

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

AUG 15 2012

STATE OF ILLINOIS
Pollution Control Board

MARTIN MAGGIO,)
)
Petitioner)
)
v.)
)
COUNTY OF WINNEBAGO,)
WINNEBAGO COUNTY BOARD and)
WINNEBAGO LANDFILL COMPANY,)
LLC,)
)
Respondents)

No. PCB 13-10
(Pollution Control Facility Siting Appeal)

NOTICE OF FILING

TO: SEE ATTACHED CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on August 15, 2012 the undersigned caused to be filed with the Clerk of the Illinois Pollution Control Board Petitioner's PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY, a copy of which is attached hereto.

Respectfully Submitted,
Martin Maggio



By: _____
One of his attorneys

Michael S. Blazer (ARDC No. 6183002)
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Jeep & Blazer, LLC
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of Petitioner's NOTICE OF FILING with attached PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY to be served on the following, via U.S. Mail at Hillside, Illinois, postage prepaid, before 5:00 p.m. on this 15th day of August, 2012:

*For Winnebago County and Winnebago
County Board*

Gary L. Kovanda
231 Echo Drive
Rockton, IL 61072

Margie M. Mullins
Winnebago County Clerk
404 Elm Street, Suite 104
Rockford, IL 61101

Scott H. Christiansen
Chairman, Winnebago County Board
404 Elm Street
Rockford, IL 61101

For Winnebago Landfill Company, LLC

George Mueller
Mueller Anderson & Associates
609 East Etna Road
Ottawa, IL 61350

John Lichty – Chief Executive Officer
Winnebago Landfill Company, LLC
5450 Wansford Way, Suite 201
Rockford, IL 61109



Michael S. Blazer
One of the attorneys for
Petitioner

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A
NEW POLLUTION CONTROL FACILITY**

Now comes Petitioner, Martin Maggio ("Maggio"), by his attorneys, Jeep & Blazer, LLC, and hereby submits his Petition for Review of the decision of the County Board of Winnebago County, Illinois (the "County Board") conditionally approving the Site Location Application submitted by Winnebago Landfill Company, LLC ("WLC") for the expansion of WLC's existing municipal solid waste landfill located North of Edson Road and West of U.S. Interstate 39 in Southern Winnebago County, and in support thereof states:

1. This Petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act, (the "Act"), 415 ILCS 5/40.1, and in accordance with Sections 107.200-107.208 of the Illinois Pollution Control Board Regulations, 35 IAC 107.200-208.
2. WLC filed its siting application (the "Application") with the Winnebago County Clerk on January 17, 2012.
3. A public hearing on the Application commenced on April 23, 2012 and closed on April 30, 2012. Written public comment was received from the time the

Application was filed until May 30, 2012, (including materials post-marked May 30, 2012), at which time the record was closed.

4. The County Board rendered its approval of the Application on July 12, 2012. A true and correct copy of the minutes of the July 12, 2012 County Board meeting, with attached Hearing Officer's Report and Recommendation, is attached hereto as Exhibit A. Maggio is not currently in possession of the formal resolution that is the subject of the foregoing County Board minutes, and will supplement the record of this case when said resolution becomes available.

5. Maggio appeared and participated in the hearings held before the County Board as an Objector to the request for siting approval. In addition Maggio is a resident of Winnebago County and owns, directly and indirectly, property located adjacent to the subject landfill expansion.

6. As an initial matter, the County Board did not have proper jurisdiction to conduct the local public hearings or make a decision on WLC's siting request for the landfill expansion, in that WLC failed to properly serve notice of the subject proceeding in accordance with the requirements of §39.2(b) of the Act, 415 ILCS 5/39.2(b).

7. In addition, Maggio is informed and believes that the local siting review procedures, hearings, decision, and process, individually and collectively, were fundamentally unfair, in that members of the County Board prejudged the Application, and there were improper and prejudicial *ex parte* communications between the County Board and its representatives and WLC and its representatives while the Application was pending.

WHEREFORE, Maggio requests that the Board enter an Order:

- A. Finding that the County Board lacked jurisdiction to consider or pass upon the Application, and that its decision is therefore void;
- B. Reversing the County Board's siting decision;
- C. Setting for hearing this contest of the County Board's siting decision; and
- D. For such other and further relief as this Board deems appropriate.

Respectfully Submitted,
Martin Maggio



By: _____
One of his attorneys

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EXHIBIT A

**REGULAR ADJOURNED MEETING
WINNEBAGO COUNTY BOARD
JULY 12, 2012**

1. Chairman Christiansen called to order the Regular Adjourned Meeting of the Winnebago County Board for Thursday, July 12, 2012 at 6:03 P.M.
2. Chairman Christiansen announced the following Agenda Changes:

UNDER UNFINISHED BUSINESS:

Remove the Board of Health Reappointments

3. Roll Call: 24 Present, 3 Absent and 1 Vacant. (Ekberg, Hoffman and Redd were absent).
4. Tassoni gave the Invocation and led the Pledge of Allegiance.

AWARDS, PRESENTATIONS AND/OR PROCLAMATIONS AND PUBLIC PARTICIPATION

5. Awards - None
- Proclamations - None
- Presentation - None
- Public Participation - None

MINUTES

6. Chairman Christiansen entertained a motion to approve the County Board Minutes from the June 14, 2012 meeting and to layover the Minutes from the June 28, 2012 meeting. Kinnison made a motion to approve the minutes, seconded by Guevara. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)

ANNOUNCEMENTS & COMMUNICATIONS

7. County Clerk Margie M. Mullins Submitted the Items Listed Below as Correspondence Which Were Placed on File by Chairman Christiansen:

- A. County Clerk Mullins submitted from Cision U.S., Inc. a letter regarding two business location closings; one in Chicago (52 employees) and one in Rockford (87 employees).
- B. County Clerk Mullins submitted from the Illinois Department of Labor the Winnebago County Prevailing Wage Report for July 2012.
- C. County Clerk Mullins submitted from Nancy L. McPherson, Winnebago County Recorder the Monthly Report for June, 2012.
- D. County Clerk Mullins submitted from the Illinois Department of Transportation a letter of Notification of Jurisdictional Transfer, Winnebago County to Rockford Township, South Bend Road Bridge over Kilbuck Creek Structure No. 101-3069
- E. County Clerk Mullins submitted from the Illinois Department of Transportation a letter regarding the approval of an Agreement between Winnebago County and Homer L. Chastain & Associates, Inc., Consulting Engineers for engineering services to be performed (Township Bridge Program, Section 04-03120-00-BR).
- F. County Clerk Mullins submitted from Cision U.S., Inc. a letter amending the letter sent on June 22, 2012 regarding the closing of two locations of business; the amendment itemized the job titles and number of employees (by title and location) affected by the closure.

Tassoni spoke the dissatisfaction and lack of communication regarding the closing of the Department of Motor Vehicle facility on Auburn Street; and would like to inform the Secretary of State's Office of our opinion.

Jury echoed Tassoni's statement and suggested that a reprimand be sent to the Secretary of State's Office from the Winnebago County Board.

Hawks agreed with the above statements and spoke of the hardship this will place on the residents of the area. This facility is also used for acquiring State I.D.s, voting registration as well as voting. This will also have a negative affect on the other businesses in the area.

Wilson agreed that this action has caused dissatisfaction and disappointment.

Chairman Christiansen said it showed "a flat lack of respect".

Chairman Christiansen spoke of the "Party On The Rock"; a benefit for the 9/11 Emergency Responders Memorial. This event will be held on Thursday, July 26, 2012 at the Prairie Street Brewhouse in downtown Rockford and he encouraged everyone to participate.

CONSENT AGENDA

8. Chairman Christiansen entertained a motion to approve the Consent Agenda for July 12, 2012 (Leaves of Absence and Raffle Report). Jury moved for the approval of the Consent Agenda, seconded by Cabello. The motion was approved by unanimous vote of all members present. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)

REPORTS FROM STANDING COMMITTEES

FINANCE AND ADMINISTRATIVE COMMITTEE

9. Biondo moved for the approval of Budget Amendments 2012-020 through 2012-027; with the exception of Budget Amendment 2012-023, seconded by Pollock. Biondo moved to amend 2012-023 to include \$20,000 for the last early retirement payments under Personnel, seconded by Gasparini. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant) Main motion was approved by a unanimous vote of all members present. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
10. Biondo moved for the approval of a Resolution Directing the Winnebago County Board to Act and Vote on all Elected Salaries 90 Days Prior to the Candidate Filing Period, seconded by Horstman. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
11. Biondo moved for the approval of a Resolution Expressing Official Intent Regarding Certain Capital Expenditures to be Reimbursed from Proceeds of Certain Debt Certificates to be Issued in 2012 by the County of Winnebago, Illinois, seconded by Logan. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
12. Biondo moved for the approval of a Resolution to Appoint Precinct Election Judges, seconded by Jury. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)

ZONING COMMITTEE

13. Webster moved for the approval of Item SU-03-12: A Special Use Permit (with conditions) to Allow a Contractor's Office and Buildings as an Accessory use by the Occupant of a Single-Family Residence in the AG, Agricultural Priority District, requested by Carlos Lawn Maintenance, Submitted by Jorge Carlos & Araceli Martinez, owners, represented by Carl Ecklund, attorney, for property located at 5886 Yale Bridge Road, in Rockton Township, seconded by Jury. Discussion by Horstman. Motion was denied by a roll call vote of 24 no votes, with 3 absent and 1 vacant seat. (Barrios, Biondo, Cabello, Fiduccia, Gambino, Gasparini, Goral, Guevara, Hawks, Horstman, Jury, Kinnison, Logan, Mullins, Owano, Parvin, Pollack, Schultz, Strathman, Sweeney, Tassoni, Webster, Wescott and Wilson voted no.) (Ekberg, Hoffman and Redd were absent.) (1 Vacant)

14. Webster moved for the approval of Item V-02-12: A Variation to Reduce the Front Yard Setback to 3 Feet Instead of the Required 60 Feet to Allow an Accessory Building in the AG, Agricultural Priority District, requested by Douglas & Carla Spears owners, represented by Roger B. Kellerman, attorney, for property located at 4705 S. Perryville Road, in Cherry Valley Township, seconded by Owano. Discussion by Owano. Motion was denied by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
15. Webster moved for the approval of Item V-03-12: A Variation (with conditions) to Allow an Accessory Building to Have a Height of 24 Feet Instead of the Permitted 20 Feet in the AG, Agricultural Priority District, requested by Douglas & Carla Spears owners, represented by Roger B. Kellerman, attorney, for property located at 4705 S. Perryville Road, in Cherry Valley Township, seconded by Guavara. Motion was denied by a roll call vote of 9 yes and 15 no votes with 3 absent and 1 vacant seat. (Barrios, Biondo, Gambino, Goral, Hawks, Horstman, Kinnison, Logan, Mullins, Schultz, Sweeney, Tassoni, Webster, Wescott and Wilson voted no.) (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
16. Webster moved for the approval of Item V-04-12: A Variation (with conditions) to Allow an Accessory Building to Have an Area of 4,800 Square Feet Instead of the Permitted 3,738 Square Feet in the AG, Agricultural Priority District, requested by Douglas & Carla Spears owners, represented by Roger B. Kellerman, attorney, for property located at 4705 S. Perryville Road, in Cherry Valley Township, seconded by Owano. Motion was denied by a roll call vote of 10 yes and 14 no votes, with 3 absent and 1 vacant seat. (Barrios, Biondo, Gambino, Goral, Hawks, Horstman, Logan, Mullins, Schultz, Sweeney, Tassoni, Webster, Wescott and Wilson voted no.) (Ekberg, Hoffman and Redd were absent.) (1 Vacant)

ECONOMIC DEVELOPMENT

17. No Report.

PUBLIC WORKS

18. No Report.

OPERATIONS COMMITTEE

19. Wescott moved for the approval of an Ordinance Amending Chapter 86 of the County Code Setting Forth Soil Boring Procedure Changes for the Environmental Division of the Winnebago County Health Department, seconded by Jury. Motion was approved by a unanimous vote of all members present. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
20. Wescott moved to approve a Resolution to Reject Bids for Landscaping, Water system and Electrical Work, seconded by Jury. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
21. Wescott moved for the approval of a Resolution for Awarding Proposals for Prime Vendor Food Services, seconded by Jury. Discussion by Chairman Christiansen and

- Purchasing & Risk Management Director Sally Claassen. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
22. Wescott moved for the approval of a Resolution Awarding Bids for River Bluff Nursing Home Window Improvements, seconded by Horstman. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant.)
 23. Wescott moved for the approval of a Resolution Awarding Bids for Network and Cell Repeater Infrastructure, seconded by Jury. Motion was approved by voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
 24. Wescott moved for the approval of a Resolution Awarding Bids for File System, seconded by Guavara. Discussion by Jury. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant)
 25. Wescott moved for the approval of a Resolution Awarding Bids for the Juvenile Justice Center, seconded by Horstman. Discussion by Chairman Christiansen, Purchasing & Risk Management Director Sally Claassen and Goral. Motion was approved by a roll call vote of 23 yes and 1 no vote, with 3 absent and 1 vacant seat. (Guevara voted no.) (Ekberg, Hoffman and Redd were absent.) (1 Vacant)

PUBLIC SAFETY

26. No Report.

UNFINISHED BUSINESS

27. Chairman Christiansen entertained a motion to approve a Resolution Adopting the Proposed Findings and Order on the Application for Local Siting Approval for the Winnebago Landfill Expansion to be laid over from the June 28, 2012 meeting. Logan moved to approve the Resolution, seconded by Jury. Webster moved to approve three (3) Amendments to the Resolution, seconded by Gasparini. Motion was approved by a voice vote. Discussion by Hearing Officer Price, Strathman, Schultz, Sweeney and Goral. Motion was approved by a roll call vote of 20 yes and 3 no votes, with 3 absent, 1 abstention and 1 vacant seat. (Fiduccia, Owano and Schultz voted no.) (Strathman abstained.) (Ekberg, Hoffman and Redd were absent.) (1 Vacant)

NEW BUSINESS

28. Chairman Christiansen read in for the first reading of the two reappointments listed below.

REAPPOINTMENTS:

**OTTER LAKE UTILITY DISTRICT
5 Year Term
May 2012 – May 2017**

Mr. J. Donald Waldschmidt
2358 Butternut Bend
Davis, IL 61016

WIN-BUR-SEW FIRE PROTECTION DISTRICT
3 Year Term
May 2012 – May 2015

Mr. Guy Cunningham
9977 Cunningham Road
Winnebago, IL 61088

29. Schultz requested that a Resolution regarding the development of a Sports Complex in Roscoe be referred to Committee. Discussion by Chairman Christiansen, Deputy States Attorney Kurlinkus, Schultz, Jury and Gambino.
30. Chairman Christiansen entertained a motion to adjourn. Jury moved to adjourn the meeting, seconded by Sweeney. Motion was approved by a voice vote. (Ekberg, Hoffman and Redd were absent.) (1 Vacant) Meeting was adjourned at 6:36 P.M.

Respectfully submitted,

Margie M. Mullins
Winnebago County Clerk

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**STATE OF ILLINOIS
COUNTY OF WINNEBAGO
BEFORE THE WINNEBAGO COUNTY BOARD**

In Re:)
)
APPLICATION OF)
THE WINNEBAGO LANDFILL COMPANY, LLC,)
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2)
OF A NEW POLLUTION CONTROL FACILITY)

**REPORT OF HEARING OFFICER
RECOMMENDED FINDINGS OF FACT AND
RECOMMENDED CONDITION OF APPROVAL**

INTRODUCTION

The Winnebago Landfill Company, LLC (“Applicant”), has applied for local siting approval of an expansion of its municipal solid waste landfill operations in Winnebago County, by proposing a new disposal unit located to the east of its current landfill operations, to the north of Edson Road, and to the west of Interstate 39. The Applicant owns the real property (the “Property”) that constitutes the proposed pollution control facility (“Facility”) and the Property is located within the County of Winnebago and not within the corporate limits of any municipality. The Application (consisting generally of six volumes of materials and 46 engineering and geologic plans and drawings) was filed on January 17, 2012. The County is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the “Act”) and its own Resolution 2005 CR 126 establishing rules and procedures for pollution control facility siting (“Siting Resolution”) now codified in the County’s Code of Ordinances. Among the requirements of the Act and the Siting Resolution are that the County conduct a hearing on the Application and that the County make a formal decision on the Application within 180 days of the date of filing (in

this case: July 15, 2012) or, by operation of the Act, the Application for local siting approval is deemed approved.

In accordance with the procedures and other terms and provisions of the Act and the Siting Resolution, I reviewed the Application and initial filings and I opened the public hearing on the application on April 23, 2012. The following parties appeared at the Hearing by and through counsel: the Applicant represented by George Mueller; Martin Maggio represented by Larry Clark; the Village of New Milford represented by Jim Stevens and Roxanne Sosnowski; and Winnebago County represented by Gary Kovanda (and Weaver Boos Consultants on the engineering). The City of Rockford, through its corporate counsel, Patrick Harris, filed an appearance but did not actually participate in the Hearing.

During the hearing, I admitted the Application, testimony and exhibits from 6 witnesses called by the Applicant in support of the Application. I admitted an exhibit and testimony from 3 witnesses called by the Village of New Milford in opposition to the Application. Martin Maggio offered but then withdrew a witness.

In addition to testimony, and in accordance with the Act, written public comment was received by the County Clerk from the date on which the application was filed through May 30, 2012. "Comment" is distinguished from "testimony" in that "comment" is not provided under oath and is not subject to cross examination.

In addition to testimony and written comment, I received oral comment from various members of the public during two separate evening sessions.

I declared the hearing closed on April 30, 2012 at the conclusion of the second session of oral public comment when no further speakers came forward. In accordance with the Act, written comment was then received by the County Clerk for an additional 30 days after the

close of the Hearing (i.e., through 11:59:59 p.m. CDST on May 30, 2012, including any written comment post-marked on or before May 30, 2012).

I received argument in favor of siting approval and proposed findings from the Applicant; argument in opposition to siting approval, proposed findings of fact, and—alternatively—proposed conditions of approval from the Village of New Milford; argument in opposition to siting approval, proposed findings of fact, and—alternatively—proposed conditions of approval from Martin Maggio; and argument in favor of siting approval and proposed findings from the County Staff. After consideration of the Record, my report and recommendation is as follows:

RECOMMENDATION

For the reasons set forth below, I find that the evidence in the Record establishes that the proposed Facility meets each of the criteria for local siting approval set forth in Section 39.2 of the Act. Moreover, I find that the Applicant and its Application have met the requirements of the Winnebago County Code of Ordinances and rules and regulations for siting approval. Although substantial public comment (discussed below) was received in opposition to the Application, it did not substantively overcome the competent, authentic and relevant evidence in the Record demonstrating that the Facility meets each criterion.

I further recommend that the Winnebago County Board condition its approval upon the following requirement: No earlier than one year prior to submitting any and all pertinent applications to the IEPA for development or construction of this Facility, the Applicant shall submit the final design of the gas collection system, hydrogen sulfide monitoring, and odor management procedures to the County for its review—the cost of which is to be shared equally by the Applicant and the County—for the purpose of determining that the design for gas

collection system, the hydrogen sulfide monitoring system, and the odor management procedures and practices reasonably incorporate any improvements and advances in technology, best-management practices, and knowledge as to each of those components of the Application that may occur between the time of local siting approval and the approximate time of actual construction. The County shall have no less than 60 days and no more than 90 days to complete its review.

The Application makes the case for a large lead time in securing this local siting approval. But the testimony provided by Mr. Moose on behalf of the Applicant also established that the solid waste industry, and this Operator in particular, have improved and continue to improve the designs, systems and best-management procedures and practices for gas collection, hydrogen-sulfide monitoring, and odor management. This condition will bring to this Facility any advances in these components from the evolutionary and progressive process described by Mr. Moose that may occur between the time of local siting approval and the time of construction.

ANALYSIS

These proceedings are governed by Section 39.2 of the Environmental Protection Act (“the Act”), 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Winnebago County has also adopted Resolution 2005 CR 126 setting forth certain procedures for the Siting Process which are codified in the Winnebago County Code of Ordinances. The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria and local siting approval shall be granted if the proposed facility meets each of those criteria.

I. JURISDICTIONAL AND PROCEDURAL MATTERS

The Record establishes that the Applicant owns the real property that constitutes the proposed pollution control facility and that the property and the Facility are wholly located within the County of Winnebago and not within the corporate limits of any municipality. No party filed any objection contesting jurisdiction.

Section 39.2(b) of the Act sets forth notice requirements prior to the *filing* of a siting application. The Record contains an Affidavit of Compliance with 415 ILCS 5/39.2(b), prepared and executed by George Mueller, the attorney for the Applicant, affirming that the pre-filing notice complied with the statutory requirements for content, the timing, and manner of service and publication conformed to all statutory requirements, and that all individuals and entities legally entitled to notice were served. No party filed any objection regarding compliance with pre-filing notice requirements.

Likewise, the Applicant complied with all notice requirements of Section 39.2(c) concerning the notice requirements prior to the *hearing* on the Application. The Record contains the Affidavit of George Mueller demonstrating compliance with all pre-hearing notice requirements. This Affidavit demonstrated that the contents of the pre-hearing notice complied with the statute, the timing of service and publication complied with the statute, and that the Applicant did serve all entities entitled to receive notice under the statute. No party filed any objection regarding compliance with pre-hearing notice requirements.

Likewise, no objections have been filed concerning compliance with the Winnebago County Code of Ordinances. I find that the Applicant complied with all requirements of the Winnebago County Code of Ordinances.

Therefore, the Winnebago County Board has jurisdiction to consider the Application.

II. THE SITING CRITERIA

As a matter of law, once an applicant makes a *prima facie* case on a criterion, the burden of proof shifts to the opponents to rebut the applicant's case. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E. 2nd 353 (1969). In order to rule against an applicant on any criterion, the decision maker (the County Board in this case) must find competent rebuttal or impeachment evidence in the record. *Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 553, 592 N.E. 2d 148 (1st Dist. 1992).

The Applicant called six expert witnesses to offer further evidence as to all nine of the statutory siting criteria. Counsel for Maggio and for New Milford cross-examined each of the witnesses. As indicated above, New Milford also called 3 rebuttal witnesses (two lay people and one expert). As explained below, I found (and I recommend) that the Applicant proved its case on each criterion and that Maggio and New Milford did not overcome that proof with competent rebuttal and impeachment evidence.

A. *Criterion (I) - The Facility is necessary to accommodate the waste needs of the area it is intended to serve.*

I find that the Application sets forth the information demonstrating that the Facility meets this criterion. I further find that the testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this criterion.

The Applicant called Christina Seibert, a solid waste planner with more than ten years of experience analyzing need in the solid waste industry, preparing assessments and plan consistency reports for municipal solid waste facilities (including the previous expansion of the Winnebago Landfill). Ms. Seibert testified to demographic projections for the service area, to

the county's solid waste plan, and to the need assessments in the service area. Ms. Seibert also looked at landfills outside the service area that are reasonably available for disposal of waste from the service area and concluded that the capacity of landfills in this larger region is not sufficient. She relied upon available data from regulatory agencies on disposal capacity, industry and trade publications, and historical data from the Applicant's operations. She considered recycling opportunities and programs in her analysis.

The proposed service area consists of thirteen counties in Northern Illinois and two counties in Southern Wisconsin. Applicants for siting approval are entitled to designate their own service area. Ms. Seibert observed that the number of landfills in the service area has steadily declined over the past several decades. Based upon waste generated in the service area, she calculated a capacity deficit within the service area by 2044 of over 323 million tons. The proposed expansion will have a capacity of 38,843,000 tons, thereby still leaving a significant disposal capacity shortfall.

Ms. Seibert also testified to the broader of concept of "necessary," "need" and "accommodate" that includes factors such as travel distances, recycling programs, and economic benefit to the region. Specifically she testified that the Facility is needed to keep travel distances to a minimum (it is closer to the "centroid" of its service area than other landfill facilities in Illinois); that the proposed expansion can help increase recycling by providing surcharges and host fees that can be used to subsidize recycling programs (noting that recycling rates in counties with landfills are twice the rates of counties without landfills); and that the proposed expansion would generate significant economic activity within Winnebago County (\$3.8 million of annual direct revenue to the County, plus \$4 million annually of additional economic activity, plus support for 106 local jobs with annual wages of over \$5 million).

On cross-examination, Ms. Seibert was asked about including the City of Chicago in the service area. As a preliminary matter, the Applicant has the absolute right to designate the proposed service area. Ms. Seibert's testimony about existing market conditions further demonstrated that including the City of Chicago in the service area is a reasonable business decision by the Applicant.

Ms. Seibert was also asked about the remaining 12+ years of capacity of the existing landfill. She testified that twelve years is not a long time considering the lengthy process that is required from start to finish to permit and to develop landfill capacity. She also indicated that it is reasonable and prudent to plan for at least a twenty-year disposal window.

Her testimony was not rebutted and no evidence was introduced proving that the Facility does not meet criterion 1.

B. Criterion (II) - The Facility is so designed, located, and proposed to be Operated that the Public Health, Safety and Welfare will be Protected.

I find that the Application sets forth the information demonstrating that the Facility meets this criterion. I further find that the testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this criterion. For ease of Reference, Table 2.1-1 summarizes the Applicant's demonstration of compliance with applicable location standards such that the proposed facility complies with applicable location restrictions or the Applicant has made a commitment for future actions necessary to comply (but for practical reasons cannot be implemented until a future date).

The Applicant called two expert witnesses in support of this criterion: Daniel Drommerhausen and Devin Moose.

(i) Hydro/Geo

Mr. Drommerhausen is a professional geologist with Shaw Environmental, Inc. He testified regarding the geologic and hydro-geologic investigation that he performed for the Property and the Facility. Mr. Drommerhausen has 15+ years of experience in solid waste consulting; has worked on twenty-five landfill projects; has eighteen years of groundwater modeling experience; and he has performed several extensive hydro-geologic investigations at the existing Winnebago Landfill.

Mr. Drommerhausen testified concerning the geology and hydrogeology set forth in the Application including computer groundwater modeling; field data and design criteria; and the proposed ground water monitoring program. Importantly, Drommerhausen's hydro-geologic investigation and conclusions were specific to the Property and Facility (in contrast to the public comment from Mr. Eckberg) and (again in contrast to the comment of Mr. Eckberg) the investigation met and even exceeded IEPA requirements. Drommerhausen relied upon fifty-four continuously sampled soil and bedrock borings, data from monitoring wells; *in situ* hydraulic conductivity studies; and extensive laboratory testing on soil samples, including testing for hydraulic conductivity.

Mr. Drommerhausen graphically depicted geologic cross sections of the site. This showed an average of forty-two feet of Esmond Till under the site, a material with very low permeability, underlain by an average of eleven feet of laminated clay, which also has very low permeability. According to Mr. Drommerhausen, the till and clay will act as an excellent natural barrier between the landfill and water-bearing units underneath, and the hydraulic conductivity of the clay at the site, in fact, exceeds the requirements set by the IEPA for compacted earth liners. Most importantly, the proposed expansion is designed to take advantage of the presence

of this natural barrier by leaving an average of thirty-four feet of *in situ* clay beneath the leachate sumps.

Mr. Drommerhausen identified the uppermost aquifer at the site as the glacial- fluvial deposits in conjunction with the upper Galena-Platteville dolomite formation and that the groundwater flow beneath the site is from the east/northeast to the south/southwest. He found that the geology and hydrogeology at the site are consistent with descriptions in regional publications and the conditions found beneath the existing Winnebago Landfill, which has previously been permitted by the IEPA. He concluded that these hydrogeologic conditions would allow a comprehensive groundwater monitoring system to be implemented.

Mr. Drommerhausen conducted a groundwater impact evaluation to ensure that the expansion will not impact groundwater near the facility boundary for at least one hundred years after final closure. The computer model used by him exceeds compliance with IEPA standards, and demonstrates that there will be no impacts on groundwater quality in the uppermost aquifer one hundred feet from the landfill boundary for at least one hundred years after closure.

Mr. Drommerhausen described the proposed design of the groundwater monitoring system, which included thirty-nine detection monitoring wells within the uppermost aquifer and down-gradient spacing of two hundred sixteen feet between wells. The wells will be installed in phases so that all necessary monitoring wells will be operational prior to acceptance of waste in the cells that are intended to be monitored.

Based on his experience and expertise, and the geologic and hydro-geologic investigations performed at the site, as well as the computer modeling performed by him, Mr. Drommerhausen concluded that the facility is so located that the public health, safety, and welfare will be protected. That conclusion was not rebutted by any evidence.

Dean Ekberg made an informative Oral Comment Presentation that, in part, purported to take issue with Mr. Drommerhausen's conclusions; but Mr. Eckberg's presentation was not site-specific and not subject to cross examination. Although unnecessary in my opinion, the Applicant submitted a detailed point by point rebuttal in the form of written public comment. Drommerhausen analyzed this Facility for this Property based on specific scientifically relevant facts whereas Eckberg's discussion was more general concerned properties other than site of the Facility.

Other public comment suggested that the Operator has—in its current operation--permitted a leak affecting the water supply of residents of the Sheridan Grove subdivision in New Milford and that the well is highly chlorinated to kill off organic debris in the water. Setting aside the leap in logic from the existing landfill to the proposed Facility, the Applicant nevertheless filed a detailed response rebutting these suggestions. The rebuttal includes publicly available water quality records show that there are no organic compounds or heavy metals detected in the Sheridan Grove water supply system, and that chlorine levels are moderate and typical of a properly operated water supply system. I find no basis in the Record to sustain the argument that the Facility or the Operator or the plan of operations for this Facility poses any risk to the ground water supply. Rather, the evidence demonstrates that the Facility will comply with the groundwater protection standards.

(ii) Design, Location and Operations

The second witness called on Criterion II was Mr. Devin Moose, a professional engineer and the national director of solid waste consulting for Shaw Environmental, Inc. Mr. Moose is a registered professional engineer in eight states, a diplomat of the American Academy of Environmental Engineers, with over thirty years of experience in solid waste engineering. He

has been the lead engineer for more than fifty landfill projects, involving design, permitting and due diligence for both the public and private sectors, and has been involved in over forty siting proceedings, representing both the public and private sector. Mr. Moose was the chief designer of the proposed expansion.

He first testified that the proposed Facility meets all appropriate and relevant location standards, including wetlands standards, seismic impact zone standards, water supply protection standards, and road setback requirements—including an appropriate setback from Interstate 39.

Mr. Moose also testified that the proposed Facility meets all airport setback requirements and compliance with the airport location standard is confirmed in a letter from Richard Pur, Program Manager of the Chicago Airports District Office of the FAA on May 30, 2012 (submitted as written public comment) confirming that the “siting of the landfill does not place it within the approach surfaces of the RFD runways (existing or future).” Mr. Pur concluded that the Federal Aviation Administration has no objection to the proposed expansion of the Winnebago Landfill, and that the proposal is not subject to the site limitations of the Wendell Ford Act.

Mr. Moose testified that the proposed Facility contains all of the various components of a safe and modern landfill. He testified that he designed the facility to maximize the use of natural geologic barriers existing at the site and located the leachate collection sumps located at the South end, where the underlying low permeability clay tends to be the thickest. Mr. Moose also detailed the composite liner system underlying the waste consisting of a minimum 12-inch granular drainage layer underlain by a protective geo-textile, a 60-mil HDPE geo-membrane, a minimum 3 feet of re-compacted, cohesive soil liner on top of the *in situ* low permeability clay

deposits, which will have an average thickness of 18 feet under the liner. In the critical leachate sump areas, there will be a second 60-mil HDPE liner and a geo-synthetic clay liner.

Landfill cells will be oriented from North to South and slope to the South where leachate will be collected. The 11 cells will be constructed in phases beginning at the west and moving east from cell to cell. It is anticipated that no construction east of the existing Harrisville Road line will occur until approximately 2035.

Mr. Moose also described the components of the final cover for the landfill. These consist of a minimum of 3 feet of protective soil cover of which 6-inches will be suitable for vegetation, underlain by a geocomposite drainage layer, a 40-mil LLDPE geo-membrane, underlain by a minimum 12-inch re-compacted cohesive soil cover. The purpose of the final cover is to minimize infiltration from precipitation and to efficiently channel precipitation into the storm water collection system and a barrier for landfill gas migration. The final cover will also be constructed in phases from West to East, so that when a cell is filled, it will be closed and covered.

Mr. Moose described the landfill gas collection system consisting of gas probes, gas wells and piping between wells intended for the removal of landfill gas, primarily methane, using a vacuum extraction process. The initial plan is to flare landfill gas and seek to convert it to an energy source when possible.

Mr. Moose testified that the design and plan of operations for the Facility makes landfill gas monitoring a high priority. Monitoring will take place in below ground probes, spaced around the outside perimeter of the disposal unit. There will be ambient air monitoring and continuous gas monitoring within buildings. The Applicant will sample landfill gas monitoring devices and ambient air monitoring locations on a monthly basis. The Applicant will also

monitor surface emissions. The comprehensive odor management plan includes monitoring for hydrogen sulfide and methane. Hydrogen sulfide is a particular concern of the Village of New Milford and some of the public comment and is discussed in more detail below. I am confident that the proposed Facility is properly designed and will be operated to protect the public and meet these concerns.

Mr. Moose also designed the storm water management system for the proposed expansion. This system will manage storm water, will provide flood hazard reduction, will provide wetland mitigation, and will improve water quality. Mr. Moose testified that the IEPA Bureau of Land, the IEPA Bureau of Water and the U.S. Army Corps of Engineers will also review the storm water management. The components of the storm water management system include a detention basin in the western portion of the expansion area, riffle bioswales, decreased release rates to prevent down-stream flooding, onsite wetland mitigation, and an infiltration basin. Additionally, there will be perimeter bioswales with deep-rooted native plant species. These will replace the function of impacted drainage ways; they will provide aesthetic beauty, increase infiltration, slow water flow and filter out sediment.

Mr. Moose testified as to the facility operating plans. These included waste stream acceptance procedures, load checking procedures and random inspections. The facility will accept only general municipal refuse, construction, and demolition debris and permitted non-hazardous special waste.

Mr. Moose reiterated the dust, mud and litter controls set forth in the Application. These include paving the site entrance and all major interior roadways, use of a street sweeper, and prompt vegetation of the final cover for dust control. Litter will be controlled by use of daily cover, temporary fencing to collect litter, modification of daily activity, including closure, during

high winds, and a requirement that all refuse vehicles must be fully enclosed, covered or tarped. Additionally, the Applicant will have employees patrol the facility and surrounding area to collect any litter escaping from the active fill area.

Mr. Moose testified that modern landfills are some of the most highly regulated facilities. He explained his goal as designer--and the Applicant's goal as operator--is to "control, contain, and collect" especially with respect to the waste, the leachate, and the landfill gas.

His testimony regarding design and operations was un-rebutted. No other witness testified on any of these issues although there was substantial public comment on the current operations at the existing landfill.

(iii) Hydrogen Sulfide Odors

This was the primary focus of the public comment and the testimony of the 2 non-expert witnesses called by New Milford. The Applicant acknowledged a previous problem with odors in its Application and Mr. Moose did so in his testimony. Mr. Moose gave a presentation in which he explained in detail the initial cause and subsequent remediation of the hydrogen sulfide problem. He explained the various sources of odors and the traditional means of controlling them. In general, these types of odors tend to be very intermittent, and are well controlled by good operating practices. Additionally, the proposed Facility is further south and east (and down-wind) of nearby residential areas than are the existing landfill units.

Mr. Moose testified that odors may be caused by adjacent, unrelated facilities or activities, and that these may be mistakenly thought to be originating from the Landfill. He stated that the nearby Orchard Hills landfill is generally upwind of the existing landfill and upwind of nearby residential areas from which there have been odor complaints.

Mr. Moose then described specifically the hydrogen sulfide emissions and odors which became noticeable in 2009 resulting from “a Perfect Storm” of conditions that impacted landfills throughout the United States. The factors that contributed to this Perfect Storm are now understood. Construction and demolition debris recycling increased dramatically over the last 10 years, and the residual materials, or fines, from these activities went to landfills. These included high percentages of ground up drywall, which had previously gone to landfills in large chunks. This ground-up drywall, with its high gypsum content, was highly reactive in a landfill environment, and released significant hydrogen sulfide. The problem was compounded by a drywall shortage in the United States during the building boom in the first few years of this century, which resulted in the increased use of Chinese drywall, which had even higher sulfur content. These components caused problems in landfills throughout the country. Applicant has submitted a detailed post hearing public comment verifying the problems associated with Chinese drywall, and also a public comment verifying the sudden onset of hydrogen sulfide problems at many other landfills.

According to Mr. Moose, these hydrogen sulfide problems were actually worse and occurred earlier at facilities that re-circulated leachate, such as the nearby (and upwind) Orchard Hills facility. The Winnebago landfill was permitted to re-circulate leachate, but had not done so, in part because of concern about possible resulting odor problems. The Applicant is not seeking permission to re-circulate leachate in the new Facility.

When hydrogen sulfide odors became apparent in the summer of 2009, Winnebago Landfill self-reported the problem to the IEPA and then submitted revised permit application requests for construction of an enhanced gas management system between July and September of 2009, but the IEPA did not issue a temporary permit authorizing installation of the enhanced

system until October, 2011. Earlier construction of the enhanced gas management system would have remedied the problem more quickly.

Mr. Moose also testified that the Winnebago Landfill unilaterally decided to stop accepting construction and demolition debris fines and other materials rich in sulfur and has developed and implemented an odor management “toolbox.” The first component is institutional control, which includes revised waste acceptance procedures, portable odor misting systems placed near point source odor emissions, no recirculation of leachate, and a requirement that transfer trailers be unloaded within 24 hours of arrival. Another component is physical enhancement of the gas collection and control system. This includes additional vertical collectors, interim vertical collectors, installation of horizontal collectors, connection to the leachate collection system, construction of automatic backup flaring capacity, and creation of redundant loop design. This active system was installed in the Northern, Southern, and North Expansion units and will be installed in the Proposed Facility. Another component is monitoring and performance assessment, including documentation of complaints, gas and odor readings, logging corrective actions, and off-site monitoring.

Mr. Moose’s testimony about the hydrogen sulfide problem establishes that the solid waste industry in general, and this Applicant and Operator specifically, are constantly evolving and improving upon the designs, systems and best-management procedures and practices for gas collection, hydrogen-sulfide monitoring, and odor management.

The Village of New Milford called two of its Trustees to testify, Tom Lamb and Linda Krause. Both witnesses complained of odors which they believed came from the existing Landfill. As the Applicant points out, neither witness has training in odor identification or measurement, and neither purported to be testifying as an expert witness. Mr. Lamb indicated

that he had never even called Winnebago Landfill to complain about odors. Ms. Linda Krause testified that she is vice-president, manager and a resident of a mobile home park in New Milford, and that she is also a Village Trustee. She complained about the smells, saying they are mostly garbage smells and stated that one cannot grill outside, nor play with children or grandchildren outside. However, she has never complained to the Landfill about the odors.

Odor also dominated the public comment.

But the testimony of the New Milford witnesses and the public comment do not rebut the evidentiary proofs presented by the Applicant that this proposed Facility is designed, located, and proposed to be operated that the Public Health, Safety and Welfare will be protected. Every evolutionary advance and corrective action taken by the Applicant in response to the fugitive odors at its existing Landfill will be incorporated into this Facility and this Facility will not engage in leachate recirculation (unlike the Orchard Hills Facility).

C. *Criterion (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 Surrounding Property.*

I find that the Application sets forth the information demonstrating that the Facility meets this criterion. I further find that the testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this criterion.

Section 3.1 of the Application sets out the land uses in the vicinity and manner in which the proposed Facility relates to the character of the area; sets out the End Use Plan; and sets out the Landscape Plan for the Facility.

(i) Location.

With regard to location of the Facility so as to minimize incompatibility with the character of the surrounding area, the Applicant called J. Christopher Lannert in support of the

Application on this criterion. Lannert is a registered landscape architect and a land use planner who has testified at 39 solid waste landfill hearings. Lannert reviewed the application to determine whether the proposed facility is located so as to minimize incompatibility with the character of the surrounding area. He reviewed regional documents and maps, as well as aerial photographs. He verified existing land uses and zoning classifications and performed his own field inspection. Mr. Lannert identified the predominant land use surrounding the Proposed Facility as agricultural, with the secondary surrounding land use being industrial. He opined that landfill development and expansion is consistent with both of these land uses, and that locating a facility near these predominant uses minimizes incompatibility with the surrounding area.

Mr. Lannert also presented a number of “views” of the Proposed Facility. These verified the surrounding land uses as agriculture and industrial users. The predominant surrounding agricultural land use and secondary industrial land use areas were also verified by zoning maps. Mr. Lannert also testified that the proposed facility minimized incompatibility with surrounding land uses through its end use and landscape plan. The elements of that plan that are important in minimizing incompatibility include screening berms and setbacks to buffer daily activities. These screening berms range in height from 15 to 20 feet on the North, West and East sides of the Proposed Facility. There will also be rain gardens and infiltration basins. These features all help the facility blend into the surrounding setting. Bioswales located within the designated setbacks will provide an additional natural visual buffer around the facility boundary. The final landform will be enhanced through planted diversion berms and a herring-bone planting pattern. Mr. Lannert illustrated a typical planting distribution with 2 shade trees, 6 ornamental trees, and 16 shrubs in a 200-foot area.

Mr. Lannert examined the visibility of the active and proposed final landform from surrounding areas. A screening berm will completely block visibility of daily operations from Interstate 39. Mr. Lannert then super-imposed the proposed final landform onto photographs taken from all sides of the proposed facility to demonstrate that the facility will be, from many viewpoints, virtually invisible, and that it will not be obtrusive from any vantage point. For example, viewed from the Baxter Road overpass on I-39, adjacent from the Maggio truck stop, the final landform will barely protrude above the horizon.

Lastly, Mr. Lannert identified the EcoRock environmental campus, planned to be developed by Winnebago Landfill's parent company on the North side of the proposed Facility, as an additional component that significantly minimizes the proposed facility's incompatibility with surrounding property uses. The EcoRock campus will focus on developing new technologies that will enhance the economic diversity of the region, including generation of renewable energy that can support the infrastructure of the Rock 39 industrial area. In addition, this campus will provide an additional buffer and transition between the expanded facility and proposed future industrial and commercial land uses.

Based on his experience and expertise, Mr. Lannert concluded that the facility is located so as to minimize incompatibility with the character of the surrounding area. This conclusion is based upon the predominant land uses surrounding the facility being agricultural and industrial, as well as the fact that residential land uses near the facility are well screened and have developed after the construction and operation of the existing, and previously permitted, landfills. Additionally, the visual impact of the facility will be mitigated by distance, intermediate natural vegetation, buffers, setbacks, berms, intermediate land uses, and on-site

landscaping. Finally, proposed future development in the area will concentrate on industrial land uses, and the landfill can serve as an economic engine for that development.

The Village of New Milford called William James, a landscape architect and certified planner, employed by Camiros, Ltd., as a witness. He opined that from a visual and aesthetic perspective, the final landform of the proposed Facility would not minimize incompatibility with the surrounding area. However, Mr. James offered no facts to support this conclusion, had never been to the area of the proposed expansion, and could not find any factual or technical fault with the photographs taken by Mr. Lannert, including those photographs with the super-imposed final landform, demonstrating graphically that visibility of that landform would be minimal. Rather, Mr. James proposed changing the facility “design” in order to minimize incompatibility.

The Applicant moved to strike the testimony of Mr. James. I granted the motion because he did not testify about the actual criterion and because he was not even given the actual grading plan for the Facility—which I found to be a necessary basis for a competent opinion on this criterion.

The Village of New Milford also called Jacques Gourguechon. Gourguechon is not a licensed professional but is a member of the American Institute of Certified Planners. Mr. Gourguechon is the President of Camiros, Ltd. and was involved in developing the Winnebago County 2030 Land Resources Management Plan.

Mr. Gourguechon testified in opposition to the Application primarily on the premise that the Facility is inconsistent with the 2030 plan and particularly because it is too close to the Baxter Rd./I-39 interchange. Gourguechon testified that the Facility would prevent harm the light industrial uses that exist in the area and that are planned for the area. He acknowledged the fact that this is not a local zoning matter and that the 2030 plan is not policy and does not

control, in any sense, these proceedings. He agreed with Mr. Lannert that the area is currently predominately agricultural. In addition, he acknowledged 4 or 5 quarries in the area, and that these would not be light industrial land uses. He did not mention the nuclear power plant visible on the horizon, the two sets of high tension power lines, hog farms, the unscreened auto wrecking yard or the asphalt plant, all of which are also in the vicinity.

Mr. Gourguechon testified that the Winnebago 2030 Plan calls for heavy commercial and light industrial development along the areas that are immediately adjacent to the I-39/Baxter Road interchange, light industrial beyond that and medium industrial and heavy industrial beyond those areas but on cross examination he retreated from this position. He agreed that the Maggio property, at the northeast quadrant of the interchange, is the only area shown as commercial. However, Mr. Lannert had previously testified that the Maggio property had actually been rezoned to the light industrial classification in late 2011 and Mr. Gourguechon was not aware of the rezoning.

Mr. Gourguechon opined that a landfill is one of those types of land uses that diminish the potential for people taking the private sector risk that is involved in economic development – but he offered no supporting data or examples for that conclusion.

Mr. Gourguechon also opined that a landfill should ever be located near an Interstate interchange. That opinion is not credible and contrary to criterion 6 which emphasizes the need to site the Facility in a location that will minimize impacts on existing traffic. Locating a Facility near an interchange—as so many are—meets that criterion.

Cross examination also demonstrated that Mr. Gourguechon based his opinions on incorrect facts or assumptions where the actual facts had not been provided to or researched by

him. Mr. Gourguechon admitted that at the present time there are no more productive land uses from an economic perspective within one mile of the proposed expansion than the landfill itself.

In sum, Mr. Gourguechon's testimony was not persuasive and did not overcome the substantial proof presented by Lannert demonstrating that this Criterion is satisfied.

(ii) Property Values

The Applicant also called Peter Poletti concerning location of the Facility so as to minimize effect on the value of the surrounding property. Poletti is a certified general real estate appraiser in 8 states, a member and instructor of the Appraisal Institute, a certified Illinois assessing officer and a township assessor for 35 years. The Application contains Poletti's Real Estate Impact Study.

Poletti testified that the proposed facility is located so as to minimize the effect on the value of surrounding property. Poletti inspected the proposed site and surrounding area, reviewed the published literature on the subject, reviewed the host community agreement and siting application, had discussions with other consultants working on the project, reviewed publically available property transaction data in the vicinity, and studied the land uses in the area. Poletti indicated that a review of literature on the subject of property value impacts from landfills indicates that whatever impacts exist are typically minimized by locating landfills in less densely populated areas, such as is being done here. Such impacts are further minimized with modern, highly engineered and regulated landfills, like that proposed here. Additionally, the published literature indicates that there is no evidence that landfills negatively impact agricultural, commercial or industrial land values, so the real focus of impact analysis should be on residential properties. Mr. Poletti pointed out that there are few residential properties near the landfill, the proposed expansion will be further away from those residential properties than

existing landfill units, and that the existing residential properties are effectively buffered from the proposed expansion.

Mr. Poletti performed a quantitative analysis to measure the impact of the existing landfill units on surrounding residential property. He did this by selecting a target area, a zone in close proximity to the operating landfill, and comparing sales data in that area with sales data of comparable properties in a control area, a region more remote from the immediate influence of an operating landfill. In comparing sales data from the two areas, Mr. Poletti used overall average of selling prices, regression analysis and paired sales analysis. He found no statistically significant difference in pricing between the target and the control areas and therefore concluded that the existing landfill has no mathematically measurable impact on property values. Accordingly, expanding the landfill under these conditions serves to minimize impact on property values. Mr. Poletti testified that he had previously performed similar statistical analyses and quantitative studies in connection with the proposed DeKalb County landfill expansion and had obtained similar results.

Mr. Poletti also performed a qualitative analysis to confirm that the proposed facility minimizes impact on property values. The qualitative analysis involved review of design and other features utilized to minimize property value impacts. These included review of existing topography and analysis of how the proposed landform will blend with the same, review of existing vegetation and analysis of the proposed vegetative plan at the facility. He also considered that the proposed expansion is in a sparsely populated area and is buffered by adjacent industrial and agricultural land uses, as well as Interstate 39 and Highway 251.

The proposed on-site features such as increased set back, extensive and varied vegetation, screening berms, the storm water design features including bioswales and wetlands, are, in his

opinion, all features which serve to minimize impact on surrounding property values. Moreover, location close to the propose EcoRock development and the Rock 39 project serve to minimize impacts on property values.

Finally, Mr. Poletti pointed out that the Property Value Protection Plan previously agreed upon between the County and Winnebago Landfill Company will provide an additional measure of protection and thereby have the potential to further minimize impacts on property values.

Poletti's testimony was not rebutted (Maggio withdrew his witness and New Milford's lay witness, Mr. Lamb, provided only unsubstantiated opinions). No competent evidence was introduced proving that the Facility does not meet criterion III. Accordingly, I find that the proposed Facility meets this Criterion.

D. Criterion (IV) - The Facility is located outside the Boundary of the 100 Year Floodplain.

I find that the Application sets forth the information demonstrating that the Facility meets this criterion. I further find that the testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this criterion. Devin Moose also testified that the proposed expansion is located outside the 100-year flood plain. He reviewed the official flood plain map prepared by the Federal Emergency Management Agency, compared the 100-year flood plain designations on that map to the expansion boundary and verified that the entire expansion is, in fact, outside the 100-year flood plain. This testimony was not rebutted.

E. Criterion (V) - The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.

I find that the Application sets forth the information demonstrating that the Facility meets this criterion. I further find that the testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this criterion. Mr. Moose testified the plan of

operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, and other operational accidents. This testimony was not rebutted and no evidence of past fires, spills or other operational accidents was introduced.

*F. Criterion (VI) - The Traffic Patterns to and from the Facility
Are so Designed as to Minimize the impact on Existing Traffic Flow.*

I find that the Application sets forth the information demonstrating that the Facility meets this criterion. I further find that the testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this criterion. The Applicant called Michael Werthman, a registered professional engineer and certified professional traffic operations engineer, with 21 years of traffic engineering experience for both the private and public sectors. He performed a three phase traffic study where he examined the existing physical and operational characteristics of the nearby roadway system; determined the type and volume of traffic to be generated by the Facility and the travel routes for that traffic; and evaluated the impact of the proposed facility's traffic on the existing roadway system and made recommendations to minimize the same.

Mr. Werthman testified that he conducted peak period and daily traffic counts to establish base line traffic volumes. He evaluated the existing roadway network, including Baxter Road, Lindenwood Road, Harrisville Road, Illinois 251, and Edson Road. Traffic counts were performed at four intersections along Baxter Road: Illinois 251, Lindenwood Road, Harrisville Road, and I-39, as well as at the existing site entrance on Lindenwood Road. Waste would be delivered to the facility by six ton direct haul packer and roll-off trucks which would typically access the facility via Illinois 251 and Baxter Road. Waste would also be received in 23 ton transfer trailers which would typically access the facility via I-39 or Illinois 251. The proposed

new site entrance for the expanded facility will be on Harrisville Road, which will be widened and improved to accommodate the vehicles.

At the time of the traffic counts conducted by Mr. Werthman the landfill was receiving an average of 5,000 tons of waste per day. While the facility proposes to continue to receive waste at that volume, Mr. Werthman modeled proposed future traffic on receipt of 7,500 tons per day. Moreover, he added that 7,500 tons per day to the 5,000 presently being received, thereby meaning he effectively modeled future traffic conditions based upon receipt of 12,500 tons of waste per day. He testified that this is an extremely conservative analysis. He then added to that the projected growth in background traffic on Baxter Road. Using highway capacity software, which grades levels of service on roadways from A to F based upon the average control delay experienced by vehicles passing through intersections, Mr. Werthman concluded that all of the studied intersections were currently operating at either an A or B level of service, which is very good and involves minimal delays. He concluded that the facility is located so as to minimize the impact on existing traffic flows.

Mr. Werthman also testified that the Winnebago County Highway Department had previously reviewed his study and concluded: “We agree with the traffic projection, its directional distribution, and its conclusion of impact on the existing roadway system...we approve the study and accept its recommendation.”

The testimony of Mr. Werthman was not rebutted by any other witness or evidence.

G. Criterion (VII) –

Per the Application, the Facility will not be treating, storing or disposing of Hazardous waste and so this Criterion is not applicable and therefore deemed satisfied. This fact was not contested.

H. Criterion (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.

I find that the Application sets forth the information demonstrating that the Facility meets this criterion. I further find that the testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this criterion. Christina Seibert (Criterion 1) testified on this criterion. She reviewed the history of the Winnebago County Solid Waste management plan starting with its adoption in 1991 and the adoption of four updates since, going through September, 2011. She noted that the proposed expansion is consistent with the plan objective by providing sufficient capacity for approximately 25 years of Winnebago County's non-hazardous solid waste.

Moreover, Seibert testified about the Plan's reliance on in-County, privately owned and operated landfill capacity as the preferred alternative for managing that portion of the waste stream that cannot be diverted through reduction, reuse, recycling and composting.

Seibert also addressed that portion of the Plan stating: "The County should enter into a host agreement with the owners of any proposed solid waste disposal facility, including Winnebago Landfill that provides additional disposal capacity for the County" and the terms of the Host Agreement. The Applicant and Winnebago County have, in fact, entered into the required community host agreement. The Winnebago landfill will provide approximately 25 years of additional disposal capacity, and accordingly the Winnebago landfill Proposed Facility is consistent with the Winnebago County solid waste management plan.

Seibert concluded that the proposed Facility meets the County's goal of effective solid waste planning and the County's goal to do so through a successful public/private partnership. Her testimony was not rebutted.

I. Criterion (IX) –

Per the Application, the Facility is not located in a regulated recharge area and so this Criterion is not applicable and therefore deemed satisfied. This fact was uncontested.

H. Consideration of Previous Operating Experience

The Act permits the County Board to consider the previous operating experience of an applicant. Section 10 of the Application sets forth the Applicant's operating history with respect to recent violation notices. The Applicant's complete operational history, including all documents previously submitted to IEPA was separately filed with the siting application as required by Section 39.2(c) of the Act. The Applicant's testimony at the Hearing on Operating History consisted of the testimony of Mr. Moose on the Applicant's response to the hydrogen sulfide problem. Although there was substantial Public Comment on the current operations, no other witness testified regarding operational history and no party entered any evidence of other operational problems.

A review of the Operating History in the Application demonstrates to me that the current operation is well run and that when problems arise, the Applicant is responsive. Problems are inevitable in any operation. Thus, on the record before me, the evidence concerning history of Operations proves the Applicant is able to run a landfill facility safely and properly and that there is no basis to deny the Application.

III. PUBLIC COMMENTS

In addition to the public comment (oral and written) received during the Hearing, the County Clerk received over a thousand written public comments after the hearing closed. Most of the Oral Comment received during the Hearing opposed the Application but most of the written comment received after the Hearing supported the Application.

The public comment opposed to the Application focused primarily on the following issues (in order of popularity as I recorded them):

- Odor, litter and traffic from operations of the landfills now
- Lost economic development opportunities
- Acceptance of Non-Local Waste
- Property Values

The public comment supporting the Application focused on the following:

- Jobs
- Economic benefits to the community
- Long-term disposal capacity for Winnebago County and surrounding areas.

I found that the public comment, while important to the County's macro-understanding of the Application, was not focused on the statutory criteria in a relevant and "probative" way required by the statute and case law and therefore the comment, neither singly nor collectively, caused any change in how I weighed the evidence on any of the Criteria discussed above.

I agree with the Applicant that the public comment submitted by the City of Rockford and Village of Cherry Valley deserve special attention as they are Illinois municipalities.

First, the City of Rockford appeared in the proceedings but never attended the Hearing and did not otherwise formally participate in a meaningful way on any of the criteria that it sought to address in its comment. Rockford—represented by a respected City Attorney—therefore clearly understands the difference between the evidentiary value of evidence produced in the setting of the hearing and that of public comment. I gave the comment far less weight than I might have given their concerns had they actually participated and raised them in the crucible of the Hearing where they would have been tested and either confirmed or dismissed.

Moreover, I found the City's written comment not to be credible on several important issues as it was inconsistent with the actual record. For example, the City's comment asserts conclusions about traffic—both vehicular and air--that are either contradicted by or otherwise unsupported by the actual record. The Applicant's post-Hearing brief addresses several more errors in the Comment but the inescapable conclusion is that the City of Rockford's submission does not alter the balance of the evidence in favor of the Facility on each and every criterion.

The Village of Cherry Valley did not appear in the Hearing. In its comment, Cherry Valley focused on criterion III in the same way that the Village of New Milford focused on criterion III. The evidence in the record contradicted a number of the premises asserted by Cherry Valley in their comment. In particular, the evidence in the record is that the area is not now and—landfill or no—would not be able to sustain a hotel at the interchange any time soon. Moreover, the record contains substantial testimony that landfills and light industrial and even commercial uses can exist in the same plan. In sum, with respect to the statutory criteria, I reached the same conclusions as I did with respect to the evidence submitted by New Milford and found the evidence favored the Facility.

IV. SPECIAL CONDITIONS

The Act allows for conditional approval: “[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) (2006)(emphasis added). The finding of whether a special condition is both reasonable and necessary must, like the approval, be based on the evidence. *Peoria Disposal Co. v. Peoria County Board*, PCB 06-184, slip op. at 6 (Dec. 7, 2006).

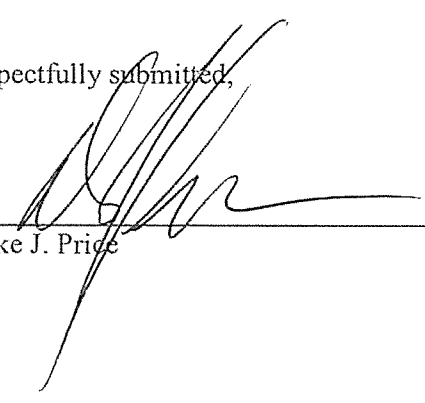
In this case, I have recommended only one special condition and it is based on the lead time for this approval and on the testimony of Mr. Moose concerning the history of the hydrogen sulfide and odors problems experienced by the industry and by this Applicant. His testimony proves that protecting the health and safety of the public is progressive rather than static, and that it requires on-going diligence and learning on the part of the Operator. This Applicant has demonstrated its ability to so protect the public. But the amount of lead time being given for this approval when compared to the speed at which new challenges—and their solutions--occur requires one further check on these critical components of gas collection, hydrogen sulfide monitoring, and odor management designs and practices before the Facility is actually constructed.

Conversely, it is my opinion that the Record does not support any other special conditions.

V. PROPOSED FINDINGS OF FACT

My proposed findings of fact are attached.

Respectfully submitted,



Derke J. Price

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PROPOSED FINDINGS OF FACT

1. Winnebago Landfill Company, LLC. Filed an application seeking siting approval for the proposed Facility on Jan. 17, 2012.
2. Winnebago County has duly adopted siting procedures codified in its Code of Ordinances.
3. The siting application contains sufficient detail describing the proposed facility to demonstrate compliance with each of the nine siting criteria in Section 39.2(a) of the Act.
4. The Applicant complied with all pre-filing notice requirements of Section 39.2(b) of the Act.
5. The applicant complied with all pre-hearing notice requirements of Section 39.2(c) of the Act.
6. No complaints regarding access to and availability of the siting application have been received.
7. No objections regarding participation, hearing procedures or public comment were made by any participant, would be participant or member of the public.
8. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness.
9. Based upon waste generated in the service area, Ms. Seibert calculated a capacity deficit within the service area by 2044 of over 323 million tons. The proposed expansion will have a capacity of 38,843,000 tons, thereby still leaving a significant disposal capacity shortfall.
10. The testimony of Ms. Seibert on need was credible and was not rebutted. The Applicant has proven that the facility is necessary to accommodate the waste needs of the area it is intended to serve.
11. The site-specific hydro-geologic investigation exceeded IEPA requirements, showed an average of forty-two feet of Esmond Till under the site, a material with very low permeability, underlain by an average of eleven feet of laminated clay, which also has very low permeability. The proposed expansion is designed to take advantage of the presence of this natural barrier by leaving an average of thirty-four feet of in situ clay beneath the critical leachate sumps.
12. The hydrogeologic conditions at the site permit a comprehensive groundwater monitoring system to be implemented.
13. The groundwater impact evaluation demonstrates that there will be no impacts on groundwater quality in the uppermost aquifer one hundred feet from the landfill boundary for at least one hundred years after closure.

14. Based upon the unrebutted testimony of Daniel Drommerhausen that geologic conditions at the site provide a naturally protective barrier, that groundwater flow patterns allow for the design of an efficient groundwater monitoring system and that computer modeling verifies no long term impact on the uppermost aquifer, the facility is so located so that the public health, safety and welfare will be protected.

15. The proposed Facility will extend existing facility life by 24.7 years and will increase facility size from 433.47 acres to 797.39 acres. The expansion unit will be East of the existing facility and the new unit waste footprint will be 222.38 acres.

16. The proposed Facility is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and also water supply well and road setback requirements.

17. The composite liner system underlying the waste will consist of a minimum 12-inch granular drainage layer underlain by a protective geotextile, a 60-mil HDPE geo-membrane, a minimum 3 feet of re-compacted, cohesive soil liner on top of the in situ low permeability clay deposits, which will have an average thickness of 18 feet under the liner. In the critical leachate sump areas, there will be a second 60-mil HDPE liner and a geo-synthetic clay liner. Landfill cells will be oriented from North to South and slope to the South where leachate will be collected. The 11 cells will be constructed in phases beginning at the West and moving East from cell to cell. It is anticipated that no construction East of the existing Harrisville Road line will occur until approximately 2035. The final cover will consist of a minimum of 3 feet of protective soil cover with 6-inches suitable for vegetation, underlain by a geocomposite drainage layer, a 40-mil LLDPE geo-membrane, underlain by a minimum 12-inch re-compacted cohesive soil cover.

18. Collected landfill gas from the proposed Facility will eventually be able to generate enough electricity to support 20,000 homes annually.

19. The components of the storm water management system include a detention basin in the Western portion of the expansion area, riffle bioswales, decreased release rates to prevent downstream flooding, onsite wetland mitigation, and an infiltration basin. Additionally, there will be perimeter bioswales with deep-rooted native plant species. These will replace the function of impacted drainage ways, they will provide aesthetic beauty, increase infiltration, slow water flow and filter out sediment.

20. On the basis of the Application and the testimony of Devin Moose, a professional engineer with extensive experience in landfill design and permitting for both the public and private sector, this proposed Facility meets criteria of the Act and the goal of the modern landfill designer and operator to control, contain, and collect the waste, leachate, and landfill gas. His testimony regarding design and operations was un-rebutted. No other witness testified for the objectors on any of these issues.

21. The proposed Facility is further south and east of nearby residential areas than the existing landfill units. The Proposed Facility is 1.48 miles from the Sheridan Grove subdivision and 1.35 miles from Living Woods.

22. The hydrogen sulfide emissions and odors which became noticeable in 2009 resulted from a variety of previously unknown circumstances and conditions that impacted landfills throughout the United States. The industry and the Applicant responded timely to the problems and to developing a solution. The Applicant self-reported to the IEPA. Subsequently, the Applicant developed and implemented odor management protocols that will be part of the expansion unit. Between February and April of this year, at a total of 1340 readings from 27 off-site monitoring locations, this monitoring demonstrated that other sources, including natural sources, are contributing to hydrogen sulfide levels in the area but that the overall hydrogen sulfide detected in the readings was at very low levels.

23. The odor problem at the landfill in 2009, 2010 and 2011 was a result of hydrogen sulfide in circumstances that are not likely to recur and the problem is under control. The Applicant's evolutionary and progressive response to the hydrogen sulfide issue further demonstrates that the expanded facility will be so operated that the public health, safety, and welfare will be protected. Empirical data from the community monitoring program established by the Applicant verifies this conclusion.

24. Leachate will not be re-circulated at this Facility.

25. The predominant land use surrounding the Proposed Facility is agricultural with the secondary surrounding land use being industrial. Landfill development and expansion is consistent with both of these land uses, and locating a facility near these predominant uses minimizes incompatibility with the surrounding area.

26. The proposed facility minimizes incompatibility with surrounding land uses through its end use and landscape plan. The elements of that plan that are significant to minimizing incompatibility include screening berms and setbacks to buffer daily activities. The final landform super-imposed onto photographs taken from all sides of the proposed facility demonstrate that the facility will be, from many viewpoints, virtually invisible and that it will not be obtrusive from any vantage point.

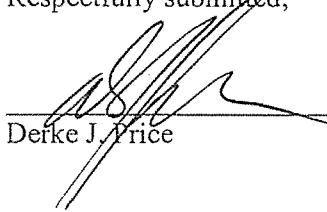
27. The EcoRock environmental campus, planned to be developed by Winnebago Landfill's parent company on the north side of the proposed Facility is an additional component that significantly minimizes the proposed facility's incompatibility with surrounding property uses.

28. Based upon all the reasons cited in the report and the Application, and based upon the experience and expertise of Peter Poletti, the proposed facility is located so as to minimize the effect on the value of the surrounding property.

29. The proposed expansion is located outside the 100-year flood plain.

30. The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, and other operational accidents.
31. Based upon the experience and expertise of Michael Werthman and the traffic study he performed, the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows. This is further supported by the fact that the proposed Facility is expected to generate a very limited amount of additional traffic compared to what is currently being generated, the reconstruction and upgrading of Harrisville Road with a separate left turn lane on the Westbound approach of Baxter Road, and larger intersection radius' to accommodate turning truck traffic. This is further supported by the technical review of the Winnebago County Highway Department which accepted Mr. Werthman's conclusions and recommendations. The testimony of Mr. Werthman was not rebutted.
32. The facility will accept only general municipal refuse, construction, and demolition debris and permitted non-hazardous special waste. The facility will not treat, store or dispose of hazardous waste.
33. The proposed proposed Facility is consistent with the Winnebago County Solid Waste Management Plan by providing sufficient capacity for approximately 25 years of Winnebago County's non-hazardous solid waste. Moreover, the plan has chosen reliance on in County, privately owned and operated landfill capacity as the preferred alternative for managing that portion of the waste stream that cannot be diverted through reduction, reuse, recycling and composting. The County plan specifically contemplates expansion of the Winnebago landfill, and the parties have entered into a host agreement as required by the Plan.
34. The proposed site is not in a regulated recharge area.
35. Section 10 of the siting application sets forth the Applicant's operating history with respect to recent violation notices. The Applicant's complete operational history, including all documents previously submitted to IEPA was separately filed with the siting application as required by Section 39.2(c) of the Act. The Operating History in the Application demonstrates that the current operation is well run and that when problems arise, the Applicant is responsive. Problems are inevitable in any operation. Thus, on the record before me, the evidence concerning history of Operations proves the Applicant is able to run a landfill facility safely and properly and that there is no basis to deny the Application.
36. The evidence has demonstrated Applicant's compliance with each of the nine siting criteria in Sec. 39.2(a) of the Act, and the County Board should grant local siting approval.

Respectfully submitted,



Derke J. Price