BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MARTIN MAGGIO,	)	
	)	
Petitioner	)	
	)	
v.	)	No. PCB 13-10
	)	
COUNTY OF WINNEBAGO, WINNEBAGO COUNTY BOARD and WINNEBAGO LANDFILL COMPANY, LLC,	)	(Pollution Control Facility Siting Appeal)
	)	
Respondents	)	

NOTICE OF FILING

TO: SEE ATTACHED CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on January 29, 2013 the undersigned caused to be filed with the Clerk of the Illinois Pollution Control Board, via electronic filing, Petitioner's Post Hearing Reply Brief, a copy of which is attached hereto.

Respectfully Submitted,
Martin Maggio

By: _____
One of his attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of PETITIONER'S POST-HEARING REPLY BRIEF to be served on the following, via email transmission, on the on this 29th day of January, 2013:

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WINNEBAGO COUNTY BOARD and	)	
WINNEBAGO LANDFILL COMPANY,	)	
LLC,	)	
	)	
Respondents	)	

PETITIONER'S POST-HEARING REPLY BRIEF

Now comes Petitioner, Martin Maggio ("Maggio"), by his attorneys, and hereby submits his Post-Hearing Reply Brief in connection with his appeal of the Winnebago County Board's (the "County Board") approval of the Site Location Application ("Application") submitted by Winnebago Landfill Company, LLC ("WLC") for the expansion of WLC's existing municipal solid waste landfill located North of Edson Road and West of U.S. Interstate 39 in Southern Winnebago County, Illinois.

I. INTRODUCTION

Certain irrelevancies in WLC's Response Brief may be disposed of at the outset. WLC states that no one raised a notice issue while this matter was before the County Board. WLC also describes as "noteworthy" the fact that Maggio has not challenged the "substantive correctness of the local siting approval". (WLC Brief at 2) These statements, neither "noteworthy" nor relevant to the issues before this Board, reflect WLC's effort to diminish the import of its failure to serve pre-application notice to all parties entitled to such notice, and the jurisdictional impact of that failure. More to the point, it is well settled that a siting body's lack of jurisdiction may be raised at any time, either during or

after the siting proceeding. Further, the failure to notify any party entitled to statutory notice will divest the County Board of jurisdiction over the landfill application. See *Ogle County Board on Behalf of County of Ogle v. Pollution Control Board*, 272 Ill.App.3d 184, 195 (2nd Dist. 1995), appeal denied *sub nom Ogle County Board v. Pollution Control Board*, 163 Ill.2d 563 (1995); *Concerned Boone Citizens, Inc. v. M.I.G. Investments, Inc*., 144 Ill.App.3d 334, 339 (2nd Dist.1986)

WLC also tries to diminish the severity of the jurisdictional defect by stating that "Maggio's only complaint is that the owners of a single parcel, the Hildebrand parcel, did not claim their certified mail, and that the owners of six other parcels did not sign for their certified mail until after January 3, 2012, the 14th day prior to the filing of the siting application." (WLC Brief at 3) This point cannot be overstated – §39.2(b) of the Illinois Environmental Protection Act (the "Act") requires service "on the owners of all property", not just most of them. In this case, by WLC's own admission, a total of eight individuals and entities, representing seven separate parcels of property, were not properly served with notice. (Stipulation, Hearing Exhibit 1, ¶¶4, 6 and Exhibit B thereto)

It is with these stipulated facts in mind that WLC's tortured "analysis" of the case law may be addressed.

II. "SERVICE" PURSUANT TO SECTION 39.2 OF THE ACT REQUIRES RECEIPT BY THE PARTY TO BE SERVED

WLC resorts to a number of tactics in its effort to avoid the Second District's clear and explicit ruling in *Ogle County*. First, WLC asserts that the holding in *Ogle County* – that section 39.2(b) of the Act reflects the intent of the legislature to require actual receipt of the notice – is "*dicta"*. (WLC Brief at 5) The ruse of relegating an adverse ruling to "*dicta"* is an all too common fallback by litigants who cannot otherwise explain

the ruling away. "*Dicta*" was defined by the Court in *People v. Williams*, 204 Ill.2d 191, 206-207 (2003):

> *Dicta* normally comes in two varieties: obiter *dicta* and judicial *dicta*. Obiter *dicta* are comments in a judicial opinion that are unnecessary to the disposition of the case. *Black's Law Dictionary* 1100 (7th ed.1999). Judicial *dicta* are comments in a judicial opinion that are unnecessary to the disposition of the case, but involve an issue briefed and argued by the parties. *Black's Law Dictionary* 465 (7th ed.1999). Judicial *dicta* have the force of a determination by a reviewing court and should receive dispositive weight in an inferior court.

What was the subject of the "disposition of the case" in *Ogle County*? The specific issue before the court was whether the notice served on two parties was timely. 272 Ill.App.3d at 194 The notices had been sent by registered mail 17 days before the siting application had been filed, but two of the notices had not been received until after the 14-day deadline had passed. *Id.* at 184 The question before the Court was therefore whether the date of mailing or the date of receipt controlled. *Id.* at 194 This is the language from *Ogle County* that WLC apparently claims was "unnecessary to the disposition of the case":

> Therefore, we hold that the "return receipt requested" provision of section 39.2(b) of the Act reflects the intent of the legislature to require actual receipt of the notice, as evidenced by the signing of the return receipt. *** Because the return receipts at issue in the case at bar were signed after the notice deadline had expired, we find that the notice did not comply with the requirements of section 39.2. Accordingly, we agree with the PCB's determination that the County Board lacked jurisdiction to hear BFI's application.

Id. at 196 It is difficult to conceive of statements more "necessary" to the disposition of a case than the statements that actually dispose of it.

WLC also asserts that this Board "has consistently held, even before the *Ogle County* decision, that actual receipt of a certified or registered mailing is not required". WLC couples this assertion with the statement that this Board "has always been cognizant of the chaos and unjust results that would flow from letting an intended recipient of service control the outcome by deciding whether or not to claim a timely certified mailing." (WLC Brief at 4) These statements misrepresent this Board's historic treatment of the service requirement in §39.2.

WLC cites to three Board decisions in support of the above assertions: *City of Columbia v. County of St. Clair*, PCB 85-177 (April 3, 1986), *Waste Management v. Village of Bensenville*, 1989 WL 99646, PCB 89-28 (August 10, 1989), and *Carmichael v. Browning-Ferris Industries*, 1993 WL 411594, PCB 93-114 (October 7, 1993) *Carmichael* was the underlying Board decision in *Ogle County*. Contrary to WLC's misrepresentation, in *Carmichael* this Board expressly held that:

> **"Service" clearly means receipt unless otherwise stated.** Considering the language of Section 39.2(b), notice was perfected when Mr. Pfab and Senator Rigney (by agent Rebecca Hansen) signed the "green cards" as received. The Board has held that **the date of mailing is not the date of service**. (*Wabash and Lawrence County Taxpayers and Water Drinkers Assoc. v. County of Wabash*, (December 3, 1987), PCB 87–122.) Taking Section 39.2(b) alone, service as defined in the Illinois landfill siting sections of the Act was not perfected. [Emphasis added]

1993 WL 411594, Slip Op. Cite at 3 This Board further noted that, "'Service' is defined by Black's Law Dictionary to be the "exhibition or delivery of a writ, summons and complaint, criminal summons, notice, order, etc., by an authorized person, to a person who is thereby officially notified of some action or proceeding in which he is concerned,

and is thereby advised or warned of some action or step...". Slip Op. Cite at 5, n. 4, quoting Black's Law Dictionary 1227 (5th Ed.1971)

This Board's discussion in *Carmichael* of *Columbia* and *Bensenville* also disposes of WLC's attempted reliance on those cases:

> In *City of Columbia v. County of St. Clair*, April 3, 1986, PCB 85–223 (Consolidated), a case very similar to the instant case, the applicant filed a request for siting approval 13 days after newspaper publication of the intent to file, rather than the 14 days required by statute, and initiated service of notice to adjacent landowners 15 days prior to filing the request for siting approval with the county. The Board held that the initiation of service by registered mail 15 days in advance of the filing date of the request with the county did not meet statutory requirements, was unreasonable and therefore, created defective notice in violation of Section 39.2(b) of the Act. The action was dismissed by the Board as the County of St. Clair lacked jurisdiction to hear the request for the siting approval. (*Id*. at 19.)
>
> In another case, *Waste Management of Illinois v. Village of Bensenville*, (August 10, 1989), PCB 89–28, 6 the applicant filed the request for siting approval on July 22, 1988, thereby making the 14–day notice deadline July 8, 1988. On July 1, 1988, the applicant initiated notice by registered mail service. On July 6, 1988, the applicant left a notice under the door of the adjacent landowner. When the notice was left on July 6, 1988, the individual attempting to serve the adjacent landowner noticed a sign saying that the he was on vacation and would return on July 11, 1988. The registered mail receipt was signed on July 11, 1988. The Board held that mailing by registered mail 21 days prior to the date of filing of the request was sufficient to expect receipt of notice and thus notice was not defective. The Board in its reasoning stated that it was not going to allow the process to be frustrated by individuals who refuse service or are absent, and therefore will look to the reasonableness of the service process. Thus, **in the special circumstances of that case**, the Board held that the notice requirements of Section 39.2(b) of the Act were fulfilled. [Emphasis added]

Notably, the "special circumstances" that this Board considered in *Bensenville* are wholly absent from this case. WLC's counsel placed the pre-application notices in a Post Office box in Ottawa, Illinois on December 27, 2011. (Stipulation, Hearing Exhibit 1, ¶3) This was only one week before the service deadline, and included a shortened delivery day (New Year's Eve) and a full delivery holiday (New Year's Day) in that week. WLC expended the least possible effort, and itself delayed service by placing the notices in a mailbox in Ottawa, where WLC's counsel is located, rather than delivering the notices to the post offices for Rockford, Sycamore and Monroe Center, where notices to the persons at issue in this case were to be served. (Stipulation, Hearing Exhibit 1, Exhibit B)

WLC also had the ability to directly track the progress of service to determine if something more than the minimum effort it expended might be advisable. The Stipulation has attached to it, as Exhibit B, U.S. Postal Service "Track & Confirm" information for each of the individuals that either did not receive, or did not timely receive, the pre-application notice. That information is readily available over the Internet at www.usps.com by entering the article number shown on the mailing receipt or by calling the Postal Service at 1-800-222-1811. WLC could have easily determined that certain notices were not being delivered quickly enough, or not at all, at any time during the holiday-shortened week before the notice deadline. WLC could then have made some alternative attempt at service. Instead, "WLC made no further effort at serving those persons who did not claim their certified mail." (Stipulation, Hearing Exhibit 1, ¶5)[1]

[1] Continuing its effort to artificially diminish the impact of its service failures, WLC states that §39.2(b) "identifies alternative means of providing service" and that the "redundant" requirement of publication ensures that those entitled to notice will receive it. (WLC Brief at 3, 9) First, publication is expressly not redundant – the statute requires both service and publication. Second, the fact that the

In any event, WLC's representation regarding this Board's pre-*Ogle County* position is false. *Ogle County* did not reflect new law or a departure from established precedents. As noted above, the *Ogle County* Court's ruling was based on its determination of the "intent of the legislature" as evidenced by the requirements of §39.2(b) of the Act. 272 Ill.App.3d at 194 It is important in this regard to first recognize a principle of statutory construction at work in this matter.

When statutes are enacted after judicial opinions are published, it is presumed that the legislature acted with knowledge of the prevailing case law. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill.2d 281, 305-306 (2010) "A statute should not be construed to effect a change in the settled law of the State unless its terms clearly require such a construction." *In re May 1991 Will County Grand Jury*, 152 Ill.2d 381, 388 (1992). The version of §39.2(b) in effect today is virtually identical to the original enactment in 1981. A copy of the original Public Act 82-682 is attached hereto as Exhibit A. What was the meaning of the phrase "registered mail, return receipt requested" in November 1981, when §39.2 of the Act was enacted?

People ex rel. Head v. Board of Education of Thornton Fractional Township South High Scholl District No. 215, 95 Ill.App.3d 78 (1st Dist. 1981) was decided in March 1981, just eight months before §39.2 was enacted. *Head* involved the defendant School District's effort to terminate a teacher. Notice of the termination had been sent pursuant to a provision of the Illinois School Code that provided, "Any teacher who has been employed in any district as a full-time teacher for a probationary period of 2 consecutive school terms shall enter upon contractual continued service unless given

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statute allows for personal service simply highlights the fact that WLC did nothing to attempt an alternate method of service when its lackadaisical effort was not succeeding.

written notice of dismissal stating the specific reason therefor, by registered mail by the employing board at least 60 days before the end of such period. 95 Ill.App.3d at 80 The dismissed teacher argued that notice was defective because it had been sent by certified mail, return receipt requested, instead of registered mail, and had not been received until after the statutory deadline. *Id.* at 80-81

In finding that notice had not been properly served, the court held that:

> Under the facts and circumstances of this case, the fact that the notice here was sent by "certified mail, return receipt requested" instead of by "registered mail" is not of pivotal importance. The purpose of the statutory requirement that the notice of non-renewal be sent by registered mail is to **provide documentation that the notice was received and thereby avoid potential controversies concerning whether or not the notice was conclusively given**. However, because both "certified mail, return receipt requested" and "registered mail" **document whether or not the addressee received the letter**, we do not find the form of mailing notice in this case to be determinative.
>
> It is undisputed that petitioner did not receive notice of non-renewal within the 60 day period before the end of the school term. We do not believe that the mere mailing of the notice by respondent was sufficient. **If the legislature intended that a board's duty would be fulfilled upon mailing notice, it would not have required a form of mailing that would indicate to the board whether or not the notice was received. Ordinary mail would suffice if the board was required only to send notice and not required to take steps to insure that a teacher receive notice.** [Emphasis added]

See also *A-1 Security Services, Inc. v. Stackler*, 61 Ill.App.3d 285, 287-288 (1st Dist. 1978) ("Because registered mail requires the addressee to sign for the item in acknowledgment of delivery, **the date of the signed acknowledgment is the date the item was received and thus the date of service**. [Emphasis added]")

Well before *Ogle County,* this Board relied on *Head* and similar cases in construing the Illinois General Assembly's intent in imposing the same "registered mail" requirement in §39.2 of the Act. In *Ash v. Iroquois County Board,* 1987 WL 56144, PCB 87-29, Slip Op. Cite at 4-5 (IPCB July 16, 1987) this Board held that:

> Ash contends that the 'true intention' of the Legislature in enacting the notice provision of Section 39.2(b) was to implement a system whereby there would be some record of the notice to owners and legislators having been both sent **and received**.
>
> The Board believes that Ash has expressed **the most logical analysis of the legislative intent behind the notice requirement** of Section 39.2(b). The Board can ascertain no substantive difference in the functions provided by registered and certified mail, save that postal insurance may be purchased to cover items sent via the former method. The letters sent by Ash to adjoining landowners and legislators in fulfillment of the Section 39.2(b) requirements are not items of monetary value, and therefore are not parcels for which registered mail alone will suffice. Moreover, the Board notes that no hardship resulted to any person as a result of Petitioner's use of certified mail, return receipt requested. This method still provided a permanent record of the sending **and receipt** of the notices. P. Ex. 3. Presumably notices were received in a timely fashion by all necessary landowners and legislators, for it has not been alleged that Ash failed to notify any necessary person(s). Additionally, Illinois appellate courts have found, in various factual settings, that the form of mailing notice is not decisive where certified mail will serve the purpose of registered mail. *The People ex rel. Gail Head v. The Board of Education of Thornton Fractional Township South High School District No. 215*, 95 Ill. App. 3d 78, 81–82 (1st Dist. 1981); *Olin Corporation v. William M. Bowling*, 95 Ill. App. 3d 1113, 1116–1117 (5th Dist. 1981); *Norman Bultman v. Melvin Bishop*, 120 Ill. App. 3d 138, 143–144 (5th Dist. 1984); *Illini Hospital v. George P. Bates*, 135 Ill. App. 3d 732, 734–735 (3rd Dist. 1985). [Emphasis added]

This Board reiterated its *Ash* decision several years later (after *Ogle County*) in *Environmentally Concerned Citizens Organization v. Landfill, LLC*, PCB 98-98, 1998 WL

244621, Slip Op. Cite at 5 (IPCB May 7,1998) ("Further the Board found that the use of certified mail still proved a permanent record for the sending **and receiving** of notices. *** Neither the courts nor the legislature have seen fit to disagree with the Board's interpretation. [Emphasis added]")[2]

WLC's final assault on the Legislature's intent takes the form of chiding Maggio for not discussing *Waste Management of Illinois, Inc. v. Pollution Control Board*, 356 Ill.App.3d 229 (3rd Dist. 2005) in his opening Brief. (WLC Brief at 8) *Waste Management* is neither applicable to nor dispositive of this case. First, it is a Third District opinion, and this case is governed by the Second District's decision in *Ogle County*. See 415 ILCS 5/41(a); *Aleckson v. Village of Round Lake Park*, 176 Ill.2d 82, 92 (1997) Second, and much more fundamentally, *Waste Management* is internally inconsistent and analytically flawed.

The *Waste Management* court stated that the form of the mailing controls over the date of receipt. 356 Ill.App.3d at 234 Yet this statement followed an extended discussion of *Ash* and *Head*, *supra*, both of which, as discussed above, expressly held that the date of receipt determines the date of service. Indeed, following its discussion of those cases, the *Waste Management* court found that:

> Clearly, certified mail, return receipt requested, is the exact equivalent of registered mail, return receipt requested, for purposes of the statute. Such is not the case, however, with regular mail, which **provides no assurance of receipt**. [Emphasis added]

[2] In its misrepresentation of this Board's rulings, WLC points out that "that certified mail, as used here, is the functional equivalent of registered mail for purposes of establishing compliance with Section 39.2(b)". (WLC Brief at 4) WLC fails to mention either *Ash* or *Environmentally Concerned Citizens* and their holding that the date of receipt is the operative date for determining the date of service.

Id. at 234 The *Waste Management* court made no mention of this inconsistency when it stated, just one paragraph later, that the date of receipt is irrelevant.

Further, the *Waste Management* court's statement was made in response to the petitioner's argument "that strict adherence to the language of the statute would allow landowners to avoid service by refusing to sign the return receipt, and thereby deny the county board jurisdiction". *Id.* This is the same "concern" expressed by WLC here. (WLC Brief at 9) In another example of irreconcilable inconsistency, the court then rejected this "concern", pointing out that this "Board has held that constructive notice of a hearing may be presumed in instances where a property owner has refused or avoided service." *Id.* at 235, citing *ESG Watts v. Sangamon County Board*, 1999 WL 436320, PCB 98–2, Slip Op. Cite at 6-7 (June 17, 1999) As in *Waste Management,* there is no evidence in this case that any of the persons and entities who did not receive proper notice either attempted to avoid service or refused to acknowledge receipt.

Finally, the *Waste Management* court cited to *People ex rel. Devine v. $30,700 U.S. Currency*, 199 Ill.2d 142 (2002) in support of the proposition that jurisdiction under §39.2(b) of the Act is based on how the notice is sent, and not on whether it is received. 356 Ill.App.3d at 234 But the court failed to sddress the fundamental differences between the Drug Asset Forfeiture Procedure Act, 725 ILCS 150/1, *et seq*. ("DAFPA"), at issue in *U.S. Currency,* and §39.2(b) of the Act. WLC tries to diminish this difference by asserting that both statutes "contain the identical 'return receipt requested' language" (WLC Brief at 10) and that there is a "small but controlling difference in the language of the various statutes construed". (WLC Brief at 7) What WLC describes as a "small difference" is the express language in DAFPA, upon which the *U.S. Currency* Court's

holding was based, that, "Notice served under this Act is **effective upon…the mailing** of written notice…. [Emphasis added]" 199 Ill.2d at 151 The *Waste Management* court did not even mention that DAFPA explicitly provides that service is effective upon mailing; or the primary role of the "upon mailing" provision in the *U.S. Currency* Court's decision; or the fact that §39.2(b) of the Act contains no such language to support a departure from the long line of authority construing the Legislature's intent in §39.2(b) of the Act, and other statutes with the same language, requiring proof of actual receipt.

WLC claims that the purported holding in *Waste Management* "is the only interpretation of 415 ILCS 5/39.2(b) that makes any sense". (WLC Brief at 9) WLC of course ignores all the prior rulings to the contrary. In any event, with all due respect to the Third District, its inconsistent statements, coupled with the court's failure to even mention the fundamental difference in the two statutes, result in anything but "sense".[3]

A critical concept discussed in Maggio's initial Post-Hearing Brief bears repeating. In the context of prior judicial construction of statutes, and particularly in the context of jurisdictional provisions like §39.2 of the Act, "a departure [from established precedents] amounts to an amendment of the statute itself rather than simply a change in the thinking of the judiciary with respect to common law concepts which are properly under its control." *People v. Williams*, 235 Ill.2d 286, 295 (2009), quoting *Froud v. Celotex Corp*., 98 Ill.2d 324, 336 (1983) See also *Neal v. United States*, 516 U.S. 284, 295-296 (1996) WLC has provided no basis for disregarding the long line of controlling authority

[3] The Third District has not fared well with the *Kankakee/Town & Country* series of cases, of which *Waste Management* is a part. The court was in fact the object of a scathing rebuke by the Illinois Supreme Court. Addressing a series of rulings that were inconsistent, inexplicable, or baseless, the Supreme Court took the highly unusual step of directing the Third District to vacate and reconsider a prior opinion, with express directions as to how the court should go about doing so. See *County of Kankakee v. Illinois Pollution Control Board*, 231 Ill.2d 663 (2009)

in Illinois construing a registered or certified mail requirement to mean that service is only effective upon proof of receipt.

III. CONCLUSION

WLC exerted the least possible effort to effect service of its pre-application notice. Not surprisingly, that limited effort resulted in a failure to serve several parties entitled to notice. For all of the foregoing reasons, and those set forth in Maggio's initial Post-Hearing Brief, the decision of the Winnebago County Board must be overturned.

Respectfully Submitted,
Martin Maggio

By: _____
One of his attorneys

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EXHIBIT A

1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language;

2. Any child who is physically or mentally unable to attend school, such disability being certified to the county or district truant officer by a competent physician; or who is excused for temporary absence for cause by the principal or teacher of the school which the child attends; *the exemptions in this paragraph (2) do not apply to any female who is pregnant or the mother of one or more children, except where a female is unable to attend school due to a complication arising from her pregnancy and the existence of such complication is certified to the county or district truant officer by a competent physician;*

3. Any child necessarily and lawfully employed according to the provisions of the law regulating child labor may be excused from attendance at school by the county superintendent of schools or the superintendent of the public school which the child should be attending, on certification of the facts by and the recommendation of the school board of the public school district in which the child resides. In districts having part time continuation schools, children so excused shall attend such schools at least 8 hours each week;

4. Any child over 12 and under 14 years of age while in attendance at confirmation classes.

Section 2. This Act takes effect July 1, 1981.

PUBLIC ACT HISTORY

Passed in the General Assembly July 2, 1981.

Governor returns bill to General Assembly with recommendations for change (Amendatory Veto of September 17, 1981) October 1, 1981.

General Assembly accepts change October 28, 1981.

Certified by the Governor November 12, 1981.

Effective November 12, 1981.

PUBLIC ACT 82-682.

PUBLIC HEALTH AND SAFETY.

ENVIRONMENTAL PROTECTION ACT — REGIONAL POLLUTION CONTROL FACILITY.

(Senate Bill No. 172. Certified November 12, 1981.)

PUBLIC ACT TEXT

AN ACT relating to the location of sanitary landfills and hazardous waste disposal sites.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 3 and 39 of the "Environmental Protection Act", approved June 29, 1970, as amended, are amended and Sections 39.1 and 40.1 are added thereto, the amended and added Sections to read as follows:

(Ch. 111 ½, par. 1003)

Sec. 3. (a) "Agency" is the Environmental Protection Agency established by this Act.

(b) "Air Pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

(c) "Board" is the Pollution Control Board established by this Act.

(d) "Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

(e) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(f) "Garbage" is waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce.

(g) "Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Agency guidelines consistent with the requirements of this Act and Board regulations. Hazardous waste does not include municipal waste.

(h) "Hazardous Waste Disposal Site" is a site *at* ~~on~~ which hazardous waste is disposed.

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

(i) "Industrial Process Waste" means any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Industrial Process Waste" includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludges, incinerator ashes, core sands, metallic dust sweepings, asbestos dust, hospital pathological wastes and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris.

(j) "Institute" is the Illinois Institute of Natural Resources.

(k) "Intermittent Control System" is a system which provides for the planned reduction of source emissions of sulfur dioxide during periods when meteorological conditions are such, or are anticipated to be such, that sulfur dioxide ambient air quality standards may be violated unless such reductions are made.

(l) "Municipal waste" means garbage, general household and commercial waste, landscape waste and construction or demolition debris.

(m) "Municipality" means any city, village or incorporated town.

(n) "Open burning" is the combustion of any matter in the open or in an open dump.

(o) "Open dumping" means the consolidation of refuse from one or more sources at a ~~central~~ disposal site that does not fulfill the requirements of a sanitary landfill.

(p) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

(q) "Pollution Control Waste" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Pollution Control Waste" includes but is not limited to water and wastewater treatment plant sludges, baghouse dusts, scrubber sludges and chemical spill cleanings.

(r) "Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public,

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including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities; or unincorporated communities where 10 or more separate lots or properties are being served or intended to be served; State-owned parks and memorials; and State-owned educational, charitable, or penal institutions.

(s) "Refuse" means waste.

(t) "Regional Pollution Control Facility" is any waste storage site, sanitary landfill, waste disposal site, waste transfer station or waste incinerator that accepts waste from or that serves an area that exceeds or extends over the boundaries of any local general purpose unit of government. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers," approved May 29, 1889, as now or hereafter amended. The following are not regional pollution control facilities: (1) sites or facilities located within the boundary of a local general purpose unit of government and intended to serve only that entity; (2) waste storage sites regulated under 40 CFR, Part 761.42; or (3) sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person.

A new regional pollution control facility is:

(1) a regional pollution control facility initially permitted for development or construction after July 1, 1981; or

(2) the area of expansion beyond the boundary of a currently permitted regional pollution control facility; or

(3) a permitted regional pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.

(u) ~~(t)~~ "Resource Conservation" means reduction of the amounts of waste that are generated, reduction of overall resource consumption and the utilization of recovered resources.

(v) ~~(u)~~ "Resource Recovery" means the recovery of material or energy from waste.

(w) ~~(v)~~ "Sanctioned sporting event" means any contest or demonstration conducted in accordance with the standards, rules and with the endorsement of the United States Auto Club, or the

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National Association for Stock Car Auto Racing, or the Association for Motor Sports, or the American Athletic Union, or the National Collegiate Athletic Association, or the Illinois High School Association.

(x) ~~(w)~~ "Sanitary Landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

(y) ~~(x)~~ "Sewage works" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of sewage, industrial waste or other wastes or for the recovery of by-products from such wastes.

(z) ~~(y)~~ "Site" means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

(aa) ~~(z)~~ "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(bb) ~~(aa)~~ "Special Waste" means any industrial process waste, pollution control waste or hazardous waste.

(cc) ~~(bb)~~ "Storage" when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(dd) ~~(cc)~~ "Storage Site" is a site at which hazardous waste is stored.

(ee) ~~(dd)~~ "Trade Secret" means the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(ff) ~~(ee)~~ "Treatment", when used in connection with hazardous waste means any method, technique or process, including neutralization, designed to change the physical, chemical, or biological

character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(gg) ~~(ff)~~ "Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Clean Water Act or *source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921)* ~~radioactive materials discarded in accordance with the provisions of "An Act to authorize the Director of Public Health to purchase, lease, accept or acquire suitable sites for the concentration and storage of radioactive wastes, to provide for supervision of the operation of such sites and to authorize the Department of Public Health to prepare and to enforce regulations pertaining to the use and operation of such sites" approved August 16, 1963, as now or hereafter amended, and as authorized by regulations promulgated pursuant to the "Radiation Protection Act", approved July 17, 1959, as now or hereafter amended~~ or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

(hh) ~~(gg)~~ "Waste Disposal Site" is a site on which solid waste is disposed.

(ii) ~~(hh)~~ "Water Pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(jj) ~~(ii)~~ "Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

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(kk) ~~(jj)~~ "Hazardous hospital wastes" means wastes generated in connection with patient care that is contaminated with or may be contaminated with an infectious agent that has the potential of inducing an infection and has not been rendered innocuous by sterilization or incineration.

(Ch. 111 ½, par. 1039)

Sec. 39. (a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In granting permits the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. A bond or other security shall not be required as a condition for the issuance of a permit, provided that a bond or other security may be required as a condition for the issuance of a permit for a hazardous waste disposal site pursuant to regulations adopted by the Board under Section 22.4 of this Act. If the Agency denies any permit under this Section, the Agency shall transmit to the applicant within the time limitations of this Section specific, detailed statements as to the reasons the permit application was denied. Such statements shall include, but not be limited to the following:

(i) the sections of this Act which may be violated if the permit were granted;

(ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were granted;

(iii) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency and;

(iv) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted.

If there is no final action by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued; except that this time period shall be extended to 180 days when notice and opportunity for public hearing are required by State or federal law or regulation.

(b) The Agency may issue NPDES permits exclusively to this subsection for the discharge of contaminants from point sources into navigable waters, all as defined in the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500), within the jurisdiction of the State, or into any well.

All NPDES permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provision of this Act.

The Agency may include, among such conditions, effluent limitations and other requirements established under this Act, Board regulations, the Federal Water Pollution Control Act Amendments of 1972 and regulations pursuant thereto, and schedules for achieving compliance therewith at the earliest reasonable date.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of NPDES permits, and which are consistent with the Act or regulations adopted by the Board, and with the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500) and regulations pursuant thereto.

The Agency, subject to any conditions which may be prescribed by Board regulations, may issue NPDES permits to allow discharges beyond deadlines established by this Act or by regulations of the Board without the requirement of a variance, subject to the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500) and regulations pursuant thereto.

(c) Except for those facilities owned or operated by sanitary districts organized under "An Act to create sanitary districts and to remove obstructions in Des Plaines and Illinois rivers," approved May 29, 1889, as now or hereafter amended, no permit for the development or construction of a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area in which the facility is to be located in accordance with Section 39.1 of this Act. No permit for the development or construction of a new facility other than a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the applicant has secured all necessary zoning approvals from the unit of local government having zoning jurisdiction over the proposed facility.

~~(c) Immediately upon receipt of a request for a permit or supplemental permit for a refuse disposal facility, the Agency shall notify the State's attorney and the Chairman of the County Board of the county in which the facility is located and each member of the General and to the clerk of each municipality any portion of which is within 3 miles of the facility, prior to the issuance of a permit to develop a hazardous waste disposal site, the Agency shall conduct a public hearing in the county where the site is proposed to be located.~~

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(d) In making any determination under regulations established pursuant to Section 9.1(d) or (e) of this Act;

(1) The Agency shall have authority to make the determination of any question required to be determined by the Clean Air Act, this Act, or the regulations of the Board including the determination of Lowest Achievable Emission Rate or Best Available Control Technology consistent with the Board's regulations.

(2) The Agency shall, after conferring with the applicant, give written notice to the applicant of its proposed decision on the application including the terms and conditions of the permit to be issued and the facts, conduct or other basis upon which the Agency will rely to support its proposed action;

(3) Following such notice, the Agency shall give the applicant an opportunity for a hearing in accordance with the provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended, pars. 1010 through 1015 inclusive.

(e) The Agency shall include as conditions upon all permits issued for hazardous waste disposal sites such restrictions upon future use of such sites as are reasonably necessary to protect public health and the environment, including permanent prohibition of use of such sites for purposes which may create an unreasonable risk of injury to human health or to the environment. After administrative and judicial challenges to such restrictions have been exhausted, the Agency shall file such restrictions of record in the Office of the Recorder of the county in which the hazardous waste disposal site is located.

(f) Before issuing any permit for the conduct of any refuse-collection or refuse-disposal operation, the Agency shall conduct an evaluation of the prospective operator's prior experience in waste management operations. The Agency may deny such a permit if the prospective operator or any employee or officer of the prospective operator has a history of:

(i) repeated violations of federal, State, or local laws, regulations, standards, or ordinances in the operation of refuse disposal facilities or sites; or

(ii) conviction in this or another State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court; or

(iii) proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposal of any hazardous waste.

(Ch. 111 ½, new par. 1039.1)

Sec. 39.1. (a) The 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 the site location suitability for such

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new regional pollution control facility only in accordance with the following criteria:

(i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;

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

(iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

(iv) the facility is located outside the boundary of the 100 year flood plain as determined by the Illinois Department of Transportation, or the site is flood-proofed to meet the standards and requirements of the Illinois Department of Transportation and is approved by that Department;

(v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents; and

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

(b) No later than 14 days prior to a request for location approval the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located. Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the county board, and a description of the right of persons to comment on such request as hereafter provided.

(c) An applicant shall file a copy of its request with the county board of the county or the governing body of the municipality in which the proposed site is located. Such copy shall be made available

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for public inspection and may be copied upon payment of the actual cost of reproduction.

Any person may file written comment with the county board or governing body of the municipality concerning the appropriateness of the proposed site for its intended purpose. The county board or governing body of the municipality shall consider any comment received or postmarked not later than 30 days from the date of receipt of the request in making its final determination.

(d) At least one public hearing is to be held by the county board or governing body of the municipality within 60 days of receipt of the request for site approval, such hearing to be preceded by published notice in a newspaper of general circulation published in the county of the proposed site, and notice by certified mail to all members of the General Assembly from the district in which the proposed site is located and to the Agency. The public hearing shall develop a record sufficient to form the basis of appeal of the decision in accordance with Section 40.1 of this Act.

(e) Decisions of the county board or governing body of the municipality are to be in writing, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section. In 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. If there is no final action by the county board or governing body of the municipality within 120 days after the filing of the request for site approval the applicant may deem the request approved.

(f) The siting approval, procedures, criteria and appeal procedures provided for in this Act for new regional pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for such facilities. Local zoning or other local land use requirements shall not be applicable to such siting decisions.

(g) Nothing in this Section shall apply to any existing or new regional pollution control facility located within an unincorporated area of any county having a population of over 3,000,000 or within the corporate limits of cities or municipalities with a population of over 1,000,000.

(Ch. 111 ½, new par. 1040.1)

Sec. 40.1 (a) If the county board or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, refuses to grant approval under Section 39.1 of this Act, the applicant may, within 35 days, petition for a hearing before the Board to contest the decision of the county board or the governing body of the municipality. The Board shall publish 21 day notice of

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the hearing on the appeal in a newspaper of general circulation published in that county. The county board or governing body of the municipality shall appear as respondent in such hearing, and such hearing shall be based exclusively on the record before the county board or the governing body of the municipality. At such hearing the rules prescribed in Sections 32 and 33 (a) of this Act shall apply, and the burden of proof shall be on the petitioner; however, no new or additional evidence in support of or in opposition to any finding, order, determination or decision of the appropriate county board or governing body of the municipality shall be heard by the Board. In making its orders and determinations under this Section, the Board shall include in its consideration the written decision and reasons for the decision of the county board or the governing body of the municipality, the transcribed record of the hearing held pursuant to subsection (d) of Section 39.1, and the fundamental fairness of the procedures used by the county board or the governing body of the municipality in reaching its decision. If there is no final action by the Board within 90 days, petitioner may deem the site location approved; provided, however that that period of 90 days shall not run for any period of time, not to exceed 30 days, during which the Board is without sufficient membership to constitute the quorum required by subsection (a) of Section 5 of this Act, and provided further, that such 90 day period shall not be stayed for lack of quorum beyond 30 days regardless of whether the lack of quorum exists at the beginning of such 90 day period or occurs during the running of such 90 day period.

(b) If the county board or the governing body of the municipality as determined by paragraph (c) of Section 39 of this Act, grants approval under Section 39.1 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of the municipality may petition the Board within 35 days for a hearing to contest the approval of the county board or the governing body of the municipality. Unless the Board determines that such petition is duplicitous or frivolous, or that the petitioner is so located as to not be affected by the proposed facility, the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals, such hearing to be based exclusively on the record before county board or the governing body of the municipality. The burden of proof shall be on the petitioner. The county board or the governing body of the municipality and the applicant shall be named as co-respondents.

Section 2. The provisions of "The State Mandates Act", Public Act 81-1562, shall not apply to the provisions of this Act.

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Section 3. This Act shall take effect upon becoming a law.

PUBLIC ACT HISTORY

Passed in the General Assembly July 1, 1981.
Governor returns bill to General Assembly with recommendations for change (Amendatory Veto of September 24, 1981) October 1, 1981.
General Assembly accepts change October 28, 1981.
Certified by the Governor November 12, 1981.
Effective November 12, 1981.

PUBLIC ACT 82-683.

REVENUE — CITIES AND VILLAGES — COUNTIES — PUBLIC UTILITIES.

USE TAX ACT — SERVICE USE TAX ACT — SERVICE OCCUPATION TAX ACT — RETAILERS' OCCUPATION TAX ACT — MUNICIPAL CODE — MUNICIPAL SERVICE OCCUPATION TAX ACT — COUNTY USE TAX ACT — REGIONAL TRANSPORTATION AUTHORITY ACT — GRAPHIC ARTS MACHINERY AND EQUIPMENT — ETHYL ALCOHOL DISTILLATION EQUIPMENT — EXEMPTS FROM TAX.

(Senate Bill No. 257. Certified November 12, 1981.)

PUBLIC ACT TEXT

AN ACT relating to exemptions from certain use and occupation taxes.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 3 of the "Use Tax Act", approved July 14, 1955, as amended, is amended to read as follows:
(Ch. 120, par. 439.3)
Sec. 3. A tax is imposed upon the privilege of using in this State tangible personal property, other than *graphic arts machinery and equipment both new and used and including that manufactured on special order, certified by the purchaser to be used primarily for graphic arts production, and including in this exemption such machinery and equipment purchased for lease and other than* farm chemicals and other than farm machinery and equipment costing $1,000 or more both new and used and including that manufactured on special order, certified by the purchaser to be used

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