

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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LOWE TRANSFER, INC. and)
MARSHALL LOWE,)
Co-Petitioners,)
vs.)
COUNTY BOARD OF McHENRY)
COUNTY, ILLINOIS)
Respondent)

No. PCB 03-221)
(Pollution Control Facility)
Siting Appeal)
STATE OF ILLINOIS
Pollution Control Board

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

Co-Petitioners, Lowe Transfer, Inc. and Marshall Lowe ("LOWE"), by Zukowski, Rogers, Flood & McArdle, its attorneys, respectfully request the Pollution Control Board strike certain portions of the County Board of McHenry County's ("County") Response to Lowe's Motion to Deem Site Location Application Approved. In support of this Motion, LOWE states as follows:

Lowe Did Not Assert Notice Must Be Printed in McHenry County

1. On September 18, 2003, the County filed its Response to Lowe's Motion to Deem Site Location Application Approved.
2. In the first four (4) pages of the County's Response, the County argues the issue of whether "published" means "printed" in McHenry County. The County concludes, "Consequently, Co-Petitioners' assertion that the newspaper containing notice must be printed in McHenry County must fail". (County's Response, p.4).
3. The County correctly cites Illinois court cases affirming that "published" does not mean "printed" in the county. However, nowhere in Lowe's Motion did Lowe make any assertion that the statutory notice under Section 40.1 must be printed in McHenry County.

Lowe's argument was two fold: (1) the notice was not published in McHenry County and (2) the notice was not published in a newspaper of general circulation in McHenry County.

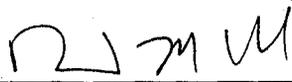
4. While the discussion of this point of statutory construction is interesting, it has nothing to do with the Motion filed by Lowe.

5. The only possible explanation for this misstatement of fact would appear to be in an attempt by the County to bolster their response by having their first argument misconstrue Lowe's position on a point of law and, thereby, taint the Board's view of Lowe's Motion.

6. The inclusion of this misstatement of Lowe's Motion will mislead the Board and unduly prejudice Lowe.

WHEREFORE, Lowe requests that the County's misrepresentation of Lowe's Motion regarding this issue be stricken.

Respectfully submitted,
LOWE TRANSFER, INC. and MARSHALL LOWE
By: Zukowski, Rogers, Flood & McArdle

By: 

David W. McArdle

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