ILLINOIS POLLUTION CONTROL BOARD
September 2, 2010

VEOLIA ES VALLEY VIEW LANDFILL, INC.,	)	
Petitioner,	)	
v.	)	PCB 10-31
	)	(Pollution Control Facility
COUNTY BOARD OF MACON COUNTY, Illinois,	)	Siting Appeal)
Respondent.	)	

GERALD P. CALLAGHAN OF FREEBORN & PETERS, LLP, APPEARED ON BEHALF OF PETITIONER;

RANDALL D. WAKS OF THE MACON COUNTY STATE'S ATTORNEY'S OFFICE AND LARRY M. CLARK APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by G.L. Blankenship):

Veolia ES Valley View Landfill, Inc. (Veolia) petitioned the Board seeking review of five conditions to a landfill siting approval granted by the County Board of Macon County, Illinois (Macon). Veolia challenges these conditions by arguing that they are against the manifest weight of the evidence, unsupported by the record and infringe upon the permitting authority of the Illinois Environmental Protection Agency (IEPA).

For the reasons stated below, the Board affirms three of the conditions, affirms in part one of the conditions, and strikes one. This opinion begins with the procedural and legal background of the case. The Board then outlines the facts of this case. Finally, the Board summarizes the briefs of the two parties and provides reasoning for its decision.

PROCEDURAL BACKGROUND

On November 9, 2009, Veolia timely filed a petition asking the Board to review an October 8, 2009 decision by Macon that approved Veolia's request for siting approval for the horizontal and vertical expansion of its existing pollution control facility in Harristown Township, Macon County. In its decision, Macon approved the siting subject to conditions. The Board accepted the petition for hearing on November 19, 2009. Macon filed the record on March 4, 2010. On May 19, 2010, Macon filed supplemental documents to the record.

A hearing was held on May 20, 2010 before Board Hearing Officer Carol Webb (5/20 Tr.). Veolia filed a brief on June 7, 2010 (Veolia Brief). Macon filed its brief on June 28, 2010

(Macon Brief). On July 12, 2010, Veolia filed a reply brief (Reply). On June 3, 2010, the Harristown Coalition of Residents filed the only public comment in this case.

LEGAL BACKGROUND

The following section delineates the statutory provisions at issue in this proceeding and then discusses the legal standards to be applied by the Board when deciding the issues.

Statutory Provisions

Section 3.330(a) of the Environmental Protection Act (Act) defines a pollution control facility as "any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator." 415 ILCS 5/3.330(a) (2008). Section 3.330(b) defines a new pollution control facility to include "the area of expansion beyond the boundary of a currently permitted pollution control facility. 415 ILCS 5/330(b) (2008).

Section 39.2(a) of the Act requires that an applicant seeking approval for siting a pollution control facility must provide evidence demonstrating that the nine criteria listed in subsections (i) through (ix) are met. 415 ILCS 5/39.2(a) (2008). The criteria relevant to this case are:

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(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[.]

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The county board or the governing body of the municipality may also 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) under this Section. 415 ILCS 5/39.2(a) (2008).

Section 39.2(e) provides in pertinent part that,

[i]n granting approval for a site the county board or governing body of the municipality may 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) (2008).

Legal Standards for Board Review

In reviewing the local siting authority's imposition of a special condition, the Board must determine whether the special condition to a site approval is reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and not inconsistent with Board regulations. Peoria Disposal Co. v. Peoria County Board, PCB 06-184, slip op. at 6 (Dec. 7, 2006), citing 415 ILCS 5/39.2(e) (2004); *see* 415 ILCS 5/39.2 (2008). "When the issue is whether a condition is necessary to accomplish the purpose of a Section 39.2(a) citing criterion, the Board must determine whether the local government's decision to impose the condition is against the manifest weight of the evidence." Waste Mgmt. of Ill., Inc. v. Will County Board, PCB 99-141, slip op. at 3 (Sept. 9, 1999) (citation omitted), *aff'd sub nom*. Will County Board v. PCB, 319 Ill. App 3d 545, 747 N.E.2d 5 (3rd Dist. 2001); *see also* Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 119, 866 N.E.2d 227, 236 (2007) (a reviewing court must determine whether the Board's decision in a landfill siting appeal was against the manifest weight of the evidence).

A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. Land and Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3rd Dist. 2000); Fairview Area Citizens Taskforce v. PCB, 198 Ill. App. 3d 541, 550, 555 N.E.2d 1178, 1184 (3rd Dist. 1990). The Board is not in a position to reweigh the evidence, but it must determine whether the decision of the local siting authority is against the manifest weight of the evidence. *Id*. (citations omitted). The applicant bears the burden of proving that the conditions are not necessary to accomplish the purposes of the Act and therefore were imposed unreasonably. Rochelle Waste Disposal, LLC v. the City of Rochelle, and the Rochelle City Council, PCB 07-113, slip op. at 21 (Jan. 24, 2008), citing IEPA v. PCB, 118 Ill. App. 3d 772; 780, 455 N.E.2d 188, 194 (1st Dist. 1983); 415 ILCS 5/40.1(a) (2006); 35 Ill. Adm. Code 107.506. The Board has authority to modify conditions imposed by the local siting authority to the extent that they are not supported by the record or would be inconsistent with the purposes of the Act. *See* Browning Ferris Industries of Illinois v. Lake County Board of Supervisors and IEPA, PCB 82-101, slip op. at 14-15 (Dec. 2, 1982).

FACTS

Site Background

The subject property that constitutes the landfill in question is located in Harristown Township in the County of Macon. C1-5. The site began operations in 1957 and was acquired by Veolia in 1998. C1-1457, C1-1459. The site has a history of multiple violations of landfill standards, including a violation for discharge of leachate into a stormwater stream. C1-41 to 47. Groundwater exceedences have also been identified at the landfill. C2-213.

Application Background

On May 1, 2009, Veolia filed with Macon a request for siting approval for the horizontal and vertical expansion of the landfill (Application). C2-4, C3-2. The Application assumed continuous pumping of the Gradient Control System (GCS) for a period of 100 years to demonstrate an acceptable groundwater impact assessment (GIA). C1-45259. The Application's GIA model also assumes elevations of leachate for future conditions. C1-45248. These

elevations are used to demonstrate that the landfill will be protective of the surrounding groundwater.

The hearing on the application was conducted by Macon's Environmental, Education, Health and Welfare Committee (EEHWC) on August 5, 6 and 15, 2009. C2-1, C2-165, C2-295. Veolia presented six witnesses to address the nine siting criteria in Section 39.2(a) of the Act (415 ILCS 5/39.2(a) (2008)). C2-26 to C2-293, C2-399 to C2-428, C2-430 to C2-457. No members of the public participated in the hearing and Macon's review team did not present any witnesses or other evidence. At the hearing, Veolia's landfill design engineer testified that vegetation with a minimum height of 8 feet would not act as a visual barrier once landfill operations move above grade. C2-56. The same witness indicated that operational screening or barrier berms could be built as visual barrier as the landfill continues to develop higher above grade. *Id.*

Upon the close of hearings, Macon received a number of public comments from citizen's and citizen groups regarding the proposed landfill expansion. C5-1 to 36. Counsel for Macon's review team also submitted proposed findings and recommendations which included 41 proposed siting conditions. C3-21 to C3-39. Veolia's response agreed to be bound by most of the review team's conditions, but proposed revisions to eight conditions and rejected three conditions (providing reasons for its revisions and rejections). C3-9 to C3-20. The EEHWC met on September 30, 2009, to formulate a recommendation to Macon. C6-6. During its deliberations, the EEHWC struck one condition and adopted Veolia's version of another. C6-45, C6-50. At the close of the discussion, the EEHWC voted to approve the Application. C6-56 to C6-58. On October 8, 2009, Macon voted to pass a resolution on the Application subject to the findings and conditions recommended by the EEHWC. C6-69, C8-3 to C8-23. On October 13, 2009, the resolution was filed of record by the County Clerk. C8-3.

Filings with the Board

On November 9, 2009, Veolia filed its petition with the Pollution Control Board, challenging conditions 8, 9, 11, 19 and 27. Those conditions are as follows:

> 8. Perpetual Pumping. The gradient control system located inside of the slurry wall and well MS-13 (or its replacements) shall be pumped for a minimum of 100 years unless otherwise released from this obligation by the Macon County Board.
>
> 9. Financial Assurance. A perpetual care trust fund should be established to address the long term pumping required at this site, and the rate of $0.20 per ton or an annual payment of $50,000, whichever is greater, shall be placed into such fund during the 28 years of landfill operation. This fund is to be used for the required pumping from year 58 (at the end of the 30-year post-closure) until year 128 as predicted in the GIA (the GIA models 100 years following closure). More specifically, assuming a 2011 start date, the expected closure is in 2039 and the GIA pumping will run to 2139). Alternately this requirement may be met by the inclusion of such costs, for the specified period of time (year 2139), in the

applicant's Financial Assurance for Closure and Post-Closure Costs as identified in Subpart F: Financial Assurance for Closure and Post-Closure Care (35 Ill.Admin.Code 807.600 *et seq*). If the Illinois EPA proposes to release the applicant's Financial Assurance, then the applicant (or their successor) shall either maintain such financial assurance as identified above or shall petition the Macon County Board to release such financial assurance requirements.

11. Leachate elevations. The Applicants shall install and operate, at a minimum, the proposed number of leachate extraction wells and other leachate collection points to reduce the leachate elevation in Sections 1, 2 and 3 to a height no greater than the leachate elevations illustrated in the GIA model for future conditions (reference Hydrogeologic Characterization Report, Volume IV, Attachment 12b, Drawing Sheet 1, Predictive Model Landfill Potentiometric Contours) unless the Applicant can demonstrate that higher levels are acceptable by providing a revised GIA model to the County and Illinois EPA for review and approval. Leachate elevations shall be measured from at least 3 leachate piezometers, installed in each of Sections 1, 2 and 3 (located in the northern, central and southern portions), at points equidistant from leachate extraction points to minimize the influence of leachate extraction wells on the measured leachate elevation. Leachate elevation and leachate extraction well operation data shall be recorded at least quarterly and be readily available for County review.

19. Gradient Control System. The Gradient Control System to be used to de-water the horizontal expansion shall not be dismantled at the point in time when sufficient waste has been placed atop the base liner to discontinue its use, but shall be maintained such that a sample of the groundwater in the system can be extracted and tested once per year. The testing parameters shall be at least six (6) common leachate indicator parameters.

27. Visual Barriers. The development of the landfill shall be built in such a manner that perimeter and operational berms shall be placed to minimize view of the landfill operations and to assist in minimizing possible offsite impact. Perimeter berms shall be vegetated immediately after they are constructed. The east perimeter berm shall be constructed prior to waste exhumation and other operations that expose waste within 500 feet of the east property boundary. The east perimeter berm shall be no less than 8 feet in height and shall extend, at a minimum, from point 5800 N to point 4800 N shown on Drawing A4, and shall be built wide enough to support vegetation as described on the application's landscape plan. Operational berms shall be used such that waste is not seen on the west, north or east. In areas where there is insufficient room to construct a separate berm, the elevated roadway may be horizontally extended and the plantings may be installed adjacent to the roadway surface or upon the side slopes of such roadway/berm. The elevation of such a combination roadway/berm shall be 8 feet above the adjacent grade except where existing localized conditions are prohibitative and such determination is approved by the Macon County Solid Waste Department.

Conditions 8, 9, 11 and 19 were passed under Criterion 2 of Section 39.2(a) of the Act ("[T]he facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected."). C8-11, 12, 14. Condition 27 was imposed under Criterion 3 of the Act ("[T]he 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."). C8-16 to 17.

On June 3, 2010, the Board received its only public comment in this matter, filed by the Coalition of Harristown Residents. The Coalition supports Conditions 8, 9, 11 and 27 and seeks a more stringent testing standard on Condition 19.

BOARD DISCUSSION

In the discussion that follows, the Board will first address a preliminary issue raised by Veolia that concerns the review team's recommendations filed as a public comment to the Macon hearings. Then, the Board will separately present the arguments of the parties and discuss the Board findings on each of the five conditions that are contested by Veolia.

PRELIMINARY ISSUE

Veolia Brief

Veolia argues that Conditions 8, 9, 11, 19 and 27 were proposed by Macon's review team after the siting hearing was closed. Veolia Brief at 6. Veolia states that it was impossible for it to present testimony at Macon's hearing to critique or offer modifications to the conditions because the review team did not present any witnesses, testimony or other evidence to support these conditions. *Id.* However, Veolia did propose modifications to these conditions in its Response and Amended Response. *Id.*

Macon Brief

Macon notes that it retained the services of an environmental engineering firm and attorney to work in conjunction with the Macon County Solid Waste Department to review the application. Macon Brief at 2. Macon states that, while Veolia was unable to provide testimony at the Macon hearing in response to the review team's proposed conditions (which Macon contends is always the case when information is submitted at the time of public comment), Veolia did offer modifications to the proposed conditions, some of which were ultimately adopted by Macon. *Id.* at 5. Macon contends that no parties to a local siting hearing have an absolute right to cross examine individuals when their input is limited to oral or written public comment. *Id.* However, Macon notes that Veolia was given the opportunity to respond to the review team's proposed conditions. *Id.*

Veolia Reply Brief

Veolia cites Browning, which held that siting conditions must be supported by the record. Reply at 1. Veolia believes that Macon's brief underscores the fact that the record

contains no evidence to support the five challenged conditions. *Id.* Veolia states that the filing of recommended conditions in the record as public comment does not mean they are supported by evidence in the record. *Id.* Veolia believes that the conditions are nothing more than argument or advocacy, they are not evidence or supported by evidence. *Id.* at 2.

Board Discussion on Preliminary Issue

This preliminary matter raises two issues. First, Veolia argues that it did not have any opportunity to offer testimony at the Macon hearing to critique or offer modifications to the conditions recommended by the review team. Veolia Brief at 6. The review team's recommendation was timely filed as a public comment after hearing. The Board is not persuaded by Veolia's argument. A party cannot cross-examine written material submitted as public comment. Land and Lakes Co., 319 Ill. App. 3d at 51, 743 N.E.2d at 196. The Act also does not require that the public comment period be held open to allow parties to respond to materials submitted on the last day. *Id.* Moreover, the reliability of public comments and the petitioner's inability to cross-examine their authors should not affect their admissibility but only the weight to be given them. *See* Browning, PCB 82-101, slip op. at 6 (Dec. 2, 1982). In this case, Veolia acknowledges that it did submit modifications to these conditions. Veolia Brief at 6. Some of these modifications were adopted by Macon in its final conditions. Macon Brief at 5. The Board finds that Macon was not required to provide Veolia the opportunity to present testimony at the Macon hearing regarding the review team's recommendation. Furthermore, Macon's reliance on the review team's findings when making its determination was reasonable under the Act. *See* 415 ILCS 5/39.2(c) (2008) (requiring the local siting authority to consider any timely filed public comment when making its determination).

The second concern raised by Veolia is that the conditions suggested in the review team's recommendation are not supported by the record. This matter will be addressed in detail in the discussions that follow.

CONDITION 8

Condition 8 states as follows:

> Perpetual Pumping. The gradient control system located inside of the slurry wall and well MS-13 (or its replacements) shall be pumped for a minimum of 100 years unless otherwise released from this obligation by the Macon County Board. C8-11.

Veolia Brief

Veolia objects to this condition in that it could conflict with the IEPA permit issued for the expansion. Veolia Brief at 6. Veolia's proposed modification would enable Veolia to cease pumping if approved by the IEPA. *Id.* Veolia believes that this condition would put it in an irreconcilable position of being required by the IEPA to cease pumping of the gradient control system (GCS) while being in violation of this condition. *Id.* Veolia cites to Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors, PCB 82-101, slip op. at 3, 15

(Dec. 2, 1982), in which this Board struck a portion of a condition that authorized the Lake County Department of Public Health to require, rather than recommend, "additional measures to control vectors, dust, odors, blowing and erosion problems." *Id.* at 7. Veolia believes that the Board should strike Condition 8 for the same reason. *Id.*

Macon Brief

Macon contends that Veolia has objected to this condition on the basis that it could conflict with the IEPA-issued permit. Macon Brief at 5. Macon notes that the landfill is a troubled site and that Veolia had to install a number of slurry walls upon acquisition of the landfill in order to address leachate migration issues. *Id.* Macon points out that Veolia proposed pumping the GCS for a period of 100 years and that Veolia's GIA is based upon pumping the GCS for 100 years. *Id.* at 6. Macon believes that, in order for Veolia to stop their pumping, Veolia would have to apply to the IEPA for a modification of their operating permit and show that there will be no impact to the groundwater 100 feet from the waste boundary. *Id.* Macon argues that it is not trying to subvert the IEPA process, but merely be allowed to meaningfully participate in any proposed changes to the operation of the landfill in the future that would change the basis upon which the County granted approval. *Id.*

Macon states that this landfill has accumulated a number of violations and that others owned by Veolia also appear to have operational issues. *Id.* Macon considered this information when determining whether or not to grant local siting approval under the health, safety and welfare criterion and to impose appropriate conditions thereto. *Id.* Macon opines that, based on the landfill's historically poor performance, it is reasonable for Macon to want to maintain some control over the operation of the landfill during the time proposed by Veolia. *Id.* at 7. Macon does not believe that Veolia should be allowed to change the process of pumping the GCS for 100 years without demonstrating to Macon that the stoppage is safe, considering that the basis for this approval is, in part, based upon Veolia's representation that they would continue to pump for 100 years. *Id.*

Veolia Reply Brief

Veolia believes that this condition inserts Macon into the IEPA's authority to control pumping of the GCS, thereby usurping the IEPA's permitting authority. Reply at 2-3. Veolia argues that "[t]he language of Section 39.2 does not vest the County Board with permitting authority." *Id.* at 3, citing County of Lake v. Illinois Pollution Control Board, 120 Ill. App. 3d 89, 457 N.E. 2d 1309, 1316 (2d Dist. 1983). Veolia further cites the County of Lake court's finding that Sections 39(a) and 39.2(e) of the Act, "[w]hen read together, the sections suggest that the Agency maintains its authority to issue permits. The scope of authority granted the County Board is restricted." *Id.* Veolia states that siting conditions that "might conflict with permit conditions" should be stricken. *Id.*, citing Browning, PCB 82-101, slip op. at 15 (Dec. 2, 1982).

Board Discussion on Condition 8

Veolia believes that Condition 8 should be stricken because it inserts Macon into the IEPA's authority to control pumping of the GCS. Reply at 2-3. Veolia argues that this might result in a conflict with the IEPA permit conditions. *Id.* Macon notes that it is Veolia who based its GIA upon pumping continuing for 100 years. Macon Brief at 6. It is partially this basis upon which Macon based its approval and Macon is merely seeking to meaningfully participate in any proposed changes to the operation of the landfill in the future. *Id.* Macon notes the troubles that have occurred at the Veolia landfill in the past and does not believe that Veolia should be allowed to change the pumping process without demonstrating to Macon that the stoppage is safe. *Id.* at 6-7.

The Board agrees with Macon. Criterion 2 of Section 39.2(a) of the Act provides in part that the facility "be operated so that the public health, safety and welfare will be protected." Veolia relies on the GIA to demonstrate that the proposed landfill expansion will be protective of the groundwater. Veolia's GIA assumes continuing the GCS pumping for a period of 100 years to demonstrate an acceptable groundwater impact assessment. C1-45259. Therefore, the Board finds that this condition is not contrary to the manifest weight of the evidence and it is reasonable for Macon to require pumping of the GCS for a period of 100 years to meet Criterion 2 of Section 39.2 of the Act. Macon has also demonstrated that such protection is necessary considering the history of past violations at the Veolia landfill. C1-41 to 47.

This current case is distinguishable from Christian County Landfill, Inc. v. Christian County Board, PCB 89-92 (Oct. 18, 1989). In that case, the County sought to impose a condition which would grant it "the power to impose those conditions which are reasonable and necessary to ensure that the operation of the [landfill] is in accordance with the criteria" of Section 39.2. *Id.* at 9. The Board stated that "[o]nce the county … renders its decision, the power of the county … under Section 39.2 of the Act is exhausted." *Id.* at 27. The Board went on to state that Section 39.2 does not grant "continuing powers" as alleged by the County in that case. *Id.* at 28.

The Board in Christian County Landfill also stated that the condition was not "reasonable and necessary to accomplish the purposes" of the Act. *Id.* at 27. Condition 8 in this case is reasonable in that Macon is reassuring that Veolia will continue to perform the GCS pumping for 100 years. C1 at 45259. It is Veolia who presented its model based on 100 years of GCS pumping. The Board's rules only guarantee 30 years of post-closure maintenance. 35 Ill. Admin. Code Section 811.111(c)(1)(C). Not only is it reasonable for Macon to provide itself this assurance under Criterion 2 of the Act, but it is also necessary in order for Macon to ensure that the standard upon which it has based its application approval is continued in the manner set forth in Veolia's model. Macon is not guaranteed that the Agency will impose this 100 year post-closure standard.

Furthermore, Macon is not imposing on itself "continuing powers" in the same way as set forth under Christian County Landfill (*i.e.* to impose future conditions which may alter or affect the Agency's permit), but is merely providing itself an assurance that an influential factor in its decision-making will continue so that Criterion 2 is met.

Additionally, the Board finds that the "perpetual pumping" condition placed by Macon does not conflict with or limit any potential IEPA permit conditions. Based upon a permit

application from Veolia, IEPA may require pumping of the GCS for more than or less than 100 years. If IEPA approves a pumping period of less than 100 years for the GCS, as noted by Macon, Veolia may seek a modification of the siting condition from Macon based upon any new information relied upon by IEPA in making its determination.

The Board finds that Condition 8 is not against the manifest weight of the evidence in the record. Veolia has not proven that the condition is unnecessary to accomplish the purposes of the Act or that the condition was imposed unreasonably. Condition 8 is reasonable and necessary to ensure that the "public health, safety and welfare" is protected as required under Criterion 2 of the Act. 415 ILCS 5/39.2(a). The Board therefore affirms Condition 8.

CONDITION 9

Condition 9 states as follows:

> Financial Assurance. A perpetual care trust fund should be established to address the long term pumping required at this site, and the rate of $0.20 per ton or an annual payment of $50,000, whichever is greater, shall be placed into such fund during the 28 years of landfill operation. This fund is to be used for the required pumping from year 58 (at the end of the 30-year post-closure) until year 128 as predicted in the GIA (the GIA models 100 years following closure). More specifically, assuming a 2011 start date, the expected closure is in 2039 and the GIA pumping will run to 2139). Alternately this requirement may be met by the inclusion of such costs, for the specified period of time (year 2139), in the applicant's Financial Assurance for Closure and Post-Closure Costs as identified in Subpart F: Financial Assurance for Closure and Post-Closure Care (35 Ill.Admin.Code 807.600 *et seq*). If the Illinois EPA proposes to release the applicant's Financial Assurance, then the applicant (or their successor) shall either maintain such financial assurance as identified above or shall petition the Macon County Board to release such financial assurance requirements. C8-11 to 12.

Veolia Brief

Veolia objects to this condition on several grounds. Veolia Brief at 7. Veolia argues that the County does not have authority to impose this condition under Section 39.2 of the Act. *Id.* Veolia cites to a condition in Browning which required the applicant to "provide proof of financial responsibility by means of bond, escrow agreement or insurance policy for life of site plus 20 years in the amount of $3 million." *Id.*, citing Browning, PCB 82-101, slip op. at 4 (Dec. 2, 1982). Veolia contends that the Board in Browning held that "[a]bsent legislative authorization," the County had no authority to require the applicant to provide financial security to the County. *Id.* at 7-8. Veolia states that this condition should be stricken because of Macon's lack of authority. *Id.* at 8.

Veolia again cites to Browning to contend that there is no support in the record for the amount of the financial assurance required by Condition 9. *Id.* In Browning, the Board struck the financial security condition because "the record does not explain or support choices as to the

amount and period of time included in the requirement, and provides for no standards to govern the 'payment to a person authorized by Lake County to determine and execute the remedies necessary.'" *Id.*, citing Browning, PCB 82-101, slip. op at 17 (Dec. 2, 1982). Veolia further argues that the Second District Appellate Court, in upholding the Board's decision in Browning, held that Section 39.2 of the Act did not authorize the County to require financial responsibility, such authority was not implied, and the time limit and amount of the financial security required by the condition were arbitrary and unsupported by the record. *Id.*

Veolia contends that there is no evidence in the record to explain Macon's established rate of the greater of $0.20 per ton or $50,000 per year, nor are there standards in Condition 9 to guide Veolia on who will establish the trust fund or who should be paid. *Id.* at 8-9. Veolia believes that Condition 9 should be stricken as unsupported by the record and against the manifest weight of the evidence. *Id.* at 9.

Macon Brief

Macon states that this condition provides alternatives to the imposition of financial responsibility in that Veolia could meet their financial obligation by including these costs in their Financial Assurance for Closure and Post-Closure Care. Macon Brief at 7, citing 85 Ill. Admin. Code 807.600 *et seq.* Macon believes that, because Veolia's proposal and GIA were based upon the concept of continuing the pumping for 100 years after closure, some provision must be made to provide for the financial wherewithal to accomplish that task. *Id.* at 8. Macon states that it is merely providing Veolia an alternative to the financial assurances provided through the formal Post-Closure Care plan. *Id.* Macon notes that the regulations are silent on how to deal with the period beyond the post-closure care period and states that, if the IEPA or other applicable regulatory agency extends the post-closure period to and including 100 years after the 30-year post-closure period, that would address Macon's concerns. *Id.*

Macon states that the $0.20 per ton or $50,000 per year amount was based in part upon Veolia's estimates for premature closure figures for maintenance of the GCS and the gradient control effluent treatment system line items as contained in Veolia's application. *Id.* Macon opines that there are three time periods in question: the closure care period, the post-closure care period, and the period beyond the post-closure care period. *Id.* at 9. Macon notes that the applicant must already maintain financial assurance for closure and the post closure care periods, but that since pumping goes beyond what the Board anticipated in its regulations (i.e. beyond the 30 years after landfill closure), Macon must establish an avenue to cover those costs. *Id.* Macon seeks a method that requires Veolia to meet its long-term responsibilities. *Id.*

Veolia Reply Brief

Veolia restates that the County does not have legal authority to impose a condition requiring the posting of financial responsibility. Reply at 3, citing Browning, PCB 82-101, slip op. at 4 (Dec. 2, 1982); County of Lake, 120 Ill. App. 3d 89, 457 N.E. 2d at 1317. Veolia opines that Macon's brief merely argues that Macon does not trust the IEPA to carry out its regulatory duty to require adequate financial assurance, and that this mistrust does not create legal authority for Macon to impose this condition. *Id.* at 4. Veolia again emphasizes that the record does not

support this condition, and notes that Macon's citation to the record in support of its calculation of the amount of financial security chosen does not even address pumping of the GCS. *Id.*

Board Discussion on Condition 9

Veolia contends that Macon lacks the authority to impose this condition, and furthermore that the amount of financial assurance is unsupported by the record. Veolia Brief at 7-8. Macon believes that, because Veolia's proposal and GIA are based upon the concept of continuing pumping for 100 years post-closure, that some provision must be made to provide for the financial wherewithal to accomplish that task. *Id.* at 8.

Landfill permitting "requires proof that the proposed new landfill or expansion has received local siting approval." Saline County Landfill v. IEPA, PCB 03-106, slip op. at (May 16, 2002) (Agency denied permit application where application was not consistent with approval granted by local siting authority).[1] This Board has previously held that "Sections 31(b) and 33(a) of the [Act] confer the right to enforce site location suitability approval conditions in an enforcement action before the Board." Village of South Elgin v. Waste Management of Illinois, Inc., PCB 03-106, slip op. at 2 (March 20, 2003) (third-party enforcement action asking the Board to enforce two special conditions of a landfill siting approval granted by the county board). The Second District Appellate Court has held "a violation of a condition properly imposed under this authority is a violation of the Act." *Id.*, citing County of Lake v. PCB, 120 Ill. App. 3d 89,101, 457 N.E.2d 1309, 1317 (2nd Dist. 1983).

It is understood under the Act that the IEPA, in issuing its permit, will enforce the conditions imposed by Macon.[2] Part of the IEPA's permit issuance duties requires post closure care financial assurance. In this instance, the cost estimate for the post closure care activities should include pumping of the GCS for a period of 100 years. While it is reasonable for Macon to seek financial assurance for the 100 year period proposed by Veolia, it is unnecessary to assume that the IEPA will not uphold its statutory duty of imposing that financial assurance. In the event that the IEPA does not impose financial assurance for the full 100 year post-closure period set forth in Veolia's model, Macon is not left without any financial assurance of post-

[1] Section 39.2(c) of the Act provides that:

> [N]o permit for the development or construction of a new pollution control facility may be granted by the Agency *unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board* of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area in which the facility is to be located in accordance with Section 39.2 of this Act. 415 ILCS 5/39(c) (2008) (emphasis added).

[2] Section 21.1(a) of the Act provides that a waste disposal operation shall not be conducted "unless such person has posted with the Agency a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with this Act and regulations adopted thereunder." 415 ILCS 5/21.1(a).

closure care. Veolia's failure to continue the GCS pumping for 100 years would, at minimum, result in a violation of Condition 8. Veolia would therefore be in violation of the Act and would be subject to enforcement actions brought against it to uphold its financial obligations.

Section 39.2(e) of the Act allows a county board to impose such conditions as may be "reasonable and necessary" to accomplish the purposes of Section 39.2. 415 ILCS 5/39.2(e). While the record indicates that it is reasonable for Macon to seek Condition 9, the record lacks support to show that this condition is necessary to protect "the public health, safety and welfare" under Criterion 2 of the Act. 415 ILCS 5/39.2(a). The Board therefore strikes Condition 9.

CONDITION 11

Condition 11 states as follows:

> Leachate elevations. The Applicants shall install and operate, at a minimum, the proposed number of leachate extraction wells and other leachate collection points to reduce the leachate elevation in Sections 1, 2 and 3 to a height no greater than the leachate elevations illustrated in the GIA model for future conditions (reference Hydrogeologic Characterization Report, Volume IV, Attachment 12b, Drawing Sheet 1, Predictive Model Landfill Potentiometric Contours) unless the Applicant can demonstrate that higher levels are acceptable by providing a revised GIA model to the County and Illinois EPA for review and approval. Leachate elevations shall be measured from at least 3 leachate piezometers, installed in each of Sections 1, 2 and 3 (located in the northern, central and southern portions), at points equidistant from leachate extraction points to minimize the influence of leachate extraction wells on the measured leachate elevation. Leachate elevation and leachate extraction well operation data shall be recorded at least quarterly and be readily available for County review. C8-12.

Veolia Brief

Veolia does not believe that this condition is supported by the record. Veolia Brief at 9. Veolia previously responded to this condition by stating that piezometers cannot be installed or maintained effectively in a waste mass in an active landfill. *Id.* Veolia also states that the record does not even explain the purpose and function of a piezometer, and therefore there is no evidence to support the use of piezometers in the way required under the condition. *Id.* Veolia therefore argues that this condition is against the manifest weight of the evidence. *Id.* at 10.

Veolia contends that the Board in Browning struck a similar condition addressing leachate levels in a landfill, noting that the conditions imposed by local siting authorities can be "technically infeasible." *Id.* Veolia believes that such a condition would require the support of qualified, competent testimony, which is not present in this case. *Id.*

Veolia believes that Macon imposed this condition to ensure that leachate levels do not rise above those assumed in the groundwater impact assessment (GIA) model for future conditions. *Id.* Veolia also believes that nothing in the record suggests that there is any chance

that leachate levels will exceed the levels assumed in the model. *Id.* This is because the leachate levels used in the model are extremely conservative and were determined by deactivating the pumps at each measurement location until the levels reached equilibrium (which was only reached after months of not pumping). *Id.* Veolia states that the leachate levels used in the model are worst case levels and will never exist due to Veolia pumping leachate continuously. *Id.* Veolia offered a hydrogeologist at the Macon hearing who testified that Veolia will maintain leachate levels at the bottoms of the extraction wells. *Id.*

Veolia also argues that Condition 11 should be stricken because it could conflict with the IEPA's permit for the expansion. *Id.* at 11. Veolia cites Browning, stating that the Board in that case found it improper for a condition to "require measures which might conflict with permit conditions."). *Id.*, citing Browning, PCB 82-101, slip op. at 15 (Dec. 2, 1982). Veolia believes that this condition should be stricken as it would not be surprising if the IEPA were not to permit Veolia to install the specified piezometers, given the technical infeasibility of doing so. *Id.*

Macon Brief

Macon disagrees with Veolia's contention that this condition is not supported by the record. Macon Brief at 10. Macon notes that leachate levels in the existing landfill vary significantly and that information in the Hydrogeologic Characterization Report Volume 3 of 4 prepared by Environmental Information Logistics, LLC, on behalf of Veolia reports the leachate head in the existing units. *Id.* Macon goes on to detail the maximum leachate levels in the existing sections of the landfill. *Id.* Macon states that Veolia proposed to keep the leachate at the level Veolia used for its data input for the GIA. *Id.* Macon believes that this level of leachate is vitally important to Veolia's determination of "no impact" at 100 years post-closure at 100 feet from the waste limits. *Id.* Macon's review team proposed that the levels of leachate in the various sections of the existing landfill be maintained at or below the levels used in the GIA determination. *Id.* The review team proposed that three leachate piezometers be installed to measure the height of the leachate so that Veolia could adequately maintain the level of leachate at or below the levels used in the GIA. *Id.* at 10-11.

Macon disagrees with Veolia that the piezometers would be extremely hard to maintain and that they could not be installed with any accuracy. *Id.* at 11. Macon believes that, even if each well had to be periodically replaced so as to maintain its integrity, this would not be an overbearing burden on Veolia as only nine piezometer wells would have to be installed. *Id.* Macon sees this replacement as no more onerous than replacing an extraction well, which Veolia proposed to do. *Id.* Macon also points out that Veolia has relied upon piezometer results for measurements in their Hydrogeologic Report and that piezometers have been installed at this site for years and used to satisfy the requirements of 35 Ill. Admin. Code 811.315(d)(1)(D) and 35 Ill. Admin. Code 811.318(d)(8). *Id.* Macon also believes that Veolia's argument that the installation of piezometers could conflict with IEPA's permit for expansion is without merit in that Veolia would not have to come back before Macon for "re-approval" if one or more construction details are required to be changed. *Id.* at 12.

Veolia Reply Brief

Veolia again states that this condition is not supported by the record. Reply at 4. Veolia disagrees with Macon's contention that the leachate levels at the landfill are much greater than allowed in today's landfills, and cites testimony at the Macon hearing from its landfill design engineer which points out that the leachate levels are commonplace and present (or even greater) at other landfills in Illinois. *Id.* at 4-5. Veolia also argues that the existing landfill is not required to meet the leachate level standard for new landfills. *Id.* at 5. Veolia contends that the only requirement is that the GIA must show that there will be no impact on groundwater, and that its hydrogeologist testified at the Macon hearing that Veolia meets this requirement. *Id.* Veolia notes that this conclusion is further supported by the Hydrogeologic Characterization Report in the siting application. *Id.* Veolia also again points out that the leachate levels used in the GIA are artificially high. *Id.*

Veolia argues that there is no evidence that piezometers can be installed and operated effectively in the waste mass of an active landfill. *Id.* Veolia also contends that Macon's position (that Veolia's Hydrogeologic Characterization Report relies on piezometer measurements) fails to point out that the piezometers referenced in that report are groundwater piezometers, not leachate piezometers in an active waste mass. *Id.* at 5-6. Veolia also contends that this condition is another example of Macon usurping the permitting authority of the IEPA and could conflict with IEPA permit conditions. *Id.* at 6.

Board Discussion on Condition 11

Veolia argues that Condition 11 should be stricken because it is not supported by the record. Veolia Brief at 9. Further, Veolia argues that Condition 11 may conflict with IEPA permit conditions since it is possible that the IEPA would not impose such a condition due to the technical infeasibility of installing leachate piezometers. *Id.* at 11. Veolia believes that the leachate levels used in the model will never be reached as those are worst-case scenarios. *Id.* at 10. The leachate levels used in the GIA model were determined after the deactivation of leachate pumps at each measurement location. Veolia notes that the "unpumped" levels will never exist, since leachate will be pumped continuously. *Id.* Macon argues that the levels of leachate proposed in the GIA are vitally important to its determination of "no impact" at 100 years post-closure at 100 feet from the waste limits. Macon Brief at 10. Macon also notes that Veolia's argument that this condition could conflict with the IEPA permit is without merit since Veolia would have to reappear before Macon for re-approval if one or more construction details are required to be changed. *Id.* at 12.

Veolia contends that the installation of leachate piezometers is technically infeasible because "piezometers installed as specified in the review team's condition cannot be effectively installed or maintained within a waste mass and will not provide an accurate indication of leachate level." Veolia Brief at 9. Further, Veolia argues that the record lacks any evidence to support Macon's condition regarding the use of piezometers to measure leachate levels in a waste mass in an active landfill. As noted above, Macon disagrees with Veolia that the piezometers would be extremely hard to maintain and that they could not be installed with any accuracy. *Id.* at 11. Macon maintains that it would not be an onerous burden on Veolia even if one or all nine piezometer wells have to be re-installed over their life-time. *Id.*

The Board will first examine whether it is reasonable, necessary and supported by evidence in the record for Macon to require Veolia to reduce leachate elevation in Sections 1, 2 and 3 to a height no greater than the leachate elevations illustrated in the GIA model for future conditions and then consider the appropriateness of requiring the installation of piezometers to measure leachate elevation in the affected units.

The Board views the portion of Condition 11 requiring the maintenance of leachate level in Section 1, 2, and 3 at the elevations used in the GIA model to be similar to Condition 8. Veolia relies on the GIA to demonstrate that the proposed landfill expansion will be protective of the groundwater. Veolia's GIA assumes the leachate elevations illustrated in the GIA model for future conditions (reference Hydrogeologic Characterization Report, Volume IV, Attachment 12b, Drawing Sheet 1, Predictive Model Landfill Potentiometric Contours). C1-45248. The leachate elevations used in the GIA are critical to Veolia's demonstration that the landfill is protective of the surrounding groundwater. The Board finds that it is reasonable and necessary for Macon to require Veolia to maintain leachate levels in the landfill at or below the leachate elevations used in the GIA to meet Criterion 2 of Section 39.2 of the Act.

Browning is distinguishable because the installation required in that case (gas vents for liquid levels on excavated trenches) was inappropriate for the measurement sought and installation as required was not possible. Browning, PCB 82-101, slip op. at 13 (Dec. 2, 1982). Furthermore, the condition in Browning sought unspecified "treatment" and the record contained no basis for the maximum level chosen. The manifest weight of the evidence did not support the condition.

Unlike Browning, the levels specified by Macon are identified in the GIA submitted by Veolia. It is reasonable for Macon to rely on this data – data which Veolia has also relied upon in seeking approval for its siting expansion. Similar to the reasoning given above under Condition 8, this is the assumption relied upon in the model and it is reasonable for Macon to want this protection in giving its approval for the expansion. The evidence in the record clearly supports Condition 11.

Next, the Board will review the portion of Condition 11 that requires Veolia to install piezometers in the waste to measure the leachate levels. Other than the parties' arguments in their briefs, Macon's Review Team's Conditions and Veolia's Reasons for Modifications, the record lacks any information concerning the technical feasibility of placing piezometers in the waste mass of an active landfill for monitoring leachate levels on a long-term basis. The record therefore does not reasonably show that such installation would be technically feasible. Moreover, the Board finds that the portion of Condition 11 that requires the placement of piezometers in the active sections of the landfill is unnecessary to meet Criterion 2. The Board notes that the leachate elevations used in the GIA model were measured when the leachate was not being pumped from the extraction wells. However, as noted by Veolia, the leachate levels will be significantly lower during operation since leachate will be pumped continuously.

Veolia contends that Condition 11 could conflict with the IEPA permit for expansion if the IEPA does not permit Veolia to install the piezometers specified in Condition 11. Veolia

Brief at 11. As discussed above, the Board finds that this portion of the Condition is unnecessary and therefore this conflict is unlikely to occur.

In sum, the Board finds that it is reasonable and necessary for Macon to require Veolia to maintain leachate elevation in Sections 1, 2 and 3 at or below the leachate elevations illustrated in the GIA model for future conditions. The manifest weight of the evidence demonstrates this portion of the condition is reasonable and needed to ensure that the facility will "be operated [so] that the public health, safety and welfare will be protected." 415 ILCS 5/39.2(a). However, placement of leachate piezometers to measure leachate levels in the landfill lacks support in the record as being reasonable and necessary to ensure the requirements of Criterion 2 of Section 39.2(a) of the Act are met. The Board affirms Condition 11 in part, but strikes that portion of the condition pertaining to placement of leachate piezometers to measure leachate levels in the landfill.

The Board has the authority to modify this condition to the extent that it is not supported by the record. *See* Browning, PCB 82-101, slip op. at 14-15 (Dec. 2, 1982). The Board-affirmed condition therefore reads as follows:

> Leachate elevations. The Applicants shall install and operate, at a minimum, the proposed number of leachate extraction wells and other leachate collection points to reduce the leachate elevation in Sections 1, 2 and 3 to a height no greater than the leachate elevations illustrated in the GIA model for future conditions (reference Hydrogeologic Characterization Report, Volume IV, Attachment 12b, Drawing Sheet 1, Predictive Model Landfill Potentiometric Contours) unless the Applicant can demonstrate that higher levels are acceptable by providing a revised GIA model to the County and Illinois EPA for review and approval. ~~Leachate elevations shall be measured from at least 3 leachate piezometers, installed in each of Sections 1, 2 and 3 (located in the northern, central and southern portions), at points equidistant from leachate extraction points to minimize the influence of leachate extraction wells on the measured leachate elevation.~~ Leachate elevation and leachate extraction well operation data shall be recorded at least quarterly and be readily available for County review.

CONDITION 19

Condition 19 states as follows:

> Gradient Control System. The Gradient Control System to be used to de-water the horizontal expansion shall not be dismantled at the point in time when sufficient waste has been placed atop the base liner to discontinue its use, but shall be maintained such that a sample of the groundwater in the system can be extracted and tested once per year. The testing parameters shall be at least six (6) common leachate indicator parameters. C8-14.

Veolia Brief

Veolia agrees to keep the gradient control system (GCS) in place after it ceases pumping, but objects to the apparent requirement that water extracted from the system must be tested once per year for certain unnamed leachate indicator parameters. Veolia Brief at 11. Veolia believes that the sampling and testing requirement of this condition should be stricken for several reasons. *Id.*

Veolia believes Condition 19 is vague and standardless. *Id.* Veolia first notes that the condition could be read to require annual testing or that it merely requires the water be capable of testing. *Id.* Veolia also notes that the condition does not describe the type of testing that should be done or the leachate indicator parameters that should be tested. *Id.* Veolia compares this to Browning, in which the Board struck on the grounds of vagueness the portion of a condition requiring testing for unspecified pollutants.[3] *Id.* at 12. The Board in Browning also struck a condition that required the applicant "to test the waters of private wells located within 500 feet of the site on a quarterly basis," finding that "the condition is so vague as to be unenforceable" because the record did not support the 500 foot limit or specify the tests to be performed. *Id.* Veolia believes this condition to be similar in that it does not identify the leachate parameters to be tested and does not describe the tests to be performed. *Id.*

Veolia also contends that there is no evidence that testing of water in a GCS for leachate parameters is necessary or that such testing would provide a valid result. *Id.* Veolia believes that this testing would likely provide invalid results and that requiring water from the GCS to be tested is "not consistent with regulations promulgated by the Board" in violation of Section 39.2(e) of the Act. *Id.* Veolia also notes that this condition does not contain any standards for selecting the "leachate indicator parameters." *Id.* at 13. Veolia believes this condition should be stricken as vague, unsupported by the record, against the manifest weight of the evidence and inconsistent with the regulations promulgated by the Board. *Id.*

Macon Brief

Macon states that this condition was purposefully left flexible with regards to type of testing to be done so as to allow Veolia to adapt its testing program of one sample/year to parameters that would provide useful information. Macon Brief at 12. Macon notes that the Board in Browning struck the testing of "unspecified" pollutants, whereas here Macon has structured a condition that is very site specific. *Id.* at 12-13. Macon states that Veolia has accumulated leachate data for this landfill over numerous years and thus has the best representation of the parameters present in this site's leachate that will be the most appropriate to measure. *Id.* at 13. Macon would prefer Veolia to identify those parameters most likely indicative of an early leachate containment system failure. *Id.* Macon further believes that, by allowing Veolia to select the testing parameters, any false indicator issue can be avoided. *Id.*

Macon imposed this condition to provide for an early warning to Veolia. *Id.* Macon states that, because of the landfill's checkered past and the fact that all residential wells are

[3] The County in Browning imposed a condition that authorized the Health Department "to test water for pollutants before pumping" the water off-site. *Id.* at 12.

located to the north side of the existing landfill, this early warning system provides an additional safeguard for Macon and a level of comfort to the residents living closest to the landfill. *Id.*

Macon further believes that this condition is reasonable in that it can be implemented at a nominal cost and could provide information of potential groundwater impacts at the earliest possible point in time. *Id.* at 14. Macon points out that several people voiced their concerns over groundwater or water well contamination at the hearing. *Id.* Macon imposed this condition to supplement the IEPA regulations and believes it to be reasonably related to the health and welfare of the citizens. *Id.*

Veolia Reply Brief

Veolia contends that Macon's brief accentuates the vagueness of this condition. Reply at 6. Veolia argues that the condition does not state who picks the parameters to be tested or how they are to be selected. *Id.* Veolia further points out that the condition does not state whether the leachate parameters must be one of the more than 200 listed in 35 Ill. Admin. Code 811.APPENDIX C. *Id.* at 6-7. Veolia also argues that it is impossible for Macon to claim that the testing costs would be nominal because Condition 19 does not describe the type of testing that must be performed. *Id.* at 7.

Veolia states that another problem with Condition 19 is that testing water from a drain is not the same as testing groundwater from a monitoring well. *Id.* Whereas the regulations provide detailed guidance on how groundwater must be sampled and tested, no such safeguards exist in the program described by this condition. *Id.* Veolia believes that false positives are expected. *Id.*

Veolia believes that there is no evidence in the record that the groundwater supply of any nearby residents is in any way threatened. *Id.* Veolia's believes the evidence is to the contrary in that its hydrogeologist at the Macon hearing that the "groundwater moves from north to south, thus eliminating the potential that a water supply well would be affected by operation of this landfill." *Id.* Veolia notes that the GCS from which water samples would be tested is under the lateral expansion area, which will have a Sub-Title D liner and leachate collection system in accordance with 35 Ill. Admin. Code 811.302(e). *Id.* Veolia sees no need for this condition, in addition to its contention that the condition is vague. *Id.*

Board Discussion on Condition 19

Veolia argues that this condition is vague in regards to whether or not testing must be done, what testing must be done, and which leachate parameters should be tested. Veolia Brief at 12-13. Macon contends that the condition has been purposefully left flexible so as to allow Veolia to implement its own testing parameters in order to avoid any false indicators. Macon Brief at 13.

Criterion 2 of Section 39.2(a) of the Act requires that the facility be "so designed, located and proposed to be operated that the public health, safety and welfare will be protected." 415 ILCS 5/39.2(a). The Board finds that Condition 19 is reasonable when considered under this

Criterion. As Macon has noted, the landfill does not appear to be without faults, and Macon believes it to be in the best interests of the public health, safety and welfare to implement an additional safeguard on the landfill. This position is supported by the concern voiced by members of the public at the Macon hearing and in post-hearing public comments with regards to groundwater and water well contamination. The Board notes that the Valley View Landfill has a history of multiple violations of various landfill standards. C1 at 41-47. Groundwater exceedences have also been identified at the Landfill that are being addressed by the slurry walls. C2 at 213. Veolia is correct in that the IEPA will implement its own safeguards to protect against groundwater contamination. Pet. Brief at 12, citing 35 Ill. Adm. Code 811.319. However, it is reasonable for Macon to implement this additional safeguard with regards to the health, safety and welfare of its citizens. As noted by Macon, Condition 19 serves as an early warning system.

Furthermore, the Board disagrees with Veolia's position that this condition is vague as to the tests to be performed. The Board finds that Condition 19 sets forth a performance standard that requires monitoring of the GCS, but allows Veolia the flexibility to select the appropriate indicator parameters to be monitored. This condition is similar to many of the requirements in the Board's landfill regulations that are specified in the form of performance standards to provide flexibility to landfill operators and IEPA to craft specific requirements based on site-specific factors. Veolia may select the indicator parameters to monitor the GCS in a manner similar to the selection of the indicator parameters for monitoring its groundwater monitoring wells. C2 at 212. The Board notes that any parameters chosen by Veolia for monitoring the GCS must be submitted as a part of landfill permit application to IEPA for approval. Further, the Board notes that since Veolia has to comply with the Board's groundwater monitoring regulations, Veolia may rely on the the Board's regulations for selecting groundwater monitoring parameters at 35 Ill. Adm. Code 811.319(a)(2) to meet Condition 19. *See* 35 Ill. Admin. Code 811.319(a)(2). Veolia's position that such testing could lead to false positives underscores Macon's reasoning for the flexibility in testing parameters – so that such false results can be avoided.

Condition 19 is not contrary to the manifest weight of the evidence. Condition 19 is reasonable and necessary to ensure that the facility is "operated [so] that the public health, safety and welfare will be protected" under Criterion 2 of Section 39.2(a) of the Act. 415 ILCS 5/39.2(a). The Board therefore affirms Condition 19.

CONDITION 27

Condition 27 states as follows:

> Visual Barriers. The development of the landfill shall be built in such a manner that perimeter and operational berms shall be placed to minimize view of the landfill operations and to assist in minimizing possible offsite impact. Perimeter berms shall be vegetated immediately after they are constructed. The east perimeter berm shall be constructed prior to waste exhumation and other operations that expose waste within 500 feet of the east property boundary. The east perimeter berm shall be no less than 8 feet in height and shall extend, at a minimum, from point 5800 N to point 4800 N shown on Drawing A4, and shall

> be built wide enough to support vegetation as described on the application's landscape plan. Operational berms shall be used such that waste is not seen on the west, north or east. In areas where there is insufficient room to construct a separate berm, the elevated roadway may be horizontally extended and the plantings may be installed adjacent to the roadway surface or upon the sides lopes of such roadway/berm. The elevation of such a combination roadway/berm shall be 8 feet above the adjacent grade except where existing localized conditions are prohibitative and such determination is approved by the Macon County Solid Waste Department. C8-16 to 17.

Veolia Brief

Veolia agreed to install perimeter berms subject to the revisions it proposed pertaining to those berms. Veolia Brief at 13. Veolia objected to the portion of the condition that states "[o]perational berms shall be used such that waste is not seen on the west, north or east." *Id.* Veolia contends that neither the condition nor the record define an "operational berm" nor does the condition provide any specifications concerning size, shape, materials or location of the berms. *Id.* at 13-14. Veolia cites to Browning, where the Board stated that the definition of an operation berm is "left to the unfettered discretion of the County inspector." *Id.* at 14, citing Browning, PCB 82-101, slip op. at 13 (Dec. 2, 1982). Veolia contends that this condition is vague, standardless and against the manifest weight of the evidence. *Id.*

Veolia believes that requiring Veolia to operate the site so that waste can never be seen from the west, north and east is vague and unsupported by the record. *Id.* Veolia offered its design engineer at the Macon hearing who testified that he was not aware of any landfills that have temporary screening berms. *Id.*, citing C2-56 to 57. Veolia's landfill architect testified at the Macon hearing that a screening berm would have minimal impact on screening surrounding areas and that it would be "difficult or impossible" to completely screen a landfill of this size. *Id.*, citing C2-371.

Veolia argues that there is no testimony or evidence that operational berms can be constructed on the side of the landfill, noting that the only testimony was from its landfill design engineer at the Macon hearing who stated that he had never seen them nor was he aware of them having been installed on other landfills. *Id.*, citing C2-27 to 28, C2-57. Veolia contends that the portion of Condition 27 requiring operational berms is vague, standardless, unsupported by the record and against the manifest weight of the evidence and should therefore be stricken. *Id.*

Macon Brief

Macon states that, just because Veolia's landfill design engineer was unaware of screening berms being used to screen the view of garbage from off-site locations at other landfills, it does not mean that screening berms are inappropriate. Macon Brief at 15. Macon states that the screening berms are extensions of the perimeter berms in that their purpose is to limit the views of the operations of the landfill from area roadways. *Id.*

Macon reemphasizes that it has appropriately considered the application, testimony from the hearing held before it, and the oral and written public comment filed by the parties and the public in making its decision. *Id.* Macon notes that Veolia had the opportunity to respond to Macon's review team's recommended conditions and even convinced the EEHWC to change two conditions to the way Veolia proposed, as opposed to the review team's recommendation. *Id.* Macon believes that such evidence was appropriately entered and considered in reaching its decision and imposing conditions. *Id.*

Veolia Reply Brief

Veolia points out that Macon, in its brief, does not cite to any place in the record where there was testimony about operational berms. Reply at 8. Macon bases its argument on screening berms, which are not even mentioned in the condition. *Id.* Veolia also contradicts Macon's assertion that the design engineer testified at the Macon hearing that Veolia could build an operational berm or a screening berm.[4] *Id.* Veolia further points out that the design engineer's testimony at the Macon hearing goes on to clarify that he does not know what a screening berm is or how it would be constructed, nor has he ever seen one at a landfill. *Id.*

Veolia contends that the difference between a perimeter berm and a screening berm are significant. *Id.* Whereas a perimeter berm is constructed outside of the landfill footprint on level ground, Condition 27 appears to require a screening berm to be built on the side slope of the landfill above areas filled with waste. *Id.* Furthermore, the record does not provide evidence that such berms could be constructed, nor does it include any construction standards, describing the size, location, materials or design of such berms. *Id.* at 8-9. Veolia sees this condition as standardless, unsupported by the record, and vague. *Id.* at 9.

Board Discussion on Condition 27

Veolia agreed to install perimeter berms at the landfill but objected to the portion of the condition dealing with operational berms. Veolia Brief at 13. Veolia contends that the condition is vague. *Id.* at 14. Veolia also argues that screening a landfill this size would be difficult or impossible. *Id.* Macon contends that Veolia's lack of knowledge of screening berms being used at other landfills does not mean such berms are inappropriate, and that the purpose of the berms is to limit views of the landfill operations from the surrounding roadways. Macon Brief at 15.

As noted above, Condition 27 sets forth that visual barrier such as perimeter or operational berms is intended to minimize the view of landfill operations and any potential offsite impact. This condition falls within the purview of Criterion 3 of Section 39.2(a), which provides in part for the facility to be so located "so as to minimize incompatibility with the character of the surrounding area." 415 ILCS 5/39.2(a)(iii) (2008). Thus, it is reasonable for Macon to want to maintain the character of the surrounding area by requiring Veolia to block the view of landfill operations from surrounding areas. The record supports Macon's concern regarding screening of landfill operations from the adjacent roadways and properties. C2 at 55.

[4] When asked if Veolia could build a screening berm, the design engineer answered "I guess." *Id.*

Veolia's expert testified that while vegetation with a minimum height of 8 feet would be used to screen the operations from the surrounding areas, such vegetation will not act as visual barrier when the landfill operations move above grade. C2 at 56. Further, the record indicates that operational screening or barrier berms may be built as visual barrier as the landfill is developed above grade. *Id.* The record also includes a concern from local residents regarding the effect that the large landfill will have on the surrounding area. C5-1 to 2, C5-17, C5-23, C5-33.

The Board finds that the vagueness or infeasibility arguments raised by Veolia are without merit. Condition 27, as proposed by Macon, sets forth the types of berms that Veolia must install to serve as visual barriers consistent with Criterion 3 of Section 39.2 of the Act. Condition 27 specifies the general location, length and height of the perimeter berm required on the eastern perimeter of the landfill. The record indicates that Veolia has no issues with the installation of the perimeter berm. Regarding operational berms, the Board notes that while the phrase is not defined, the record is clear that Macon is referring to a berm closer to the waste foot-print that would serve as a visual barrier when landfill operation moves above grade. Further, Condition 27 does not require the operational berm to be built on waste as claimed by Veolia. Actually, the visual barrier condition provides flexibility by allowing Veolia to use the proposed elevated roadway with some modification as an operational berm as long as the roadway berm is 8 feet above the adjacent grade. C1 at 239. Condition 27 also allows Veolia to seek modification of height requirements from the County's Solid Waste Department.

The manifest weight of the evidence in the record supports Condition 27. This condition is reasonable and necessary in order to "minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property" under Criterion 3 of Section 39.2(a) of the Act. 415 ILCS 5/39.2(a). In light of the above, the Board affirms Condition 27.

CONCLUSION

Veolia ES Valley View Landfill, Inc., seeks Board review of five conditions to a landfill siting approval granted by the County Board of Macon County, Illinois. Veolia petitioned the Board to review an October 8, 2009 decision by the Macon County Board that approved Veolia's request for the horizontal and vertical expansion of its existing pollution control facility in Harristown Township, Macon County. For the reasons stated in the opinion above, the Board affirms Conditions 8, 19 and 27 of the County Board of Macon County, Illinois's landfill siting approval. The Board affirms part of and strikes part of Condition 11 and the Board strikes Condition 9.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board finds that the County Board of Macon County, Illinois' decisions to impose Conditions 8, 19 and 27 are not against the manifest weight of the evidence. The Board affirms those conditions.

2. The Board finds that Macon's decision to impose the portion of Condition 11 relating to the reduction of leachate elevation in Sections 1, 2 and 3 is not against the manifest weight of the evidence. The Board affirms that portion of Condition 11. The Board finds that Macon's decision to impose the portion of Condition 11 relating to the placement of leachate piezometers lacks support in the record. The Board strikes that portion of Condition 11. Accordingly, the Board modifies Condition 11 as follows:

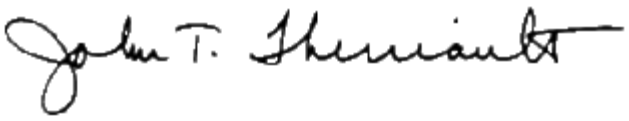
   Leachate elevations. The Applicants shall install and operate, at a minimum, the proposed number of leachate extraction wells and other leachate collection points to reduce the leachate elevation in Sections 1, 2 and 3 to a height no greater than the leachate elevations illustrated in the GIA model for future conditions (reference Hydrogeologic Characterization Report, Volume IV, Attachment 12b, Drawing Sheet 1, Predictive Model Landfill Potentiometric Contours) unless the Applicant can demonstrate that higher levels are acceptable by providing a revised GIA model to the County and Illinois EPA for review and approval. ~~Leachate elevations shall be measured from at least 3 leachate piezometers, installed in each of Sections 1, 2 and 3 (located in the northern, central and southern portions), at points equidistant from leachate extraction points to minimize the influence of leachate extraction wells on the measured leachate elevation.~~ Leachate elevation and leachate extraction well operation data shall be recorded at least quarterly and be readily available for County review.

3. The Board finds that Macon's decision to impose Condition 9 is against the manifest weight of the evidence. The Board strikes Condition 9.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 2, 2010, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board