BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VILLAGE OF ROBBINS and, ALLIED WASTE TRANSPORTATION, INC.	)	
Petitioners,	)	
vs.	)	Case No. PCB No. 04-48
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING

TO: All Counsel of Record (see attached service list)

PLEASE TAKE NOTICE that on October 18 2004, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, an original and nine copies of the Waiver of Decision Deadline, copies of which are attached hereto.

Dated: October 18, 2004

Respectfully Submitted,

ALLIED WASTE TRANSPORTATION, INC.,
Petitioners

By: VILLAGE OF ROBBINS

William Mansker

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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 October 18, 2004, a copy of the foregoing was served upon:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

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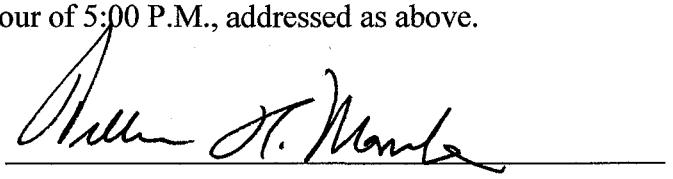
By depositing a copy thereof, enclosed in an envelope in the United States Mail at Matteson, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.



Mr. William Mansker
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MOTION TO RECONSIDER

NOW COMES Petitioner, VILLAGE OF ROBBINS, by and through undersigned counsel of record, and hereby respectfully moves this Board to Reconsider its Order denying Petitioners' Motion for Summary Judgment for modification of a solid waste management facility permit and, in support thereof, states as follows:

BACKGROUND

1. On September 16, 2004, this Board issued an Order denying Petitioners' Motion for Summary Judgment.

2. Specifically, this Board found that summary judgment was not appropriate after concluding that the Village of Robbins' siting approval granted to the facility at issue in 1993 constituted approval only of a waste-to-energy facility, despite a Certification of Siting Approval signed by the Mayor of the Village of Robbins and submitted to the Agency in 2003 that unambiguously stated that the pollution control facility sited by the Village of Robbins on February 9, 1993 was intended to serve at least in part as a transfer station. R. 075.

3. Furthermore, this Board failed to properly apply Section 39.2(e-5) of the Illinois Environmental Protection Act (Act) in this matter. If this Board had properly applied that

section, this Board would have found that Section 39.2(e-5) requires (as a matter of law) that Petitioners' Motion for Summary Judgment be granted.

4. For the reasons set forth herein, Petitioner respectfully requests that this Board reconsider its September 16, 2004 Order and appropriately grant Petitioners' Motion for Summary Judgment.

ARGUMENT

I. THIS BOARD SHOULD HAVE GIVEN DEFERENCE TO THE VILLAGE OF ROBBINS' CONCLUSION REGARDING THE SCOPE OF THE SITING APPROVAL.

5. Decisions regarding site location approval for pollution control facilities have been vested by the legislature in the hands of local authorities. *See* 415 ILCS 5/39.2; *E & E Hauling, Inc. v. Pollution Control Board,* 107 Ill.2d 33, 481 N.E.2d 664 (1985).

6. Consequently, a local siting authority's decisions regarding siting approval matters are given great deference, and are only reversed if those determinations are against the manifest weight of the evidence. *See Land and Lakes Co. v. Illinois Pollution Control Board,* 319 Ill.App.3d 41, 743 N.E.2d 188 (3d Dist. 2000); *Concerned Adjoining Owners v. Pollution Control Board,* 288 Ill.App.3d 565, 680 N.E.2d 810 (5th Dist. 1997); *Turlek v. Pollution Control Board,* 274 Ill.App.3d 244, 653 N.E.2d 1288 (1st Dist. 1995).

7. In fact, in order to reverse a local siting authority's determination regarding matters relating to siting approval, this Board or a reviewing court must find that the opposite conclusion is clearly evident, plain or indisputable. *See Concerned Adjoining Owners,* 288 Ill.App.3d 565, 680 N.E.2d 810; *Turlek,* 274 Ill.App.3d 244, 653 N.E.2d 1288.

8. Despite the fact that as a matter of law, deference is required to be given to a local siting authority, this Board provided absolutely no deference to the siting authority's clear and

unambiguous conclusion, through its Certification of Siting Approval, that the siting approval previously granted by the Village of Robbins encompassed approval of a solid waste transfer.

9. Instead, this Board completely disregarded the Village of Robbins' unambiguous Certification of Siting Approval and, instead, relied exclusively on the ordinance adopted by the Village in 1993.

10. It is well-settled that the local siting authority, and the local siting authority alone, is responsible for determining the scope of siting approval granted to a pollution control facility. *See Saline County Landfill, Inc. v. Illinois Environmental Protection Agency*, PCB 02-108 (May 16, 2002).

11. In fact, the Illinois Supreme Court has made it clear that "the legislature intended to invest local governments with the right to assess not merely the location of proposed facilities, but also the impact of alterations in the scope and nature of previously permitted facilities." *M.I.G. Investments, Inc. v. Environmental Protection Agency*, 122 Ill.2d 392, 523 N.E.2d 1 (1988) (emphasis added).

12. In this case, the Village of Robbins has made clear in more than one manner that the siting approval it granted in 1993 was broad enough to cover Allied's and the Village of Robbins' current waste transfer proposal. R. 075.

13. That conclusion should be given great weight, and not set aside unless it is against the manifest weight of the evidence, which is clearly not the case in the present matter.

II. THE PETITIONERS PROVIDED ADEQUATE PROOF OF LOCAL SITING APPROVAL TO THE AGENCY AND THIS BOARD IN THE FORM OF PERMITS ISSUED TO THE FACILITY.

14. Section 39.2(c) of the Illinois Environmental Protection Act provides in pertinent part:

> [N]o permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act.

415 ILCS 5/39(c) (emphasis added).

15. Therefore, pursuant to Section 39(c) of the Act, a permit must be granted if the applicant submits proof to the Agency that the local siting authority has approved the facility in accordance with Section 39.2 of the Act. *See* 415 ILCS 5/39(c).

16. In this case, Allied has submitted ample proof in the form of permit, previously issued by the Agency, all of which establish that the facility approved by the local siting authority in 1993 included a waste transfer station component.

17. In fact, the operating permit previously issued by the IEPA specifically provide that the facility shall participate in comprehensive waste processing efforts by collecting, recycling and diverting waste, as well as processing waste for removal of certain materials for recycling or off-site disposal. See IEPA Operating Permit No. 1997-072-OP, p. 17 (June 2, 1997).

18. Additionally, the original and supplemental permits previously issued to Robbins Resource specifically provide that the pollution control facility was allowed to receive waste, handle waste, store waste for certain periods of time, screen, separate, segregate and sort waste materials, transfer waste under certain circumstances and conditions, and process and convert waste materials to different forms. See Permit Nos. 1997-072-OP (June 2, 1997); 1998-030-DE (April 6, 1998); 1998-078-DE (June 3, 1998); 1998-208-OP/SUP (July 31, 1998); 1998-314-DE/SUP (June 10, 1999); 1998-313-DE/SUP (Oct. 14, 1999).

19. Based on the permits issued to the facility, the Agency specifically permitted transfer station functions, including waste receiving, temporary storage, consolidation and transfer.

20. These permitted activities clearly comport with the Act's definition of "transfer station," which is a "a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility." 415 ILCS 5/3.500.

21. Even this Board acknowledges that those permits allow for waste transfer activities, as the Board specifically stated in its Order that "the permits indicate that the sited waste-to-energy facility did have transfer station components. . . " (Board Order, p. 8) (emphasis added).

22. The permits already issued by the Agency for this facility then explicitly establish that the facility was sited to operate, in part, as a transfer station.

23. If that had not been the case, the Agency would have been without authority, pursuant to Section 39(c), to issue the permits identified above in the first instance, all of which again specifically provide for and permit waste transfer operations at the facility.

24. Consequently, the contents of the permits issued to this facility in and of themselves provide ample proof that the facility was property permitted to act as a waste transfer station, and this Board's finding to the contrary was simply incorrect.

III. THE PETITIONERS PROVIDED ADEQUATE PROOF OF LOCAL SITING APPROVAL TO THE AGENCY AND THIS BOARD IN THE FORM OF THE CERTIFICATION OF SITING APPROVAL.

25. In addition to the permits issued to the facility, which clearly establish that the facility was sited to include a waste transfer station component, the Petitioners have also provided unrefuted evidence that the facility was clearly sited as a waste transfer station through

the Certification of Siting Approval, signed by the very same mayor who was in office when the original siting approval was granted to the facility in 1993.

26. That Certification clearly and unambiguously establishes that the siting approval in 1993 was for a waste transfer station. R. 75.

27. The Board, however, seems to dismiss the Certificate as if it is inadequate proof of local siting approval and, instead, relied solely on the Ordinance passed by the Village of Robbins to somehow conclude that the facility would not be operated as a waste transfer station.

28. In fact, this Board stated that the Certification should be given "less weight" than the Ordinance, which this Board concludes is the "best evidence of the Village's intent regarding the type of facility it sited." (Board Order, p. 8).

29. However, the Board had no basis upon which to conclude that the Ordinance was somehow superior proof of the Village's intent, while the Certificate was somehow inadequate or improper proof of local siting approval.

30. In fact, the plain language of Section 39(c) does not identify any specific type of proof that is required to show local siting approval, but merely indicates that "proof" of siting approval must be provided. *See* 415 ILCS 5/39(c).

31. It is well-settled that courts must look to the language of a statute to ascertain the intent of the legislature. *See City of East Peoria v. Illinois Pollution Control Board*, 117 Ill.App.3d 673, 452 N.E.2d 1378, 1382 (3d Dist. 1983).

32. In this case, the language of the statute clearly establishes that "proof" of local siting approval is required, and does not limit the types of proof that can be submitted to the Agency to make this demonstration. *See* 415 ILCS 5/39(c).

33. Consequently, it was inappropriate for this Board to conclude that the Ordinance somehow served as superior proof of the Village of Robbins' intent, especially in light of the unambiguous Certification filed by the Village.

IV. THE PETITIONERS PROVIDED ADEQUATE PROOF OF LOCAL SITING APPROVAL TO THE AGENCY AND THIS BOARD IN THE FORM OF THE SITING AUTHORITY AGREEMENT.

34. In addition to the substantial sources of proof identified above, Petitioners also presented ample proof, through the Siting Authority Agreement entered into between the Village of Robbins and Allied, that this facility was sited in 1993 to perform transfer station activities.

35. The Siting Authority Agreement, entered into on February 13, 2003, specifically sets forth that Allied be allowed to use the formerly approved pollution control facility "for waste receipt and handling, waste processing, waste solidification, waste load consolidation and to operate as a solid waste transfer station (for both non-hazardous special waste and Municipal Solid Waste)." (R.076).

36. The agreement also memorializes that the siting approval previously granted to the pollution control facility by the Village of Robbins is "sufficiently broad to cover the proposed use of the Property and the Facility, and that the present proposed use can be undertaken without the necessity of additional local siting approval procedures." (R.076).

37. As such, that agreement makes clear that the local siting approval granted to the facility in 1993 included transfer station components.

38. However, even if it is somehow found that the 1993 siting approval did not encompass transfer station activities (which is clearly not the case), the Siting Authority Agreement itself provides proof that the facility was properly sited pursuant to Section 39.2(e-5).

39. Section 39.2(e-5) of the Act provides in pertinent part:

> Siting approval obtained pursuant to this Section is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the county board of the county or governing body of the municipality pursuant to subsection (e). However, any such conditions imposed pursuant to this Section **may be modified** by agreement between the subsequent owner or operator and the appropriate county board or governing body.

415 ILCS 5/39.2(e-5) (emphasis added).

40. In this case, Allied and the Village of Robbins have done precisely what is contemplated in Section 39.2(e-5), as the Village of Robbins has entered into a Siting Authority Agreement with Allied (the subsequent operator of the pollution control facility), to modify (as necessary) any conditions previously imposed upon the pollution control facility, and to specifically allow the operator to now operate the facility primarily as a transfer station.

41. Pursuant to section 39.2(e-5) the Village of Robbins, as the local siting authority, had absolute power and authority to do exactly what it did in its agreement with Allied, and to allow the pollution control facility to primarily act as a transfer station. (R. 076-80).

42. Consequently, even if this Board finds inadequate proof of siting approval in the form of the Agency permits already issued to this facility and the Certification of Siting Approval signed by the Mayor of the Village of Robbins, the Siting Authority Agreement in and of itself provides ample evidence that this facility was approved in accordance with Section 39.2(e-5) of the Act.

43. In its Order, this Board improperly refused to apply Section 39.2(e-5) to this case, finding that "to allow the use of Section 39.2(e-5) in this context would deprive members of the public an opportunity to participate in the local siting process." (Board Order, p. 9).

44. However, this Board's finding is incorrect because the public was able to participate in the local siting process when the facility was sited in 1993.

45. Furthermore, the public had a more recent opportunity to provide opinions about this facility in local zoning hearings that took place to have the area surrounding the facility zoned PRR and Industrial. R. 162, 194.

46. Despite the public's opportunity to voice their opposition to this facility at the local zoning hearings, the public apparently did not do so.

47. Consequently, this Board's concerns over the public's opportunity to participate in the approval of this facility are unfounded; and then no reason exists as to why Section 39.2(e-5) should not apply in this case.

V. THE ORDINANCE PASSED BY THE VILLAGE OF ROBBINS DOES NOT ESTABLISH THAT THE FACILITY WAS TO ACT ONLY AS AN INCINERATOR, AND NOT AS A TRANSFER STATION.

48. As explained above, this Board relied exclusively on an Ordinance passed by the Village of Robbins regarding siting of the facility in 1993 to support its conclusion that the facility sited was not a transfer station.

49. However, a review of the Ordinance (which this Board exclusively relied upon) clearly does not support the Board's conclusion that the facility was "clearly" not approved to act as a transfer station.

50. In fact, the Ordinance never defines the facility as anything other than a "regional pollution control facility." R. 65-70.

51. Although the Ordinance does contain one reference to a "waste-to-energy facility" and a reference to the fact that the facility would be generating electricity from waste (R. 69-70), nowhere in the Ordinance does the Village of Robbins indicate that the facility was to be operated solely for these functions, nor does the Ordinance specifically provide that the facility is not to act as a transfer station.

52. Rather, this Board simply read into the Ordinance such limitations, which is improper because the Board was required to examine the "plain language" of the Ordinance. *See City of East Peoria*, 117 Ill.App.3d 673, 452 N.E.2d 1378, 1382.

53. Furthermore, there is no such facility as a "waste-to-energy" facility, as neither that term, nor any other term encompassing waste-to-energy activities (including "incinerator"), is defined anywhere in the Act. See 415 ILCS 5/3 et seq.

54. Therefore, in 1993, the Village of Robbins could not have been siting a "waste-to-energy facility" but was, instead, siting a "pollution control facility," the definition of which includes a transfer station. See 415 ILCS 5/3.330(a).

55. Even if the Village of Robbins had been siting a waste-to-energy facility in 1993, that does not change the conclusion that the siting specifically encompassed transfer station activities because a waste-to-energy facility, otherwise known as an incinerator, is inherently a transfer station with an incineration component. The only difference between a traditional transfer station and an incinerator is the end method of disposal; both are "pollution control facilities" as defined by the Act and included within the 1993 Ordinance granting siting approval. See 415 ILCS 5/3.330(a).

56. Unlike almost every other type of "pollution control facility", neither transfer stations nor incinerators are involved in the "disposal" of waste. See 415 ILCS 5/3.185 (defining "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters").

57. Instead, incinerators act much like transfer station, in that they separate waste and recyclables, consolidate the waste (into ash/scrubber residue), and then transfer the waste to a landfill for disposal.

58. In fact, during the years that the Robbins facility was operated as an incinerator, approximately 45% of its incoming waste was transferred out of the facility as recyclables, waste and ash.

59. As such, the sited facility acted in large part as a transfer station.

60. Consequently, even if the facility sited by the Village of Robbins was specifically identified as an incinerator (which is not the case), that facility would have waste transfer components, as this Board specifically found in its Order. (Order, p. 8).

61. As a result, allowing this facility to perform transfer station activities would not in any way constitute a "wholesale change in the very type of facility contemplated." (Order, p. 8).

III. SECTION 39.2(E-5) OF THE ACT CLEARLY REQUIRES MODIFICATION OF THE PERMIT.

62. Section 39(c) of the Act provides that a permit shall be granted if an applicant submits proof of approval of the facility by the governing body of the municipality that is in accordance with Section 39.2 of the Act. See 415 ILCS 5/39(c).

63. In this case, the Village of Robbins has provided clear proof that the facility was sited in accordance with Section 39.2(a) of the Act through the Certification of Siting Approval signed by the Village of Robbins.

64. Nevertheless, even if this Board somehow finds that the Village's approval did not specifically allow the facility to act as a transfer station, the Village has provided ample proof that, to the extent even relevant, any "conditions" previously imposed on the property have been

"modified" in accordance with Section 39.2(e-5), so that the facility may now serve primarily as a waste transfer station.

65. Section 39.2(e-5) of the Act provides in pertinent part:

> Siting approval obtained pursuant to this Section is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the county board of the county or governing body of the municipality pursuant to subsection (e). However, any such conditions imposed pursuant to this Section **may be modified** by agreement between the subsequent owner or operator and the appropriate county board or governing body.

415 ILCS 5/39.2(e-5) (emphasis added).

66. In this case, Allied and the Village of Robbins have done precisely what is contemplated in and allowed by Section 39.2(e-5) by entering into a Siting Authority Agreement, which specifically provides that Allied be allowed to use the formerly approved pollution control facility as a waste transfer station. R. 076.

67. As explicitly provided for in section 39.2(e-5) of the Act, the Village of Robbins was specifically authorized to enter into the Siting Authority Agreement with Allied, the subsequent operator of the pollution control facility, to modify any and all conditions imposed on the previously approved pollution control facility, as the Village of Robbins has properly done in this case.

68. Pursuant to the plain language of section 39.2(e-5), it is the siting authority that has the sole power and responsibility to modify any terms and conditions of original siting approval with a subsequent owner of a pollution control facility, which, again, is exactly what the Village of Robbins did through its agreement with Allied, which specifically provides that Allied may now use the pollution control facility primarily as a transfer station. R. 076-80.

69. There can be no dispute that section 39.2(e-5) governs the circumstances of this case, and requires, as a matter of law, that Petitioner's permit be modified because siting approval of the subject pollution control facility has been transferred to a new entity and that new entity has entered into an agreement with the siting authority to operate as a transfer station.

70. This is clearly a situation contemplated by section 39.2(e-5), and, thus, section 39.2(e-5) requires (as a matter of law) the modification requested by Petitioner Allied and expressly agreed to by the Village of Robbins, the local siting authority.

71. Despite the clear application of Section 39.2(e-5) to the facts of this case, this Board improperly refused to apply that section, finding that "to allow the use of Section 39.2(e-5) in this context would deprive members of the public an opportunity to participate in the local siting process." (Board Order, p. 9).

72. In so finding, this Board simply chose not to apply the law as written, which is clearly improper.

73. As a result, this Board should reconsider its Order in this case and should grant Petitioners' Motion for Summary Judgment.

WHEREFORE, the Petitioner, VILLAGE OF ROBBINS. respectfully requests that this Honorable Board reconsider the Order it entered on September 16, 2004 and grant Petitioners' Motion for Summary Judgment.

Dated: 18, 2004

Respectfully Submitted,

VILLAGE OF ROBBINS,
Petitioner

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