

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 29 2004

VILLAGE OF SOUTH ELGIN,

Complainant,

v.

WASTE MANAGEMENT OF ILLINOIS, INC.;

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 03-106

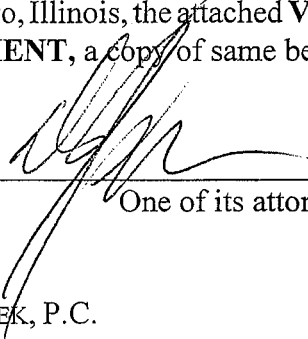
(Enforcement)

NOTICE OF FILING

To: Donald J. Moran  
Loren Blair  
Pedersen & Houpt  
161 North Clark Street-Suite 3100  
Chicago, IL 60602

PLEASE TAKE NOTICE that on April 29, 2004, I have caused to be filed with the Illinois Pollution Control Board; Thompson Center; Chicago, Illinois, the attached **VILLAGE OF SOUTH ELGIN's MOTION FOR SUMMARY JUDGMENT**, a copy of same being served upon you.

By

  
One of its attorneys

Derke J. Price  
Stephanie A. Benway  
ANCEL, GLINK, DIAMOND, BUSH, DiCIANNI & ROLEK, P.C.  
140 South Dearborn Street, Sixth Floor  
Chicago, Illinois 60603  
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CERTIFICATE OF SERVICE

The undersigned certifies that she served a copy of this Notice of Filing together with its attachment by sealing a copy of same in a duly-addressed envelope, with proper first-class postage prepaid, and depositing said envelope in the US Mail at 140 South Dearborn; Chicago, Illinois, at or before the hour of 5:00 p.m., on April 29, 2004.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109,

I certify that the statements set forth herein are true and correct.



**RECEIVED**  
CLERK'S OFFICE

**APR 29 2004**

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

VILLAGE OF SOUTH ELGIN, )  
a Municipal Corporation, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
WASTE MANAGEMENT OF ILLINOIS, INC., )  
 )  
Respondent. )

No. PCB 03-106  
(Enforcement)

**VILLAGE OF SOUTH ELGIN'S**  
**MOTION FOR SUMMARY JUDGMENT**

The Complainant Village of South Elgin (the "Village"), by and through its attorneys, Ancel, Glink, Diamond, Bush, DiCianni & Rolek, P.C., pursuant to Section 101.156 of the Illinois Pollution Control Board Procedural Rules, hereby submits its Motion for Summary Judgment and in support thereof states the following:

**I. INTRODUCTION AND STANDARD OF REVIEW**

On January 16, 2003, the Village filed its Complaint pursuant to Section 5/31(d) of the Environmental Protection Act, seeking a determination that the Respondent Waste Management of Illinois, Inc. ("WMI") is in violation of the terms and conditions of the siting permit for the Woodland III landfill expansion on the Woodland Landfill Site, granted September 13, 1988 by the Kane County Board ("County Board") via Resolution No. 88-155 - which prohibited any further expansion of or on the Site - by attempting to expand the Woodland Landfill Site by adding a second pollution control facility (a transfer station). All fact discovery relevant to this motion has been completed and no material fact exists. Summary judgment is proper if the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no

genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.

Pollution Control Board Rules ("PCBR"), §101.516 (c).

## **II. STATEMENT OF FACTS**

The Woodland Landfill sits is located in unincorporated Kane County, and is adjacent to the municipal boundary and residential neighborhoods of the Village. (Complt. & Answer, ¶2). The site, which was a former quarry, was initially established as a pollution control facility in 1976 and consists of a total of 213 acres. *Id.* In 1976, the Illinois Environmental Protection Agency ("IEPA") permitted the use of 55 acres for a landfill ("Woodland I") and in 1982 the site was expanded an additional 48 acres ("Woodland II"). *Id.*

In 1988, WMI filed an application with Kane County to expand the landfill between Woodland I and Woodland II. (Complt. & Answer, ¶3). The application detailed WMI's proposed end-use or closure plan for the site and represented that "upon completion the site will be comprised [sic] of a combination of filled land and unfilled land, which will be left, essentially in a natural state . . . A major component of the end use proposal is to allow for hiking and bicycle riding across this large open space. (Complt. & Answer, ¶9; *see also* WMI's End Use Plan, attached to Complaint as Exhibit 6).

A public hearing was held regarding WMI's application on July 26, 1988. At the hearing, counsel for WMI presented a letter dated July 8, 1988 addressed to Honorable Mayor Thomas Rolando, Village of South Elgin, Village Hall, 10 North Water Street, South Elgin, Illinois 60177. (Complt. & Answer, ¶8; *see also* relevant portion of the transcript, attached to complaint as Exhibit 5). WMI's counsel read the following into the record, among other things: "Dear Mayor Rolando: Waste Management of Illinois, Inc. will agree to the following conditions with the Village of South

Elgin, Illinois and the County of Kane upon successful siting of our application which is before the Kane County Board of Kane County, Illinois, and the issuance of an operating permit by the Illinois Environmental Protection Agency for this landfill expansion . . . Waste Management of Illinois, Inc. agrees and stipulates that this expansion will be the last expansion that we will attempt to do on this site, which is commonly known as the Woodland Landfill site.” *Id.*

At the July 1988 hearing, the WMI also introduced the testimony of Mr. Hamblin. Mr. Hamblin testified that “the Woodland III proposal encompasses the entire site and looks at a final land use plan on that land form that is a passive recreational area. It incorporates some of the surrounding facilities or surrounding land uses into the final land use plan. The original Woodland I and Woodland II final land use plans weren’t as comprehensive or detailed in their final form.” (Complt. & Answer, ¶10; *see also* relevant portion of transcript, attached to Complaint as Exhibit 7).

The Kane County Board granted siting approval pursuant to Resolution 88-155 (the “Resolution”). *Id.*; *see also* copy of Resolution, attached to Complaint as Exhibit 1. Condition 2 of the Resolution provided that “the site will be developed and operated in a manner consistent with the representations made at the public hearing on this matter held on July 26, 1988 and to all applicable laws, statutes, rules and regulations of the Illinois Environmental Protection Agency, and the Illinois Pollution Control Board, or their successors, as may be now or hereafter in effect and which are applicable to this site.” (Exhibit 1). The Resolution further provided in Condition 4 that “the site, commonly known as the Woodland Site, shall not be expanded further.” *Id.*

On June 14, 2002, WMI filed a Site Location Application (the "Site Application") seeking to site an 8.9 acre parcel of the Woodland Landfill for use as a waste transfer station. (Complt. & Answer, ¶4). After months of public hearing on the matter, on December 10, 2002, the Kane County Board denied WMI's application. (Complt & Answer, ¶5). Shortly thereafter, on January 14, 2003, WMI filed its Petition for Hearing to Contest Site Location Denial, No. PCB 03-104 (the "Petition for Rehearing"), requesting a hearing to contest the decision of the Board. *Id.*

## II. ARGUMENT

### **WMI'S PROPOSAL TO BUILD A WASTE TRANSFER STATION ON THE WOODLAND LANDFILL SITE IS A VIOLATION OF THE CONDITIONS IMPOSED BY THE KANE COUNTY BOARD**

WMI's proposal to build a waste transfer station on the Woodland Landfill Site constitutes an impermissible expansion on and of the site, in violation of the conditions imposed by the Kane County Board through its Resolution adopted on September 13, 1988. Section 5/39.2(e) of the Illinois Environmental Protection Act, 415 ILCS 5/39.2(e), provides that "[i]n granting approval for a site, the county board...may impose such conditions as may be reasonable and necessary to accomplish the purpose of this action." A violation of a condition properly imposed under the authority to confer site location suitability approval conditions is a violation of the Environmental Protection Act. *County of Lake v. PCB*, 120 Ill.App.3d 89, 101, 457 N.E.2d 1309 (2<sup>nd</sup> Dist. 1983). As such, the Village of South Elgin is entitled to summary judgment and the conditions imposed by the Kane County Board must be enforced.

**A. The Kane County Board Granted Siting Approval for Woodland III Pursuant to Resolution 88-155**

WMI does not and cannot dispute that the County Board, in granting siting approval for Woodland III, imposed specific conditions relating to WMI's development of the site. In 1988, the County Board adopted Resolution 88-1255, which included the following conditions: (1) that the site shall not be expanded further, and (2) that WMI fulfill all of the representations made at the July 26, 1988 public hearing, specifically that Woodland III was its last attempt to expand the Woodland Landfill site and that the relevant portion of Woodland III would be turned into a passive recreation area upon closure. (Exhibit 1). The terms of the Resolution were incorporated into WMI's permit. As such, WMI is obligated to comply with the resolution to remain in compliance with its permit for Woodland III.

**B. WMI's Proposal to Build a Waste Transfer Station on the Woodland Landfill Constitutes an Impermissible Expansion**

The Village is entitled to summary judgment in this matter because WMI's proposal constitutes an expansion in violation of Condition 4 of the County Board's siting approval. The word "expand" has been defined by courts to include an extension of nonconforming use or an increase in intensity of same. *People v. Treim Steel & Processing*, 5 Ill.App.2d 371, 125 N.E.2d 678 (1<sup>st</sup> Dist. 1955). Furthermore, as already determined by the Pollution Control Board in the instant case, a significant increase in usage can constitute an expansion of a then permitted waste transfer facility. (March 23, 2003 Order of Pollution Control Board, attached for the Board's convenience, citing *Continental Waste Industries of Illinois, Inc. v. Mt. Vernon*, PCB 94-138, slip op. at 5, 20 (October 27, 1997).

There can be no doubt that WMI's proposal meets the definition of expansion. WMI does not dispute that it submitted a proposal to the County Board to site an 8.9 acre parcel of the Woodland Landfill for use as a waste transfer station, nor does WMI dispute that its application referred to its proposal as an "expansion." (Compt. & Answer, ¶4). WMI's application proposes to build a new transfer station which will process, consolidate, store and transfer non-hazardous municipal waste, including landscape waste and general construction of demolition debris from residential, commercial and industrial waste generators which will be capable of processing 2,640 tons per day. (Compt. & Answer, ¶11). WMI's proposal would double the number of pollution control facilities on the site, increase truck traffic, expand the operating life of the site, expand improvements of the site by adding septic, well, and waste management systems where none existed previously and increase the intensity of the use of the site for pollution control purposes.

**C. WMI's Proposal to Build a Waste Transfer Station on the Woodland Landfill Violates WMI's Post-Closure Requirement**

The Village is entitled to summary judgment in this matter because WMI's proposal constitutes violation of Condition 2 of the County Board's siting approval requiring that the area be turned into a passive recreation area post-closure. Condition 2 of the Resolution provided that "the site will be developed and operated in a manner consistent with the representations made at the public hearing on this matter held on July 26, 1988 and to all applicable laws, statutes, rules and regulations of the Illinois Environmental Protection Agency, and the Illinois Pollution Control Board, or their successors, as may be now or hereafter in effect and which are applicable to this site." (Exhibit 1). Pursuant to end-use plan requirements under Section 807.206 of the Illinois Administrative Code, in its siting proposal for Woodland III, WMI represented that "upon

completion the site will be comprised of a combination of filled land and unfilled land, which will be left, essentially, in a natural state...a major component of the end use proposal is to allow for hiking and bicycle riding across this large open space.” (Exhibit 6). At the July 26, 1988 public hearing, WMI reiterated this end-use plan stating on the record that the “Woodland III proposal encompasses the entire site and looks at a final land use plan on that land form that is a passive recreational use. It incorporates some of the surrounding facilities or surrounding land uses into the final land use plan.” (Exhibit 7).

In short, there is simply no credible means by which WMI can claim that a waste transfer facility that will “process, consolidate, store and transfer non-hazardous municipal waste, including landscape waste and general construction or demolition debris from residential, commercial and industrial waste generators” will meet the end-use plan contemplated in Condition 2 of the Woodland III site approval. As such, the Village is entitled to summary judgment and WMI must be found in violation.

### **III CONCLUSION**

The Village is entitled to summary judgment because there are no material facts in dispute. WMI’s proposal to site a new waste transfer facility on the Woodland Landfill site is a violation of Conditions 2 and 4 of the Kane County Board’s siting approval for Woodland III. The waste transfer facility would be an expansion of the site because it would result in a significant increase in non-conforming use and because the facility does not conform with the end-use plan proposed and agreed to by WMI.

WHEREFORE, the Village of South Elgin respectfully requests that this Honorable Board enter an order (a) granting summary judgment in its favor; (b) finding that WMI’s attempt to site a

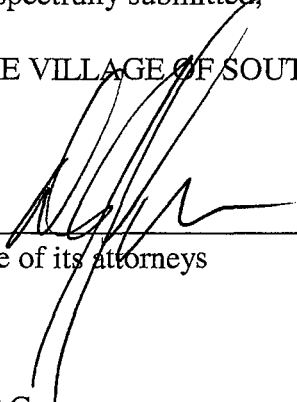


transfer station on the Woodland Site violates the Act and rules, regulations, permits and terms and conditions imposed by Kane County in Resolution 88-155; (c) ordering WMI to cease and desist from its attempt to site a transfer station on the site; and (d) providing any such other and further relief as the Board deems equitable and just.

Respectfully submitted,

THE VILLAGE OF SOUTH ELGIN

By:

  
\_\_\_\_\_  
One of its attorneys

Derke J. Price  
Stephanie A. Benway  
ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & ROLEK, P.C.  
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# Exhibit A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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VILLAGE OF SOUTH ELGIN,  
a municipal corporation,

Complainant,

v.

WASTE MANAGEMENT OF ILLINOIS, INC.;

Respondent.

JAN 16 2003

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 03- 106

(Enforcement)

COMPLAINT

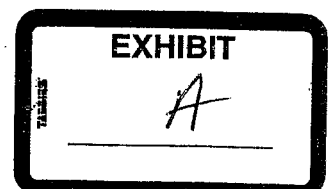
Complainant, Village of South Elgin ("Village"), by its attorneys, ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & ROLEK, P.C., pursuant to Section 5/31(d) of the Environmental Protection Act, 415 ILCS 5/31(d), seeks a determination that respondent Waste Management of Illinois, Inc. is in violation of the terms and conditions of the siting permit for the Woodland III expansion on the Woodland Site, granted September 13, 1988 by the Kane County Board through Resolution No. 88-155 (attached as Exhibit 1 and incorporated herein), insofar as Respondent's present application and appeal (PCB 03-104) seeking to add a second pollution control facility (a transfer station) to the Woodland Site constitutes:

(1) a violation of the terms of Condition 4 of Resolution 88-155 providing: "The site, commonly known as the Woodland site, shall not be expanded further;

(2) a violation of WMII's representation incorporated in Condition 2 of Resolution 88-155 that: "Waste Management of Illinois, Inc., agrees and stipulates that this expansion will be the last expansion that we will attempt to do on this site which is commonly known as the Woodland Landfill site"; and

(3) a violation of the Condition-imposed by Kane County and by 35 Ill. Admin. Code 807.206--to implement the promised end-use plan designating the area now proposed for the transfer station to be reconstructed as a passive recreation park.

In further support of this complaint, Village states as follows.



1. The Village of South Elgin, a municipal corporation, is in Kane County, Illinois.
2. The Woodland Landfill site is located in unincorporated Kane County, adjacent to the municipal boundary of the Village, next to residential neighborhoods of the Village. The site--a former quarry--was initially established as a pollution control facility in 1976 and consists of a total of 213 acres. In 1976, IEPA permitted the use of 55 acres for landfill ("Woodland I"). In 1982, the site was expanded by adding 48 acres ("Woodland II").
3. In 1988, Waste Management of Illinois, Inc. ("WMII") filed an application with Kane County to further prolong the life of the landfill for an additional 15 years by working the area between Woodland I and II (this application is commonly referred to as the "Woodland III" application). The Kane County Board adopted Resolution 88-155 approving, with conditions, the Woodland III application (Certified copy of the Resolution is attached and incorporated herein by reference as Exhibit 1), including conditions that required the Site be developed as a passive recreation park once it was full and closed.
4. In June, 2002, WMII re-filed a Site Location Application for Woodland Transfer Facility (originally filed in February, 2002) with the Kane County Board. In this application, WMII proposed to locate a transfer station facility on the Woodland Site (although the entire application is too voluminous to attach hereto, a portion of the application is attached as Exhibit 2). A map showing the location of the proposed transfer station on the Woodland Landfill site is attached as Exhibit 3.
5. Following months of public hearings, the Kane County Board overwhelmingly denied WMII's application for the transfer station. On or about January 14, 2003, however, WMII filed its Petition for Hearing To Contest Site Location Denial with this Board, No. PCB 03-104, requesting a hearing to contest the decision of the Kane County Board. A copy of the Petition (without exhibits) is attached hereto as Exhibit 4.
6. WMII's persistent attempt to site a transfer station at the Woodland Site constitutes a breach of the Conditions imposed by Kane County when approving the Woodland III application. More specifically, Condition 4 mandated:

"The site, commonly known as the Woodland Site, shall not be expanded further."

(Exhibit 1)

7. Further, Condition 2 of Kane County Board Resolution No. 88-155 required:

"That the site will be developed and operated in a manner consistent with the representations made at the public hearing on this matter held on July 26, 1988 and to all applicable laws, statutes, rules and regulations of the Illinois Environmental Protection Agency, and the Illinois Pollution Control Board, or their successors, as may be now or hereafter in effect and which are applicable to this site."

(Exhibit 1)

8. Among the representations read into the record of the July 26, 1988 public hearing—subsequently incorporated into Condition 2—were the representations of WMII set forth in a July 8, 1988 letter from WMII to the Village of South Elgin in which WMII promised (among other things) that the Woodland III request "will be the last expansion that we will attempt to do on this site, which is known as Woodland landfill site." (Relevant portion of the transcript of the hearing in which WMII read the letter into the record is attached hereto as Exhibit 5.) The July 8, 1988 letter was attached to and incorporated into Resolution 88-155 as Exhibit B thereto. (See Exhibit 1)

9. Similarly, in its 1988 siting application for Woodland III and at the public hearing on the application, WMII detailed its proposed end-use (closure) plan for the site. Such a plan is required by 35 Ill. Admin. Code 807.206. In its materials, WMII represented that: "Upon completion the site will be comprised [sic] of a combination of filled land and unfilled land, which will be left, essentially, in a natural state. . . . A major component of the end use proposal is to allow for hiking and bicycle riding across this large open space. . . ." (WMII's application materials concerning the End Use Plan are attached hereto as Exhibit 6.)

10. Concerning the end-use plan, WMII made the following representations at the July 26, 1988 public hearing (again, these representations are, through Condition 2, conditions of approval):

“Woodland III proposal encompasses the entire site and looks at a final land use plan on that land form that is a passive recreational use. It incorporates some of the surrounding facilities or surrounding land uses into the final land use plan. The original Woodland I and Woodland II final land use plans weren’t as comprehensive or as detailed in their final form.”

The relevant portion of the July 26, 1988 hearing transcript is attached hereto as Exhibit 7.

11. Contrary to the terms of its site permit, WMII has filed with the Kane County Board a site application for a new transfer station on nine acres of the Woodland site, which will “process, consolidate, store and transfer non-hazardous municipal waste, including landscape waste and general construction or demolition debris from residential, commercial and industrial waste generators,” which will be capable of processing 2,640 tons per day. (Exhibit 2.)

12. Section 5/39.2(e) of the Illinois Environmental Protection Act, 415 ILCS 5/39.2(e), provides that “In granting approval for a site, the county board . . . may impose such conditions as may be reasonable and necessary to accomplish the purpose of this section . . .” The Kane County Board imposed on the Woodland III permit the condition that the site “shall not be expanded further” (Condition 4) and the condition that WMII fulfill all of the representations made at the July 26, 1988 hearing (Condition 2), including the representation that Woodland III was the last expansion on the site and that the relevant portion of Woodland III would be a passive recreation area.

13. Pursuant to 35 Ill. Admin. Code 807.206, the granting of a landfill permit is conditioned upon the adoption of a closure plan. WMII did include a closure plan in its Woodland III application that calls for the specific area now proposed for a transfer station—indeed the entire site—to be redeveloped as a passive recreation park. WMII recently closed Woodland III and, therefore, should proceed to construct the passive recreation facility.

14. Siting the proposed transfer station on the Woodland Site constitutes an impermissible expansion on the site and of the site, in violation of Conditions 2 and 4, in at least each of the following ways:

- (C) the proposed transfer station would double the number of pollution control facilities on the site;
- (D) the transfer station would increase truck traffic to the site by more than 145% of the

volume of traffic to the site at the time of its closure;

- (E) the transfer station would indefinitely expand the operating life of the site from its intended closing date;
- (F) the transfer station would expand improvements on the Site by adding septic, well, and waste management systems where none exist or are needed presently; and
- (G) the transfer station would increase the intensity of the use of the site for pollution control purposes.

15. Likewise, siting the proposed transfer station on the Woodland Site constitutes an impermissible breach of the condition that the entire site be redeveloped as a passive recreation area.

16. Section 5/31(d) of the Environmental Protection Act, 415 ILCS 5/31(d), provides that any person may file a complaint with the Pollution Control Board for violations of the Act or any rule, regulation, permit or term or condition.

WHEREFORE, the Village of South Elgin respectfully requests that this Honorable Board enter an order (a) finding that WMII's attempt to site a transfer station on the Woodland Site violates the Act and the rules, regulations, permits and terms and conditions imposed by Kane County in Resolution 88-155 ; (b) ordering WMII to cease and desist from their attempt to site a transfer station on this site; and (c) providing such other and further relief as the Board deems appropriate.

Respectfully submitted,

VILLAGE OF SOUTH ELGIN,  
a municipal corporation,

By 

One of its attorneys

Derke J. Price  
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STATE OF ILLINOIS

COUNTY OF KANE

RESOLUTION NO. 88 - 155

**GRANTING SITE APPROVAL FOR THE WOODLAND III LANDFILL SITE**

WHEREAS, on the 7th day of April 1988, Waste Management of Illinois, Inc. did file a request for site approval for an area commonly known as the Woodland III site, and

WHEREAS, Ill. Rev. Statutes, Chapter 111 1/2, Sec. 1039.2 et seq (The Act" mandates the County Board to render a decision thereon, and

WHEREAS, after due notice and publication, the Executive Committee of the County Board did engage a Hearing Officer to act upon its behalf and to conduct the required public hearing on July 26, 1988, and

WHEREAS, testimony and evidence were presented and received at the public hearing and comments were filed relative thereto which comprised a record which was available for consideration;

NOW, THEREFORE, BE IT RESOLVED by the Kane County Board that the request of Waste Management of Illinois, Inc. for the expansion of Woodland Landfill, to become known as Woodland III, is hereby granted pursuant to "Findings and Order" entered September 13, 1988; and that this resolution is effective upon adoption.

Passed by the Kane County Board on September 13, 1988

Lorraine D. Sava  
Clerk, County Board  
Kane County, Illinois

Paul C. Lepore  
Chairman, County Board  
Kane County, Illinois



STATE OF ILLINOIS  
COUNTY OF KANE

DATE JUN 03 2002 *AW*

I, Bernadine C. Murphy, Kane County Clerk and Keeper of the Records in Kane County, Illinois do hereby certify that the attached is a true and correct copy of the original record on file.



In witness whereof, I have hereunto set my hand and affixed the Seal of the County of Kane at my office in Geneva, Illinois.

Bernadine C. Murphy  
Bernadine C. Murphy, Kane County Clerk

BEFORE THE KANE COUNTY BOARD  
KANE COUNTY, ILLINOIS

IN THE MATTER OF THE REQUEST OF WASTE )  
MANAGEMENT OF ILLINOIS, INC. FOR SITE )  
APPROVAL FOR A NEW REGIONAL POLLUTION )  
CONTROL SITING FACILITY FILED APRIL 7, )  
1988 AND KNOWN COMMONLY AS THE WOODLAND )  
III LANDFILL SITE. )

FINDINGS AND ORDER

This matter coming on to be heard upon the request for site approval of a new regional pollution control facility and the county board having considered the evidence taken at the public hearing held in this cause on the 26th day of July, 1988 together with the Exhibits admitted therein and the public comments received does hereby find and order as follows:

FINDINGS

We find that we have jurisdiction over this matter by virtue of 1987 Illinois Revised Statutes Chapter 111 1/2, section 1039.2 et seq (hereafter the Act) and we further find that the applicant has properly performed the necessary publication and notice requirements necessary to vest us with jurisdiction to act upon its request for site approval of the property legally described in the Exhibit 1 attached hereto and made a part hereof.

The Executive Committee did engage a Hearing Officer who conducted a public hearing on our behalf. The Hearing Officer made various rulings regarding evidence and conduct of the public hearing. To the extent necessary, we affirm all of the rulings and decisions of the Hearing Officer and the Executive Committee.

The Act mandates that we must consider the request using only the following criteria:

1. the facility is necessary to accommodate the waste needs of the area it is intended to serve;
2. the facility is so designed and located and proposed to be operated that the public health, safety and welfare will be protected;
3. the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property;
4. the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed;
5. the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire spills or other operational accidents;
6. the traffic patterns to or from the facility are so designed as to minimize the impact on traffic flows;

We realize that the Act contains three additional criteria related to hazardous waste sites, regulated recharge areas, and county solid waste management plans. We find, however, that this request a) is not for the deposit of hazardous wastes, b) is not within a regulated recharge area, and c) that we have not adopted a solid waste management plan. Therefore, we conclude that those criteria are not applicable to this request for site approval.

After considering the entire record based upon the preponderance of the evidence standard of proof, we find that the applicant has met its burden of proof as to all six applicable criteria, and therefore the request for site approval must be granted.

Pursuant to the authority granted to us by section 39.2 (e) of the Act, we find it desirable to impose conditions upon the grant of site approval.

ORDER

The request for site approval for a new regional pollution control facility filed on April 7, 1988 by Waste Management of Illinois Inc., is hereby granted for the real estate described in the attached Exhibit 1, subject to the following conditions:

1. For the purposes of these conditions, Waste Management means Waste Management of Illinois, Inc. and any successor thereto or assignee thereof. "Woodland" or "The Woodland Site" means the area comprised of the Woodland I, II, and III landfill sites. "Village" means the Village of South Elgin, Illinois.

2. That the site will be developed and operated in a manner

consistent with the representations made at the public hearing in this matter held on July 26, 1988 and to all applicable laws, statutes, rules, and regulations of the Illinois Environmental Protection Agency, and the Illinois Pollution Control Board, or their successors, as may be now or hereafter in effect and which are applicable to this site.

3. In the event that contamination of any kind of any well is determined to exist by virtue of the development or operation of the Woodland Site by the certification and seal of a professional engineer registered in the State of Illinois, Waste Management shall pay the reasonable costs of repairing or replacing the well. In the case of the Village's wells, Waste Management shall advance all such funds as estimated by the registered professional engineer as may be necessary to repair or replace its well if the Village is willing to agree to reimburse Waste Management under the terms and conditions fully described in Exhibit II, attached hereto and made a part hereof.

In the case of all wells, Waste Management must, within 60 days after receipt of the engineer's estimate, either pay to the well owner the sum listed in the estimate or notify the well owner that it disputes either:

- a) that the well is contaminated, and/or
- b) that the development or operation of the Woodland Site is the source of the contamination, and/or

c) that the estimated costs are reasonable.

IF a dispute exists, it shall be finally resolved by binding arbitration under the rules of the American Arbitration Association or another mutually agreed upon dispute resolution.

4. The site, commonly known as the Woodland site, shall not be expanded further.

5. Waste Management shall provide any traffic improvements required by the Illinois Department of Transportation, including but not limited to road improvements and signals.

6. Waste management shall extend the existing groundwater monitoring program to include quarterly sampling and analysis for the 31 volatile organic parameters listed in the U.S. EPA priority pollutants list, arsenic, and cyanide at wells G-107, G-108 and G-104-1 (R). These wells are screened within the same aquifer as the village water supply wells. They are located directly upgradient of those water supply wells and downgradient of the landfill. (See Exhibit 2)

7. Waste management shall analyze monitoring wells BP-33A, G-105, G101D and G-106 as set forth in the request for site approval, for the extended set of parameters, as specified above, on a one-time basis prior to receiving an operating permit for this Site. (See Exhibit 2)

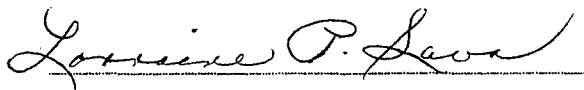
8. Upon reasonable notice in advance, the site operator shall permit the opportunity for the Village to obtain groundwater samples from any of the monitoring wells at any time. However, Waste Management may reserve the right to operate the downhole sampling and monitoring equipment at each well. (See Exhibit 2)

9. The Village shall have the right to inspect any phase of landfill construction by their authorized representative. Such representative will be required to notify the operator on or before arrival and abide by all site safety rules and practices of the operator. Waste Management shall notify the Village prior to operating in any of the lined areas permitted under the Woodland III design, and prior to any cover removal operations on Woodland or Woodland II Landfill Sites which are adjacent to the Woodland III Site.

Entered this 13th day of September, 1988.



Vice-  
Chairman Fred E. Ledebuhr



Attest: Clerk

EXHIBIT #1 of FINDINGS AND ORDER  
entered 9-13-88

LEGAL DESCRIPTION: WOODLAND III LANDFILL

Commencing at the Southwest corner of Section 36 Township 41 North, Range 8 East of the Third Principal Meridian; thence North 88° 58' 58" East, along the South line of the Southwest Quarter of said Section 36, 1331.83 feet to the Southeast corner of the West Half of the Southwest Quarter of said Section 36 and the place of beginning; thence continue North 88° 58' 58" East, along the South line of the Southwest Quarter of said Section 36, 910.68 feet to the Westerly Right-of-Way line of the abandoned Chicago, Aurora and Elgin Railroad; thence South 3° 14' 50" West along said Westerly Right-of-Way line, 750.45 feet to a point of curvature; thence Southeasterly, 2111.89 feet along the arc of a curve to the left, said curve having a radius of 2914.90 feet and a chord of 2066.00 feet, to the centerline of the abandoned Clintonville Road; thence North 88° 04' 10" West, along said Centerline, 1471.26 feet to the West line of the East Half of the Northwest Quarter of Section 1, Township 40 North, Range 8 East of the Third Principal Meridian; thence North 0° 30' 40" West, along said West line, 334.74 feet; thence South 89° 53' 50" West, 567.28 feet to the Westerly Right-of-Way of Gilbert Avenue; thence North 45° 40' 00" West along said Westerly Right-of-Way 503.96 feet to a point of curvature; thence 611.59 feet along the arc of a curve to the right, said curve having a radius of 5241.79 feet and a chord of 611.24 feet, to the West line of the Northwest Quarter of said Section 1; thence North 0° 30' 40" West, along the West line of said Northwest Quarter of Section 1, 53.36 feet to the centerline of Gilbert Avenue; thence Northwesterly 1004.23 feet along the arc of a curve to the right, said curve having a radius of 5208.79 feet and a chord of 1092.675 feet, said chord bearing North 33° 00' 05" West, to a point of tangency; thence North 27° 28' 30" West, 1175.25 feet; thence North 85° 34' 13" East; 1083.69 feet;

thence North 0° 15' 22" West along the West line of Jones Resubdivision of Lot 10 of Gibbon's Addition to the Village of South Elgin, 339.70 feet to the Northeast corner of said Jones Resubdivision; thence South 89° 09' 30" East, 514.85 feet; thence North 0° 15' 22" West, 598.59 feet; thence North 89° 44' 38" East, 200.00 feet; thence North 0° 15' 22" West, 1328.37 feet to the centerline of Middle Street; thence North 79° 23' 00" East, along the centerline of Middle Street, 729.31 feet to a point of curvature; thence 106.99 feet along the arc of a curve to the right, said curve having a radius of 1637.28 feet and a chord of 106.97 feet; thence South 4° 52' 34" West, 2275.47 feet to the East line of the West Half of the Southwest Quarter of said Section 36; thence South 0° 04' 20" West, along said East line of the West half of the Southwest Quarter of Section 36, 628.25 feet to the South line of the Southwest Quarter of said Section 36, and the place of beginning, and containing 213.1075 acres, more or less, in Kane County, IL.





Waste Management of North America, Inc.  
Midwest Region  
7300 College Drive, P.O. Box 563  
Palos Heights, Illinois 60463  
312 821-8100

July 8, 1988

The Honorable Mayor Thomas Rolando  
Village of South Elgin  
Village Hall  
10 North Water Street  
South Elgin, Illinois 60177

Dear Mayor Rolando:

Waste Management of Illinois, Inc., will agree to the following conditions with the Village of South Elgin, Illinois, and the County of Kane upon successful siting of our application which is before the Kane County Board of Kane County, Illinois, and the issuance of an operating permit by the Illinois Environmental Protection Agency for this landfill expansion.

In the event that contamination of any kind is determined to exist in the two closest municipal wells to Woodland Landfill, subsequent to the date hereof, Waste Management of Illinois, Inc., shall advance any remediation costs incurred to eliminate such contamination or replace the wells. The Village will be provided descriptions of such costs as they are incurred and should it be proven by professional engineering judgement, that the contamination was the result of causes or sources other than any associated with Woodland Landfill, the Village shall reimburse Waste Management of Illinois, Inc., for all sums of money it has advanced. Such reimbursement shall be made on demand but Waste Management shall accommodate the Village to the extent public borrowing is required to satisfy payment.

Waste Management of Illinois, Inc., agrees and stipulates that this expansion will be the last expansion that we will attempt to do on this site which is commonly known as the Woodland Landfill site.

We agree to extend our existing groundwater monitoring program to include quarterly sampling and analysis for the 31 volatile organic parameters listed in the U.S. EPA priority pollutants list, arsenic, and cyanide at wells G-107, G-108 and G-104-1 (R). These wells are screened within the same aquifer as the South Elgin water supply wells. They are located directly upgradient of those water supply wells and downgradient of the landfill. In addition, also upon approval of the Woodland III Application, we agree to sample and analyze monitoring wells BP-33A, G-105, G-101D and G-106, for the extended set of parameters, as specified above, on a one-time basis.

Mayor Rolando

-2-

7/8/88

We also will extend the opportunity for the Village of South Elgin to obtain groundwater samples from any of the monitoring wells at any time. We reserve the right to operate the downhole sampling and monitoring equipment at each well. Arrangements for such sampling should be made in advance with the General Manager.

The Village of South Elgin may inspect any phase of landfill construction by their authorized representative. Such representatives will be required to notify the general manager on or before arrival and abide by all site safety rules and practices. Notification to the Village will be made prior to landfilling any of the lined areas, permitted under the Woodland III design. The Village will also be notified prior to any cover removal operations on Woodland or Woodland II Landfills, adjacent to the Woodland III development.

Sincerely,

WASTE MANAGEMENT OF NORTH AMERICA, INC.  
Midwest Region



Donald E. Price  
Vice-President

DRP:fn

#2

# Site Location Application for Woodland Transfer Facility

## Kane County, Illinois

*Submitted By:*

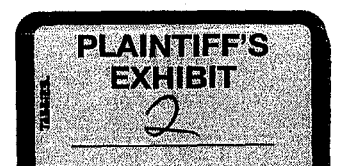


**Waste Management of Illinois, Inc.**

*Submitted to:*

**Kane County, Illinois**

February 2002





**WASTE MANAGEMENT**

Illinois / Indiana Region  
720 E. Butterfield Road  
Lombard, Illinois 60148  
(630) 572-8800  
(630) 218-1711 Fax

February 13, 2002

Kane County Board  
c/o Ms. Bernadine Murphy  
County Clerk  
Kane County Government Center  
719 Batavia Avenue, Building B  
Geneva, Illinois 60134

Re: Application for Site Location Approval  
Woodland Transfer Facility

Dear Ms. Murphy:

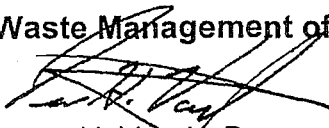
On behalf of Waste Management of Illinois, Inc., I am very pleased to submit this Site Location Application for the proposed Woodland Transfer Facility. The original and forty-eight (48) copies of the Application are filed herewith.

To facilitate the efficient review of the Application, we have organized it according to the nine statutory criteria set forth in the Illinois Siting Act, also known as S.B. 172 (415 ILCS 5/39.2). The Application establishes that the proposed expansion meets all of the siting criteria.

We look forward to the County's hearings on the Application and responding to any questions or concerns you might have regarding the proposed facility.

Respectfully submitted,

**Waste Management of Illinois, Inc.**

  
Dean H. VanderBaan  
Vice President

## EXECUTIVE SUMMARY

Waste Management of Illinois, Inc. (WMII) proposes to site, permit, construct and operate a new transfer facility at the southern portion of the existing Woodland Landfill property located in unincorporated Kane County, Illinois. The Woodland Transfer Facility (Facility) will process, consolidate, store and transfer non-hazardous municipal waste, including landscape waste and general construction or demolition debris from residential, commercial and industrial waste generators. Waste materials received at the Facility will be processed and loaded into transfer trailers for transport to landfills.

The Facility is located approximately 1,500 feet west/southwest of the intersection of Illinois Route 25 and Dunham Road in unincorporated Kane County, Illinois, and is approximately 9 acres in size.

WMII proposes to construct a transfer station building which will be completely enclosed. It will have a tipping floor for the unloading of waste materials, a primary loading area consisting of two loading bays for loading transfer vehicles, and an auxiliary loading area used to process seasonal materials such as landscape waste and, if needed, source separated recyclables. Support features include ventilation and odor control, stormwater management, liquid management and fire protection. The Facility will process an average of 2,000 tons per day (tpd) of waste materials, with a maximum processing capability of 2,640 tpd.

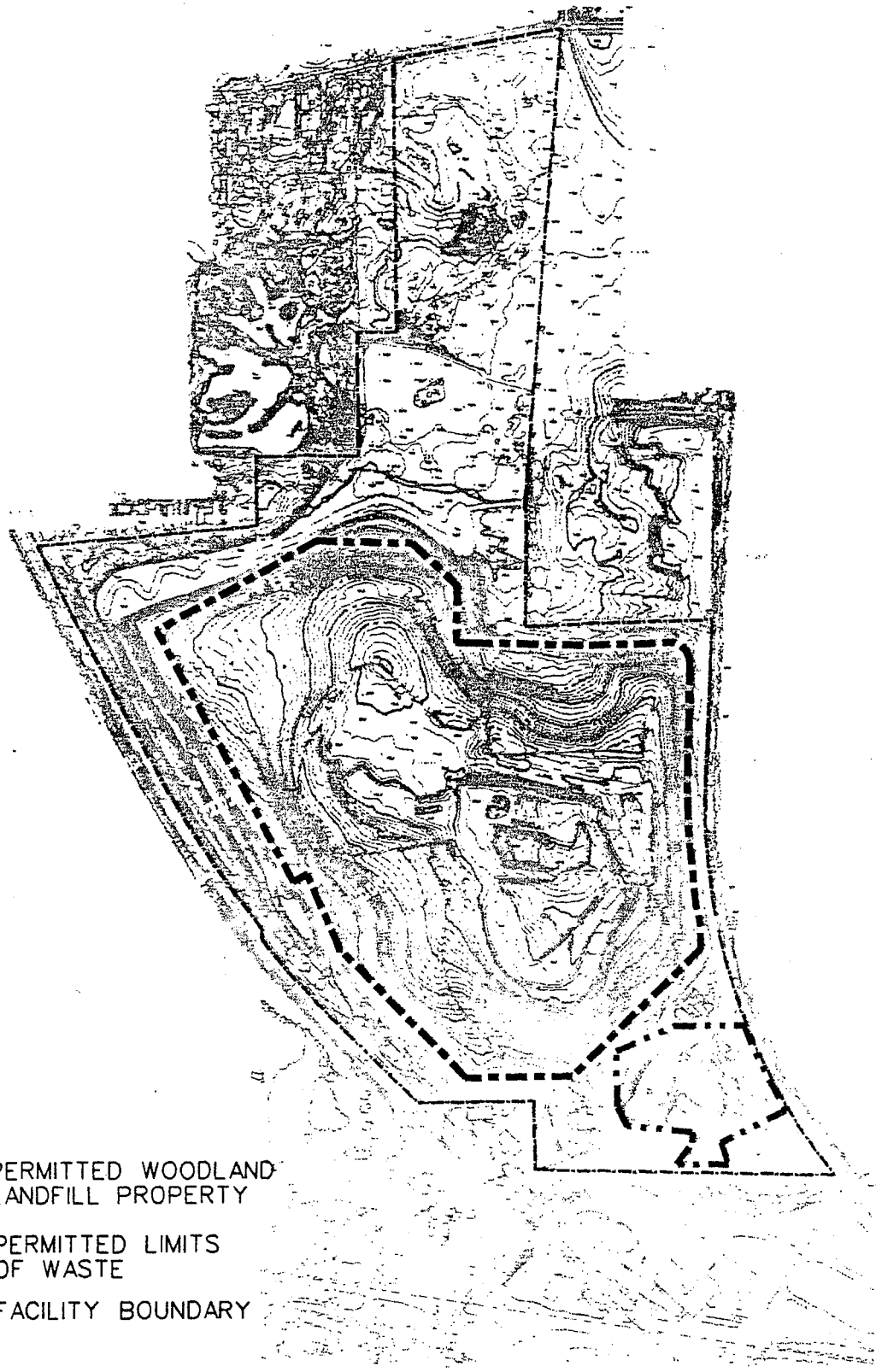
This Application evaluates and assesses the nine criteria set forth in Section 39.2 of the Illinois Environmental Protection Act (commonly referred to as Senate Bill 172 or S.B. 172) as follows:

- The needs analysis establishes that the Facility is necessary to meet the waste disposal needs of the area it is intended to serve.
- The engineering design and operations plan demonstrates that the public health, safety and welfare will be protected.
- The Facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property.
- The Facility is not located within a 100-year floodplain.
- The plan of operations for the Facility is designed to minimize danger to the surrounding area from fires, spills or other operational accidents.
- The traffic impact study results demonstrate that traffic patterns to and from the Facility have been designed to minimize impact on existing traffic flows.
- Regulated hazardous wastes will not be accepted at the Facility.
- The Facility is consistent with the Kane County Solid Waste Management Plan and Plan update.
- The Facility is not located in a regulated recharge area.

The plans, drawings, data and reports that further explain the nature and suitability of the Facility are included in this Application. WMII looks forward to the public hearing process and the opportunity to present this Application to the Kane County Board.

It should be noted that this Site Location Application is the first of two steps in siting and permitting a pollution control facility in Illinois. The second step consists of obtaining all necessary County and Illinois Environmental Protection Agency permits.

#3



**LEGEND**

- PERMITTED WOODLAND LANDFILL PROPERTY
- PERMITTED LIMITS OF WASTE
- · - · - FACILITY BOUNDARY



SCALE: 1" = 800'

EARTH  TEC

**PLAINTIFF'S EXHIBIT**  
3

**FIGURE 2-1**  
**FACILITY LOCATION**  
 SITE LOCATION APPLICATION  
 WOODLAND TRANSFER FACILITY  
 KANE COUNTY, ILLINOIS  
 WASTE MANAGEMENT OF ILLINOIS, INC.



#4

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CIRK'S OFFICE  
JAN 14 2003  
STATE OF ILLINOIS  
Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS, INC., )

Petitioner, )

vs. )

COUNTY BOARD OF KANE COUNTY, )  
ILLINOIS, )

Respondent. )

No. PCB 03- 104

(Pollution Control Facility  
Siting Appeal)

PETITION FOR HEARING  
TO CONTEST SITE LOCATION DENIAL

Petitioner Waste Management of Illinois, Inc., ("WMII"), by Pedersen & Houpt, its attorneys, respectfully requests a hearing to contest the decision of the County Board of Kane County, Illinois ("County Board") denying site location for the proposed Woodland Transfer Facility ("Facility"). In support of this Petition, WMII states as follows:

1. This Petition is filed pursuant to Section 40.1(a) of the Illinois Environmental Protection Act (the "Act") (415 ILCS 5/40.1).

2. On June 14, 2002, WMII submitted its request for site location approval for the Facility ("Request"). The Facility is a waste transfer station located on an 8.9-acre site on Illinois Route 25 in unincorporated Kane County, Illinois. It will process, consolidate, and transfer an average of 2,000 tons of non-hazardous municipal waste per day.

3. On December 10, 2002, following service and publication of notice and public hearings conducted before a hearing officer and two County Board members, said hearings having been held from September 17 to October 10, 2002, the County Board denied the Request. A true and correct copy of the County Board Resolution denying same is attached hereto and made a part hereof as Exhibit A.

THIS DOCUMENT IS PRINTED ON RECYCLED PAPER.



4. WMII contests and objects to the County Board's decision to deny the Request because the siting process and procedures used by the County Board in reaching that decision were fundamentally unfair.

5. WMII further contests the County Board's siting denial because it is wholly unsupported by the record and is against the manifest weight of the evidence.

6. To the extent the County Board's siting denial held that criteria (ii), (iii), (vi) and (viii) of the Act were not met, the denial was clearly against the manifest weight of the evidence.

WHEREFORE, WMII respectfully requests that the Board enter an order (a) setting for hearing this contest of the County Board siting denial decision, (b) reversing the County Board siting denial decision, and (c) providing such other and further relief as the Board deems appropriate.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

One of Its Attorneys

Donald J. Moran  
PEDERSEN & HOUP  
Attorneys for Petitioner  
161 N. Clark Street  
Suite 3100  
Chicago, IL 60601  
Telephone: (312) 641-6888

#5

1 call your first witness.

2 MR. MORAN: Before I do that, Mr.  
3 Hearing Officer, I would submit in  
4 connection with the documents just  
5 identified, a letter that Waste Management  
6 sent to the mayor in the Village of South  
7 Elgin, which we'd like marked as  
8 Petitioner's Exhibit No. 4 and with the  
9 hearing officer's indulgence, I would simply  
10 request the opportunity to read this letter  
11 into the record.

12 HEARING OFFICER AKEMANN: Anyone  
13 object to counsel reading this letter into  
14 the record?

15 (No response.)

16 HEARING OFFICER AKEMANN: Would  
17 the Applicant proceed then.

18 MR. MORAN: The letter is dated  
19 July 8th, 1988. It's addressed to the  
20 Honorable Mayor Thomas Rolando, Village of  
21 South Elgin, Village Hall, 10 North Water  
22 Street, South Elgin, Illinois 60177.

23 "Dear Mayor Rolando: Waste Management  
24 of Illinois, Inc. will agree to the



1 following conditions with the Village of  
2 South Elgin, Illinois and the County of Kane  
3 upon successful siting of our application  
4 which is before the Kane County Board of  
5 Kane County, Illinois, and the issuance of  
6 an operating permit by the Illinois  
7 Environmental Protection Agency for this  
8 landfill expansion.

9 In the event that contamination of any  
10 kind is determined to exist in the two  
11 closest municipal wells to Woodland  
12 Landfill, subsequent to the date hereof,  
13 Waste Management of Illinois, Inc. shall  
14 advance any remediation cost incurred to  
15 eliminate such contamination or replace the  
16 wells. The Village will be provided  
17 descriptions of such costs as they are  
18 incurred and should be proven by  
19 professional engineering judgment, that the  
20 contamination was the result of causes or  
21 sources other than any associated with  
22 Woodland Landfill, the Village shall  
23 reimburse Waste Management of Illinois, Inc.  
24 for all sums of money it has advanced. Such

1 reimbursement shall be made on demand but  
2 Waste Management shall accommodate the  
3 Village to the extent public large is  
4 required to satisfy payment.

5 Waste Management of Illinois, Inc.  
6 agrees and stipulates that this expansion  
7 will be the last expansion that we will  
8 attempt to do on this site, which is  
9 commonly known as Woodland Landfill site.

10 We agree to extend our existing  
11 groundwater monitoring program to include  
12 quarterly sampling and analysis for the 31  
13 volatile organic parameters listed in the  
14 U.S. EPA priority pollutants list, arsenic  
15 and cyanide at wells G-107, G-108, and  
16 G-104-1 (R). These wells are screened  
17 within the same aquifer as the South Elgin  
18 water supply wells. They are located  
19 directly upgradient of those water supply  
20 wells and downgradient of the landfill. In  
21 addition, also upon approval of the Woodland  
22 III Application, we agree to sample and  
23 analyze monitoring wells BP-3A, G-105,  
24 G-101D, and G-106, for the extended set of

1 parameters as specified above, on a one-time  
2 basis.

3 We also will extend the opportunity  
4 for the Village of South Elgin to obtain  
5 groundwater samples from any of the  
6 monitoring wells at any time. We reserve  
7 the right to operate the downhole sampling  
8 and monitoring equipment at each well.  
9 Arrangements for such sampling should be  
10 made in advance with the general manager.

11 The Village of South Elgin may inspect  
12 any phase of landfill construction by their  
13 authorized representative. Such  
14 representative will be required to notify  
15 the general manager on or before arrival and  
16 abide by all site safety rules and  
17 practices. Notification to the Village will  
18 be made prior to landfilling any of the  
19 lined areas, permitted under the Woodland  
20 III design. The Village will also be  
21 notified prior to any cover removal  
22 operations on Woodland or Woodland II  
23 Landfills, adjacent to the Woodland III  
24 development.



#6

The "Palustrine Unconsolidated Bottom" wetland provides feeding habitat for large wading birds such as herons and egrets. Its side slopes are too steep to provide good habitat for small wading birds. However, this wetland may be used occasionally by waterfowl for resting and feeding areas. A similar area is at the downstream end of the creek near Gilbert Street. Located to the west and north along the creek, and controlled by topography, is a complex mixture of "Palustrine Emergent Persistent Wetland" and "Palustrine Scrub/Shrub Broad-Leaved Deciduous Wetland". This wetland is dominated by plant species: Typha in its southern one-third and by Phalaris and Carex in its northern two-thirds. Other common species are Sagittaria, Eupatorium, Salix, Acer, and Cornus. A plant list for this area has been prepared and is presented as Attachment A to this plan. From a botanical point of view this area is not considered a high quality wetland. This wetland provides nesting habitat for blackbirds and feeding and nesting habitat for small, seed eating birds. Deer tracks and a deer resting area were observed during a field review. Small mammals, reptiles, amphibians, and numerous invertebrates may also be supported by this habitat.

As stated in the "Site Characteristics" section, a portion of the existing wetland area will be impacted by the landfill expansion. Figure 5, Conceptual Wetland Mitigation Plan shows which areas of the existing wetland will be impacted by the proposed landfill expansion. In order to mitigate the impact on the existing wetland, a full wetland mitigation plan shall be prepared and approved by USACE and IEPA. Proposed wetland mitigation measures shall include improving existing wetland areas, creating new wetland areas and designing a wetland discharge/drainage way. The intent of the wetland mitigation plan is to identify mitigation measures that will result in a high quality, managed wetland which will satisfy the requirements of the Corps of Engineers and Kane County.

#### END USE PLAN

Upon completion, the site will be comprised of a combination of filled land and unfilled land, which will be left, essentially, in a natural state. Of the approximately 213 acres of site area, approximately 121 acres will be left unfilled. This area includes undisturbed land, wetland restoration areas, and stormwater detention areas. Figure 6, End Use Plan, illustrates the proposed end use for the site. The site will be used primarily for passive recreational activities.

A major component of this end use proposal is to allow for hiking and bicycle riding across this large open space area. To facilitate this, the end use plan calls for trails to be developed to connect the various areas of the site with the Prairie Path. A picnic area will be located around the ponds at southern portion of the site. A sledding hill, located near the northeast corner of the landfill area, will represent the only

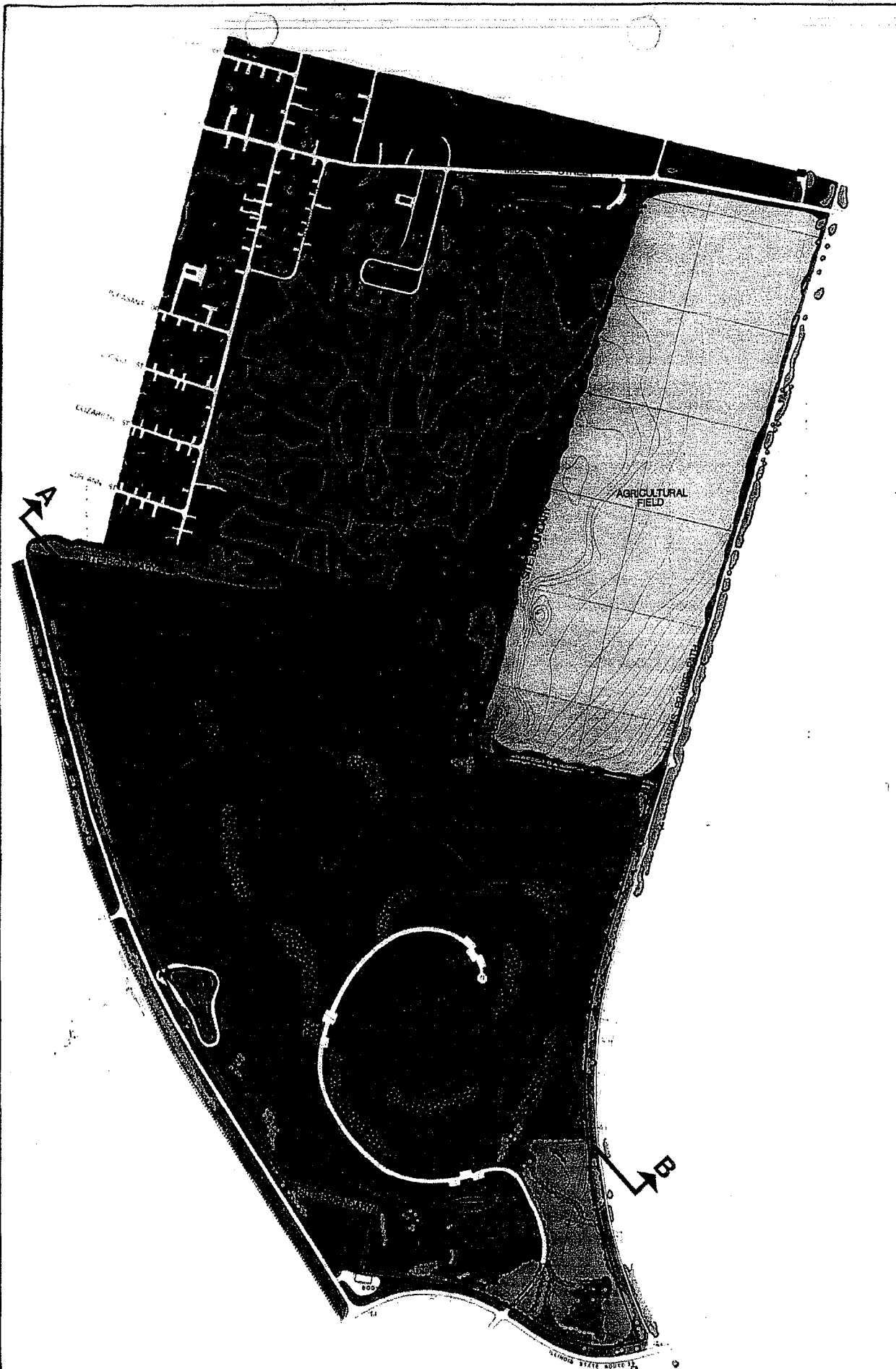


FIGURE 6  
**END USE PLAN**  
 WOODLAND III SANITARY LANDFILL

camiros ltd.

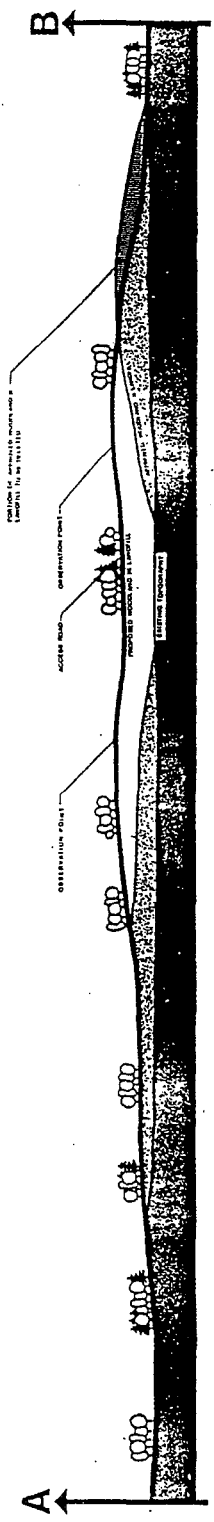
active recreational program element. The northern portion of the site will be left undisturbed as existing wetland, prairie and wooded areas. An on-site road, beginning at Route 25 and ending at a summit observation area, will provide vehicular access and parking to the various activity areas. Post closure on-site improvements to facilitate the end use program will be the responsibility of the Kane County Forest Preserve District or other public recreation providers.

#### COMPATIBILITY

From a land planning perspective, the compatibility of the proposed landfill expansion with the surrounding area can be addressed in two ways. First, compatibility can be addressed in terms of land use impact; second, it can also be addressed in terms of its aesthetic impact on surrounding properties.

Regarding land use impacts, a key factor involves the proximity of sensitive land uses, such as housing, schools or hospitals, which could be impacted by the landfill operation. The location of the subject site is such that no significant impact on sensitive land uses will occur. The only residential area adjacent to the site, located to the northwest along Lor Ann Street, abuts an already completed landfill area. In fact, most of the landfill expansion area is located between two existing landfills. Consequently, the nearest residence would be located approximately 800 feet from the closest area of active landfill. In addition, an existing wooded area exists between the residences and the completed landfill which strengthens this buffer space. Another residential area is located west of Gilbert Street and the Chicago and Northwestern Railroad tracks, which together provide substantial separation from the landfill site. These are the two closest areas of sensitive uses to the site, and they are adequately separated and buffered from the landfill expansion area so as to not receive significant impacts. It should also be noted that a completed landfill and an active landfill are already existing on the site. Thus, the proposal would not introduce the landfill as a new use to the area, but rather as a continuation of an existing use. Therefore, the landfill site is located such that land use incompatibilities with the surrounding areas will be minimized.

The second aspect of compatibility, aesthetic compatibility, involves designing the topography of the landfill (the landform) in a way that minimizes visual impact on surrounding areas. Of particular importance are the views of the landform from adjacent residential areas and major roads/highways. Given their location, views of the landform from nearby residential areas will be buffered by the presence of existing vegetation, topography, and distance from the site. These same factors also help to minimize visual impacts as seen from major roads/highways. In addition, the landform has been designed with a combination of gentle and steep slopes to provide topographic



**Northwest-Southeast Section**

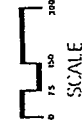
NOTE: LOCATION OF SECTION KEYED TO ILLUSTRATIVE END USE PLAN.  
NOTE: VERTICAL SCALE NOT EXAGGERATED

**ILLUSTRATIVE SECTION**

**WOODLAND III SANITARY LANDFILL**  
OPERATOR: WASTE MANAGEMENT OF ILLINOIS, INC.

**camiros ltd.**  
411 South Wells Street  
Chicago, Illinois 60607  
Phone: (312) 972-9211  
Planning, Zoning, Development, Economics, and Landscape Architecture

Job No.: 11883  
Date: 11/73  
Revised: 2/78  
Scale: 1"=25'-0"



sheet number

#7

1 there are seats right in the front. You can  
2 come right up. I know we have the  
3 air-conditioning on and it may be difficult  
4 to hear, and if the witness would try and  
5 speak up please.

6 A I'll repeat. The basis for the design is --  
7 and the basis for my opinion -- is that some  
8 of the major features of the design that  
9 will protect both the public health, safety  
10 and welfare, are first, that it has a  
11 composite liner system. This liner system  
12 will retard the flow of contaminates from  
13 the landfill.

14 Within the landfill there is a  
15 leachate collection and system to remove the  
16 leachate from the landfill. There is a gas  
17 control system. The design incorporates  
18 certain water management programs. It  
19 includes an operating plan that is written  
20 and describes the details of the operating  
21 life throughout -- or the operation --  
22 throughout it's operating life.

23 The plan also includes a closure or  
24 postclosure care plans. There are monitor

1 it as an exhibit. I've already asked the  
2 witness about it.

3 HEARING OFFICER AKEMANN: Any  
4 questions from members of the Board?

5 BOARD EXAMINATION

6 BY MR. KAMMERER:

7 Q How does the final land use plan 3 differ  
8 from No. 1 and No. 2?

9 A Woodland --

10 Q Woodland water facility -- I'm assuming they  
11 both had a final plan. How does No. 3 --  
12 how does that differ from No. 1 and No. 2?

13 A The most easy way to answer that question is  
14 that the Woodland III proposal encompasses  
15 the entire site and looks at a final land  
16 use plan on that land form that is a passive  
17 recreational use. It incorporates some of  
18 the surrounding facilities or surrounding  
19 land uses into the final land use plan.

20 The original Woodland I and Woodland  
21 II final land use plans weren't as  
22 comprehensive or as detailed in their final  
23 form.

24 Q This is -- we'll be going on a wetland and



1           there is a creek, I understand, running  
2           there where the landfill Woodland III will  
3           go. What will be done with the water?  
4           Where will that be directed?

5       A       Currently there is a tributary to the  
6           Brewster Creek that passes between or  
7           bisects the Woodland I and Woodland II  
8           facility; that's correct.

9                        As a part of the development of  
10           Woodland III, that creek will be relocated,  
11           and the relocation of that creek and  
12           surrounding wetland is a part of a 404  
13           permit application which Waste Management  
14           submitted to the Corps of Engineers for  
15           approval. That wetland remitigation and  
16           creek location is all a part of that  
17           application, and that has to be done in  
18           conjunction with the development of the  
19           landfill.

20       Q       And the steps, you say, this plan would have  
21           to be approved before the Corps of Engineers  
22           would review that plan?

23       A       The Corps of Engineers are reviewing that  
24           plan right now.

# Exhibit B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE  
MAY 19 2003  
STATE OF ILLINOIS  
Pollution Control Board

VILLAGE OF SOUTH ELGIN )  
a Municipal corporation, )  
 )  
Complainant, )  
 )  
v. )  
 )  
WASTE MANAGEMENT OF ILLINOIS, INC. )  
 )  
Respondent. )

No. PCB 03-106  
(Enforcement)

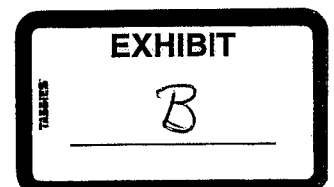
ANSWER & AFFIRMATIVE DEFENSES TO COMPLAINT

Respondent Waste Management of Illinois, Inc. ("WMII"), by and through its attorneys, Pedersen & Houpt, P.C., for its answer and affirmative defenses to the Complaint of Complainant Village of South Elgin ("Village"), states as follows:

(Preamble)

Complainant, Village of South Elgin ("Village"), by its attorneys, ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & ROLEK, P.C., pursuant to Section 5/31(d) of the Environmental Protection Act, 415 ILCS 5/31(d), seeks a determination that respondent Waste Management of Illinois, Inc. is in violation of the terms and conditions of the siting permit for the Woodland III expansion on the Woodland Site, granted September 13, 1988 by the Kane County Board through Resolution No.88-155 (attached as Exhibit 1 and incorporated herein), insofar as Respondent's present application and appeal (PCB 03-104) seeking to add a second pollution control facility (a transfer station) to the Woodland Site constitutes:

- (1) a violation of the terms of Condition 4 of Resolution 88-155 providing: "The site, commonly known as the Woodland site, shall not be expanded further;
- (2) a violation of WMII's representation incorporated in Condition 2 of Resolution 88-155 that: "Waste Management of Illinois, Inc., agrees and stipulates that this expansion will be the last expansion that we will attempt to do on this site which is commonly



known as the Woodland Landfill site"; and  
(3) a violation of the Condition--imposed by Kane County and by 35 Ill. Admin. Code 807.206--to implement the promised end-use plan designating the area now proposed for the transfer station to be reconstructed as a passive recreation park.

**ANSWER (to Preamble):** To the extent the preamble to the Complaint asserts legal conclusions, WMII states that an answer is neither necessary nor appropriate. WMII denies the remainder of the preamble to the Complaint.

1. The Village of South Elgin, a municipal corporation, is in Kane County, Illinois.

**ANSWER:** WMII admits the allegations contained in paragraph 1.

2. The Woodland Landfill site is located in unincorporated Kane County, adjacent to the municipal boundary of the Village, next to residential neighborhoods of the Village. The site--a former quarry--was initially established as a pollution control facility in 1976 and consists of a total of 213 acres. In 1976, IEPA permitted the use of 55 acres for landfill ("Woodland I"). In 1982, the site was expanded by adding 48 acres ("Woodland II").

**ANSWER:** WMII admits the allegations contained in paragraph 2.

3. In 1988, Waste Management of Illinois, Inc. ("WMII") filed an application with Kane County to further prolong the life of the landfill for an additional 15 years by working the area between Woodland I and II (this application is commonly referred to as the "Woodland III" application). The Kane County Board adopted Resolution 88-155 approving, with conditions, the Woodland III application (Certified copy of the Resolution is attached and incorporated herein by reference as Exhibit 1), including conditions that required the Site be developed as a passive recreation park once it was full and closed.

**ANSWER:** WMII admits that WMII filed an application with Kane County in 1988 to

expand the Woodland Landfill by a vertical expansion of 20 acres of the Woodland II waste footprint and a horizontal expansion of 28 acres between Woodland I and Woodland II ("Woodland III"). WMII further admits that Woodland III was granted local siting approval pursuant to County Board Resolution 88-155 ("Resolution"), which is the best evidence of the Resolution's contents and, therefore, WMII refers to the Resolution for a complete and accurate recitation of its contents. WMII denies the remaining allegations contained in paragraph 3.

4. In June, 2002, WMII re-filed a Site Location Application for Woodland Transfer Facility (originally filed in February, 2002) with the Kane County Board. In this application, WMII proposed to locate a transfer station facility on the Woodland Site (although the entire application is too voluminous to attach hereto, a portion of the application is attached as Exhibit 2). A map showing the location of the proposed transfer station on the Woodland Landfill site is attached as Exhibit 3.

**ANSWER:** WMII admits that WMII filed a Site Location Application ("Application") on June 14, 2002 seeking to site an 8.9-acre parcel of the Woodland Landfill site for use as a waste transfer station. WMII further admits that documents entitled Exhibit 2 and Exhibit 3 were attached to the Complaint, but states that the June 14, 2002 Application is the best evidence of the Application's contents and, therefore, refers to the Application for a complete and accurate recitation of its contents.

5. Following months of public hearings, the Kane County Board overwhelmingly denied WMII's application for the transfer station. On or about January 14, 2003, however, WMII filed its Petition for Hearing To Contest Site Location Denial with this Board, No. PCB 03-104, requesting a hearing to contest the decision of the Kane County Board. A copy of the Petition (without exhibits) is attached hereto as Exhibit 4.

**ANSWER:** WMII admits that, following a public hearing, WMII's Application was denied by the Kane County Board on December 10, 2002, and that on January 14, 2003, WMII filed its Petition for Hearing To Contest Site Location Denial with this Board, No. PCB 03-104 ("Petition for Review"), requesting a hearing to contest the decision of the Kane County Board. WMII further admits that a document entitled Exhibit 4 was attached to the Complaint, but states that Petition for Review is the best evidence of the Petition for Review's contents and, therefore, refers to the Petition for Review for a complete and accurate recitation of its contents. WMII denies the remaining allegations contained in paragraph 5.

6. WMII's persistent attempt to site a transfer station at the Woodland Site constitutes a breach of the Conditions imposed by Kane County when approving the Woodland III application. More specifically, Condition 4 mandated:

"The site, commonly known as the Woodland Site, shall not be expanded further." (Exhibit 1)

**ANSWER:** WMII denies the allegations contained in paragraph 6. Further answering, WMII states that the Resolution is the best evidence of the Resolution's contents and, therefore, refers to the Resolution for a complete and accurate recitation of its contents.

7. Further, Condition 2 of Kane County Board Resolution No. 88-155 required:

"That the site will be developed and operated in a manner consistent with the representations made at the public hearing on this matter held on July 26, 1988 and to all applicable laws, statutes, rules and regulations of the Illinois Environmental Protection Agency, and the Illinois Pollution Control Board, or their successors, as may be now or hereafter in effect and which are applicable to this site." (Exhibit 1)

**ANSWER:** WMII states that the Resolution is the best evidence of the Resolution's contents and, therefore, refers to the Resolution for a complete and accurate recitation of its contents.

8. Among the representations read into the record of the July 26, 1988 public hearing--subsequently incorporated into Condition 2--were the representations of WMII set forth in a July 8, 1988 letter from WMII to the Village of South Elgin in which WMII promised (among other things) that the Woodland III request "will be the last expansion that we will attempt to do on this site, which is known as Woodland landfill site." (Relevant portion of the transcript of the hearing in which WMII read the letter into the record is attached hereto as Exhibit 5.) The July 8, 1988 letter was attached to and incorporated into Resolution 88-155 as Exhibit B thereto. (See Exhibit 1)

**ANSWER:** WMII states that the Resolution and the hearing transcripts are the best evidence of the Resolution and hearing transcript's contents and, therefore, refers to the Resolution and the hearing transcript for a complete and accurate recitation of their contents. WMII denies the remaining allegations contained in paragraph 8.

9. Similarly, in its 1988 siting application for Woodland III and at the public hearing on the application, WMII detailed its proposed end-use (closure) plan for the site. Such a plan is required by 35 Ill. Admin. Code 807.206. In its materials, WMII represented that: "Upon completion the site will be comprised [sic] of a combination of filled land and unfilled land, which will be left, essentially, in a natural state. . . A major component of the end use proposal is to allow for hiking and bicycle riding across this large open space..." (WMII's application materials concerning the End Use Plan are attached hereto as Exhibit 6.)

**ANSWER:** WMII states that the Application and the hearing transcript are the best evidence of the Application and the hearing transcript's contents and, therefore, refers to the Application and the hearing transcript for a complete and accurate recitation of their contents. The

second sentence of paragraph 9 contains a legal conclusion to which an answer is neither necessary nor appropriate.

10. Concerning the end-use plan, WMII made the following representations at the July 26, 1988 public hearing (again, these representations are, through Condition 2, conditions of approval):

"Woodland III proposal encompasses the entire site and looks at a final land use plan on that land form that is a passive recreational use. It incorporates some of the surrounding facilities or surrounding land uses into the final land use plan. The original Woodland I and Woodland II final land use plans weren't as comprehensive or as detailed in their final form."

The relevant portion of the July 26, 1988 hearing transcript is attached hereto as Exhibit 7.

**ANSWER:** WMII states that the hearing transcripts are the best evidence of the hearing transcript's contents and, therefore, refers to the entire hearing transcript for a complete and accurate recitation of its contents. To the extent paragraph 10 asserts legal conclusions, WMII states that an answer is neither necessary nor appropriate.

11. Contrary to the terms of its site permit, WMII has filed with the Kane County Board a site application for a new transfer station on nine acres of the Woodland site, which will "process, consolidate, store and transfer non-hazardous municipal waste, including landscape waste and general construction or demolition debris from residential, commercial and industrial waste generators," which will be capable of processing 2,640 tons per day. (Exhibit 2.)

**ANSWER:** WMII denies that the filing of its Application is contrary to the terms of the site permit. Further answering, WMII states that the Application is the best evidence of the Application's contents and, therefore, refers to the Application for a complete and accurate recitation



of its contents.

12. Section 5/39.2(e) of the Illinois Environmental Protection Act, 415 ILCS 5/39.2(e), provides that "In granting approval for a site, the county board... may impose such conditions as may be reasonable and necessary to accomplish the purpose of this section..." The Kane County Board imposed on the Woodland III permit the condition that the site "shall not be expanded further" (Condition 4) and the condition that WMII fulfill all of the representations made at the July 26, 1988 hearing (Condition 2), including the representation that Woodland III was the last expansion on the site and that the relevant portion of Woodland III would be a passive recreation area.

**ANSWER:** WMII states Section 5/39.2(e) of the Illinois Environmental Protection Act ("Act") and the Resolution are the best evidence of the Act and the Resolution's contents and, therefore, refers to the Act and Resolution for a complete and accurate recitation of their contents.

13. Pursuant to 35 Ill. Admin. Code 807.206, the granting of a landfill permit is conditioned upon the adoption of a closure plan. WMII did include a closure plan in its Woodland III application that calls for the specific area now proposed for a transfer station-indeed the entire site-to be redeveloped as a passive recreation park. WMII recently closed Woodland III and, therefore, should proceed to construct the passive recreation facility.

**ANSWER:** WMII states that 35 Ill. Admin. Code 807.206 and the Application are the best evidence of 35 Ill. Admin. Code 807.206 and the Application's contents and, therefore, refers to 35 Ill. Admin. Code 807.206 and the Application for a complete and accurate recitation of their contents. Further answering, WMII admits that Woodland III has closed recently, but denies the remaining allegations contained in paragraph 13.

14. Siting the proposed transfer station on the Woodland Site constitutes an impermissible expansion on the site and of the site, in violation of Conditions 2 and 4, in at least each of the

following ways:

- (C) the proposed transfer station would double the number of pollution control facilities on the site;
- (D) the transfer station would increase truck traffic to the site by more than 145% of the volume of traffic to the site at the time of its closure;
- (E) the transfer station would indefinitely expand the operating life of the site from its intended closing date;
- (F) the transfer station would expand improvements on the Site by adding septic, well, and waste management systems where none exist or are needed presently; and
- (G) the transfer station would increase the intensity of the use of the site for pollution control purposes.

**ANSWER:** WMII denies the allegations contained in paragraph 14 of the Complaint.

15. Likewise, siting the proposed transfer station on the Woodland Site constitutes an impermissible breach of the condition that the entire site be redeveloped as a passive recreation area.

**ANSWER:** WMII denies the allegations contained in paragraph 15 of the Complaint.

16. Section 5/31(d) of the Environmental Protection Act, 415 ILCS 5/31(d), provides that any person may file a complaint with the Pollution Control Board for violations of the Act or any rule, regulation, permit or term or condition.

**ANSWER:** WMII states that Section 5/31(d) of the Act speaks for itself.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense (The Complaint is Premature)**

1. The Complaint alleges that WMII's request for local siting approval of the Woodland Transfer Facility on an 8.9-acre portion of the Woodland Landfill property violates certain terms and

conditions of the Resolution.

2. The Complaint is premature because WMII's request for local siting approval of the Woodland Transfer Facility was denied by the Kane County Board.

3. Therefore, unless and until the Board reverses the Kane County Board's decision denying local siting approval, WMII lacks the ability to site the Woodland Transfer Facility and the Village's complaint fails to allege an actual controversy ripe for determination.

4. The Complaint is also premature because the Resolution did not contain a final and definitive end use plan.

5. Any steps toward implementing an end use plan must first be coordinated with, and approved by, the appropriate governmental authorities.

6. To date, no end use plan has been approved or adopted. Therefore, unless and until WMII receives the approval and assistance of the appropriate authorities, WMII is unable to implement any end use plan.

#### **Second Affirmative Defense**

##### **(There is No Condition Requiring WMII to Implement Any End Use Plan)**

1. The Resolution required that the Woodland Landfill site be developed and operated in a manner consistent with the representations made at the public hearing held on July 26, 1988.

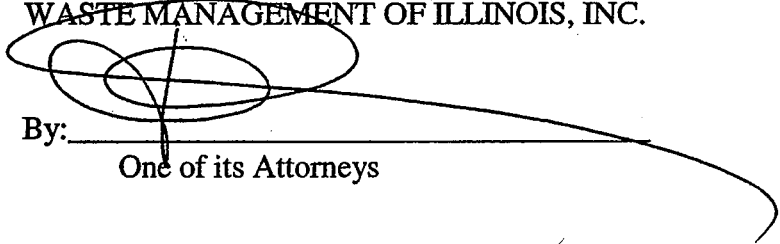
2. No representations were made by WMII at the July 26, 1988 public hearing that any specific end use plan would be implemented on any part of the Woodland Landfill site.

3. Therefore, the Resolution does not contain any condition that requires WMII to implement an end use plan on any part of the Woodland Landfill site.

WHEREFORE, WMII respectfully requests that the Illinois Pollution Control Board deny the relief requested in the Village's Complaint, and award such other and further relief as the Board deems just and proper.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By:   
One of its Attorneys

Donald J. Moran  
Lauren Blair  
PEDERSEN & HOIPT  
161 N. Clark Street  
Suite 3100  
Chicago, Illinois 60601  
(312) 641-6888

# Exhibit C

ILLINOIS POLLUTION CONTROL BOARD

March 20, 2003

VILLAGE OF SOUTH ELGIN, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 03-106  
 ) (Citizens Enforcement - Land)  
 WASTE MANAGEMENT OF ILLINOIS, )  
 INC., )  
 )  
 Respondent. )

ORDER OF THE BOARD (by N.J. Melas):

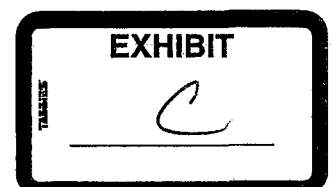
On January 16, 2003, the Village of South Elgin (South Elgin) filed this complaint (Comp.) against Waste Management asking the Board to enforce two special conditions of a landfill siting approval granted to Waste Management by the Kane County Board on September 13, 1988. The special conditions were incorporated by reference into the permit the Illinois Environmental Protection Agency (Agency) issued to Waste Management for expansion of the Woodland site (Woodland III permit). On February 18, 2003, Waste Management of Illinois, Inc. (Waste Management) filed a motion to dismiss this complaint as frivolous (Mot.).

On January 14, 2003, Waste Management filed a petition for review of the Kane County Board's decision to deny Waste Management's request for siting approval of a proposed waste transfer facility (Woodland Transfer Facility). See Waste Management of Illinois, Inc. v. County Board of Kane County, PCB 03-104. In its petition for review, Waste Management claims: (i) the siting process and procedures the Kane County Board used in reaching the decision were fundamentally unfair; and (ii) Kane County's denial of siting approval, and the finding that certain statutory criteria were not met, were against the manifest weight of the evidence. This siting appeal is still pending.

South Elgin responded in opposition to the motion to dismiss this enforcement case on March 4, 2003. As discussed below, the Board denies Waste Management's motion to dismiss, finds South Elgin's complaint is neither duplicative nor frivolous, and accepts this complaint for hearing.

**BACKGROUND**

The Woodland Landfill site is 213 acres and was established as a pollution control facility in 1976. Initially, the Agency permitted the use of 55 acres for use as a landfill (Woodland I). In 1982, the Agency permitted 48 more acres (Woodland II).



In 1988, Waste Management sought Kane County's siting approval under Section 39.2 to extend the life of the landfill for an additional 15 years by working the area between Woodland I and II (Woodland III application).

At a July 26, 1988 public hearing, Waste Management read into the record representations it made in a letter to South Elgin in which Waste Management promised, among other things, that the Woodland III request would be its last attempt to expand on the Woodland landfill site. At the same hearing, Waste Management also detailed its end-use plan for the facility that would allow for hiking and bicycle riding across the large open space. *See Comp.* at 3.

Subsequently, the Kane County Board adopted Resolution 88-155 approving, with conditions, the Woodland III application. The resolution was incorporated by reference into Waste Management's Woodland III permit issued by the Agency. Condition 2 of the resolution required that the site be developed and operated in accordance with representations made at the July 26, 1988 public hearing. Condition 4 mandated that the Woodland site not be expanded any further.

On June 14, 2002, Waste Management applied for approval to site an 8.9-acre parcel of the Woodland Site for use as a waste transfer facility. The Kane County Board denied Waste Management's application on December 10, 2002. As noted above, Waste Management filed a petition with the Board to contest the siting denial on January 14, 2003.

#### **PRELIMINARY MATTER**

The Board finds that South Elgin has the authority to bring this enforcement action before the Board. Sections 31(b) and 33(a) of the Environmental Protection Act (Act) confer the right to enforce site location suitability approval conditions in an enforcement action before the Board. The Second District Appellate Court has held "a violation of a condition properly imposed under this authority is a violation of the Act." *County of Lake v. PCB*, 120 Ill. App. 3d 89,101, 457 N.E.2d 1309, 1317 (2nd Dist. 1983) (*affirming B.F.I v. Lake County Board*, PCB 82-101, slip op. at 23 (Dec. 2, 1982)).

South Elgin requests the Board enforce two conditions of the 1988 Kane County Board resolution included in the Woodland III Agency permit: (1) that the site shall not be expanded further; and (2) that Waste Management fulfill all of the representations made at a July 26, 1988 public hearing, including that Woodland III was the last expansion it would attempt to make on the site and that the relevant portion of Woodland III would be turned into a passive recreation area post-closure. South Elgin correctly asserts that since the terms of the resolution was incorporated into the permit, a violation of a permit condition is also a violation of the Act. Section 31(b) of the Act allows any person to file a complaint with the Board against any person violating the Act. 415 ILCS 31(b).

### **DUPLICATIVE/FRIVOLOUS DETERMINATION**

Section 103.212(a) of the Board's procedural rules (35 Ill. Adm. Code 103.212(a)) implements Section 31(d) of the Act. 415 ILCS 5/31(d) (2002). This Section allows any person to file a complaint with the Board against any person violating any permit or condition thereof. Section 31(d) further provides that "[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing." *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action is frivolous if it requests "relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b).

Waste Management filed a motion to dismiss this matter as frivolous on February 18, 2003. Mot. at 2. The Board has not identified any other cases, either substantially similar or identical to Elgin's complaint, pending in other forums. The Board finds none of the allegations in the complaint are duplicative. The Board determines below whether Elgin's complaint is frivolous.

### **MOTION TO DISMISS**

For purposes of ruling on a motion to dismiss, all well plead facts contained in the pleading must be taken as true and all inferences from them must be drawn in favor of the nonmovant. People v. Stein Steel Mills Services, Inc., PCB 02-1 (Nov. 15, 2001). A complaint should not be dismissed for failure to state a claim unless it clearly appears that no set of facts could be proven under the pleadings that would entitle complainant to relief. Shelton v. Crown, PCB 96-53 (May 2, 1996).

### **THE PARTIES' ARGUMENTS**

Waste Management argues that the Board should dismiss South Elgin's complaint because it does not allege an actual controversy that is ripe for review by the Board. Waste Management states that in order to state a cause of action, an "actual controversy" must exist. In defining "actual," Waste Management cites to the Illinois Supreme Court's explanation in National Marine, Inc. v. IEPA, 159 Ill. 2d 381, 390, 639 N.E.2d 571, 575 (1994):

'Actual' in this context does not mean that a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render advisory opinions, or give legal advice as to future events. The case must, therefore, present a concrete dispute admitting of an immediate and definitive determination of the parties'



rights, the resolution of which will aid in the determination of the controversy of some part thereof. *Id.* at 390, 639 N.E.2d at 575.

Waste Management argues there is no actual controversy for two reasons: (1) Waste Management's transfer facility proposal does not constitute an "expansion," and, therefore, it did not violate any condition of the Woodland III siting approval; and (2) even if Waste Management's proposal does constitute an expansion, the Kane County Board's denial of siting for the waste transfer facility renders this complaint premature, or not yet ripe for review by the Board. The parties' arguments are summarized below.

### **Whether the Waste Transfer Facility Siting Application is a Proposed Expansion**

Waste Management contends that South Elgin based its complaint on the mistaken conclusion that Waste Management requested an expansion of the Woodland Site in its application for siting of a waste transfer facility. Mot. at 4. Waste Management opines that it is not seeking to expand the site, but simply to use part of the existing Woodland Site as a waste transfer facility. Waste Management further argues that, because it does not propose an expansion, it does not violate any condition of the Woodland III permit, and, hence, there is no actual controversy to adjudicate.

South Elgin states that the proposed transfer station constitutes an expansion because it would extend the lifespan of waste operations on the Woodland Site. Resp. at 6. Additionally, the transfer station would increase the intensity of the use by increasing the size and number of buildings, screening elements, well operations, septic system, amount of waste handled per day, and truck traffic in and out of the facility. *Id.* South Elgin claims that any attempt to site the transfer is, therefore, a violation of Condition 2 of the Woodland III permit that incorporated by reference Waste Management's promise that Woodland III would be its last attempt to expand the Woodland site. *Id.*

### **Ripeness**

Waste Management also argues that, in any event, the Kane County Board denied siting of the waste transfer facility. Consequently, Waste Management argues it cannot perform the actions which South Elgin claims will violate the Act unless the Board reverses the Kane County Board decision. Mot. at 5. Thus, Waste Management asserts there exists no controversy ripe for determination by the Board at this time.

Waste Management further supports its arguments by stating that the Board has no authority to issue advisory opinions (*City of Geneva v. Kane County*, PCB 94-58, slip op. at 1-2 (Oct. 6, 1994)), and that mere speculation that the County Board's decision will be reversed is insufficient to support South Elgin's cause of action (*Rocke v. PCB*, 78 Ill. App. 3d 476, 397 N.E.2d 51 (1st Dist. 1979)). Waste Management maintains that, should the Kane County Board reverse its decision and grant siting approval for the waste transfer facility, South Elgin's claim may then be ripe for determination. However, until that time, Waste Management concludes there is no actual controversy for the Board to decide.

In response to Waste Management's argument that the issue is not yet ripe for review, South Elgin disagrees. South Elgin argues that Condition 2 of the resolution prohibits Waste Management not only from expanding the site, but from *attempting* to expand the site. Resp. at 2. South Elgin further contends that the transfer facility proposal constitutes an expansion (as discussed above), and merely by applying for siting approval of this expansion with the Kane County board, Waste Management violated Condition 2 of the resolution. South Elgin concludes that this clearly is an "actual," concrete, justiciable violation of the Act ripe for review by the Board.

## DISCUSSION

### Whether the Waste Transfer Facility Siting Application is a Proposed Expansion

As stated above, the Board will not dismiss a complaint unless no set of facts can be proven under the pleadings that would entitle the complainant to relief. Shelton, PCB 96-53. Here, Waste Management itself referred to the proposed Woodland Transfer Facility as an expansion in a letter from Waste Management to the Kane County Board, dated February 13, 2002. Comp. Exh. 2. The letter states: "The Application establishes that the proposed expansion meets all of the siting criteria." *Id.* Furthermore, the Board has held that even an increase in the amount of waste received and handled at an existing permitted waste transfer facility constitutes an expansion of that facility. Continental Waste Industries of Illinois, Inc. v. Mt. Vernon, PCB 94-138, slip op. at 5, 20 (Oct. 27, 1994). In Continental Waste, the Board noted that a significant increase in usage and the addition of a second loading dock for outgoing trailers constituted an expansion of the then-permitted waste transfer facility. *Id.* at 20.

The waste transfer facility proposed by Waste Management is not merely an increase in usage of a current facility, but a proposal for siting a brand new waste transfer facility on property currently permitted as a landfill site. The site application is a proposal for a new transfer station on approximately nine acres of the Woodland site that will process, consolidate, store and transfer non-hazardous municipal waste. The facility would be capable of processing of 2,640 tons of waste per day. Comp. at 4. The Board finds there is enough information in the pleadings that Waste Management's proposal may constitute a proposal for expansion within the meaning of Section 39.2 of the Act to proceed to hearing on this issue.

### Ripeness

The Board is also persuaded by South Elgin's argument that this controversy is ripe for review. Condition 4 of the Kane County Board's resolution granting approval of Woodland III, mentioned above, states: "[t]he site, commonly known as the Woodland site, shall not be expanded further." Comp. Exh. 1. Condition 2 of the resolution incorporated representations read into the record of a July 26, 1988 public hearing on that matter. Among the representations was a letter from Waste Management to the Kane County Board read into the record by attorney Don Moran on behalf of Waste Management. The letter promised that the Woodland III request would be Waste Management's last attempt to expand the Woodland landfill site. Comp. Exh. 5.

By submitting an application for siting approval for the waste transfer facility on the Woodland site, Waste Management has arguably attempted to expand the site. Accordingly, South Elgin's action is ripe for review.

### ACCEPT FOR HEARING

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.212(a). Waste Management's motion to dismiss automatically stayed the 60-day period to file and answer to the complaint. Therefore, the Board gives Waste Management 60 days from receipt of this order to file an answer to South Elgin's complaint. *See* 35 Ill. Adm. Code 103.204(e).

Failure to file an answer to a complaint within this deadline may have severe consequences. Generally, if Waste Management fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider Waste Management to have admitted the allegation. 35 Ill. Adm. Code 103.204(d). The Board directs the hearing officer to proceed expeditiously to hearing.

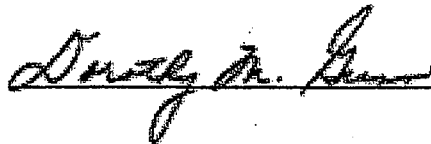
### CONCLUSION

Today the Board denies Waste Management's motion to dismiss this complaint, finds this complaint is neither duplicative nor frivolous, and accepts the complaint for hearing.

IT IS SO ORDERED.

Board Member D.C. Karpiel abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 20, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board