm. Code 811.311 and 811.312. *Id.*

In addition to landfill gas, Veolia is committed to controlling and mitigating odor. C1-0326. To mitigate odor, Veolia has developed a comprehensive Odor Control Plan for the expansion which includes:

- 1) spreading and compaction of waste after waste is unloaded at the active face;
- 2) applying six inches of soil cover or other approved daily cover material at the end of each work day;
- 3) checking loads routinely for unauthorized waste and odorous wastes;
- 4) applying approved cover material immediately for any loads exhibiting strong odors following compaction in the landfill;
- 5) limiting the working face of the active area of the landfill so that the face is not larger than necessary, based on terrain and equipment, to conduct operations in a safe and efficient manner;
- 6) installing an active gas collection system;
- 7) implementing a landfill gas air monitoring program consistent with Illinois Environmental Protection Agency (IEPA) regulations, including ambient air monitoring;
- 8) applying an odor control product to neutralize any difficult odors that cannot be controlled using the above outlined measures;
- 9) communicating openly and directly with Zion and the surrounding neighbors to address any odor related problems associated with the landfill. C1-0326-C1-0327.

Overview of Hearing Before Zion

Public hearings were held by Zion on May 12, 13, 17, and 25, 2011, before Zion's hearing officer Charles Helsten. C3-0001 - 3-0217. Veolia presented evidence on the nine statutory criteria and the past operating history of Veolia at hearing. *See* C3-0001 - C1-5398. Specifically, Veolia presented testimony from representatives of Shaw Environmental: Phillip Kowalski (criterion 1), Daniel Drommerhausen (criterion 2) and Devin Moose. C3-0007; C3-0005; C3-0150. In addition, Veolia presented testimony from Michael Werthman from KLOA a traffic engineering firm. *Id.* Christopher Lannert with the Lannert Group and Gary DeClark from Integra Realty testified for Veolia on criterion 3. *Id.*; C3-0071. The general manager of the facility, James Lewis also testified for Veolia. C3-0007.

Zion was represented at hearing by Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer (Ancel Glink), who prepared a memorandum on proposed findings of facts and conclusions of law. C3-0001 - C1-5398.

In addition participants at hearing included SWALCO, Kathleen Barnett, Robert and Robin Bunner and Daniel Kreul. C3-0001 - C1-5398; C5-0032. A 30-day post-hearing public comment period was allowed. C3-0142; C6-0001 - C6-0006.

Testimony and Comments on Contested Condition

This section will begin by summarizing the testimony of James Lewis, general manager at the facility and then the testimony of Devin Moose from Shaw Environmental. The Board concludes by summarizing the oral public comments of Kathleen Barnett and Robert Bunner.

James Lewis General Manager of the Facility

Mr. Lewis testified that Veolia received a violation notice late in 2006 for odors. C3-0093 at 276; *see also* C1-5354. Prior to receiving the notice, the odor problem had already been identified and Veolia was seeking permits to install additional gas extraction wells and new blowers. *Id.* at 277. Mr. Lewis explained that the odor was a result of the build-up of landfill gas and the gas collection and control system was upgraded. C3-0100 at 305. A gas collection and control system consists of gas wells, which are holes drilled into the garbage with a perforated pipe in the middle. C3-0100 at 305 - C3-101 at 306. A vacuum source is attached to pull the gas out of the facility. C3-101 at 306. To control odors at a landfill, Mr. Lewis indicated that the gas collection and control system must be maintained as many odor issues at landfills are related to landfill gas. *Id.*

Mr. Lewis stated that Veolia spent about \$2,000,000 to address problems with the gas collection system and he believes that the problem largely improved in 2007. C3-0094 at 278. Mr. Lewis pointed out that Veolia plans to “stay ahead of the curve” even though there are not gas odors from the facility now. *Id.* Veolia has budgeted for another \$1,000,000 in upgrades in this year and the upgrades will include installation of additional gas wells and pipeline. *Id.* at 278-279. Mr. Lewis opined that the upgrades already performed and scheduled for 2010 would contain any gas odors from the facility. C3-0099 at 300.

Veolia also uses gas monitoring and “tuning” to guard against landfill gas escaping. C3-0094 at 279. “Tuning” involves monitoring the gas coming out of each well and adjusting the vacuum valve based on what is extracted from the well. *Id.* at 280. Gas wells are tuned because every well has different conditions subsurface. *Id.* at 279. Mr. Lewis testified that the gas monitoring at the facility includes probes around the facility to monitor the gas to insure that the gas extraction system is not allowing subsurface migration of gas. *Id.* Also as a part of the air monitoring, surface scans are conducted. *Id.* at 280. A surface scan is a process where a scanner is held a short distance from the earth or the cap of the landfill and follows a pattern to ascertain if gas is migrating from the landfill. *Id.*

Gas flares are part of the gas collection system in place and Mr. Lewis stated that the existing gas flares have more than sufficient capacity to be used not only with the present levels of gas, but with the expansion. C3-0102 at 310. Mr. Lewis explained that combustion of the gas removes any odor. C3-0106 at 326. The improvements have doubled the capacity to “destruct the gas” and that capacity is not all being used at present. *Id.* Mr. Lewis does not believe that the expansion will create additional odor issues from the gas at the facility. C3-0107 at 332. Mr. Lewis opined that any odor from the facility now is odor from garbage and not gas. C3-0112 at 350.

Devin Moose, Shaw Environmental

Mr. Moose testified on behalf of Veolia discussing: 1) the levels of required compliance and approvals; 2) location standards; and 3) facility design and operations. C3-0156 at 368. Mr. Moose stated that you design a landfill by what he calls the “three Cs”, which are control, contain, and collect. C3-0158 at 397. Mr. Moose testified that first you control the toxicity of landfill gas by limiting the type of garbage you accept and you contain what you do accept within the landfill using a cover system. *Id.*; C3-0162 at 413. The landfill is covered in stages as the garbage is accepted. C3-0163 at 414.

Mr. Moose noted that the facility is designed to collect the landfill gas using a gas collection system. C3-0159 at 398. Mr. Moose stated that landfill gas is for the most part what is responsible for odors at a landfill. C3-0163 at 416. The gas is removed from the landfill using gas extraction wells and a vacuum system. *Id.* at 416-7. The gas once removed is used for energy or combusted with some type of flare to destroy the gas. *Id.* at 417.

Mr. Moose indicated that with the expansion, the facility has the ability to produce 8,200 standard cubic feet of landfill gas per minute (scfm). C3-0163 at 417. Mr. Moose opined that the existing gas collection system has more than enough capacity with the existing flares to handle the expansion. *Id.* More specifically, Mr. Moose pointed out that when the expansion is complete there will be 149 gas extraction wells placed at an interval based on radius of influence of 125 feet around the perimeter of the facility, and about 150 feet toward the interior. C3-0164 at 418. Mr. Moose opined that such placement was a “little bit more than industry practice at some locations” and that more importantly the gas collection system seems to be working since 2006. *Id.*

Mr. Moose stated that to insure proper functioning of the gas collection system, monitoring for gas below the ground is done to detect if gas is migrating through the liner system. C3-0164 at 419. Monitoring below the ground is accomplished by using gas detection probes, which are a slotted pipe installed in the vadose zone of the geology of the site. *Id.* at 419-20. The ambient air monitoring is performed to insure that gas is not coming through the cover. *Id.* at 419. Also, gas monitoring occurs continuously inside buildings at the site. *Id.*

In addition to active gas collection system, odor control measures at the facility include spreading and compacting waste immediately after the waste is place on the active face of the landfill, minimizing the size of the active face, application of daily cover, routine load checking, air monitoring use of odor control products, and maintaining communication with neighbors on odor issues. C3-0167 at 433 - C3-0168 at 434.

Mr. Moose responded to questions about how the ambient air monitoring would be done. A device is held six to eight inches off the ground in a random pattern to check for gas. C3-0173 at 456-7. When asked if such monitoring would occur if an odor complaint was made, Mr. Moose indicated that depending on where the complaint came from, the use of the air monitoring device might not be helpful. *Id.* at 457. Mr. Moose stated that “[o]dor is a reactive investigatory process” and being precise about activities that would occur with future odor complaints is difficult. *Id.* The type of odor that is being complained of is significant in

searching for a source. C3-0173 at 457 - C3-0174 at 458. When asked if Mr. Moose thought allowing Zion to comment on the final design of the gas collection system was reasonable, given the odor problems, Mr. Moose stated “[i]t is more than reasonable. I think it is welcome.” C3-0179 at 478.

Kathleen Barnett

Ms. Barnett participated throughout the hearings and asked a number of questions. *See generally* C3-0001 - 3-0217. Ms. Barnett specifically asked questions of Mr. Lewis and Mr. Moose regarding odor issues. *See* C3-0104 - C3-0105; C3-0181 - C3-0182. Ms. Barnett presented a public comment at the hearings indicating that in the last week she had to close windows due to the odor from the facility. C3-0139 at 543.

Robert Bunner

Mr. Bunner participated throughout the hearings and asked a number of questions. *See generally* C3-0001 - 3-0217. Mr. Bunner specifically asked questions of Mr. Lewis regarding odor issues. C3-0105 - C3-0106. Mr. Bunner presented a public comment asking Zion to deny siting. C3-0140 at 548. Mr. Bunner stated that that are many days that he and his wife cannot enjoy the outdoors due to the gases being emitted from the landfill. *Id.*

Findings of Fact and Conclusions of Law Before Zion

Ancel Glink prepared proposed findings of fact and conclusions of law for Zion. C5-0020 - C5-0027; C9-0032 - C9-0039. As hearing officer for Zion, Mr. Helsten also presented proposed findings of fact and conclusion of law to Zion. C5-0031 - C5-0045; C9-0019 - C9-0031. In addition, Veolia presented proposed findings of fact and conclusion of law to Zion. C5-0001 - C5-0019; C9-0040 - C9-0058. Each will be summarized below.

Ancel Glink

Ancel Glink found the testimony of Mr. Moose credible on criterion 2, but found that the “record establishes a pattern of operational challenges related to the collection and control of landfill gas, the migration of dust and litter, and vector control related to bird migration.” C5-0021. Ancel Glink noted that these problems resulted in complaints by neighbors. *Id.* Ancel Glink opined that the evidence and testimony before Zion gave Zion a unique opportunity to exert “further control over the operations” with the recommended conditions. Ancel Glink recommended 26 conditions including Special Condition 2.2 which reads:

Prior to submitting the development permit application to the IEPA for the proposed Facility, the Owner/Operator shall submit draft plans and designs relating to the landfill gas collection and control system to the City of Zion for review and approval. The City shall have up to 60 days from submittal to render its approval or denial of the proposed design. The Owner/Operator shall be responsible for reimbursing the City for any costs related to the review of the proposed design. C5-0022.

Ancel Glink concluded that with the addition of the 26 conditions, the siting should be approved. C5-0021. More specifically, with the imposition of 22 conditions, including Special Condition 2.2, the public health safety and welfare will be protected and criterion 2 will be met. *Id.*

Hearing Officer Helsten

Mr. Helsten presented his findings of fact and conclusions of law, noting that his findings and conclusions were simply advisory in nature and Zion should give whatever weight Zion deemed appropriate to the findings. C5-0031. Mr. Helsten found that Veolia satisfied all the procedural and jurisdictional requirements set forth in Section 39.2 of the Act (415 ILCS 5/39.2 (2008)) and Zion's siting ordinance. C5-0034. Mr. Helsten also found that Zion had jurisdiction to consider the siting application. *Id.*

Mr. Helsten adopted the findings of fact and conclusions of law set forth in Veolia's proposed findings in subparagraphs one through 50 under criterion 2, and also adopted Ancel Glink's proposed findings of facts and conclusions of law on criterion 2. C5-0035. As to the conditions proposed by Ancel Glink, Mr. Helsten found the conditions, as he amended them, to be reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and not inconsistent with Board regulations. C5-0036. Mr. Helsten also noted that Veolia had agreed to be bound by certain conditions, including the contested Special Condition 2.2. *Id.*

Specifically regarding Special Condition 2.2, Mr. Helsten opined that the oversight and review process may need to continue beyond the development permit stage of the IEPA permitting process. C5-0037. Mr. Helsten indicated that in addition to a permit from IEPA's Bureau of Land, a permit for the construction of the gas collection and control system will be required from the IEPA's Bureau of Air. *Id.* Also, Mr. Helsten stated that installation and operation of a gas control system is a progressive process that takes place over the life of a landfill and the gas collection and control system may need to be modified after issuance of the initial permits. C5-0038. Furthermore, Mr. Helsten noted that permit conditions placed on a permit by IEPA may necessitate additional review by Zion. C5-0039. Mr. Helsten recommends that Special Condition 2.2 be amended to read:

Prior to submitting any and all pertinent permit applications to the IEPA for development, operation, maintenance and expansion of the landfill gas collection and control system for the Proposed Facility, the City shall have up to sixty (60) days from the date of submittal of any such permit applications to render its approval or denial of the proposed design of that particular component of the landfill gas collection and control system (which approval will not be unreasonably withheld). The owner/operator shall be responsible for reimbursing the City for any and all reasonable and necessary cost related to the review of the proposed design. *Id.*

Veolia

Veolia's findings of facts and conclusions of law indicated that the facility has been designed to control, contain and collect both leachate and landfill gas. C5-0005. The findings and conclusions noted that the facility has a gas collection and control system including a gas monitoring system. C5-0006. The gas collection and control system was upgraded and will destroy 9,000 scfm of landfill gas through flares, exceeding the peak landfill gas generation anticipated from the expansion. *Id.* Furthermore, Mr. Moose opined in his testimony that the facility was so designed, located and proposed to be operated that the public health, safety and welfare will be protected. C5-0008. Veolia did consent to Special Condition 2.2 as proposed by Ancel Glink. C5-0028.

Zion's Decision

On August 3, 2010, Zion adopted an ordinance approving the expansion of the facility. C9-0010 - C9-0058. Zion expressly adopted the hearing officer's findings of fact and "subject to the modified conditions" in the ordinance, the hearing officer's conclusions of law. C9-0012. Zion approved the application of Veolia with 25 conditions. C9-0013. Special Condition 2.2 was one of those conditions and reads:

Prior to submitting the development pen-nit [*sic*] [permit] application to the IEPA for the landfill gas collection and control system for the proposed Facility, the Owner/Operator shall submit draft plans, designs, and an operations and maintenance plan relating thereto to the City of Zion for review and approval. Thereafter, prior to submitting any and all pertinent permit applications to the IEPA for modification to the landfill gas collection and control system for the proposed Facility, the Owner shall submit notice thereof to the City of Zion, which may exercise the option to review and approve said plans by giving notice of such election within 10 business days of receipt. In both cases, the City shall have up to 60 days from submittal of such plans to render its approval or conditional approval of the proposed design. The Owner/Operator shall be responsible for reimbursing the City for any costs related to the review of the proposed designs. C9-0013.

ARGUMENTS

The Board will begin by summarizing the public comment filed by SWALCO. Next the Board will summarize the arguments by Veolia in the opening brief and then the arguments by Zion in the response brief. The Board will conclude with a summary of Veolia's reply.

SWALCO Comment

SWALCO comments that Veolia clearly has had prior operational difficulties in preventing odors from leaving the site and permeating the neighborhood. PC 1 at 1. SWALCO points to the prior notice of violation, testimony by Mr. Moose, and comments from

neighbors in support of this position. PC 1 at 1-2, citing C1-5350 - C1-5357, C3-0174, C3-0140, C3-0139, C4-0013 - C4-0015. SWALCO contends that “given the acknowledged odor issues,” allowing Zion to take a proactive role in the current and future design of the gas collection and control system is prudent and necessary. PC 1 at 2. SWALCO argues that if Veolia cannot solve odor issues then Veolia should not reject offers of participation by Zion. *Id.* SWALCO opines that Zion can review only current plans as identified by the application and the application does not contain sufficient detail in addressing odor problems. *Id.* SWALCO points out that Veolia agreed to prepare updated plans and allow Zion to review them. *Id.*

Veolia’s Opening Brief

Veolia argues that Special Condition 2.2 is a modification of the condition as proposed in the hearing officer’s report and not the same as the condition proposed by Ancel Glink. Br. at 2. Veolia contends that Zion’s imposition of Special Condition 2.2 exceeds Zion’s authority under Section 39.2 of the Act (415 ILCS 5/39.2 (2008)) because the condition requires Veolia to obtain Zion’s approval before seeking any and all permits from the IEPA. Br. at 3. Veolia argues that the broad language of the condition would require Veolia to seek approval for all permits after issuance by the IEPA of a development permit issued under Section 39(c) of the Act (415 ILCS 5/39(c) (2008)) and the condition would allow Zion to impose future conditions on Veolia. Br. at 3-4. Veolia opines that the law clearly prohibits local siting authorities from “meddling” in future activities of the facility that are within the jurisdiction of the IEPA. Br. at 4.

Veolia agreed to a condition proposed by Ancel Glink that required Veolia to submit to Zion plans and designs relating to the gas collection and control system before applying to the IEPA for a development permit. Br. at 4. Veolia argues that Veolia did not agree to submit an operations and maintenance plan subject to Zion’s review and approval; nor to allowing Zion to impose future conditions. *Id.* Veolia opines that Special Condition 2.2 requires Zion’s approval of permit applications before submission to the IEPA and Zion would presumably be able to reject those petitions. *Id.* Veolia argues that this places Veolia in a position where Veolia might not be able to obtain permit modifications for necessary adjustments to the gas collection and control system. *Id.*

Veolia asserts that the type of control Zion attempts to exercise with Special Condition 2.2 has been rejected by the Board and cites to Christian County Landfill, Inc. v. Christian County Board, PCB 89-92 (Oct. 8, 1989). Br. at 4. Veolia points out that in Christian County, the Board held that conditions affecting future occurrences and allowing future imposition of conditions were not necessary to accomplish the purposes of Section 39.2 of the Act (415 ILCS 5/39.2 (2008)). Br. at 4-5. Veolia further points out that the Board found that the legislature intended to limit local siting authorities to review of only the siting application. Br. at 5, citing Christian County, PCB 89-92, slip op. at 8.

Veolia argues that pursuant to Christian County, Zion’s authority under Section 39.2 of the Act (415 ILCS 5/39.2 (2008)) was exhausted when the siting ordinance was adopted and Zion has no authority to participate in the permit process. Br. at 5. Veolia argues that because

Zion has no authority to participate in the permit process, Zion has no authority to impose conditions on future permits. Br. at 6. Veolia opines that Special Condition 2.2 does allow Zion to impose future conditions on a permit and the Board rejected just that type of condition in Christian County. Br. at 6-7, citing Christian County, PCB 89-92, slip op. at 8. Veolia asserts that Zion has “usurped the IEPA’s permit authority and threatens the finality of the siting approval process.” Br. at 7.

Veolia asserts that the permit process is the exclusive jurisdiction of the IEPA. Br. at 5. Veolia relies on County of Lake (120 Ill. App. 3d 89; 457 N.E.2d 1309) to support the argument that permitting is the exclusive jurisdiction of the IEPA. *Id.* Veolia notes that the court in County of Lake upheld a Board decision to strike a condition and stated that Section 39.2 of the Act (415 ILCS 5/29.2 (2008)) does not vest the local siting authority with permitting authority and that certain conditions were an attempt to issue a permit. Br. at 5, citing County of Lake, 457 N.E.2d at 1316.

Veolia maintains that Special Condition 2.2 goes beyond the conditions struck by the Board in Christian County and County of Lake because Zion intends to insert Zion in the air permitting process. Br. at 7. Veolia notes that the language of Special Condition 2.2 allows Zion to review “any and all pertinent permit applications” and this would include air permits. *Id.* Veolia asserts that Zion derives limited power from Section 39.2 of the Act (415 ILCS 5/29.2 (2008)) to approve site location suitability for a landfill. Br. at 8. Veolia opines that Zion’s attempt to “meddle” in the air permitting process is contrary with the Act and Board regulations. *Id.*

In sum, Veolia maintains that Zion’s authority ended with the siting ordinance under Christian County. Br. at 6. Further, Veolia asserts that Zion’s imposition of Special Condition 2.2 is an attempt to place Zion with the IEPA in the permitting process; however, under County of Lake, Zion is not in the same position as the IEPA with permitting. *Id.* Therefore, Veolia asserts that Special Condition 2.2 exceeds the authority granted to Zion and is not reasonable and necessary to meet the requirements of Section 39.2 of the Act (415 ILCS 5/39.2 (2008)). *Id.*

Zion’s Brief

Zion’s first argument is that Veolia has waived several grounds for appeal by failing to present arguments. Resp. at 2-3. Those grounds were raised in the initial petition for review and include assertions that Special Condition 2.2 is: 1) unsupported by the record; 2) against the manifest weight of the evidence; 3) standardless; and 4) vague. Resp. at 3. Zion argues that Veolia’s brief “completely ignores” the record on which Zion relied in adopting Special Condition 2.2. *Id.* Zion argues that Veolia has failed to meet the burden of proof that Special Condition 2.2 is against the manifest weight of the evidence because Veolia failed to site evidence in the record or case law to support Veolia’s position. *Id.*

Zion further argues that Veolia has waived a challenge to all of Special Condition 2.2, because Veolia consented to an earlier version of Special Condition 2.2. Resp. at 3-4. Zion

asserts that the Board should “at the very most modify Special Condition 2.2 to match the form” that Veolia accepted. Resp. at 4.

Zion asserts that the imposition of Special Condition 2.2 is supported by the record as evidenced by the citations to the record in SWALCO’s comment and the testimony of Mr. Moose. Resp. at 4-5. Zion points to a response by Mr. Moose wherein he indicated that Veolia would welcome a chance to have Zion review and comment on the final design for the landfill gas management system. Resp. at 5, citing C3-0179. Zion also asks the Board to pay particular attention to the public participants’ focus on the landfill’s odor problems. *Id.* citing C3-0081 to C3-0082; C3-0085; C3-0093; C3-0100 - C3-0101; C3-0109 - C3-0113; C3-0139 - C3-0140; C3-0174; C1-5350 - C1-5355.

Although, Zion notes that Veolia is planning to spend \$1,000,000 to improve the current pre-expansion system and will continue to “stay in front of that gas production curve.” Resp. at 6, quoting C3-0107. Zion opines that the gas collection and control system plan is expected to be a static system. Resp. at 6.

Zion asserts that Special Condition 2.2 is related to other conditions imposed on the siting and is necessary to insure compliance with other conditions. Resp. at 6. Zion maintains that if Zion cannot review future modifications to the gas collection and control system, Zion will not be able to enforce other conditions of the siting approval. *Id.*

Zion argues that Veolia is misinterpreting Special Condition 2.2 “in light of the evidentiary and statutory context in which it was imposed.” Resp. at 6-7. Zion asserts that Special Condition 2.2 gives Zion the opportunity to review plans for future gas collection and control systems, but such a review is not required. *Id.* Further, Zion argues that Special Condition 2.2 does not provide a standard for the review and though this may make the condition ambiguous, the condition is not meaningless or invalid. *Id.* Zion maintains that any ambiguity in Special Condition 2.2 “widens the range of evidence that may be used to discover the drafters intended [*sic*].” *Id.* citing County of Kankakee, et al. v. PCB, et al., 396 Ill. App. 3d 1000 (3rd Dist. 2009). Zion argues that if Special Condition 2.2 is susceptible to different interpretations, the one that will carry out the purpose of the condition must apply. *Id.*

Zion notes that Special Condition 2.2 was imposed in connection with criterion 2 of Section 39.2 of the Act (415 ILCS 5/39.2 (2008)), which requires a facility to be designed and proposed to be operated in a manner that protects “the public health, safety and welfare”. Resp. at 7. Zion asserts that the scope of review for gas collection and control systems must be guided by criterion 2, which does not anticipate Zion interjecting itself in the permitting process. *Id.* Zion maintains that interpreting Special Condition 2.2 to allow Zion to condition approval in a manner that would conflict with air permitting by the IEPA would be an interpretation that would render the condition invalid. Resp. at 7-8. Zion argues that such an interpretation of Special Condition 2.2 is incorrect. Resp. at 8.

Zion argues that further clarification of Zion’s intent is found in the language describing the conditions of approval in the Ancel Glink memorandum. Resp. at 8, citing C5-0021. According to Zion, Ancel Glink recommended the special conditions to address “the pattern of

operational challenges related to the collection and control of landfill gas . . . and to exercise sufficient additional control to ensure that such challenges will be minimized so that the public, health, safety and welfare are protected.” *Id.* Zion asserts that there is no direct or implied intent in the Ancel Glink memorandum that would indicate Zion was inserting itself in the IEPA permitting process. Resp. at 8.

Zion maintains that Special Condition 2.2 “works in tandem” with other special conditions that Veolia is not challenging. Resp. at 8. Zion argues that the purpose of the Act allows Zion to create a mechanism to assist in monitoring and enforcing siting conditions. Resp. at 8, citing County of Lake, 120 Ill. App. 3d at 100; 457 N.E.2d at 1316. Zion opines that nothing in Special Condition 2.2 is inconsistent with the Act or Board regulations or interjects Zion into the air permitting process. Resp. at 8.

Zion argues that the imposition of Special Condition 2.2 is analogous to the Board’s decision to sustain a condition in Veolia ES Valley View Landfill, Inc. v. County Board of Macon County, PCB 10-31 (Sept. 2, 2010). Zion notes that the Board let stand a condition “addressing future operations of the landfill expansion”. Resp. at 9. Zion further notes that the applicant relied on Christian County to argue that the Macon County Board could not maintain continuing powers once siting approval was granted. *Id.* Zion opines that the Board rejected the applicant’s argument and found that the Macon County Board was providing assurance that “an influential factor” in the Macon County Board’s decision would continue. Resp. at 9-10. Zion asserts that Special Condition 2.2 is not designed to impose continuing powers after the approval of siting; instead, the condition is intended to ensure that the gas collection and control system will protect the public health, safety and welfare. Resp. at 10. Further Zion argues that as Special Condition 2.2 relates to future modifications, the condition will ensure that “influential factors” in Zion’s decision making process are met. *Id.*

Veolia’s Reply

Veolia asserts that irrespective of the evidence in the record, Zion’s imposition of Special Condition 2.2 is not related to the purposes of Section 39.2 of the Act (415 ILCS 5/39.2 (2008)); but instead infringes on the IEPA’s exclusive authority to issue permits under Section 39 of the Act (415 ILCS 5/39 (2008)). Reply at 1-2. Veolia opines that Special Condition 2.2 would allow Zion to “review, approve or conditionally approve all plans and designs for the gas collection and control system” prior to submission to the IEPA. Reply at 2. This would be so not just for the initial development permits, but also any future permits necessary. *Id.* Veolia maintains that this condition is not authorized by the Act and is an effort by Zion to involve itself in future permitting functions, reserved solely to the IEPA. *Id.*

Veolia argues that Zion seems to concede that Special Condition 2.2 as imposed by Zion is not legally defensible, while Zion asserts that Veolia consented to a prior version of the condition. Reply at 2. Veolia clarifies that while a prior version was acceptable, that version did not include “unlimited review by Zion of the gas collection and control system plan prior to submittal of the application for development permit.” *Id.* Veolia notes that there were limitations not included in Special Condition 2.2 such as: 1) Zion could review only the plans

and designs for the system, not the operation and maintenance plans; and 2) Zion was given 60 days to review the plans. Reply at 3.

Veolia disagrees with Zion's argument that Special Condition 2.2 is necessary to allow Zion to monitor and enforce other conditions imposed on siting. Reply at 3. Veolia argues that a similar argument was made in County of Lake and was rejected by the court. Reply at 3, citing County of Lake, 457 N.E.2d at 1316. Veolia states that the court recognized that the imposition of the condition at issue was an attempt by the County Board to issue a permit and that attempt usurped the exclusive power of the IEPA. *Id.* Veolia further states that the court went on to note that the County Board could enforce conditions in an action before the Board. *Id.* Veolia argues that likewise, Special Condition 2.2 is not necessary to provide Zion with a mechanism to enforce other siting conditions as Zion can do so by bringing an action before the Board. Reply at 3-4.

Veolia maintains that the Board and courts have rejected a siting authority's future involvement in the operations and permitting of a facility, once the facility is sited. Reply at 4. Veolia reiterates that in Christian County the Board held that once a siting is granted, a local siting authority has exhausted the siting authority granted under the Act. *Id.* Veolia argues that on August 3, 2010, Zion lost any authority to direct future activities at the site, review and approve IEPA permit applications, or impose further conditions on Veolia. *Id.*

Veolia notes that in Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors, PCB 82-101 slip op. at 12 (Dec. 12, 1982), the Board stated that siting conditions are in the nature of conditions precedent to an IEPA permit. Reply at 4. Veolia argues that Special Condition 2.2 is not a condition precedent but rather allows Zion to become intertwined in the permit process. *Id.* Veolia maintains that Veolia cannot review Special Condition 2.2 and know what to do to meet the Zion's requirements and Veolia will not know until Zion has approved or conditionally approved the plans and designs. *Id.* Veolia contends that this allows Zion to control the permitting process because Veolia can only apply for a permit after Zion's approval, pursuant to Special Condition 2.2. *Id.*

Veolia argues that by requiring Veolia to submit an application for a permit to the IEPA only after Zion has approved the plans and designs and to require Veolia to comply with future conditions, Zion has become the IEPA's "gate-keeper". Reply at 4-5. Veolia asserts that this controls what the IEPA can ultimately approve. Reply at 5. Veolia contends that this is a usurpation of the IEPA's authority and not permitted by the Act. *Id.*

Veolia takes issue with Zion's argument that Special Condition 2.2 may be ambiguous and fails to state standards which apply, but should still be affirmed. Reply at 5. Veolia notes that Zion argues rules of statutory construction to support the language in Special Condition 2.2, which, according to Veolia, "have nothing to do with the interpretation of a condition". *Id.* Veolia asserts that if the condition is ambiguous and standardless, the condition must be stricken. *Id.* citing Browning Ferris, PCB 82-101, slip op. 13-16.

Veolia contends that Zion takes this position because Zion is aware that the imposition of the condition as written cannot withstand scrutiny. Reply at 5. Veolia argues that the Special

Condition 2.2 usurps the permitting functions of the IEPA and even Zion's efforts to revise the condition should be rejected. *Id.*

Veolia asserts that Zion erroneously compares Special Condition 2.2 with a condition that the Board upheld in Macon County. Reply at 6. The condition at issue in Macon County involved a requirement that the applicant pump the gradient control system for a minimum of 100 years and the applicant agreed to the pumping. *Id.* However, in Macon County, the applicant wanted the IEPA to release them from the obligation and the contested condition left that authority with the county. *Id.* Veolia points out that the Board rejected the applicant's argument noting that the applicant had proposed the pumping and incorporated that assumption into the groundwater impact assessment. *Id.*

Veolia argues that the condition in Macon County merely required the applicant to do what the applicant proposed and the condition was an objective condition clearly informing the applicant what was expected. Reply at 7. By contrast, Veolia argues that Special Condition 2.2 has no standards and requires Veolia to submit future designs and plans for approval. *Id.* Veolia maintains that Veolia has no idea what standards Zion will use to approve the future designs and plans and Veolia cannot know if any future conditions can be complied with at the facility. *Id.*

Veolia argues that these types of uncertainties are why the Board has held that conditions that are imposed "to ensure that the operation of the [landfill] is in accordance with the criteria set forth in Section 39.2" are "not reasonable and necessary to accomplish the purposed of Section 39.2 of the Act." Reply at 7, citing Christian County, slip op. at 12 and 14. Veolia maintains that this is the rationale used by SWALCO and Zion to support the imposition of Special Condition 2.2. Reply at 7-8. Veolia argues that the Board has found that allowing the local authority to maintain power under Section 39.2 would threaten the finality of the siting decisions and as a result, Section 39.2 does not grant continuing powers to the local siting authority. Reply at 7, citing Christian County, slip op. at 12 and 14.

DISCUSSION

In reviewing Zion's imposition of Special Condition 2.2, 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. Veolia ES Valley View Landfill, PCB 10-31. Further, the Board must determine whether Zion's decision to impose the condition is against the manifest weight of the evidence. Waste Management, PCB 99-141. Zion's authority to impose a condition on siting approval stems from Section 39.2(e) of the Act (415 ILCS 5/39.2(e) (2008)), which provides that a local siting authority may impose conditions "as may be reasonable and necessary to accomplish" the purposes of Section 39.2. However, Zion may not usurp the exclusive power of the IEPA to grant or deny a permit. County of Lake, 120 Ill. App. 3d at 100; 457 N.E.2d at 1316. Thus, the Board must first determine that the imposition of Special Condition 2.2 is within the purview of Zion.

Special Condition 2.2 requires submission of "draft plans, designs, and an operations and maintenance plan relating" to the gas collection and control system to Zion for review and

approval. C9-0013. Special Condition 2.2 further requires that “prior to submitting any and all pertinent permit applications to the IEPA for modification of the landfill gas collection and control system for the proposed Facility” notice must be given to Zion. *Id.* Zion is allowed 10 days to give a notice of its intent to review and approve the modification plans. Special Condition 2.2 then allows Zion to “have up to 60 days from submittal of such plans to render its approval or conditional approval of the proposed design.” *Id.* Veolia argues that Special Condition 2.2 is beyond the authority of Zion and interferes in the permitting authority of the IEPA, relying on Christian County and County of Lake. *See generally* Br. at 4-7. Zion disagrees and argues that the condition is reasonable and necessary to ensure compliance with Section 39.2; and though the condition may be ambiguous and lack standards, should be affirmed. Zion also argues that Veolia agreed to a form of Special Condition 2.2 and the Board should at most modify the condition consistent with the language agreed to by Veolia. *See generally* Resp. at 2-4. Zion further asserts that Special Condition 2.2 is similar to the condition at issue in Macon County PCB 10-31, which the Board affirmed. *See* Resp. at 9.

The Board finds that Special Condition 2.2 is more analogous to conditions imposed by the city in Rochelle Waste Disposal, L.L.C. v. City of Rochelle and Rochelle City Council, PCB 07-113 (Jan. 24, 2008) *aff'd in part, dismissed in part, sub nom. City of Rochelle v. PCB*, Nos 2--08--0427 & 2--08--0433, cons. (2nd Dist. Sept. 4, 2009) (Rule 23 order) than to the conditions in the cases relied upon by the parties. In Rochelle, the city imposed several conditions, some of which the Board struck or modified and others the Board affirmed. Rochelle, slip op. 55-56. Two conditions that the Board affirmed, and were not the subject of appeal, were Conditions 26 and 28. Rochelle, slip op. at 52-53. Both Conditions 26 and 28 provided for the city to be involved in the permitting process, including attending meetings that the applicant might have with IEPA. *Id.* The city also would review portions of the permit application and comment on the application; such comments were to be included in submission to IEPA. *Id.* In addition to the recommendation of the consultant and hearing officer to include the condition, the host agreement provided for the applicant to submit permit applications to the city for prior approval. *Id.* Based on these facts, the Board affirmed the inclusion of conditions 26 and 28, finding that the imposition was not against the manifest weight of the evidence. *Id.*

The Board sees the similarities between the conditions imposed in Rochelle and Special Condition 2.2; however, the Board finds that the circumstances in imposing the conditions are very different. Most significantly is the fact that in Rochelle, the applicant had agreed to allow the city to review and approve permit applications, while here there is no evidence of such a host agreement and Veolia specifically objects to Special Condition 2.2. Also, while in Rochelle Conditions 26 and 28 as adopted were substantively the same as proposed by the city’s consultant and hearing officer; here Zion substantively altered the language of the condition agreed to by Veolia.

The Board also sees differences in the language of Conditions 26 and 28 imposed in Rochelle and Special Condition 2.2 in the instant case. In Rochelle, the city would provide comments that were to be included in submissions to IEPA, but the conditions do not provide for the city’s approval of the plans and designs or the ability to place conditions on an approval. The Board finds that this is a significant difference. As written, Special Condition 2.2 requires Veolia to submit “draft plans, designs, and an operations and maintenance plan” to Zion “for

review and approval” prior to submission to the IEPA. Furthermore, Special Condition 2.2 requires that Veolia, “prior to submitting any and all pertinent permit applications to the IEPA for modification to the landfill gas collection and control system,” notify Zion so that Zion can review the plans “to render its approval or conditional approval of the proposed design.” Therefore, the Board finds that the language differences between Conditions 26 and 28 in Rochelle and Special Condition 2.2 dictate a different result.

The Board need not look to the arguments concerning the interpretation of Special Condition 2.2 as the language of the condition is clear. The Board finds that the plain language of Special Condition 2.2 allows Zion to usurp the authority of the IEPA, because Zion could refuse to approve a plan or design and stop the permitting process. Therefore, the Board finds that Special Condition 2.2 exceeds the authority granted to Zion by Section 39.2 of the Act (415 ILCS 5/39.2 (2008)) and Special Condition 2.2 is not reasonable and necessary to accomplish the purposes of Section 39.2 of the Act (415 ILCS 5/39.2 (2008)).

Because the Board has found that Special Condition 2.2 as written is beyond Zion’s authority to impose, the Board need not examine other arguments set forth by Zion regarding the imposition of the condition. However, the Board will address Zion’s argument that the Board should, at most, modify the language of Special Condition 2.2 to match the language that Veolia agreed would be acceptable. *See* Resp. at 2-4. Zion also argues that Veolia has waived argument that imposition of Special Condition 2.2 is against the manifest weight of the evidence. *Id.* First, the Board finds that Veolia has not waived the argument that the imposition of Special Condition 2.2 is against the manifest weight of the evidence. Second, given Zion’s argument that the Board could modify the language of Special Condition 2.2, the Board will examine the record to determine if the record supports the imposition of Special Condition 2.2, as modified. *See Waste Management*, PCB 99-141. That brings the Board to the final question of this discussion, “Is Zion’s decision to impose Special Condition 2.2 against the manifest weight of the evidence?”

The evidence cited by Zion to support the imposition of Special Condition 2.2 consists of: 1) questions by Ancel Glink and Mr. Helsten to Mr. DeClark, Veolia’s expert on real estate values, concerning the impact of odor on property values; 2) testimony of Mr. Lewis describing the notice of violation in 2006 and steps to correct the issue; 3) questions of Mr. Moose by SWALCO about odor; 4) two public comments about ongoing odor issues. Likewise, SWALCO cites to the violation notice from 2006, Mr. Moose’s testimony and the same two public comments.

The record also contains an extensive description of the gas management system, including monitoring for gas escaping the landfill. C1-203. Further, Mr. Lewis testified as to the step taken after discovering odor problems related to gas management and indicated that the problems had improved in 2007. C3-0094 at 278. Mr. Lewis indicated that \$2,000,000 had been spent on the gas management system and an additional \$1,000,000 was planned in 2010. *Id.* Mr. Lewis testified that the existing flares were sufficient to destroy gas that would be generated from the expansion. C3-102 at 310. In addition to Mr. Lewis’s testimony, Mr. Moose discussed the design of the expansion including the gas collection and control system.

See generally C3-0159 and C3-0163. Mr. Moose testified that existing gas collection and control system has more than enough capacity to handle the expansion. C3-0163 at 417.

Both Zion's consultant and hearing officer recommended inclusion of a form of Special Condition 2.2. C5-0020 - C5-0027; C5-0031 - C5-0045. Ancel Glink recommended that the condition be included because the "record establishes a pattern of operational challenges related to the collection and control of landfill gas, the migration of dust and litter, and vector control related to bird migration." C5-0021. Mr. Helsten modified the condition to include oversight of any future modifications. C5-0039.

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. Land and Lakes, 319 Ill. App. 3d ay 48, 743 N.E.2d at 194; Fairview Area Citizens Taskforce, 198 Ill. App. 3d at 550, 555 N.E.2d at 1184. The Board is not in a position to reweigh the evidence, but the Board must determine whether the decision of the local siting authority is against the manifest weight of the evidence. *Id.*

The Board has carefully reviewed the record in this case and finds that the only support in the record for imposing Special Condition 2.2 is a 2006 notice of violation and two public comments relating to odor problems. Conversely, Veolia has provided an extensive description of a landfill gas collection and control system as well as a detailed description of how the 2006 odor problems were addressed. Veolia has also addressed how landfill gas will be monitored to detect migration of gas from the landfill. Further, Veolia has described the operational procedures that will be followed to control odor associated with the placement of waste in the landfill.

The record contains no evidence that the proposed plans for the design and operations of the landfill is insufficient to control odors or that the IEPA permitting process will approve a defective design or operational procedures for controlling odors. The only evidence of current odor programs at the landfill is anecdotal public comments from two individuals. There was no testimony at the public hearings on the Veolia landfill siting application that there have been odor problems since 2006, and no evidence that violation notices have been posted by any enforcement authorities since 2006 for odor.

In this case, the Board's review of the evidence shows no need for the condition, so that the opposite result of Zion's decision to impose Special Condition 2.2 is clearly evident. Therefore, the Board finds that Zion's inclusion of Special Condition 2.2 was against the manifest weight of the evidence. In addition, the Board finds that evidence of odor is not sufficient to establish that Special Condition 2.2, even if modified, is reasonable and necessary to accomplish the purposes of Section 39.2 of the Act (415 ILCS 5/39.2 (2008)). The Board strikes Special Condition 2.2 and declines to modify the condition.

CONCLUSION

The Board reviewed the arguments and found that Zion's imposition of Special Condition 2.2 on approval of expansion of Veolia's landfill was beyond Zion's authority

pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (2008)). Furthermore, a careful review of the record establishes that, even if modified, Special Condition 2.2 is not supported by the record and Zion's imposition of the condition is against the manifest weight of the evidence. The Board therefore strikes Special Condition 2.2.

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

ORDER

Special Condition 2.2 imposed by the City of Zion on the siting approval for Veolia ES Zion Landfill is stricken.

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) (2008); *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 April 21, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board