

SEP 28 2006

STATE OF ILLINOIS
Pollution Control Board

ATKINSON LANDFILL COMPANY)
)
Petitioner)
v.) (Pollution Control Facility Siting Appeal)
)
THE VILLAGE OF ATKINSON AND)
THE VILLAGE BOARD OF THE)
VILLAGE OF ATKINSON)
)
Respondents)

PLB07-20

NOTICE OF FILING

TO: SEE SERVICE LIST

PLEASE TAKE NOTICE that on September 28, 2006, the attached documents, Applicant's Petition for Review to the Atkinson Landfill Company, Inc. for the Proposed Expansion of its Landfill in the Village of Atkinson, Henry County, Illinois were filed with the Clerk of the Pollution Control Board.

CERTIFICATE OF SERVICE

I, **GLENN C. SECHEN**, an attorney, certify that I have served a copy of the attached documents by regular mail upon the person(s) referenced below at or before 4:00 p.m. on the 28th day of September, 2006.

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c/o Clerk's Office
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P.O. Box 614
Atkinson, IL 61235

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Glenn C. Sechen
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 23 2006

STATE OF ILLINOIS
Pollution Control Board

ATKINSON LANDFILL COMPANY)
)
 Petitioner)
)
 v.)
)
 THE VILLAGE OF ATKINSON AND)
 THE VILLAGE BOARD OF THE)
 VILLAGE OF ATKINSON)
)
 Respondents)

(Pollution Control Facility Siting Appeal)

APPLICANT'S PETITION FOR REVIEW

NOW COMES the Atkinson Landfill Company ("Petitioner"), by its attorneys Glenn C. Sechen and James R. Griffin, and pursuant to Section 40.1 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/40.1), petitions for review of the action of the Village Board of the Village of Atkinson and its imposition of conditions ("Special Conditions") to the grant of site location approval. This petition does not encompass a review of the grant of siting approval, but rather only a review of the conditions imposed by the Village Board. Additionally, the Petitioner is not requesting review of the condition requiring compliance with Resolution Number 178 adopted by the Village Board on August 23, 1999. In support of the Petitioner's prayer for the outright reversal and striking of the Special Conditions, purportedly adopted by Resolution 185, the Petitioner states as follows:

BACKGROUND:

1. On March 6, 2006, the Petitioner filed a request for Site Location Approval for a new Pollution Control Facility ("Application"). Proof of filing is attached as Exhibit A.

2. As the Applicant below, the Petitioner is a proper party under 35 IAC 107.208(a).

3. A public hearing in connection with the Application was conducted on or about June 21, 2006.

4. Two of the attorneys who appeared at the public hearing and filed appearances indicating their representation of various Village-related persons or entities as follows:

- a. Stacey L. Hall, on behalf of the Village Board of Trustees;
- b. The Village Attorney, Virgil Thurman, on behalf of the elected officials of the Village of Atkinson;

5. The public hearing took only a few hours and the only evidence presented was that presented by the Petitioner.

6. Counsel for the Village Board of Trustees and the Petitioner filed proposed findings.

7. Counsel for the Village Board of Trustees' proposed findings recommend that site location approval be granted, subject to certain Special Conditions, including in substance, the following; Exhibit B

- a. that the Petitioner apply for the rezoning of certain property;
- b. that the Host Agreement be amended to increase the host fee paid to the Village, provide a property value protection plan for all of the Village regardless of proximity to the landfill; and
- c. the Petitioner replace any off-site vegetation which provides a visual buffer to the landfill, in the event such buffer or screening is damaged, destroyed

or removed, by an act of God or otherwise, while at the same time essentially denying any vertical expansion.

8. Thereafter, the Village Board held a special meeting on August 28, 2006. However, no decision regarding the Application was made or announced at the special Village Board meeting.

9. Rather than deliberate in a public meeting, the Village Board met in a private closed-door session ("Private Closed Door Meeting"), without notice to the Petitioner. The Private Closed Door Meeting was held at a time and location unknown to the Petitioner to determine the action the Village Board would take on the Application.

10. The Private Closed Door Meeting was improper, fundamentally unfair and resulted in prejudice to the Petitioner regarding the Special Conditions.

11. The Petitioner is unaware of whether a transcript or other appropriate recordation of the Private Closed Door Meeting exists.

12. On information and belief, *ex parte* contact occurred and the content of previous *ex parte* communications were discussed, and others interested in the outcome, in addition to members of the Village Board, were in attendance at the Private Closed Door Meeting.

13. The presence and participation of the two attorneys purportedly representing various Village-related persons and entities resulted in *ex parte* communications, was otherwise fundamentally unfair and resulted in prejudice to the Petitioner regarding the adoption of the Special Conditions.

14. Two days after the Special Village Board Meeting, the Village Clerk telefaxed a copy of Resolution 185 (Attached as Exhibit C) to counsel for the Petitioner.

15. Section 11 of the Village Board's decision ("Resolution 185"), sets forth and imposes Special Conditions on the grant of siting:

SECTION 11. The facility shall be subject to the following Special Conditions:

- (A) The **maximum elevation** of the facility shall be no higher than 792 msl.
- (B) The Applicant shall comply with all conditions imposed by Resolution No. 178, presented, passed and approved by the Village Board on August 23, 1999.
- (C) The Village Host Agreement shall be amended to provide for mitigation of the additional burdens placed on the health, safety and welfare of the general public. **The mitigation may be accomplished by an increase in the Host Benefit Fee**, sufficient to offset the additional burden placed upon the general public, **or by any other means mutually agreed upon** by the Village Board and Applicant.
- (D) The Host Agreement shall be amended to provide a property value protection plan to all residences in the Village of Atkinson, as Applicant's own expert testified that all properties in Atkinson **would be expected to be affected** by the landfill.
- (E) If any off-site vegetation that provides a visual buffer or screening to the landfill is damaged, destroyed or removed, by an act of God or otherwise, Applicant, at its sole cost and as soon as is reasonably practicable, **shall replace any off-site vegetation or shall create on-site visual buffering** that provides substantially similar screening, **unless Applicant demonstrates** to the Village Board that such replacement would be impracticable.

(emphasis added).

16. The Special Conditions imposed by the Village Board are virtually identical to those in the Village's draft findings filed by the attorney for the Village Board. Exhibit B.

17. The Special Condition limiting the height of the proposed vertical expansion to essentially the existing maximum permitted height of the currently permitted facility, results in a significantly less efficient and more costly facility.

Furthermore, the restriction is unsupported by any evidence, contrary to the manifest weight of the evidence, without specification as to the reason for adoption, unreasonable, and unrelated to the purposes of Section 39.2. Lastly, the restriction is, the result of *ex parte* communication and is otherwise violative of fundamental fairness and of Section 39.3(e).

18. The Special Condition requiring the Petitioner to replace any off-site vegetation that provides a visual buffer or screening to the landfill which is damaged, destroyed or removed, by an act of God or otherwise, is prejudicial and inconsistent with the Special Condition which caps the height of the proposed vertical expansion essentially precluding any vertical expansion.

19. The Special Condition requiring an increase in the Host Benefit Fee is beyond the authority of the Village Board, bears no reasonable relation to the requirements of Section 39.2 of the Act and is fundamentally unfair.

20. Each of the Special Conditions imposed on the approved siting application are unduly prejudicial and invalid for one or more of the following reasons:

- a. the Special Conditions imposed are neither reasonable nor necessary to accomplish the purposes of Section 39.2 as required by Section 39.2(e);
- b. conditions cannot be imposed as leverage to force the payment of money and other benefits to a host unit of government as Henry County has already done in this very matter;
- c. the Special Condition requiring an unspecified increase in host fees, or other mutually agreed upon relief is not a final action,

- constitutes a mere invitation to negotiate, is not authorized by law and further negates all of the Special Conditions;
- d. the Village Board abused its discretion and exceeded its authority in imposing the Special Conditions in this matter;
 - e. the Special Conditions imposed by the Village Board are wholly unrelated to the Criterion claimed by the Village Board;
 - f. the Village Board applied the wrong standard in its imposition of the Special Conditions in this matter;
 - g. the evidence in the record is insufficient to support the Special Conditions required by the Village Board;
 - h. the decision of the Village Board imposing Special Conditions is palpably erroneous, wholly unwarranted, clearly the result of passion or prejudice, and further, is arbitrary and unreasonable;
 - i. the manifest weight of the evidence in the record does not support and justify any of the Special Conditions imposed;
 - j. the Village Board failed to adequately specify the reasons for its decision imposing the Special Conditions; and
 - k. are otherwise invalid.

21. The Special Conditions imposed are invalid, as siting has been granted unconditionally, by operation of law pursuant to Section 39.2(e).

- a. the Application was filed on March 6, 2006, and the 180-day decision deadline is September 4, 2006.
- b. there has been no final action regarding Special Conditions.

- c. the Special Conditions are otherwise violative of the Act.

22. The Special Conditions are the result of a lack of fundamental fairness resulting in prejudice to the Petitioner for one or more of the following reasons:

- a. the Special Conditions are a result of *ex parte* contacts;
- b. the decision-making session was not conducted at the Special Village Board meeting but, are the result of the Private Closed Door Meeting;
- c. persons other than members of the Village Board were present at the Private Closed Door Meeting;
- d. information and objections obtained through *ex parte* contacts were discussed and, in fact, *ex parte* contact occurred in the Private Closed Door Meeting;
- e. the incorrect burden of proof and improper standards and criterion were applied in the Private Closed Door Meeting;
- f. an insufficient record of what transpired at the Private Closed Door Meeting was maintained, which led directly to the adoption of the Special Conditions;
- g. the Private Closed Door Meeting and the participation therein violated the provisions of the Village of Atkinson Pollution Control Siting Ordinance a copy of which is attached as Exhibit D; and
- h. the Private Closed Door Meeting was otherwise violative of the principles of fundamental fairness and also the restrictions placed on *ex parte* contact.

WHEREFORE, the Atkinson Landfill Company prays that the Special Conditions on the grant of Site Location Approval be deemed invalid, void and of no force or effect and that the grant of Site Location Approval stand without conditions, and for such additional relief deemed appropriate by the Board.

Respectfully Submitted:

Glenn C. Sechen

Counsel for Applicant

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Exhibit A

WEAVER
BOOS
CONSULTANTS
NORTH CENTRAL, LLC
GEO-ENVIRONMENTAL ENGINEERS
AND SCIENTISTS

March 6, 2006

Ms. Carolyn Jiles
Village of Atkinson
107 W. Main Street
Atkinson, Illinois 61235

RE: Application for Site Location Approval
Southeast Expansion – Atkinson Landfill

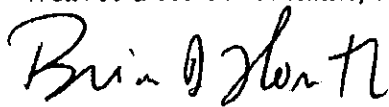
Dear Ms. Jiles:

The Atkinson Landfill Company is requesting site location approval to expand the existing Atkinson Landfill both horizontally and vertically. The proposed lateral expansion will result in an increase in the permitted facility area from 249.8 acres to 347.7 acres. The proposed vertical expansion will be placed over 45.7 acres of the presently permitted landfill.

The original and ten copies of the application are attached. As the nine sections of this petition show, the proposed Atkinson Landfill Southeast Expansion meets and exceeds all of the siting criteria and will be designed, monitored and operated so that the public health, safety and welfare will be protected. The proposed design and operating plans are substantially identical to the plans previously submitted to and approved by the IEPA in January 2004. In preparation of this siting request, minor upgrades were made to these plans to reflect the revised facility layout and new advances in standard operating procedures. Numerous figures and appendices are attached to support the application, and an 18 sheet drawing set has also been prepared.

We appreciate the Village's attention to this matter and look forward to presenting details of the application as the siting process proceeds.

Very truly yours,
Weaver Boos Consultants, Inc.



Brian J. Horvath
Senior Project Manager

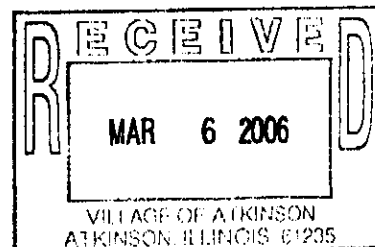


Exhibit B

**BEFORE THE BOARD OF TRUSTEES
IN AND FOR THE VILLAGE OF ATKINSON, ILLINOIS**

**IN RE: AN APPLICATION FOR)
APPROVAL OF A POLLUTION)
CONTROL FACILITY OF ATKINSON)
LANDFILL COMPANY)**

**THE VILLAGE OF ATKINSON'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDATIONS**

I. INTRODUCTION

Pursuant to the Village of Atkinson's Pollution Control Facility Siting Ordinance and the Illinois Environmental Protection Act, the Applicant, Atkinson Landfill Company, filed an Application for Approval of a Pollution Control Facility on March 6, 2006. 415 ILCS 5/39.2, Village of Atkinson Ordinance No. 577, §3. Both the Village Siting Ordinance and the Section 39.2 of the Act require the Village Board to approve or disapprove the Applicant's request for local siting. 415 ILCS 5/392, Ordinance 577, §2. The Board must determine whether the Applicant has sufficiently demonstrated compliance with the following nine statutory criteria:

- (i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;
- (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- (iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;
- (iv) (A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain or the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or if the facility is a facility described in subsection (b)(3) of Section 22.19a, the site is flood-proofed;
- (v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

- (vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
- (vii) if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
- (viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; and
- (ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

415 ILCS 5/39.2(a), Ordinance No. 557, §5(a). Only if the Village Board finds that the Applicant has proven by a preponderance of the evidence that all applicable criteria have been met, can siting approval be granted. Hediger v. D & L Landfill, Inc., PCB 90-163, slip op. at 5 (Dec. 20, 1990). Section 39.2 permits the Village Board to consider as evidence the previous operating experience and past record of convictions or admissions of violations of the Applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) above. In addition, Section 39.2(e) permits the Village Board to "impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board." 415 ILCS 5/39.2(e).

The public hearing on Applicant's siting application took place on June 21, 2006. The record in this siting approval consists of the transcript of the hearing, the Application, the exhibits submitted at the public hearing and public comment made during the public comment period.

II. PROPOSED FINDINGS.

A. Notice and Jurisdiction.

Section 39.2(b) of the Act requires an Applicant to serve notice of an intended filing upon property owners within a statutory distance of the lot line of the proposed site no later than fourteen days prior to filing a request for approval. 415 ILCS 5/39.2(b) The same notice must also be served on members of General Assembly from the district in which the facility is to be located and, must appear in a newspaper of general circulation published in the county in which the facility is to be located. 5/39.2(b). Exhibit No. 2 shows that the notices were timely served on the property owners and General Assembly members and notice published in a timely manner. The Applicant must also give notice of the public hearing on its application no later than fourteen days prior to the hearing by publishing notice in a newspaper of general circulation published in the county, and by giving notice to members of the General Assembly from the district in which the site is located, to every municipality contiguous to the proposed cite or municipality in which the cite is located, to the county board of the county in which the site is to be located, and to the Agency. 415 ILCS 5/39.2(d) Exhibit No. 3 shows the necessary notice of the public hearing was served and published as required by Section 39.2.

Proposed Finding and Recommendation

The Applicant has demonstrated it has met the notice requirements imposed by Section 39.2. The Village Board has jurisdiction to consider the siting application.

B. Section 39.2 Criteria

1. The Facility is Necessary to Accommodate the Waste Needs of the Area It is Intended to Serve.

Section 39.2(a)(i) of the Act, or Criterion 1, requires the Applicant to demonstrate "the facility is necessary to accommodate the waste needs of the area it is intended to serve."

Steve Niehoff, from Weaver, Boos Consultants testified on behalf of Applicant regarding this criterion. Mr. Niehoff testified regarding the primary and secondary service areas of the proposed facility, the current and projected future population in the service areas, the estimated per capita waste disposal and the total projected waste disposal from the service areas. Mr. Niehoff also testified regarding the existing pollution control facilities and their ability to meet the waste disposal needs of the service area. (Transcript, pp. 119-120, Application, pp. 1-1 to 1-18).

The primary service area is Illinois EPA region three, which consists largely of the Peoria and the Quad Cities region. The Secondary Service area is composed of Illinois EPA regions one and two, consisting largely of Northwestern Illinois and the Chicago metropolitan area. (Transcript p. 120 Application, pp. 1-3). According to Mr. Niehoff, the primary service area population is projected to increase approximately 3 percent between 2000 and 2030. Mr. Niehoff also testified that since Applicant's Application was filed, the Illinois Department of Commerce and Economic Opportunity had issued revised population forecasts showing an 11 percent population increase in the primary service area between 2000 and 2030. (Transcript, pp. 121-22, Application, pp. 1-5)

Mr. Niehoff determined the waste disposal rate for the service area to be 7.7 pounds per capita per day. (Transcript, p. 123). Mr. Niehoff then projected the waste disposal rates by multiplying the population projections by the per capita waste disposal rate. (Transcript, p. 123). Mr. Niehoff testified that 14.3 million tons of waste will be disposed of in 2005 with 16.7 million tons of waste being disposed of per year by 2030. (Transcript, p. 123, Application, pp. 1-11 to 1-12).

According to Mr. Niehoff, the latest Illinois EPA Non-hazardous Solid Waste Management and Landfill Capacity Report shows a total of twenty-seven landfills in the service area which have a combined capacity of about 148 million tons. (Transcript, p. 123). Mr. Niehoff also testified that a significant portion of 148 million ton capacity comes from Spoon Ridge Landfill, which is inactive and accepts only about one truckload of waste per year. (Transcript, p. 123). If the capacity of the Spoon Ridge landfill is not taken into account the service area has only about 109 million tons of capacity. (Transcript, pp. 123-125, Application pp. 1-13 to 1-17). Taking into account the projected waste disposal need and existing capacity, Mr. Niehoff opined that the existing disposal capacity will be exhausted by 2011 and that the expansion of the Atkinson landfill is necessary to accommodate the disposal needs of the service areas. (Transcript, pp. 124-125, Application, pp. 1-18).

It is the Applicant that selects the service area. Metropolitan Waste Systems, Inc. v. Pollution Control Board, 558 N.E.2d 785 (Ill. App. 3 Dist.1990). The siting authority does not have the power to revise the Applicant's service area. Land and Lakes Company v. Village of Romeoville, PCB 91-7 (December 6, 1991). Further, the Applicant is not required to show absolute necessity in order to show the facility is necessary to meet the needs of the service area. Fairview Area Citizens Taskforce v. PCB, 555 N.E.2d 1178, 1184 (Ill. App. Dist. 1990). Rather the Applicant must show only that opening of the landfill would be "expedient" and "reasonably convenient". Waste Management v. PCB, 530 N.E.2d 682, 689 (Ill. App. Dist. 1988); E & E Hauling, Inc. v. PCB, 451 N.E.2d 555 (Ill. App. 2 Dist. 1983).

Proposed Finding and Recommendation Regarding Criterion 1

The Applicant has sufficiently demonstrated that the facility is necessary to accommodate the waste needs of the area it is intended to serve. The Village Board should find the facility meets Criterion 1.

2. The Facility is So Designed, Located and Proposed to Be Operated So That Public Health, Safety and Welfare Will Be Protected.

Section 39.2 of the Act, otherwise referred to as Criterion 2, requires the Applicant to establish that "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected." 415 ILCS 5/39.2(a)(ii). Through section 39.2(a)(ii), "[t]he legislature has charged the [siting authority], rather than the PCB, with resolving technical issues, such as public health ramification of the landfill's design." McLean County Disposal, Inc. v. County of McLean, 566 N.E.2d 26, 28 (Ill. App. 4 Dist. 1991). This broad delegation of authority reflects the legislative intent that the local siting hearing, which provides the only opportunity for public comment on the site, be the most critical stage of the process. Id.

The Applicant's witness regarding Criterion 2 was Brian Horvath. Mr. Horvath testified regarding the Applicant's compliance with the Illinois Location Standards contained in the Illinois Administrative Code. Mr. Horvath testified that all relevant location standards have been met such as location restrictions regarding federal jurisdictional waters, floodplains, regulated recharge areas, setbacks from water sources and water bodies, etc. (Transcript, pp. 37-38, Application, pp. 2-4 to 2-8). Mr. Horvath also testified regarding various systems proposed to be used by the Applicant to protect the health, safety and welfare of the public, including the bottom liner system, the leachate collection and removal system, the final cover system, the gas

management system, the surface water management system and the various geo-technical analyses utilized to evaluate the site. (Transcript, pp. 39-42, Application 2-8 to 2-28).

Mr. Horvath testified that the bottom liner system for the landfill complies with the requirements of 35 Illinois Administrative Code 811.306. (Transcript, p. 29, Application, p. 2-10). Mr. Horvath also testified regarding the quality control standards used to monitor the compactions of the liner. (Transcript, pp. 39-40). Applicant further detailed these quality control standards in its Application. (Application, pp. 2-10 to 2-16).

Mr. Horvath testified regarding the Applicant's proposed leachate collection and removal system. The leachate collection system is subject to the requirement of 35 Illinois Administrative Code 811.307-309 and subject to review by the Illinois Environmental Protection Agency. (Application, p. 2-16). Mr. Horvath testified that the leachate collection system meets or exceeds the requirements of the Code. (Transcript, p. 39). Any leachate collected from the landfill must be managed in accordance with 35 Illinois Administrative Code 811.309. (Application, p. 2-18). Mr. Horvath also testified that the final cover system meets or exceeds the requirements of 35 Illinois Administrative Code 811.314. (Transcript, pp. 39-40, Application, pp. 2-19 to 2-20).

Mr. Horvath testified regarding the gas management system that will be employed by the Applicant. According to Mr. Horvath and the Application, the gas management system will be constructed and operated in accordance with 35 Illinois Administrative Code 811.311, the New Source Performance Standards (NSPS), and Title V of the Clean Air Act. (Transcript, pp. 40-41, Application, p. 2-22).

Mr. Horvath also testified regarding the surface water management system. Mr. Horvath was cross-examined regarding the surface water management system by attorneys for

the Village Board and Elected Officials and The Giant Goose Conservation Education Workshop ("Giant Goose") and public comment on the ground surface water management was received from Giant Goose. (Transcript pp. 40-42, 64-84). According to Applicant, the maximum elevation of the proposed expansion will be 872 msl, or approximately 225 feet higher than the nearby properties and 80 feet higher than what is currently permitted, and will cover 782 more acres than what is currently permitted, resulting in an increase of 20.4 million cubic yards of waste to be stored at the facility. (Transcript, p. 37, Application, p. 2-9)

According to the Applicant, surface water will be managed in accordance with 35 Illinois Administrative Code 811.103 and local ordinances. (Application, p. 22). Mr. Horvath testified that the system is designed to intercept surface water from adjoining properties and divert that surface water away from active or completed operations to detention ponds prior to sampling and discharge. (Transcript, pp. 41-42). From the detention ponds, stormwater will be discharged in accordance with local and state law and the conditions of the NPDES permit. (Transcript, pp. 41-42). The discharge will also be sampled pursuant to the conditions related to the previous siting approval. (Transcript, 41-42). According to the Applicant, the system is designed to handle a 25-year storm and safely bypass a 100-year storm. (Transcript, pp. 39-42, 59-60, Application, pp. 2-22 to 2-23).

Mr. Horvath testified regarding the groundwater monitoring system, which will be utilized to assess the quality of the groundwater passing beneath the landfill and to detect any discharge of contaminants. Applicant has proposed a network of 14 monitoring wells that will be established within and at the edge of the zone of attenuation. Monitoring of groundwater is subject to extensive regulations found at 35 Illinois Administrative Code 811.315-.320 and 811.324-.326. (Transcript, pp. 42-44, Application pp. 2-42 to 2-58). According to Applicant, its

proposed groundwater monitoring system and monitoring program meets or exceeds the requirements of the Code. (Transcript, p. 39). Pursuant to the Code, the Illinois EPA that has jurisdiction and authority to determine the location of monitoring wells. (Transcript, p. 44, Application 2-42 to 2-43).

Mr. Horvath also testified regarding the facilities operating plan and the complete plan was submitted as part of the Application. (Transcript, pp. 44-49, Application, pp. 258 to 2-85). The landfill will accept municipal waste, authorized special waste, commercial waste and construction/demolition waste. The Applicant predicts it will accept 1500 tons of incoming waste per day. The landfill will not accept regulated hazardous waste, landscape waste, regulated PCB waste and regulated asbestos waste. (Transcript, p. 45, Application 2-58 to 2-62). The Applicant proposes to train its employees to recognize unacceptable wastes, conduct formal load inspection if an improper disposal is suspected, and conduct random load checks for unacceptable wastes. (Transcript, pp. 45-46, Application pp. 2-72 to 2-75).

Giant Goose participated in the hearing as a party, submitted a letter captioned "Conditions to Approval of Siting Applications", which was introduced into evidence at the hearing, and provided public comment during the Public Comment Period. Giant Goose expressed concern regarding the horizontal and vertical expansion and the effect such expansion would have on its property located directly east of the proposed expansion. (Transcript, pp. 69-84, 134-141). Giant Goose uses the adjacent property to conduct educational activities such as camping, hiking, fishing and nature observation for more than 1,250 persons each year. (Giant Goose Public Comment). Giant Goose's concerns included increased surface water run-off on to its property from the vertical expansion and increased problems with dust, litter and odor from the expansion. (Giant Goose Public Comment). Similar concerns were raised during Applicant's

1999 siting approval and several conditions were found to be reasonable and necessary to address these concerns and further the purpose of Section 39.2. (Transcript, p. 140-141). Applicant has stated that it willing to operate the expansion under the conditions to the 1999 siting approval (Transcript, p. 141).

The applicant has also proposed plans for litter control, odor control, dust control, vector control, noise control, hours of operation, waste placement procedures, daily cover, landfill gas monitoring procedures and groundwater monitoring procedures. Applicant proposes to collect litter by various fences and manual collection of litter that has been moved beyond its borders. (Transcript, p. 45, Application pp. 2-80). The Applicant's vector control plan involves the use of daily cover to discourage pests and vector and an exterminating service to eliminate rodents around buildings. (Application, p. 2-82). Noise suppressing equipment is used and maintained to control noise. Applicant has proposed paved roads, rumble bars and cleaning and watering of roads to control dust and mud. (Application, pp. 2-65). Applicant states that its leachate collection system, gas monitoring system, and groundwater monitoring systems will be operated and maintained so as to meet or exceed local, state, and federal laws and regulations. (Application, pp. 2-66 to 2-72, 2-77 to 2-80).

Mr. Horvath testified that a fire prevention and control plan, spill prevention and control plan, and accident prevention and control plan will be in place at the proposed facility. (Transcript, p. 46-48, Application, p. 2-82 to 2-84). The plan provides for procedures if hazardous or unauthorized waste is inadvertently accepted or if an attempt to dispose of such waste is made. (Application, pp. 2-82 to 2-84). The plan provides that the Illinois EPA will be notified, the waste will be disposed of off-premises in a way consistent with state and federal laws, and the incident will be documented. (Application, pp. 2-82 to 2-84). The Applicant has

also proposed a fire safety plan and open burning restrictions. The fire safety plan includes training staff to be alert to potential fire hazards, separation and extinguishment of "hot loads", the availability of on-site water and fire extinguishers to deal with any fire emergency, and use of the Village Fire Department if necessary. (Application, pp. 2-81, 2-82).

The accident prevention response plan requires that all employees will be trained in proper operating and emergency procedures, which include waste handling, safe equipment operations, basic spill response, and basic fire fighting, and at least one on-site employee will be trained in CPR and first aid. (Transcript, pp. 46-47, Application 2-82 to 2-84). Applicant also states that safety equipment and personal protective equipment will be provided at the site. (Transcript, p. 47). An emergency contact list will be provided near each phone. (Transcript p. 47). An emergency coordinator will coordinate the response to any emergency, and all operators will be trained in initial fire response and control procedures. (Transcript, p. 47). The Application also contains a Construction Quality Assurance Plan, a closure and post-closure plan, which Applicant states complies with applicable regulations, and a financial assurance and end use plan. (Transcript, pp. 48-50, Application, pp. 2-84 to 2-98).

Proposed Findings and Recommendations Regarding Criterion 2

The Applicant has presented evidence regarding its plan to protect the public health, safety and welfare through the location, design and operation of the proposed facility. Giant Goose has raised legitimate concerns regarding the effect of the landfill on the safety and welfare of its adjacent property as well as the effect on the health, safety and welfare of the general public. These concerns were legitimate during the 1999 expansion and are of even greater concern during this siting application as Applicant has proposed to extend its operation closer to Giant Goose's property. Further, there is no doubt that, even with the procedures

proposed by Applicant, a 20.4 million cubic yard capacity increase, with an 80-foot vertical expansion and a 78.2 acre horizontal expansion, which will extend the life of the landfill for additional years, will place increased strain on the health, safety and welfare of the public by increasing the amount of noise, dirt, dust, litter, odor and subjecting the general public to noise, dirt, dust, litter, and possible contamination of its ground and surface water for an additional number of years.

As such, the Village Board should find that the facility meets Criterion 2 if the Applicant is subject to the following conditions, which are reasonable and necessary to accomplish the purposes of section 39.2(a)(ii):

a. The Applicant shall comply with all conditions imposed by Resolution No. 178, presented, passed and approved by the Village Board on August 23, 1999.

b. The Village Host Agreement shall be amended to provide for mitigation of the additional burdens placed on the health, safety and welfare of the general public. The mitigation may be accomplished by an increase in the Host Benefit Fee sufficient to offset the additional burden placed upon the general public or by any other means mutually agreed upon by the Village Board and Applicant.

3. The Facility Is Located So As To Minimize Incompatibility With the Character of the Surrounding Area and To Minimize The Effect On the Value Of the Surrounding Property.

Section 39.2(a)(iii) of the Act, also known as Criterion 3, provides that the Village Board shall approve the site location and suitability only if "the facility is located so as to minimize the incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property." 415 ILCS 5/39.2(a)(iii). The "clear intent of the statute is to require the local government units to consider a proposed facility expansion as a new

and separate regional pollution control facility." Waste Management of Illinois Inc. v. Pollution Control Bd., 463 N.E.2d 969, 979 (Ill. App. 2 Dist. 1984). As such, an applicant may not demonstrate compliance with Criterion 3 "based upon a preexisting facility." Id. An applicant must demonstrate that it has done or will do what is reasonably feasible to minimize incompatibility. Id.

Peter J. Poletti testified on behalf of the Applicant with respect to Criterion 3. His report is contained in the Application at Section 3. Mr. Poletti discussed the zoning and current land use of the surrounding property within a one-mile radius. Mr. Poletti testified that most of the land south of the landfill and I-80 is zoned agricultural, with a few exceptions. The area to the east of the landfill is also zoned primarily agricultural, with industrial zoning northeast of Route 6 and the Iowa Interstate Railroad. The land to the north and northwest of the landfill is zoned primarily industrial, residential and commercial. (Transcript pp. 93-94, Application, pp. 3-15, 3-17.) Mr. Poletti testified that the current land use correlated closely with the existing zoning in the one mile radius surrounding the landfill, with land being used for primarily agricultural and recreational purposes to the southeast and northeast of the landfill and commercial, residential and industrial use being made of the land to the north and northwest of the facility. (Transcript, pp. 94-98, Application, pp. 3-15 to 3-17.)

The Applicant proposes to buffer views of the landfill by existing on-site, as well as off-site vegetation around the facility, the use of natural grasses on the side slopes of the proposed facility, and the construction of a wetland area to the Northwest of the landfill. (Transcript pp. 97-8, Application p. 3-19). Mr. Poletti noted that from the intersection of U.S. 6 and Atkinson Road the views of the landfill will be blocked by trees. Mr. Poletti testified that the landfill would be visible from other areas such as I-80 and East 2350th Street. (Transcript, p.

108). Mr. Poletti did not address whether views would be blocked from an elevated position, such as a second story window, or whether views would be buffered or blocked if off-site vegetation was removed or altered. Likewise, the public comment submitted by Branko Vardijan, does not address these issues regarding the buffering of the view of the landfill.

Mr. Poletti also offered testimony on the landfill's impact on surrounding property values. (Transcript, pp. 98-107, Application, pp. 3-20 to 3-69). Mr. Poletti testified regarding a study he performed in which he compared the sale prices of residential property within a target area to the sale prices of similar properties within the control area. According to Mr. Poletti the target area is the area in which property values will be affected by the proposed expansion. (Transcription, p. 99). Mr. Poletti defined the target area as the Village of Atkinson. (Transcript, p. 99). The target area is determined by considering a combination of distance, visibility and intervening lands use. (Transcript, p. 99). The control area is an area that is considered to be a zone where property values will not be affected, such as an area removed from the landfill. (Transcript p. 99, Application, p. 3-20). Mr. Poletti used Annawan as the control area as Annawan and Atkinson are roughly the same size, the same distance from the urban areas, generally the same rough type of mix of businesses, and they are both located on the interstate. (Transcript, p. 99, Application 3-21).

Mr. Poletti testified that both Atkinson and Annawan had an average of 5.4 percent per year compounded rate of growth. (Transcript, p. 101, Application p. 3-21 to 3-25). Mr. Poletti also testified that the average price per square foot of single-family sales occurring between January of 2000 and December of 2005 showed an average price per square foot in the target area of Atkinson of \$76.08 per square foot and an average of \$71.48 per square foot in the

control area of Annawan. Mr. Poletti opined there was no statistically significant difference between the two averages. (Transcript, pp. 101-103, Application pp. 3-26 to 3-28).

Mr. Poletti also testified regarding a previous study in which he examined residential real estate transactions from 1993 to 1998, when the Atkinson Landfill was in operation. The average overall price increase in the control area of Annawan was 5.2 percent and the average overall price increase in the target area of Atkinson was 4.6 percent. (Transcript, p. 104). Mr. Poletti opined that there was no statistically significant difference between these appreciation rates. (Transcript, p. 104). Likewise, Mr. Poletti reported that the price per square foot study in that time period found homes in the target area of Atkinson to have an average price of \$46.38 per square foot and those in the control area of Annawan to have an average price of \$38.06 per square foot. (Transcript, p. 104). Mr. Poletti opined there is no statistical difference between the averages. (Transcript, p. 104, Application pp. 3-26 to 3-34).

Professor Poletti also discussed some of his previous studies, including those involving the Streator landfill in Streator, Illinois, the southwest side of the Livingston landfill, West of Pontiac, Illinois and the Clinton landfill, which is located South of Clinton, Illinois. According to Mr. Poletti, these studies included single-family homes, home sites, small acreages, and agricultural tracts and all of the studies considered periods when the relevant landfills were actively operating. (Transcript, p. 105). Each study showed no statistical and measurable effect on surrounding property values. (Transcript, p. 105, Application pp. 3-35 to 3-67).

Proposed Finding and Recommendation Regarding Criterion 3.

Mr. Poletti presented evidence that the proposed facility is located so as to minimize the incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. His opinion that was based on his inspection of

the area and proposed plans, the surrounding land uses and zoning, the proximity to the interstate interchange, the existing on-site and off-site natural buffers, his review of sale transactions in Atkinson and Annawan and his review of other studies concerning operating landfills and property values, as well as on the property value of protection plan included in the Host Agreement. (Transcript, pp. 92-109, Application, Section 3).

However, Mr. Poletti, while indicating that the entire Village of Atkinson would be affected by the landfill (the entire village was part of the target zone), did not address the effect of the value on surrounding industrial or commercial properties. Further, part of Mr. Poletti's opinion was based upon the appreciation and sale prices of homes in Atkinson during the operation of the permitted facility. As such, that portion of his opinion is "based upon a preexisting facility", which is an improper basis to demonstrate compliance with Criterion 3. See Waste Management of Illinois, Inc., 463 N.E.2d at 979. The other basis on which Mr. Poletti bases his opinion are proper.

Accordingly, the Village Board should find that the Applicant has met Criterion 3, if the following conditions, which are reasonable and necessary to accomplish the purpose of Section 39.2(a)(iii), are imposed on the Applicant:

a. The Host Agreement is amended to provide a property value protection plan to all residences in the Village of Atkinson, as Applicant's own expert testified that all properties in Atkinson would be expected to be affected by the landfill.

b. Applicant shall apply to have the northern most 220 feet of the Northwest Quarter of the Southwest Quarter except 7.6 acres in the Northeast Quarter of Section 35, Township 17 North, Range 4 East, more commonly known as 660 Meadowwood Dr., rezoned to B-2 district and make its best efforts to have the rezoned property used for commercial purposes

by Applicant, subsequent owners, or tenants in order to provide an additional buffer to the residential properties located north of the landfill.

c. If any off-site vegetation that provides a visual buffer or screening to the landfill is damaged, destroyed or removed, by an act of God or otherwise, Applicant, at its sole cost and as soon as is reasonably practicable, shall replace any off-site vegetation or shall create on-site visual buffering that provides substantially similar screening to the off-site vegetation that has been damaged, destroyed or removed.

4. The Facility is Located Outside the Boundary of the 100-Year Floodplain.

Section 39.2(a)(iv) of the Act, also known as Criterion 5, requires the Applicant to demonstrate that "the facility is located outside the boundary of the 100-year floodplain, or if the facility is a facility described in subsection (b)(3) of Section 22.19a, the site is flood-proofed." 415 ILCS 5/39.2(a)(iv). Mr. Horvath testified that he had reviewed the most recent flood boundary map of Henry County and that the flood boundary map showed no 100-year floodplain within the boundary of the proposed facility. (Transcript, p. 38, Application, p. 4-1).

Proposed Finding and Recommendation Regarding Criterion 4

Applicant has sufficiently demonstrated that the facility is located outside the boundary of the 100-year floodplain. The Village Board should find the facility meets Criterion 4.

5. Operations for the Facility Are Designed to Minimize the Danger to the Surrounding Areas From Fire, Spills or Other Operational Accidents.

Section 39.2(a)(v), also known as Criterion 5, requires the applicant to establish that "the plan of operations for the facility is designed to minimize the danger to surrounding area from fire, spills or other operational accidents." 415 ILCS 5/39.2(a)(v). Much of Mr.

Horvath's testimony regarding Criterion 2 is applicable to whether Applicant has demonstrated compliance with Criterion 5 and is incorporated by reference. Applicant proposes to have both Emergency Coordinator and Assistant Emergency Coordinator to address and respond to any emergency. (Application, pp. 5-1). In addition, to its fire prevention and control plan, spill prevention and control plan, accident prevention and control plan, and related response measures, the applicant will have in place an Equipment Operating Safety Plan, General Public Safety Plan, and General Working Facility Safety Plan. (Application, Section 5).

Proposed Findings and Recommendations Regarding Criterion 5

The Applicant has presented sufficient evidence that it has a plan of operation for the facility designed to minimize the danger to the surrounding area from fire, spills or other operational accidents. The Village Board should find that the facility complies with Criterion 5.

6. The Traffic Patterns To Or From The Facility Are So Designed As to Minimize The Impact On Existing Traffic Flows.

Section 39.2(a)(vi), or Criterion 6, requires the Applicant to demonstrate that the "traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." 415 ILCS 5/39.2(a)(vi). Jerry Hinrichs testified for the Applicant regarding Criterion 6. Mr. Hinrichs testified that the entrance to the Atkinson landfill is located approximately 500 feet north of the exit from I-80. (Transcript, p. 113). Mr. Hinrichs further testified that almost all of the traffic to and from the landfill used I-80 to access the landfill. (Transcript, pp. 113-114, Application pp. 6-2, 6-5). Mr. Hinrichs estimated that approximately 75 trucks will enter the landfill per day from I-80 over Atkinson Road with 25 of the 75 trucks resulting from the proposed expansion. (Transcript, p. 116). Mr. Hinrichs opined that (1) there would be no need for a left hand turn lane into the landfill entrance road and a right hand turn

lane is not warranted, (2) the traffic generated by the proposed expansion will have no significant impact on the area roadway system, and (3) the proposed design of the site access system will be more than adequate to serve the facility and ensure the traffic demands will be accommodated. (Transcript, pp. 115-116).

Finding and Recommendation Regarding Criterion 6

The Applicant has sufficiently demonstrated that the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. The Village Board should find the facility meets Criterion 6.

- 7. If The Facility Will Be Treating, Storing or Disposing of Hazardous Waste, An Emergency Response Plan Exists For The Facility Which Includes Notification, Containment And Evacuation Procedures To Be Used In Case Of An Accidental Release.**

Section 39.2(a)(vii), or Criterion 7, requires an Applicant who will be treating, storing or disposing of hazardous waste to have in place an emergency response plan, which includes notification, containment and evacuation procedures to be used in case of an accidental release. 415 ILCS 5/39.2(a)(vii). Applicant's Application and witnesses state that it will not be treating, storing, or disposing of hazardous waste in the proposed expansion. (Transcript, pp. 105-106, Application, p. 7-1).

Finding and Recommendation Regarding Criterion 7

The Applicant has sufficiently demonstrated that will not be treating, storing or disposing of hazardous waste. The Village Board should find the facility meets Criterion 7.

- 8. If the Facility Is To Be Located In A County Where The County Board Has Adopted A Solid Waste Management Plan Consistent With The Planning Requirements of The Local Solid Waste Disposal Act Or The Solid Waste Planning And Recycling Act, The Facility Is Consistent With That Plan.**

Section 39.2(a)(viii), or Criterion 8, requires that applicant demonstrate that its facility is consistent with any Solid Waste Management Plan that has been adopted by the County in which the site is to be located and which is consistent with the Local Solid Waste Disposal Act or The Solid Waste Planning Act. 415 ILCS 5/39.2(a)(viii). Mr. Niehoff testified that he had reviewed the Bi-State Regional Comprehensive Solid Waste Management Plan (“County Plan”) of which Henry County is a part, along with Plan updates, and evaluated the compatibility of the proposed facility with the Plan. (Transcript, pp. 125-127, Application, pp. 8-1 to 8-5). Mr. Niehoff noted that the Plan acknowledges that modern engineered sanitary landfills, such as is proposed by Applicant, are a feasible method of solid waste disposal. (Transcript, p. 127). The proposed expansion will provide additional disposal capacity in Henry County in accordance with the plan. (Application, p. 8-3). A 1995 amendment to the Plan requires that the Applicant negotiate a Host Agreement with the County prior to filing a siting application pursuant to section 39.2 (Application, p. 8-4). The Applicant has negotiated and executed a Host Agreement with the County. (Application, Appendix 6-2). In addition, the Henry County Board has provided a letter stating that the proposed Atkinson Landfill Southeast Expansion is consistent with the County Plan. (Transcript, p. 127, Exhibit 14.) Mr. Niehoff opined that the proposed facility is consistent with the Henry County Solid Waste Management Plan. (Transcript, pp. 127-128, Application, p. 8-5).

Finding and Recommendation Regarding Criterion 8

The Applicant has presented sufficient evidence that the proposed expansion is consistent with the Henry County Solid Waste Management Plan. The Village Board should find that the facility meets Criterion 8.

9. If The Facility Will Be Located Within a Regulation Recharge Area, Any Applicable Requirements Specified By the Board For Such Area Have Been Met.

Section 39.2(a)(ix) requires the Applicant who proposes to locate a facility within a regulated recharge area to demonstrate any applicable requirements specified by the Board for such area have been met. 415 ILCS 5/39.2(a)(ix). Mr. Horvath testified and Applicant's Application indicates that the proposed facility is not located within a regulated recharge area. Applicant has also submitted a letter from the Illinois EPA stating that the only regulated recharge area is within the Pleasant Valley Public Water District of Peoria. (Transcript, pp. 38-39, Application, p. 9-1).

Finding and Recommendation Regarding Criterion 9

Applicant has sufficient demonstrated that the proposed facility will not be located in a regulated recharge area. The Village Board should find that the facility meets Criterion 9.

III. CONCLUSION

The Village Board should find the Applicant has met the statutory criteria contained in Section 392(a) and impose the conditions stated herein. The conditions are reasonable and necessary to accomplish the purposes of Section 39.2 and are not inconsistent with the Board's regulations.

Respectfully Submitted:

/s/ Stacey L. Hall
Counsel for the Board of Trustees of the Village of
Atkinson

Of Counsel:

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CERTIFICATE OF SERVICE

I, **Stacey L. Hall**, an attorney, certify that I had served a copy of **The Village of Atkinson's Finding of Fact, Conclusions of Law and Recommendations** by e-mail, upon the person(s) referenced below, and that the same was also served upon the Village of Atkinson by regular U.S. Mail on the 18th day of August, 2006.

Village of Atkinson (Via Regular Mail and Email)
c/o Clerk's Office
Fax No. (309) 936-7648
Email: carolyn_jiles@hotmail.com

Glenn C. Sechen (Via Email)
Schain, Burney, Ross & Citron, Ltd.
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Virgil Thurman (Via Email)
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Village of Atkinson
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Kenneth A. Bleyer, J.D., Ph.D. (Via Email)
Hearing Officer
Email: kb@thatsawinner.com

Scott E. Clemens (Via Email)
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/s/ Stacey L. Hall _____

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Exhibit C

**RESOLUTION OF THE VILLAGE BOARD
OF THE VILLAGE OF ATKINSON, ILLINOIS**

**CONCERNING THE REQUEST FOR LOCAL SITING
APPROVAL OF A POLLUTION CONTROL FACILITY OF
APPLICANT THE ATKINSON LANDFILL COMPANY**

RESOLUTION NO. 185

WHEREAS, Applicant, the Atkinson Landfill Company, Inc. has petitioned the Board for local siting approval of a pollution control facility; and,

WHEREAS, Applicant proposes to develop a comprehensive waste management facility as detailed in its Application for pollution control facility siting approval; and

WHEREAS, the Board has conducted public hearings and received testimony from expert witnesses; and

WHEREAS, the Board has accepted and considered all written comments delivered or mailed within 30 days of the last public hearing held in this matter; and

WHEREAS, the Board has reviewed and considered the Applicant's Proposed Findings of Facts, the Village Board's Proposed Findings of Fact and the Hearing Officer's Report concerning this matter; and

WHEREAS, the Board has reviewed the Application in light of the criteria established for siting of pollution control facilities in Section 39.2 of the Illinois Environmental Protection Act, the Village of Atkinson Pollution Control Facility Siting Ordinance, and other applicable statutory and regulatory provisions; and

WHEREAS, after review of the Application, all relevant testimony, all exhibits, all public comments, the record made herein in its entirety and, after further consideration of all relevant and applicable factors and matters, and subject to the further provisions and conditions contained herein below, the Board HEREBY FINDS as follows:

SECTION 1. The Village Board has jurisdiction to rule on the Application for siting approval of a pollution control facility, based upon the Applicant's proper notification as provided by Illinois statutes as they pertain to the persons and entities that appear on the applicable authentic tax records.

SECTION 2. The facility is necessary to accommodate the waste needs of the area it is intended to serve.

SECTION 3. The facility is so designed, located and proposed to be operated so that the public health, safety and welfare will be protected, subject to the Applicant's compliance with conditions A, B, and C set forth in Section 11.

SECTION 4. The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property, subject to the Applicant's compliance with conditions D and E set forth in Section 11.

SECTION 5. The facility is located outside the boundary of the 100-year floodplain

SECTION 6. The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

SECTION 7. The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

SECTION 8. The facility will not be treating, storing or disposing of hazardous waste.

SECTION 9. The facility is consistent with the solid waste management plan adopted by Henry County.

SECTION 10. The facility is not located within a regulated recharge area..

SECTION 11. The facility shall be subject to the following conditions:

- (A) The maximum elevation of the facility shall be no higher than 792 msl.
- (B) The Applicant shall comply with all conditions imposed by Resolution No. 178, presented, passed and approved by the Village Board on August 23, 1999.
- (C) The Village Host Agreement shall be amended to provide for mitigation of the additional burdens placed on the health, safety and welfare of the general public. The mitigation may be accomplished by an increase in the Host Benefit Fee sufficient to offset the additional burden placed upon the general public or by any other means mutually agreed upon by the Village Board and Applicant.
- (D) The Host Agreement shall be amended to provide a property value protection plan to all residences in the Village of Atkinson, as Applicant's own expert testified that all properties in Atkinson would be expected to be affected by the landfill.

- (E) If any off-site vegetation that provides a visual buffer or screening to the landfill is damaged, destroyed or removed, by an act of God or otherwise, Applicant, at its sole cost and as soon as is reasonably practicable, shall replace any off-site vegetation or shall create on-site visual buffering that provides substantially similar screening, unless Applicant demonstrates to the Village Board that such replacement would be impracticable.

NOW, THEREFORE, BE IT RESOLVED, by the Village Board that based upon its findings and determinations concerning the nine criteria stated above and all of the evidence, the Board hereby grants the request of The Atkinson Landfill Company for siting approval of a pollution control facility as described in its Application, subject to the conditions stated herein.

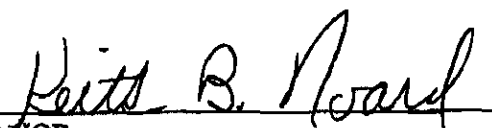
BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon the adoption thereof.

PRESENTED, PASSED AND APPROVED this 28th day of August, 2006.

ATTEST:

VILLAGE BOARD
VILLAGE OF ATKINSON, ILLINOIS


Carolyn Jiles, Clerk of the Village


MAYOR



*"A Nice Place
To Live"*

VILLAGE OF ATKINSON

Member of Illinois Municipal League

107 West Main Street • P.O. Box 614

ATKINSON, ILLINOIS 61235

Phone # (309) 936-7668 Fax # (309) 936-7648

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: (SEE LIST BELOW)

FROM: Carolyn J. Jiles

SUBJECT: Resolution 185

TOTAL NUMBER OF PAGES 4 **(Including Cover Letter)**

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE!

THANK YOU!

SENDER: Village Clerk **DATE/TIME:** 8/30/06

Resolution of the Village Board of the Village of Atkinson, Illinois
Concerning the request for local siting
Approval of a pollution control facility of Applicant The Atkinson
Landfill Company.

Virgil Thurman Fax (309)944-8416

Glenn C. Sechen (312)332-4514

Kenneth Bleyer (773)527-2873

Branko Vardijan (773)761-7706

Exhibit D

CERTIFICATE

To All To Whom These Presents Shall Come, Greeting:

I, Carolyn J. Jiles, Village Clerk
(Name of Certifying Official) (Title of Certifying Official)

do hereby certify that the attached is a true and correct copy of Ordinance/

Resolution number 557 adopted by Village Board on
(Name of Public Body)

October 18, 1998
(Date of Adoption)

(SEAL)

Carolyn J. Jiles
(Signature of Official)

ORDINANCE NO. 557

POLLUTION CONTROL FACILITY SITING ORDINANCE

WHEREAS, the Illinois Environmental Protection Act (the "Act", 415 ILCS 5/1 *et seq.*) requires the approval by the Board of Trustees of the Village of Atkinson ("Village Board") of the site suitability of each new Pollution Control Facility ("PCF") to be established within the Village; and

WHEREAS, Section 39(c) of the Act provides that the Illinois Environmental Protection Agency (the "IEPA") may not grant a permit for the development or construction of a new Pollution Control Facility without proof that the location of said facility has been approved by the Village Board; and

WHEREAS, Section 39.2 of the Act provides that the Village Board shall approve the site location for a new PCF which is to be located in the Village, but only if the Village Board finds:

1. The facility is necessary to accommodate the waste needs of the area that it is intended to serve; and
2. The facility is so designed, located, and proposed to be operated in such a manner that the public health, safety and welfare will be protected; and
3. The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property; and
4. (A) For a facility other than a sanitary landfill or waste disposal site, that the facility is located outside the boundary of the 100 year floodplain, or that the site is flood-proofed; (B) For a facility that is a sanitary landfill or waste disposal site, that the facility is located outside the boundary of the 100 year floodplain, or if the facility is described in subsection (b) of Section 22.19a of the Act, that the site is flood proofed; and
5. The plan of operations for the facility is designed so as to minimize the danger to the surrounding area from fire, spills, or other operational accidents; and
6. Traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows; and
7. The facility will not be treating, storing or disposing of hazardous waste, or if it will,

an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release; and

8. If the Henry County Board has adopted a Solid Waste Management Plan consistent with the planning requirements of The Local Solid Waste Disposal Act (415 ILCS 10/1.1 et seq.) or The Solid Waste Planning and Recycling Act (415 ILCS 15/1 et seq.), the facility is consistent with that plan; and
9. If the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met; and

WHEREAS, it is the judgment of the Village Board that in order for it to properly and effectively reach a decision upon an application for a new PCF which conforms to the nine criteria set forth above, it must have presented to it meaningful information relative to each criteria at the earliest possible time and retain qualified professional consultants; and

WHEREAS, Section 39.2(k) of the Act expressly authorizes the Village Board to charge Applicants a reasonable fee to cover the reasonable and necessary costs incurred by the Village in the siting review process; and

WHEREAS, it is deemed necessary and desirable for the Village Board to delineate the procedures for the hearing and the approval or denial of applications for site location approval of new PCF;

NOW, THEREFORE, BE IT ORDAINED by the President and Village Board of the Village of Atkinson that the following Ordinance is hereby adopted and enacted:

SECTION 1: DEFINITIONS

- a. The "Act" is the Illinois Environmental Protection Act, as amended from time to time (415 ILCS 5/1 et seq.).
- b. "Applicant" is any person or entity proposing to obtain site location approval and IEPA permits for a new or expanded Pollution Control Facility in the Village of Atkinson, and includes the fee owner of such site, the proposed operator, and any other party with an interest in the site, such as a lessee, contract purchaser or land trust beneficiary.
- c. "Board" refers to the Illinois Pollution Control Board.
- d. "Village" refers to the Village of Atkinson, Illinois.

- e. "Village Board" refers to the Board of Trustees of the Village of Atkinson.
- f. "IEPA" refers to the Illinois Environmental Protection Agency.
- g. "PCF" refers to a Pollution Control Facility as defined in the Act. "PCF" includes a new Pollution Control Facility as defined by the Act.
- h. All other terms used in this Ordinance and defined in the Act shall have the same definitions and meanings as found in said Act [including, but not limited to those terms defined in Section 3 (415 ILCS 5/3)].

SECTION 2: VILLAGE APPROVAL OF POLLUTION CONTROL FACILITIES

No site location approval for the development or construction of a new or expanded PCF in the Village may be granted by the Village Board unless an application for approval of such site is submitted for consideration to the Village Board, a hearing is conducted and the Applicant has agreed to sign the Operating Agreement proposed by the Village.

Any Village Trustee or staff member who has or feels he or she has, any disqualifying interest in the property or affairs of the Applicant shall be excused from participating in any hearing or decision.

No PCF application will be considered or approved by the Village if it proposes to include hazardous waste and no such hazardous waste may be disposed of in the Village. No burning or incineration of waste shall be allowed at the PCF.

SECTION 3: PROCEDURE FOR FILING AN APPLICATION

- a. (i) The application shall comply with the requirements of the Act and this Ordinance. The Applicant shall file it in a format compatible with the computer system utilized by the Village.
- (ii) All sections of the application shall be clearly marked with dividers. Exhibits and drawings shall be clearly marked. Applicant must include all information which demonstrates that the Applicant will comply with the Act, the applicable regulations and the requirements of this Ordinance.
- b. (i) Applicant shall file the original application with the Village Clerk, with ten copies, including such site plans, exhibits and maps, and other documents as may assist the Village Board in its determination.
- (ii) Applicant shall deposit with the Village Clerk at the time of filing the application a one-time filing fee of Ten Thousand Dollars (\$10,000).

The filing fee is intended to defray the reasonable and necessary costs related to the application, including costs, clerical expenses, hearing officer compensation, court reporter expenses, transcription costs, public notice expenses, staff review time, per diems, Village attorneys and Village consultants (such as qualified professional engineers, planners, appraisers, environmental counsel, etc.), and other costs incident to the consideration of the application, and the costs incident to preparing the record for appeal in case of an appeal ("Village Costs"). The fee is an estimate and Applicant shall be liable for Village Costs in excess of this fee.

If there are funds remaining from the filing fee after payment of the Village Costs, such amount shall be refunded to the Applicant. If a shortfall exists or is expected, Applicant will be billed and will pay the same immediately.

- (iii) The date that the Applicant files an application and fee shall be considered the official filing date for all time limit purposes.
 - (iv) At any time prior to completion by the Applicant of the presentation of the Applicant's factual evidence and cross-questioning, Applicant may file not more than one amended application pursuant to this Ordinance and Section 39.2(k) of the Act. The filing of an amended application shall extend the time limitation for final action set forth in Section 39.2(e) of the Act and this Ordinance for an additional period of ninety (90) days.
- c.
- (i) Upon receipt of the application and payment of the fee, the Village Clerk shall date stamp all the copies and immediately deliver one copy to the President of the Village Board and one copy to the such Village staff as may be appropriate. The Village Clerk will preserve the original application intact.
 - (ii) The Village shall retain a hearing officer and consultants who will act on behalf of the Village. The hearing officer shall conduct all hearings in accordance with law and shall have the discretion to interpret this Ordinance and the law consistent with the principles of fundamental fairness. Applicant will cooperate with the consultants and allow access to the site and all records and documents.
- d. An Applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved, pursuant to a finding against the Applicant under any of criteria 1 through 9 of this Ordinance, within two years of the date of the denial.
- e. A copy of the application and all related documents or other materials on file with the Village shall be made available by the Village for public inspection. Members

of the public shall be allowed to obtain a copy of the application or any part of it upon payment of the actual cost of reproduction as outlined in the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

- f. It is the Applicant's duty to comply with all notice and other requirements set forth in the Act and in this Ordinance. The Applicant shall:
- (i) No later than fourteen days prior to filing an application for site location approval with the Village Clerk, cause written notice of the filing of such application to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the Applicant, and on the owners of all property within two hundred fifty feet in each direction of any lot line of the subject property, said owners being such persons or entities which appear from the tax records of the county; provided that the public roads, streets, alleys and other public ways shall be excluded in computing the two hundred fifty foot requirement and provided further, that in no event shall this requirement exceed four hundred feet, including public streets, alleys and other public ways.
 - (ii) The Applicant shall serve such notice upon each member of the General Assembly from the legislative district in which the proposed facility is to be located, and this notice shall also be published in a newspaper of general circulation in the Village.
 - (iii) The notice shall state the name and address of the Applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the application for site approval will be submitted to the Village Clerk, a description of the right of persons to comment on such request as hereafter provided, and any other information as may be reasonably required by the Village or the Act.
 - (iv) Applicant shall include in the application or at the hearing proof of compliance with all applicable pre-filing notice requirements.
- g. By filing an application, Applicant agrees to execute and perform the Operating Agreement required by the Village, a copy of which is attached to this Ordinance, or as amended by the Village Board, if the application is granted.

SECTION 4: NOTICE AND SCHEDULING

- a. A public hearing shall be scheduled by the Village to begin no sooner than ninety

days and no later than one hundred twenty days after receipt of the application. Within ten days of the filing of the application the Village Clerk shall notify the Applicant of the location and date on which the public hearing is to commence.

- b. The Village shall cause to be published in a newspaper of general circulation in the Village a notice of the public hearing not later than fourteen days prior to said hearing. The Applicant and Village shall also serve written notice of such hearing by certified mail, return receipt requested, to all members of the Illinois General Assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the proposed site, to every municipality contiguous to the Village, to the Henry County Board and to the IEPA. The Applicant or Village, as the case may be, shall file with the Village Clerk copies of each notice with proof of service of such notice.

SECTION 5: CONDUCT OF THE PUBLIC HEARING

- a. The public hearing shall develop a record sufficient to form the basis of any appeal. To that end, the application shall be evidence and shall be admitted into evidence at the public hearing. During the course of the public hearing, the Village Board shall receive testimony and evidence from the Applicant and witnesses whom the Applicant may call in support of the application, any Village witnesses, any objectors, and any other witnesses having information relevant to the nine criteria stated below. The Village Board shall recommend approval only if the proposed facility meets the nine criteria (or such amended criteria as may be set forth from time to time in the Act).
 - (i) the facility is necessary to accommodate the waste needs of the area that it is intended to serve; and
 - (ii) the facility is so designed, located, and proposed to be operated that the public health, safety and welfare will be protected; and
 - (iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property; and
 - (iv) (A) for a facility other than a sanitary landfill or waste disposal site, that the facility is located outside the boundary of the 100 year floodplain, or that the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, that the facility is located outside the boundary of the 100 year floodplain, or if the facility is described in subsection (b) of Section 22.19a of the Act [415 ILCS 5/22.19(a)], that the site is flood proofed; and
 - (v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents; and

- (vi) traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows; and
 - (vii) that the facility will not be treating, storing or disposing of hazardous waste, or if it will, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release; and
 - (viii) if the Henry County Board has adopted a Solid Waste Management Plan consistent with the planning requirements of The Local Solid Waste Disposal Act (415 ILCS 10.1 et seq.) or The Solid Waste Planning and Recycling Act (415 ILCS 15/1 et seq.), the facility is consistent with that plan; and
 - (ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.
- b. Applicant shall have the burden of proof and the burden of going forward with evidence. In addition to the admission of the application into evidence, testimony and other evidence may be introduced by the Applicant.
 - c. The hearing officer shall conduct the hearing according to rules established to achieve fundamental fairness. Applicant or the Village or counsel may make an opening statement. The hearing officer may also allow a representative of the objectors or their counsel to make an opening statement.
 - d. A court reporter retained by the Village shall be employed and shall be present at public hearings. The reporter shall provide the Village with a certified transcript of the hearing as soon as possible.
 - e. The hearing officer shall preside and make decisions concerning the admission of evidence and the manner in which the hearing is conducted, subject to this Ordinance and the principles of fundamental fairness. The hearing officer may exclude irrelevant, immaterial, incompetent or unduly repetitious testimony or evidence. The hearing officer shall rule on all questions relating to the admissibility of evidence. The rulings of the hearing officer shall not be appealable to the Village Board. However, issues of jurisdiction shall be finally determined by the Village Board.
 - f. All persons desiring to speak in the hearing, including members of the public, must submit written notification of said intent to the Village Clerk before the first day of the public hearing or register with the hearing officer at the first day of the hearing. Persons desiring to present or otherwise introduce written evidence at the hearing must file such evidence with the Village Clerk before the hearing is ended.

- g. Any persons wishing to participate on an ongoing basis, present evidence or witnesses (other than themselves) or to cross-examine witnesses at the hearing, must become a party by filing an appearance or notice in writing with the Village Clerk at least 24 hours before the hearing is scheduled to begin. Any such party shall have the right to be represented by an attorney at the hearing. Along with the filing of an appearance or notification of intent to become a party, the prospective party shall file with the Village Clerk a list of witnesses, written statements of any witness, a summary of the testimony to be offered, and copies of all prepared statements, documents and other evidence of any description which the party may wish to introduce into evidence or otherwise utilize at the public hearing. Further, if the prospective party wishes to be represented by counsel, along with the filing of such notification of intent to become a party, the prospective party or the attorney shall file with the Village Clerk an appearance of counsel. Prospective parties failing to meet these requirements may still be a participant, provided the minimum requirements of this Ordinance to be a participant are met.
- h. To assure completion of the hearing in accordance with the deadlines of the Act, the hearing officer may propound questions to any witness or party to clarify the record or to bring out relevant information. The hearing officer may reasonably limit in scope, time, and duration the statement, testimony or cross-examination of any participant, witness or party.
- i. The hearing officer may also order that the testimony of any witness, participant or party be reduced to writing and made a part of the record. The Applicant shall be afforded the opportunity to respond, file written responsive testimony and file motions regarding any such written testimony offered by others. The record shall remain open to allow the Applicant five business days after the close of the hearing to file such motions and to submit responses and responsive testimony into the record as evidence.
- j. The hearing officer shall hear testimony and evidence first from the Applicant and any witnesses the Applicant may wish to call. Upon the close of the Applicant's testimony, any other parties may offer witnesses and evidence. After the Applicant's and other parties' testimony and evidence, the Village may present witnesses and evidence, unless the Village is the Applicant, in which case it shall proceed as any other Applicant. The hearing officer shall decide issues regarding the presentation of evidence subject to this Ordinance.
- k. All witnesses shall testify under oath or affirmation. Testimony may include the use of exhibits and prepared statements. If testimony is by prepared statement, the person wishing to present a prepared statement shall supply ten copies, in addition to previously filed copies, of the prepared statement to the hearing officer at the hearing in advance of such testimony. All witnesses shall be subject to reasonable

direct, cross, redirect and recross examination. After all parties have presented testimony, reasonable rebuttal and sur-rebuttal may be allowed at the discretion of the hearing officer.

- l. The Applicant and the Village's counsel shall be allowed to cross-examine witnesses as a matter of right, subject to such reasonable limitation as may be set by the hearing officer. Parties represented by attorneys may be allowed to cross-examine in the discretion of the hearing officer. Other persons shall be allowed to submit questions to the hearing officer, who shall exercise discretion in the manner in which such questions are to be posed to witnesses. Sufficient examination of witnesses is to be allowed so as to provide for fundamental fairness.
- m. Public Comment. The hearing officer has the discretion to allow or not allow public comment at the hearing or set a time for public comment.
- n.
 - (i) At any time prior to completion by the Applicant of the presentation of the Applicant's evidence and opportunity for cross-questioning, Applicant may file not more than one amended application. Upon the filing of an amendment, the time limitation for final action set forth in this Ordinance and in Section 39.2(e) of the Act, as amended, shall be extended for an additional period of ninety days from the filing; and
 - (ii) Within seven days of the filing of the amendment the Village or hearing officer shall notify the Applicant and publish notice of the date of the next public hearing.
- o. The hearing officer shall permit the filing of proposed findings and responses thereto by the Applicant and any party wishing to file them. The hearing officer shall set a schedule for the filing of proposed findings and responses.
- p. The hearing shall be held and concluded as quickly as is reasonably possible, given the 120 and 180 day deadlines in the Act.

SECTION 6: PROCEDURE FOR FILING WRITTEN PUBLIC COMMENTS

- a. Any person may file written comments with the Village Clerk concerning the appropriateness of the proposed site. The Village Board shall consider any comment received or postmarked from the date of receipt of the application through thirty days after the date of the last hearing in making its final determination. Said written comments shall clearly reference the PCF application to which they refer to ensure their consideration. Upon receipt, the Village Clerk shall date stamp the comments, refer them to the hearing officer and Village Board and send copies to the Applicant, who shall have 14 days to respond.

- b. These written comments and any responses shall become part of the record of the proceedings.

SECTION 7: DECISION

- a. The hearing officer shall submit proposed findings to the Village Board as soon as practicable. The hearing officer may propose his or her own findings or adopt, in whole or in part, the proposed findings of the Applicant or another party.
- b. All proposed findings shall be submitted to the Village Board for its decision as to the ultimate approval or disapproval of the proposed site location. A sufficient number of copies of the record of the public hearing shall also be made available to the Village Board as soon as reasonably practicable once the transcript becomes available.
- c. The Village Board shall make a decision based on the record from the public hearing and review of the proposed findings which are timely filed. The decision of the Village Board shall be by resolution in writing in conformity with Section 39.2(a) of the Act.
- d. In granting site location approval, the Village Board may impose such conditions as may be reasonable and necessary to accomplish the purposes of the Act so long as the conditions are not inconsistent with the Act and the regulations promulgated by the Board.
- e. The decision of the Village on the application shall be in writing, specifying, in general terms, the reason(s) for the decision. The deliberations of the Village are and shall be subject to the Illinois Open Meetings Act (5 ILCS 120/1.01 et seq.).
- f. The decision shall be available for public inspection at the office of the Village Clerk and may be copied upon payment of the cost of reproduction.
- g. If there is no final action by the Village Board within one hundred eighty(180) days after the filing of the application for site location approval, the Applicant may deem the application approved.

SECTION 8: SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by the Board or any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 9: ORDINANCES REPEALED

All Ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed insofar as they conflict with this Ordinance.

SECTION 10: EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage by the Village Board, its approval by the President of the Village Board and its attestation by the Village Clerk.

Dated at Atkinson, Henry County, Illinois this 19th day of October, A.D. 1998.

(SEAL)

James H. Hamer
James Hamer
President of the Village Board

ATTESTED and Filed in the office of the Village Clerk this 19th day of October, 1998.

Carolyn J. Jiles
Carolyn Jiles
Village Clerk

VOTING AYE: 7
VOTING NAY: 0
ABSTAINING: 0
ABSENT: 0