

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 5 2003

LOWE TRANSFER, INC. and)
MARSHALL LOWE,)
Co-Petitioners,)
vs.)
COUNTY BOARD OF McHENRY)
COUNTY, ILLINOIS)
Respondents.)

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

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: See List Referenced in Proof of Service

PLEASE TAKE NOTICE that on June 4, 2003, we filed with the Illinois Pollution Control Board, the attached Lowe Transfer, Inc. and Marshall Lowe's **PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL and APPEARANCE** in the above entitled matter.

LOWE TRANSFER, INC. and
MARSHALL LOWE

By: _____

One of Its Attorney

PROOF OF SERVICE

I, a non-attorney, on oath state that I served the foregoing Petition on the following parties by depositing same in the U. S. mail at or before 5:00 p.m. on this 4th day of June, 2003:

Mr. Michael W. Tryon
Chairman - McHenry County Board
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Ms. Katherine C. Schultz
McHenry County Clerk
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Assistant State's Attorney R. Glenn Gable
State's Attorneys Office
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Helen A. Harkins
Helen A. Harkins

David W. McArdle
ZUKOWSKI ROGERS FLOOD & MCARDLE
50 Virginia Street
Crystal Lake, Illinois 60014
(815) 459-2050
Attorney Registration No. 06182127

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CLERK'S OFFICE

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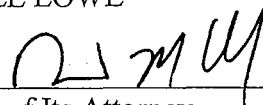
STATE OF ILLINOIS
Pollution Control Board

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

APPEARANCE

The undersigned enters their appearance on behalf of Co-Petitioners, LOWE
TRANSFER, INC. and MARSHALL LOWE.

LOWE TRANSFER, INC. and
MARSHALL LOWE

By: 
One of Its Attorney

David W. McArdle
ZUKOWSKI, ROGERS, FLOOD & McARDLE
Attorneys for Lowe Transfer, Inc. and Marshall Lowe
50 Virginia Street
Crystal Lake, Illinois 60014
(815) 459-2050
(815) 459-9057 (Fax)

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June 4, 2003 (9:12 AM)

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 5 2003

STATE OF ILLINOIS
Pollution Control Board

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

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

PETITION FOR HEARING
TO CONTEST SITE LOCATION DENIAL

Co-Petitioners Lowe Transfer, Inc. and Marshall Lowe ("Lowe"), by Zukowski, Rogers, Flood & McArdle, its attorneys, respectfully request a hearing to contest the decision of the County Board of McHenry County, Illinois ("County Board") denying site location for the proposed Northwest Highway Transfer Facility ("Facility"). In support of this Petition, Lowe states as follows:

1. This Petition is filed pursuant to Section 40.1(a) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/40.1).
2. Pursuant to 415 ILCS 5/39.2, on November 20, 2002, Lowe submitted its request for site location approval for the Facility ("Request"). The Facility is a municipal waste transfer station located on a 2.46-acre site on U.S. Route 14 in unincorporated McHenry County, Illinois. The Facility will be used for the consolidation and transfer of residential, commercial and industrial non-hazardous municipal waste with an average of 600 tons per day.
3. Following service and publication of required notices, public hearings were conducted before a hearing officer and McHenry County's Pollution Control Facility Siting Committee, from

March 1 to March 15, 2003. On May 6, 2003, the County Board denied Lowe's Request, making Lowe a proper petitioner under §35 Ill. Adm. Code Part 107.200(a). A true and correct copy of the May 6, 2003 County Board Resolution denying same is attached hereto and made a part hereof as Exhibit A.

4. Lowe contests the County Board's decision to deny the Request on grounds including the following:

a. The May 6, 2003 decision relative to Criteria (ii), (iii) and (v) (415 ILCS 5/39.2(ii), (iii) and (v)) not being met, is against the manifest weight of the evidence;

b. The County Board's imposition of a "host fee" as a special condition of approving Criteria (viii) (415 ILCS 5/39.2(viii)), was unauthorized and unlawful;

c. The following phrase in 415 ILCS 5/39.2 was applied in an unlawful manner by the County Board in paragraph J "Unnumbered Criterion" on page 4 of the May 6, 2003 decision:

... The county board or the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under this Section. ...

d. The record fails to show any basis for the County Board's decision; and

e. In violation of McHenry County's Regional Pollution Control Facility Siting Ordinance No. 0-9412-1200-88, a true and correct copy of which is attached hereto as "Exhibit B,"

the County Board failed to specify the reasons for its decision. (§7(b) and (c).)

WHEREFORE, Lowe Transfer, Inc. and Marshall Lowe respectfully request that the Illinois Pollution Control Board enter an order (a) setting for hearing this contest of the McHenry County Board siting denial decision, (b) reversing the McHenry County Board siting denial decision, and (c) providing such other and further relief as the Illinois Pollution Control Board deems appropriate.

Respectfully submitted,

LOWE TRANSFER, INC. and MARSHALL LOWE
By, Zukowski, Rogers, Flood & McArdle

By 

David W. McArdle

David W. McArdle
ZUKOWSKI, ROGERS, FLOOD & MCARDLE
Attorney No: 06182127
Attorney for: Lowe Transfer, Inc. and Marshall Lowe
50 Virginia Street
Crystal Lake, IL 60014
815/459-2050
815/459-9057 (fax)

RESOLUTION OF THE MCHENRY COUNTY BOARD
CONCERNING THE LOWE TRANSFER, INC APPLICATION
FOR A POLLUTION CONTROL FACILITY

RESOLUTION NO. R-200305-12-104

LOWE TRANSFER, INC ("Applicant") has petitioned the McHenry County Board ("Board") and the McHenry County Pollution Control Facility Committee ("Committee") for local siting approval of a pollution control facility. Specifically, Applicant proposes to develop a solid waste transfer station, as detailed in its Application for a Pollution Control Facility ("Application").

WHEREAS, the Committee has conducted various public hearings and received testimony from expert witnesses submitted by the Applicant and other interested parties for purposes of eliciting public comment and evaluation of the Application; and

WHEREAS, the Committee has accepted and considered all written comments delivered or postmarked within 30 days of the last public hearing; and

WHEREAS, the Committee has reviewed the Application in light of the criteria established for consideration of siting of pollution control facilities in Section 39.2 of the Illinois Environmental Protection Act, and to the extent applicable, the provisions of the McHenry County Pollution Control Facility Siting Ordinance (the Ordinance); and

WHEREAS, the Committee met on April 28, 2003 to make its recommendation to the full County Board as to whether (in light of its review and consideration of the Application) the request for local siting approval should be approved or denied; and,

WHEREAS, at the end of the Committee's deliberations, the Committee recommended that local siting approval for the facility detailed in the Application be denied; and,

WHEREAS, after review of the Application, all expert testimony, all lay testimony, all exhibits, the hearing record as a whole, all public comments, the proposed Findings of Fact and Conclusions of Law submitted by various parties herein, as well as the Report of the McHenry County Staff, the record of this proceeding as a whole, and after considering all relevant and applicable factors and matters, as well as the Committee's Findings and Recommendations herein, the McHenry County Board HEREBY FINDS as follows:

- I. That the Board has jurisdiction to rule on the Lowe Transfer, Inc. application for siting approval of a pollution control facility based upon the applicant's proper notification as provided by Section 39.2 of the Illinois Environmental Protection Act and the County Ordinance as they pertain to the persons and entities that appear on the authentic tax records of McHenry County which are maintained by the McHenry County Treasurer, as well as such other notice requirements set

forth in these statutory provisions. Further, that the hearing held on such Application was conducted in a fundamentally fair manner.

Aye 20 Abstain 0
Nay 0

- II. (A) CRITERION #1: THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE AREA IT IS INTENDED TO SERVE.

The Applicant has demonstrated compliance with Criterion #1:

Aye 19 Abstain 0
Nay 1

- (B) CRITERION #2: THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED THAT THE PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED.

The Applicant has demonstrated compliance with Criterion #2:

Aye 0 Abstain 0
Nay 20

- (C) CRITERION #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 THE SURROUNDING PROPERTY.

The Applicant has demonstrated compliance with Criterion #3:

Aye 0 Abstain 0
Nay 21

- (D) CRITERION #4: THE FACILITY IS LOCATED OUTSIDE THE BOUNDARY OF THE 100-YEAR FLOODPLAIN OR THE SITE IS FLOOD-PROOFED.

The Applicant has demonstrated compliance with Criterion #4:

Aye 21 Abstain 0
Nay 0

- (E) CRITERION #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.

The Applicant has demonstrated compliance with Criterion #5:

Aye 7 Abstain 0
Nay 14

(F) CRITERION #6: THE TRAFFIC PATTERNS TO OR FROM THE FACILITY ARE SO DESIGNED AS TO MINIMIZE THE IMPACT ON EXISTING TRAFFIC FLOWS.

The Applicant has demonstrated compliance with Criterion #6:

Aye 19 Abstain 0
Nay 2

Does the Board hold that its finding of compliance with Criterion #6 is subject to any special conditions?

Special Condition No. 1 – The Applicant shall improve the site or Northwest Highway if queue storage routinely proves to be insufficient for either Northwest Highway or this facility;

Special Condition No. 2 – The Applicant shall limit the average daily facility operations to 600 tons per day;

Special Condition No. 3 – The Applicant must construct a left turn lane from Northwest Highway to access the site from the North;

Special Condition No. 4 – The Applicant must enforce the identified truck travel patterns. Transfer trucks shall not be allowed to travel south from the facility. If excessive violations arise, the Applicant must cease operations of the facility until such time that the special condition is satisfactorily met by this facility.

Aye 21 Abstain 0
Nay 0

(G) CRITERION #7: IF THE FACILITY WILL BE TREATING, STORING OR DISPOSING OF HAZARDOUS WASTE, AN EMERGENCY RESPONSE PLAN EXISTS FOR THE FACILITY WHICH INCLUDES NOTIFICATION, CONTAINMENT, AND EVACUATION PROCEDURES TO BE USED IN CASE OF AN ACCIDENTAL RELEASE.

The Applicant has demonstrated compliance with Criterion #7:

Aye 15 Abstain 0
Nay 6

(H) CRITERION #8: IF THE FACILITY IS TO BE LOCATED IN A COUNTY WHERE THE COUNTY BOARD HAS ADOPTED A SOLID

WASTE MANAGEMENT PLAN CONSISTENT WITH THE PLANNING REQUIREMENTS OF THE LOCAL SOLID WASTE DISPOSAL ACT OR THE SOLID WASTE PLANNING AND RECYCLING ACT, THE FACILITY IS CONSISTENT WITH THAT PLAN.

The Applicant has demonstrated compliance with Criterion #8:

Aye 21 Abstain 0
Nay 0

Does the Board hold that its finding of compliance with Criterion #8 is subject to any special conditions?

Special Condition No. 1 – The Applicant shall pay the host fee in the amount of \$1.90 per ton, that amount being found from the record as a whole to fairly compensate the County for potential impacts caused by the transfer station and to meet those goals and requirements imposed upon the proposed facility by the McHenry County Solid Waste Management Plan. Said host fee shall be increased on January 1 of each calendar year for which the facility is open by the amount of the increase in the Consumer Price II Index for the Great Lakes Region for the prior calendar year.

Aye 21 Abstain 0
Nay 0

(I) CRITERION #9: IF THE FACILITY WILL BE LOCATED WITHIN A REGULATED RECHARGE AREA, ANY APPLICABLE REQUIREMENTS SPECIFIED BY THE BOARD FOR SUCH AREAS HAVE BEEN MET.

The Applicant has demonstrated compliance with Criterion #9:

Aye 21 Abstain 0
Nay 0

(J) UNNUMBERED CRITERION: THE BOARD HAS CONSIDERED AS EVIDENCE THE PREVIOUS OPERATING EXPERIENCE OF THE APPLICANT AND PAST RECORD OF CONVICTIONS OR ADMISSIONS OF VIOLATIONS OF THE APPLICANT WHEN CONSIDERING CRITERIA (ii) AND (v) OF 415 ILCS 5/39.2(a).

Aye 21 Abstain 0
Nay 0

Were the determinations made by the Board based upon the record in its entirety, and only the record as presented to the Board?

Aye 21
Nay 0

Abstain 0

NOW, THEREFORE, BE IT RESOLVED by the Board that based upon its findings on these nine criteria, the Board hereby:

_____ Approves the Application for local siting approval.

XX Denies the Application for local siting approval.
21 AYE 0 NAY

BE IT FURTHER RESOLVED that this Resolution becomes effective immediately upon the adoption thereof.


BE IT FURTHER RESOLVED that the County Clerk is hereby authorized to distribute a certified copy of this Resolution to the County Administrator, the Deputy County Administrator, the McHenry County State's Attorney, the Planning and Development Director, and the McHenry County Health Department Administrator.

PRESENTED, PASSED AND APPROVED this 6th day of May,
2003.

ATTEST:


KATHERINE C. SCHULTZ
COUNTY CLERK

MCHENRY COUNTY, BOARD
BY:


MICHAEL W. TRYON, CHAIRMAN
MCHENRY COUNTY BOARD

STATE OF ILLINOIS)
 SS
COUNTY OF MCHENRY)

I, Katherine C. Schultz, County Clerk within and for said County and State aforesaid, do hereby certify the foregoing to be a true and complete copy of Resolution No. R-200305-12-104 a Resolution of the McHenry County Board concerning the Lowe Transfer, Inc. Application for a pollution control facility. WHEREOF I have hereunto subscribed my hand and affixed the official seal of said County, at my office in Woodstock, Illinois this 9th day of May AD, 2003.

Katherine C. Schultz
McHenry County Clerk

ORDINANCE NO. 0-9412-1200-88

PREVIOUSLY ADOPTED
ORDINANCE NO. 0-9304-1200-20

THE REGIONAL POLLUTION CONTROL
FACILITY SITING ORDINANCE

BE IT ORDAINED by the County Board of the County of McHenry, Illinois:

WHEREAS, the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) has provided for approval of the county board of a county as to the site location suitability for each new Regional Pollution Control Facility, the following ordinance is intended to delineate the substance and procedure for the application and hearing of such proposed site locations, and shall be called "The Regional Pollution Control Facility Siting Ordinance".

SECTION 1: DEFINITIONS

(a) ACT is the Illinois Environmental Protection Act as amended (415 ILCS 5/1 et seq.).

(b) APPLICANT is any person, firm or partnership, association, corporation, company or organization of any kind.

(c) HAZARDOUS WASTE DISPOSAL SITE is a site at which hazardous waste is disposed. Hazardous Waste is waste as defined in the Illinois Environmental Protection Act, as amended (415 ILCS 5/1 et seq.) (The Act).

(d) (a) REGIONAL POLLUTION CONTROL FACILITY is any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility or waste incinerator that accepts waste from or that serves an area that exceeds or extends over the boundaries of any local general purpose unit of government. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation Act, as now or hereafter amended.¹

The following are not regional pollution control facilities:

(1) sites or facilities located within the boundary of a local general purpose unit of government and intended to serve only that

¹70 ILCS 2605/1 et seq.

entity;

(2) waste storage sites regulated under 40 CFR, Part 761.42;

(3) sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

(4) sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3;²

(5) abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

(6) sites or facilities used by any person to specifically conduct a landscape composting operation;

(7) regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;³

(8) the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r) (2) or (r) (3) of Section 21;

(9) the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;⁴

(10) the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for the storage of petroleum contaminated materials before treatment. Only these categories of petroleum listed in paragraph (5) of subsection (a) of Section 22.18b are exempt under this subdivision;

²415 ILCS 5/22.2 OR 5/55.3.

³Former Ill.Rev.Stat. Chapter 127, ¶ 63-1 (repealed).

⁴415 ILCS 5/53 et seq.

(11) the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail.

(b) A new regional pollution control facility is:

(1) a regional pollution control facility initially permitted for development or construction after July 1, 1981; or

(2) the area of expansion beyond the boundary of a currently permitted regional pollution control facility; or

(3) a permitted regional pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.

(e) COUNTY is McHenry County, Illinois.

(f) COUNTY BOARD is the McHenry County Board.

(g) IEPA is the Illinois Environmental Protection Agency.

In addition, all other words used in this Ordinance and defined in the Act shall have the same definitions and meanings as found in said Act.

SECTION 2: COUNTY APPROVAL OF REGIONAL POLLUTION CONTROL FACILITIES

No site approval for the development or construction of a new Regional Pollution Control Facility or expansion of an existing Regional Pollution Control Facility in McHenry County may be granted by the McHenry County Board unless an application is filed for approval of such a site and is submitted for consideration to said County Board. An application for site approval need not be submitted if exempted by law or if the site is not a Regional Pollution Control Facility as defined by the Act.

SECTION 3: REGIONAL POLLUTION CONTROL FACILITY COMMITTEE AND COMMITTEE CHAIRMAN

(a) A Regional Pollution Control Facility Committee (the Committee) shall be established by the McHenry County Board and shall consist of six (6) members. One (1) County Board member from each district is to be appointed by the Chairman of the County Board for a term of one (1) year.

(b) The Chairman of the Regional Pollution Control Facility Committee shall be appointed by the Chairman of the County Board and shall be the seventh (7th) member of the Committee. One member of the Committee shall be designated Acting Chairman in the event of the Chairman's absence. In the alternative, the Chairman of the County Board may elect if he/she chooses, to assume the chair of the Regional Pollution Control Facility Committee. The Chairman shall serve for one (1) year; no Chairman shall serve for more than two (2) consecutive terms. The Chairman shall vote only in the event that there is a tie in the vote.

(c) All meetings and hearings of the Regional Pollution Control Facility Committee shall be at the call of the Committee Chairman, or in his/her absence, the Acting Chairman, or by four (4) members of the Committee at such times as may be required.

(d) The Committee shall elect a hearing officer or officers to serve during any public hearing concerning an application for site approval. The hearing officer(s) shall serve at the pleasure of the Committee. Compensation for the services of the hearing officer(s) shall be mutually agreed upon before a hearing. The duties of the hearing officer(s) shall be provided for in the Articles of Rules and Procedures Regional Pollution Control Facility Committee-McHenry County, Illinois (the "Articles of Rules and Procedures").

SECTION 4: PROCEDURE FOR FILING AN APPLICATION FOR APPROVAL OF A REGIONAL POLLUTION CONTROL FACILITY

(a) (i) In order to request approval of a proposed Regional Pollution Control Facility or expansion of an existing Regional Pollution Control Facility in McHenry County, an applicant must file an application with the County Board, with a minimum of thirty (30) copies of the application and the substance of the applicant's proposal showing sufficient details describing the proposed facility to demonstrate compliance, including all site plans, exhibits and maps, and all documents if any, submitted as of that date to the IEPA pertaining to the proposed facility in connection with said applicant's application except trade secrets as determined under Section 7.1 of the Act (415 ILCS 5/7.1). Said application may be obtained from the secretary of the McHenry County Board.

(ii) In addition, the applicant must file with the County Board a deposit fee of \$150,000.00 (One Hundred Fifty Thousand and 00/100 Dollars) when applying for site approval of a

Regional Pollution Control Facility, except that a deposit fee of \$200,000.00 (Two Hundred Thousand and 00/100 Dollars) is required if said facility is designed as a Hazardous Waste Disposal Site. The fee as applicable is intended to defray the reasonable and necessary costs of processing the application, including: space rental, hearing officer(s), court reporter, transcription costs, public notice, staff review times, Committee per diems, State's Attorney and County consultants (including tests, exhibits and testimony, if any, provided by said consultants), any other relevant costs incidental to the consideration of an application, and the costs of preparing the record for appeal, if any appeal of a County Board decision is made to the Illinois Pollution Control Board. If the costs to the County are less than the amount paid in the form of the deposit, the excess shall be refunded to the applicant. Should there be any additional costs incurred by the County over the amounts paid as deposit, the applicant shall bear any and all additional costs.

(iii) The application must be answered completely with information provided for each question, accompanied by all site plans, exhibits, maps and documents as specified in SECTION 4 (a)(i) above. The date the applicant files the application with the office of the County Board shall be considered the official filing date for all time limit purposes. At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the County Board and any participants, the applicant may file not more than one amended application upon payment of additional fees pursuant to Section 39.2(k) of the Act and SECTION 4(a) (ii) of this Ordinance shall be extended for an additional period of 90 days.

- (b) (i) Upon receipt of a completed application, and payment of the deposit fee, the secretary of the County Board shall date stamp all the copies and immediately deliver one copy to the Chairman of the County Board, one copy to the Director of the Department of Planning and Development, one copy to the County Solid

Waste Manager, one copy to each municipality within one and one-half miles of the proposed facility and one copy to the Chairman of the Regional Pollution Control Facility Committee.

(ii) In order to develop a record sufficient to form the basis of an appeal of the County Board decision, the McHenry County Department of Health and the State's Attorney's Office may retain consultants on behalf of the County. The consultants and the County agencies shall then commence a study of the application. The applicants shall cooperate fully with the consultants and the technical staff of the County in their review of the application.

(c) A copy of the application and all related documents or other materials on file with the County Board shall be made available for public inspection in the office of the County Board. Members of the public shall be allowed to obtain a copy of said request or any part thereof upon payment of actual cost of reproduction and proper request as outlined in the Freedom of Information Act (5 ILCS 140/1 et seq.)

(d) The applicant shall meet all notice requirements as required by 415 ILCS 5/1 et seq. to wit:

(i) The applicant shall cause to be published no sooner than thirty (30) days nor later than fourteen (14) days prior to a request for location approval a written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within two hundred fifty (250) feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the two hundred fifty (250) feet requirement, provided further, that in no event shall this requirement exceed four hundred (400) feet, including public streets, alleys and other public ways.

(ii) The applicant shall also serve, within fourteen (14) days prior to a request for location approval, written notice upon members of the General Assembly from the legislative district in which the proposed facility is located and this notice shall be published in a newspaper of general circulation published in McHenry County. Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the County Board, a description of the right of persons to comment on such request as hereafter provided and any other information as may be required by the Committee Rules and Procedures.

(iii) The applicant shall file proof of all notice requirements with the County Board within fourteen (14) days of their publication.

SECTION 5: PROCEDURE FOR FILING WRITTEN COMMENTS TO AN APPLICATION FOR APPROVAL OF A REGIONAL POLLUTION CONTROL FACILITY

(a) Any person may file written comment with the County Board concerning the appropriateness of the proposed site for its intended purpose. The County Board shall consider any comment received or postmarked from the date of acceptance of the application through and until thirty (30) days after the date of the last public hearing in making its final determination. Said written comments shall be sent or delivered to the Office of the McHenry County Board, 2200 N. Seminary Avenue, Woodstock, IL 60098. Upon receipt, the County Board secretary shall date stamp the comment.

(b) These comments shall become a part of the record of the proceedings of the Committee.

SECTION 6: HEARINGS ON APPLICATIONS

(a) At least one public hearing shall be held by the Regional Pollution Control Facility Committee no sooner than ninety (90) days but no later than one hundred twenty (120) days from the receipt of the request for site approval.

(b) The applicant is to cause to be published a notice of said hearing in a newspaper of general circulation published in

McHenry County not later than fourteen (14) days before said hearing, and notice by certified mail to all members of the General Assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located, and to the Illinois Environmental Protection Agency. The public hearing shall develop a record sufficient to form the basis of any appeal. The fact that a member of the County Board has publicly expressed an opinion on an issue related to site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue.

(c) The Chairman of the Committee shall notify the applicant in writing of the date of the public hearing before the Committee, at least twenty one (21) days before that hearing, in order that the applicant may publish notice of that hearing.

(d) During the course of the public hearing before the Committee, the Committee shall receive testimony, such testimony to be recorded, from the applicant and witnesses the applicant may call; any County witnesses, and other witnesses or objectors, and shall recommend approval only if the proposed facility meets the following criteria:

(i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;

(ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(iii) 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 the surrounding property;

(iv) the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed;

(v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;

(vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

(vii) if the facility will be treating, storing or disposing hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;

(viii) the facility is consistent with any current solid waste management plan adopted by the County Board of the County which is consistent with the planning requirements of the Local Solid Waste Disposal Act⁵ or the Solid Waste Planning and Recycling Act;⁶ and

(ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met.

The Committee and the County Board may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) above and of Section 39.2(a) of "the Act".

(e) A hearing officer or officers, appointed by the Committee, shall preside at the public hearing and shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted subject to this Ordinance and the Articles of Rules and Procedures of the Committee. However, the hearing officer(s) shall make all rulings and decisions in accordance with fundamental fairness. No ruling of the hearing officer(s) shall be appealable to the County Board.

(f) The decision of the Committee on the application is to be in writing, specifying the reason(s) for the decision, such reason(s) to be in accordance with (d) of this Section. The Committee shall submit its report to the County Board as soon as practicable.

(g) The siting approval procedures, criteria and appeal procedures provided for in the Act for new Regional Pollution Control Facilities as set forth in this Ordinance shall be the

⁵415 ILCS 10/1 et seq.

⁶415 ILCS 15/1 et seq.

exclusive siting procedures and rules and approval procedures. Local zoning or other local land use requirements shall not be applicable to such siting decisions.

SECTION 7: DECISIONS

(a) Once the Committee has made its recommendation and reduced its recommendation to writing, the written recommendation shall be submitted to the full County Board for its decision as to the ultimate approval or disapproval of the proposed site location. Four (4) copies of the record of the public hearing shall also be made available to the full County Board in the County Board Office as soon as said transcript becomes available.

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

(c) Whether the County Board approves or disapproves of the proposed site location, a Resolution shall be passed to that effect, stating the reason(s) for the decision.

(d) An applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved, pursuant to a finding against the applicant under any of criteria (i) through (ix) of SECTION 6(d) above and of Section 39.2(a) of the Act, within the preceding two (2) years.

SECTION 8: ARTICLES OF RULES AND PROCEDURES

The Committee shall establish Articles of Rules and Procedures for the application and hearing process governing Regional Pollution Control Facilities. These rules and procedures must also be followed by any applicant. Any additional information or requirements mandated by said rules and procedures must be submitted or followed by said applicant.

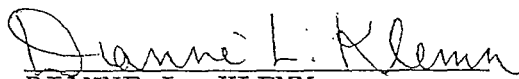
SECTION 9: SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

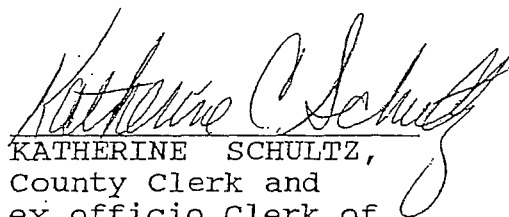
SECTION 10: ORDINANCE REPEALED

All ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

BE IT FURTHER ORDAINED that this amended Ordinance takes effect on the 20th day of December 1994.


DIANNE L. KLEMM
Chairman, McHenry County Board

ATTEST:


KATHERINE SCHULTZ,
County Clerk and
ex officio Clerk of
the McHenry County Board

Voting:	Aye	<u>24</u>
	Nay	<u>0</u>
	Abstaining	<u>0</u>
	Absent	<u>0</u>