BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC. Petitioner, v. VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEYVILLE, ILLINOIS; and CASEYVILLE TRANSFER STATION, LLC, Respondents.	)	PCB 15-65 (Third Party Pollution Control Facility Siting Appeal)
VILLAGE OF FAIRMONT CITY, ILLINOIS, Petitioner, v. VILLAGE OF CASYEVILLE, ILLINOIS BOARD OF TRUSTEES and CASEYVILLE TRANSFER STATION, LLC, Respondent.	)	PCB-15-69 (Third Party Pollution Control Facility Siting Appeal) (Consolidated)

RESPONDENT CASEYVILLE TRANSFER STATION, LLC'S AND RESPONDENT CASEYVILLE'S POST-HEARING BRIEF IN REPLY TO THE POST HEARING BRIEFS OF PETITIONERS ROXANA LANDFILL, INC. AND VILLAGE OF FAIRMONT CITY

Now comes Respondent, Caseyville Transfer Station, LLC ("CTS"), by and through its attorney, Penni Livingston of the Livingston Law Firm and Respondent Village of Caseyville, by and through its attorney J. Brian Manion of Weilmunster Law Group, P.C., and hereby submit the Post-Hearing Brief requesting that the Illinois Pollution Control Board DENY Petitioners' Requests and UPHOLD the Decision of the Village of Caseyville to Grant local siting approval

for the Caseyville Transfer Station, LLC (CTS) to allow CTS to apply for permit with the Illinois Environmental Protection Agency. In support of its opposition to Petitioners' Requests and Briefs, Respondents state as follows:

I. INTRODUCTION

This third-party appeal by Petitioners Roxana Landfill, Inc. ("Roxana") and the Village of Fairmont City, Illinois ("Fairmont City" and, together with Roxana, the "Petitioners") involves the approval by Respondent, the Village of Caseyville (the "Village") of Caseyville Transfer Station, LLC's ("CTS") Application for Local Siting Approval (the "Application") for a new municipal solid waste transfer station (the "Transfer Station") to be located within the municipal boundaries of Caseyville, Illinois.

On January 15, 2014, CTS sent by Certified Mail a Notice of Intent to File a Request for Local Siting to all persons entitled to receive such notice under 415 ILCS 5/39.2, and published the notice in a newspaper of general circulation in St. Clair County, the Belleville News Democrat. The Notice of Intent to File stated that the Application was to be filed on **February 10, 2014.**

On February 10, 2014, John Siemsen, Manager of CTS, hand-delivered the Application, consisting of four binders, to the Caseyville Village Hall. He testified thus and provided a hotel receipt showing that he traveled to Caseyville that day and stayed overnight. CTS sent by Certified Mail to all persons entitled to receive notice under 415 ILCS 5/39.2 a Notice of Public Hearing on Request for Local Siting Approval providing for a May 29, 2014 public hearing, and published the Notice of Public Hearing in the Belleville News Democrat.

The Opponents to the Application are clearly motivated by economic interests and a desire to stifle competition in the waste disposal market within the Metro East area of Illinois. Petitioner Roxana Landfill, Inc. is a subsidiary of Allied Waste, one of the nation's largest waste

management companies, and operates a landfill approximately 19 miles from the proposed transfer station and nowhere near the proposed facility to be affected in any way but economically. Petitioner Fairmont City is the host municipality for the lucrative Milam Landfill operated by Waste Management of Illinois, Inc. The Village has nearly identical interests to Waste Management and is now represented by the primary local siting counsel for Waste Management of Illinois, Mr. Donald Moran. Quite clearly, two of the largest waste management companies in the United States, Allied Waste and Waste Management, are attempting to utilize Section 39.2 of the Illinois Environmental Protection Act as a means to protect the oligopoly that these companies have enjoyed in the Metro East waste disposal marketplace.

II. DISCUSSION

A. The Village Board Had Jurisdiction to Approve the Application for Local Siting Approval

1. The CTS Application for Local Siting Approval was Filed on February 10, 2014

The evidence clearly shows that Mr. John Siemsen, Manager of CTS, personally delivered the Application to the Caseyville Village Hall on February 10, 2014, the date he stated in the publication of Notice. Mr. Siemsen testified that he personally drove from suburban Chicago to Caseyville on February 10, 2014 to hand-deliver the Application to the Village of Caseyville. (Tr. 59.) Mr. Siemsen testified that he was "acutely aware" that February 10, 2014 was the date on which he needed to file the Application in accordance with the pre-filing notices that CTS had made. (Tr. 60.) He further testified to his specific recollection that he personally delivered the Application to the Village of Caseyville on February 10, 2014. (Tr. 60.) Mr. Siemsen testified that he stayed at the Belleville Super 8 Motel on the evening of February 10, 2014, and that the reason he was in the area was because he had driven from suburban Chicago to personally file the Application with the Village of Caseyville on February 10, 2014. (Tr. 59.)

Exhibit No. 2 documents Mr. Siemsen's stay at the Super 8 Motel on the evening of February 10, 2014. The Application was delivered with a cover letter dated February 10, 2014 that indicated that the Application was "Hand Delivered." The Caseyville Village Clerk, Robert Watt, and the Caseyville Deputy Village Clerk, Leslie McReynolds, did not recall the specific date that the Application was delivered to the Village of Caseyville, but neither disputed that it could have been on February 10, 2014. (Watt Dep. Tr. at 8; McReynolds Dep Tr. at 10-11.) No evidence exists to say the Application wasn't filed on this date so the Village could properly find it had jurisdiction to decide the matter of local siting.

The attorney for the Village of Caseyville at the time of the Application, Mr. John Gilbert, testified that, in response to inquiries from representatives of Roxana, he conducted an internal inquiry on or about February 19, 2014 and determined that the Application was in fact filed on February 10, 2014. (Tr. 113.)

Petitioners are trying to find any way to keep this facility from being sited. Previously they claimed ex parte communications, but it was Roxana who was engaging in ex parte communications trying to persuade the Mayor and Village attorney to pass an ordinance requiring a $250,000 application fee for the transfer station since they found out about it likely from notice in the paper. We don't know answers because Roxana's employee Susan Piazza, who engaged the Village in discussions with her attorney, FAILED TO APPEAR AT HEARING IN DISOBEDIENCE TO A LAWFULLY, PERSONALLY SERVED SUBPOENA TO APPEAR AT HEARING after her current lawyer would only produce said witness if the scope of testimony was agreed to be limited.

Petitioners have not and cannot point to any evidence that the Application was delivered to the Village of Caseyville on any date other than February 10, 2014. Instead, Petitioners advance the novel theory that, even if the Application was physically delivered to the Village

offices on February 10, 2014, it should not be considered "filed" until it is in the personal possession of the elected Village Clerk, Mr. Robert Watt, who has a full-time job with the military. In other words, Petitioners contend, physical delivery of the Application at the Village administrative offices to the Deputy Village Clerk or to another Village administrative worker does not constitute "filing." In its brief, Petitioner Roxana attempts to mislead the Board in citing Mr. Watt's deposition testimony that "I don't think it was February 10th with respect to the filing date, when it is crystal clear that Mr. Watt was testifying to the date he personally possessed the Application rather than the date that the Application was delivered to the Village offices. (Roxana Brief, p. 12; Tr. R. Watt. p. 8.)

The absurdity of Petitioners' theory is obvious with respect to large municipal entities such as the City of Chicago or the County of Cook, where the respective elected clerk quite clearly does not personally take possession of and accept for "filing" each document submitted to the municipality. Petitioners' theory is equally ridiculous with respect to a small municipality such as the Village of Caseyville.

Caseyville Village Clerk Robert Watt testified that he is a full time civilian employee at the Scott Air Force Base and that he is rarely present at the Village of Caseyville offices during normal business hours. (Tr. R. Watt, p 71.) Mr. Watt further testified that responsibility for acceptance and filing of documents is delegated to Village staff. (Tr. R. Watt, p 60-61.) A document physically delivered to the Village offices is considered "filed" even if Mr. Watt is not physically present at the exact time of document delivery. (Tr. R. Watt, p 72.) Quite simply, the Application was "filed" on February 10, 2014 when Mr. Siemsen personally delivered the Application to the administrative offices of the Village of Caseyville. To find otherwise is unreasonable as the manifest weight of evidence shows the application was timely filed.

In sum, there is ample and uncontroverted evidence that the Application was physically delivered to the Village of Caseyville offices on February 10, 2014. This physical delivery of the Application by CTS constituted "filing" of the Application. Petitioners have not identified any evidence that the Application was delivered on any date other than February 10, 2014. Petitioners had copies of everything months before hearing on this matter and this filing date issue is not a genuine issue.

2. The Site Description Contained in CTS's Notices was Clear and Unambiguous

Roxana's allegations with respect to the description of the proposed Site in the pre-filing notice are simply confusing. Roxana first complains that no addresses for the Site were listed in the notice, which is correct. As Roxana itself points out, the official addresses for the parcels are confusing because they are on Rock Springs Road in East St. Louis, Illinois. This is due to those parcels' historic association with the Sunny Acres Farm on the south side of Interstate 64. Because the addresses would be confusing, they were not included in the pre-filing notice.

Roxana further complains that the Parcel Identification Numbers did not contain the decimal point used by the St. Clair County Tax Assessor database in the portion of the number identifying the township. The St. Clair County Tax Assessor database adds an additional decimal place to provide an additional field for identifying mineral and other rights. The PINs contained in the notice were sufficient to identify the parcels on St. Clair County records. In fact, there was no confusion regarding the location of the proposed Site and the figures and drawings included in the Application, available for inspection at the Village Clerk's office, made clear the exact location of the Site. To find the description of property to be inadequate and therefore to reverse local siting approval is unreasonable as it is against the manifest weight of evidence.

B. The Village Board's Decision to Approve Local Siting of this proposed Transfer Station Under the Section 39.2 Criteria is not Against the Manifest Weight of the Evidence

It is well established that a siting authority's decision regarding the statutory criteria will only be overturned if it is against the manifest weight of the evidence. *See Fox Moraine.* "A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence." *Tate v. IPCB*, 188 Ill. App. 3d 994, 1022 (4th Dist. 1989). The question to the Board on appeal of a local siting decision "is not whether a ruling in favor of [Petitioners] is a more reasonable conclusion based on the evidence presented. Rather, the only question is whether it is clearly evident from the record that the [siting authority should have denied the siting application]." *Peoria Disposal Co. v. PCB*, 385 Ill. App. 3d 781, 801 (2008).

The law is also clear that it was within the province of the Village of Caseyville Board of Trustees "to determine the credibility of witnesses, to resolve conflicts in the evidence, and to weigh the evidence presented." *Land & Lakes Co. v. IPCB*, 319 Ill. App. 3d 41, 53 (3rd Dist. 2000). The Board does not reweigh the evidence, and the fact that there is some evidence that would support a different conclusion does not allow the Board to substitute its judgment for the judgment of the local siting authority. *See id.* The Board should not reverse a local siting decision merely because it could have reached the opposite conclusion. *See Fox Moraine.* As shown below, there is ample evidence in the record supporting the decision of the Village of Caseyville approving the local siting application.

a. <u>Criterion 1: The Proposed Caseyville Transfer Station Is Reasonably Convenient To The Area's Waste Disposal Needs And Therefore Satisfies The Criterion Of Necessity</u>

The first criterion, found in Section 39.2(a)(i) of the Act, is that "the facility is necessary to accommodate the waste needs of the area it is intended to serve." Under this standard,

Applicant is not required to show that the proposed Transfer Station is "necessary in absolute terms, but only that proposed facility was 'expedient' or 'reasonably convenient' vis-a-vis the area's waste needs." *E&E Hauling Inc. v. Pollution Control Board*, 451 NE2d 555, 573 (Ill. App. 1983). Also, this approval was for a Transfer Station, not a landfill.

i. The Proposed Caseyville Transfer Station is Necessary Because There Are No Municipal Solid Waste Transfer Stations in the Service Area

The uncontroverted evidence at the public hearing demonstrated that there are no municipal solid waste transfer stations within the Service Area and that the Service Area contains the fewest municipal solid waste transfer stations in the State of Illinois, whether measured on a population basis or geographic basis. (Tr. pp. 25-29; Ex. 7.) In particular, while the Chicago metropolitan area has 0.57 transfer stations per 100,000 people, the Metro East region has only 0.36. (Ex. 7.) This likely explains the large monthly charges for trash hauling in the geographic area.

ii. The Proposed Caseyville Transfer Station is Necessary to Promote Competition and Efficiency in the Service Area

As demonstrated by the testimony of and letter submitted by Mr. Eric Greear of Brisk Sanitation (Exhibit 14), the proposed Caseyville Transfer Station will increase competition in the Service area by allowing independent waste haulers to better compete with the dominant companies in the waste management industry. According to Mr. Greear, "The Caseyville Transfer Station could allow Brisk to better compete against Allied Waste and Waste Management in retaining and securing customers for waste disposal services. Brisk Sanitation competes against Allied and Waste Management for customers but must contract with the same companies for landfill disposal." (Exhibit 14.) Mr. Greer further stated that the proposed

Caseyville Transfer Station would be closer and more convenient, would result in reduced wait times for disposal, and would reduce wear and tear on waste hauling vehicles. (Ex. 14.)

Mr. Greear's statements are supported by the United States Environmental Protection Agency document, "Transfer Stations: A Manual for Decision Making," which was introduced by the Applicant at the public hearing as Exhibit E of Exhibit 1. According to the USEPA, Transfer stations serve the purpose of consolidating waste from collection vehicles into more efficient transfer trailers for more economical shipment to distant disposal sites. *See* Exhibit E of Exhibit 1 at p. 2. Transfer stations reduce waste transportation costs, reduce fuel consumption and collection vehicle maintenance costs, and produce less overall traffic, air emissions and road wear. *See id.* at p. 3.

iii. Neither the Existence of Local Landfill Capacity Nor the Longer Distance to Competing Landfills Negates the Need for the Proposed Caseyville Transfer Station as approved by the Local Government and Ms. Sheryl Smith's Testimony is Inapposite

The Opponents' claim that the proposed Transfer Station is not necessary to accommodate the needs of the service area is a naked assertion based on a desire to protect the oligopoly these entities enjoy for landfill disposal services in the Service Area. Mr. Donald Moran, Esq., appeared purportedly on behalf of the Village of Fairmont City,[1] and argued essentially that a transfer station may be sited only if it is first proved that the existing landfill capacity in the Service Area is inadequate to satisfy the waste needs of the Service area. (*See* Transcript p. 63-4.) However, Mr. Moran did not cite any case law supporting this bald assertion. Mr. Moran's witness, Ms. Sheryl Smith testified that the proposed Transfer Station is not necessary essentially because the Opponents operate landfills in the Service Area. (*See*

[1] Waste Management, Inc.'s Milam Landfill is located in Fairmont City and Waste Management, Inc. pays Fairmont City host fees with respect to the Milam Landfill. Mr. Moran, from the esteemed law firm of Pederson & Haupt, P.C. in Chicago, Illinois, is the long-time attorney for Waste Management, Inc. *See, e.g., Waste Management of Illinois, Inc. v. Pollution Control Board*, 463 N.E.2d 969 (1984) and *Waste Management of Illinois Inc. v. DeKalb County Board*, PCB 2010-104. Village minutes hiring him are attached to the Motion to Dismiss.

Transcript pp. 73-79.) Ms. Smith's testimony regarding the five reasons she believes the proposed Transfer Station is unnecessary only underscore the dominant market position of the opponents and does nothing to negate Applicant's evidence that the Transfer Station is "'expedient' or 'reasonably convenient' vis-a-vis the area's waste needs." *E&E Hauling*, 451 NE 2d at 573.

1. *Existing Landfill Capacity is Irrelevant to the Need for a Transfer Station*

Ms. Smith's first reason that the proposed Transfer Station is not necessary is that the landfills operated the Opponents provide sufficient disposal capacity for the next 20 years. (*See* Transcript p. 79.) However, as Mr. Moran and Ms. Smith well know, transfer stations do not add additional landfill disposal capacity. Instead, as Ms. Smith testified, transfer stations are intended to provide more cost effective means of transporting waste. (*See* Transcript p. 72.) Applicant concedes that the opponents' landfills have substantial additional capacity remaining, but this fact does not negate the increased efficiencies and need for the proposed Transfer Station described above.

2. *The Cost to Transport Waste From the Transfer Station to Remote Landfills is not Relevant to the Siting Criteria*

Ms. Smith's second reason for claiming the Transfer Station is unnecessary is that, by her calculations it would cost $12.65 to transport waste from the Transfer Station to the landfill located in Perry County. (*See* Transcript p. 79.) Even if Ms. Smith's calculations were correct, this hardly presents a reason to deny siting approval for the Transfer Station and instead is a business consideration for Applicant. Illinois law is clear that the necessity of a facility cannot be challenged by a claim that the facility would not be profitable. *See Turlek v. Pollution Control Board*, 653 N.E.2d 1288, 1293 (Ill. App. 1995). Under Ms. Smith's calculations (which Applicant does not accept), Applicant could compete with the opponents if it could obtain

reduced landfill disposal pricing and/or pricing premiums for increased service and convenience collectively amounting to $12.65 per ton. The opponents' rigorous opposition to this Application is motivated by their fear that the Transfer Station would in fact provide competition to their landfill disposal oligopoly.

3. Ms. Smith Distorts the Solid Waste Plan's Preference for Landfill Disposal

Ms. Smith's third stated reason why the Transfer Station is unnecessary is that the solid waste management plan identifies landfilling as the preferred disposal option. (Transcript p. 79.) Consistency with the county Solid Waste Management Plan is a separate criterion and is separate from whether there is a need for the proposed facility. *See* 415 ILCS 5/39.2(a)(i) and (viii). Moreover, as Ms. Smith well knows, for the purposes of the Solid Waste Management Plan, the preference for landfilling indicates only that the Plan does not provide for an alternative disposal method such as incineration, and indicates nothing with respect to transfer stations. As. Mr. Moran and Ms. Smith also well know, wastes accepted by the Transfer Station will ultimately be landfilled, which Ms. Smith claims is the preferred disposal method under the solid waste plan.

4. A Transfer Station Need not be Pre-Approved by the Solid Waste Plan to be Reasonably Efficient and Convenient

Ms. Smith testified as her fourth reason that the Transfer Station is not necessary under the first criterion because there is no mention of it under the Solid Waste Management Plan, see Transcript p. 79, which was last updated in 2006. As noted above, the need for the proposed Transfer Station is a separate issue from consistency with the Solid Waste Management Plan. *See* 415 ILCS 5/39.2(a)(i) and (viii). Moreover, the Solid Waste Management Plan process is intended to cause counties to plan for adequate waste disposal capacity, not to stifle additional waste disposal options. The Plan is consistent with the County Plan and the County Health Department would have attended the Hearing if they thought otherwise.

5. *The Existence of Landfills Does Not Negate the Need for the Transfer Station*

As her fifth and final assertion that the Transfer Station is unnecessary, similar to her first reason, Ms. Smith testified that the Transfer Station is unnecessary because the Opponents' competing landfills are located between 10 and 17 miles from the proposed Site.

For the reasons set forth above, neither the existence of existing landfill capacity nor the absence of mention of transfer stations in the Solid Waste Management Plan negate the strong need for the Transfer Station demonstrated by the Applicant. Moreover, if the Opponents' landfills are 10 and 17 miles from the Site, that means that there are many residents for which the proposed Transfer Station would be a more convenient option. Moreover, the need for the Transfer Station is not based solely on distance but also the increased efficiencies experienced, especially by smaller haulers, with respect to shorter waiting lines and less wear and tear on equipment from driving on landfill roads. (*See* Exhibit 14.)

b. Criterion 2: The Proposed Caseyville Transfer Station Is So Designed, Located And Proposed To Be Operated That The Public Health, Safety And Welfare Will Be Protected

The second criterion under the Act requires that "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected." 415 ILCS § 5/39.2(a)(ii). The fact that a facility will be designed and operated in accordance with Illinois Environmental Protection Agency standards is sufficient evidence for approval under this standard. *See Wabash and Lawrence Counties Taxpayers and Water Drinkers Ass'n v. Pollution Control Board*, 555 NE2d 1081, 1086 (Ill. App. 1990). To show that the proposed facility is designed to protect public health, safety and welfare, the applicant need not submit written documentation "anticipating and addressing any objections which might be raised." *Tate v. Pollution Control Board*, 544 N.E.2d 1176, 1197 (Ill. App. 1989). The Applicant presented

ample and uncontested documentation at the public hearing demonstrating that the Transfer Station is so designed, located and operated in a manner that is protective of human health and the environment.

i. Location

At the public hearing, the Applicant introduced a Regional Aerial (Exhibit 2, Figure 1) and an Area Land Use Map (Exhibit 2, Figure 2) which demonstrate the proposed Site is located so as to protect public health, safety and welfare. Figure 2 demonstrates that the only land uses within 1000 feet of the proposed Site include vacant land, agricultural, and trucking, excavating and quarrying operations. Figure 2 further demonstrates that there are no residential land uses within 1000 feet of the proposed site. Neither the Opponents of the Transfer Station nor any public commenter at the hearing disputed the accuracy of Figure 1 or Figure 2, or identified any residential or other sensitive land use within the vicinity of the proposed Site.

Applicant also introduced substantial documentation that the Site location has been vetted for environmentally sensitive conditions. In particular, Applicant introduced as Wetlands Map as Exhibit 2, Figure 9, which shows that the U.S. Fish and Wildlife Service National Wetlands Inventory identifies no designated wetlands on or adjacent to the proposed Site. Applicant also introduced as Exhibit 8 documentation of the Applicant's Consultation for Endangered Species Protection and Natural Areas Preservation which demonstrates that there are no known state-listed threatened or endangered species, Illinois Natural Area Inventory sites, dedicated Illinois Nature Preserves, or registered Land and Water Reserves in the vicinity of the proposed site. (*See* Exhibit 8.) Included in the record as Exhibit M of Exhibit 1 contains documentation that there are no sole source aquifers or public water supply wells in the vicinity of the proposed site. No Opponent or public commenter disputed the accuracy of the Wetlands Map or identified any environmentally sensitive conditions on or in the vicinity of the proposed Site.

ii. Design

Applicant introduced at the public hearing a Site Plan (Exhibit 2, Figure 4) and a Building Layout (Exhibit 2, Figure 5) showing the general site and building design and layout of the proposed Transfer Station, which were described at the public hearing. Roxana's proffered traffic expert, Mr. Dustin Riechmann, testified that the Application contained insufficient information for him to reach a conclusion with respect to the design because it contained insufficient detail. (*See* Transcript pp. 109-11.) What Mr. Riechmann fails to understand, however, is that the drawings at the local siting stage are preliminary and will undergo modification during the Illinois Environmental Protection Agency permitting process as well as local reviews by the St. Clair County Highway Department, the Caseyville Building Department and other agencies. As Mr. Riechmann readily admits, this is the first time he has ever performed a review of a transfer station local siting application. (*See* Transcript pp. 106-7.) As seen from the Record, a Village Trustee testified the utilities were being moved for the County to upgrade this roadway.

iii. Operations

Applicant's Plan of Operations is contained in the record of the public hearing in Section 5 of Applicant's Application for Local Siting Approval. (Exhibit 1.) The Plan of Operations describes in detail the management procedures that will be implemented at the facility including, among other things, practices to prevent and respond to spills, fires and accidents and to prevent acceptance of unauthorized materials. Exhibit 6 contains a letter from Caseyville Fire Department Deputy Fire Chief Randy Allard documenting that he reviewed the Plan of Operations and found no deficiencies from a fire safety perspective. Despite having over three months to review the Plan of Operations, no Opponent or public commenter identified any

deficiency or threat to public health, safety or welfare associated with Applicant's Plan of Operations.

c. Criterion 3: The Proposed Caseyville Transfer Station 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

The third criterion under the Act requires that "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" 415 ILCS § 5/39.2(a)(iii). To satisfy this standard, an applicant must undertake to do what is "reasonably feasible to minimize incompatibility and impact on property values," but the Act "does not require a guarantee that there will be no incompatibility and impact on property values." *Fox Moraine, LLC v. United City of Yorkville*, 960 N.E.2d 1144, 1180 (Ill. App. 2011).

As demonstrated by Exhibit 2, Figure 2, the proposed Site is located in an area that is remote from any inconsistent land uses. In fact, the Site was selected specifically because there are no residential or even retail businesses in the vicinity and it is very close to Interstates 64, 55, and 255. The character of the surrounding area is wholly consistent with the Transfer Station and includes only vacant, agricultural, quarrying, trucking and excavating land uses. (*See* Exhibit 2, Figure 2.) Based upon the complete absence of any inconsistent land uses, the Board should conclude that the Site was located in a manner to minimize incompatibility and loss of value to the surrounding property.

Mr. Moran asserts that "normally what you would see is there would be a study done to determine whether a proposed facility would have any impact on surrounding property value." (Transcript p. 65.) In fact, however, Mr. Moran has not and cannot cite any authority for his assertion that a study is required, and is directly contradicted by the actual case law stating that

the Act "does not require a guarantee that there will be no incompatibility and impact on property values." *Fox Moraine*, 960 N.E.2d at 1180. Unable to present any substantive evidence or documentation to rebut the obvious fact that the proposed Site is remote and appropriate for the proposed land use, Mr. Moran offers infirm procedural arguments. The Board should base its decision, like the Village of Caseyville did, on common sense and the unrebutted evidence of surrounding land uses demonstrated by Exhibit 2, Figure 2 and by a site visit which was requested of the Hearing Officer, but was denied.

d. Criterion 4: The Proposed Caseyville Transfer Station Is Located Outside The Boundary Of The 100 Year Floodplain

Section 39.2(a)(iv) of the Illinois Environmental Protection Act provides: "for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed." 415 ILCS 5/39.2(a)(iv). At the public hearing, Applicant introduced as Exhibit 12 Panel 180 of 555 of the Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) for St. Clair County (November 5, 2003) (Map No. 17163C0180D). Exhibit 12 demonstrates that the Site is included within "Zone X," which is outside of the 100-year floodplain, and as being protected from the 1% annual chance flood by the Mississippi River Levee System. A drawing showing the FIRM flood hazard information for the area surrounding the Site was introduced by Applicant as Exhibit 2, Figure 10, and the fourth criterion is clearly satisfied.

Neither the Opponents nor any public commenter presented any technical or scientific information contradicting the applicable Federal Emergency Management Agency Flood Insurance Rate Map. A public participant, Ms. Kathryn Mertzke, asserted that the Harding Ditch floods regularly, but did not provide any documentation that the proposed Site has ever been subject to flooding. (*See* Transcript p. 49.) Applicant submitted a letter from the owner of the

proposed Site, Ralph Stanley, stating among other things that Mr. Stanley and his family have owned the Site since 1968, and that the site has not been subject to flooding with the exception of the flood of 1993. (*See* Exhibit 6.)

e. Criterion 5: The Plan Of Operations For The Proposed Caseyville Transfer Station Is Designed To Minimize Danger To The Surrounding Area From Fire, Spills Or Other Operational Accidents

The fifth criterion under Section 39.2 is that "the plan of operations for the facility is designed to minimize danger to the surrounding area from fire, spills or other operational accidents." 415 ILCS § 39.2(a)(v). This standard does not require that the applicant can guarantee that no accident will ever occur, but rather that the risks from operations will be minimized. *See Wabash*, 555 NE2d at 1086. Permitting from IEPA will ensure appropriate conditions be placed on t he operation of this facility.

The Plan of Operations for the proposed Transfer Station is included as Section 5 of Exhibit 1, Applicant's Application for Local Siting Approval. Applicant submitted the Plan of Operations to the Caseyville Fire Department for review. The results of that review were presented in a May 1, 2014 letter to the Caseyville Board of Trustees from Randy Allard, Deputy Fire Chief, Caseyville Fire Department, which stated as follows:

> At the request of Caseyville Transfer Station, LLC, I reviewed the application for local siting approval for the proposed Caseyville Transfer Station. In particular, I reviewed their plan of operations. Their plan includes fire and accident prevention plans, fire prevention and control procedures, spill and accident prevention and control plans. Based on my review I find that Caseyville Transfer Station LLC complies with all Fire related codes and training. Their plans appear to be designed to minimize danger from fire, spills or accidents and meets current Life Safety Codes that have been set forth by the National Fire Protection Agency and the Office of the State Fire Marshal.

See Exhibit 6. At the public hearing and after the public hearing, neither any Objector nor any public commenter identified any flaws, deficiencies or risks with respect to Applicant's Plan of

Operations. The manifest weight of evidence shows the Village could find that the Applicant had proven that its Plan of Operations is designed to minimize danger to the surrounding area from fire, spills or other operational accidents.

f. Criterion 6: The Traffic Patterns To And From The Proposed Caseyville Transfer Station Are So Designed As To Minimize The Impact On Existing Traffic Flows

The sixth criterion under Section 39.2 is that "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." 415 ILCS § 39.2(a)(vi). To satisfy this standard, an applicant is not required to eliminate all traffic problems, nor to "provide evidence of exact routes, types of traffic, noise, dust, or projections of volume and hours of traffic . . . but rather a showing that the traffic patterns to and from the facility are designed to minimize impact on existing traffic flows." *Fox Moraine*, 960 N.E.2d at 1181. The applicant is not required to prepare or introduce a formal traffic study or traffic plan. *See Fairview Area Citizens Taskforce v. Pollution Control Board*, 555 N.E.2d 1178, 1186-7 (Ill. App. 1990).

Applicant introduced as Exhibit 2, Figure 6 a Site Traffic Pattern Map which shows the planned means of ingress and egress to and from the proposed Transfer Station. As shown on the Site Traffic Pattern Map, the site plan calls for separate points for ingress and egress to the facility and ample site queuing areas. (See Exhibit 2, Figure 2.) Applicant's Exhibit 2, Figure 7 shows the primary routes to and from the facility.

Roxana attempted to create issues with respect to traffic through the testimony of Mr. Dustin Riechmann. Mr. Riechmann did not conduct a detailed or even scientific traffic study, but instead made random observations and took photographs in the vicinity of the proposed Site. (*See* Transcript pp. pp. 116-124.) Mr. Riechmann's testimony proves too much as, under his analysis, no truck traffic should be allowed on Bunkum Road at all.

Mr. Riechmann concludes, among other things, that: (1) the Highway 111 and I-64 Intersection has a "heavy congestion" condition based upon a single observation at 4:00 p.m. (*See* Transcript p. 117); (2) the intersection of Highway 111 and I-64 is unable to handle truck traffic based on an observation of rutting behind the curb line (*See* Transcript p. 117); and (3) he had a concern regarding blockage of the transfer station entrance due to freight train interference even though he admits that he did not observe such a condition (*See* Transcript p. 123.) Mr. Riechmann raises a number of other generalized concerns including the poor condition of Bunkum Road and the existence of a preschool program located approximately one mile east of the proposed Site (*See* Transcript pp. 122-124). These same considerations would apply to any business on Bunkum Road generating truck traffic, including the numerous trucking and industrial businesses already located on Bunkum Road. None of these issues raised by Mr. Riechmann provide a basis for denial of Applicant's Application. Furthermore, the St. Clair County Highway Department is in the process of improving Bunkum Road, see Exhibit 13, and most of Mr. Riechmann's analysis will be rendered moot by the road improvements. (See testimony of Kerry Davis that Roxana filed for more information on improvements as utilities are already being moved).

Mr. Riechmann further testified that there are inadequate site distances to exit the proposed Site onto Bunkum Road. Mr. Riechmann admits, however, that he just estimated where the ingress and egress points would be. (*See* Transcript p. 125.) The single drawing submitted as part of Mr. Riechmann's testimony does not identify the measurement point that Mr. Riechmann was using. (*See* Roxana Exhibit 1.) Quite simply, Mr. Riechmann's observations are unreliable and premature and do not show the Village decision to be against the manifest weight of evidence.

As stated at the hearing, the St. Clair County Highway Department will require Applicant to conduct a traffic study to be presented for the Department's review and approval prior to Applicant gaining access to Bunkum Road. (*See* Transcript p. 43; Exhibit 13.) As part of the traffic study Applicant will ensure that the exit from the Transfer Station complies with all AASHTO site line standards. As set forth above, the Village could approve Applicant's application for local siting but impose a condition with respect to the AASHTO site line standards. Applicant met this criteria and the Village decision is not against the manifest weight of evidence.

g. Criterion 7: The Proposed Caseyville Transfer Station Will Not Be Treating, Storing Or Disposing Of Hazardous Waste

Section 39.2(a)(vii) of the Illinois Environmental Protection Act provides: "if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release." 415 ILCS 5/39.2(a)(vii). Because the Transfer Station will not be treating, storing or disposing of hazardous waste, this criterion is not applicable and thus has been satisfied.

h. Criterion 8: The Proposed Caseyville Transfer Station Is Consistent With The St. Clair County Solid Waste Management Plan

Section 39.2(a)(viii) of the Illinois Environmental Protection Act provide that "if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan." 414 ILCS 5/39/2(a)(vii). A copy of the St. Clair County Solid Waste Management Plan (the "Solid Waste Management Plan"), with revisions, was introduced at the public hearing as

Exhibit P of Exhibit 1. As further described and explained in Section 8 of Exhibit 1, the Solid Waste Management Plan does not directly address transfer stations. It identifies landfilling as the preferred disposal method but expresses concern regarding receipt of out-of-state waste by the landfills operated by the Objectors. (*See* Exhibit 1, Section 6; Exhibit 1, Exhibit P.) While Mr. Moran appears to assert that a transfer station can only be approved if it was specifically called for in the Solid Waste Management Plan, he provides no legal authority for this outlandish claim and the County Plan does discuss incineration which no one would approve. It is in reed of an upgrade from 2006. The proposed Transfer Station would serve to transport waste from the Service Area to landfills outside the Service Area. This is not prohibited by the Solid Waste Management Plan, and is therefore consistent with the Solid Waste Management Plan.

i. Criterion 9: The Proposed Caseyville Transfer Station Will Not Be Located Within A Regulated Groundwater Recharge Area

Section 39.2(a)(ix) of the Illinois Environmental Protect Act provides: "if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met." 414 ILCS 5/39.2(a)(ix). As of the date of this Application, only one regulated recharge area has been designated, the Pleasant Valley Public Water District located in Peoria County, Illinois. As documented by the communications contained in Exhibit M of Exhibit 1, the Site is not located within a regulated recharge area or other groundwater protection area. At and after the public hearing, no Objector or public commenter identified any regulated recharge area or other sensitive groundwater resource within the vicinity of the proposed Site. The ninth criterion is clearly satisfied.

C. The Village Board's Siting Proceedings were not Fundamentally Unfair

The Opponents have consistently asserted that the Section 39.2 siting process must be treated as a judicial process, requiring, among other things, sworn witness testimony and expert witness testimony. (See, e.g., Transcript pp. 6-7, 24-25, and 65-68.) Under Illinois law, however, there is no requirement that the Section 39.2 hearing be conducted as a trial. "[T]he Act does not prohibit a [municipal authority] from establishing its own rules and procedures governing conduct of a local siting hearing so long as those rules and procedures are not inconsistent with the Act and are fundamentally fair." *Waste Management, Inc. v. Pollution Control Board*, 530 N.E.2d 682, 693 (Ill. App. 1988). A local siting hearing is an administrative hearing, and "due process is satisfied by procedures that are suitable for the nature of the determination to be made and that conform to fundamental principles of justice. . . . Furthermore, not all accepted requirements of due process in the trial of a case are necessary at an administrative hearing." *See id.*

Rather, the fundamental fairness rights afforded under the Illinois Environmental Protection Act "are limited to (1) public inspection of the application and related documents and materials on file and (2) public comment concerning the appropriateness of the site for its intended purpose." *Stop the Mega-Dump v. County Board of DeKalb County*, 979 N.E.2d 524, 535 (Ill. App. 2012). At the hearing, the Opponents and members of the public were given a full and fair opportunity to present any evidence, testimony, or objections. (See Transcript p. 138.) The Objectors have no valid argument that the public hearing conducted by the Board of Trustees was fundamentally unfair.

j. The Village Can Consider the Economic Benefits it Will Receive from the Transfer Station

According to Roxana, the Village's siting decision "has nothing to do with host fee payments or jobs potentially created by the proposed facility." (Written Comment of Roxana

Landfill, Inc., p. 5.) While the potential economic benefits to the Village resulting from the Transfer Station may be irrelevant to Roxana, the law is clear that the Village may consider these benefits so long as it also finds that the nine criteria are satisfied. *See Fairview Area Citizens Task Force v. Pollution Control Board*, 555 N.E. 2d 1178, 1181-82 (Ill. App. 1990). The estimated host fees payable to the Village under the Host Community Agreement are shown on Exhibit 5.

III. CONCLUSION

WHEREFORE, the Respondents, Caseyville Transfer Station, LLC, and the Village of Caseyville, Illinois pray that this honorable Board find that the decision by Caseyville to approve local siting of CTS's Transfer Station is not against the manifest weight of evidence as an opposite result is not clearly evident or indisputable from a review of the record and therefore DENY Petitioners' request to overturn the Village of Caseyville's approval of said local siting application so that the applicant may apply for a permit from Illinois EPA, showing local siting approval.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica N. Johnson, do certify that I caused to be electronically filed on this 17th day of November, 2014, the foregoing Respondent Caseyville Transfer Station, LLC. and Respondent Village of Caseyville's Post-Hearing Brief in Reply to the Post Hearing Briefs of Petitioner Roxana Landfill, Inc. and Village of Fairmont City by depositing the same electronically on the Illinois Pollution Control Board website as well as emailing the Motion to all parties.

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