

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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JUL 11 2003

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

STATE OF ILLINOIS
Pollution Control Board

PC#4

PCB No. 03-221
(Pollution Control Board
Siting Appeal)

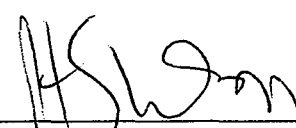
NOTICE OF FILING

TO: See Attached Certificate of Service

Please take notice that on July 11, 2003, we filed with the Illinois Pollution Control Board an original and nine copies of this Notice of Filing and Public Comment Village of Cary's Objection To Petitioners' Motion to Remove Record From Board Offices, copies of which are attached and hereby served upon you.

Dated: July 11, 2003

VILLAGE OF CARY

By:  _____
One of its Attorneys

Percy L. Angelo, Esq.
Patricia F. Sharkey, Esq.
Kevin G. Desharnais, Esq.
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PUBLIC COMMENT
VILLAGE OF CARY'S OBJECTION TO
PETITIONERS' MOTION TO REMOVE RECORD FROM BOARD OFFICES

The Village of Cary ("Village") is a public body representing the citizens of the Cary. The proposed Transfer Station site is located directly adjacent to the Village of Cary and in close proximity to the homes of many Cary residents. On behalf of the residents of the Village of Cary, and by and through the lawyers employed by the Village to represent it in this proceeding, the Village hereby enters its objection to the Petitioners' Motion to Remove the Record in this proceeding from the Board's offices.

The Village's objection is based on the following:

1. Although the Village has been denied intervention in this proceeding, it remains the representative of the majority of residents who will be most affected by the siting of the proposed transfer station and has a right to file public comments in this proceeding.

2. As a representative of the affected public that actively participated in the underlying proceeding in opposition to the proposed siting and that will actively participate in this appeal, the Village has a duty to bring to the Board's attention the public's concern that the record in this case be kept available to the Board and to the members of the public for review.

3. Board rules require the filing of an original and nine copies of the record in siting appeals. (35 Ill. Admin. Code 107.304(c)) However, the Hearing Officer's July 8, 2003 Order granted McHenry County's motion to file a reduced number of copies of the record in this case. As a result, the Board received only an original and two copies of certain portions of the record and only a single copy of other portions of the record. Specifically, the Board has only the originals of 22 over-sized exhibits and two video tapes. If these items are removed from the Board's offices, both the Board and the public will be completely deprived of their right to consult these exhibits. This will hamstring the Board Members in their review, and will handicap the Respondent and the public, including the Village and its residents. Removal of copies of other portions of the record – even if more than one copy was provided -- will also limit access to these materials.

4. Petitioner is effectively requesting that it *alone* have access to important pieces of the record and that access to other portions of the record be limited. But Petitioner is not the only party or interested person in this proceeding nor is it the only one that will be filing a brief or preparing for hearing. The Respondent, McHenry County, the Village, and the neighboring landowners and residents are all likely to need access to the record to prepare for hearing and to file briefs and comments.

5. It was the Petitioner's duty to pay the costs for the preparing and certifying the record (35 Ill. Admin. Code 107.306). Therefore, when the County filed a reduced number of copies with the Board, the Petitioner saved copying costs. After receiving this benefit, Petitioner should not be allowed to deprive the Board and other participants full review of the record by removing from the Board offices one of the few copies – and, for some portions of the record,

the *only* copy – filed. Petitioner is a business entity and has the resources to make its own copies just as other participants in this proceeding will have to do.

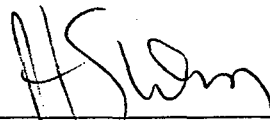
WHEREFORE, Cary objects to the Petitioner's Motion and urges the Board to deny it.

Respectfully Submitted,

The Village of Cary

Dated: July 11, 2003

By


One of its Attorneys

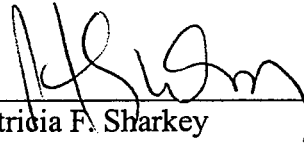
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CERTIFICATE OF SERVICE

Patricia F. Sharkey, an attorney, hereby certifies that a copy of the foregoing Notice of Filing and Public Comment Village of Cary's Objection To Petitioners' Motion to Remove Record From Board Offices was served on the persons listed below by depositing same in the U.S. Mail at or before 5:00 p.m. on this 11th day of July, 2003.

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Zukowski, Rogers, Flood & McArdle
50 Virginia Street
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Hinshaw and Culbertson
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Rockford, IL 61105-1389



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