

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 19 2003

STATE OF ILLINOIS
Pollution Control Board

VILLAGE OF SOUTH ELGIN,)
)
Complainant,)
)
vs.)
)
WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
Respondent.)

No. PCB 03-106

(Enforcement)

NOTICE OF FILING

TO: Mr. Derke J. Price
ANCEL, GLINK, DIAMOND, BUSH, DICANNI & ROLEK, P.C.
140 South Dearborn Street, Sixth Floor
Chicago, Illinois 60603

PLEASE TAKE NOTICE that on May 19, 2003, we filed with the Illinois Pollution Control Board, the attached, **WASTE MANAGEMENT OF ILLINOIS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**, in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 
One of Its Attorneys

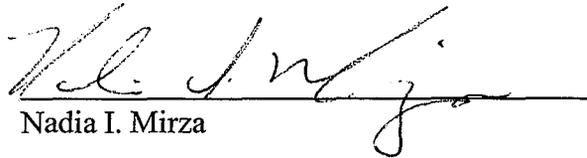
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PEDERSEN & HOUP
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Attorney Registration No. 1953923

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PROOF OF SERVICE

Nadia I. Mirza, a non-attorney, on oath states that she served the foregoing, **WASTE MANAGEMENT OF ILLINOIS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAIN**, on the following parties by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, at 5:00 p.m. on this 19th day of May, 2003:

Mr. Derke J. Price
ANCEL, GLINK, DIAMOND, BUSH, DICANNI & ROLEK, P.C.
140 South Dearborn Street, Sixth Floor
Chicago, Illinois 60603


Nadia I. Mirza

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF SOUTH ELGIN)
a Municipal corporation,)
)
Complainant,)
)
v.)
)
WASTE MANAGEMENT OF ILLINOIS, INC.)
)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 03-106

(Enforcement)

ANSWER & AFFIRMATIVE DEFENSES TO COMPLAINT

Respondent Waste Management of Illinois, Inc. ("WMII"), by and through its attorneys,
Pedersen & Houpt, P.C., for its answer and affirmative defenses to the Complaint of Complainant
Village of South Elgin ("Village"), states as follows:

(Preamble)

Complainant, Village of South Elgin ("Village"), by its attorneys, ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & ROLEK, P.C., pursuant to Section 5/31(d) of the Environmental Protection Act, 415 ILCS 5/31(d), seeks a determination that respondent Waste Management of Illinois, Inc. is in violation of the terms and conditions of the siting permit for the Woodland III expansion on the Woodland Site, granted September 13, 1988 by the Kane County Board through Resolution No.88-155 (attached as Exhibit 1 and incorporated herein), insofar as Respondent's present application and appeal (PCB 03-104) seeking to add a second pollution control facility (a transfer station) to the Woodland Site constitutes:

- (1) a violation of the terms of Condition 4 of Resolution 88-155 providing: "The site, commonly known as the Woodland site, shall not be expanded further;
- (2) a violation of WMII's representation incorporated in Condition 2 of Resolution 88-155 that: "Waste Management of Illinois, Inc., agrees and stipulates that this expansion will be the last expansion that we will attempt to do on this site which is commonly

known as the Woodland Landfill site"; and
(3) a violation of the Condition--imposed by Kane County and by 35 Ill. Admin. Code 807.206--to implement the promised end-use plan designating the area now proposed for the transfer station to be reconstructed as a passive recreation park.

ANSWER (to Preamble): To the extent the preamble to the Complaint asserts legal conclusions, WMII states that an answer is neither necessary nor appropriate. WMII denies the remainder of the preamble to the Complaint.

1. The Village of South Elgin, a municipal corporation, is in Kane County, Illinois.

ANSWER: WMII admits the allegations contained in paragraph 1.

2. The Woodland Landfill site is located in unincorporated Kane County, adjacent to the municipal boundary of the Village, next to residential neighborhoods of the Village. The site--a former quarry--was initially established as a pollution control facility in 1976 and consists of a total of 213 acres. In 1976, IEPA permitted the use of 55 acres for landfill ("Woodland I"). In 1982, the site was expanded by adding 48 acres ("Woodland II").

ANSWER: WMII admits the allegations contained in paragraph 2.

3. In 1988, Waste Management of Illinois, Inc. ("WMII") filed an application with Kane County to further prolong the life of the landfill for an additional 15 years by working the area between Woodland I and II (this application is commonly referred to as the "Woodland III" application). The Kane County Board adopted Resolution 88-155 approving, with conditions, the Woodland III application (Certified copy of the Resolution is attached and incorporated herein by reference as Exhibit 1), including conditions that required the Site be developed as a passive recreation park once it was full and closed.

ANSWER: WMII admits that WMII filed an application with Kane County in 1988 to

expand the Woodland Landfill by a vertical expansion of 20 acres of the Woodland II waste footprint and a horizontal expansion of 28 acres between Woodland I and Woodland II ("Woodland III"). WMII further admits that Woodland III was granted local siting approval pursuant to County Board Resolution 88-155 ("Resolution"), which is the best evidence of the Resolution's contents and, therefore, WMII refers to the Resolution for a complete and accurate recitation of its contents. WMII denies the remaining allegations contained in paragraph 3.

4. In June, 2002, WMII re-filed a Site Location Application for Woodland Transfer Facility (originally filed in February, 2002) with the Kane County Board. In this application, WMII proposed to locate a transfer station facility on the Woodland Site (although the entire application is too voluminous to attach hereto, a portion of the application is attached as Exhibit 2). A map showing the location of the proposed transfer station on the Woodland Landfill site is attached as Exhibit 3.

ANSWER: WMII admits that WMII filed a Site Location Application ("Application") on June 14, 2002 seeking to site an 8.9-acre parcel of the Woodland Landfill site for use as a waste transfer station. WMII further admits that documents entitled Exhibit 2 and Exhibit 3 were attached to the Complaint, but states that the June 14, 2002 Application is the best evidence of the Application's contents and, therefore, refers to the Application for a complete and accurate recitation of its contents.

5. Following months of public hearings, the Kane County Board overwhelmingly denied WMII's application for the transfer station. On or about January 14, 2003, however, WMII filed its Petition for Hearing To Contest Site Location Denial with this Board, No. PCB 03-104, requesting a hearing to contest the decision of the Kane County Board. A copy of the Petition (without exhibits) is attached hereto as Exhibit 4.

ANSWER: WMII admits that, following a public hearing, WMII's Application was denied by the Kane County Board on December 10, 2002, and that on January 14, 2003, WMII filed its Petition for Hearing To Contest Site Location Denial with this Board, No. PCB 03-104 ("Petition for Review"), requesting a hearing to contest the decision of the Kane County Board. WMII further admits that a document entitled Exhibit 4 was attached to the Complaint, but states that Petition for Review is the best evidence of the Petition for Review's contents and, therefore, refers to the Petition for Review for a complete and accurate recitation of its contents. WMII denies the remaining allegations contained in paragraph 5.

6. WMII's persistent attempt to site a transfer station at the Woodland Site constitutes a breach of the Conditions imposed by Kane County when approving the Woodland III application. More specifically, Condition 4 mandated:

"The site, commonly known as the Woodland Site, shall not be expanded further." (Exhibit 1)

ANSWER: WMII denies the allegations contained in paragraph 6. Further answering, WMII states that the Resolution is the best evidence of the Resolution's contents and, therefore, refers to the Resolution for a complete and accurate recitation of its contents.

7. Further, Condition 2 of Kane County Board Resolution No. 88-155 required:

"That the site will be developed and operated in a manner consistent with the representations made at the public hearing on this matter held on July 26, 1988 and to all applicable laws, statutes, rules and regulations of the Illinois Environmental Protection Agency, and the Illinois Pollution Control Board, or their successors, as may be now or hereafter in effect and which are applicable to this site." (Exhibit 1)

ANSWER: WMII states that the Resolution is the best evidence of the Resolution's contents and, therefore, refers to the Resolution for a complete and accurate recitation of its contents.

8. Among the representations read into the record of the July 26, 1988 public hearing--subsequently incorporated into Condition 2--were the representations of WMII set forth in a July 8, 1988 letter from WMII to the Village of South Elgin in which WMII promised (among other things) that the Woodland III request "will be the last expansion that we will attempt to do on this site, which is known as Woodland landfill site." (Relevant portion of the transcript of the hearing in which WMII read the letter into the record is attached hereto as Exhibit 5.) The July 8, 1988 letter was attached to and incorporated into Resolution 88-155 as Exhibit B thereto. (See Exhibit 1)

ANSWER: WMII states that the Resolution and the hearing transcripts are the best evidence of the Resolution and hearing transcript's contents and, therefore, refers to the Resolution and the hearing transcript for a complete and accurate recitation of their contents. WMII denies the remaining allegations contained in paragraph 8.

9. Similarly, in its 1988 siting application for Woodland III and at the public hearing on the application, WMII detailed its proposed end-use (closure) plan for the site. Such a plan is required by 35 Ill. Admin. Code 807.206. In its materials, WMII represented that: "Upon completion the site will be comprised [sic] of a combination of filled land and unfilled land, which will be left, essentially, in a natural state. . . A major component of the end use proposal is to allow for hiking and bicycle riding across this large open space..." (WMII's application materials concerning the End Use Plan are attached hereto as Exhibit 6.)

ANSWER: WMII states that the Application and the hearing transcript are the best evidence of the Application and the hearing transcript's contents and, therefore, refers to the Application and the hearing transcript for a complete and accurate recitation of their contents. The

second sentence of paragraph 9 contains a legal conclusion to which an answer is neither necessary nor appropriate.

10. Concerning the end-use plan, WMII made the following representations at the July 26, 1988 public hearing (again, these representations are, through Condition 2, conditions of approval):

"Woodland III proposal encompasses the entire site and looks at a final land use plan on that land form that is a passive recreational use. It incorporates some of the surrounding facilities or surrounding land uses into the final land use plan. The original Woodland I and Woodland II final land use plans weren't as comprehensive or as detailed in their final form."

The relevant portion of the July 26, 1988 hearing transcript is attached hereto as Exhibit 7.

ANSWER: WMII states that the hearing transcripts are the best evidence of the hearing transcript's contents and, therefore, refers to the entire hearing transcript for a complete and accurate recitation of its contents. To the extent paragraph 10 asserts legal conclusions, WMII states that an answer is neither necessary nor appropriate.

11. Contrary to the terms of its site permit, WMII has filed with the Kane County Board a site application for a new transfer station on nine acres of the Woodland site, which will "process, consolidate, store and transfer non-hazardous municipal waste, including landscape waste and general construction or demolition debris from residential, commercial and industrial waste generators," which will be capable of processing 2,640 tons per day. (Exhibit 2.)

ANSWER: WMII denies that the filing of its Application is contrary to the terms of the site permit. Further answering, WMII states that the Application is the best evidence of the Application's contents and, therefore, refers to the Application for a complete and accurate recitation

of its contents.

12. Section 5/39.2(e) of the Illinois Environmental Protection Act, 415 ILCS 5/39.2(e), provides that "In granting approval for a site, the county board... may impose such conditions as may be reasonable and necessary to accomplish the purpose of this section..." The Kane County Board imposed on the Woodland III permit the condition that the site "shall not be expanded further" (Condition 4) and the condition that WMII fulfill all of the representations made at the July 26, 1988 hearing (Condition 2), including the representation that Woodland III was the last expansion on the site and that the relevant portion of Woodland III would be a passive recreation area.

ANSWER: WMII states Section 5/39.2(e) of the Illinois Environmental Protection Act ("Act") and the Resolution are the best evidence of the Act and the Resolution's contents and, therefore, refers to the Act and Resolution for a complete and accurate recitation of their contents.

13. Pursuant to 35 Ill. Admin. Code 807.206, the granting of a landfill permit is conditioned upon the adoption of a closure plan. WMII did include a closure plan in its Woodland III application that calls for the specific area now proposed for a transfer station-indeed the entire site-to be redeveloped as a passive recreation park. WMII recently closed Woodland III and, therefore, should proceed to construct the passive recreation facility.

ANSWER: WMII states that 35 Ill. Admin. Code 807.206 and the Application are the best evidence of 35 Ill. Admin. Code 807.206 and the Application's contents and, therefore, refers to 35 Ill. Admin. Code 807.206 and the Application for a complete and accurate recitation of their contents. Further answering, WMII admits that Woodland III has closed recently, but denies the remaining allegations contained in paragraph 13.

14. Siting the proposed transfer station on the Woodland Site constitutes an impermissible expansion on the site and of the site, in violation of Conditions 2 and 4, in at least each of the

following ways:

- (C) the proposed transfer station would double the number of pollution control facilities on the site;
- (D) the transfer station would increase truck traffic to the site by more than 145% of the volume of traffic to the site at the time of its closure;
- (E) the transfer station would indefinitely expand the operating life of the site from its intended closing date;
- (F) the transfer station would expand improvements on the Site by adding septic, well, and waste management systems where none exist or are needed presently; and
- (G) the transfer station would increase the intensity of the use of the site for pollution control purposes.

ANSWER: WMII denies the allegations contained in paragraph 14 of the Complaint.

15. Likewise, siting the proposed transfer station on the Woodland Site constitutes an impermissible breach of the condition that the entire site be redeveloped as a passive recreation area.

ANSWER: WMII denies the allegations contained in paragraph 15 of the Complaint.

16. Section 5/31(d) of the Environmental Protection Act, 415 ILCS 5/31(d), provides that any person may file a complaint with the Pollution Control Board for violations of the Act or any rule, regulation, permit or term or condition.

ANSWER: WMII states that Section 5/31(d) of the Act speaks for itself.

AFFIRMATIVE DEFENSES

First Affirmative Defense (The Complaint is Premature)

1. The Complaint alleges that WMII's request for local siting approval of the Woodland Transfer Facility on an 8.9-acre portion of the Woodland Landfill property violates certain terms and