

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PETITION OF LANDFILL 33, LTD.)	
)	
Petitioner,)	PCB 2020-018
)	(Permit Appeal – Land)
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

REPLY BRIEF IN SUPPORT OF PETITIONER LANDFILL 33’S MOTION FOR SUMMARY JUDGMENT

NOW COMES LANDFILL 33 LTD, (“Landfill 33”) by and through its attorneys, HINSHAW & CULBERTSON LLP, and hereby files this Reply Brief in Support of Petitioner Landfill 33’s Motion for Summary Judgment, and in support thereof, states as follows¹:

I. The Agency has Admitted All of the Facts Warranting Summary Judgment in Favor of Landfill 33 Particularly that Local Siting Approval of a Vertical Expansion with a Maximum Height of 644 MSL was Granted By Effingham County in the Year 2000.

Landfill 33’s Motion for Summary Judgment contained an extensive statement of facts to support its motion and the State has not denied the veracity of any fact alleged. (See Landfill 33’s Motion for Summary Judgment pages 1-11). Specifically, the Agency has not, and cannot, deny that the April 5, 2019 Application seeks to amend the final contours of the landfill with all contours remaining below 644 MSL. (R22, 24 33-38). Further, the Agency has admitted, and even argued itself, that the proposed vertical expansion that was the subject of a public local siting hearing held by Effingham County Board on January 20, 2000 and approved on February 21, 2000, had a

¹ Landfill 33 hereby incorporates by reference all facts and arguments it raised in its the Motion for Summary Judgment filed in this case on April 17, 2020 and its Response to Illinois Environmental Protection Agency’s Motion for Summary Judgment filed on May 12, 2020 as though stated verbatim herein and will endeavor to minimize repeating same.

maximum elevation of 644 MSL. (R1, 33, 1860, 1884; see Respondent's Motion for Summary Judgment Pgs 1,6, and 7). The Agency also has not, and cannot, deny that the record is clear that the February 21, 2000 Effingham County Board "siting approval does not include any special conditions ... to maximum waste volume, final contour dimensions or maximum elevation". (R1883). The Agency has only argued, erroneously, that because some of the vertical contours are proposed to be amended above their current Agency permitted heights, but below the 644 MSL, that a new local siting approval is required. However as explained below that argument has already been rejected by *Brickyard Disposal and Recycling v. Illinois Environmental Protection Agency*, PCB No. 16-66, 216 Ill. Env't'l Lexis 220 (*aff'd.* by Fourth District Appellate Court at 218 IL App (4th) 170114) and *Waste Management v. Illinois EPA*, PCB 94-153 (July 21, 1994). Therefore, Landfill 33 is entitled to Judgment as a Matter of law.

Despite admitting all of the material facts necessary to warrant summary judgment in favor of Landfill 33, the Agency has proffered a "red herring" argument that Landfill 33 is relying upon exhibits that are not in the IEPA record and the Agency, within its Response Brief, makes an untimely motion to strike certain exhibits. First, all of the documents cited in Landfill 33's Motion for Summary Judgment are either in the Agency's administrative record or exhibits to the original Petition for Review initiating this case. Second, all of the exhibits the Agency objects to are merely probative of facts already proven elsewhere in the record and therefore even if the PCB decides not consider those exhibits the material facts are still undisputed and Landfill 33's motion should be granted. Third, any motion to strike said exhibits is untimely as they have been in the record of this IPCB action since the inception of the case over 7 months ago. Finally, fourth, to the extent the IPCB finds it necessary, Landfill 33 hereby motions to supplement the administrative record with the disputed exhibits.

The Agency specifically takes issue with Drawing A2-3 and Exhibits C and D to the Petition. Drawing A2-3 is a diagram depicting the contours that were being proposed at the time of the local siting hearing on January 20, 2000 and was attached to the Petition for Review within Exhibit A. The authenticity of Exhibit A to the Petition was asserted by Landfill 33 in a Requests for Admission and the Agency and did not deny same though it objected to the Request. See Respondent's Response to Requests for Admission No. 1 attached here to as Exhibit 2.² Exhibit C to the Petition is a September 19, 2000 Certification of Siting Approval (LPC-PA8), the authenticity of which was admitted by the Agency. Ex. 2 Response No. 9. Exhibit D to the Petition is the pertinent portions of the Agency Permit issued on June 28, 2002 when it approved Modification Number 9 which approval is explicitly referenced in the IEPA Permit History in the Administrative Record at R1860. The authenticity of Exhibit D to the Petition was also admitted by the Agency. Ex. 2 Response No. 11.

First, the PCB rules explicitly provide that summary judgment may be based not only upon the record but also "pleadings, depositions and admissions on file, together with any affidavits". 35 Ill.Admin.Code Sec. 101.56(b). Further, the Illinois Pollution Control Board ("Board") is to consider the pleadings and the permit record to determine whether there is any genuine issue as to any material fact. *Brickyard Disposal and Recycling, Inc. v. Illinois Environmental Protection Agency*, PCB No. 16-66, 2016 Ill. Env. Lexus 220, *8 (citing *Continental Casualty v. Coregis Insurance Company*, 316 Ill.App.3d 1052, 1062 (1st Dist. 2000)). All 3 of the pieces of evidence that the Agency now objects to being considered were attached to the Petition for Review as exhibits and thus are part of the pleadings in this case and by law are proper to be considered on a

² Exhibit Number 2 has been used as Exhibit 1 was marked in Petitioner Landfill 33's Motion for Summary Judgment.

motion for summary judgment. Furthermore, the authenticity of Exhibits C and D has been admitted by the Agency and Section 101.56 requires the Board to consider the admissions on file.

Second, the information contained in all three pieces of evidence that the Agency objects to are found in portions of the Administrative Record. Specifically, Drawing A2-3 was offered to show that the elevation of 644 MSL was considered and approved by the Effingham County Board in the year 2000. The Agency itself in its Cross-Motion for Summary Judgment admitted that Landfill 33, through Andrews Engineering, submitted a nearly identical drawing depicting the existing contours of the landfill as part of its 2019 application which explicitly depicted a maximum approved elevation of 644 MSL. (See R. 33). Further, the fact that the permitted maximum height was 644 MSL and that the 2019 application was “consistent in all respects” with that 2000 siting approval was explicitly referenced in the November 19, 2018 Effingham County Board Resolution and the Correspondence from the County Board Chair James Niemann. (R1883-1885). Furthermore, the 644 MSL maximum elevation is contained in the original April 5, 2019 Letter from Landfill 33’s Consultant (Andrews Engineering) submitting the Application and in numerous follow-up communications between Andrews and the Agency thereafter all of which are contained in the Administrative Record. (See e.g. R1, 2, 31, 32, 1840, 1843, 1848, 1878, 1884, 1885, 1905). If that was not enough, contained in the Administrative Record, is the email from IEPA Inspector Dustin Berger on April 17, 2019 which provides that Landfill 33 “recently submitted a permit application **that keeps the current permitted maximum height**, but changes the contours to over 400,000 yards capacity.” (R1876)(emphasis added). Therefore, the record contains many references, beyond Drawing A2-3, proving the fact that the height of 644 feet above MSL was considered by the local siting authority during the public hearing and permitted by the Agency on June 28, 2002 pursuant to the Effingham local siting approval of February 20, 2000.

Likewise, Exhibit C is merely the IEPA's own form (LPC-PA8) which is a Certification of Siting Approval dated September 19, 2000 which was part of the Sig. Mod No. 9 Application approved in 2002. The fact that Effingham County issued a siting approval compliant with Section 39.2 on February 21, 2000 is contained in many places in the Administrative Record including Attachment 3 to the 2019 Application which contained the Effingham County Board Findings of Fact Regarding Request For Expansion of Existing Landfill Facility Submitted by Landfill 33 Ltd. (R29). Those findings explicitly provide that a "public hearing [was] held on January 20, 2000" and that each of the criteria enumerated in 415 ILCS 5/39.2(a) were met, and that the proposed expansion was necessary to accommodate the waste needs of Effingham County and designed to protect the public health, safety and welfare. (R29). Andrews Engineering also provided a correspondence to the Agency with the Application noting that a public local siting hearing occurred on the vertical expansion request in the year 2000 (R1898) and supplied the affidavit of the chairman of the Effingham County Board from that time, Leon Gobjczynski. (R1900) who testified that all of the procedures and processes of Section 39.2 were "followed with Modification No. 9 to Permit No. 1995-231-LFM, issued June 28, 2002 and was consistent in all respects with the [section 39.2] requirements that existed at that time." Therefore Exhibit C was merely additional evidence corroborating the fact that a 39.2 compliant hearing occurred in 2002 and local approval granted at that time (a fact that the Agency has never denied). Finally, Exhibit D was cited in Landfill 33's motion to merely show that the Agency awarded Sig Mod Permit No. 9 with a maximum height elevation of 644 MSL on January 28, 2002. A fact that is never denied by the Agency and is explicitly noted in the Permit History at R1860 and referenced at numerous other locations. (See . R1, 2, 31, 32, 1840, 184, 1848, 1878, 1884, 1885, 1905). Therefore, no issue of

material fact arises even if the evidence that the Agency objects to is wrongfully ignored by the Board as such evidence is contained elsewhere in the Administrative Record.

Third, the Agency's purported motion to strike Drawing A2-3 and Exhibits C and D should itself be stricken. Section 101.500 requires All motions to be made in writing and "must be filed and served in compliance with Subparts C and J". No separate motion was ever filed and served. Further, the Agency has not indicated if this motion is directed to the PCB or the hearing officer as required. 35 Ill.Admin.Code Sec. 101.500(b). Most importantly, Section 101.506 requires that "[a]ll motions to strike, dismiss or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after service of the challenged document, unless the Board determines that material prejudice would result". 35 Ill.Admin.Code Sec. 101.506. The challenged documents were exhibits to the Petition for Review which was filed 7 months ago on October 9, 2019 and thus the motion to strike is entirely untimely. The Agency has not, and cannot, allege any prejudice as they have been aware of the documents for over 7 months, the substance of each document is contained elsewhere in the administrative record, and the authenticity of the documents has not been challenged. Thus the Agency's Motion to strike itself should be stricken. To the extent that the Board is going to entertain the Agency's Motion then the arguments raised herein are filed in Response.

Fourth, and finally, if the Board agrees with the Agency that the documents need to be part of the Administrative Record (even though they were exhibits to the Petition and by law are properly considered on a motion for summary judgment), then the Petitioner Landfill 33 hereby motions to the Board to supplement the record with the documents. Such a motion may be raised at any time per Section 101.500(c). Further, the Record should be so supplemented because the Agency has not, and cannot, dispute the authenticity of the records, each record is relevant to the

issues at bar, and each record proves, supports, and corroborates the fact that Effingham County approved a vertical expansion in 2000 which included a diagram depicting a maximum elevation of 644 MSL and imposed no restrictions on vertical elevation and the Agency permitted a maximum elevation of 644 MSL in 2002.

II. The Agency has Conceded the Application Contains Sufficient Evidence of the Authority of the Signators of the Application to File on Behalf of the Owner.

At page 5 of its Response Brief the Agency concedes that it “agree[s] that Landfill 33 provided adequate information of ownership [and therefore] the issue of ownership as raised in the September 6, 2019 decision is moot, and the Board’s review of the Agency’s decision in that respect is unnecessary.” Therefore, Landfill 33 makes no reply to that issue as the Agency is conceding there is no incompleteness of the application for lack of proof of authority to execute same as owner or operator.

III. As a Matter of Law a Proposed Changed in Permitted Contours does Not Require New Local Siting Approval when a Landfill Received a Prior Siting Approval Which Either Imposed no Height Boundaries or the Proposed Contours are Below a Prior Approved Maximum Vertical Height.

The Agency has continued to: (1) improperly conflate the Agency permitted contours with the Effingham County Approved landfill boundary; and (2) improperly argue that proposed increase in waste capacity within a maximum sited vertical elevation requires a new local siting. The Agency has not, and cannot, point to any Finding of Fact or Condition imposed by Effingham County that would limit the height of the expansion approved by the Board on February 21, 2000 to the existing contours. To the contrary the record is clear that Effingham County imposed no such vertical height restriction. First, the April 5, 2019 Application included a copy of the Effingham County Board Resolution to Approve Landfill Expansion which was unanimously passed February 21, 2000 and imposed no restrictions on the vertical expansion and to the contrary provided *in toto* as follows:

NOW, THEREFORE, BE IT RESOLVED by the members of the Effingham County Board in session on this 21 day of February, 2000, that the findings of fact are hereby adopted and that the request of the applicant Landfill 33 LTD for a vertical expansion of an existing landfill facility is hereby GRANTED. (R28).

The Findings of Fact entered that day were also contained within the Application and imposed no limitation or restriction on the height of the vertical expansion and explicitly found that each of the Section 415 ILCS 39.2(e) criteria were met. (R29).

Further, the local siting authority, Effingham County, itself affirmed to the Agency that its siting approval of 2000 imposed no vertical height restriction and the 2019 Application was within the boundaries of the facility that was approved in 2000. Specifically, the Effingham County State's Attorney executed the IEPA form LPC-PA8 certifying that on November 19, 2018 local siting approval of the 2019 application had been acquired. (R26-27, 1895-96). The Agency was also provided the November 19, 2018 Effingham County Board Resolution which explicitly affirmed that the February 21, 2000 "Siting Approval does not include any special conditions imposed by the County Board relating to maximum waste volume, final contour dimensions or a maximum elevation" and the "IEPA only assigned a final absolute maximum elevation as part of the permitting process ... [and] the revised final contours being proposed by Landfill 33, Ltd in its current Sig Mod Application are in all respects consistent with ... previous Siting Approvals... so long as the final maximum elevation of 644 MSL ... is not exceeded" (R 1885). Effingham County also provided the affidavit of its Board Chairman at the time of the public hearing and vote in 2000, Leon Gobczynski who swore and affirmed under oath that on February 21, 2000 "the Effingham County Board elected to not impose any vertical boundary limitations upon the siting approval granted" and the application being considered in 2019 to "reconfigure the top of the existing landfill is consistent in all respects with the Effingham County Board's determinations in

January and February of 2000". (R1900). Finally, Mr. Gobczynski testified that the 1999 "application for siting approval simply requested a vertical expansion with approximate cubic waste yardage, and included a map which only included proposed general/conceptual final contours. Moreover the map contained in the siting application specifically notes that the contours may be refined/revised." (R1898)(emphasis added). Indeed, Drawing A2-3 was attached to the siting approval application in the year 2000 and shows a maximum elevation of 644 MSL and explicitly provides at Note 5 "The final contours and conditions shown here may be refined or undergo minor modifications for the IEPA Developmental Permit Application." (See Exhibit 1 to Landfill 33's Response to IEPA's Motion for Summary Judgment). Further, even the map provided by Andrews Engineering proposing final contours for the proposed 2019 modifications contains the exact same language making clear that the contours of the top of the landfill are subject to change. (See Drawing B2-3 of Application note 6, R196). Therefore, ample evidence was provided by the Effingham County itself (as well as Landfill 33) that the siting hearing and approval of 2000 imposed no height restriction on the vertical expansion approval and that the 2019 Application is within the boundaries approved by the County in 2000. The Agency has no right nor duty to compel the County to hold another local siting hearing to approve the same boundaries it already approved in 2002.

The Agency's assertion that because some of the vertical contours are higher than it permitted in 2002 a new local siting hearing must be held is erroneous because the County imposed no height restriction in 2000 and the proposed contour changes do not exceed the 644 MSL maximum height approved by the Agency. Indeed, the Agency inspector admitted that the 2019 Application does not exceed the "current permitted maximum height" and merely changes contours below that height to gain additional capacity. (R1860).

In *Waste Management v. IEPA*, 94-153 (July 21, 1994) the PCB found that proposed modifications of contours do not require a new local siting hearing – even when some contours are proposed to be higher than previously permitted. In the *Waste Management* case the Five Oaks landfill had received original local siting approvals from Christian County in 1986 and 1989 which “did not establish final design contours and waste limits...” *Id.* at slip opinion page 3. The Agency issued an operating permit in 1990 with a maximum elevation of 685 feet above MSL which was the same elevation considered at the local siting approval. *Id.* Likewise, in this case the Effingham County Board did not establish any waste limits or final contours rather the Agency permit established those contours. In *Waste Management* a new application was filed in 1992 that would amend the contours and result in some of them being higher than originally permitted but less than the maximum 685 MSL approved by Christian County in 1986 and 1989 and permitted by the Agency in 1990. *Id.* Likewise, here the Application will indeed result in higher elevations for some of the contours but will not exceed the maximum elevation of 644 MSL approved by Effingham County in 2000 and permitted by the Agency in 2002. The PCB held in *Waste Management* that the Agency was wrong and no new siting hearing was required and deemed the Waste Management application complete because “the proposed redesign does not constitute an expansion beyond the boundary of a currently permitted pollution control facility”. *Id.* at slip opinion pg. 6. The *Waste Management* Five Oaks landfill case facts are nearly identical to this case and the PCB held that even when contours are elevated from the last permit if local siting approved any elevation higher than such proposed contours there is no need to hold a new siting hearing and thus the PCB should find that the current Application is complete.

Brickyard Disposal and Recycling v. Illinois Environmental Protection Agency, PCB No. 16-66, 216 Ill. Env't Lexis 220 (*aff'd.* by Fourth District Appellate Court at 218 IL App (4th) 170114) followed *Waste Management v. Illinois EPA*, PCB 94-153 and noted:

“[i]n *Waste Management*, a county board approved siting with maximum elevation and lateral boundaries, but without setting three-dimensional contours for the landfill mound. PCB 94-153, slip op. at 3 (July 21, 1994). A subsequent Agency permit set these contours. *Id.* The operator later proposed to reconfigure the contours, higher in some areas, lower in others. All of the reconfigured contours would be within the local siting approval's boundaries, but some of them would extend beyond the permit's contours. As in this case, the Agency argued that its permitted boundaries controlled. *Id.* at 4. The Board found, however, that new local siting approval was not required. Because the redesign fell within boundaries set by the local siting authority, there was no expansion.”

Brickyard, PCB 16-66, 2016 Ill.Env.Lexis 220 at *16-17(emphasis added).

Therefore, under all controlling precedent, is undeniable that an increase in permitted contours that does not go beyond a previously approved and permitted maximum height is not an application for a new facility requiring new local siting approval.

The Agency once again erroneously argues local siting approval is required because “Landfill 33 does not seek to reduce any of the contours or boundaries defining the space of the Facility to make up for the requested expansion”. (IEPA’s Response Brief at pg. 6). In other words the Agency is continuing to argue that the increase in capacity creates the need for local siting approval and once again references a single quote in *M.I.G. Investments, Inc. v. Ill. Env'tl. Prot. Agency*, 122 Ill.2d 392, 401 (1988) that the section 39.2 requirements apply “to a proposal to increase vertically the waste disposal capacity of a landfill beyond the limits set out in the initial permit issued by the Agency.” (Agency response Brief, pg 7). However the reference to the Agency permit was because in *M.I.G.* there had been no prior local siting approval since the passage of section 39.2 in 1981 and thus the court looked to the 1972 Agency permit. Therefore in that case the Agency permit established the vertical facility maximum height and the applicant was

proposing to increase that height. 122 Ill.2d at *395. Here there was a local siting hearing in 2000 which approved a vertical expansion without limitation on the height and an Agency permit in 2002 that explicitly found a maximum height of 644 was within the local siting approval. Unlike *M.I.G.* the current application does not seek to go beyond the 644 maximum locally approved elevation. As *Brickyard* explained the reference in *M.I.G.* to an increase in the volume of waste was merely to show that when one expands the physical vertical boundary of a facility the scope of a landfill changes however “it does not follow... that change in volume without expanding beyond a vertical boundary triggers local siting under Section 39(c)”. *Brickyard*, 218 IL App (4th) 170114 at *P34. The *Brickyard* case unequivocally held that “contrary to the State’s argument, MIG Investments does not establish a ‘volumetric boundary’ or trigger local siting review for changes in waste volume within the boundaries of existing landfills”. *Id.* at *P34 (emphasis added).

Because the Application proposes only to increase the contours but not exceed any boundary established by the local siting authority in 2000 nor the 644 MSL maximum elevation permitted by the Agency in 2002, the Application is complete as a matter of law and Landfill 33’s Motion for Summary Judgment should be granted.

IV. Ample Evidence of Local Siting Approval was Provided.

The Agency has shockingly continued to argue that “Landfill 33 has failed to satisfy its burden of production [by] not produc[ing] evidence from the record to support that local siting in 2000 approved the currently proposed expansion.” (Agency Response to MSJ, pg 5). As explained above, and in the Landfill 33’s Motion for Summary Judgment and its response to the IEPA’s Motion for Summary Judgment, there was a plethora of evidence provided to the Agency that the January 20, 2000 public hearing and the County Board vote approving the local siting on February 21, 2000 was compliant with 415 ILCS Sec. 39.2. (See Landfill 33’s Motion for Summary

Judgment pgs. 4-7 and 16-18 and Landfill 33's Response to IEPA's Motion for Summary Judgment 11-13). The evidence submitted to the Agency included the February 21, 2000 Resolution and the Section 39.2 Findings of Fact of the Effingham County Board, the November 19, 2018 Resolution of the current Effingham County Board explaining that the current proposal does not exceed the boundaries of 2000 siting approval, a correspondence from the Chairman of the current County Board, James Nieman, confirming same; the Affidavit of the Chairman of the Effingham County Board from 2000, Leon Gobczynski, testifying under oath that a local siting hearing occurred which was compliant with section 39.2; and the LPCA-P8 IEPA forms signed by the Effingham County States Attorney certifying that local siting compliant with section 39.2 occurred. (R26-29, 1883-84, 1895-96, 1900). It is ridiculous for the Agency to continue to assert that evidence of local siting was not provided.

The Agency's argument that the Findings of Fact and Resolutions from 2000 "relate to Landfill 33's 1999 application for expansion, not the 2019 Application" is a surreptitious method to again attempt to erroneously claim that the 2000 local siting approval somehow expired. However, pursuant to 415 ILCS 5/39/2(f) local siting approval does not expire as long as an application is made to develop the site within 3 years and indeed the application for Modification Number 9 was filed on June 29, 2001 which was within 3 years of the February 20, 2000 local siting approval. (R30). The vertical boundaries approved by Effingham County on February 21, 2000 and the maximum elevation permitted by the Agency on June 28, 2002 of 644 MSL are not exceeded by the 2019 proposed modification of contours and thus pursuant to the *Five Oaks Waste Management* case and the *Brickyard* case Landfill 33's application was complete and it is entitled to summary judgment.

V. Conclusion

For the reasons provided herein the Illinois Pollution Control Board should grant Landfill 33's Motion for Summary Judgment, deny the IEPA's Motion for Summary Judgment, and reverse the Agency determination that the April 5, 2019 Application was incomplete and remand the case to the Agency to review the merits of the Application.

Dated: May 20, 2020

Respectfully submitted,

LANDFILL 33, LTD.

By: /s/ Richard S. Porter
Richard S. Porter

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 20th day of May, 2020, I have served the Reply Brief in Support of Petitioner Landfill 33's Motion for Summary Judgment upon the following persons via certified mail and electronic transmission.

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/s/ Danita Heaney

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LANDFILL 33, LTD.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 20-18
)	(Land - Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

RESPONDENT'S RESPONSE TO REQUESTS FOR ADMISSION

Now comes Respondent, Illinois Environmental Protection Agency, by and through its attorneys, and submits this response to the following Requests for Admission propounded by Petitioner, Landfill 33, Ltd.

1. Admit that the document attached hereto as Exhibit A is a true, correct, genuine copy of relevant portions of the Request for Local Siting Approval for Vertical Expansion of Landfill 33 (the "Landfill"), IEPA Site No. 0498100007 filed with the Effingham County Board on September 27, 1999.

RESPONSE: Respondent objects to this Request #1 as being irrelevant, given that it references a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal.

Respondent additionally objects to this Request #1 to the extent it requests a legal conclusion regarding which portions of the Request for Local Siting Approval for Vertical Expansion of Landfill 33, IEPA Site No. 0498100007 filed with the Effingham County Board on September 27, 1999 are "relevant."

Notwithstanding these objections, Respondent lacks sufficient information to admit or deny what specific materials were filed with the Effingham County Board on September 27, 1999.



2. Admit that the September 27, 1999 Request for Vertical Expansion explicitly provided that "the waste footprint of approximately 41 acres will remain unchanged. The applicant intends to expand the capacity by reconfiguring the top of the disposal unit."

RESPONSE: Respondent objects to this Request #2 as being irrelevant given that it references a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, deny the characterization of the Request for Vertical Expansion, which speaks for itself.

3. Admit that the September 27, 1999 Request for Vertical Expansion explicitly provided that "the site will be used for disposal of municipal solid waste and non-hazardous special waste...."

RESPONSE: Respondent objects to this Request #3 as being irrelevant given that it references a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, deny the characterization of the Request for Vertical Expansion, which speaks for itself.

4. Admit that the document attached hereto as Exhibit B is a true and accurate copy of the February 21, 2000 Resolution to Approve Landfill Expansion ("Siting Resolution") which was unanimously passed by the Effingham County Board on that same date.

RESPONSE: Admit.

5. Admit that the Effingham County Board made Findings of Fact that each of the applicable criteria of Section 39.2 of the Illinois Environmental Protection Act had been met.

RESPONSE: Respondent objects to this Request # 5 as being vague and ambiguous. To the extent that the Request refers to the February 21, 2000 Resolution to Approve Landfill Expansion, referenced above, admit.

6. Admit that the document attached hereto as Exhibit B contains a true and accurate copy of the Effingham County Board Findings of Fact Regarding Request for Expansion of Existing Landfill Facility Submitted by Landfill 33, LTD.

RESPONSE: Admit.

7. Admit that the Effingham County Board February 21, 2000 Resolution approved the entire 40.6 acre horizontal landfill site boundary and the vertical expansion of same without restrictions or conditions.

RESPONSE: Respondent objects to this Request # 7 to the extent it requests a legal conclusion regarding the effect of the Effingham County Board February 21, 2000 Resolution ("Resolution"). Notwithstanding this objection, deny that the Resolution approved a vertical expansion "without restrictions or conditions," insofar as the Resolution approved the "facility's expansion, as proposed by Landfill 33 LTD."

8. Admit that that the Effingham County Board February 21, 2000 Resolution contained no volumetric calculations, conditions, or restrictions.

RESPONSE: Respondent objects to this Request # 8 to the extent it requests a legal conclusion regarding the effect of the Effingham County Board February 21, 2000 Resolution ("Resolution"). Notwithstanding this objection, admit that the Resolution contained no volumetric calculations. Deny that the Resolution approved a volumetric expansion without "conditions" or "restrictions," insofar as the Resolution approved the "facility's expansion, as proposed by Landfill 33 LTD."

9. Admit that the document attached hereto as Exhibit C is a true and accurate copy of the September 19, 2000 Certification of Siting Approval (LPC-PA8) executed by the Effingham County Clerk, certifying that on February 21, 2000 the County Board of Effingham County approved the Vertical Expansion of Landfill 33.

RESPONSE: Respondent objects to this Request #9 as being irrelevant given that it refers to a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, admit.

10. Admit that on June 29, 2001, Landfill 33 submitted supplemental permit modification application Log No. 2001-248 to the Illinois Environmental Protection Agency for the vertical expansion of the Landfill 33 pollution control facility.

RESPONSE: Admit.

11. Admit that the document attached hereto as Exhibit D is a true and accurate copy of the June 28, 2002 correspondence from the Illinois Environmental Protection Agency approving the modification of Permit No. 1995-231-LFM, modification 9, Log. No. 2001-248.

RESPONSE: Respondent objects to this Request #11 as being irrelevant given that it references a document is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, admit that the document is a true and accurate copy of the Illinois Environmental Protection Agency's June 28, 2002 correspondence.

12. Admit that on June 28, 2002 the Illinois Environmental Protection Agency approved the modification of the Landfill 33 Permit, explicitly providing that "the revised maximum final elevation is 644 msl" (644 feet mean sea level) and "there is no change to the acreage of the waste footprint of the 40.6 acre disposal unit approved by 1995-231-LFM and by modification No. 9".

RESPONSE: Respondent objects to this Request #12 as being irrelevant given that it references a document that is not in the administrative record as filed by the Agency and that was never presented to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, deny the characterization of the contents of the correspondence, which speaks for itself.

13. Admit that the document attached hereto as Exhibit E1 is a true and accurate copy of the April 5, 2019 cover letter to the Application for Significant Modification of Illinois EPA Permit No. 1995-231-LFM.

RESPONSE: Admit.

14. Admit that April 5, 2019 cover letter to the Application for Significant Modification of Illinois EPA Permit No. 1995-231-LFM explicitly provided that the request was to "revise the final cover contours and stay below the maximum elevation of 644 MSL".

RESPONSE: Deny the characterization of the contents of the correspondence, which speaks for itself.

15. Admit that the April 5, 2019 cover letter to the Application for Significant Modification of Illinois EPA Permit No. 1995-231-LFM explicitly provided that "This application has been provided to and discussed with the Effingham County Board. In the opinion of the Effingham County Board the proposed final cover modification is consistent with the previous Siting Approval, so long as the final maximum elevation of 644 MSL is not exceeded".

RESPONSE: Deny the characterization of the contents of the correspondence, which speaks for itself.

16. Admit that the April 5, 2019 Significant Modification Application does not seek or request the vertical expansion of the landfill beyond the previously approved 644 foot MSL boundary.

RESPONSE: Respondent objects to this Request #16 as being vague and ambiguous, and to the extent it requests legal conclusions regarding the effect of April 5, 2019 Significant Modification Application and previous approvals. Notwithstanding these objections, deny.

17. Admit that the proposed final contour changes provide that the vertical height of the Landfill will not exceed an elevation of 644 feet MSL.

RESPONSE: Respondent objects to this Request #17 as being vague and ambiguous. To the extent that the Request refers to "proposed final contour changes" as proposed within the April 5, 2019 Significant Modification Application referenced above, admit.

18. Admit that the April 5, 2019 Significant Modification Application did not seek or request to expand the 40.6 acre horizontal facility boundary.

RESPONSE: Admit.

19. Admit that the April 5, 2019 Significant Modification Application contained drawings which depict the same horizontal boundaries as originally approved by the Effingham County Board in 1999.

RESPONSE: Respondent objects to this Request # 19 as being vague and ambiguous and to the extent it requests legal conclusions regarding the facility's approved horizontal boundaries. Notwithstanding these objections, deny.

20. Admit that the document attached hereto as Exhibit E2 is a true and accurate copy of the Illinois Environmental Protection Agency's May 3, 2009 correspondence, indicating that "increase in the waste disposal capacity will result in an expansion beyond the currently permitted boundary" which the Agency concluded needed a local siting hearing and approval.

RESPONSE: Admit that the document is a true and accurate copy of the Illinois Environmental Protection Agency's May 3, 2019 correspondence. Deny the characterization of the contents of the correspondence, which speaks for itself.

21. Admit that, in pertinent part, the case of *III. Env'tl. Prot. Agency v. Illinois Pollution Control Board and Brickyard Disposal and Recycling, Inc.*, 2018 II App (4th) 170144, P38 (2018) provided that "Section 3.330(b)(2) plainly applies to a request to expand 'beyond the boundary of a currently permitted pollution control facility' not 'currently permitted waste boundaries' and that local siting review is not triggered by changes in waste volume within the boundaries of an existing landfill."

RESPONSE: Respondent objects to this Request # 21 to the extent that the content of an Illinois appellate court opinion is not a factual matter properly the subject of a request for admission of fact. Notwithstanding this objection, admit that the Request accurately sets forth language within the cited opinion.

22. Admit that attached hereto as Exhibit F1 is a true and accurate copy of the Andrews Engineering Correspondence dated June 7, 2019 to the IEPA addressing each of the purported incompleteness deficiencies.

RESPONSE: Admit that Exhibit F1 is a true and accurate copy of correspondence to IEPA dated June 7, 2019. Deny the characterization of the contents of the correspondence, which speaks for itself.

23. Admit that the April 5, 2019 Significant Modification proposal does not expand or exceed the physical boundaries of the facility previously established by the Effingham County Board in its February 21, 2000 Resolution to Approve Landfill Expansion.

RESPONSE: Deny.

24. Admit that in the June 7, 2019 correspondence Andrews Engineering opined that the April 5, 2019 Significant Modification proposal does not expand or exceed the physical boundaries of the facility previously established by the Effingham County Board in its February 21, 2000 Resolution to Approve Landfill Expansion.

RESPONSE: Deny the characterization of the contents of the correspondence, which speaks for itself.

25. Admit that the document attached hereto as Exhibit F2 is a true and accurate copy of the July 5, 2019 correspondence from the Environmental Protection Agency, again claiming that local site review was required because additional capacity would be gained from the proposed changes to final contours.

RESPONSE: Admit that Exhibit F2 is a true and accurate copy of July 5, 2019 correspondence from IEPA to Petitioner. Deny the characterization of the contents of the correspondence, which speaks for itself.

26. Admit that the document attached hereto as Exhibit F3 is a true and accurate copy of the Andrews Engineering August 7, 2019 correspondence to the IEPA addressing each of the July 5, 2019 Agency comments, Log No. 2019-119 as to the April 5, 2019 Significant Modification Permit No. 1995-231-LFM.

RESPONSE: Admit that Exhibit F3 is a true and accurate copy of correspondence to IEPA dated August 7, 2019. Deny the characterization of the contents of the correspondence, which speaks for itself.

27. Admit that the document attached hereto as Exhibit G is a true and accurate copy of the Illinois Environmental Protection Agency's September 6, 2019 correspondence reiterating its determination of incompleteness.

RESPONSE: Admit that Exhibit G is a true and accurate copy of the September 6, 2019 correspondence. Deny the characterization of the contents of the correspondence, which speaks for itself.

28. Admit that local siting review was conducted by the Effingham County Board in the form of the February 21, 2000 Siting Resolution before the Illinois Environmental Protection Agency approved the vertical expansion modification request of Landfill 33 of a 644 ft MSL on June 28, 2002.

RESPONSE: Respondent objects to this Request # 28 as being vague and ambiguous and to the extent it requests legal conclusions regarding the effects of the February 21, 2000 Siting Resolution and IEPA's June 28, 2002 approval of a permit modification. Notwithstanding these objections, admit that the Effingham County Board's February 21, 2000 Siting Resolution preceded IEPA's June 28, 2002 approval of a permit modification. Deny the remainder.

29. Admit that the April 5, 2019 Significant modification request did not exceed the 644 ft MSL facility vertical boundary.

RESPONSE: Respondent objects to this Request # 29 to the extent it requests a legal conclusion regarding the facility's approved vertical boundary. Notwithstanding this objection, deny.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
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BY: s/Christina L. Nannini

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Date: February 10, 2020

CERTIFICATE OF SERVICE

I hereby certify that I did on February 10, 2020, caused to be served by electronic mail, a true and correct copy of the following instrument entitled Respondent's Response to Requests for Admission upon the following:

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