ILLINOIS POLLUTION CONTROL BOARD

LOWE TRANSFER, INC. and MARSHALL LOWE, Petitioners, vs. COUNTY BOARD OF MCHENRY COUNTY, ILLINOIS Respondent.	)	Case No. PCB 03-221

NOTICE OF FILING

TO: See Attached

PLEASE TAKE NOTICE that on August 22, 2003, we mailed for filing with the Illinois Pollution Control Board, the attached **Respondent County Board of McHenry County, Illinois' Brief in Support of its Decision to Deny Siting Approval to Lowe Transfer, Inc.,** a copy of which is attached hereto.

Dated: August 22 ,2003

Respectfully Submitted,

On behalf of the County Board of McHenry County, Illinois

By: Hinshaw & Culbertson

Charles Helsten by RJS
One of its Attorneys

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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 Aug 22, , 2003, a copy of the **Respondent County Board of McHenry County, Illinois' Brief in Support of its Decision to Deny Siting Approval to Lowe Transfer, Inc.,** served upon:

Via U.S. Mail and e-mail:
David McArdle
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Via Hand Delivery:
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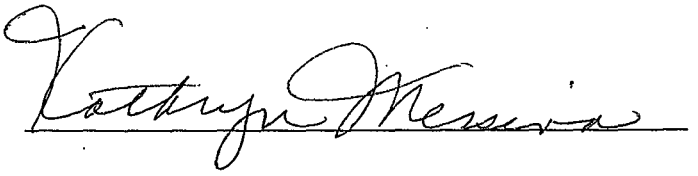
By depositing a copy thereof, enclosed in an envelope in the United States Mail at Chicago, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LOWE TRANSFER, INC. and MARSHALL LOWE,	)	
Petitioners,	)	
vs.	)	Case No. PCB 03-221
	)	Pollution Control Facility Siting Appeal
COUNTY BOARD OF MCHENRY COUNTY, ILLINOIS	)	
Respondent.	)	

RESPONDENT COUNTY BOARD OF MCHENRY COUNTY, ILLINOIS' BRIEF IN SUPPORT OF ITS DECISION TO DENY SITING APPROVAL TO LOWE TRANSFER, INC.

For the reasons set forth herein, Respondent, County Board of McHenry County ("McHenry County Board"), respectfully requests that this Board affirm its decision to deny siting approval to Lowe Transfer, Inc. and Marshall Lowe, the Co-Petitioners herein.

I. INTRODUCTION

On November 20, 2002, Marshall Lowe and Lowe Transfer, Inc. submitted its Application for Site Location Approval for a proposed Northwest Highway Transfer Facility ("Facility"). The Facility would be located on U.S. Route 14 in unincorporated McHenry County. Pursuant to the Illinois Environmental Protection Act, public hearings were conducted before a hearing officer and the McHenry County Pollution Control Facility Siting Committee. *See* 415 ILCS 5/39.2(d). These hearings were held from March 1 to March 15, 2003. (C.00178-C.00227). Registered Objectors to the Application included the Village of Cary, the Plote Family, the Bright Oaks Homeowners' Association, the Cary Park District, the Trout Valley Homeowners' Association and the McHenry County Defenders, as well as many private citizens. (C.00178, pp. 9-12;C.00043-53).

The McHenry County Pollution Control Facility Siting Committee met on April 28, 2003 and reviewed the Application and the evidence presented during the siting hearings and recommended to the full County Board to deny the Application because the Applicant failed to satisfy criteria (ii), (iii) and (v). (C.07237). On May 6, 2003, the McHenry County Board unanimously denied the Application for local siting approval (C.07244) and issued Resolution No. R-200305-12-104, Concerning the Lowe Transfer, Inc. Application For a Pollution Control Facility. (Exhibit A attached to Lowe's Petition for Hearing). The Resolution set forth that the Applicant failed to satisfy criteria (ii), (iii) and (v), and imposed special conditions with respect to criterion (vi) and criterion (viii). *Id.* The special condition of criterion (viii) required the Applicant to pay a host fee. *Id.* The Resolution also sets forth that the Board members unanimously "considered as evidence the previous operating experience of the Applicant and past record of convictions or admissions of violations of the application when considering criteria (ii) and (v) of 415 ILCS 5/39.2(a)." *Id.*

On June 6, 2003, Lowe Transfer, Inc. and Marshall Lowe filed a Petition for Hearing to Contest Site Location Denial alleging that: (1) the McHenry County Board's decision was against the manifest weight of the evidence with respect to criteria (ii), (iii) and (v); (2) the imposition of a "host fee" as a special condition approving Criterion (viii) was unauthorized and unlawful; (3) the McHenry County Board applied the unnumbered criterion in Section 39.2 of the Illinois Environmental Protection Act unlawfully; (4) the McHenry County Board failed to specify the reasons for its decision; and (5) the McHenry County Board violated its own ordinance by failing to specify the reasons for its decision. (Co-Petitioner's Petition for Hearing to Contest Site Location Denial, ¶4). For the reasons set forth below, the McHenry County Board's decision to

deny siting approval to the Applicant was lawful and not against the manifest weight of the evidence. Consequently, the decision of the McHenry County Board should be upheld.

II. ARGUMENT

A. The County Board's denial of siting approval should be upheld because it was not against the manifest weight of the evidence.

In order to grant siting approval to a pollution control facility, such as a transfer station, the County Board or local governing body must find that the Applicant has satisfied all of the criteria set forth in section 39.2(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39.2(a). *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board*, 160 Ill.App.3d 434, 443, 513 N.E.2d 592, 597 (2d Dist. 1987). If any one of the criteria listed in section 39.2(a) is not met, the Application must be denied. *See Id.* In this case, the McHenry County Board found that three criteria set forth in section 39.2(a) were not met. Specifically, the Board found that the Applicant failed to show compliance with criteria (ii), (iii) and (v). (C.007244, pp. 3-57). Because the Application did not satisfy all of the statutory criteria, the McHenry County Board was required to deny siting approval.

The McHenry County Board's denial of Lowe Transfer, Inc.'s Application must be upheld because the County's decision that the Applicant failed to comply with criteria (ii), (iii) and (v) was clearly not against the manifest weight of the evidence. It is well-settled that a county board's decision to grant or deny siting approval can only be reversed if the decision is contrary to the manifest weight of the evidence. *Waste Management*, 160 Ill.App.3d at 441-42, 513 N.E.2d at 597. The manifest weight of the evidence standard is to be applied to each and every criterion on review. *Id.* The manifest weight of the evidence standard is consistent with the legislative intent to grant local authorities the power to determine the site location suitability of a proposed new regional pollution control facility. 160 Ill.App.3d at 441, 513 N.E.2d at 596. It is

the sole province of the hearing body to weigh the evidence, resolve conflicts in testimony and assess the credibility of the witnesses. *Tate v. Illinois Pollution Control Board*, 188 Ill.App.3d 994, 1022, 544 N.E.2d 1176, 1195 (4th Dist. 1989).

In determining whether a decision is against the manifest weight of the evidence, it is not sufficient that a different conclusion may be reasonable. *Wabash and Lawrence Counties Taxpayers and Water Drinkers Association v. Pollution Control Board*, 198 Ill.App.3d 388, 392, 555 N.E.2d 1081, 1085 (5th Dist. 1990). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident, plain or indisputable. *Worthen v. Roxana*, 253 Ill.App.3d 378, 384, 623 N.E.2d 1058, 1062 (5th Dist. 1993). When reviewing a decision under a manifest weight of the evidence standard, the reviewing court may not reweigh evidence and may not reassess the credibility of witnesses. *Id.; Wabash*, 198 Ill.App.3d at 392, 555 N.E.2d at 1085.

It is clear that the McHenry County Board's decision to deny siting approval to Lowe Transfer, Inc. is not against the manifest weight of the evidence as the evidence presented at the 13-day siting hearing shows that the Applicant failed to satisfy criteria (ii), (iii) and (v) of section 39.2 of the Act, as explained more fully below.

B. MORE THAN AMPLE EVIDENCE EXISTS TO SUPPORT THE MCHENRY COUNTY BOARD'S DECISION THAT THE FACILITY IS NOT DESIGNED, LOCATED AND PROPOSED TO BE OPERATED TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE.

Section 39.2(a)(ii) of the Act, otherwise referred to as Criterion (ii), requires the Applicant to establish 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). Through section 39.2(a)(ii), "[t]he legislature has charged the county board, rather than the PCB, with resolving technical issues, such as public health ramifications of the landfill's design." *McLean County*

Disposal, Inc. v. County of McLean, 207 Ill.App.3d 477, 480, 566 N.E.2d 26, 28 (4th Dist. 1991). This broad delegation of authority reflects the legislative intent that the local board hearing, which provides the only opportunity for public comment on the site, be the most critical stage of the process. *See id.*

1. The McHenry County Board properly weighed the evidence and considered the credibility of the witnesses in determining that criterion (ii) was not met.

Courts have acknowledged that whether a facility is so designed, located, and proposed to be operated that the public health, safety and welfare will be protected is "purely a matter of assessing the credibility of the expert witnesses." *File v. D&L Landfill*, 219 Ill.App.3d 897, 907, 579 N.E.2d 1228, 1236 (5th Dist. 1991); *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill.App.3d 541, 552, 555 N.E.2d 1178, 1185 (3d Dist. 1990). In this case, several expert witnesses testified regarding criterion (ii) at the landfill siting hearing. The Applicant's witnesses were Dan Zinnen, an agricultural engineer, I. Keith Gordon, a civil engineer and Douglas Dorgan, a hydrogeologist. The objectors, specifically the Village of Cary, presented Lawrence Thomas, a professional engineer and hydrogeologist, Mr. Andrew Nickodem, a civil engineer, and Kevin Sutherland, an environmental engineer on the subject of criterion (ii). The testimony of these witnesses was clearly conflicting, as Zinnen and Gordon both specifically testified that the facility satisfied criterion (ii) because it was so designed, located, and proposed to be operated that the public health, safety and welfare will be protected (C.00179, pp. 14, 42; C.00183, pp. 47-48, 67-68), while Mr. Thomas, Mr. Nickodem and Mr. Sutherland specifically found that the facility was not so designed, located and proposed to be operated to protect the public health, safety and welfare. (C.00188, pp. 50-51, C.00189, p. 61; C.00215, p. 54:C.00218, p. 79).

As explained by the Court in *Concerned Adjoining Owners*, "[i]t was up to the local governing body to determine the credibility of witnesses, resolve conflicts in the evidence and weigh all of the evidence offered." 288 Ill.App.3d at 576, 680 N.E.2d at 818. The Illinois Pollution Control Board cannot reweigh expert testimony to decide which expert is more qualified and more believable. *McLean County*, 207 Ill.App.3d at 487, 566 N.E.2d at 33. Clearly, the McHenry County Board found the objectors' witnesses to be credible and persuasive, and it is not the Pollution Control Board's role to reassess their credibility or reweigh the evidence presented by the experts. *See File*, 219 Ill.App. at 907, 579 N.E.2d at 1236. In this case, it was appropriate for the McHenry County Board to not accept the testimony of the Applicant's witnesses as Gordon, Zinnen and Dorgan all readily admitted that they have never testified against or opposed the siting of a transfer station. (C. 00183, p. 56; C.0224, p. 99).

Several Courts have specifically found that where there is conflicting testimony, a local governing body's decision is not against the manifest weight of the evidence if the decision is consistent with an expert's testimony. *See City of Rockford v. County of Winnebago*, 186 Ill.App.3d 303, 315, 542 N.E.2d 423, 432 (2d Dist. 1989) (explaining that the court would not determine which witnesses were more expert or decide controverted facts); *Fairview*, 198 Ill.App.3d at 552-53, 555 N.E.2d at 1185 ("Since there is evidence to support the village board's decision, and . . . it is not the function of the reviewing court to reweigh evidence or reassess credibility, the finding of the village board on this criterion is not against the manifest weight of the evidence."); *Wabash*, 198 Ill.App.3d at 393, 555 N.E.2d at 1086 (explaining that simply because one expert provided evidence which, if accepted, would support a contrary conclusion does not mean that the County Board's conclusion is against the manifest weight of the evidence); *McLean County Disposal, Inc. v. County of McLean*, 207 Ill.App.3d 477, 487, 566

N.E.2d 26, 33 (4th Dist. 1991) (explaining that because the expert testimony conflicted, the court would not reweigh the evidence and found that the agency's determination was not contrary to the manifest weight of the evidence). Here, the McHenry County Board's decision was not only consistent with the testimony of one expert, but was consistent with the testimony of three experts, Thomas, Nickodem and Sutherland, who all found that the transfer station proposal did not satisfy criterion (ii). Because that decision was based on testimony directly from experts with considerable experience in the area of siting and permitting pollution control facilities, that decision cannot be against the manifest weight of the evidence.

2. The McHenry County Board correctly found that the facility did not satisfy criterion (ii) because the location of the facility will endanger the public health, safety and welfare.

The evidence presented at the siting hearing amply supports the County Board's conclusion that the Applicant failed to satisfied Criterion (ii). As was made clear in the siting hearings, the proposed site for the transfer station is so located so not to be protective of the public health, safety and welfare.

The evidence clearly showed that the public health, safety and welfare will be adversely affected by the location of the site. As was admitted by Dan Zinnen, the Applicant's own witness on criterion (ii), the site of the transfer station consists only 2.6 acres of land and is located only 20 feet away from The Hollows, an area owned by the McHenry County Conservation District, which contains sensitive wetlands and natural areas. (C.00178, pp. 112). The site is also located in close proximity to a lake, namely Lake Plote (C.00178, pp. 112, 116-117), and approximately 1300 feet from a residential subdivision, Bright Oaks. (C.00182, p. 28). While Mr. Zinnen placed much emphasis on the fact that the site is zoned industrial and located in an industrial area (C.00178, pp. 136, 137-38), the fact of the matter is that the site is actually located next to a highly sensitive natural area, The Hollows, (C.00178, p. 112) and is located less than half a mile

from property that was zoned residential at the time of the hearing. (C.00182, p. 28). Only days after the close of the hearing, property immediately adjacent to the site of the facility, the Plote property, was also zoned residential. (C.04132-04174, C07175-7182).

Mr. Andrew Nickodem, a civil engineer, who has personally designed transfer stations and has been involved with solid waste facilities for more than 15 years (C.00214, p. 5), testified that the facility did not meet criterion (ii) because it was located too close to The Hollows, Bright Oaks and the Plote Property. (C.00215, pp. 54-55; C.00216, p. 4). Mr. Nickodem testified that in his 15 years of experience and involvement with 50 transfer stations, he has never seen a facility located next to two sensitive areas, such as The Hollows and Bright Oaks. (C.00214, pp. 17-18). Mr. Nickodem stated that he had such a problem with the location of the facility that if he were presented with that location by a client wanting to build a transfer station there, he would refuse to build. (C.00215, p. 95). Mr. Nickodem explained that the poor location of the site was magnified by the fact that there was not an adequate buffer between the facility and The Hollows. (C.00215, p. 29). Mr. Nickodem suggested a screening wall (such as those that exist along highways) to act as a buffer between the facility and The Hollows to try to protect The Hollows from noise, odor and the sight of the facility. (C.00214, pp. 25-26, C.00215, p. 29). However, no such screening wall was included in the design of the facility, clearly showing the Applicant's lack of detail in minimizing the effect that the facility would have on its neighbors.

Mr. Nickodem stated that his major concern was that the transfer station could adversely affect wetland areas in The Hollows (C.00214, pp. 19-20). Those wetlands are very important because, according to the Illinois Department of Natural Resources, they are "irreplaceable and unmitigatable based on the fact that the complex biological systems and functions that this site supports cannot be successfully recreated within a reasonable time frame using existing

restoration or creation methods." (C.00181, pp. 31-32). Based on the testimony provided at the hearing, it is clear that The Hollows, and the wetlands contained therein, may, and almost certainly will, be affected by the transfer station because the testimony of the Applicant's own witnesses establishes that household hazardous waste may seep into The Hollows. Mr. Gordon stated that it is possible, and even likely, that household hazardous waste will come through the transfer station. (C.00180, pp.33-35). In turn, Mr. Zinnen acknowledged that such household hazardous waste could run out onto the queuing area, which is made of asphalt, has no liner or membrane beneath it, and has no curb separating it from The Hollows. (C.00184, pp. 27-30).

Because of the close proximity of The Hollows to the site and the lack of adequate protection between the two locations, the delicate ecological environment of The Hollows could be impacted by contaminants, which would clearly be inconsistent with the requirement of section 39.2(a)(ii) that the facility be designed and located to protect the public health, safety and welfare. This fact was aptly noted by Mr. Klasen, a member of the McHenry County Regional Pollution Control Facility Committee, who specifically stated that he did not believe the Application satisfied criterion (ii) because it is located next to The Hollows, which is "a sensitive natural resource that should be preserved." (C.07237, p. 15). According to Mr. Klasen, it would be inappropriate to have a transfer station "adjoining and abutting a sensitive area like [The Hollows.]" *Id.*

In addition to the site's close proximity to The Hollows and the Bright Oaks Subdivision, the site is also located immediately adjacent to the Plote Property, which has been zoned residential. (C.04132-04174, C07175-7182). While the Plote Property was not officially zoned residential until after the siting hearing concluded, it was well known that the Plotes were seeking the residential zoning, and had been in the process of doing so for some time. In fact,

Mr. Lowe himself was aware that the Plotes were seeking to have the area directly next to this site zoned residential and because of that fact, Mr. Lowe filed his Application on an expedited basis so that the Application would be filed and the siting hearing would take place before the Plotes received residential zoning approval. (C.00202, p. 20). Because it was clear that the land immediately and directly adjacent to the transfer facility would imminently become residential, ample evidence exists in the record to demonstrate that this facility is not located to protect the public health, safety and welfare.

Another major problem with the location of the facility, which will adversely affect the public health safety and welfare, is the size of the site. (C.00215, pp. 54-55). Mr. Nickodem testified that the site is simply too small for a transfer station, and is smaller than any other site he has seen recently developed. (C.00214, pp.27-28). In fact, based on an exhibit introduced by the Applicant himself, no transfer station of such a small size had been built in Illinois in the past twelve years. (C.00215, pp. 105-106: Applicant's Exhibit 23). In determining whether the site would be adequate in size, Mr. Nickodem had an associate run a program called "Auto Turn" to simulate trucks on the site. (C.00214, pp. 29). That program revealed that trucks would not be able to adequately turn and maneuver around the site. (C.00214, pp. 29-35). As a result of the inadequate size of the facility, Mr. Nickodem testified that there would be good possibility of accidents as well as traffic back-ups on Route 14. (C.00214, pp. 29, 33-34, 48-50, 51 and 55). While Mr. Gordon testified that he believed that the site was an adequate size based on his calculations, Mr. Gordon's calculations were flawed because he admitted that his calculations were based on trucks that were smaller than those that could use this facility. (C.00223, pp. 12-16). Mr. Gordon based his calculations on trucks with wheelbases of 52 and 54 inches and trailers with lengths of 53 to 55 feet, even though transfer trailers can have wheelbases of up to

64 inches and lengths of up to 65 feet. (C.00223, p. 7, 11, 12-20, 24). In fact, Mr. Nickodem testified that the vast majority of trucks in transfer stations are WB 62 (C.00223, pp. 32-33). Because Mr. Gordon failed to properly calculate whether the site was in fact large enough to safely handle vehicles of this size, the McHenry County Board was clearly justified in finding that the site was inadequate and not consistent with criterion (ii) because a site that is too small (and, therefore, causes safety concerns for truck drivers as well as the public) is clearly not located so as to protect public health, safety and welfare.

The location of this site is also not protective of the public health, safety and welfare because it is possible that underground storage tanks of older, unknown vintage may still be located beneath it. The Applicant's own experts could not conclusively state that underground storage tanks that were once present beneath the site had been removed. While Mr. Zinnen stated that he believed the underground storage tanks have been removed, he has seen no documentation evidencing that. (C.00223, p. 51). That belief was based purely upon hearsay statements. (C.00223, p. 59). Furthermore, Mr. Gordon specifically testified that he did not know if underground storage tanks are still located on site. (C.00185, pp. 85-86).

It is no wonder that serious doubts and questions exist as to whether this site, as located, would pose threats to the public, health, safety and welfare, as this site was earmarked by Mr. Lowe (someone with no experience with transfer stations) for the sole purpose of building a transfer station without any feasibility studying having been undertaken to determine if the location was appropriate for development and operation of a transfer station. (C.00202, p. 16). Based on the problems identified above, it is clear that the location of this facility will not protect the public, health, safety and welfare and, therefore, the McHenry County Board properly found that criterion (ii) was not met.

3. The McHenry County Board correctly found that the design of the facility would not protect the public health, safety and welfare because the facility is not designed to prevent contamination of ground water.

In addition to the hazardous waste that may seep into The Hollows, the testimony presented at the hearing establishes that there is inadequate protection of the ground water that will flow from the facility. According to Mr. Zinnen, the uppermost ground water is hydrologically connected to the surface run-off to Lake Plote, Lake Atwood and the wetlands, located in the Hollows. (C.00186, p. 87). In fact, Mr. Zinnen admitted that the groundwater flows at a rapid rate directly toward the wetlands. (C.00181, pp. 25). As such any contamination that would find its way to groundwater at the transfer station will flow to nearby lakes as well as The Hollows.

Mr. Lawrence Thomas, a professional engineer, who has worked in the area of hydrogeology since 1980, also testified that the groundwater below the proposed sites travels to Lake Plote, Lake Atwood and into The Hollows (C.00188, pp. 6-7, 25-26; C.00190, pp. 44-45). He also testified that some water will also eventually flow into Lake Killarney. (C.00188, pp. 27-28). Mr. Thomas testified that "there is a substantial risk . . for groundwater contamination." (C.00188, p. 33). He explained that was true because even very small amounts of contamination, such as could come from household hazardous waste, can contaminate very large amounts of groundwater. (C.0188, pp. 35-36). Mr. Thomas explained that contaminants would be able to move through the subsurface because it is comprised of sand and gravel; the contaminants could also move through pathways along the septic system, injection chambers and gas any utility pipes on the property. (C.00190, pp. 41-42).

While a groundwater monitoring program was proposed for the property, the evidence presented at the siting hearing established that the groundwater monitoring system may be inadequate to protect the public health, safety and welfare. Mr. Zinnen testified that there will be

only two monitoring wells on the site, which will both be located down-gradient. (C.00181, p. 35). Both Mr. Zinnen and Mr. Dorgan, the Applicant's own witnesses, admitted that it is typical to have up-gradient wells to compare with the down-gradient wells to determine if contamination is emanating from the site. (C.00181, pp. 35-36; C.00199, p. 84-85). In fact, Mr. Zinnen specifically admitted that without those up-gradient wells, it would be impossible to determine if the transfer station was causing groundwater problems. (C.00181, p. 35). Mr. Thomas also testified that the number and location of the wells was inadequate because there were no up-gradient wells, and the wells were not nested to test different layers of the stratigraphy to determine if contamination was present at particular layers. (C.0188, p. 48-49). Mr. Thomas also saw an inconsistency with the landscaping and the plan to monitor the wells because based on the landscaping plan proposed for the facility, he did not believe there would be room to actually monitor and maintain the wells. (C.00188, pp. 41-42). The groundwater monitoring system is also inadequate because, as was conceded by Mr. Zinnen, there will be nothing to monitor for components that are denser than water. (C.00181, pp,. 38-39). Mr. Thomas explained that was problematic because the compounds that are heavier than water can include contaminants, and the system as designed would tend to allow those compounds to move downward into the groundwater. (C.00188, p. 36). Furthermore, the proposed groundwater monitoring scheme is inadequate because no plan was established to test for certain target contaminants. (C.00188, pp. 40-41, pp. 48-49). According to Mr. Zinnen, the Applicant has not yet specified, or even determined, how often samples will be taken from the wells and what contaminants will be tested for. (C.00181, pp. 40-41). That is significant because according to Mr. Thomas, the site should be testing for all contaminants that will affect drinking water, and there is no indication that the Applicant will do so. (C.00188, p. 40). Because of the many

deficiencies and ambiguities in the ground water monitoring system proposed, it clearly will not be successful in determining if contamination is, in fact, being caused by the transfer station, and the facility is not, therefore, properly designed to protect the health, safety and welfare.

The proposed transfer station is also inconsistent with criterion (ii) because it is not designed to adequately protect against storm water contamination, which can, in turn, lead to ground water contamination. Mr. Sutherland, an environmental engineer, testified that the design of the storm water system does not adequately keep potential contamination out of contact with groundwater in the area. (C.00218, p. 85). Again, as conceded by the Applicant's own expert, there is no containment or curbing around the paved areas of the site, other than the ramp areas, to prevent spills in those areas from entering the storm water system. (C.00181, p. 84). This is particularly problematic because if there is contamination in the storm water infiltration chamber, it will be then introduced into the groundwater, and will in turn flow through the groundwater at a rather rapid rate. (C.00181, p. 83). Mr. Thomas explained that the water quality catch basins that are meant to remove materials in the water are not totally effective, therefore allowing some constituents to find their way to the groundwater, thereby causing contamination. (C.00188, pp. 42-43).

The infiltration system which is part of the storm water system may also not be effective in protecting the health, safety and welfare of the public because there is no ability to stop the materials in the system from migrating into the sewer system if contamination is in fact detected. (C.00188, p. 43). Accordingly, contaminants introduced into the ground water at the sand and gravel layer could eventually find their way into the public water supply wells. (C.00188, p. 44, C.0190, p. 59). As noted by Mr. Thomas, the infiltration chamber is not designed to protect the public health, safety and welfare because once any contaminants are in the chamber, there is no

way to prevent them from moving downward. (C.00188, p. 37-38). Another problem that exists in the storm water design is that no procedures had been established regarding when and how the infiltration chamber or catch basins will be cleaned, even though such a plan is typically a component of such a system. (C.00181, pp. 83-84;C.00218, p. 79). Mr. Sutherland explained that it is necessary to be able to readily access to the catch basins so that they can be maintained and to ensure they do not become clogged with debris. (C.00218, pp. 83-84).

Moreover, the storm water system created by the Applicant does not appear to be protective of the public health, safety and welfare because under the system design presently proposed, liquids from the ramp and apron of the facility will be treated as storm water instead of contact water. Mr. Nickodem testified that water from the ramps is routed directly into the storm water system. (C.00215, pp. 11-12). This presents a problem in that water from those ramps may be contaminated by waste, as well as liquids from the trucks, such as fuel, oils or grease. (C.00215, p. 12). That mix of liquid contaminants and storm water would then be pumped directly into the storm water collection system, which is inappropriate. *Id.* Likewise, contamination of storm water can occur from liquids that fall on the apron of the facility, as those liquids will also be treated as storm water under the current design. (C.00188, pp. 38-39; C.00215, pp. 21-22). Treating those liquids as storm water will substantially increase the likelihood of contamination. (C.00188, pp. 38-39). Because of this risk of contamination, most transfer stations are designed with a slope built into the apron area so that water that falls onto that area is treated as contact water, not storm water. (C.00215, pp. 22-23).

The Applicant's experts seemed to contend that groundwater pollution would not be a problem for this site because the site will be relocated above a layer of Tiskilwa till, which has a low permeability factor. (C.00187, p. 39). However, other testimony revealed it was less than

clear that this "very low permeability clay liner" even exists under the site because no cross-section of site-specific geologic conditions was provided (C.00187, p. 53;C.00224, pp. 94-95), which seems to suggest that the Applicant is unsure of what the geology under the site consists of. Additionally, no borings were taken below 30 to 35 feet to determine if an adequate layer of highly impermeable clay actually lies below the sand and gravel layer at the site. (C.00187, p. 60; C.00224, p. 9). Moreover, the certain well logs produced for nearby sites do not show the presence of the Tiskilwa till layer. (C.00224, p. 30).

Even if the Tiskilwa till layer were present in the areas surrounding the site, this would not conclusively establish that the till was sufficiently present under this particular site, as the Applicant's own witnesses explained that Tiskilwa till is absent in some areas, and, unless this area were already mapped, there would be no way of knowing if this was an area where till was absent. (C.00224. p. 33). Mr. Dorgan also admitted that there are naturally occurring holes in that layer, which may possibly exist on this site. (C.00199, pp. 69-70; C.00224, pp. 70-71). He admitted that no studies were done on the site itself to determine if the till layer was present. (C.0199, pp. 82-83). If the Tiskilwa till layer is not present beneath the site, the groundwater will be able to quickly move to other areas because sand and gravel less able to retard than clay. (C.00224, p. 94).

Again, even if this clay till layer is located under this site, this does not establish that groundwater would not be able flow beyond the site itself, as while a layer of clay till can slow down the flow of water, it will not necessarily completely prevent groundwater migration. (C.00188, pp. 31-32). In fact, the Tiskilwa till layer does not seem to be as impermeable as the Applicant's experts suggested, because the Tiskilwa till in this general area is actually made up of approximately 70% sand and silt, and only about 30% clay. (C.00224, p. 24). Mr. Thomas

estimated that it could take only a few months to a few years for contaminants introduced into the uppermost aquifer to travel through the till. (C.00189, pp. 22-23, C.00190, p. 80). Therefore, if contamination does find its way into the uppermost aquifer, it will eventually flow somewhere beyond the site, in turn adversely affecting the public health, safety and welfare.

4. The McHenry County Board correctly found that the facility would not be so operated to protect the public health, safety and welfare because it will not be operated to control noise, odors or litter.

The testimony presented at the siting hearing by the witnesses, as well as the Applicant himself, establish that the facility was not proposed to be operated in a way that will protect the health, safety and welfare of the public. First and foremost, the Applicant admitted that he has no experience with transfer stations, and does not know who the operator of this transfer station will be. (C.00200, pp. 20, 78; C.00202, p. 41, 59). Because of the Applicant's lack of experience, he admittedly is relying on others to set up a "safe and efficient" operation. (C.00201, p. 62). Because the Applicant himself is clearly not assuming direct responsibility for establishing a "safe and efficient" operation, but, instead, is relying on other unknown individuals to do so, the Applicant clearly failed to establish that the operations of the facility will be protective of the public health, safety and welfare. The testimony at the siting hearing also established that the operations of the facility will not be performed in a way that will protect the public health, safety and welfare because the Applicant's plan of operations shows that potential impacts, such as odor, noise, and litter will not be effectively controlled.

The evidence demonstrated that the facility as proposed would not be operated in a way that protects neighbors from odors. The evidence presented at the hearing showed that surrounding properties will be adversely affected if odors are present on the site because the prevailing winds blow from and across the facility to The Hollows and the Plote property. (C.00182, p. 44). There will clearly be odors present at the site because inadequate protections

were proposed to prevent, or at least minimize, such odors. As noted by the Applicant's own witness on the plan of operations for the facility, the tipping floor of the facility will be washed with water only once a week even though literature, including a document on waste transfer stations published by U.S.E.P.A., specifically provides that the tipping floor should be washed daily to reduce odors as well as the threat of vectors. (C.00181, pp. 49-50, 74-76). Mr. Gordon also admitted that no misting procedures will be used to keep down odors and dust, even though misting is used at a number of other transfer stations and can significantly reduce odors. (C.00181, pp. 76-77; 00215, p. 67). In spite of the fact that the Applicant's own expert expects that odors will emanate to neighboring properties, particularly the Plote property (C.00183, p. 59), the Applicant has not created adequate operational safeguards to help minimize that odor, and have, therefore, not created a plan of operation that will adequately protected the health, safety and welfare of the public.

Another feature missing from the operating plan of the Applicant is an adequate litter monitoring and control plan. It is undisputed that a transfer station will cause litter to find it ways to surrounding areas, which is why the Applicant has hired someone who will pick up litter. However, the area to be covered by the litter patrol is inadequate, because according to the Applicant itself, the litter patrol will only cover the areas that the Applicant "believes" are directly affected by transfer station operations. (C.00203, pp. 13-15). Mr. Gordon recommended that litter be patrolled within a half-mile radius of the site (C.00186, pp. 18-19). Mr. Lowe, on the other hand, specifically stated that he would not be willing to patrol for litter one-half mile in either direction because he did not believe that the transfer station would cause a litter problem that far away, and thought it would be "grossly unfair" to require him to patrol that distance. (C.00203, pp. 13-15). As such, there was a direct conflict in opinion on this issue

between Mr. Lowe and his own expert. Moreover, it is evident that Mr. Lowe is very reluctant to take responsibility and ensure a litter problem does not arise. Consequently, the plan of operations of this facility is not consistent with criterion (ii) because the presence of litter will adversely affect the public health, safety and welfare, and the Applicant has made clear that he will only take responsibility for and clean up only that amount of litter that he deems reasonable.

Another problem with the operations of the facility is the lack of planning for noise prevention and/or control. In fact, the Applicant never even quantified the noise level that will be present at this site (C.00215, pp. 28-29; C.00182, p. 25), even though Mr. Zinnen specifically stated that noise is an area of concern that needs to be addressed at transfer stations (C.00182, p. 24). The noises that are abundant at transfer stations such as the one proposed in this case include those from the diesel truck engines as well as beepers which sound on vehicles when they back up. (C.00184, pp. 68, 70). According to Applicant's own expert, sounds from these back-up alarms can reach as high as 100 decibels, and are "horrible for neighbors." (C.00186, pp. 8, 66). Again, despite the concerns about those noises, no noise expert was ever called by Applicant to testify as to mitigation measures that would be employed, and Applicant's witnesses who did testify had no idea what noise level would be present at the boundary of the facility and neighboring properties. (C.00186, pp. 9-10).

The level of noise presented at this site is particularly problematic because there is very little buffer between surrounding neighbors (such as The Hollows), and the transfer station, which is why Mr. Nickodem suggested building a concrete wall between the station and The Hollows to keep out as much noise as possible. (C.00215, p. 64-65). Presently, the only buffer suggested between the transfer station buildings and The Hollows is ground vegetation or trees. (C.00182, p. 23). Mr. Gordon also admitted that there were sound barriers other than trees that

could be used to lessen sound to neighbors, such as barrier walls. (C.00186, p. 10). Mr. Nickodem saw no reason why such a wall should not be built to separate those properties and minimize the effect on The Hollows. (C.00215, p. 64-65). However, no barrier wall is planned for this site. Additionally, no other provisions are planned for the site that will lessen or reduce the amount of noise that will come from the operations of the facility.

For all the reasons set forth in detail above, the testimony and evidence presented at the siting hearing clearly establish that the decision of the McHenry County Board with respect to criterion (ii) was appropriate. This was not a situation like that presented in *Industrial Fuels & Resources/Illinois, Inc. v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 546, 592 N.E.2d 148, 157 (1st Dist. 1992), where there was "no evidence of record to demonstrate that the design of the facility is flawed from a public safety standpoint or that its proposed operations present an unacceptable risk to the public health safety, safety and welfare." In the present case, more than ample evidence was presented to establish that the location, design and proposed plan of operation for this facility were not adequate to protect the public health, safety and welfare. Therefore, it was clearly proper for the McHenry County Board to deny siting approval to the Applicant based on criterion (ii).

C. THE MCHENRY COUNTY BOARD PROPERLY FOUND THAT THE APPLICANT FAILED TO SHOW THAT THE FACILITY IS SO LOCATED TO MINIMIZE THE INCOMPATIBILITY WITH THE CHARACTER OF THE SURROUNDING AREA AND TO MINIMIZE THE EFFECT OF THE VALUE OF THE SURROUNDING PROPERTY.

Section 39.2(a)(iii) of the Act, also known as criterion (iii), provides that the County Board shall approve the site location suitability for a new regional pollution control facility only if "the facility is located so as to minimize the 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. This criterion requires an applicant to demonstrate more than minimal efforts to

reduce the landfill's incompatibility. *File v. D & L Landfill, Inc.*, 219 Ill.App.3d 897, 907, 579 N.E.2d 1228, 1236 (5th Dist. 1991). An applicant must demonstrate that it has done or will do what is reasonably feasible to minimize the incompatibility. *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board*, 123 Ill.App.3d 1075, 1090, 463 N.E.2d 969, 980 (2d Dist. 1984). In the present case, conflicting evidence was presented with respect to criterion (iii) by Mr. Frank Harrison, Mr. Larry Peterman, Mr. N. Drew Petterson, Mr. Cameron Davis, and Mr. John Whitney. However, the evidence adduced in this case squarely supports the findings of the County Board that the Lowe Transfer Station was not designed to minimize the incompatibility with the surrounding area and minimize the effect of the transfer station on the value of the surrounding properties.

Mr. Cameron Davis, the Village of Cary Administrator, testified that the Lowe Transfer Station negatively impacts the character of the surrounding area, specifically property that is currently incorporated in the Village of Cary. (C.00205, p. 65). Mr. Davis also testified at length regarding the compatibility of the transfer station with the Cary Centennial Comprehensive Official Plan ("Comprehensive Plan"). The Comprehensive Plan indicates that the surrounding properties were to be primarily for residential and recreational uses. (C.00205, p. 21). Specifically, the Comprehensive Plan indicates that the gravel mining area on the north side of Route 14 at Three Oaks Road, near the proposed Transfer Station, was to be redeveloped into multiple family and commercial uses. (C.00402, p. 29). The Comprehensive Plan also encompasses the area where the proposed transfer station was to be located. (C.00402, p. 35).

In examining the surrounding area, Mr. Davis explained in detail how the transfer station was incompatible with the Plote property and the Kaper development. During the public comment period after the Committee hearings, the Village of Cary annexed the Plote property,

which it zoned R-1. (C.04132-4174, C.07175-7182). Prior to the annexation, the proposed transfer station was to be located approximately 1300 feet from a residential subdivision. (C.00182, p. 28). After the annexation, the proposed transfer station would be directly adjacent to an area zoned exclusively for residential development. Mr. Davis described negotiations and discussions concerning the Plote property, noting that the Village and Plote had been in talks to annex the property for an extended period of time. (C.00205, p. 23). These discussions were regarding the annexation of the property into the Village of Cary; zoned for a residential and commercial development. (C.00205, pp. 27-29). In addition, Mr. Lowe acknowledged that he knew of these on-going discussions between Plote and the Village, and even attempted to expedite his Application in hopes that the transfer station would be sited before the annexation occurred. (C.00202, p. 20). Impliedly, Mr. Lowe then knew the transfer station was incompatible with the other planned developments in the surrounding area. Mr. Davis concluded that the transfer station would not be compatible with the new high quality residential development which was to occur in accordance with the Comprehensive Plan. (C.00205, p. 76) Moreover, Mr. Larry Peterman, the Applicant's own witness, admitted that he could not recommend to a client that the Plote property be developed under a multi-family residential use scenario next to the proposed transfer station. (C.00194, p.14).

Mr. Davis also discussed the impact the transfer station was having on the Kaper development and how the proposed transfer station was incompatible with it. The Kaper development is directly across the street from where the proposed transfer station would be located, and interestingly enough, was never raised or discussed in the Lowe Application. (C.00205, pp. 9, 15). The concerns expressed to Mr. Davis by potential developers of the Kaper development were "how close it is, smells and things of that nature." (C.00205, p. 15). The

proposed transfer station, in Mr. Davis' opinion, was impeding the development of that property. (C00208-23). Specifically, Mr. Davis stated that having direct and immediate contact with a waste transfer station, dealing with the kind of volume and traffic surrounding the transfer station, and the stigma attendant to garbage smells in the area were just a few of the items impeding development. (C.00208, p. 24). Also, the Applicant's own expert, Mr. Frank Harrison, agreed that the perception of the transfer station could impact the surrounding property values and attach a stigma to the property. (C.00193, p. 29, C.00194, p. 5). This stigma, affecting housing developments and property values, provides ample support for the County Board's determination that the transfer station was not compatible with the surrounding area, and is directly incompatible with the Comprehensive Plan calling for high end residential development on adjoining parcels.

Mr. Davis also indicated that the Lowe Transfer Station would not be compatible with the Comprehensive Plan because it was not fulfilling the need for a recycling facility in the area. (C.00205, pp. 30-41). In addition, under another criteria included in the Comprehensive Plan, the proposed transfer station would not be compatible as the transfer station would be located at the gateway of the Village of Cary. (C.00205, pp. 51-52). Mr. Larry Peterman, the Applicant's own expert, admitted that he would not advise a client to develop a transfer station at the entrance to a city or town such as Cary. (C.00193, p. 96).

The transfer station, in addition to being directly incompatible with the commercial and residential neighborhoods in the area, is incompatible with the remaining land surrounding the site; namely, the Hollows. Mr. N. Drew Petterson, an urban planner, offered his evaluation of the compatibility of the Lowe Transfer Station in this regard. Mr. Petterson specifically stated that it was his conclusion that "the proposed transfer station land use is incompatible with the

adjacent Hollows uses because of the added noise, litter, odor, fumes, use of trucks either waiting to access the facility or waiting to exit onto Route 14. All of these impacts are not consistent with the recreation uses that are offered on that site." (C.00208, p. 89). Mr. Petterson also added that his review of the current land use in McHenry County 2010 Plan and the Cary Comprehensive Plan indicated that the proposed Lowe Transfer Station would be inconsistent for the appropriate future use for the subject property. (C.00208, p. 97).

The second part of criterion (iii) requires the transfer station to be located so as to minimize the effect on surrounding property values. Testimony was elicited from Mr. John Whitney regarding the effect of the Lowe Transfer Station on the surrounding property values. Mr. Whitney offered his opinion that the lack of comparable studies regarding the impact of transfer stations on residential use indicates that an inherent incompatibility exists. (C.00220, p. 33). In Mr. Whitney's opinion, residential properties and waste transfer stations in close proximity thereto are just not compatible. In fact, a study performed by Mr. Harrison, the Applicant's own appraiser, of the Princeton Village subdivision, bears this point out. However, Mr. Whitney also demonstrated that Mr. Harrison's evaluation of the surrounding property values in the study did not adequately address, from an appraisal standpoint, whether the proposed Lowe Transfer Station facility was located to minimize the effect of the value of the surrounding property. (C.00220, p. 28). Mr. Whitney testified that Mr. Harrison did not remove all of the other influences on the property value so as to sufficiently isolate the actual effect of a transfer station on adjoining property values in his report. (C.00220, pp. 30-31). In doing so, Mr. Harrison's report and testimony that the property values of residential homes surrounding a transfer station were not affected by the transfer station were brought into serious question.

Again, it is the function of the County Board to assess the credibility of the witnesses, and draw its own conclusions. See *Tate*, 188 Ill.App.3d at 1022, 544 N.E.2d at 1195.

Mr. Whitney also opined that Mr. Harrison's calculated appreciation rate was incorrect. (C.00220, p. 88). Mr. Whitney declared that Mr. Harrison calculated the appreciation of average home sales, rather than correctly ascertaining the average of the appreciation rates. (C.00220, p. 88) In doing so, Mr. Harrison's appreciation rate varied 50% from Mr. Whitney's calculations. (C.00220, p. 73). Later, when pressed by Mr. Klasen, a County Board member, Mr. Whitney testified that the appreciation rate for an average home is between 5-6%. (C.00220, p. 88). Under both Mr. Harrison's and Mr. Whitney's calculations surrounding the appreciation of homes in the Princeton Village study, the appreciation rate was less than 2.5% (C.00220, p. 73). Mr. Klasen pointed out that in the Princeton Village study, 18 out of the 37 homes in the subdivision had less than a 1% appreciation rate. (C.00220, p. 88). Mr. Whitney agreed that the appreciation rate was "not good." (C.00220, p. 88).

Based upon all of this testimony, it was clearly not against the manifest weight of the evidence for the County Board to conclude that the facility was not located so as to minimize the incompatibility with the character of the surrounding area, or to minimize the effect on the value of the surrounding properties. The Board was presented with more than adequate testimony that the Lowe Transfer Station was negatively impacting the surrounding area, both in terms of future development and in terms of property valuation. Therefore, the decision of the Board that the Lowe Transfer Station was not compatible with the surrounding area was clearly not against the manifest weight of the evidence.

D. THE MCHENRY COUNTY BOARD PROPERLY FOUND THAT THE PLAN OF OPERATIONS FOR THE FACILITY IS NOT DESIGNED TO MINIMIZE THE DANGER TO SURROUNDING AREA FROM FIRES, SPILLS OR OTHER OPERATIONAL ACCIDENTS.

Under section 39.2(a)(v), also known as criterion (v), an applicant is required to establish that "the plan of operations for the facility is designed to minimize the danger to surrounding area from fire, spills or other operational accidents." 415 ILCS 5/39.2(a)(v). The McHenry County Board correctly found that this criterion was also not met by the Applicant in this case because of the lack of procedures in place to protect against fires, spills and other operational accidents.

Like criteria (ii) and (iii), there was also conflicting evidence with respect to criterion (v). The Applicant's civil engineer, Mr. Gordon, specifically testified that the Application satisfied criterion (v) (C.00179, p. 43); however, the objectors' witnesses, Mr. Thomas, Mr. Nickodem, and Mr. Sutherland, all testified that the Application did not satisfy criterion (v) (C.00189, pp. 9-10; C.00215, p. 55; C.00218, p. 80). As stated above, it is the sole province of the County Board to assess the credibility of the experts and weigh conflicting evidence. See *Tate*, 188 Ill.App.3d at 1022, 544 N.E.2d at 1195. Here, the McHenry County Board clearly did so and determined that criterion (v) was not met based upon the evidence presented. That decision cannot be against the manifest weight of the evidence in that the evidence presented at the siting hearing clearly established there are many safety concerns with respect to the proposed transfer station, which in turn shows that the facility will not be operated to minimize the danger of fires, spill and other operational accidents.

One of the major safety concerns that was repeatedly raised was the lack of adequate fire protection in the Application. The Applicant's own witness, Mr. Keith Gordon, admitted that there are no sprinklers in this facility, even though he has known of fires to occur in transfer

stations and has equipped other transfer stations with sprinklers. (C.00179, pp. 69-70, 75). Mr Gordon admitted that the possibility of a fire is real because it is possible for waste to smolder, come in contact with open air and in turn cause a fire. (C.00179, pp. 76). In fact, the possibility of a fire in this transfer station is much greater than the risk in most other transfer stations because the trucks will be fueled inside the building, which is something that is not typically done inside transfer stations (C.00215, p. 30, pp. 91-92). As explained by Mr. Nickodem, the reason that fueling is not typically done inside buildings is specifically due to the risk of fire. (C.00216, pp. 24-25, 28-29). Despite the increased risk of fueling inside, the transfer facility does not have sprinklers, but merely has hand-held fire extinguishers, which Mr. Nickodem stated were "insufficient" because they would only be sufficient to address very small fires. (C.00215, pp. 31-32, 00216, p. 9). Additionally, there is an increased risk of fire due to the proximity of The Hollows because of numerous trees located along the property line. (C.00215, p. 32-33). Another concern with respect to fire protection is where water necessary to fight a fire in the facility will come from, as the transfer station is not located in close proximity to any fire hydrants, and the site has no other major source of water. Mr. Zinnen admitted that he did not know where the water to fight a fire would come from because there is no storm water retention pond on the site; he simply assumed that the fire trucks would be able to supply an amount of water sufficient to put out any fires that may occur. (Cl.00179, pp. 78-79). However, no expert was offered by the Applicant on this issue.

Another major safety problem that demonstrates this facility does not have an adequate plan of operations that will protect against fires, spills and other accidents is the lack of spill protection for the site. According to the Applicant's own expert, the Applicant does not yet have a spill prevention plan. (C.00179, p. 84). The Applicant has also failed to determine who to

contact in the event of a spill or other emergency on the site. (C.00180, pp. 14-15). In fact, the Applicant himself stated that he would not know what to do in the event of a spill or other emergency on site. (C.00201, p. 19).

Furthermore, the Applicant has failed to put into place measures that will help guard against spills. Mr. Zinnen admitted that there is no provision in place to shut off the flow into the storm water system if there is a spill, leak or any other evidence of contamination. (C.00181, pp. 82-83). However, the objectors' witnesses testified that such a control measure was necessary to stop the ability of contaminants to reach the ground water. (C.00216, pp. 19, 25; C.00218, p. 73) Mr. Nickodem testified that he would normally provide valves or gates in a storm water system, so that if a spill occurs, the water which has come into contact with contaminants will not go directly into the catch basin, which then goes directly into the underground system and then into the ground water. (C.00215, p. 17). Mr. Sutherland testified that some provision for spill isolation, such as a valve, to prevent a spill from entering the storm water system was necessary because without some type of spill prevention device, contaminants could be introduced into the groundwater. (C.00218, pp. 82-83). Mr. Nickodem also believed that it was appropriate to provide curbing as an additional control measure to help stop the flow of a spill onto neighboring properties. (C.00215, pp. 18-19). Because the Applicant has failed to adequately protect against the effects of spills, the Applicant has clearly failed to meet criterion (v).

The fact that inadequate safeguards were in place to minimize the threat of a spill and/or groundwater contamination to neighboring properties was also apparently clear to members of the McHenry County Pollution Control Facility Committee. At the meeting where the committee members voted on each criteria, Mr. Klasen commented that he did not believe the

facility satisfied criterion (v) because he had "major concerns about spills," especially since the water from the site would be traveling to Lake Plote and eventually to Lake Killarney. (C.07237, p. 20). As was clearly noted by the McHenry County Pollution Control Facility Committee, the facility will not adequately protect against fires, spills and other accidents.

The Applicant also fails to meet the requirements of criterion (v) because the Applicant has not set forth adequate procedures for dealing with hazardous waste (C.00215, pp. 23-27). Mr. Gordon testified that if a hazardous waste was found, the Applicant would likely call a firm that handled such material to take it away and sample it. (C.00180, pp. 32). However, no arrangement has been made with any such firm, and it is unknown whether the firm so designated could adequately address the problems which may arise. (C.00180, pp. 32-33). Mr. Nickodem testified that other transfer station sites he is familiar with have boxes in which potentially hazardous waste is locked and secured, which is safer than simply putting the hazardous waste to the side until a response contractor can makes it way to the site, as the Applicant plans to do. (C.00215, pp. 78-79, 90-91). The Applicant does not even plan to have leak-proof containers on site in which to keep the hazardous waste, but, instead, is relying on the contractor or firm it retains to provide the equipment. (C.00180, p. 29). Clearly, such a plan of operations is inconsistent with the notion of adequately safeguarding against environmental accidents, as a comprehensive and safe plan for dealing with suspected hazardous waste had not been proposed.

There was clearly ample evidence for the McHenry County Board to rely on in reaching its decision that the plan of operations was not designed to minimize the danger of fire, spills or other environmental accidents. As such, the County's decision was not against the manifest weight of the evidence and must, therefore, be upheld. *See Fairview*, 198 Ill.App.3d at 552-53,

555 N.E.2d at 1185 (explaining that as long as there is evidence to support the county's decision, the decision is not contrary to the manifest weight of the evidence).

E. THE COUNTY BOARD'S IMPOSITION OF A "HOST FEE" AS A SPECIAL CONDITION OF APPROVING CRITERION (VIII) WAS LAWFUL

This Board should not even address Co-Petitioners' contention that the County Board's imposition of a "host fee" was unlawful because that argument does not present a justiciable controversy that is ripe for adjudication. It is well-settled that a justiciable controversy is necessary for a court or tribunal to have subject matter jurisdiction over a particular matter. *See People v. Capitol News, Inc.*, 137 Ill.2d 162, 560 N.E.2d 303, (1990); Ill. Const. 1970, art. VI, § 9. However, the justiciable controversy requirement cannot be satisfied where the underlying issues in the case are premature. *Sharma v. Zollar*, 265 Ill.App.3d 1022, 1027, 638 N.E.2d 736, 740 (1st Dist. 1994). In the present case, the co-Petitioner's argument that the County Board's imposition of the "host fee" was unlawful is not ripe for adjudication because the County Board denied siting approval to the Applicant, and because of that denial, the Applicant will clearly not be required to pay any "host fee." Because any decision by this Board as to whether that host fee was lawful would have no effect on the issues it this case, any such decision would be an advisory opinion, which is strictly prohibited under Illinois law. *See Barth v. Reagan*, 139 Ill.2d 399, 419, 564 N.E.2d 1196, 1205 (1990). If, however, this Board does address Co-Petitioners' argument regarding the County's imposition of a host fee, for the reasons set forth below, it is clear that the County Board's imposition of the host fee was lawful.

The imposition of a condition is specifically authorized by Section 39.2(e) of the Environmental Protection Act. Section 39.2(e) of the Act specifically provides that a County Board "may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board."

415 ILCS 5/39.2(e). Section 39.2(e) specifically allows a local unit of government to negotiate and enter into a host agreement with a local siting applicant, and requires the terms and conditions of that agreement to be disclosed and made a part of the hearing record. 415 ILCS 5/39.2(e).

Illinois has also determined that economics is a relevant consideration under Section 39.2, and it is within the local siting authority's discretion to consider it. *See Concerned Adjoining Owners v. Pollution Control Board*, 288 Ill.App.3d 565, 535, 680 N.E.2d 810, 817 (5th Dist. 1997). Pursuant to criterion (viii) of section 39.2 of the Act, the McHenry County Board was required to consider the economic impact of the proposed transfer station and had the authority to impose a host fee that would be economically beneficial to the County. Section 39.2(a)(viii) required the County Board to determine if the transfer facility was consistent with the County's Solid Waste Management Plan, which was drafted pursuant to the Solid Waste Planning and Recycling Act. 415 ILCS 5/39.2(a)(viii). The Solid Waste Planning and Recycling Act specifically requires that counties implement solid waste management plans that evaluate the economic advantages and disadvantages of proposed waste management facilities and programs. 415 ILCS 15/4(c)(4). As a result, the McHenry County Board clearly had the authority to examine the economic impact that the transfer station would have on the County and was justified in determining that a reasonable host fee was required. Accordingly, it is lawful for the County Board to impose a host fee as a special condition of approving criterion (viii) under Section 39.2.

Furthermore, the imposition of a host fee was authorized because the host fee was proposed by the applicant himself, and Mr. Lowe specifically agreed to accept a condition of a host community payment equal to what the evidence showed was necessary to defray the impact

of the facility on the County. (C.00203, pp. 26, 28). During his testimony, and consistent with the proposal set forth in the Executive Summary portion of the Application, Mr. Lowe suggested a host fee of 40¢ per ton to the County, 10¢ per ton to the Defenders, and 10¢ per ton to a scholarship fund. (C.00203, p. 23). Mr. Lowe testified that it was his intention in making the host community pledge to offset any cost or impact that the County may incur or experience as a result of the operation of the transfer station. (C.00203, p. 25). Mr. Lowe stated it wasn't the Applicant's intention to cost the County any money to inspect or maintain the facility. (C.00203, p. 27). Mr. Lowe specifically stated, "I wouldn't have a problem if the County got into this and found out that they couldn't do it for [40¢ per ton]. I wouldn't have any problem with increasing [40¢ per ton]." (C.00203, p. 25). Mr. Lowe went on to state that he would not have a problem with a cost of living increase in the host fee. (C.00203, p. 28).

According to this testimony, it is clear that Mr. Lowe had agreed to pay a host fee as a special condition of approving criteria (viii). Mr. Lowe's testimony showed considerable flexibility in determining the reasonableness of the host fee. Mr. Lowe left it to the County Board to decide how much the host fee should be to cover the costs incurred in addressing impacts associated with the transfer station. Therefore, the host fee was authorized and lawful.

The imposition of a $1.90 per ton host fee is clearly reasonable to offset the costs of the County. The McHenry County staff, which includes staff from the McHenry County Planning and Development, the McHenry County State's Attorney's Office, the McHenry County Department of Environmental Health, and Patrick Engineering, Inc., reviewed the Application for Siting Approval for the Lowe Transfer Station and made recommendations to the County Board regarding the host fee. (C.03889-3890). The County staff believed that the 40¢ per ton originally offered to the McHenry County Board as a host fee by Mr. Lowe was insufficient. *Id.*

The County staff found that additional fees were required to minimize the financial burden on the County for inspections and to provide disposal alternatives to the citizens of McHenry County. *Id.* The County staff recommended that the Pollution Control Facility Siting Committee implement a reasonable host fee similar to other fees required in the region in the amount of $1.90 per ton. *Id.*

In determining the appropriate host fee amount, the staff relied on two host fees figures in place in the relevant geographical area. *Id.* The first host fee agreement was the DuPage County Generic Host Community Benefit Agreement. (C.03898-03929). That Agreement provided for fees of at least $1.68 per ton in 2002, $1.69 per ton in 2003, and a $1.70 per ton fee plus an increase based upon the Consumer Price Index or Urban Consumers (CPI-U) in 2004 and each year thereafter, with no downward adjustment. (C.03911-03914). The other host fee agreement relied upon by the County staff was an agreement between Onyx and the City of Batavia, which provides for fees of $1.90 for the first 400 tons of waste received per day and a $2.00 for every ton in excess of 400 tons. (C.03938-03945). This host fee was also adjusted upward annually based upon the CPI-U. (C.03942). Both host fee figures were clearly designed to fairly offset the impact of proposed transfer stations upon the local unit of government in question.

Based upon the staff recommendations, the County Pollution Control Facility Siting Committee determined that a fee of $1.90 per ton, with a yearly increase based upon the CPI-2 was reasonable and commensurate with the evidence. (C.07237, p. 35). Keeping in mind that Mr. Lowe stated that he would be willing to pay a fee that increased yearly in an amount that the County thought was necessary, and was willing to pay a host fee which would alleviate any burden on the County for the transfer station, the County Board's decision to impose a host fee

of $1.90 per ton was reasonable and within its discretion. Therefore, Petitioner's claim that the host fee was unauthorized and unlawful must fail.

F. THE MCHENRY COUNTY BOARD LAWFULLY APPLIED THE UNNUMBERED CRITERION OF SECTION 39.2(a) OF THE ACT

Petitioner contends that the County Board unlawfully considered the Applicant's previous operating experience and past record of convictions or admissions of violations. However, that is clearly not the case, as Section 39.2(a) of the Illinois Environmental Protection Act specifically allows county boards or other governing bodies to consider these factors in conjunction with criteria (ii) and (v) set forth in section 39.2(a). *See* 415 ILCS 5/39.2(a). As set forth in 39.2(a), "the county board or the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations in the field of solid waste management when considering criteria (ii) and (v) under this Section." 415 ILCS 5/39.2(a).

Additionally, case law from the appellate courts as well as the IPCB have established that it is appropriate for a county board or local governing body to consider an applicant's previous operating experience. *See Medical Disposal Services, Inc. v. Environmental Protection Agency*, 286 Ill.App.3d 562, 677 N.E.2d 428 (1st Dist. 1997) ("[S]ection 39.2(a) of the Act permits localities to consider the applicant's previous operating experience."); *Saline County Landfill, Inc. v. Illinois Environmental Protection Agency*, PCB 02-108, slip op. at *14 (April 18, 2002) (same). The PCB in *Saline County* explained: "Pursuant to section 39.2(a) . . . localities are to approve not just the site's location and the facility but also the operator of the facility." PCB 02-108, slip op. at *14. The County Board of McHenry County did just that in considering the operating experience of the Applicant in this case.

Paragraph J "Unnumbered Criterion" of the Resolution of the McHenry County Board Concerning the Lowe Transfer, Inc. Application for a Pollution Control Facility, dated May 6, 2003, which provides that "[t]he Board has considered as evidence the previous operating experience of the applicant and past record of convictions or admissions of violations of the applicant when considering criteria (ii) and (v) of 415 ILCS 5/39.2(a)," cannot be an unlawful application of 415 ILCS 5/39.2, as asserted by Petitioner, because it is in absolute conformity with 415 ILCS 5/39.2. In fact, the language contained in Paragraph J directly quotes the language contained in 415 ILCS 5/39.2, and, therefore, cannot constitute an unlawful application of the Act.

Furthermore, the County Board was justified in considering the Applicant's experience, or lack thereof, in determining whether the Applicant complied with criteria (ii) and (v) because the evidence presented at the hearing revealed that the Applicant, Marshall Lowe, had no experience in the operation of a transfer station, and was simply relying on other unknown individuals to run the proposed pollution control facility. In fact, throughout his testimony, Mr. Lowe repeatedly stated that he had no experience operating a transfer station. (C.00200, pp. 20, 78; C.00202, p. 41). Even more telling is Mr. Lowe's admission that he did not even read the application that he filed and signed. (C.00203, p. 48). Rather, Mr. Low stated that he merely relied on other people to make sure it was accurate and completed. *Id.* Mr. Lowe further admitted that he had no employees trained in solid waste handling and transfer (C.00200, pp. 27, 79) and had "no clue" who would be the operator of the transfer station. (C.00202, pp. 59). In fact, he admitted he would rely on others to find "qualified" people to run the operation, because he himself would not be able to determine who would be "qualified" (C.00200, p. 20). Lowe also conceded he was relying on others to set up a "safe and efficient" operation. (C.00201, p.

62). He admitted that he did not know what he would have to do to properly respond to a spill or similar problem at the transfer station. (C.00201, p. 19). The only other officer in his corporation, Lowe Transfer, is his wife, who also has no experience in the area of solid waste transfer. (C.00202, p. 39).

Clearly, the McHenry County Board had the discretion (and, more importantly, the obligation to its citizens), under Section 39.2(a) of the Act to consider all of the statements made by Mr. Lowe regarding his lack of experience with solid waste transfer stations. As was made clear throughout Mr. Lowe's testimony, he had absolutely no experience with transfer stations, and had no idea how to run a transfer station. Because Section 39.2(a) allows county boards to specifically take that factor into consideration, the McHenry County Board was certainly justified in doing so, and subsequently concluding that Mr. Lowe's lack of experience would negate the Applicant's ability to satisfy criteria (ii) and (iv).

Moreover, the County Board was also entitled to consider the Applicant's experience in his present business, which may or may not constitute solid waste management, because it is germane to his Application and is relevant in ascertaining how Mr. Lowe would operate this facility. In fact, it was Mr. Lowe himself who brought up his operation of his current business, Lowe Enterprises, in an attempt to establish what kind of waste transfer operation he would run. Lowe touted his current business operation, explaining that he has received no complaints from neighbors, has exceeded the requirements set forth in the County code, and has been told that his materials recycling site is one of the two cleanest in the United States. (C.00200, pp. 18-19; C.00200, pp. 32-33). Because Mr. Lowe and his counsel brought up Lowe Enterprises and Mr. Lowe's operation of that business, it was clearly appropriate for Mr. Lowe to be cross-examined about the operation of Lowe Enterprises. *See People v. Fontana*, 251 Ill.App.3d 694, 702, 622

N.E.2d 893, 869 (2d Dist. 1993), quoting *People v. McCarthy*, 213 Ill.App.3d 873, 883, 572 N.E.2d 1219, 1226 (4th Dist. 1991) ("The proper scope of cross-examination extends to all matters raised on direct examination, including all matters which explain, qualify or destroy the testimony on direct examination.").

Mr. Lowe's testimony and cross-examination by Ms. Angelo, attorney for the Village of Cary, revealed that he may be violating a number of environmental regulations in his current business. First and foremost, Mr. Lowe admitted that he does not have a solid waste permit, but has only an air permit. (C.00200, p. 37). Moreover, a solid waste permit may in fact be required by section 21(d) of the Act for Mr. Lowe's current business. 415 ILCS 5/21(d). Furthermore, Mr. Lowe admitted that he has probably not followed the requirements of section 22.38 of the Act, 415 ILCS 5/22.38, which may apply to him, because he fails to: (1) follow certain procedures in shipping recycled materials offsite within six months, 415 ILCS 5/22.38(b)(4); (2) sort and dispose of non-recyclables within 72 hours, 415 ILCS 5/22.38(b)(2); (3) take less than 25% non-recyclables, 415 ILCS 5/22.38(b)(3); (4) control noise, 415 ILCS 5/22.38(b)(7); control storm water runoff, 415 ILCS 5/22.38(b)(8); (5) keep certain records and do certain labeling to show compliance, 415 ILCS 5/22.38(b)(6); and (6) control access to the facility, 415 ILCS 5/22.38(b)(9). (C. 00200, pp. 30-36, 44, 53-57). Lowe also admitted he allows contractors to dump waste in his facility after hours by leaving the gate opened at all times. (C.00200, pp. 47-48, 53-56). These are just a few of the environmental regulations that Mr. Lowe may be violating in his current business, Lowe Enterprises, and it was absolutely appropriate for the County Board to consider these possible violations in determining whether the proposed facility would meet the requirements set forth in criteria (ii) and (v) of section 39.2 of the Act.

Even if in fact Mr. Lowe does not violate any environmental rules, statutes or regulations in his current operation of his business, the cross-examination of Marshall Lowe was still relevant, and could be considered by the County Board because it revealed that Mr. Lowe had absolutely no knowledge about Illinois environmental regulations and laws, and had little or no interest or intention of becoming informed about them. In fact, he admitted that he has taken no steps to ensure that his current business is in compliance with Illinois Environmental Protection Agency land regulation and has never asked Illinois Environmental Protection Agency Bureau of Land if he needs to provide notices or information to that division (C.00200, p. 37). Mr. Lowe has not provided any notice to any department of the Illinois Environmental Protection Agency other than the Bureau of Air (C.00200, p. 57) and suggested that it would be the EPA's responsibility to let him know what was required under the Illinois Environmental Protection Act. (See C.00200, p. 41). Such testimony can certainly be considered by the County Board in determining whether the Applicant is likely to abide by the laws and regulations which relate to the proposed pollution control facility.

For the reasons set forth above, it was entirely appropriate for the County Board to consider the previous operating experience of the Applicant as well as the Applicant's general attitude about complying with environmental regulations in general. Consequently, the County Board clearly did not apply Section 39.2(a) in an unlawful manner.

G. THE MCHENRY COUNTY BOARD PROPERLY SET FORTH THE REASONS FOR ITS DECISION ACCORDING TO SECTION 39.2.

Petitioners claim that the record fails to show any basis for the County Board's decision denying Petitioner's Request for site location approval for a municipal waste transfer station. Petitioners infer a violation of Section 39.2(e) of the Act, which states that the decision of the County Board must be in writing "specifying the reasons for the decision." 415 ILCS 5/39.2(e).

An examination of the record in this instance shows that the County Board properly announced the reasons for its determination.

It has been held that so long as a decision is in writing and a record has been made of the decision, neither a detailed statement finding specific facts, nor a detailed explanation of the relationship between the facts, the criteria, and the conclusions is necessary. *E & E Hauling, Inc. v. PCB*, 451 N.E.2d 555 (2d Dist. 1983), *aff'd* 107 Ill.2d 33, 481 N.E.2d 664 (1985); *Clutts v. Beasley*, 541 N.E.2d 844 (5th Dist. 1989); *Sierra Club v. City of Wood River*, 1995 WL 599852 (Oct. 1995). The decision can be framed in the language set out in the statute. *See id.*,

E & E Hauling defined what was required under Section 39.2(e). The court held that "nothing in the statute required a detailed examination of each bit of evidence or a thorough going exposition of the County Board's mental processes." *E & E Hauling*, 451 N.E.2d at 577. All that is required of a County Board is to "indicate which of the criteria, in its view, have or have not been met, and this will be sufficient if the record supports these conclusions so that an adequate review of the County Board's decision can be made." *Id.* at 578. Here, the Resolution clearly established what criteria the Board determined had and had not been met. Therefore, the County Board decision is sufficient under Section 39.2(e).

In *Clutts*, the court examined a county board's written decision, which did not include specific findings of fact, and determined that it was adequate under both the provisions of the statute and under the prior holding of *E & E Hauling*. *Clutts*, 541 N.E.2d at 845. The *Clutts* court went on to state the criteria set forth are the factual as well as the ultimate findings made by a county board. *Id.* According to the court, the purpose of the criteria is to impose standards, so a decision is made with some degree of guidance and consistency, rather than arbitrarily or by whim. *Id.* In *Sierra Club*, the Illinois Pollution Control Board found that the general language in

a city's resolution denying an application stating "all applicable requirements of Section 39.2 and the Siting Ordinance have been met" was sufficient. *Sierra Club*, at p. 9.

The Resolution adopted by the McHenry County Board states that the County Board reviewed "the Application, all expert testimony, all lay testimony, all exhibits, the hearing record as a whole, all public comments, the proposed Findings of Fact and Conclusions of Law, the record of the proceeding as a whole, and all relevant and applicable factors and matters." (Resolution No. R-200305-12-104; See Exhibit A contained in Lowe's Petition for Hearing). The resolution goes on to address each individual requirement under Section 39.2, and each criterion contains a yes/no vote tally. *Id.* A voluminous record of the siting application hearings exists as the hearing itself lasted 13 days, during which thousands of pages of exhibits were offered. Under existing Illinois and PCB caselaw, it is clear that the record supports the determination and Resolution of the McHenry County Board, and Petitioner's request to reverse the determination of the Board for failing to set forth its reasons for its determination should fail.

Furthermore, an examination of the record shows that the County Board voted on and discussed each and every issue under the siting criteria prior to denying the application. The Regional Pollution Control Facility Committee transcript shows that any concerns or questions were raised and comments were made for each criterion included in Section 39.2.

Board Member Klasen initially raised concerns over siting criterion (i), involving the primary service area of the facility. Klasen was concerned that the primary service area included counties other than McHenry County. (C.07237, p. 10-13). Klasen also raised the issue of the facility being located next to a sensitive natural resource, and therefore believed that the facility was not so designed, located and proposed to be operated to protect public health, safety, and welfare as required by criterion (ii). Klasen specifically stated that he was not "sure that

something adjoining and abutting a sensitive area like this should be approved." (C.07237, p. 14-16). Klasen also raised concerns relating to criterion (iii), and expressed extreme concern that an owner of a home would sell it for a negative profit margin, after only owning the house for 66 months. (C.07237, p. 17). Specifically, Klasen was concerned that the majority of homes in the comparison study offered into evidence at the hearing lost money. (C.07237, p. 18). Klasen concluded that he could not find compliance with criterion (iii) had been demonstrated in light of his observations and conclusions. (C.07237, p. 18).

Criterion (v), which is directed to minimizing the danger to the surrounding area, was also addressed, and major concerns were raised about spills entering local waters. (C.07237, p. 20-22). Again, the issue of the transfer station being located next to an environmentally sensitive area was discussed. (C.07237, p. 22). The traffic issue, criteria (vi), was addressed and approved subject to certain conditions, each of which was discussed prior to their adoption. (C.07237, p. 23-27). Mr. Klasen stated that he could not support criterion (vi) where no finding for improvements according to IDOT's plan were made for "probably the worst intersection in this County." (C.07237, p. 26). Criterion (viii) was also approved with conditions after a brief discussion concerning whether the record would support a determination for a host fee of $1.90 per ton. (C.07237, p. 28-36). Finally, the Committee Transcripts show a final vote of 6-0 that the findings and determinations of the Committee were based only upon the record, and the record in its entirety. (C.07237, p. 40-41). In addition, in denying the siting application, the full County Board voted 21-0 that the Board based its decision solely upon the record. (County Board Meeting Tr. p. 50-53).

These transcripts clearly show that the County Board examined and deliberated each of the criteria set forth in Section 39.2 in making its determination to deny Petitioner's siting

application. Both the Committee and the full County Board made their decisions based upon the record. There is ample evidence in the record to support the McHenry County Board's determination and, therefore, Petitioner's request to reverse the County Board's decision should fail.

H. THE MCHENRY COUNTY BOARD PROPERLY SET FORTH THE REASONS FOR ITS DECISION ACCORDING TO THE MCHENRY COUNTY REGIONAL POLLUTION CONTROL FACILITY SITING ORDINANCE.

Paragraph 4(e) of the petition alleges that the Board did not comply with the McHenry County Regional Pollution Control Facility Siting Ordinance as the Board did not specify the reasons for its decision in denying the siting application. A review of the Ordinance shows that the Board did not violate the Ordinance and adequately set forth reasons for its determination.

As a preliminary matter, case law shows that the Illinois Pollution Control Board will not review procedures employed in a siting proceeding to determine if they are in compliance with a local siting ordinance, nor will it compel performance of a local ordinance. *See Residents Against a Polluted Environment*, PCB 96-243, slip op. at 6 (Sept. 19, 1996); *Smith v. City of Champaign*, PCB 92-55, slip op. at 3 (Aug. 13, 1992). As such, Petitioner's request that the PCB examine the County Board's decision to determine if it complies with the provisions of a local siting ordinance is inappropriate.

Nevertheless, even if the Pollution Control Board does examine the County Board's decision for compliance with the Ordinance, it is clear that the County Board's decision is in accordance with the McHenry County siting ordinance. The McHenry County local siting ordinance only provides that the decision shall be in writing with such specificity as to be in conformity with Section 39.2 of the Act. (McHenry County Regional Pollution Control Facility

Siting Ordinance No. 0-9412-1200-88; attached to Lowe's Petition for Hearing as Exhibit B). The ordinance states, in relevant part, as follows:

> Section 7. (b) The County Board shall make a decision based on the record from the public hearing and review of the recommendation of the Committee. *The decision of the County Board shall be in writing, specifying the reasons for the decision, such reasons to be in conformity with Section 39.2(a) of the Act (415 ILCS 5/39.2(a)).* In granting approval for a site, the County Board may impose such conditions as may be reasonable and necessary to accomplish the purposes of the Act and as are not inconsistent with regulations promulgated by the Illinois Pollution Control Board. Such decision shall be available for public inspection at the office of the County Board and may be copied upon payment of the actual cost of reproduction. If there is no final action by the County Board within one hundred eighty (180) days after the filing of the request for site approval, the applicant may deem the request approved.
>
> (c) Whether the County Board approves or disapproves of the proposed site location, a *Resolution shall be passed to that effect*, stating the reason(s) for the decision.

(Ordinance No. 0-9412-1200-88, emphasis added).

As discussed above, Section 39.2(a) of the Act requires that the reasons for a decision need not be set forth in specific detail, but rather a decision setting forth the vote for each criteria in Section 39.2 is sufficient. See discussion *supra.* The McHenry County ordinance only requires the Board's decision to comply with Section 39.2 and be in writing. (McHenry County Ordinance, Section 7(b)). This decision, according to section 7(c) of the McHenry County ordinance, is to be set forth in a Resolution.

The McHenry County Board issued Resolution No. R-200305-12-104 concerning the siting application. (See Resolution No. R-200305-12-104). The Resolution issued by the County Board in this matter is obviously in writing, and complies with the requirements of Section 39.2, as discussed previously. The Resolution denying siting approval contains a yes/no vote count for each criterion. *Id.* Therefore, Petitioner's argument that the McHenry County

Board's determination is contrary to the local McHenry ordinance is inappropriate, and its petition to reverse the McHenry County Board's determination should fail.

III. CONCLUSION

For the reasons set forth above, the McHenry County Board, respectfully requests that the Illinois Pollution Control Board uphold the County Board's decision to deny siting approval to Lowe Transfer, Inc.

Dated: August 22, 2003

Respectfully Submitted,
RESPONDENT COUNTY BOARD
OF MCHENRY COUNTY, ILLINOIS

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