BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROCHELLE WASTE DISPOSAL, L.L.C. Petitioner, vs. CITY COUNCIL OF THE CITY OF ROCHELLE, ILLINOIS, Respondent.	)	No. PCB 03- 218 (Pollution Control Facility Siting Appeal)

NOTICE OF FILING

TO: Counsel or Parties on attached Certificate of Service.

YOU ARE HEREBY NOTIFIED, that on February 13, 2004, we filed an original and nine copies of the attached Petitioner's Reply Brief with the Illinois Pollution Control Board by Federal Express delivery, a copy of which is herewith served on you.

ROCHELLE WASTE DISPOSAL, L.L.C.

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ATTORNEY'S CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, depose and say that I am an attorney and served the foregoing instrument upon the within named:

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by sealing a true and correct copy of the same in an envelope, addressed as shown above, with sufficient United States postage and by depositing said envelope, so sealed and stamped, in the United States Mail at Rockford, Illinois, at or about the hour of 5 o'clock p.m., on the 13th day of February, 2004.

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Petitioner,	)	No. PCB 03- 218
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vs.	)	
	)	(Pollution Control Facility
	)	Siting Appeal)
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CITY COUNCIL OF THE CITY OF ROCHELLE, ILLINOIS,	)	
	)	
Respondent.	)	

PETITIONER'S REPLY BRIEF

I. Introduction

The briefs filed by the City of Rochelle ("the City") and the Concerned Citizens of Ogle County ("the CCOC") underscore the essentially political nature of the decision made in this case and why the Board and the courts should require that local siting authorities act in an unequivocally "quasi-judicial" capacity unswayed by "public clamor." See, e.g., People ex rel. Wangelin v. St. Louis Bridge Co., 357 Ill. 245, 254,191 N.E. 300, 304 (1934). On each of the criteria the City and the CCOC make arguments that could be made in essentially ***any*** landfill siting case, confident that the legislative actions of the City will be upheld under the "manifest weight of the evidence" standard of review as long as any colorable defense of that action can be mounted. Thus, on need, design, location and operation, incompatibility and effect on property value and traffic, the City and the CCOC simply trot out the generic objections always raised – objections which the Board and the courts usually recognize as valid whenever siting is denied and

unfounded whenever siting is approved. Thus, as long as the siting process is permitted to be legislative rather than adjudicatory, the process provides no true safeguard for the environment because of all of the reasons set forth in the Petitioner's initial Post-Hearing Brief.

II. Fundamental Fairness

Both the CCOC and the City contend that People ex rel. Klaeren v. Village of Lyle, 202 Ill.2d 164, 781 N.E.2d 223, 269 Ill.Dec. 426 (2002), does not require any change in how local siting hearings are conducted and that local legislators are free to base such decisions on legislative considerations and even "claim their political reward" (CCOC Brief 1 & 3) where they succumb to "public clamor and outcry." People ex rel. Wangelin v. St. Louis Bridge Co., 357 Ill. 245, 254, 191 N.E. 300, 304 (1934). Respondent's Brief 47-48. Although Klaeren left undefined the ***exact*** contours of the process due parties to quasi-judicial proceedings before municipal bodies, it certainly made clear that they have a right of due process which precludes local decisionmakers from engaging in *ex parte* communications or announcing their decision is based upon "the expressed public will." CCOC Brief 1.

> The reasons for classifying zoning hearings that deal with special use applications as administrative or quasi-judicial are manifest. In these hearings, the property rights of the interested parties are at issue. The municipal body acts in a fact-finding capacity to decide disputed adjudicative facts based upon evidence adduced at the hearing and ultimately determines the relative rights of the interested parties. As a result, those parties must be afforded the due process rights normally granted to individuals whose property rights are at stake. Klaeren 202 Ill.2d at 183, 781 N.E.2d at 234, 269 Ill.Dec. at 437.

Where, as in this proceeding, decisionmakers announce immediately after their decision that they have voted in accordance with the public clamor, that creates an obvious appearance of impropriety which cannot be dispelled by the decisionmakers' self-serving assertions that they were uninfluenced by matters outside the record or by the *ex parte* political pressures brought to bear upon them. "The right to trial by an impartial decisionmaker is a basic requirement of due process." Keith v. Massanari, 17 Fed.Appx. 478, 2001 WL 965106 (7th Cir.). "At the heart of due process is the right to a fair hearing conducted by an impartial tribunal." Bakalis v. Golembeski, 35 F.3d 318, 323 (7th Cir. 1994). "Due process of law, by necessity, requires an impartial decision maker . . . ." Kraut v. Rachford, 51 Ill.App.3d 206, 216, 366 N.E.2d 497, 504, 9 Ill.Dec. 240, 247 (1st Dist. 1977).

Both the CCOC and the City repeatedly rely upon the decisionmakers' self-serving statements as a basis for suggesting that they were not "influenced" by those political pressures and *ex parte* communications (CCOC Brief 4), that those contacts supposedly "had no impact" on their decision (Respondent's Brief 3, n. 2) and that they did not consider the various *ex parte* contacts to be "evidence." Respondent's Brief 3, 5-7, 31 & 35. Supposedly, although the Petitioner was precluded from inquiring as to what *ex parte* communications were considered (Tr. 73-75), the decisionmakers were permitted to testify that they maintained "an open mind throughout the hearing process" (Tr. 120), that the *ex parte* communications were no different than what they heard during the hearing (Respondent's Brief 31 & 35) and that they did not consider what they heard through *ex parte* communications to be "evidence." Respondent's Brief 4-7.

Compounding this problem, the Petitioner was restricted in its effort to show the ***fact*** of such *ex parte* communications. For example, the City contends that Councilman Bubik was "only" approached by three people after the application was filed and before a decision was rendered (Respondent's Brief 3), but he admitted that during his deposition he had testified that he did not remember how many people had contacted him to express their opposition to the landfill after the hearing began, and Mr. Bubik had testified that he didn't recall if it had been as many as 20 people or even as many as 100 people. Tr. 67-72. Mr. Bubik doubted that it would have been as many as 1,000 people, but his deposition testimony clearly impeached his statement during the hearing that he had ***not*** been contacted by other landfill opponents after the hearing began. Nevertheless, the PCB Hearing Officer suggested that there had been no impeachment and would not allow Councilman Bubik to be asked how many times he had been so approached after he had conceded that his denial of any such approach was inconsistent with his deposition answers. Tr. 71-72. Similarly, although the Petitioner could not inquire as to what parts of the hearing the decisionmakers actually attended or what evidence they considered, the decisionmakers were permitted to testify that they did not consider the *ex parte* communications to be evidence (Tr. 87, 123-24, 133-34 & 142) and that the *ex parte* communications merely expressed the same opposition they supposedly heard during the hearing itself. Respondent's Brief 31. Even though the City had admitted that Councilman Kissick was contacted approximately six times by CCOC President Frank Beardin after the application was filed, Mr. Kissick and Mr. Bubik attempted to retract

that admission by claiming that neither any longer recalled whether such communications had taken place. Tr. 116-117 & 197-98.

Although the City claims there is no evidence that Councilman Bubik actually read the Florida newspaper article -- which asserted, contrary to the record in this case, that landfill liners ***always*** leak (Respondent's Brief 4) -- the Petitioner's offer of proof established that Mr. Bubik had in fact read the article ***and*** that it did indeed influence his decision. Tr. 72-79.

As far as the reconsideration meeting on April 28, 2004, is concerned, the Board should clearly determine that RWD's attorney, John Holmstrom, was informed by the City's attorney, Charles Helsten, that no action would be taken by the City Council that evening and that any reconsideration would have take place on the following Wednesday. Mr. Holmstrom testified to that and, more significantly, prepared a contemporaneous memorandum of the conversation which set forth precisely that description of the conversation. Petitioner's Exhibit 22. Mr. Helsten, on the other hand, in ***his*** initial description of the communication, described it as merely leaving a "phone message" for Mr. Holmstrom. That description is set forth in Respondent's Request to Admit to Petitioner signed by Mr. Helsten. Petitioner's Exhibit 23. Although Mr. Helsten attempted to suggest that attorney Richard Porter had prepared the request to admit and that there had simply been a miscommunication between him and Mr. Porter, the contemporaneous documentary evidence supports Mr. Holmstrom's version of the conversation (which was a conversation, not a phone message as Mr. Helsten had initially contended) and is much more consistent with RWD's failure to have counsel at the

meeting – a meeting which RWD had been informed would involve no action or decision by the Council.

Both the CCOC and the City contend that the Board is bound by existing precedent to disregard the Petitioner's suggestion that siting hearings should be treated as purely quasi-judicial proceedings. The Petitioner disagrees with that contention and suggests that Klaeren has changed the law in this area and that the Petitioner is properly contending for a revision of the "prejudice" standard in order that local siting hearings are conducted with fairness and due process.

III. The Criteria

A. Criterion (i) – Need

The City and the CCOC use a series of generic, nitpicking objections to suggest that the City's decision on Criterion (i) was not against the manifest weight of the evidence. They are aided in that effort by both the vagueness of the statutory criterion itself and the uncertain precedent interpreting the need requirement.

The CCOC in effect concedes that RWD established need because obviously everyone, including the Board, knows that regional facilities such as proposed in this case are necessary. The CCOC effectively concedes that issue and argues, contrary to precedent (See, e.g., Metropolitan Waste Systems, Inc. v. Illinois Pollution Control Board, 201 Ill.App.3d 51, 55, 558 N.E.2d 785, 787, 146 Ill.Dec. 822, 824 (3rd Dist. 1990)), that the applicant is not entitled to define a service area which quite obviously has need of disposal capacity. The CCOC argues that it is not surprising that RWD's need expert, Sheryl Smith, determined that the proposed service area had need for the facility:

> since by including metropolitan Chicagoland in the service area and excluding those counties where there is substantial sited capacity, one can ***always guarantee*** the outcome of this computation. CCOC Brief 7 (emphasis added).

Both the City and the CCOC, relying on the vagaries of the law in this area, argue that Ms. Smith should have considered proposed facilities which have not yet received an IEPA permit even though both the Board and court decisions have suggested that such unpermitted capacity is too speculative to be considered in a need analysis. See, e.g., Tate v. Pollution Control Board, 188 Ill.App.3d 994, 1019-20, 544 N.E.2d 1176, 1193-94, 136 Ill.Dec. 401, 418-19 (4th Dist. 1989) (unpermitted capacity "was not a fact, but merely an expectancy . . . [and] such a capacity should not be considered in determining" need). The CCOC and the City are nevertheless confident that the decision will be upheld because the Board has both upheld the denial of siting where proposed, but unpermitted, facilities were ***not*** considered in an applicant's need analysis (See, e.g., CDT Landfill Corp v. City of Joliet, PCB 98-60, **9 (1998)) as well as upheld siting approvals where objectors have suggested that need had not been established on the basis of proposed landfills which had not yet "been granted an operational permit." Gere Properties, Inc. v. Jackson County Board, PCB 02-201, **15-16 (2002).

Thus, authority can be dredged up for either position, which means that the City's political decision in this case could be upheld regardless of the evidence and in the face

of an obvious need for such a regional facility. Ms. Smith properly did not consider unpermitted capacity. [1]

Making claims that could be made with respect to essentially ***any*** need analysis, the City and the CCOC inaccurately characterize and nitpick Ms. Smith's need analysis:

> Ms. Smith was paid to testify (Respondent's Brief 13);
>
> Ms. Smith has determined that there was need in connection with each of the 13 landfill reports she has ***prepared*** (Ibid.);[2]
>
> Ms. Smith did not calculate the precise dimensions and "geographic center" – whatever that is – of the service area (CCOC Brief 8; Tr. 2/25 88);
>
> Ms. Smith supposedly "understated" the projected waste receipts at the facility (Ibid.; Tr. 2/25 59-60), which would of course only increase, not decrease, the need for the facility and might slightly extend its operating life;
>
> Ms. Smith's conclusions regarding "the historical waste stream . . . were not verified by her data" (CCOC Brief 8) – an ominous-sounding accusation, which really only means that Ms. Smith obviously relied on information provided by RWD as to the historical source of waste disposed of at the facility (Tr. 2/25 69);
>
> Ms. Smith supposedly concluded "that 100% of the waste generated in the service area originated in Rochelle" (CCOC Brief 8), a claim which is simply not true and not supported by the transcript (Tr. 2/25 73-75);
>
> Ms. Smith's report supposedly stated that the Will County Landfill would be restricted to waste from within that county, and Ms. Smith supposedly "admitted on cross-examination" that Will County could also take waste from "communities that overlap the county boarders" – a fact plainly set

[1] The CCOC's counsel, George Mueller, is well aware that unpermitted capacity should not be considered because that is precisely the position that he and his expert (the same consulting firm advising the City in these proceedings, Envirogen) took in recent siting proceedings in Livingston County Illinois – that "it is not a sound or even appropriate practice to consider speculative capacity from landfills which are not yet permitted in doing a needs analysis." See transcript excerpt attached hereto as Exhibit 1.

[2] The City fails to mention that Ms. Smith declined to participate in connection with two landfill siting applications as to which she was of course not asked to prepare a report. Obviously, expert witnesses are rarely asked to prepare formal reports where their preliminary conclusions are unhelpful to the retaining party.

forth in Ms. Smith's report (Needs Report C0001, p. 152) and hardly something dragged out of her on cross (Tr. 2/25 96);

Ms. Smith supposedly failed to consider Livingston landfill – a facility which is projected to be depleted by 2004 (App. for Siting Approval, Vol. I, C0001, p. 165);

Ms. Smith should have considered the Spoon Ridge capacity even though her testimony that it is inactive and unavailable (Tr. 2/25 98-100) is fully supported by the Agency and clearly well understood by this Board (Sixteenth Annual Landfill Capacity Report, p. R 3.3); and

Ms. Smith supposedly claimed 60% of the proposed facility's waste would come "from the Chicago Metro area" (Respondent's Brief 14), something Ms. Smith never said (Tr. 2/25 92 & 99-100).

Similarly, Ms. Smith did a somewhat collateral analysis of the distances to alternative disposal sites, and the City suggests that Ms. Smith manipulated data (Respondent's Brief 55-56) because the distances shown on MapQuest (which the CCOC chose to use) were slightly less than the distances provided by Ms. Smith's computer program, Street Atlas (Tr. 2/25 7). There was utterly no evidence offered to show that MapQuest was more reliable than Street Atlas, and, more importantly, the minor differences in those distances would not have affected Ms. Smith's conclusion that:

> [W]ithout the expansion of the Facility, haulers will face increased hauling costs to direct haul waste to alternative landfill locations. Need Report – App. for Siting Approval, Vol. I, C0001, p. 176.

That conclusion is self-evident, and the relevance of Ms. Smith's analysis is the alternate landfill locations, not the exact distances from Rochelle, which is hardly critical. Also, a program like MapQuest has the ability to itself "manipulate the data" by changing parameters, such as the use of interstates or the shortest, as opposed to the fastest, route.

Several of the City's arguments are particularly disingenuous. For example, the City suggests that Ms. Smith's conclusions are "questionable" because she supposedly "asserted that as much as 123 million tons of waste in the service area may require disposal," a figure "based on a zero percent recycling rate even though all the counties are recycling above zero percent and some counties, including Ogle County, are actually exceeding their recycling goals." Respondent's Brief 56. That of course was precisely Ms. Smith's point, and her charts, exhibits and testimony made clear that she was projecting a ***range*** of capacity shortfall depending on whether there was no recycling or, an equally unlikely occurrence, that the recycling goals were actually met. Tr. 2/25 56-57 & Need Report – App. for Siting Approval, Vol. I, C0001, p. 173. See also Tr. 2/25 31 (likelihood of county recycling goals being met "is not very high"). Thus, Ms. Smith was simply attempting to explain the parameters of her opinion and the factors that would affect whether the capacity shortfall was at the high end or the low end of the range. Turning that forthright approach on its head, the City suggests that Ms. Smith was attempting to manipulate data and that she was somehow suggesting that need could be predicated upon a complete absence of recycling.

Similarly disingenuous is the City's argument that Ms. Smith did not know how much of Ogle County's waste was being transported to Onyx facility. Respondent's Brief 56. The City's conclusion that Ms. Smith therefore "did not fully consider the fact that the Onyx facility could provide waste disposal to a great deal of the area intended to be served by the proposed facility" is completely erroneous. The Onyx Orchard Hills Landfill was specifically considered in the Need Report (App. for Siting Approval, Vol.

I, C0001, p. 150), and the provincial question of how much of Ogle County's waste is disposed of at that facility is neither particularly relevant nor even very likely determinable. Again, the issue is the needs of the service area, not the needs of just the county where the siting authority is located, and it is the applicant who determines the service area, not the local decisionmakers.

The City makes a similarly unsupported argument in contending that Ms. Smith is somehow wrong in concluding that it is "typically more expensive to transfer waste out of a county than rely on in-county disposal" because the existing facility will rely on approximately 80 percent of its waste coming from counties other than Ogle County. Respondent's Brief 57. Certainly, the City is not seriously suggesting that long-distance transport of waste is somehow less expensive than in-county disposal or that the trend towards regional landfills disproves any such economy. In other words, these are kibitzing arguments simply thrown up in order to suggest some colorable basis for criticizing an obviously well-founded needs analysis by Ms. Smith. Not one of the criticisms leveled by either the CCOC or the City is valid or compelling, and these weightless arguments are made merely to create the illusion that there was some defect in Ms. Smith's obviously well-supported analysis. The need for this facility was evident from Ms. Smith's report and testimony, and none of the picayune objections leveled by the CCOC or the City can deny what the CCOC has admitted to be evident – that any regional facility such as that involved in this case is necessary to serve RWD's service area, which includes "metropolitan Chicagoland." CCOC Brief 7. As set forth in Ms. Smith's report, that entire area has determined to ship waste out-of-county via either

direct haul or transfer stations. App. for Siting Approval, Vol. I, C0001, pp.141-42 (City of Chicago); pp. 142-43 (Cook County); p. 144 (DuPage County); p. 146 (Kane County); p. 147 (Kendall County).

The Board knows that the CCOC and the City are completely off track in arguing that such need is somehow negated by the fact that Region 1 capacity increased in 2001. Respondent's Brief 13. The IEPA reports are a matter of public record, and, as the Board well knows, a slight increase in Region 1's total capacity (1.4%) (see Fifteenth Annual Landfill Capacity Report – 2001) was more than offset by the 1.8% capacity ***decrease*** the following year. See Sixteenth Annual Landfill Capacity Report – 2002. The stark reality is set forth in the Sixteenth Annual Report:

> The Chicago Metropolitan Region had only five years of landfill capacity remaining at the end of 2002 . . . . Sixteenth Annual Landfill Capacity Report – 2002.[3]

The need for a facility such as proposed by RWD is evident, Ms. Smith's testimony and report were compelling and the effort by the City and the CCOC to suggest the opposite is disingenuous. The City's decision on Criterion (i) should be reversed as a simple matter of intellectual honesty.

B. Criterion (ii) – Design, Location and Operation

The CCOC and the City follow essentially the same strategy with respect to Criterion (ii) that the CCOC used during the hearing. In essence, because there are always ambiguities and anomalies in any hydrogeological investigation and because this site was so thoroughly investigated that there are literally thousands of pages of

[3] The report also states that no new capacity had been added in Region 2 from 1999-2001.

documents containing many more thousands of pieces of data, the City and the CCOC ignore the larger picture and use outright misrepresentations and isolated examples of data anomalies to suggest that the site characterization is incorrect.

For example, the CCOC argues that sand lenses in the Till should have been drawn as continuous rather than "as being of diamond shape with the thickest portion encountered at the boring." CCOC Brief 10. As RWD's hydrogeologist, Steven M. Stanford, testified, those sand lenses were drawn in accordance with "convention," and they were shown as discontinuous because sand lenses at other locations were of different "textures." Tr. 3/3 160-61. Also, the cross sections are drawn in accordance with interpretation, and Mr. Stanford testified that the way they were drawn was "partially based on observation during the excavation of the site, and it's also based on literature information that indicates these bodies are discontinuous." Tr. 3/3 161-62.

Accusing Mr. Stanford of "intentionally minimizing negative features," the CCOC argues that he classified "wells with virtually identical elevations and identical depths into bedrock as being in different geologic units based on the permeability determined in slug testing of those wells." CCOC Brief 10. The CCOC then purports to cite "[e]xamples," which are actually the singular example the CCOC could find out of the dozens of wells analyzed by Mr. Stanford. As Mr. Stanford explained, Well G-34-D was screened more deeply in the bedrock than Well G-106-D, and therefore Well G-34-D was categorized as being in the lower Dolomite, whereas the other well was characterized as being in the Upper Dolomite. Tr. 3/3 209-10. In other words, there was one piece of ambiguous data which required that Mr. Stanford make a judgment call. If the judgment

had been made the other way, that would not have made any material difference to the overall analysis.

Similarly, the CCOC suggests that Well G-68-I is screened in the Tiskilwa Till and yet it "behaves like an aquifer" (CCOC Brief 10), which supposedly shows that Mr. Stanford is incorrect in stating that the Till is an impermeable barrier between the bottom of the landfill liner and the uppermost aquifer. That is a misrepresentation of the testimony. Although the well is screened in the Till, Mr. Stanford testified that it was "connected with the sand layer above there." Tr. 3/3 167. Thus, it was entirely appropriate for Mr. Stanford to not treat that well as an indication of the permeability of the Tiskilwa Till.

The CCOC is also off base in suggesting "Mr. Stanford's gross inability to even identify and classify the top of the bedrock [which] renders his conclusion about the quality of the geologic setting completely meaningless." CCOC Brief 11. Again, that assertion is based on a few selected data points, which Mr. Stanford fully explained. For example, all of Mr. Stanford's cross sections bear detailed notes stating that "interpolation of strata between borings is in accordance with the geologic principles [and that] subsurface conditions between the borings may vary from those indicated." See, e.g., Cross Section K-K', App. for Siting Approval, Vol. IV, C0004, p. 2158, n. 1. They also contain the notation that the upper surface of the bedrock has been "interpolated on a site-wide basis between borings of sufficient depth using Autodesk software." Id. at p. 2158, n. 3. Thus, contrary to what the CCOC asserts, Mr. Stanford did not depict Boring EB-31 "as encountering bedrock," and clearly testified that bedrock was not encountered

at the base of EB-31 and that the depth of bedrock at that location is not known. Tr. 3/3 189. How the computer program happens to contour a surface which is not known -- ***and clearly set forth in the report as being unknown*** -- is not something that calls Mr. Stanford's overall interpretation into question. Obviously, in no hydrogeological characterization can every point of the bedrock surface be known. Clearly, that is something determined, as the notes indicate, on a site-wide basis. The cross sections are designed to generally describe what is beneath the surface, but where the depth of bedrock is unknown, the cross sections are just illustrative. Therefore, for data points which are actually unknown, there is nothing unusual about illustrating at least 40 feet of bedrock below a boring in one cross section and illustrating the same boring as having over 60 feet in another cross section. Tr. 3/3 192. There was utterly no showing by the CCOC that the bedrock surface had been drawn improperly on a site-wide basis, and the few "examples" cited by the CCOC in its brief are the inevitable ambiguities and minor errors that would necessarily be encountered in any hydrogeological investigation.

Both the City and the CCOC criticize Mr. Stanford on the grounds his Groundwater Impact Assessment (GIA) was supposedly flawed because "he did not determine the permeability of the Tiskilwa layer through which the contaminants would move but instead simply assumed that contaminants would move at the same speed as they did in the liner system." Respondent's Brief 19-20 & CCOC Brief 12. As Mr. Stanford explained both in the Application and in his testimony, he determined that the geometric mean permeability of the Tiskilwa layer [lower Till] is 1.4×10^{-6} centimeters per second. App. for Siting Approval, Vol. VI, C0006, p. 4065. As explained in the

Application (Id. at p. 3974), construction of the proposed landfill, which is laterally extensive relative to the thickness of the Till and the Platteville Group, would produce a shadow effect because recharge will be dramatically reduced by the low permeability composite liner system. Beneath the landfill the water, and hence the contaminants, can only move at the rate allowed by leakage through the composite liner system. To assume that contaminants move through the Tiskilwa layer at a rate different than through the composite liner system would require the materialization of additional water from nowhere. Tr. 3/3 151-54. In other words, "the vertical velocities will likewise [because of reduction in recharge] be reduced to a rate approximately equal to the landfill leakage rate as computed in Section 2.5.5.3." App. for Siting Approval, Vol. VI, C0006, p. 3974.

Both the City and the CCOC rely upon numerous, unsubstantiated claims to criticize Mr. Stanford's GIA. For example, the City claims that Mr. Stanford "assumed only two pinhole defects in the HDPE per acre even though Mr. Zinnen assumed twice as many in his model." Respondent's Brief 19. That assertion is both incorrect and a red herring. Mr. Stanford did not assume the presence of two pinhole defects in the HDPE. A pinhole defect is by definition an opening in the HDPE with a diameter smaller than its thickness. With the 60-mil HDPE liner designed into the proposed landfill, the area of such a defect would be no larger than 0.0182 square centimeters. As Mr. Stanford testified, he specifically assumed the presence of two installation defects per acre, each with an open area of 1.0 square centimeter, which is 55 times the open area of the supposed pinhole defects. The issue is also a red herring because the number of defects per acre is not an input parameter to the model used by Mr. Stanford. The actual input

parameter is the leakage rate through the composite liner system, not the number of installation defects or pinholes. Considering not only the number of installation defects but the head atop the liner system as well, the leakage rate assumed by Mr. Stanford was 0.0005682 meters per annum. App. for Siting Approval, Vol. VI, C0006, p. 3971. This value is far more conservative than the figure of 0.0002979 meters per annum published in the Agency's 1992 Instructional Notes to Practitioners of GIA's. See also Tr. 3/3 150-54.

Another erroneous criticism by the City is their claim that Mr. Stanford "did not consider any leaks in the clay liner when he performed the groundwater impact assessment." Respondent's Brief 19. As stated in the Application, Mr. Stanford assumed that the clay liner ***would actually leak*** at a variety of flux rates ranging between 0.0003481 and 0.0005682 meters per annum. App. for Siting Approval, Vol. VI, C0006, pp. 3971 & 3976. All of Mr. Stanford's assumed leakage rates are more conservative than the figure of 0.0002979 meters per annum published in the Agency's 1992 Instructional Notes to Practitioners of GIA's.

Both the City and the CCOC are completely wrong in suggesting that Mr. Stanford inaccurately calculated the concentration level of ammonia. Respondent's Brief 20 & CCOC Brief 12. The issue is also a complete red herring because, as stated in the Application, the predicted concentration of ammonia for the uppermost intra-till granular unit in Conceptual Model Section O-O' was 0.385 mg/l, which is just less than the applicable groundwater quality standard. App. for Siting Approval, Vol. VI, C0006, p. 4005. See also Tr. 3/3 154-58. Regardless of whether factoring in the background value

determined at a monitoring well located several hundred feet away indicates a higher than allowable concentration of ammonia, the intra-till granular unit included in Conceptual Model Section O-O' is only 1.3 feet thick and therefore does not meet the definition of an aquifer, let alone the uppermost aquifer for which compliance with the groundwater protection standard must be demonstrated. App. for Siting Approval, Vol. VI, C0006, p. 3977. As stated in the Application, the uppermost aquifer, where the groundwater protection standard would apply, is the weathered upper surface of the bedrock along with any overlying silt and/or gravel to which it is hydraulically connected. Id. at 3950. Clearly the 1.3 feet thick unit does not indicate direct hydraulic connection and is therefore not subject to the groundwater protection standard. Rather, it simply comprises part of the package of sediments that would attenuate a release from the proposed landfill should one occur.

The attack on Mr. Stanford's credentials is also unwarranted. The City's claim that he has only been the responsible geologist for one other landfill (Respondent's Brief 19) is incorrect. There was no such testimony. Although Mr. Stanford does not hold himself out as a "professional witness" traveling from hearing to hearing and has only been involved in two 39.2 siting hearings (Tr. 3/3 141), Mr. Stanford has been an environmental hydrogeologist for more than 17 years, logging over 15,000 feet of exploratory borings, personally supervising the installation of more than 300 monitoring wells and investigating the hydrogeology at dozens of facilities, including landfills, hazardous waste facilities of all kinds, factories, steel mills, former manufacturing gas plants sites and petroleum storage facilities. Tr. 2/3 57-58. Unlike the CCOC's

hydrogeologist, Charles Norris, Mr. Stanford has conducted three GIAs involving groundwater flow modeling and transport modeling. Tr. 3/3 58.

The testimony of Charles Norris has been fully described in the Petitioner's opening brief, and the CCOC and the City do little more then to restate all of the same "concerns" Mr. Norris expressed during the hearing without ever stating any definitive opinion as to whether or not Criterion (ii) had been met.

Although the CCOC has nothing to say about the design of this obviously well designed facility, the City makes a series of generic objections. For example, they assert that "Mr. Zinnen admitted that that HDPE can be compromised by certain chemicals under certain conditions." Obviously that is true in concentrations vastly beyond that found in landfill leachate (Tr. 2/25 200-06), but the Application includes actual laboratory test data showing, as this Board clearly knows, that in the actual concentrations found in leachate from a landfill, those chemicals have no deleterious on HDPE membrane. App. for Siting Approval, Vol. II, C0002, pp. 908-31.

A similarly generic complaint by the City is the claim that the leachate collection pipes and their surrounding granular layer are wrapped in a geotextile, "which Mr. Zinnen admitted could become clogged." Respondent's Brief 15. As Mr. Zinnen testified, the design intent of the geotextile filter is to have some of the pores clog but that not all of the pores will clog. Obviously, this would happen in any landfill, and it would be impossible to monitor the clogging of in-place geotextiles as that would obviously require the destruction of the leachate collection system. This is simply another generic objection that could be leveled at any landfill, including those proposed by the clients of

the City's and the CCOC's counsel when they are proposing an expansion rather than opposing one. The claim that Mr. Zinnen did not know "what amount of deformation the recompacted clay and the final cover could withstand before it cracked" (Respondent's Brief 16) is another red herring. Mr. Zinnen did an analysis to determine what deformation would be expected and to show that the expected deformation would not result in a failure of the system. Tr. 2/25 225-27.

It is correct that Mr. Zinnen initially used a slightly improper calculation for the final cover slope, but he corrected the calculations during the hearing. Respondent's Brief 16 & 61. Although there was a minor error, it was entirely immaterial. The 25 percent side slope area actually accounts for approximately 43 percent of the disposal unit, and the 6 percent top accounts for 57 percent. The flow through the drainage layer is inconsequential in either case, increasing from 0.00041 inches to 0.00194 inches per year. That is the equivalent to increasing from 1/10 the width of a sheet of paper to 1/2 the width of a sheet of paper, which is entirely immaterial to the slope of the final cover. The criticism is nothing more than a "gotcha," and both the City and the CCOC know that. Tr. 2/25 231-33 & 180-85 & App. Ex. 123.

The Petitioner clearly established compliance with Criterion (ii) and the City's decision on that criterion should be reversed.

C. Criterion (iii) – Minimizing Incompatibility and Property Value Impact

The CCOC and the City make some of their most picayune objections with respect to the testimony of the land use planner, Chris Lannert, who testified that the proposed landfill would be compatible with the surrounding area, which is largely

industrial and agricultural. For example, a very substantial screening berm, much of which has already been built, is proposed for the easterly side of the facility, and the City makes the completely unsupported statement that it "is planned to be constructed on land that is not owned or controlled by the Applicant." Respondent's Brief 23. That assertion is flatly wrong. The land was purchased from the Village of Creston in a Real Estate Purchase Agreement dated April 16, 1999, which is specifically included in the Application. App. for Siting Approval, Vol. VIII, C0008, pp. 5708-5727. As Mr. Lannert clearly testified, although that property is not specifically within the facility boundary, it is subject to that land purchase agreement, which includes a Restrictive Covenant requiring the berm as a visual screen between the facility and the Village of Creston. App. for Siting Approval, Vol. VIII, C0008, pp. 5718-5727. Obviously, the Petitioner could not include the proposal of such a berm in its Application and not comply with that requirement, and the suggestion that RWD does not own the land or need not comply with the purchase agreement requirements is ridiculous.

Both the City and the CCOC resort to the empty accusation that Mr. Lannert's very complete report does not happen to include any photographs from the backyards of homes in Creston. CCOC Brief 17 & Respondent's Brief 24. As Mr. Lannert pointed out,

> [b]ecause the undulation of the topography within the community, and if you are not on the edge of the community, which is where those photographs were taken from, very few of the homes along Woodlawn or along Main or Kendall would have any particular impact, because the homes within the community buffer those views from the existing landfill as well as the proposed landfill, so those are not a consideration. Tr. 2/24 94.

Obviously, if photographs from Creston backyards were of any real significance, either the CCOC or the City could have produced such evidence. The criticism is thus as irrelevant as would be a claim that Mr. Lannert did not include a photograph from the Rochelle City Hall front door. Similarly, although both the City and the CCOC claim that Mr. Lannert admitted that this would be the largest landform in Ogle County, the transcript belies that assertion. Mr. Lannert testified that he did not know whether this would be the largest landform, and he suggested that the Onyx landfill in Davis Junction might be larger. He did not know (Tr. 2/24 108-10), and there was no evidence offered in that regard. Although the City and the CCOC are critical of Mr. Lannert because his testimony in 35 cases has been consistent with whether he was testifying for a proponent or opponent of siting, neither of them offer any substantive reason that Mr. Lannert's conclusions are challengeable. This is an agricultural and industrial area separated by roads and a railroad track from the nearest village, and review of Mr. Lannert's report and testimony will indicate to the Board that there was utterly no basis for believing that the first prong of Criterion (iii) had not been met.

The CCOC's and City's gamesmanship is nowhere more evident than in their effort to suggest that Petitioner's real estate appraiser, Peter Polletti, engaged in "nothing more than guesses and statistical manipulations." CCOC Brief 17. When Mr. Polletti prepared to testify for Mr. Mueller in connection with Allied Waste's Livingston County siting application, he used the very same approach and determined that the Livingston County landfill, which will accept approximately 13,000 tons of waste per day (as opposed to the 2,500 tons proposed in this Application), would not affect surrounding

property values, including that in a nearby village. Tr. 2/24 177-78. Thus, Mr. Mueller advocates for the approach taken by the very same witness whom he now attacks.

Both the City and the CCOC accuse Mr. Polletti of using "selective" data to show that there was no significant difference between property values or appreciation rates in areas near the landfill (the target area) and areas further away (the control area). CCOC Brief 18 & Respondent's Brief 24 & 68. Thus, Mr. Polletti supposedly excluded all the sales from a town called Lindenwood, but Mr. Polletti actually testified that there were hardly any sales in that location and that no square footage information was available for those sales from which square footage prices could be derived. Tr. 2/24 160-61. Similarly, because there were so few resales within the target area (only 4), Mr. Polletti included one sale outside his selected time period. Tr. 2/24 166. Nevertheless, as evidenced by Mr. Polletti's report (which specifically acknowledged the inclusion of that sale), the removal of that sale would still have left the average compound appreciation rate within the target area higher than in the control area. App. for Siting Approval, Vol. VII, C0007, pp. 5126-5127.

Mr. Polletti conceded that because there were so few resales within the target area the appreciation rate comparison did not mean too much. Tr. 2/24 167. Engaging in the same sort of gamesmanship evidenced by Mr. Mueller's use and abuse of Mr. Polletti's data and approach, both the City and the CCOC attempt to suggest that such limited data ***does*** mean something – that because a very few recent sales have been lower since the first application, it somehow proves that the landfill ***is*** impacting property values. Tr. 2/24 168-69 & 172. CCOC Brief 18 & Respondent's Brief 26 & 68-69.

Both the City and the CCOC also accuse Mr. Polletti of being selective about data in that he excluded sales involving older homes, bi-levels and tri-levels (CCOC Brief 18 & Respondent's Brief 68), but Mr. Polletti actually gave a complete and reasonable explanation for why those sales were excluded from the square footage comparisons:

> To increase the reliability of the study, certain criteria were applied to all of the sales. Only houses constructed after the mid 1950s were used because these homes are more similar in style, construction techniques, amenities, and utility than homes constructed before this time frame. Homes located on tracts larger than five acres were not used because of the possibility of the extra land distorting the price per square foot. Similarly, homes with large outbuildings were not used because the extra buildings would tend to distort the price per square foot. Bi-level and tri-level homes also were not included in the study because they tend to sell for less per square foot than do one-story and two-story homes and because it is often difficult to accurately estimate the actual amount of living space. Consequently, these types of homes would tend to skew results in the sample. All information concerning the size, age, type, and other characteristics were obtained from the Dement Township Assessor or the Flagg Township Assessor property record cards. App. for Siting Approval, Vol. VII, C0007, p. 5129.

Both the City and the CCOC suggest that because Creston has a higher average income but lower property values, its proximity to the landfill is affecting property values. CCOC Brief 17-18 & Respondent's Brief 25. Mr. Polletti disputed that, testifying that a variety of factors could reduce property values in Creston, such as its distance from shopping and secondary education, its sewer impact fees and its lack of curb and gutter, which could result in higher property values in the city of Rochelle. Tr. 2/24 153-56 & 176-77.

Mr. Polletti's testimony is credible, his report was complete and there was no contrary evidence offered to show that the Petitioner had not done what was possible to

minimize the impact on property values. The City Council's decision on Criterion (iii) should be reversed.

D. Criterion (vi) – Traffic

Perhaps indicating their concession that there is utterly no basis for challenging Michael Werthman's excellent traffic study and testimony, the CCOC has nothing to say in their brief about that aspect of the case. The City, on the other hand, completely misrepresents Mr. Werthman's testimony, contending that he testified that the intersection of Route 38 and Mulford Road would operate "at a D level of service" once "the new facility is added." Respondent's Brief 27. The City therefore claims that Mr. Werthman directly contracted "his opinion that Criterion (vi) was met" because he supposedly

> admitted that the facility will, in fact, have an adverse effect on traffic in the area because the presence of landfill traffic and the road improvements necessary to accommodate such traffic will downgrade the level of service at the intersection of Route 38 and Mulford from a grade 'C' to a grade 'D' the lowest acceptable level of service. Respondent's Brief 71.

Those statements are a complete misrepresentation of Mr. Werthman's testimony and report. Mr. Werthman's report (App. for Siting Approval, Vol. VIII, C0008, p. 5513) as well as his testimony made clear that the Illinois 38/Mulford Road intersection would remain at a level C level of service for more than 10 years and that it would not drop to a level D until the year 2022 because of projected ambient growth, not because of the landfill. Tr. 2/24 241-42.

Also, although the City claims that Mr. Werthman is relying upon certain improvements to be constructed by the Illinois Department of Transportation at that

intersection and that those improvements are not a certainty (Respondent's Brief 26), Mr. Werthman contradicted that, testifying that IDOT had said the improvements would be begun in the year 2003 and were planned for completion in that year. Tr. 2/24 188-89. Mr. Werthman also stated that it was both his opinion and the opinion of IDOT that a traffic signal was neither required nor warranted at the intersection of I-38 and Mulford. Tr. 2/24 207-09. App. Ex. 40 (IDOT's letter stating "the installation for traffic signals is not justified").

Although the City suggests that Mr. Werthman's report should have considered construction traffic, it is not at all clear that off-site soils will be required, and even if the 665,000 tons that might be required were brought onto the site, that would occur over the 25 year life of the landfill, which obviously is not built in a single year. Tr. 2/24 226. Thus, simple mathematics will demonstrate that the number of trucks involved in any such construction would not be significant. Tr. 2/24 225-26 & 250 & Tr. 2/25 235-37. Similarly, Mr. Werthman ***did*** consider the truck traffic that would be involved in Rochelle's intermodal yard (five to six miles away on the other side of the city), and he concluded that it would not affect traffic patterns in proximity to the landfill. Tr. 2/24 215-17. Mr. Werthman obviously had to rely on the Applicant for an indication of the number of trucks expected, their traffic patterns and peak hour distribution of the traffic, but Mr. Werthman testified that he also balanced that information from the Applicant against his own study and experience. Tr. 2/24 223-26, 244 & 250. That is typical for such an expert witness and is, once again, simply a generic objection that could be leveled at any traffic study in any landfill siting proceeding.

Mr. Werthman's study and testimony were compelling, and the City Council's finding that the Petitioner had not met Criterion (vi) should be reversed.

E. Operating Record

Asserting that the siting process ***should*** be legislative, the CCOC contends that the City Council was entitled to deny siting approval based on the supposed "deplorable operating record at the existing facility." CCOC Brief 3-4. The CCOC then proceeds to completely misrepresent the actual record in this case, which established that, although there had been some past violations, particularly prior to 1995 when the City of Rochelle was the actual owner and permitted operator of the existing facility, the record demonstrated that RWD, the current operator, has been a responsible and safe operator of the facility. Nevertheless, the CCOC, both during the hearing as well as in their brief to the Board, attempts to misrepresent the Petitioner's operating record. For example one of its most blatant misrepresentations is the claim that "in 41 inspections between February 1999 and November 2001, deficiencies were noted on 35 occasions," a claim based upon an unauthenticated "Compliance Tracking System" report identified as CCOC Ex. 8. There was no authentication of this record or explanation of its purpose, but RWD's project manager, Thomas Hilbert, testified unequivocally and without contradiction that the document was inaccurate and that, as set forth in the Application in detail,[4] since 1995 the existing facility had only received five notices of violations and two

[4] The Application contains all documents pertaining to ***all*** notices of violation or citations of any type since 1995 when RWD became the permit holder for the existing facility. App. for Siting Approval, Vol. VIII, C0008, pp. 5859-6116.

administrative warnings. Tr. 2/26 98.[5] Although the CCOC suggests that Mr. Hilbert "dismissed" CCOC Ex. 8 (CCOC Brief 16), Mr. Hilbert had actually never seen the document previously and explained that he did not know what it meant "without reviewing the document." Tr. 2/26 139-40. Far from dismissing the document, Mr. Hilbert asked for a recess to review it and, having reviewed it, testified that the document appeared to be nothing more than an internal tracking document for the Agency and that it set forth ***no*** notices of violations and was actually less complete than the records RWD had submitted with the Application in that it did not include any of the notices of violations disclosed in the Application and included records of inspectors who had nothing to do with the existing facility. Tr. 2/26 165-66.

A similarly blatant misrepresentation of the record is the CCOC's claim that the landfill operator, Clyde Gelderloos, "still denied responsibility" for some administrative citations issued in the early 1990's when he was operating the landfill for the City as a contractor. CCOC Brief 15. That is completely contrary to the record in that Mr. Gelderloos testified unequivocally that he had always accepted responsibility for those citations but that appeals were filed at the request of the ***City*** itself because the City was named the operator in the permit and wanted no suggestion that anyone else was the operator with the right to control design, hours of operation or permitting. Tr. 2/26 13-14

[5] ***All*** of these notices, which typically recited only "apparent" violations, were resolved to the satisfaction of the Ogle County Solid Waste Management Department (OCSWMD), acting on behalf of the Agency, which not infrequently withdrew apparent violations once RWD had explained the circumstances. See App. for Siting Approval, Vol. VIII, C0008, pp. 5870-71 (Agency permit obtained); pp. 5930-34 (violations corrected or withdrawn by OCSWMD); pp. 6002-05 (Compliance Commitment Agreement approved by OCSWMD); pp. 6042-44; pp. 6087-88 (Compliance Commitment Agreement approved by OCSWMD); pp. 6112-13. It should be noted that ***none*** of these notices ever resulted in any citation or enforcement proceeding because RWD always promptly responded to the Agency's concerns and took corrective actions whenever necessary.

& 31. Indeed, the Agency at one time agreed that the City, not Mr. Gelderloos' company which conducted day-to-day operations under its contract with the City, was the proper party to such citation proceedings. See In re Rochelle Disposal Service, Inc., AC 89-68 (IEPA Docket No. 9563-AC), 1989 WL 85818 (PCB June 22, 1989). See also Tr. 2/26 31-32. Mr. Gelderloos testified his company "never denied responsibility" and obviously had to reimburse the City if they were required to pay a fine because of an Administrative Citation. Tr. 2/26 32. Thus, the claim that Mr. Gelderloos or his company "still denied responsibility" for these matters even at the 2003 local siting hearing is a complete misrepresentation of the actual record. The issue was a technical, legal question as to the proper defendant in such citation proceedings, the appeals were taken at the behest of the City, which was carefully attempting to maintain its control as the permit operator and, as Mr. Gelderloos testified, all of "that was done on the behest of the City because the issue was not whether I was responsible or not, I **clearly was**." Tr. 2/26 69 (emphasis added).

The CCOC similarly misrepresents that RWD "simply walked away from the problem" of the Unit 3 groundwater interceptor trench, but that is clearly not correct. Mr. Hilbert testified unequivocally that the trench is monitored every three months, the results are submitted to the Agency and whether or not the trench should be dewatered is "an ongoing plan that we are developing with the Agency currently." Tr. 2/26 129-30.

The CCOC's claim "that deficiencies related to the gas monitoring system were noted 10 more times in inspections over the next three years" after RWD supposedly "was first ***cited*** for lack of compliance with gas monitoring directives on July 31, 1996"

(CCOC Brief 16 (emphasis added)) is also a misrepresentation. As the testimony clearly reflects, there was no Administrative Citation, and the "apparent" violation set forth in the OCSWMD's Violation Notice of October 25, 1996 (See App. for Siting Approval, Vol. VIII, C0008, p. 5877), was fully explained by RWD to the satisfaction of the OCSWMD. The Agency had indicated that the installation was not required until Unit 1 was closed (Id. at 5927), and the landfill gas probes required relocation, which was acceptable to the OCSWMD (acting on behalf of the Agency). Id. at 5931 & 5933. As Mr. Hilbert explained in his testimony, the original design plan for the gas probes had to be resubmitted to the Agency, and while the permit process was pending, the OCSWMD simply noted from time to time that the situation had not yet been completely resolved, but it was resolved prior to 1999 as soon as permits had been obtained from the Agency to do the job properly. Tr. 2/26 134-35.

Reading the CCOC's brief, one might also believe (erroneously) that RWD has failed to close Unit 1 even though it supposedly has been under Agency order to do so since the year 2000. CCOC Brief 16. That is not correct. Because Unit 1 was to be exhumed in the event that the expansion were approved, there were several extensions by the Agency pending an application for siting approval. Although the Agency was not particularly concerned with the exact deadline, the closure of Unit 1 was tied to those extensions, and one relatively arbitrary deadline that was given to the Agency by RWD was that an application for siting approval would be filed by December 31, 1999. Tr. 2/26 106. When the Applicant failed to file its application until a few weeks later in January 2000, the closure requirement technically kicked in, and there was a technical

violation for failing to initiate Unit 1 closure. However, despite that technical violation, it is clear that the Agency has not required any such closure because on December 20, 2001, the Agency revised the permit to specifically set forth that the closure of Unit 1 was "changed to extend closure period indefinitely." App. for Siting Approval, Vol. VIII, C0008, p. 6115. Obviously, if RWD had had the foresight to request an extension before December 1999, the Agency would have granted the same indefinite extension that they eventually granted the following year. That extension is still in place, and although the CCOC has made much political hay over RWD's violation of the supposed Agency directive to close Unit 1, that obligation simply does not exist under the existing indefinite extension.

Every one of the claims made by the CCOC concerning the Petitioner's operating record is a misrepresentation. It was a misrepresentation during the siting hearing, and the CCOC's brief is a misrepresentation to this Board of the actual record produced at the siting hearing. Obviously, the CCOC believes that it is entitled to use this misrepresentation as part of its political lobbying campaign against the expansion, but the actual facts establish that the Petitioner's operating record was truthfully disclosed, and, as both Mr. Gelderloos and Mr. Hilbert testified, the various violations were generally of a technical nature and never caused any "threat to public health, safety or welfare." Tr. 2/26 91 & 101.

IV. Conclusion

The Petitioner respectfully requests that the Board reverse the denial of siting or, alternatively, remand for a new hearing because of Council's denial of fundamental fairness.

ROCHELLE WASTE DISPOSAL, L.L.C., Petitioner

BY: McGREEVY, JOHNSON & WILLIAMS, P.C.
Its Attorneys

By: _____
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One of its attorneys

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IN THE STATE OF ILLINOIS
COUNTY OF LIVINGSTON

Public Hearing held on December 19, 2001, at the Livingston County Courthouse, Pontiac, Illinois, commencing at approximately 9:00 A.M. concerning request for siting approval of the proposed New Pollution Control Facility pursuant to Section 39.2(d) of the Illinois Environmental Protection Act and the Livingston County Siting Ordinance before Hearing Officer John J. McCarthy.

APPEARANCES:

EHRMANN, GEHLBACH, BADGER & LEE
By: MR. DOUGLAS E. LEE
215 East First Street, Suite 100
Dixon, IL 61021
and
GEORGE MUELLER, P.C.
By: MR. GEORGE MUELLER
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and
STRONG, BLAKEMAN, SCHROCK & BAUKNECHT
By: MR. C. THOMAS BLAKEMAN
307 West Washington Street
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Representing the Livingston County Board.

PRESENT:

LIVINGSTON COUNTY BOARD AGRICULTURAL COMMITTEE MEMBERS:
Mr. Frank Livingston
Mr. John Spafford
Mr. Roger Kirkton

EXHIBIT 1

INDEX

MR. MUELLER: We'd be happy to turn to them.

HEARING OFFICER: Any members of the committee have any questions of this witness? Members of the County Board have questions?

COUNTY BOARD MEMBER: You just answered the one I had.

HEARING OFFICER: Mr. Mueller, redirect?

REDIRECT EXAMINATION

BY MR. MUELLER:

Q. Phil, let me clear up something I may have forgotten on your direct. I asked you about whether or not you had an opinion about whether or not the application is consistent with the county's solid waste management plan. I don't think I asked you what your opinion was.

A. My opinion is that the proposed

expansion is consistent with the county's solid waste management plan.

Q. You were asked by Mr. Clark about

the rate of recycling in Livingston County. In fact, in the needs assessments you have done previously and in this one, have you determined some correlation between the rate of recycling and whether or not counties have operating landfills?

A. Yes. Recycling tends to be highly correlated with the availability of landfills. Looking at all 102 counties in the state of Illinois, recycling in counties that have landfills is about twice the level of recycling in counties that don't have landfills. That stems, I think, from the fact that landfills pay host fees or local surcharge payments to local units of government which are then available for supporting recycling programs.

Q. Phil, you've testified that you have done over 30 needs analyses or consulted on over 30. Is that correct?

A. Over 35.

Q. And do you have an opinion as to whether or not it is a sound or even

ATTORNEY'S CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, depose and say that I am an attorney and served the foregoing instrument upon the within named:

Brad Halloran
Illinois Pollution Control Board
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Chicago, IL 60601

Richard Porter, Esq.
Charles Helsten, Esq.
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by sealing a true and correct copy of the same in an envelope, addressed as shown above, with sufficient United States postage and by depositing said envelope, so sealed and stamped, in the United States Mail at Rockford, Illinois, at or about the hour of 5 o'clock p.m., on the 13 day of February, 2004, and by emailing a true and correct courtesy copy of same to Richard Porter and George Mueller at the email addresses set forth above, at or about the hour of 1 o'clock ~~a.m.~~/p.m., on the 13 day of February, 2004.

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