

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

VILLAGE OF ROBBINS and, ALLIED  
WASTE TRANSPORTATION, INC.

Petitioners,

vs.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

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**APR 29 2004**

STATE OF ILLINOIS  
Pollution Control Board

Case No. PCB No. 04-48

**NOTICE OF FILING**

TO: All Counsel of Record (see attached service list)


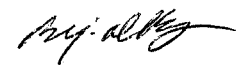
**PLEASE TAKE NOTICE** that on April 28, 2004, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, an original and nine copies of the Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment, copies of which are attached hereto.

Dated: April 28, 2004

Respectfully Submitted,

VILLAGE OF ROBBINS and ALLIED WASTE  
TRANSPORTATION, INC., Petitioners

By: Hinshaw & Culbertson

  
Charles F. Helsten  
One of Attorneys 

Hinshaw and Culbertson  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
815-490-4900

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**STATE OF ILLINOIS**  
**Pollution Control Board**

Respondent.

Case No. PCB No. 04-48

On February 9, 1993, the Board of Trustees of the Village of Robbins, in Ordinance No. 2-9-93-A, approved the application of Robbins Resource Recovery Company for a "regional pollution control facility" in the Village of Robbins. (R. 064-073). That resolution is completely devoid of any restrictions on the use or operations of the "regional pollution control facility." (*Id.*) Based on permits issued by the Illinois Environmental Protection Agency ("IEPA"), that "regional pollution control facility" was permitted to perform the same operations as a transfer station, with the added component of incineration. In fact, the operating permit issued by the IEPA specifically provides that the facility shall participate in comprehensive waste processing efforts by collecting, recycling and diverting waste, as well as processing waste for removal of

certain materials for recycling or off-site disposal. See IEPA Operating Permit No. 1997-072-OP, p. 17 (June 2, 1997). Additionally, the original and supplemental permits issued to Robbins Resource specifically provide that the pollution control facility be allowed to receive waste, handle waste, store waste for certain periods of time, screen, separate, segregate and sort waste materials, transfer waste under certain circumstances and conditions, and process and convert waste materials to different forms. See Permit Nos. 1997-072-OP (June 2, 1997); 1998-030-DE (April 6, 1998); 1998-078-DE (June 3, 1998); 1998-208-OP/SUP (July 31, 1998); 1998-314-DE/SUP (June 10, 1999); 1998-313-DE/SUP (Oct. 14, 1999).

Several years after siting approval was granted to Robbins Resource Recovery, the Village of Robbins contracted with Allied Waste Transportation, Inc. ("Allied"), an Illinois Corporation, for the operation of the facility as a transfer station. In conjunction with that agreement, on February 13, 2003, Allied entered into a Siting Authority Agreement with the Village of Robbins, specifically setting forth that Allied be allowed to use the formerly approved pollution control facility "for waste receipt and handling, waste processing, waste solidification, waste load consolidation and to operate as a solid waste transfer station (for both non-hazardous special waste and Municipal Solid Waste)." (R.076). That agreement memorializes that the siting approval previously granted to the pollution control facility by the Village of Robbins is "sufficiently broad to cover the proposed use of the Property and the Facility, and that the present proposed use can be undertaken without the necessity of additional local siting approval procedures." (R.076).

Furthermore, on February 13, 2003, Irene Brodie, the current Mayor of the Village of Robbins and the Chairperson of the committee that granted siting approval for the pollution control facility in the Village of Robbins in 1993, on behalf of the Board of Trustees of the

Village of Robbins, signed an affidavit. (R. 075). That affidavit establishes that the Robbins Recycling and Transfer Station had received local siting approval by the Village of Robbins Board of Trustees on February 9, 1993 to perform the functions of a "waste transfer station." (*Id.*)

Allied now seeks to operate a waste transfer station at the site of the approved facility in the Village of Robbins. The Illinois Environmental Protection Agency has denied Allied's Application for Permit to modify a solid waste management site, and Allied has appealed that determination to this Board. For the reasons set forth herein, this Board should grant summary judgment to Allied and grant its Application for Permit to modify the solid waste management facility permit granted in 1993.

#### ARGUMENT

Allied should be granted summary judgment and awarded its Application for Permit as a matter of law. As explained by this Board, summary judgment is appropriate when there are no genuine issues of fact and the movant is entitled to judgment as a matter of law. *Williamson Adhesives, Inc. v. EPA*, PCB 91-112 (Aug. 22, 1991); *Caruthers v. B.C. Christopher & Co.*, 57 Ill.2d 376, 380, 313 N.E.2d 457, 459 (1974).

In this case, there is no genuine issue of material fact that a modification of Petitioner's solid waste facility permit should have been granted, as no violation of the Act would occur by granting the permit. To the contrary, the Act would actually be violated by not granting modification of Petitioner's permit.

It is well-settled that in a proceeding such as this, "the sole question before the Board is whether the applicant proves that the application, as submitted to the Agency, demonstrated that no violation of the Act would occur if the permit was granted." *Saline County Landfill, Inc. v.*

*Illinois Environmental Protection Agency*, PCB 02-108, slip op. at 9 (May 16, 2002); *quoting Centralia Environmental Services, Inc. v. IEPA*, PCB 89-170, slip op. at 9 (Oct. 25, 1990). Based on the facts of this case, it would not be a violation of the Act to grant the permit; rather, it would be a violation of the Act not to grant the permit, as modification of the permit after original siting approval is specifically provided for under section 39.2(e-5) of the Illinois Environmental Protection Act ("Act"). *See* 415 ILCS 5/39.2(e-5). Section 39.2(e-5) of the Act provides:

Siting approval obtained pursuant to this Section is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the county board of the county or governing body of the municipality pursuant to subsection (e). However, any such conditions imposed pursuant to this Section may be modified by agreement between the subsequent owner or operator and the appropriate county board or governing body. Further, in the event that siting approval obtained pursuant to this Section has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes all rights and obligations and takes the facility subject to any and all terms and conditions and any existing host agreement between the prior owner and operator and the appropriate county board or governing body.

415 ILCS 5/39.2(e-5) (emphasis added).

In this case, there is no dispute that the facility in question was granted siting approval by the Village of Robbins because, as set forth above, the Board of Trustees of the Village of Robbins approved the application of Robbins Resource Recovery Company for a "regional pollution control facility" in the Village of Robbins on February 9, 1993. (R. 064-073). The siting approval granted by the Village of Robbins was, by its very term, approval of a "pollution control facility in the Village of Robbins." (R.064) (emphasis added).

The Village of Robbins' use of the term "pollution control facility" in their approval of the facility establishes that the Village intended for the facility to operate in many different capacities. By its very terms, the definition of "pollution control facility" includes "any waste

storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility or waste incinerator." 415 ILCS 5/3.330. Therefore, by not providing a more specific term to describe the facility, the Village of Robbins clearly intended the facility to act in a number of different capacities, including as a waste transfer station.

Moreover, it is also clear that the facility was intended to serve as a waste transfer station, as the original Application for Site Location Approval specifically provides that the facility is to treat and consolidate certain waste, as well as separate, remove and transfer recyclables and other types of materials. These activities then specifically and squarely fit the definition of a "transfer station," which is specifically defined as "a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal treatment or storage facility." 415 ILCS 5/3.500.

The fact that the resolution entered into by the Village of Robbins does not specifically identify the facility as a "transfer station" should not be determinative, because the activities to be performed by the facility clearly encompassed transfer station activities. In fact, the permits granted by the Illinois Environmental Protection Agency provided that the pollution control facility was permitted to receive waste, handle waste, store waste for certain periods of time, screen, separate, segregate and sort waste materials, transfer waste under certain circumstances and conditions and process and convert waste materials to different forms. *See* IEPA permits. In addition, it is clear that the facility was approved to act as a waste transfer station based on the affidavit signed by the Mayor of the Village of Robbins, which specifically provides that the facility was granted siting approval to act as a waste transfer station. (R. 075).

Finally, there is no dispute that Allied entered into a Siting Authority Agreement with the Village of Robbins, specifically setting forth that Allied be allowed to use the formerly approved

pollution control facility as a waste transfer station. (R.076). That agreement specifically provides that the siting approval previously granted to the pollution control facility by the Village of Robbins is "sufficiently broad to cover the proposed use of the Property and the Facility, and that the present proposed use can be undertaken without the necessity of additional local siting approval procedures." (R.076).

As set forth in section 39.2(e-5) of the Act, the Village of Robbins was specifically authorized to enter into the Siting Authority Agreement with Allied, the subsequent owner and operator of the pollution control facility, to modify any and all conditions imposed on the previously approved pollution control facility, as the Village of Robbins has properly done in this case. Pursuant to section 39.2(e-5), it is the siting authority that has the sole power and responsibility to modify any terms and conditions of original siting approval with a subsequent owner of a pollution control facility, which is exactly what the Village of Robbins did through its agreement with Allied, which specifically provides that Allied may now use the pollution control facility primarily as a transfer station. (R. 076-80).

It is well-settled that it is the local siting authority that is responsible for determining the scope of siting approval granted to a pollution control facility. *See Saline County Landfill, Inc. v. Illinois Environmental Protection Agency*, PCB 02-108 (May 16, 2002). In *Saline County*, the Illinois Pollution Control Board made abundantly clear that it is the duty of the siting authority to determine whether a change in a facility is consistent with the local siting approval granted to a facility. *Id.*, slip op. at 18-19. In this case, the Village of Robbins, through the affidavit signed by the Mayor, has made clear that its siting authority granted in 1993 was consistent with the solid waste transfer station proposed by Allied.

There can be no dispute that section 39.2(e-5) governs the circumstances of this case, and requires, as a matter of law, that Petitioner's permit be modified because siting approval of the subject pollution control facility has been transferred to a new entity and that new entity has entered into an agreement with the siting authority to operate as a transfer station. This is clearly a situation contemplated by section 39.2(e-5), and, thus, section 39.2(e-5) requires the modification of permit requested by Petitioners and expressly agreed to by Village of Robbins, the local siting authority.

### CONCLUSION

WHEREFORE, the Petitioners, VILLAGE OF ROBBINS and ALLIED WASTE TRANSPORTATION, INC. request this Honorable Board grant its Motion for Summary Judgment and for such other and further relief as this Honorable Board deems just and appropriate in the circumstances.

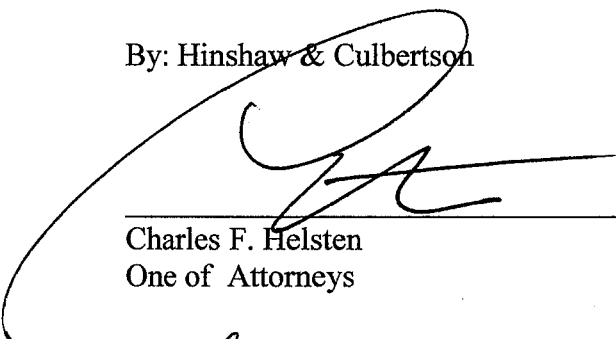
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Respectfully Submitted,

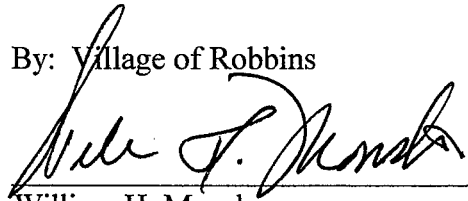
VILLAGE OF ROBBINS and ALLIED WASTE  
TRANSPORTATION, INC., Petitioners

By: Hinshaw & Culbertson



\_\_\_\_\_  
Charles F. Helsten  
One of Attorneys

By: Village of Robbins



\_\_\_\_\_  
William H. Mansker  
Village Attorney



HINSHAW AND CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
815-490-4900

VILLAGE OF ROBBINS  
3327 West 137<sup>th</sup> Street  
Robbins, Illinois 60472  
708-385-8940

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Respondent.

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*Environmental Protection Agency*, PCB 02-108, slip op. at 9 (May 16, 2002); *quoting Centralia Environmental Services, Inc. v. IEPA*, PCB 89-170, slip op. at 9 (Oct. 25, 1990).

4. It would not be a violation of the Act to grant the permit; rather, it would be a violation of the Act not to grant the permit, as modification of the permit after original siting is specifically provided for under section 39.2(e-5). *See* 415 ILCS 5/39.2(e-5).

5. Section 39.2(e-5) of the Act provides in pertinent part:

Siting approval obtained pursuant to this Section is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the county board of the county or governing body of the municipality pursuant to subsection (e). However, any such conditions imposed pursuant to this Section may be modified by agreement between the subsequent owner or operator and the appropriate county board or governing body.

415 ILCS 5/39.2(e-5) (emphasis added).

6. There is no dispute that the facility in question was granted siting approval by the Village of Robbins. On February 9, 1993, the Board of Trustees of the Village of Robbins, in Ordinance No. 2-9-93-A, approved the application of Robbins Resource Recovery Company for a regional pollution control facility in the Village of Robbins. (R. 064-073).

7. The siting approval granted by the Village of Robbins was, by its very term, approval of a "pollution control facility in the Village of Robbins." (R.064) (emphasis added). That pollution control facility was permitted to receive waste, handle waste, store waste for certain periods of time, screen, separate, segregate and sort waste materials, transfer waste under certain circumstances and process and convert waste materials to different forms.

8. It is clear that the Robbins facility, labeled a pollution control facility, contained a transfer station component. In fact, the very definition of "pollution control facility" includes

"any waste storage site, sanitary landfill, disposal site, waste transfer station, waste treatment facility or waste incinerator." 415 ILCS 5/3.330 (emphasis added).

9. Furthermore, the activities performed at the facility, as set forth in the Application for Site Location Approval, establish that the facility acted as a transfer station because the Robbins facility "accept[ed] waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility." 415 ILCS 5/3.500. Therefore, even though the Village of Robbins' Resolution did not specifically use the term "transfer station," it is clear that the Village intended the facility to operate in part as such.

10. There is no question that the siting authority granted to the facility in 1993 allowed the facility to operate as a waste transfer station, as the Mayor of the Village of Robbins, on behalf of the Board of Trustees, signed an affidavit, indicating the original siting approval granted in February 9, 1993 approved the operation of the facility in part as a "waste transfer station." (R.075).

11. There is also no dispute that several years after siting approval was granted to Robbins Resource Recovery, the Village of Robbins contracted with Allied Waste Transportation, Inc. ("Allied"), an Illinois Corporation, for the operation of the facility as a transfer station. In conjunction with that agreement, Allied entered into a Siting Authority Agreement with the Village of Robbins, specifically setting forth that Allied be allowed to use the formerly approved pollution control facility as a waste transfer station. (R.076). That agreement memorializes that the siting approval previously granted to the pollution control facility by the Village of Robbins is "sufficiently broad to cover the proposed use of the Property and the Facility, and that the present proposed use can be undertaken without the necessity of additional local siting approval procedures." (R.076) (emphasis added).

12. As explicitly provided for in section 39.2(e-5) of the Act, the Village of Robbins was specifically authorized to enter into the Siting Authority Agreement with Allied, the subsequent operator of the pollution control facility, to modify any and all conditions imposed on the previously approved pollution control facility, as the Village of Robbins has properly done in this case.

13. Pursuant to section 39.2(e-5) it is the siting authority that has the sole power and responsibility to modify any terms and conditions of original siting approval with a subsequent owner of a pollution control facility, which is exactly what the Village of Robbins did through its agreement with Allied, which specifically provides that Allied may now use the pollution control facility primarily as a transfer station, all consistent with the siting approval original provided to the facility in 1993. (R. 076-80).

14. It is well-settled that the local siting authority is responsible for determining the scope of siting approval granted to a pollution control facility. *See Saline County Landfill, Inc. v. Illinois Environmental Protection Agency*, PCB 02-108 (May 16, 2002). In this case, the Village of Robbins has made clear that its siting authority granted in 1993 was broad enough to cover Allied's waste transfer station.

15. There can be no dispute that section 39.2(e-5) governs the circumstances of this case, and requires, as a matter of law, that Petitioner's permit be modified because siting approval of the subject pollution control facility has been transferred to a new entity and that new entity has entered into an agreement with the siting authority to operate as a transfer station.

16. This is clearly a situation contemplated by section 39.2(e-5), and, thus, section 39.2(e-5) requires the modification requested by Petitioners and expressly agreed to by Village of Robbins, the local siting authority.

WHEREFORE, the Petitioners, VILLAGE OF ROBBINS and ALLIED WASTE  
TRANSPORTATION, INC. request this Honorable Board:

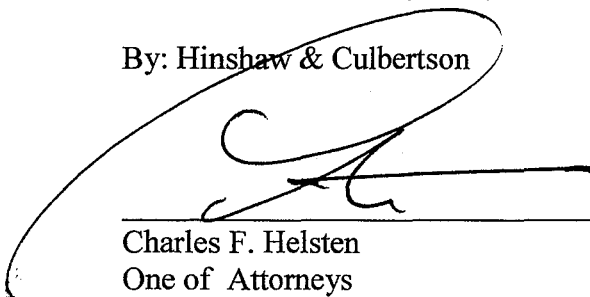
- A. Grant its Motion for Summary Judgment; and
- B. For such other and further relief as this Honorable Board deems just and  
appropriate in the circumstances.

Dated: 4/22/04

Respectfully Submitted,


VILLAGE OF ROBBINS and ALLIED WASTE  
TRANSPORTATION, INC., Petitioners

By: Hinshaw & Culbertson



Charles F. Helsten  
One of Attorneys

By: Village Attorney for the Village of Robbins,  
Petitioners



William H. Mansker  
Village Attorney

HINSHAW AND CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
815-490-4900

VILLAGE OF ROBBINS  
3327 West 137<sup>th</sup> Street  
Robbins, Illinois 60472  
708-385-8940

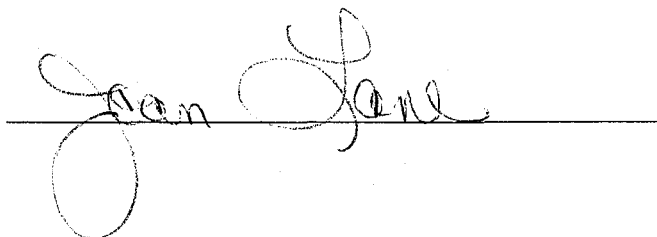
**AFFIDAVIT OF SERVICE**

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 April 28, 2003, a copy of the foregoing was served upon:

Via UPS Overnight Mail  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

John J. Kim  
Renee Cipriano  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 N. Grand Avenue, East  
Springfield, IL 62794-9276

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

A handwritten signature in cursive script, appearing to read "John J. Kim", is written over a horizontal line.

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

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