

RECEIVED
CLERK'S OFFICE

MAY 28 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF SOUTH ELGIN,

Complainant,

v.

WASTE MANAGEMENT OF ILLINOIS, INC.;

Respondent.

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 May 28, 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 Stephanie A. Benway
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
Phone: (312) 782-7606
Fax: (312) 782-0943

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 May 28, 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.

Darlene Hincks

L:\My Documents\Municipalities\South Elgin\Transfer Station\NotFilingMSJ Reply.wpd / 3327310.000

RECEIVED
CLERK'S OFFICE

MAY 28 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF SOUTH ELGIN,)	
a Municipal Corporation,)	
)	
Complainant,)	
)	No. PCB 03-106
vs.)	
)	(Enforcement)
WASTE MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondent.)	

VILLAGE OF SOUTH ELGIN'S RESPONSE
TO WASTE MANAGEMENT'S CROSS MOTION FOR SUMMARY JUDGMENT

The Village of South Elgin (the "Village"), by and through its attorneys, Ancel, Glink, Diamond, Bush, DiCianni & Rolek, P.C., hereby submits its response to Respondent Waste Management of Illinois, Inc.'s cross motion for summary judgment:

I INTRODUCTION

On April 29, 2004, the parties filed cross motions for summary judgment. The Village maintains that Waste Management of Illinois, Inc.'s ("WMI") proposal to build a waste transfer station on the Woodland Landfill Site constitutes an impermissible expansion of and on the site in violation of Conditions 2 and 4 of the permit granted by Kane County for the Woodland III landfill expansion via Resolution No. 88-155 (the "Resolution"). The facts are undisputed that Condition 2 requires WMI to comply with representations made at the hearing, including the representation in the end use plan that the entire site would become a passive recreation area post-closure and the representation contained in a letter from Donald Price that WMI would not attempt any further

expansion on the site. The facts are equally undisputed that Condition 4 prohibits any further expansion of the site.

Unable to dispute these facts, WMI resorts to ignoring the principles of construction applicable to a piece of legislation like Resolution 88-155, including the principle that the entire Resolution be read together, each part in light of the others. *Chicago Title and Trust Co. v. Village of Inverness*, 735 N.E.2d 686 (1st Dist. 2000). For example, WMI 's motion wholly ignores Condition 2 and the representations made at the hearing concerning the end use plan--representations that make it plain that there is no possibility of any transfer station in a passive recreation area.

Likewise, WMI refuses to give the language of Resolution 88-155 its plain and ordinary meaning for how else can it argue that building a second pollution control 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--is not an "expansion" in violation of Condition 4? Instead, WMI commits the logical fallacy of arguing from the negative, contending that since Condition 4 does not expressly prohibit "transfer stations" they therefore must be permissible.

In short, WMI's positions are desperate and without merit. The undisputed material facts and long established principles of construction prove as a matter of law that WMI violated Conditions 2 and 4 of the Kane County Board's Woodland III siting approval. As such, the Village is entitled to summary judgment.

II WMI'S STATEMENT OF FACTS ARE INCOMPLETE AND INACCURATE

A. Paragraphs 21, 25 and 26 of WMI's "Undisputed Facts" Are Not Facts

Paragraphs 21, 25 and 26 on pages 8 and 9 of WMI's Motion for Summary Judgment are legal conclusions and cannot be considered "undisputed facts" for purposes of its motion. Paragraphs 21, 25 and 26 incorrectly argue that Condition 4 does not prohibit development of a waste transfer station and is not an expansion of the Woodland landfill site. Paragraphs 21, 26 and 26 are improperly identified as facts as it is precisely the issue the parties are asking this Pollution Control Board to decide. As is explained more fully below, WMI's waste transfer proposal is an expansion of the Woodland Landfill site and is in violation of the Woodland III siting conditions included in the Resolution. As such, paragraphs 21, 25 and 26 must be stricken and disregarded by the Pollution Control Board.

B. Material Facts Ignored by WMI

As in its motion to dismiss response, in its motion for summary judgment, WMI ignores the fact that the Village claims that WMI violated Condition 2 of the Resolution. Condition 2 of the Resolution provided that the Woodland Landfill site "be developed and operated in a manner consistent with the representations made at the public hearing on this matter held on July 26, 1988. (Exhibit A-1, attached to the Village's Motion for Summary Judgment). At the July 26, 1988 public hearing, WMI stated on the record that the Woodland III expansion was "the last expansion that we will attempt to do on this site which is commonly known as the Woodland Landfill site." (Exhibit A-1,5. Furthermore, WMI stated that the Woodland III proposal encompassed the entire site and looks at a final end use plan on the Woodland landfill that is a passive recreational use. (Exhibit A-1,3,5-7).

C. Material Facts Misrepresented by WMI

WMI erroneously claims that the testimony of WMI Vice President Donald Price and South Elgin Mayor Thomas Rolando establish that, notwithstanding the plain language of Condition 4 of the Resolution, WMI was not prohibited from building a waste transfer station. This is simply a mischaracterization of the testimony.

Contrary to WMI's suggestion, Price did not testify that he meant the July 8, 1988 letter to allow for building of a waste transfer facility. While it is true that Donald Price testified WMI intended to build a transfer station on the Woodland site, his testimony referred to the time period prior to receiving Woodland III siting approval and has nothing to do with the meaning of the July 8, 1988 letter. Furthermore, Price acknowledged that WMI's intention was never documented or followed through in any way. (Price Dep. 22). In fact, when confronted with his July 8, 1988 letter to Mayor Rolando, Price testified that the letter was not misleading and was accurate and clear. (Price Dep. 26-27). The July 8, 1988 letter specifically states that no further expansion will be sought. The letter does not refer to WMI's intention to build a transfer facility on the site.

WMI also misrepresented the testimony of Mayor Rolando. According to WMI, Mayor Rolando's testimony suggests that since the July 8, 1988 letter did not mention a transfer facility, the building of one was not prohibited. Once again, this is a complete mischaracterization of the facts.

Mayor Rolando testified that the July 8, 1988 letter set out the agreement between the Village and WMI that WMI would seek no further expansion on the Woodland landfill site. (Rolando Dep. 29). Mayor Rolando further testified that it was his understanding that the letter would prohibit expansion of the site by building of a waste transfer station. (Rolando Dep. 35). Furthermore, the

Mayor explained that the matter of a waste transfer station was never discussed and if it had been proposed by WMI, the Village would have objected to it. (Rolando Dep. 38, 41).

III. WMI'S WASTE TRANSFER STATION PROPOSAL IS AN EXPANSION AND VIOLATES THE CONDITIONS IMPOSED BY THE COUNTY BOARD

Contrary to its assertions, WMI's proposal to build a waste transfer facility on the Woodland Landfill site violates the conditions for Woodland III site approval imposed by the County Board. Conditions 2 and 4 imposed by the Kane County Board prohibit any attempt by WMI to expand the Woodland landfill site. Condition 2 requires that the entire site be developed as a passive-recreation park upon closure of the landfill and Condition 4 prohibits further expansion of the site.

A. Building a Waste Transfer Station Constitutes an Expansion

WMI asserts that adding a pollution control facility does not constitute an expansion because a waste transfer facility is distinct to a landfill operation. WMI's argument, however, ignores established case law and this Pollution Control Board's decision as to the meaning of expansion. By WMI's own definition, an expansion is an increase in the size or capacity of an existing landfill. *M.I.G. Investments, Inc. v. EPA*, 122 Ill.2d 392, 523 N.E.2d 1 (1988). An "expansion" includes 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 (1st Dist. 1955). This Pollution Control Board has already noted that a significant increase in usage can constitute an expansion of a then permitted waste transfer facility. (March 23, 2003 Order of Pollution Control Board, citing *Continental Waste Industries of Illinois, Inc. v. Mt. Vernon*, PCB 94-138, slip op. at 5, 20 (October 27, 1997).

Contrary to WMI's suggestion, it is irrelevant that the transfer station would be sited on a separate 9-acre portion apart from the 121-acre waste footprint. WMI's transfer station proposal

aims to increase the intensity of the use of the entire 130-acre Woodland Landfill site by doubling the number of pollution control facilities, increasing truck traffic, expanding the operating life of the site, and adding septic, well and waste management systems where none previously existed.

B. Condition 4 Does Not Allow Development of a Waste Transfer Station

The Village is entitled to summary judgment on this matter because Condition 4 does not allow development of a waste transfer station. There is no dispute that the plain language of the condition clearly states that the site shall not be expanded further. Incredibly, WMI maintains that Condition 4 limits only the development of the sanitary landfill and not to the entire site.

According to WMI, the testimony of Donald Price and Mayor Rolando regarding the July 8, 1988 letter supports its contention that Condition 4 does not mean that it cannot build a waste transfer station on the Woodland site. WMI's reliance on their testimony, however, is misplaced. Donald Price, the author of the July 8, 1988 letter, never testified to the meaning of the letter. Rather, Price testified that the letter was accurate and clear. (Price Dep. 26-27). While Price claimed that it was WMI's intention to build a transfer station, he acknowledged that this intent was never acted upon.

Mayor Rolando's testimony coincides with Price's. The Mayor testified that the matter of a waste transfer station was never discussed. (Rolando Dep. 38, 41). If it had been proposed by WMI, the Village would have objected to it. (Rolando Dep. 38, 41). The July 8, 1988 letter provided that WMI would seek no further expansion on the Woodland landfill site and that it was (Rolando Dep. 29). Mayor Rolando testified that he understood the letter to prohibit expansion of the site by building of a waste transfer station. (Rolando Dep. 35).

C. Building a Waste Transfer Station is Also Prohibited by Condition 2

WMI ignores the fact that Condition 2 also prohibits the building of a waste transfer station on the Woodland site. Condition 2 of the County Board's siting approval requires that the Woodland site be converted into a passive recreation area post-closure. Pursuant to the end-use requirements under Section 807.206 of the Illinois Administrative Code, WMI explicitly agreed that upon completion, the entire site will be comprised of land which will be left in a nature state and allow for various recreational uses. (Exhibit 7, attached to the Village's Motion for Summary Judgment).

IV. CONCLUSION

The Village is entitled to summary judgment because there is no material facts in dispute and the language of the Conditions is clear. WMI's proposal to site new waste transfer facility on the Woodland Landfill site violates the conditions imposed by the Kane County Board for siting approval of Woodland III as building the new structure constitutes an expansion and does not conform with WMI's end-use plan for the site.

WHEREFORE, the Village of South Elgin respectfully requests that this Honorable Board enter and order (a) denying WMI's motion for summary judgment; (b) granting summary judgment in favor of the Village; (b) find 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 the Kane County Board in Resolution 88-155; (c) ordering WMI to cease and desist from its attempt to site a transfer station; and (d) providing any such other and further relief as the Board deems equitable and just.

Respectfully submitted,
The Village of South Elgin

By: Stephanie A. Benway
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
(312) 782-7606
(312) 782-0943 Fax