

AUG 28 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 August 26, 2003, we filed with the Illinois Pollution Control Board, the attached Lowe Transfer, Inc. and Marshall Lowe's **MOTION TO STRIKE VILLAGE OF CARY'S BRIEF AND MOTION FOR SANCTIONS** in the above entitled matter.

LOWE TRANSFER, INC. and
MARSHALL LOWE

By:

David W. McArdle

PROOF OF SERVICE

I, a non-attorney, on oath state that I served the foregoing Motion on the following parties by depositing same in the U. S. mail on this 26TH day of August, 2003 and via-fax on the 26th day of August, 2003:

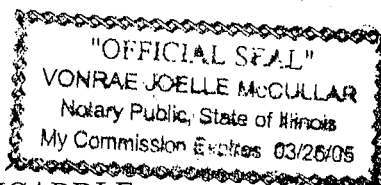
Attorney for County Board of
McHenry County, Illinois
Charles F. Helsten
Hinshaw and Culbertson
100 Park Avenue, P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900; FAX 815/963-9989

Hearing Officer
Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601
312-814-8017; FAX 312/814-3669

SUBSCRIBED and SWORN to before
me this 26th day of August, 2003

V. Joelle McCullar
Notary Public

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



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**STATE OF ILLINOIS
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MARSHALL LOWE,

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vs.

COUNTY BOARD OF McHENRY
COUNTY, ILLINOIS

Respondent

No. PCB 03-221

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**CO-PETITIONERS' MOTION TO
STRIKE VILLAGE OF CARY'S
BRIEF AND MOTION FOR SANCTIONS**

Co-Petitioners, Lowe Transfer, Inc. and Marshall Lowe ("Lowe"), by and through its attorneys, Zukowski Rogers Flood & McArdle, respectfully request the Pollution Control Board, to strike the Village of Cary's (the "Village") Amicus and issue sanctions against the Village for failure to comply with Board rules in this siting appeal. In support of this Motion, Lowe states as follows:

1. On August 25, 2003, the Village filed its 56-page Amicus Brief in direct violation of Section 101.302(k).
2. Section 101.302(k) of the Board's procedural rules very clearly states that no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer.
3. Neither the hearing officer nor the Board has received a request for permission to file a brief over 20 pages in length from the Village nor granted such a request.
4. The Village not only exceeded the page limitation provided for an amicus curiae brief but exceeded the 50 page limitation for a brief filed by a party.

5. Ms. Percy Angelo, author of the Village's brief, has extensive experience before the Pollution Control Board going back to 1972 - a fact she pointed out in the Village's Public Comment filed with the Board on August 7, 2003.

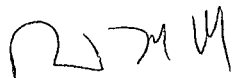
6. In this proceeding, the Village has already been reprimanded by this Board for rules violations. (See Board order dated August 7, 2003.)

7. Lowe has been forced to spend considerable time and expense in defending against these actions by the Village.

8. The complete disregard by the Village and its attorney for the Board's own actions and rules can no longer be ignored.

WHEREFORE, Co-Petitioners, LOWE TRANSFER, INC. and MARSHALL LOWE, request the Pollution Control Board strike the Village of Cary's Brief on Behalf of Amicus Curiae Village of Cary and issue sanctions against the Village for failure to comply with Board rules in this siting appeal.

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

By: 
David W. McArdle

David W. McArdle, Attorney No: 06182127
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