

ILLINOIS POLLUTION CONTROL BOARD

LOWE TRANSFER, INC. and MARSHALL )  
LOWE, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
COUNTY BOARD OF MCHENRY COUNTY, )  
ILLINOIS )  
 )  
Respondent. )

**RECEIVED**  
CLERK'S OFFICE

AUG 22 2003

STATE OF ILLINOIS  
Pollution Control Board  
Case No. PCB 03-22

**NOTICE OF FILING**

TO: See Attached

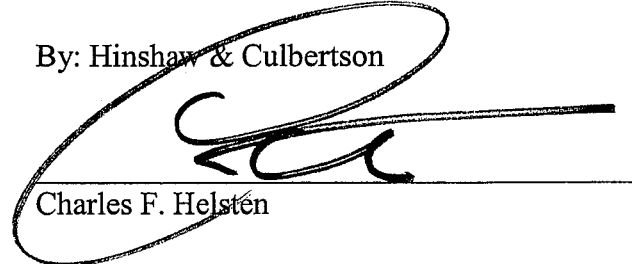
PLEASE TAKE NOTICE that on August 21, 2003, we mailed for filing with the Illinois Pollution Control Board, the attached **Response to Co-Petitioners' Motion Requesting Site Visit**, a copy of which is attached hereto.

Dated: August 21, 2003

Respectfully Submitted,

On behalf of the County Board of McHenry  
County, Illinois

By: Hinshaw & Culbertson



Charles F. Helstén

HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, Illinois 61105-1389  
815/490-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 22 2003

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

STATE OF ILLINOIS  
*Pollution Control Board*

Case No. PCB 03-221  
Pollution Control Facility Siting Appeal

**RESPONSE TO CO-PETITIONERS' MOTION REQUESTING SITE VISIT**

Now Comes the County Board of McHenry County, Illinois by and through undersigned counsel of record poses this objection to Co-Petitioners' Motion Requesting Site Visit and, in support hereof, states as follows:

1. That on or about the 14th day of August, 2003, the Co-Petitioners herein filed their Motion requesting a site visit, and in support thereof, cited the provisions of Section 101.632 of the rules and regulations of this Board as support for said Motion.

2. That this Honorable Board should over rule such Motion Requesting a Site Visit for the following reasons:

a. Any such site visit would constitute an improper denovo review of the decision made by the Respondent herein concerning the statutory criteria, as Section 40.1 of the Act specifically provides that no new or additional evidence in support of or in opposition to any finding, order, determination or decision of the appropriate county board shall be heard by this Board, and that such determination on appeal shall be based exclusively on the record before the county board in the underlying proceeding. (See generally CDT Landfill Corporation v. City of Joliet, PCB 98-60 (3-5-98).

b. In addition, upon information and belief, the Respondent asserts that while the provisions of Section 101.632 pertaining to site visits are designed to allow the Board (in the appropriate case and under the appropriate circumstances) "to establish a more comprehensive record"; any such site visit by this Board is not appropriate (and is expressly prohibited) in a "manifest weight of the evidence" review proceeding. In addition, the site visit as proposed by the Co-Petitioners herein

affords no opportunity for members of the interested public or other amicus participants herein to participate, and, as such, would be fundamentally unfair under Southwest Energy Corp. v. Pollution Control Board, 275 Ill.App. 3d 84, 93-95, 655 NE 2d 304, 310-311 (4th Dist. 1995), Landfill 33 Ltd. v. Effingham County, PCB 03-52(2-20-03), and Spill v. City of Madison, PCB 96-91 (3-21-96).

3. Moreover, based upon the decision deadline that exists in the present case, and the scheduling constraints that this Honorable Board in under in issuing its opinion and ruling herein, Co-Petitioners post Section 40.1 appeal hearing request for site visit is untimely, and any such request for a site visit should be deemed waived as not having been made in a timely fashion.

4. In addition, it should be noted that a review of the underlying record will demonstrate that the Co-Petitioners were generally opposed to the concept of site visits of any type, or sort being conducted in the underlying proceeding.

WHEREFORE, and for all the reasons stated above, the Respondent County Board of McHenry County, Illinois, respectfully request that this Honorable Board overrule Co-Petitioners' Motion Requesting a Site Visit, and for such other and further relief as this Honorable Board deems appropriate.

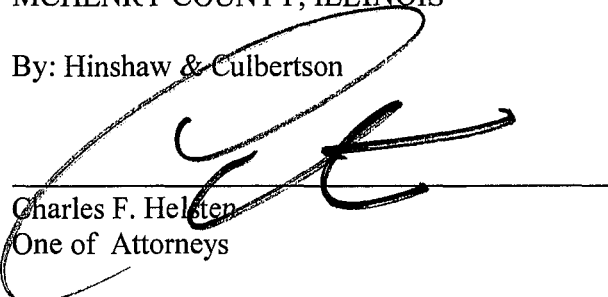
Dated: \_\_\_\_\_

8/21/03

Respectfully Submitted,

On behalf of the COUNTY BOARD OF  
MCHENRY COUNTY, ILLINOIS

By: Hinshaw & Culbertson

  
\_\_\_\_\_  
Charles F. Helsten  
One of Attorneys

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**AFFIDAVIT OF SERVICE**

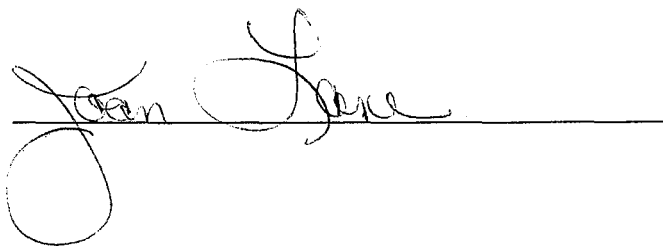
The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on August 21, 2003, a copy of the Response to Co-Petitioners' Motion Requesting Site Visit served upon:

David McArdle  
Zukowski, rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, IL 60014

Dorothy M. Gunn (via Federal Express)  
Bradley Halloran (via facsimilie)  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, IL 60601

Percy L. Agelo  
Patricia F. Sharkey  
Kevin G. Desharnais  
Attorney for Village of Cary  
Mayer, Brown, Rowe & Maw LLP  
190 South LaSalle Street  
Chicago, IL 60603

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Chicago, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.

A handwritten signature in cursive script, appearing to read "Jean Jane", is written over a horizontal line. The signature is fluid and somewhat stylized.

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