

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 14 2001

STATE OF ILLINOIS  
Pollution Control Board

AMERICAN BOTTOM CONSERVANCY, )  
EAST ST. LOUIS COMMUNITY ACTION )  
NETWORK, KATHY ANDRIA, and JACK )  
NORMAN, )

Petitioners, )

v. )

VILLAGE OF FAIRMONT CITY and )  
WASTE MANAGEMENT OF ILLINOIS, )  
INC., )

Respondents. )

PCB 01-159  
(Pollution Control Facility  
Siting Appeal)

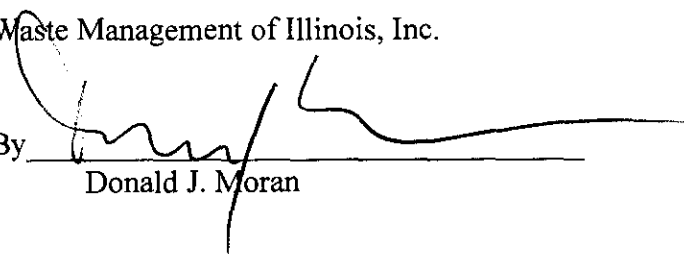
**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on September 14, 2001, we filed with the Illinois Pollution Control Board, the attached Waste Management of Illinois, Inc.'s **MEMORANDUM OF WASTE MANAGEMENT OF ILLINOIS, INC. IN RESPONSE TO POST-HEARING BRIEF IN SUPPORT OF PETITIONERS' SITING APPEAL AND PETITION FOR REVIEW.**

Respectfully submitted,

Waste Management of Illinois, Inc.

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**IN RESPONSE TO SITING APPEAL OF PETITIONERS AMERICAN BOTTOM**  
**CONSERVANCY, EAST ST. LOUIS COMMUNITY ACTION NETWORK,**  
**KATHY ANDRIA AND JACK NORMAN**

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OF PETITIONERS' SITING APPEAL AND PETITION FOR REVIEW**

**Introduction**

This case is brought before the Board by Petitioners American Bottom Conservancy, East St. Louis Community Action Network, Kathy Andria and Jack Norman ("Petitioners").

Petitioners contend that the April 18, 2001 Ordinance ("Siting Approval") by the Village of Fairmont City ("Village") granting approval of the siting request by Waste Management of Illinois, Inc. ("WMII") for vertical expansion of the Milam Recycling and Disposal Facility ("Milam RDF") should be reversed. Petitioners contend that WMII failed to meet its burden of proof on four of the nine statutory criteria, and that the Village's siting approval is against the

manifest weight of the evidence. Petitioners' Memorandum in Support of Siting Appeal, dated August 30, 2001 (Pet. Mem. 2001) at 2.<sup>1/</sup>

Petitioner's contention that criteria one through four were not satisfied is not supported by the evidence of record. Other than the witnesses presented by WMII, no one testified regarding the Siting Application or statutory criteria. There was no relevant or probative evidence offered at the public hearing that controverted WMII's prima facie case.

### **I. Factual Background**

Initially permitted in 1974, the Milam RDF is located in the Village of Fairmont City near the intersection of Interstates 55 and 70, U.S. Highway 40 and Illinois Highway 203. (C 12798.) It currently accepts municipal solid waste, demolition and construction wastes, and non-hazardous permitted special waste. The existing facility is 208 acres, 176 of which are permitted for waste disposal. (C 12736.)

Milam RDF is comprised of several disposal areas. These include Old Milam, located west of the old channel of Cahokia Creek and forming the westernmost and bottommost area of the Milam RDF (C 12800.); New Milam, located east of the old channel of Cahokia Creek and forming the central and bottommost area of the Milam RDF (C12800.); the Old Milam vertical expansion, sited in 1988 and permitted in 1989 (C 12800.); and the Milam RDF vertical and lateral expansion, consisting of a vertical expansion of Old and New Milam and a horizontal expansion of New Milam totaling 176 acres, sited in 1990 and permitted in 1991. (C 12800.)

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<sup>1/</sup> WMII will cite to the transcripts using the same designations as Petitioner. (Pet. Mem. 2001 at 3.) Further, Petitioners' Post-Hearing Brief in Support of Petitioners' Siting Appeal and Petition for Review dated August 30, 2001 will be referenced as (Pet. Mem. 2001). Unless indicated otherwise, citations (C \_\_\_ ) will be to the record of the siting proceedings in 2000 (No. PCB 00-200).

Old Cahokia Creek was relocated pursuant to a permit issued by the U.S. Army Corps of Engineers in August, 1987. (C 12800.)

On November 19, 1999, WMII filed a Site Location Application for the Vertical Expansion of the Milam RDF with the Village of Fairmont City ("Siting Application"). The Siting Application proposed a vertical expansion above the 176-acre waste footprint previously sited and permitted in 1991. The Siting Application does not propose any lateral expansion of the Milam RDF. The vertical expansion includes disposal capacity of approximately four million tons of municipal solid waste and non-hazardous special waste, which would increase the facility's site life by four years. (C 12736.) The vertical expansion is located above the top of Milam RDF's currently permitted waste grades. (C 12902.) In its Siting Application, WMII presents evidence and facts establishing each of the nine criteria set forth in Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 (1998) ("Act").

A public hearing on the Siting Application was held by the Village on March 17, 2000. Petitioners attended the public hearing and participated in the proceedings. They cross-examined five witnesses presented by WMII, and addressed various matters relating to criteria one (need), two (location, design and operation), three (compatibility), and four (flood plain). They submitted two written comments within the post hearing 30-day written comment period. No person or party, however, presented any testimony or facts at the public hearing, or subsequently, that contradicted or rebutted the evidence submitted by WMII on the statutory criteria. The Village approved the Siting Application on April 19, 2000.

Petitioners filed their first appeal with this Board on May 23, 2000, challenging the Village's approval of the Siting Application, contending that the siting proceedings were

fundamentally unfair and that the Village's decision granting siting approval was against the manifest weight of the evidence.

On October 19, 2000, this Board found that the siting proceedings were fundamentally unfair, vacated the Village's siting approval, and ordered a new public hearing. American Bottom Conservancy, et al. v. Village of Fairmont City, et al., No. PCB 00-200, slip op.(P.C.B. October 19, 2000).

The remanded public hearing was held by the Village on February 12 and February 19, 2001. Again, Petitioners attended the public hearing and participated in the proceedings. They cross-examined four witnesses presented by WMII, and addressed various matters relating to criteria one (need), two (location, design and operation), four (flood plain), and six (traffic). Petitioners, however, presented no testimony or facts at the public hearing, or subsequently, that contradicted or rebutted the evidence submitted by WMII on the statutory criteria.

On April 18, 2001, the Village approved Ordinance No. 584, granting siting approval for the vertical expansion of Milam RDF. Petitioners filed their appeal with this Board on May 22, 2001.

## **II. The Decision Granting Siting Approval Is Supported By The Manifest Weight Of The Evidence.**

Petitioners contend that the Village's findings on criteria one, two, three and four were against the manifest weight of the evidence. (Pet. Mem. 2001 at 2.) However, other than the witnesses presented by WMII, no one testified regarding the Siting Application or statutory criteria. There was no relevant or probative evidence offered at any of the hearings that controverted WMII's prima facie case. The case presented by WMII established the statutory

criteria by clear and convincing evidence. Accordingly, the decision granting siting approval is supported by the manifest weight of the evidence and should be affirmed.

A decision of a local siting body regarding compliance with the statutory siting criteria will not be disturbed unless the decision is contrary to the manifest weight of the evidence. Land and Lakes Co. v. Illinois PCB, 319 Ill. App. 3d 41, 743 N.E.2d 188, 197 (3d Dist. 2000). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident and indisputable. Turlek v. Pollution Control Board, 274 Ill. App. 3d 244, 653 N.E.2d 1288 (1st Dist. 1995).

The province of the Village Board is to weigh the evidence, resolve conflicts in testimony, and determine the credibility of witnesses. Environmentally Concerned Citizens Organization v. Landfill L.L.C., No. PCB 98-98, slip op. at 3 (May 7, 1998). Merely because there may be some evidence which, if accepted, would have supported a contrary conclusion, does not mean that this Board should reweigh the evidence and substitute the judgment for that of the Village Board. Tate v. Illinois Pollution Control Board, 188 Ill. App. 3d 994, 544 N.E.2d 1176, 1197 (4th Dist. 1989); Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 22 Ill. App. 3d 639, 461 N.E.2d 542 (3d Dist. 1984).

If there is any evidence which supports the Village decision, and this Board finds that the Village Board could have reasonably reached its conclusion, the decision must be affirmed. File v. D & L Landfill, No. PCB 9-94, slip op. at 3 (P.C.B. August 30, 1990). That a different decision might also be reasonable is insufficient for reversal. The opposite conclusion must be clear and indisputable. Willowbrook Motel v. Pollution Control Board, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985).



**III. The Vertical Expansion Is Necessary to Accommodate the Waste Needs of the Area It Is Intended to Serve.**

Petitioners argue that the vertical expansion is not necessary to accommodate the waste needs of the area it is intended to serve. (Pet. Mem. 2001 at 2.) They correctly state that need is established where an applicant shows that a proposed facility is reasonably required by the disposal needs of the service area, taking into account the waste production and waste disposal capacity of the area. Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 112 Ill.App. 3rd 639, 461, N.E.2d, 542, 546, (3rd Dist. 1984). Petitioners, however, offered no evidence that contradicted or impeached WMII's proof that the vertical expansion is necessary. (C 12733-12785); (Tr. #1 at 135-136.)

Petitioners argue that the vertical expansion is not needed because "there has been an explosion of waste capacity in Illinois" since 1999, which WMII did not consider in evaluating need, and "the most urgent need perceived by the Village is its own economic need." (Pet. Mem. 2001 at 6.) Specifically, Petitioners rely on language contained in the "1999 Annual Report, Nonhazardous Solid Waste Management and Landfill Capacity in Illinois," January 2001 ("1999 Annual Report") describing a "capacity explosion."<sup>2/</sup> (Pet. Mem. 2001 at 6, 7.)

Petitioners further allege that WMII did not address the expanded capacities at the Cottonwood Hills, Fred Weber, and Roxana (also referred to in the record as Cahokia Road Landfill or CRLF) landfills as part of their evaluation of need for the vertical expansion. (Pet. Mem. 2001 at 5-10.) These contentions are groundless.

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<sup>2/</sup> WMII has filed a motion to bar admission of the 1999 Annual Report on the ground that it was not presented or included in the record of siting proceedings before the Village. The motion was pending at the time this brief was filed.

1. **1999 Annual Report.**

Petitioners quote the following statement from the 1999 Annual Report:

The available capacity of 130.6 million gate cubic yards recorded for that date [January 1, 2000] was 80.2 million gate cubic yards more than the volume reported one year earlier. This was the highest capacity increase and the only region to report an increase this year.

(Pet. Mem. 2001 at Appendix 2.)

The quoted language is misleading. The very next sentence, *which was omitted in Petitioners' brief*, states that this "capacity explosion" includes "almost 83.6 million gate cubic yards reported by Cottonwood Hills RDF, Marissa, a facility that had not yet opened as of Jan. 1, 2000." (Pet. Mem. 2001 at Appendix 2.) The IEPA acknowledges in its report that *it did not previously include* the Cottonwood Hills RDF capacity until the 1999 Annual Report, which was published in January 2001. WMII, however, accounted for capacity of the Cottonwood Hills RDF in its evaluation of need for the vertical expansion in November 1999, 14 months prior to the IEPA reporting this capacity in the 1999 Annual Report. Petitioners' implication that WMII did not consider the additional waste capacity of Cottonwood Hills RDF is simply wrong.

Further, Petitioners quote that part of the 1999 Annual Report which says that "Sufficient capacity exists to handle the state's requirements for landfill disposal of nonhazardous solid waste for the next 16 years, ensuring there should be no landfill capacity crisis in Illinois for the foreseeable future." (Pet. Mem. 2001 at 7.) This statement is taken out of context. The statement that immediately follows is "The State of Illinois, seeking to avoid potential crises, has asked all Illinois counties to adopt and update every five years well-conceived plans to accommodate their future disposal needs." (Pet. Mem. 2001, Appendix 2.) As such, the Agency is directing local counties to manage their solid waste disposal needs to avoid crisis. As is shown

in the Siting Application, St. Clair County has adopted and completed a Plan and a 5-year Plan update to manage its solid waste disposal requirements. (Siting App. at Crit. 8.) The Siting Application establishes that the vertical expansion is consistent with this Plan update. (Siting App. at Crit. 8.) The vertical expansion will "provide ongoing disposal capacity to the service area once the existing site reaches capacity." (Tr. #1 at 140.)

Hence, the 1999 Annual Report does not, contrary to Petitioners' suggestion, declare that no landfill capacity is needed anywhere in the State of Illinois for 16 years. The 1999 Annual Report states that each county should plan for its own waste disposal needs on a continuing basis to avoid capacity shortages.

In addition, the 1999 Annual Report neither prevents an assessment or precludes a finding of need for additional capacity in appropriate locations. To do so would deprive local governments of the flexibility and authority necessary to respond to changing capacity requirements. It would also force local governments to accept existing landfills for their waste disposal, irrespective of distance, cost, safety and contractual limitations. Neither result serves the purposes of the Illinois Environmental Protection Act and its mandate for a uniform system for solid waste disposal and environmental protection.

## **2. Cottonwood Hills RDF.**

The analysis presented in Table 4 of Criterion 1 of the Siting Application demonstrates that, although not available for disposal at the time, the projected capacity of the Cottonwood Hills RDF was included when calculating the remaining disposal capacity at landfills located within the service area. (Siting App. at Crit. 1, Table 4, pp. 28, 34.) The service area for Cottonwood Hills RDF includes the same counties as for the vertical expansion, but "*also includes an additional 25 counties in Illinois, and an additional 9 counties in Missouri.*" (Siting

App. at Crit. 1, p. 35, emphasis added.) This is a total of 34 more counties than the service area for the vertical expansion. As such, in its calculation of available disposal capacity from Cottonwood Hills RDF for the service area of the vertical expansion, WMII accounts for this overlap and reduces the total available capacity at Cottonwood Hills RDF by only 25% to reflect this. (Siting App. at Crit. 1, p. 36, Table 4.) The Siting Application indicates that as of January 1, 2004, the remaining service area capacity of 81,973,427 gcy includes 75% of the available disposal capacity of Cottonwood Hills RDF. (Siting App. at Crit. 1, p. 36.) Petitioners are wrong in alleging that WMII only referred to anticipated Cottonwood Hills RDF capacity in the Siting Application, but did not use it in their calculations. (Pet. Mem. 2001 at 6.)

### 3. **Fred Weber Landfill.**

Petitioners imply that the expanded Fred Weber landfill provides capacity for the service area. (Pet. Mem. 2001 at 8.) This is incorrect. The Fred Weber landfill does not accept out of state waste or special waste. (Siting App. at Crit. 1, pp. ES-2, 31, 32.); (Tr. #3 at 49-50.) Petitioners offered no evidence to dispute this fact.

In addition, the Fred Weber landfill does not have its own fleet of trucks, so that any waste delivered to it will come from outside customers. However, the distance from Missouri transfer stations in the service area is greater to the Fred Weber landfill than to the vertical expansion, by a distance ranging from 7-26 miles one way. (Siting App. at Crit. 1, p. 44.) Increased hauling distances mean higher costs for waste haulers, who will consider such higher costs in making disposal decisions.

The cost of hauling special waste from St. Clair County to Fred Weber landfill, if it were accepted there, would be higher than transporting it to the vertical expansion. Such higher costs would result in inefficiencies and disrupt existing hauling patterns.

In sum, WMII appropriately considered the available disposal capacity for the expanded Fred Weber landfill in its evaluation of the service area for the vertical expansion. This airspace cannot be relied upon for disposal of out-of-state municipal waste, and it is not permitted for the disposal of special waste. (Siting App. at Crit. 1, p. 31.)

#### **4. Roxana Landfill.**

In November 1999, WMII included the Roxana landfill in evaluating need for the vertical expansion, stating "Capacity is available at this landfill." (Siting App. at Crit. 1, p. 34.) This referred to the capacity existing as of November 1999. At that time, no expansion of the Roxana landfill was anticipated, and therefore, WMII appropriately did not consider future disposal capacity for the service area. (Tr. #3 at 34.)

Ms. Smith knew that Roxana had applied for an expansion. (Tr. #3 at 29.) This expansion, however, was approved only for local siting. No IEPA permit was issued. (Tr. #3 at 46, 47.) Without an IEPA permit, the Roxana expansion is not a fact but merely an expectancy, and need not be considered. Tate, 544 N.E.2d at 1193.

Significantly, Ms. Smith testified that even if the Roxana landfill expansion is approved and permitted by IEPA, "it would only provide an additional three years of capacity to the service area" and therefore did not change her opinion concerning the need for the vertical expansion. (Tr. #3 at 52.)

#### **5. Economic Need.**

Petitioners allege that the most urgent need perceived by the Village is economic need. (Pet. Mem. 2001 at 6.) In support of its contention, Petitioners refer to certain public comment offered by county and village members. (Board Tr. at 415-419.) These statements provide no support for Petitioners' argument. While these persons agree that Milam RDF has provided

economic revenues to the Village, they do not state in any way that the "need" for the vertical expansion is established on the basis of the Village's own economic need. Moreover, Mr. Bregen discussed the Village's review of the Siting Application and stated "We did our best as an administration, I believe to review all questions and points. We did make a point to accept information and responses and to review even after the certain due dates. I think that we took every step that we could to make sure that our vote was fair." (Board Tr. at 420-421.)

There is no impropriety in the Village considering the economic benefit of a proposed siting request. Fairview Area Citizens Task Force v. Pollution Control Board, 198 Ill. App. 3d 541, 555 N.E.2d 1178, 1182 (3d Dist. 1990). So long as the statutory criteria are satisfied, the Village may consider the economic benefit or revenue that the proposed expansion would provide. Fairview Area Citizens Task Force, 555 N.E.2d at 1182.

#### **6. Summary.**

Petitioners claim that it is "abundantly clear from the evidence in the record" that the vertical expansion is not needed. (Pet. Mem. 2001 at 11.) In fact, the record establishes the opposite. WMII included the capacity of Cottonwood Hills RDF and an expanded Fred Weber landfill in its service area capacity analysis (Siting App. at Crit. 1, p. 32, 36.) The Roxana landfill, even if it were to receive an IEPA permit, would not provide sufficient capacity to preclude the need. (Tr. #3 at 51, 52.)

WMII has presented credible evidence and expert opinion establishing that the vertical expansion is necessary to accommodate the waste needs of the area it is intended to serve. No contrary evidence was admitted or offered. Industrial Fuels & Resources v. Pollution Control Board, 227 Ill. App.3d. 533, 592 N.E.2d 148, 156 (1st Dist. 1992). There is ample evidence supporting the Village's finding of need and therefore, the decision of the Village is not against

the manifest weight of the evidence. Tate, 544 N.E.2d at 1195-96; Fairview Area Citizens Task Force, 555 N.E.2d at 1184-85.

**IV. The Vertical Expansion Is Located Outside The Boundary Of The 100-Year Floodplain.**

Petitioners claim that the Siting Approval did not comply with Section 39.2 of the Act because the "Milam landfill is in the floodplain." (Pet. Mem. 2001 at 11.) According to Petitioners, as the vertical expansion sits on an existing landfill that is in the floodplain, the entire facility is within the 100-year floodplain. (Pet. Mem. 2001 at 11, 15.)

Petitioners' contention misconstrues the nature of the Siting Application and the applicable legal standard. The Siting Application proposes a vertical expansion above the previously permitted contours of the existing Milam RDF. (C13005.). The Act requires local siting approval for new pollution control facilities, not for existing or permitted facilities. 415 ILCS 5/3.32(b), 39(c) (1998).

A new pollution control facility includes "the area of expansion beyond the boundary of a currently permitted pollution control facility." 415 ILCS 5/3.32 (b)(2)(1998). The area of expansion beyond the boundary of an existing facility includes a vertical expansion above an existing landfill. M.I.G. Investments v. EPA, 122 Ill. 2d, 392, 523, N.E.2d 1, 4-5 (1988). Thus, the plain language of the Act requires siting approval for a vertical expansion, but not for the permitted facility.

The Siting Application requested local siting approval for the vertical expansion, not the existing Milam RDF. (C 12798-12907.) The Milam RDF was previously sited and permitted. Local siting approvals for vertical and horizontal expansions were obtained in 1988 and 1991. (C 12800.) These prior siting approvals and permits are not subject to a second review in the Siting

Application. This request concerns only the vertical expansion which is proposed above the permitted contours of the Milam RDF at elevation 410 MSL. (C 12902, 13005.) Consideration of the Siting Application properly evaluates the vertical expansion, not the existing landfill. Hediger v. D & L Landfill, No. PCB 90-163, slip op. 12-13 (P.C.B. December 20, 1990); Tate, 544 N.E.2d at 1179, 1195-97.

Petitioners attempt to discredit the technical correctness of the Siting Application and the competency of WMII's witness by alleging that "Waste Management's entire evidence on the flood plain issue consists of an expert's report contained in its application that is five sentences long." (Pet. Mem. 2001 at 11, 12.) The length of the factual report does not lessen the credibility of its contents.

Mr. Conner testified that the floodplain is three-dimensional, having length, width and height. Location above the elevation of the 100-year water level is outside the floodplain. (Tr. #3 at 78.) The facts clearly demonstrate that the 100-year floodplain elevation at the existing Milam RDF is 405 MSL. (Tr. #3 at 60.) The vertical expansion begins at elevation 410. (Tr. #3 at 61.) As such, Mr. Conner correctly states that "the proposed expansion as shown on the drawings is above elevation 410 at every location. The 100 year flood elevation is 405. *So we're 5 feet above the floodplain at every location.*" (Tr. #3 at 79, 80, emphasis added.)

Petitioners base their argument on the current FEMA Flood Insurance Rate Map, dated 1981. (Tr. #3 at 76.) Testimony indicates that the FEMA map relied upon by Petitioners in this case is inaccurate and should not be relied upon for flood plain determination. Mr. Conner testified:

1. There are no elevations on the map. (Tr. #3 at 73.)



2. The purpose of the FEMA flood insurance rate maps "...is to determine flood hazards as relating to structures that are built and then being eligible for flood insurance." (Tr. #3 at 73.)
3. A note on the map indicates that the initial identification was in 1976. Some features on the map are in excess of 25 years old. (Tr. #3 at 76.) The map does not reflect existing conditions at the site. (Tr. #3 at 73.)

Mr. Conner provided a detailed description of geographical changes at the site, including IDOT Interstate and State highway construction and interchange changes, culvert construction, permitted relocation of Old Cahokia Creek, permitted berm construction at Milam RDF, and restaurant construction. (Tr. #3 at 76-78.) He superimposed these features onto a projected scanned portion of the FEMA map. The revised FEMA map, admitted at the remanded hearing, more accurately characterizes the 100-year floodplain in and around the existing Milam RDF. (Tr. #3 at 79.); (C 14248, 2001 Record.)

Mr. Mike Mitchell, Director of Zoning for St. Clair County and the Local Flood Plain Coordinator, confirmed that the FEMA map does not accurately depict existing conditions. (Board Tr. at 418.)

Petitioners attempt to substantiate their argument that the Milam landfill is within the 100-year floodplain with a letter from Mr. Paul Osman. (Pet. Mem. 2001 at 13.) The proper question is whether the proposed vertical expansion is located in the 100-year floodplain. The undisputed evidence presented by WMII is that it is not.<sup>3/</sup> (Tr. #1 at 34-40; C13005.)

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<sup>3/</sup> Petitioners presented no testimony or evidence regarding criterion four at any of the Village hearings. They submitted a letter from Paul Osman of the Illinois Department of Natural Resources as part of their post hearing written comment. (Pet. Mem. 2001 at 13.) Of course, the Osman Letter is hearsay, and without Mr. Osman appearing to testify at the public hearing, Petitioners were unable to provide the necessary foundation for the assertions made. This

The Hediger decision addressed the very issue Petitioners raise here. In Hediger, the applicant received local siting approval for the vertical expansion of its existing landfill. Hediger, slip op. at 2. The objectors claimed that the county board's decision on all the applicable statutory criteria was against the manifest weight of the evidence. Hediger, slip op. at 8. With respect to criterion four, the objectors alleged that, based upon the county consultant's report, the existing landfill was within the floodplain. Hediger, slip op. at 14. The proper question, however, was whether the vertical expansion was located within the floodplain. Hediger, slip op. at 14. The evidence and testimony established that the vertical expansion, as opposed to the existing landfill, was not within the 100-year floodplain. This Board determined, therefore, that the county board's finding on criterion four was not against the manifest weight of the evidence, and affirmed the county's siting approval. Hediger, slip op. at 14, 17.

As in Hediger, Petitioners here allege that the existing landfill, not the vertical expansion, is within the 100-year floodplain. The question of whether the existing Milam RDF is in the 100-year floodplain is not the proper inquiry. Rather, the relevant issue is whether the vertical

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foundation was critical to the admissibility and weight accorded the statements, particularly where, as here, there was no evidence that Mr. Osman (1) had the authority or experience to determine whether Milam RDF was in the 100-year floodplain, (2) had the experience or the capability of making floodplain determinations in a siting proceeding, (3) reviewed the Siting Application, (4) knew that Cahokia Creek had been relocated, (5) knew of the facts relating to the proposed vertical expansion, or (6) intended to give an opinion that the proposed vertical expansion was within the 100-year floodplain.

Even if Mr. Osman's assertions were admitted, they are entitled to no weight. According to Petitioners, his letter "verifies" that: (1) "Milam is in the 100-year floodplain." This addresses the existing Milam RDF, not the vertical expansion, which is above the 100-year floodplain. (2) "The FEMA map was the current FEMA map." As explained in this memorandum, while the FEMA map may be current, it is not accurate or relevant in determining the 100-year floodplain. (3) "Additional flood zones had been identified at the Milam Landfill." The existing Milam RDF has been flood proofed by permit. There are no flood zones in the vertical expansion. (4) "The 100-year flood elevation was even lower than that shown on the FEMA map." The FEMA map provides no elevations.

expansion is in the 100-year floodplain. The uncontroverted evidence is that the vertical expansion is not located in the 100-year floodplain. (Tr. at 34-40.); (C 13005.); (Tr. #3 at 79.)

Where, as here, there is evidence supporting the Village's finding regarding criterion four, this Board cannot reweigh the evidence and reverse. Environmentally Concerned Citizens Organization v. Landfill L.L.C., No. PCB 98-98, slip op. at 10-11 (P.C.B. May 7, 1998). This Board has consistently upheld a local governing body's determination that criterion four was satisfied, even in cases where there was conflicting testimony or uncertainty regarding the location of the floodplain. Environmentally Concerned Citizens, slip op. at 10-11; C.O.A.L. v. Laidaw Waste Systems, No. PCB 92-131, slip op. at 11-14 (P.C.B. January 21, 1993); Hediger, slip op. at 14; Tate v. Macon County Board, No. PCB 88-126, slip op. at 25-26 (P.C.B. December 15, 1988); Wabash and Lawrence Counties Taxpayers and Water Drinkers Association v. County of Wabash, No. PCB 88-110, slip op. at 14 (P.C.B. May 25, 1989).

There is no evidence that the vertical expansion is or will be located within the 100-year floodplain. The Village's finding that criterion four was satisfied is supported by uncontradicted evidence, and should be affirmed. Tate, 544 N.E.2d at 1188-89, 1195; Hediger, slip op. at 14.

**V. The Vertical Expansion Is Not Required To Be Flood Proofed.**

In addition to their floodplain argument, Petitioners contend that the Milam RDF is not flood proofed and that the vertical expansion is not flood proofed. (Pet. Mem. 2001 at 15, 17.) Petitioners cite, curiously, to ground water levels in certain ground water monitoring wells. (Pet. Mem. 2001 at 16.) Groundwater monitoring well data is not appropriately used in determining whether the existing landfill has experienced flood conditions, or whether the vertical expansion will be floodproofed. This argument casts serious doubt on Petitioners' technical understanding and evaluation of any issue relating to floodplain or facility design.

Petitioners claim that elevated groundwater levels in monitoring wells in May 1995 means that the landfill had flooded. (Pet. Mem. 2001 at 16.) Petitioners reference groundwater elevations that were above elevation 403 in monitoring wells at the existing site. (Pet. Mem. 2001 at 16.) Mr. Conner testified that groundwater elevations do not relate to flooding and that flooding, by definition, is surface water. (Tr. #3 at 85, 86.) Further, Ms. Underwood testified that groundwater levels can fluctuate and that because there is a higher water level in a well, "*it doesn't mean anything about what the surface water conditions are in the area.*" (Tr. #3 at 127, emphasis added.) Ms. Underwood likened this to an artesian well, where water flows at the ground surface, but there is no flooding. (Tr. #3 at 127.) She testified that if there was an elevation in a well that was above a floodplain elevation, in no way did that indicate that there was flooding. (Tr. #3 at 127, 128.) A water level in a monitoring well does not indicate anything about flooding conditions. (Tr. #3 at 127.)

Petitioners' attempt to correlate groundwater elevations and surface water conditions is technically incorrect. There is no direct correlation between flooding and groundwater. (Tr. #3 at 86.)

Indeed, flood proofing of the existing Milam RDF had been established by IEPA permit 1991-152-LFM. There is no evidence in the record that the Milam landfill has ever flooded. Mr. Conner testified that there was not flooding at the landfill in 1993, nor any flooding within the footprint in 1995. (Tr. #3 at 83.) He testified that there was ponding, or an accumulation of standing water, but not flooding. (Tr. #3, at 83.) Petitioners confuse ponding and surface water in an attempt to suggest that the Milam RDF floods. Moreover, based upon the fact that the vertical expansion is not located in the 100-year floodplain, the flood proofing discussion is simply inapposite.

## **VI. Section 22.19a Does Not Apply**

Petitioners argue that WMII is not the same WMII that owned Milam RDF prior to August 19, 1997. (Pet. Mem. 2001 at 17.) According to Petitioners, if WMII is not the same company, "they (sic) cannot build a new landfill in the floodplain." (Pet. Mem. 2001 at 17.) If it is the same company, then the vertical expansion must be flood proofed. (Pet. Mem. 2001 at 17.)

As established above, the vertical expansion is not located within the 100-year floodplain. (See supra, pp. 12-16.) Moreover, there is no evidence that the Milam RDF has flooded. (See supra, pp. 16-17.) Therefore, there is no legal or factual basis to prohibit the siting of the vertical expansion or to require its flood proofing.

WMII is the company that owned and operated the Milam RDF prior to August 19, 1997. (Waste Management Exhibit 2.) Petitioners presented no evidence to establish otherwise.

## **VII. The Vertical Expansion Is Designed, Located And Proposed To Be Operated To Protect The Public Health, Safety And Welfare**

Petitioners allege that WMII has not satisfied criterion two. (Pet. Mem. 2001 at 18.) No one testified or presented evidence at the public hearing to challenge WMII's prima facie case on criterion two. Petitioners refer to documents submitted to the IEPA relating to the existing Milam RDF, and other hearsay documents, in support of their contentions. (Pet. Mem. 2001 at 18-24.) This is patently insufficient to controvert WMII's evidence.

Petitioners raise a number of technical questions that relate to the existing Milam RDF, not the vertical expansion. Objections to the existing landfill are not sufficient reasons that require a negative finding on criterion 2. Hediger, slip. op. at 13. Indeed, to the extent Petitioners' objections to the existing Milam RDF are challenges to the IEPA permits issued for the facility, this is not the proper procedure or forum to raise such challenges. Nevertheless, to

demonstrate the weakness and insufficiency of Petitioners' contentions, WMII will address their principal points.

**1. Hydrogeologic Conditions and Existing Contamination.**

Petitioners allege that "There is a longstanding problem with hydrogeologic conditions at the site." (Pet. Mem. 2001 at 18.) They base this allegation on an Agency letter from 1979 to a former owner of the Milam facility and an Agency memorandum from 1979. (Pet. Mem. 2001 at 18.) This information from 1979 is outdated and incomplete, and was gathered by a former owner of the facility. Geologic investigations of the Milam property began in 1973. (Siting App. at Crit. 2, page 2-6, Earth Tech.) As of the date of the filing of the Siting Application, over 100 borings had been drilled at Milam RDF and 75 wells installed to characterize the geology and hydrogeology. (Siting App. at Crit. 2, p. 2-6 and 4-1, Earth Tech.) These borings and wells are generally located near the 176-acre footprint area. (Siting App. at Crit. 2, p. 1-1, Earth Tech.) This is an extensive characterization of the property and demonstrates considerable understanding of the geology and hydrogeology of the site property today. (Siting App. at Crit. 2, p. 4-1, Earth Tech.)

Petitioners mischaracterize the testimony of Joan Underwood and Ernest Dennison regarding the direction of groundwater flow at Milam RDF. Petitioners state that Ms. Underwood "denied that there was any flow of groundwater to the east," (Tr. #3 at 123.) and that Mr. Dennison said that "there was never any flow to the east." (Tr. #1 at 123, 124.) Ms. Underwood testified that "overall groundwater flow is from east to west." (Tr. #3 at 123.) She was never asked if groundwater flow occurred to the east. Mr. Dennison testified that there were 27 groundwater wells at the site and based on those wells, groundwater flow is predominantly west

to southwest. (Tr. #1 at 123.) However, neither Ms. Underwood nor Mr. Dennison denied the possibility of localized flow.

Petitioners point out the groundwater contamination at the existing Milam RDF, and suggest that it is worsening. (Pet. Mem. 2001 at 19, 20.) They ignore, however, the substantial evidence describing the contamination and the remedial system installed to address it.

WMII provides a detailed explanation in the Siting Application which describes the history of groundwater contamination at Milam RDF, the Agency involvement in evaluating options to remediate the site, and the permitted remedy. (Siting App. at Crit. 2, p. 1-3, Earth Tech.) WMII states that groundwater impacts were noted from early development of the Milam RDF in unlined portions of Old and New Milam. Extensive investigations were completed to delineate subsurface conditions and to select a suitable remedial system to address impacts. A long-term remedial process is planned due to low groundwater flow velocities beneath the site. (Siting App. at Crit. 2, p. 2-10, Earth Tech.)

Further, Petitioners rely on a limited excerpt of data from the Milam RDF 1999 Annual Report which summarizes the statistical trends associated with the selected groundwater remedial action. (Pet. Mem. 2001 at 19.) Petitioners speculatively conclude that the results identified in the one section of the total report included in their brief, that "although there were 52 cases of groundwater improvement, there were 45 cases of groundwater degradation, meaning, apparently, that the *groundwater contamination is worsening*." (Pet. Mem. 2001 at 19, 20.) Petitioners again take information out of context and exclude the summary comments of the report included in the report cover letter. The report states that the "overall groundwater quality at the site appears to be improving based on the Trend Analysis results." (Pet. Mem. 2001 at Appendix 3.)

Petitioners clearly do not understand trend analysis. As stated in the Siting Application, it is expected to take approximately 35 years to remediate groundwater in the affected area of the existing facility. (Siting App. at Crit. 2, p. 1-3, Earth Tech.) In their haste to point out the results of one analysis, Petitioners failed to include that portion of the report which states:

It is still too early for the current remediation program to improve groundwater quality to background levels. An appropriate measure for determining the effectiveness of the remediation is more individual improvements than degradations in groundwater quality. As long as there continues to be a trend toward more improvements than degradations each quarter, the remediation will be considered to be effective.

(Pet. Mem. 2001 at Appendix 3.)

The Siting Application clearly describes the results of the trend analysis associated with the remedial action, and describes the results of 26 quarters of monitoring data, showing more trends of decreasing concentration than increasing concentration. (Siting App. at Crit. 2, p. 2-10, Earth Tech.)

## **2. Engineering, Seismic and Soil Conditions.**

Petitioners make reference to the St. Clair County Soil Survey and other documents that allegedly state that Milam RDF is located on fragile soils subject to liquefaction. (Pet. Mem. 2001 at 20.) Petitioners have provided no evidence to demonstrate that the vertical expansion is not properly designed.

Mr. Dennison testified that the design of a landfill takes into consideration the base materials, foundation, side slope angles, strength of materials, properties of the liner and properties of the refuse mass. (Tr. #1 at 114, 115.) He testified that the location is a suitable foundation for the landfill, and that Milam RDF is underlain by sands and clays. (Tr. #1 at 115.)



This is further verified by the extensive geologic and hydrogeologic evaluation as described in the Siting Application. (Siting App. at Crit. 2, Earth Tech.)

The Siting Application includes the results of all of the geotechnical and seismic analyses performed for the vertical expansion. The results show that the vertical expansion will not impair the integrity of the existing facility systems, and that the new systems will be stable and in compliance with regulatory requirements. (Siting App. at Crit. 2, p. 3-1, Hurst-Rosche.) Static and seismic conditions were evaluated for the vertical expansion and regulatory factors of safety were either met or exceeded for all analyses, including bearing capacity, slope failure, long-term and short-term slope failure conditions, and seismic (earthquake induced liquefaction) conditions. (Siting App. at Crit. 2, p. 3-1 through 3-3, Hurst-Rosche.)

### **3. Special Waste.**

Petitioners presented no witnesses, nor any evidence, to support their arguments regarding the acceptance of special waste at Milam RDF. They make no specific allegation about the acceptance of special waste at Milam RDF. Instead, they provide hearsay information regarding special wastes and leachate generation. They focus on industrial waste, potentially infectious medical waste, and fly ash waste, as well as household hazardous waste. (Pet. Mem. 2001 at 21.)

The Siting Application explicitly states that the vertical expansion will accept general non-hazardous municipal solid waste, demolition and construction waste, non-hazardous permitted special waste and some construction and demolition debris for processing and recycling. It will not accept regulated quantities of hazardous wastes, radioactive materials, potentially infectious medical wastes, or polychlorinated biphenyls. (Siting App. at Crit. 2, p. 1-2, Hurst-Rosche.)

Mr. Durako, Division Vice President for WMII, testified that Milam RDF accepts special waste, and that special waste is "a waste that comes from an industrial process *that has been*

*permitted to come into a sanitary municipal solid waste landfill.*" (Tr. #1 at 45, 46, emphasis added.) He testified that each special waste accepted at Milam RDF is tested by the generator prior to a permit being issued for disposal at the facility. (Tr. #1 at 47.) WMII reviews the test results and can select to do additional testing. (Tr. #1 at 47.) He testified that household hazardous wastes included in residential waste are considered small quantities and can be accepted at Milam RDF. (Tr. #1 at 50.) Random load checking of three incoming waste loads per week will be required. (Siting App. at Crit. 2, p. 7-10, Hurst-Rosche.)

#### **4. Leachate Generation.**

Petitioners make the emotional and unsupported argument that "all of these wastes combined with liquid in the waste plus rainwater combine into a giant cauldron of leachate." (Pet. Mem. 2001 at 21.) They claim that "when leachate comes into contact with the groundwater or is inundated with floodwater and spills over into the adjacent creek or into wetlands, waters of the United States are contaminated." (Pet. Mem. 2001 at 22.) There is no evidence in this record that "a giant cauldron" of leachate is going to develop at the vertical expansion, or that leachate will inundate floodwaters and spill into the adjacent creek. Existing contamination is being remediated. (Siting App. at Crit. 2, Earth Tech.)

The Siting Application states that the leachate management system will maintain a maximum of 1.0 foot of leachate on the liner. Leachate will be extracted and removed from the landfill. It will be transported offsite for treatment and disposal. (Siting App. at Crit. 2, p. 2-1, Hurst-Rosche.) Surface water will be managed in accordance with the General National Pollutant Discharge Elimination System permit. All surface water will be routed away from the active face, thereby eliminating potential for rainwater to mix with leachate. (Siting App. at Crit. 2, Section 5, Hurst-Rosche.) Intermediate cover will drain surface water and minimize rainwater infiltration

during the active period of the landfill. (Siting App. at Crit. 2, p. 7-3, Hurst-Rosche.) A composite final cover will be placed over the vertical expansion to minimize surface water infiltration. (Siting App. at Crit. 2, p. 4-1, Hurst-Rosche.)

Petitioners' attempt to calculate leachate generation quantities is fundamentally flawed. (Pet. Mem. 2001 at 22.) Petitioners argue that the Milam RDF has flooded based on groundwater levels. (Pet. Mem. 2001 at 22.) Groundwater levels, of course, are not appropriately used in determining whether the existing landfill has experienced flood conditions.

Petitioners proceed to suggest that the weight of the additional waste will cause increased pressure on the liner, and result in "thousands more contaminants and mixing of chemicals," and four more years of rainfall will be added into the site. (Pet. Mem. 2001 at 22, 23, 24.) According to Petitioners, this will result in leachate migration and groundwater contamination. (Pet. Mem. 2001 at 22.)

There is, however, no evidence, data or facts in this record that indicate that "thousands more contaminants" and substantial leachate migration will occur because of additional waste placed in the vertical expansion. The design of the vertical expansion has not been contradicted or shown to be inappropriate or unsafe.

## **5. Summary.**

Petitioners did not present or offer any evidence to demonstrate that the design of the vertical expansion is flawed from a public safety standpoint or that its proposed operation poses an unacceptable risk to public health or safety. No one testified how particular design or operating features of the vertical expansion might increase risk of harm to the public, or that the Siting Application ignored or violated any applicable governmental regulations. Where, as in this

request, no such showings are made, the prima facie case stands un rebutted and criterion two has been satisfied. Industrial Fuels, 592 N.E.2d at 157.

Moreover, this Board cannot reweigh the evidence and substitute its decision for that of the Village. Tate, 544 N.E.2d at 1197. The record contains substantial and persuasive evidence that the vertical expansion has been designed, located and proposed to be operated to protect the public health, safety and welfare. The Village was well justified in crediting that evidence and the testimony contained in the Siting Application and offered by WMII's witnesses. Land and Lakes Co., 743 N.E.2d at 197. The Village made a reasonable judgment and the opposite result is not clearly evident or indisputable. Harris v. Day, 115 Ill. App. 3d 762, 451 N.E.2d 262 (4th Dist. 1983).

The Village's decision that the vertical expansion of Milam RDF has been designed, located and proposed to be operated so as to protect the public health, safety and welfare is not against the manifest weight of the evidence, and should be affirmed.

**IX. The Vertical Expansion Minimizes Any Incompatibility With the Character of the Surrounding Area.**

Petitioners argue that the Village's decision on criterion three is against the manifest weight of the evidence. (Pet. Mem. 2001 at 24.) This argument is without merit.

Criterion three involves the question of whether the vertical expansion is located so as to minimize incompatibility with the character of the surrounding area. 415 ILCS 5/39.2(iii) (1998). This criterion requires an applicant to demonstrate that it has done or will do what is reasonably feasible to minimize incompatibility. File, 579 N.E.2d at 1236. This evidence, however, is required only if there is some incompatibility with the surrounding area shown to exist. Tate, 544 N.E.2d at 1197.

WMII witness J. Christopher Lannert testified that the vertical expansion is compatible with the character of the surrounding area. (Tr. #1 at 87, 89, 91-104.) No other witnesses testified on criterion three. Notwithstanding the compatibility of the vertical expansion with the character of the surrounding area, the record evidence establishes that WMII has proposed various features, such as the land form and buffers, intended to minimize the possible visual and operational impacts of the facility. (Tr. #1 at 92-104.)

As with the other criterion, Petitioners presented no expert or lay testimony regarding criterion three. Instead, they offer statements based on their personal knowledge, beliefs or their interpretation of public documents.

They state, for example, that "The Milam landfill is *surrounded* by archeological sites and prehistoric Indian mounds." (Pet. Mem. 2001 at 25.) This is inaccurate. The landfill is surrounded by a race track, a truck stop, a Burger King, Interstate 55/70, State Highway 203, and the Cahokia Canal (Siting App. at Crit. 3, Sheet 1.) The Cahokia Mounds are *two miles* from Milam RDF. (Pet. Mem. 2001 at 25.)

Petitioners repeatedly suggest that the Milam RDF is visible from the top of Monk's Mound. WMII presented a photograph taken from the top of Monk's Mound, facing east toward the Milam RDF. (C 13967, 2001 Record.) Petitioners attempt to discredit the photograph by suggesting that WMII may have manipulated the view in the photograph by modifying the photographer's position, camera angle, lens size and perspective. (Pet. Mem. 2001 at 28.) Petitioners present no evidence in support of this contention.

Petitioners argue that because Mr. Lannert conducted his tour of the area in July and August of 1999, he did not "take into consideration what would be the view from Monks Mound when the tress are without leaves..." (Pet. Mem. 2001 at 30.) Petitioners' sloth has betrayed them.

A review of the photograph shows that the trees in the photograph in fact *do not* have any leaves on them and the date of the photograph is digitally shown in the lower right corner of the photograph. It reads "15 1 '00;" which represents "Photograph No. 15, January 2000. (C 13 967, 2001 Record.) A review of the photograph clearly shows that the Milam RDF *cannot* be seen from the top of Monk's Mound. (Tr. #1 at 102.)

Petitioners state that it is "not possible for WMII to minimize the incompatibility of building the largest landfill in the state in the middle of the Metro East with its potential for economic growth." (Pet. Mem. 2001 at 27.) As Mr. Lannert testified, the existing landfill is permitted to a height of 570 MSL. (Tr. #1 at 81.) It is compatible with the character of the area. (Siting App. at Crit. 3, Section 3, Lannert; p. 10, Poletti.) Petitioners present no evidence that the vertical expansion is going to deter development of the area. The evidence in the record is that economic development in and around the existing Milam RDF proper has been substantial and is continuing. (Siting App. at Crit. 3, p. 6, 35 Poletti.) Property values and appreciation rates for parcels in the area have increased consistently with rates of other areas in Metro East. (Siting App. at Crit. 3, pp. 34-35, Poletti.) Petitioners offer nothing more than speculation about future development in and around the Milam RDF. (Pet. Memo. 2001 at 26-27.)

Petitioners also allege that the expanded Milam Landfill will be the "the State of Illinois' equivalent to St. Louis' Gateway Memorial Arch." (Pet. Mem. 2001 at 28.) Again, this claim is without merit. The expanded Milam Landfill will, at its highest point, be approximately 230 feet above existing grade. (Pet. Mem. 2001 at 28.) The Gateway Arch has a maximum height of 630 feet above existing grade. This is 400 feet taller than the vertical expansion at its highest point.

Petitioners search for emotional issues to support their arguments. They presented no witnesses, no testimony, and no impeaching evidence that the vertical expansion is incompatible,

that development in the area has been deterred, or that WMII has not done or will not do what is reasonably feasible to minimize any incompatibility.

There is sufficient evidence in the record to support the Village's finding that the vertical expansion satisfies criterion three. Landfill L.L.C., slip op. at 10; File, 579 N.E.2d at 1236; Fairview Area Citizens Task Force, 555 N.E.2d at 1186. The Board cannot reweigh the evidence, and a careful review of the evidence on this criterion does not indicate that the opposite ruling is clearly evidence or indisputable. Landfill L.L.C., slip op. at 10. In the absence of contrary evidence, the Village's finding that WMII satisfied criterion three is not manifestly erroneous. Land and Lakes Co., 743 N.E.2d at 198.

**CONCLUSION**

The Village decision granting siting approval was based upon the Siting Application and expert testimony presented by WMII. There was no contrary or impeaching evidence presented.

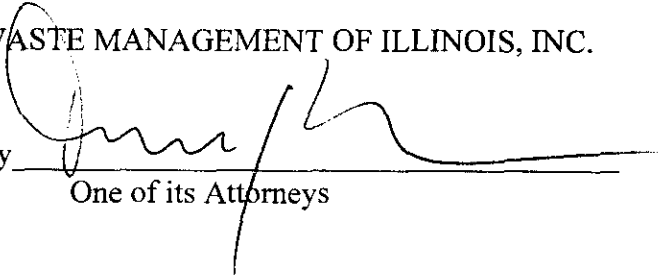
The siting approval is supported compellingly by the uncontradicted facts of record.

For the reasons set forth above, the decision granting siting approval for the vertical expansion of the Milam RDF should be affirmed.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By

  
One of its Attorneys

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**PROOF OF SERVICE**

The undersigned, a non-attorney hereby states that the **MEMORANDUM OF WASTE MANAGEMENT OF ILLINOIS, INC. IN RESPONSE TO POST-HEARING BRIEF IN SUPPORT OF PETITIONERS' SITING APPEAL AND PETITION FOR REVIEW** was served upon the parties as follows:

***Personally via Hand Delivery to:***

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

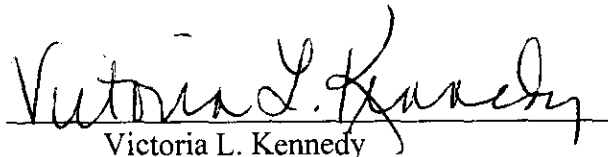
Mr. Steven Langhoff, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
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***Via facsimile and first class mail postage prepaid in an envelope correctly addressed and placed in the mail depository at 161 North Clark Street, Chicago, Illinois to:***

Ms. Yvonne M. Homeyer  
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225 South Meramec, Suite 325  
St. Louis (Clayton), MO 63105

***Via first class mail postage prepaid in an envelope correctly addressed and placed in the mail depository at 161 North Clark Street, Chicago, Illinois to:***

Mr. John Baricevic  
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Victoria L. Kennedy

Date: September 14, 2001.

**SERVICE LIST**

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