

ILLINOIS POLLUTION CONTROL BOARD

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OCT 03 2003

LOWE TRANSFER, INC. and MARSHALL )  
LOWE, )

Petitioners, )

vs. )

Case No. PCB 03-221

COUNTY BOARD OF MCHENRY COUNTY, )  
ILLINOIS )

Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

TO: See Affidavit of Service

PLEASE TAKE NOTICE that on October 1, 2003, we mailed for filing with the Illinois Pollution Control Board, the attached **Motion to Strike Co-Petitioners' Reply to County's Response to Motion to Deem Lowe's Site Location Application Approved**, a copy of which is attached hereto.

Dated: October 1, 2003

Respectfully Submitted,

On behalf of the County Board of McHenry  
County, Illinois

By: Hinshaw & Culbertson

Charles F. Helsten (HKL)  
One of its Attorneys

HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, Illinois 61105-1389  
815/490-4900

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LOWE TRANSFER, INC. and MARSHALL  
LOWE,

Petitioners,

vs.

COUNTY BOARD OF MCHENRY COUNTY,  
ILLINOIS

Respondent.

STATE OF ILLINOIS  
*Pollution Control Board*

Case No. PCB 03-221

Pollution Control Facility Siting Appeal

**MOTION TO STRIKE CO-PETITIONERS' REPLY TO COUNTY'S RESPONSE TO  
MOTION TO DEEM LOWE'S SITE LOCATION APPLICATION APPROVED**

NOW COMES, Respondent, COUNTY BOARD OF MCHENRY COUNTY, ILLINOIS,  
by and through its attorneys, HINSHAW & CULBERTSON, moving that this Board strike Co-  
Petitioners' Reply to County's Response to Motion to Deem Lowe's Site Location Application  
Approved, and in support thereof states as follows:

1. On September 25, 2003, Co-Petitioners filed their Reply to County's Response to  
Motion to Deem Lowe's Site Location Application Approved in direct violation of section  
101.500(e) of the Illinois Pollution Control Board's Procedural Rules, 35 Ill. Adm. Code  
§101.500(e).

2. Section 101.500(e) explicitly provides that a party filing a motion "will not have  
the right to reply, except as permitted by the Board or the hearing officer to prevent material  
prejudice." 35 Ill. Adm. Code §101.500(e).

3. Co-Petitioners have neither sought nor received permission from the Board or the  
hearing officer to file their Reply to County's Response to Motion to Deem Lowe's Site Location  
Application Approved.

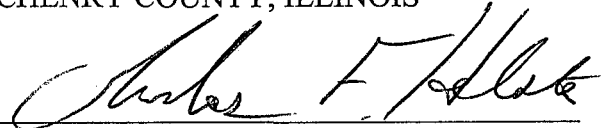
4. Consequently, Co-Petitioners' Reply to County's Response to Motion to Deem Lowe's Site Location Application Approved is in direct violation of the Illinois Pollution Control Board's Procedural Rules and should, therefore, be stricken by this Board.

WHEREFORE, Respondent, COUNTY BOARD OF MCHENRY COUNTY, ILLINOIS, respectfully requests that this Board strike Co-Petitioners Reply to County's Response to Motion to Deem Lowe's Site Location Application Approved.

Dated: October 1, 2003

Respectfully Submitted,  
RESPONDENT COUNTY BOARD  
OF MCHENRY COUNTY, ILLINOIS

By: \_\_\_\_\_



Charles F. Helsten

Charles F. Helsten  
Heather K. Lloyd  
HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
815-490-4900

**AFFIDAVIT OF SERVICE**

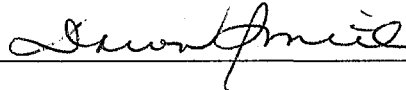
The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on October 1, 2003, the **Motion to Strike Co-Petitioners' Reply to County's Response to Motion to Deem Lowe's Site Location Application Approved**, was sent to:

David McArdle  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, IL 60014

Dorothy M. Gunn  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, IL 60601

Bradley Halloran  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, IL 60601

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.

  
\_\_\_\_\_

HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1369  
Rockford, IL 61101  
(815) 490-4900