

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

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

PCB 03-221  
(Pollution Control Board  
Siting Appeal)

Statement of Steve Lamal  
Acting Mayor on behalf of the Village of Cary

My name is Steve Lamal, and I am acting Mayor of the Village of Cary. Cary participated actively in the proceedings on the Lowe Transfer Station before the McHenry County Board, and we welcome the opportunity to support the decision of that Board denying siting approval. Because of the length of the record below, I will address only limited parts of it today, but my comments are based on the record before the County Board and are in support of the Board's decision on criteria 2, 3 and 5.

The proposed transfer station directly abuts the Village of Cary. The Plote family property, a large, mostly residential development designated as residential in the official Cary Comprehensive Plan and the subject of planning between the Plote family and the Village of Cary for over a decade, immediately borders the proposed site. This development, which the Lowe application assumed incorrectly would be industrial, is vital to the future of the Village of Cary.

The existing 435 unit Bright Oaks subdivision in the Village of Cary is only 1300 feet from the proposed transfer station. Many Bright Oaks residents, which include a high proportion of senior citizens and young families, Tr. 69-71 (V-3-6-03), participated in opposition to the

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Lowe site in the County hearings. Bright Oaks is a very stable, well cared for neighborhood over 30 years old. Tr. 69 (V-3-6-03). Mr. Lowe's application claimed that a berm prevented the Bright Oaks residents from seeing the transfer station site. Pictures and testimony at hearing made it clear that this was incorrect. The proposed station site sits on high ground directly west of Bright Oaks and is very visible, directly impacting the Bright Oaks neighbors. Cary Ex. 18, Appendix No. 10.

Other sensitive areas near or bordering the site include a proposed commercial development south of the site in Cary, and vitally important to the future of the Village, which was not even considered by Mr. Lowe's application. Besides the nearby residential and commercial uses the Lowe site will also impact the McHenry County Conservation District Hollows conservation property bordering the site to the west. Mr. Lowe's application simply dismissed this area as industrial, its original zoning, even though it has been reclaimed and operated as a very popular conservation area for many years. The McHenry County Conservation District provided its own resolution objecting to the proposed site. The Hollows is a highly sensitive use directly abutting the site and the long entrance road to the site. Concern for these neighboring uses was noted by the County Board Committee members in their votes rejecting the site.

**I. The Record Demonstrates that the Proposed Transfer Station is Incompatible With the Area and Will Adversely Impact Surrounding Properties**

There was extensive testimony on the negative impact the station would have on properties such as the Plote property, Bright Oaks and the Hollows in terms of odors, noise, dust, litter and traffic. As noted by the McHenry County Siting Committee in its vote on the application, the concerns regarding impact were substantiated by Mr. Lowe's own application which included a study of the effect of other transfer stations on property values. Only one

example could be found in the entire state where a station was sited near a residential area, Tr. 115 (III-3-6-03), and as noted by the County Committee, that study of Princeton Village near the Northbrook transfer station in Northfield Township showed a decrease in property values for many homes, and 18 of 37 homes with appreciation rates under 1%, despite the fact that appreciation rates in north suburban Cook County are generally 5-6%, and Northbrook itself is 16%. Tr. 45, 78, 87-88 (V-3-13-03). Princeton Village demonstrates the likelihood of serious impacts where residential areas are so close.

**II. The County Correctly Found that Neither Criteria 2 nor Criteria 5 was met because this Transfer Station is not Located or Designed so as to Protect the Public Health, Safety and Welfare**

The Lowe site itself is very small, only 2.64 acres, leaving no room for a buffer zone. Because of its small size, its stormwater is proposed to be infiltrated into the groundwater by an infiltration basin. Tr. 18 (II-3-8-03) (land for detention basin is costly) Tr. 54 (III-3-6-03). Expert testimony showed that the stormwater would carry contaminants, see e.g. Tr. 29-30 (IV-3-3-03); Tr. 58-60 (I-3-13-03); Tr. 14 (II-3-13-03); Tr. 84-85 (I-3-3-03); Nickodem testimony (IV-3-12-03); Tr. 9-56 (V-3-12-03), and that the groundwater into which those contaminants would be infiltrated flows at a rapid rate directly into Lake Plote on the Plote property, Lake Atwood on the McHenry County Conservation District property, and then to an area of wetlands designated "irreplaceable" and "unmitigatable" by the Corps of Engineers. Tr. 6-59 (III-3-4-03); Tr. 5-12 (IV-3-4-03); Cary Ex. 2; Tr. 25 (I-3-3-03); Vol. I, 2-21 App. No. 5; Cary Ex. 14 (wetlands map). Mr. Lowe's application did not identify these impacts. It didn't even identify the downgradient water bodies impacted by the proposed transfer station. In addition to these flows through the infiltration basin, any spills or drips from garbage or transfer trucks on the site access road will go to an existing stormwater pipe which discharges to the McHenry County Conservation District. Tr. 41 (I-3-4-03).

The County also found that Lowe had not adequately designed or proposed to operate the site. The record is full of support for that finding. The site has no sprinkler system and no firefighting water supply. Testimony and modeling showed that the site is so small the larger transfer trailers will not be able to turn the corners into the site or the corners into and out of the transfer building. Nickodem testimony (V-3-12-03); Cary Ex. 40. It was clear, and the Lowe witnesses agreed, that the goal had been to try to design a transfer station onto property he owned, not to find an environmentally good site for a transfer station. See e.g. Tr. 92-95 (I-3-8-03); Tr. 54-55 (I-3-8-03).

### **III. The County Also Properly Considered Mr. Lowe's Experience**

Evidence was also presented at hearing about Mr. Lowe's operating experience, or lack thereof. Mr. Lowe admits he has no experience. Tr. 19-20 (I-3-8-03). His operating shell corporation, Lowe Transfer, has no experience, no employees, and no money. Tr. 51-52 (II-3-8-03). Mr. Lowe admitted at hearing that Lowe Transfer is set up to shield him from liability if anything goes wrong. Tr. 50-51, 54 (III-3-8-03). To excuse his own lack of experience, Mr. Lowe contended he would hire people who did have experience, such as his consultants. Again and again, however, he overrode the statements and promises of his consultants, casting doubt on his willingness to hire or follow expert advice (even if that could make up for his lack of experience). Tr. 19-20 (II-3-8-03) (rejected consultant's comments on dealing with odor complaints); Tr. 6-7 (III-3-8-03) (insurance might be so costly he wouldn't do it); Tr. 16 (IV-3-8-03) (will not follow consultant's recommendations on patrolling for litter); Tr. 65-67 (II-3-8-03) (despite consultant comments will not provide recycling).

Mr. Lowe currently operates a concrete and asphalt recycling facility next to the site. Testimony showed that he does not have a permit for that facility under Section 21(d) of the Environmental Protection Act. Cary Ex. 11, App. No. 1; Cary Ex. 54; Tr. 37 (I-3-8-03).

Testimony showed his operations are also not in compliance with Section 22.38 of the Act regarding construction and demolition debris operations. Cary Ex. 12, App. No. 2; Tr. 30-36, 44, 53-47 (I-3-8-03). Mr. Lowe's testimony revealed a number of activities by his current operations which present environmental compliance issues, which Lowe was either unaware of or unconcerned with. See e.g. Tr. 41, 69-70 (I-3-8-03); Tr. 76-77 (I-3-8-03) (taking his wastes from site to site to burn without permits or manifests); Tr. 47-48, 53-56 (I-3-8-03); Tr. 14-15 (II-3-8-03) (allowing dumping at current site after hours without supervision); Tr. 52 (I-3-8-03) (discharging stormwater from his current industrial site to the Hollows). Mr. Lowe has not explained how the McHenry County Board's consideration of his background and experience with respect to criteria 2 and 5 was improper, even though his petition states that that is an element of his appeal. The statute specifically says that background and experience are relevant to criteria 2 and 5. Facilities like transfer stations may have serious environmental consequences when their owners or operators don't know what they're doing or don't take compliance seriously. Mr. Lowe's operating history raises serious doubts about his ability and interest in operating a waste transfer station in compliance with environmental requirements.

**IV. Section 22.14 of the Act Prohibits Establishment of a Garbage Transfer Station at the Proposed Location**

Finally, the Board should note that Section 22.14 of the Act prohibits establishment of a garbage transfer station within 1000 feet of a dwelling or property zoned residential. The Lowe property is adjacent to the Plote property which is zoned residential. It is also only 1300 feet from the longstanding Bright Oaks residential subdivision. Knowing of the longstanding plans by Plote and Cary to develop the Plote property, Mr. Lowe tried to get his transfer station sited before the Plote property could be annexed by the Village and zoned residential, Tr. 20-21 (III-3-8-03); Tr. 90-92 (I-3-8-03); Tr. 46-47 (I-3-8-03); and the record shows he tried to get the County

to keep his application preparations secret. Cary Ex. 46-49, 59. While Mr. Lowe is not always clear about his theories, we understand from the record below that he believes that compliance, or noncompliance, with Section 22.14 and his ability to get an IEPA permit for his proposed facility is irrelevant in siting. We simply disagree. The immediate proximity to residential areas is an important question which is extremely relevant under several of the siting criteria, including criteria 2, 3 and 5.

The County Board decision was reached after an extensive hearing which assembled a record providing overwhelming support for its rejection of siting. The County Board's decision is clearly in accordance with law and supported by the manifest weight of the evidence and we ask that it be affirmed.