

ILLINOIS POLLUTION CONTROL BOARD

February 6, 2014

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 10-104
	)	(Pollution Control Facility Siting Appeal)
COUNTY BOARD OF DEKALB COUNTY, ILLINOIS,	)	
	)	
	)	
Respondent.	)	

DONALD MORAN, PEDERSEN & HOUP, APPEARED ON BEHALF OF PETITIONER;  
and

STEPHANIE KLEIN, DEKALB COUNTY STATE'S ATTORNEY'S OFFICE, APPEARED  
ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On June 14, 2010, Waste Management of Illinois, Inc. (WMII) timely filed a petition asking the Board to review a May 10, 2010 decision of the County Board of DeKalb County (County). *See* 415 ILCS 5/40.1(a) (2012); 35 Ill. Adm. Code 107.204. In a 16-8 vote, the County granted the siting application of WMII for expansion of the DeKalb County Landfill (Landfill), subject to conditions contained in the County's Resolution #2010-31.

The Landfill is located northeast of the intersection of Somonauk and Girler Roads near DeKalb in unincorporated DeKalb County. The proposed expansion (Expansion) consists of the exhumation of an old fill area and disposal of the exhumed waste into a composite-lined cell, development of a 61-acre waste disposal area above and adjoining the Landfill's existing 88-acre waste footprint, and the development of a 179-acre waste disposal area east of Union Ditch No. 1. The Expansion's capacity is expected to be 23.2 million tons.

In its petition for review (Pet.), WMII appeals only one condition of the County's siting approval. Specifically, WMII states that it "contests and objects to the County Board's inclusions of the 'Additional Condition' to Criterion 6 because it is neither reasonable nor necessary to accomplish the purposes of Section 39.2 of the [Environmental Protection] Act, and is inconsistent with the regulations promulgated by this Board." Pet. at 2, citing 415 ILCS 5/39.2 (2012). The condition at issue concerns upgrading the shoulder on Somonauk Road, which is a part of the mandated route for traffic traveling to and from the Landfill. For the reasons below, the Board finds that the contested condition is not necessary to accomplish the purposes of the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and therefore strikes the condition from the local siting approval.

This opinion is narrowly focused on Section 39.2(a)(vi) of the Act (Criterion VI) and Special Condition 32 of the DeKalb County siting approval (Condition 32). *See* 415 ILCS 5/39.2(a)(vi) (2012). The Board first provides the procedural history of this proceeding. The Board then sets forth the facts, followed by the parties' arguments. Next, the Board discusses the relevant statutory framework, after which, the Board states the applicable standard of review. Finally, the Board discusses the reasoning for its decision.

### **PROCEDURAL HISTORY**

On June 14, 2010, WMII timely filed a petition asking the Board to review a May 10, 2010 decision of the County. *See* 415 ILCS 5/40.1(a) (2012); 35 Ill. Adm. Code 107.204. In a 16-8 vote, the County granted the siting application of WMII for the Expansion, subject to conditions contained in the County's Resolution #2010-31 (Resolution).

On June 11, 2010, three days before WMII's filing, citizen's group Stop The Mega Dump's (STMD) filed a third-party petition asking the Board to review the local siting approval. STMD v. County Board of DeKalb County, PCB 10-103. STMD appealed the local siting approval primarily on the grounds that the County conducted the siting proceeding in a manner that was not fundamentally fair. STMD, PCB 10-103, slip op. at 2 (March 17, 2011). STMD also alleged that the County's determination with regard to certain siting criteria of Section 39.2(a) of the Act was contrary to the manifest weight of the evidence. *Id.* Criterion VI was one of the criteria STMD alleged was not met by WMII. *Id.* STMD, however, did not specifically challenge or otherwise address Condition 32.

On June 17, 2010, the Board issued an order accepting WMII's petition for hearing and, on its own motion, consolidating this case with STMD's petition for review. However, the Board, on WMII's unopposed motion, severed this case from the STMD appeal by an order dated August 19, 2010. STMD, PCB 10-103; WMII, PCB 10-104 (Aug. 19, 2010). On March 17, 2011, the Board issued an opinion and order finding that "STMD has failed to prove that the county's siting procedures were fundamentally unfair, or that the county's determinations on siting criteria (i), (ii) and (vi) of Section 39.2(a) of the Act were contrary to the manifest weight of the evidence." STMD, PCB 10-103, slip op. at 73, (March 17, 2011). The Board did not make a finding on Condition 32 in the STMD case. STMD appealed the Board's March 17, 2011 opinion and order on fundamental fairness grounds. The appellate court affirmed the Board's order. STMD v. The County Board of DeKalb County, Waste Management of Illinois, and PCB, 2012 Ill. App. 2d 110579, 979 N.E.2d 524 (Oct. 29, 2012).

On September 1, 2010, the County filed the record of its proceedings, which includes the siting application submitted by WMII.<sup>1</sup> After the record was filed, the parties attempted to settle this matter without a hearing to no avail. *See, e.g.*, Hearing Officer Orders (May 12, 2011), (June 14, 2012), and (May 29, 2013). The Board held a hearing on WMII's petition on September 17, 2013 at the DeKalb County Legislative Center in Sycamore, DeKalb County.<sup>2</sup> WMII filed its memorandum (Memo.) in support of its appeal on October 22, 2013. The County

---

<sup>1</sup> The Board cites the County's record as "C000xxxx."

<sup>2</sup> The Board's hearing transcript is cited as "Tr. at \_."

filed its response (Resp.) on November 13, 2013. Finally, WMII filed its reply brief (Reply) on November 27, 2013.

## **FACTS**

### **WMII Landfill Expansion**

The DeKalb County Landfill, located northeast of the intersection of Somonauk and Girler Roads in unincorporated DeKalb County, includes an 88-acre waste disposal area on a 245-acre property. The existing Landfill consists of three sections: an active area, an old area, and the north area. The old area consists of twenty-four acres that are believed to have operated between 1958 and 1974.<sup>3</sup> C0000145.

WMII and the County negotiated a Host Community Agreement (Agreement) that was approved by the County on March 18, 2009 and adopted by the County Board Chairman on April 17, 2009. C0001345-90. The Agreement provides that “[b]y entering into this Agreement, the County does not express any opinion or commitment with respect to the siting application.” C0001347. The Agreement states that it will apply to the Expansion in the event of final and non-appealable local siting approval. C0001348. The Agreement specifies that transfer trailers traveling to and from the Expansion must follow a particular route: arrival via Interstate 88, exit to the north at Peace Road, travel north to Illinois Route 38, take Illinois Route 38 east to Somonauk Road, and finally travel south on Somonauk Road to the facility entrance. C0001362. The Agreement goes on to state that “local haulers (originating within DeKalb County) will use this preferred route to [the] extent practicable.” *Id.* The Resolution reinforces that requirement, stating “WMII shall inform all haulers to and from the facility of the designated truck routes, in writing.” C0008546, (Resolution at 10).

Somonauk Road is the only roadway on the designated transfer trailer route at issue in Condition 32. Pet. at 2. In addition to setting the route for transfer trailers to and from the Expansion, the Agreement also requires WMII to conduct a traffic impact analysis prior to accepting waste at the Expansion. *Id.* The Expansion involves moving the facility entrance approximately 420 feet to the south on Somonauk Road. C0007263. Prior to entering into the Agreement with WMII, the County upgraded a portion of Somonauk Road on the mandated transfer trailer route, to the existing facility entrance, to a Class II truck route accommodating 80,000 pounds. *Id.* The Agreement provides that, “[i]n support of the increased commercial activity envisioned herein, the County will upgrade Somonauk Road from State Route 38 south to the relocated Landfill entrance.”<sup>4</sup> C0001361. Therefore, the entire length of Somonauk Road included on the mandated transfer trailer route will be a Class II truck route.

---

<sup>3</sup> This opinion will focus on the transportation elements of the Expansion because the scope of Criterion VI does not include the threat of pollution from the amount or type of waste being received by WMII at the proposed Expansion.

<sup>4</sup> The County upgraded Somonauk Road from Illinois Route 38 to the existing facility entrance in May/June 2009 to a Class II truck route as part of the Illinois Department of Transportation (IDOT) Truck Access Route Program pursuant to DeKalb County Board Resolution R2009-08. C0000754.

On November 30, 2009, WMII filed its siting application with the County for the proposed Expansion consisting of a) the exhumation of an old fill area and disposal of the exhumed waste in a composite-lined cell, b) development of a 61-acre waste disposal area above and adjoining the existing 88-acre waste footprint, and c) development of a 179-acre waste disposal area east of Union Ditch No. 1. Pet. at 1-2. The application indicates that the Landfill Expansion is anticipated to receive approximately 1,800 tons per day of solid waste from the service area, and will receive no more than 500,000 tons per year. C0000209. The Expansion's capacity is expected to be 23.2 million tons, with a disposal life of 46 years. *Id.*

### **Traffic Pattern and Traffic Flow Study**

As a part of its application, WMII conducted a Traffic Impact Analysis (traffic analysis), pursuant to the Agreement. C0000749-963. The traffic analysis was based on "field reconnaissance of the [f]acility and adjacent roads" and manual and mechanical traffic counts. C0000753. David Miller, a licensed traffic engineer and Chief Executive Officer of Metro Transportation Group, prepared the traffic analysis, dated November 2009, included in WMII's application for siting approval. C0000749-963. Mr. Miller's was the only sworn expert testimony regarding Criterion VI, testifying that "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." C0007263; 415 ILCS 5/39.2(a)(vi) (2012). Other hearing participants offered comments on agricultural traffic and Somonauk Road, as discussed in the next section.

Mr. Miller testified that the traffic analysis consists of a review of collected information on surrounding roadways including roadway characteristics (e.g., number of lanes, traffic controls, speed limits and jurisdiction) and observed traffic operations during peak and off-peak times. C0007257. Mr. Miller's analysis also included daily and peak-hour traffic counts (manual and mechanical) on surrounding roadways and intersections, and evaluation of capacity and level of service for surrounding roadways and intersections. *Id.* The traffic analysis includes three sets of data regarding the traffic pattern for the Expansion. First, the existing traffic is analyzed. Second, the traffic analysis estimates traffic increases for the area due to growth up to the year 2013<sup>5</sup> *without* the Expansion traffic. Third, the traffic analysis adds the Expansion traffic to the 2013 data. In his testimony, Mr. Miller compared the three sets of data, stating,

First we looked at the collected information on the surrounding roadways, their roadway characteristics and traffic controls, and observed the traffic operations during peak and off peak times. . . . We estimated the amount of traffic that would be generated by the site for the number of trucks and other vehicles using the site, and assigned the 2013 traffic and the facility traffic to the surrounding roadways and intersections. We again evaluated the capacity and level of service for the surrounding roadway intersections for the 2013 traffic with and without the facility traffic. C0007257.

---

<sup>5</sup> The traffic analysis used 2013 as the year of comparison for traffic because 2013 was proposed as the date when the Expansion would open. C0007259-60.

Capacity and level of service (LOS) for the surrounding roadway intersections were evaluated based on the existing traffic and the projected traffic levels generated by the Expansion. *Id.* The traffic analysis explains LOS as a scale

from LOS 'A' to LOS 'F' based on the percent of time that vehicles are delayed while traveling in platoons due to the inability to pass. C0000898.

\*\*\*

LOS 'A' is the best level of operation for a roadway segment and LOS 'F' is the worst. LOS 'A' represents free flow conditions where the general level of delay experienced by motorists is excellent. LOS 'D' is accepted by IDOT as the minimum desirable level of service.<sup>6</sup> C0000758.

Mr. Miller testified that the route for transfer trailers going to and from the Expansion will require arrival via Interstate 88, exit to the north at Peace Road, travel north to Illinois Route 38, travel east to Somonauk Road, and travel south on Somonauk Road to the site entrance. The return trip would be the same, only in reverse. C0007257-64. Mr. Miller explained that transfer trailer operators deviating from the designated route can lose disposal privileges. C0007264-65.

Mr. Miller testified that the route to and from the Expansion will have an estimated total of 474 trips per day, or 237 trips in and 237 trips out. Of this total, 354 trips involve waste vehicles of different types, and 120 trips involve employees, vendors, and visitors. This total includes both existing trips and new trips. The existing landfill has a total of 178 trips per day. Therefore, the new traffic is 296 trips per day, or 148 vehicles per day, including waste vehicles and employee, vendors and visitors. C0007259, 7269.

In his testimony, Mr. Miller outlined improvements agreed to by WMII as part of the Expansion. C0007263. In addition to the upgrade of Somonauk Road to a Class II truck route, Mr. Miller recommended the addition of a separate, southbound, left turn lane off of Somonauk Road into the Expansion entrance. *Id.* Mr. Miller explained that while the turn lane was not warranted based on IDOT criteria, WMII decided to add the turn lane to allow trucks, especially transfer trailers, "to be out of the way of the southbound through traffic on Somonauk Road." C0007263.

Mr. Miller testified that Expansion peak hours, estimated to be 9:00 a.m. to 10:00 a.m., and 1:00 p.m. to 2:00 p.m., do not coincide with street peak hours on the surrounding roadways. C0007259. Expansion-generated traffic and 2013 traffic without the Expansion were modeled for the existing roadways. C0007260-61. This modeled traffic data does not result in a decrease in LOS to the evaluated roadway segments or intersections. *Id.* Specifically, with regard to

---

<sup>6</sup> LOS is based on "percent time-spent-following (seconds)" and percent time-spent-following is defined at the "average percent of time that all vehicles are delayed while traveling in platoons due to the inability to pass." C0000898.

Somonauk Road, Mr. Miller testified that the LOS will retain the highest level of LOS ‘A’ after the Expansion.<sup>7</sup> C0007260-61.

Mr. Miller explained that the relevant portion of Somonauk Road operated at 14 percent capacity at the time of the traffic analysis. Somonauk Road, at the existing facility entrance, was also evaluated at peak traffic hours. The 2013 traffic levels increase the capacity of Somonauk Road to 16 percent. Mr. Miller explained that post-Expansion traffic levels will result in Somonauk Road operating at 17 percent of capacity. C0007260-61. The traffic study also evaluated the intersection of the existing facility entrance and Somonauk Road. C0007259. The study found that at peak hours, the existing facility entrance/exit was operating at LOS ‘B’.

Mr. Miller also testified that a gap study was performed for three movements at the site entrance, including vehicles leaving the site turning north onto Somonauk Road, vehicles leaving the site turning south onto Somonauk Road, and vehicles traveling south on Somonauk Road into the site entrance with a left hand turn. “A gap study is a study that determines the frequency and duration of the breaks in the through traffic of a given roadway,” Mr. Miller testified, “to ensure that the vehicle can safely get on and off of that road.” C0007261. The “gap” refers to the time distance between vehicles as they pass a fixed point in the roadway. *Id.* Mr. Miller said that the traffic analysis found that adequate gaps are available to accommodate all vehicle movements for the Expansion at the Somonauk Road entrance. C0007261-62.

Mr. Miller concluded that the traffic patterns to and from the Expansion have been so designed as to minimize the impact on existing traffic flows. C0007263.

### **County Siting Process**

Even before the County hearing, some DeKalb County officials submitted comments to the County Board. For example, the DeKalb County Highway Department submitted a letter dated February 5, 2010 stating, in reference to the traffic analysis, “[t]he study is comprehensive and complete and this Department concurs with the conclusions presented. At this time we feel no changes are necessary.” C0007884.

A February 17, 2010 letter from the DeKalb County Sheriff’s Office cites an ongoing problem with “‘transfer trailers’ travelling through DeKalb County on Rt. 30 enroute [sic] to the Green River Industrial Park in rural Lee County.” C0007885. The sheriff elaborated on problems concerning debris blowing from the trucks and erratic and intimidating driving by truck drivers. *Id.* The sheriff proposed, as a solution to the problems, requiring transfer trailers to follow expressways and the tollway system as much as possible. *Id.* The sheriff also recommended “the construction of access ramps for I-88 at, or near the Waste Management facility” and an acceleration lane for northbound trucks leaving the WMII facility and traveling north on Somonauk Road. C0007885-86. The letter acknowledges that “funding for this improvement is not available.” *Id.*

---

<sup>7</sup> In contrast, the traffic analysis found Illinois Route 38 and Peace Road both operate at a LOS of ‘C’ with capacities of 37 and 40 percent, respectively. C0000759. Both Illinois Route 38 and Peace Road move to a LOS of ‘D’ when 2013 traffic is estimated. C0000774.

At the County hearing, the hearing officer provided an opportunity for attendees to question Mr. Miller. Mr. R. Steimel, a local resident, questioned Mr. Miller about the traffic analysis. C0007268-71. Mr. R. Steimel stated, “4 inches of blacktop was put on the road, a little gravel was put on the shoulder. We [have] very steep shoulders there” while questioning Mr. Miller about the shoulders on Somonauk Road. C0007271. Mr. R. Steimel asked Mr. Miller what could be done regarding the steep shoulder, which resulted from the Class II truck route upgrade, to address problems with agricultural equipment meeting semis on Somonauk Road. *Id.* Mr. Miller replied,

to upgrade the shoulders. That is a DeKalb County Road. They just did the upgrade last year. I guess there could be some discussion with the County regarding what can be done with the shoulders. It’s unfortunate, they just did upgrade that road, that that wasn’t taken into account. But I’m not familiar with what all went into that other than they did upgrade that to a Class [II] route. *Id.*

At the close of the local siting approval hearing, the hearing officer directed the participants to file any briefs by April 2, 2010, and public comments by April 12, 2010. C0007514. WMII and members of the public timely filed briefs after the local siting approval hearings had concluded. In its filing, WMII listed several “findings of fact” with regard to the traffic study and the Expansion’s effect on traffic patterns. Among the findings listed by WMII:

- The new traffic is 296 trips per day, or 148 vehicles per day, including waste vehicles and employees, vendors, and visitors. C0007792.
- Expansion peak hours do not coincide with street peak hours on the surrounding roadways. *Id.*
- Expansion generated traffic did not cause a decrease in LOS to the evaluated roadway segments or intersections. C0007793.
- For vehicles leaving the site, and vehicles traveling south on Somonauk Road turning into the site entrance, adequate gaps are available to accommodate all vehicle movements for the Expansion. *Id.*
- The available sight distance exceeds the requirement for vehicles exiting the site and looking either north or south to enter Somonauk Road. *Id.*

WMII’s brief before the County contended that these findings along with the recommended Somonauk Road upgrades (making it a Class II truck route from Illinois Route 38 south to the Expansion entrance) led WMII to conclude that “the traffic patterns to or from the facility have been designed to minimize impact on existing traffic flows.” C0007793, citing 415 ILCS 5/39.2(a)(vi) (2012).

Mac A. McIntyre filed a brief<sup>8</sup> as, “Objector and member of the citizen group ‘Stop the DeKalb County Mega-Dump.’” C0007796-805. Regarding the subject matter of Condition 32, Mr. McIntyre stated that Mr. Miller “admitted his report failed to account for farm traffic.” C0007805. On April 7, 2010, Dan Kenney submitted a brief as “[t]he chair of the citizens’ group Stop the DeKalb Mega-Dump,” and on his own behalf. C0007806-14. Similar to Mr. McIntyre,

---

<sup>8</sup> Mr. McIntyre’s brief was not date stamped in the record.

Mr. Kenney stated that, “having never lived in DeKalb County,” Mr. Miller “failed to include farm traffic into his [traffic] projections.” C0007811. Calvin Clay Campbell filed an objection to the siting application on April 12, 2010. C0007818-20. Mr. Campbell also stated that the traffic study conducted by Mr. Miller for WMII did not include farm traffic, which “renders his study incomplete as it pertains to whether ‘the traffic patterns to and from the facility [are] so designed as to minimize the impact on existing traffic flows.’” C0007820.

Also on April 12, 2010, the County received the DeKalb County Staff Report (Staff Report) authored by Patrick Engineering and Renee Cipriano (an attorney representing the DeKalb County Board). C0007821-83. With regard to the Expansion’s impact on traffic patterns, the Staff Report cites to the traffic study finding that “[t]he difference between the 2013 build and no-build conditions equates to only 1% of the available roadway capacity” at the facility entrance on Somonauk Road. C0007867. Further, the Staff Report states,

[t]he study indicates that due to the LOS of Somonauk Road, that there should be minimal conflict with farm traffic. The accident history along Somonauk Road, of which there is no reportable accidents in the vicinity of the existing facility, already takes into account the fact that the existing facility traffic currently does not interfere with agricultural traffic. C0007867.

The Staff Report also states that Expansion traffic “will not impact the current flow of agricultural traffic due to the additional vehicles being generated by the proposed facility.” C0008325. The Staff Report concludes by recommending two conditions under Criterion VI. C0007870. The first of these requires WMII to inform all waste haulers of the designated route to and from the Expansion. *Id.* The second mandates covering of waste hauling vehicles. *Id.*

On May 10, 2010, the County Board voted to approve WMII’s siting application, subject to conditions. *See* Resolution, C0008537-8548. With regard to Criterion VI, the County added a condition requiring WMII to notify haulers of the designated truck routes and another requiring it to monitor adequacy of tarps covering waste, as recommended in the Staff Report. Resolution, Cond. 22-28, C0008546. Finally, the County added Condition 32, which required the contested upgrades along Somonauk Road north of the Expansion entrance. C0008547.

### **Resolution #2010-31 & Condition 32**

As mentioned above, the County Board approved WMII’s siting application, subject to conditions, with the Resolution. *See* Resolution, C0008537-48. The Resolution found that all of the siting criteria had been met. But, it also added 31 specific conditions to various criteria, as well as a “generally applicable” requirement that WMII ask the Illinois Environmental Protection Agency (IEPA) to include the County conditions in any IEPA-issued permits. Resolution, Cond. 31, C0008547.

As to Criterion VI regarding traffic patterns, the County added a condition requiring WMII to notify haulers of the designated truck routes and another requiring it to monitor adequacy of tarps covering waste. Resolution at 10, C0008546; *see also, supra* at 7. Later in the



Resolution, the County added the condition being challenged in this case, “criterion 6: additional condition” numbered as condition 32 (Condition 32). Resolution at 11, C0008547. Condition 32 states, in its entirety that:

The road shoulder width shall be increased to five (5) feet on either side of Somonauk Road from the I-88 overpass to Route 38 and shall be built to the standard slope for an aggregate shoulder, which is 6%. In addition, the slope of the embankments from the shoulder edge to the toe of slope shall be standard slope and fall within approved IDOT standards. In no case shall the embankment slope be steeper than 1 vertical to 3 horizontal (1V:3H). WMII shall be responsible for funding and maintaining the shoulder improvements and the slope improvements. Resolution at 11, C0008547.

### **WMII’s Petition for Review**

As stated, above, WMII’s petition focuses on “‘Additional Condition’ No. 32 appearing in *Resolution #R2010-31 Approving the Request of Waste Management of Illinois, Inc. For Site Location of the DeKalb County Landfill Expansion.*” Pet. at 1. The petition simply states that WMII “objects to the inclusion of the ‘Additional Condition’ to Criterion 6” and WMII

[c]ontests and objects to the County Board’s inclusion of the ‘Additional Condition’ to Criteria 6 because it is neither reasonable nor necessary to accomplish the purposes of Section 39.2 of the Act, and is inconsistent with the regulations promulgated by this Board. In addition, the ‘Additional Condition’ to Criterion 6 is not supported by the record and has not been demonstrated to be either technically practicable or economically reasonable. Pet. at 2-3.

The petition requests that the Board enter an order: setting a hearing on the additional condition to Criterion VI; finding the additional condition contrary to fact and law, and therefore null and void; “directing the County Board to delete said condition from the Site Location Approval;” and providing other relief. Pet. at 3.

### **Pollution Control Board Hearing**

The Board held a hearing on WMII’s petition on September 17, 2013 in Sycamore, DeKalb County. The hearing began with an opening statement by attorney Donald Moran representing WMII. Tr. at 5-8. Mr. Moran briefly outlined Condition 32 before arguing that the condition is unreasonable and unnecessary. Mr. Moran characterized Condition 32 as “a condition imposed to address an issue presumably related to the movement of farm vehicles on Somonauk Road and not in any way related to any of the landfill vehicles that would be coming to and from the proposed expansion.” Tr. at 7.

Attorney Stephanie Klein, representing the County, also made an opening statement followed by an examination of the County’s witness, Nathan Schwartz, the county engineer with the DeKalb County Highway Department. Tr. at 8-10. Ms. Klein stated that “the increased traffic on [Somonauk Road] could present problems for the [sic] farm vehicles and that widening

of the road might help to address the difficulties that could be encountered from that increased traffic.” Tr. at 8. Testifying about the stretch of Somonauk Road that is subject to Condition 32, Mr. Schwartz said,

[t]he shoulders are all at least 4 feet wide and approximately half of that section [of Somonauk Road] they are considerably wider, anywhere from 6 feet to upwards of [sic] 10 feet wide and the section that is 4 feet wide is an area of concern . . . because typically when traffic drives down the road, farm vehicles and any heavy trucks, as they drive off the edge of the road as most every vehicle does at some point or another tends to kick the gravel off to the side of the road. Tr. at 11.

Mr. Schwartz also testified that “the County typically likes to see a little wider shoulders,” when referring to the current shoulders on Somonauk Road. Tr. at 11. As to the cost of implementing the shoulder improvements on Somonauk Road, Mr. Schwartz testified that it would be approximately \$50,000 or \$60,000 depending upon the type of shoulder installed. *Id.* at 12. An aggregate rock shoulder, Mr. Schwartz explained, would result in the first cost figure, whereas a “safety shoulder” with the first three or four feet of the shoulder paved, would result in the \$60,000 figure. *Id.*

During Mr. Moran’s cross-examination, Mr. Schwartz testified that he understood Condition 32 as requiring that “the shoulders should be widened to 5 feet, not an additional 5 feet.” Tr. at 13. Mr. Schwartz indicated that the shoulder widening work would be done on property owned by individuals along Somonauk Road and that he did not know if a right-of-way existed to encompass the widening of the shoulders. *Id.* at 15, 18. Mr. Schwartz testified that he did not have a good understanding of the purpose of Condition 32 and that, “based on what [he had] read there is not very good documentation for why the condition was put in place.” *Id.* at 21. Mr. Schwartz indicated that while farm traffic was the example given for needing the extra shoulder width, “any vehicle that drifts off the road, which they all do from time to time, is going to dislodge or displace some of . . . that gravel onto shoulders and any larger vehicles or truck traffic is going to do that in an expedient manner.” *Id.* at 22-23. Mr. Moran and Mr. Schwartz had the following exchange to close the cross-examination:

Mr. Moran: would it be fair to say that all of the vehicles that will be traveling to and from the proposed expansion would have dimensions that would not be as wide as the farm vehicles that were identified during the course of the hearing?

Mr. Schwartz: I think that is a fair assumption because farm vehicles . . . can be wider and most other vehicles need a special permit to drive on public roads if they are going to be over the designated length, width, and height.

\*\*\*

Mr. Schwartz: If everybody drove between the yellow and the white line we wouldn’t even need shoulders. Tr. at 26-27.

## **ARGUMENTS**

### **WMII's Memorandum in Support of Appeal of Condition 32**

WMII argues that “Special Condition 32 is not reasonable and necessary to accomplish the purposes of Section 39.2 of the Act. In addition, Special Condition 32 is not supported by the record.” Memo. at 1. WMII argues that Criterion VI is limited to designing traffic patterns to minimize impact, rather than requiring “the rebuilding of roadways or infrastructure, or to address[ing] the risk of driver negligence.” *Id.* at 1-2. WMII explains:

even if Special Condition 32 were theoretically relevant to a showing that criterion (vi) were satisfied, the record contains no evidence that (a) the design of the traffic patterns for the expansion will cause anything but a minimal impact on existing traffic flows, (b) the current shoulders and embankments will pose a safety hazard to any vehicle, regardless of the amount or type of traffic, or (c) even if there were a safety problem, Special Condition 32 would solve it. What the record does demonstrate is that the fact of oversized farm vehicles traveling on Somonauk Road during Spring planting and Fall harvest seasons long pre-dates the proposed expansion. Memo. at 2

WMII asserts that Condition 32 is designed to address the impact of farm vehicles on Somonauk Road rather than the impact of the Expansion traffic on that road. Memo. at 2. WMII recalls Mr. Miller’s testimony before the County that the number of vehicles traveling on Somonauk Road will only increase one percent as a result of the Expansion. *Id.* at 4. WMII also cites portions of Mr. Schwartz’s testimony at the Board hearing indicating that Condition 32 is not supported by the record. WMII argues that Mr. Schwartz’s testimony explained that any vehicle, not only transfer trailers or other Expansion traffic, could cause a severe drop-off with an aggregate shoulder. Memo. at 5. WMII points out Mr. Schwartz’s hearing testimony that he was unaware of an unusual number of traffic accidents along Somonauk Road and Mr. Schwartz’s opinion that the Expansion traffic would not require widening of the shoulder on Somonauk Road. *Id.*, citing Tr. at 24-27.

WMII cites Veolia ES Zion Landfill, Inc. v. City Council of the City of Zion, PCB 11-10 (April 2, 2011) for the applicable standard of review in this case: “[w]hen the issue is whether a condition is necessary to accomplish the purpose of a Section 39.2(a) siting criterion, the Board must determine whether the local government’s decision to impose the condition is against the manifest weight of the evidence.” Memo. at 6. WMII argues that the concern the County intended to address with Condition 32 “has nothing to do with the design of traffic patterns for vehicles traveling to and from the expansion.” *Id.* at 7. WMII characterizes the County’s concern as created by farm vehicles, not traffic to and from the Expansion. *Id.* WMII states that regardless of the shoulder width on Somonauk Road, farm equipment will require traffic to slow down in the area of the Expansion entrance and the traffic patterns to and from the Expansion entrance will not be affected. *Id.* at 8.

WMII concludes with three points. First, WMII states, “there is no evidence that traffic patterns proposed for the expansion, as opposed to existing farm vehicle traffic, will pose an

additional safety problem on Somonauk Road.” Memo. at 8. Second, WMII argues that there is no support in the record showing that the precise shoulder width and slope mandated by Condition 32 will minimize any safety concern caused by farm vehicles meeting other vehicles on Somonauk Road. *Id.* at 8-9. WMII states that the “shoulder width (5 feet) and embankment slope (6%, no steeper than 1 vertical to 3 horizontal) specified in Condition 32 are arbitrary requirements.” *Id.* at 10. In further support of this argument, WMII states that half of the portion of Somonauk Road affected by Condition 32 already has five-foot shoulders while the remainder of the affected portion has four-foot shoulders. *Id.* Third, WMII states that Condition 32 “is unreasonable in light of the lengths required to obtain the right-of-way necessary to widen the shoulders and rebuild the embankments.” *Id.* at 11.

### **DeKalb County’s Response Brief**

The County argues “[a]ny time a vehicle, including a farm vehicle, pulls off the road and onto the shoulder, it dislodges or displaces some of the gravel. A large vehicle, such as a farm vehicle, will do this more than a smaller vehicle.” Resp. at 1. The County states that the displaced gravel results in a severe drop-off at the edge of the pavement which is a safety concern. *Id.* at 1-2. The County cites a traffic analysis conducted by Patrick Engineering<sup>9</sup> that found the operating capacity of Somonauk Road will increase by three percent with Expansion traffic from levels present at the time of the study.<sup>10</sup> *Id.* at 2. The County argues that the three percent increase in traffic will cause farm equipment to pull off the road and onto the shoulders more frequently. *Id.* at 3. According to the County, this increase is “not due to driver negligence; it is due to the fact that the farm vehicles are approximately 15 feet wide and the lanes on Somonauk Road are approximately 12 feet wide.” *Id.*

The County argues that implementing Condition 32 would only cost approximately \$50,000 and points out that according to Mr. Schwartz, “the amount of additional land which would need to be acquired would be very minimal and may already be available by means of a prescriptive easement.” Resp. at 4. The County argues that Condition 32 is both reasonable and necessary and states that WMII’s argument “offers a view of the evidence that does not take into account the interaction of increased traffic with the agricultural traffic and what that will mean because of the narrowness of Somonauk Road.” *Id.*

### **WMII’s Reply Brief**

WMII states that Criterion VI does not require the applicant to minimize the impact of farm equipment on existing traffic flows and “does not require an applicant to design facility

---

<sup>9</sup> The County refers to the Patrick Engineering traffic analysis at the beginning of the Staff Report, dated April 27, 2010, stating, “Patrick Engineering has utilized its internal geotechnical engineers, chemical engineer, traffic engineers, waste planning expert, stormwater and civil engineers, and an outside property value expert to assist with the review” of WMII’s application. C0008279; *see also supra* at 8.

<sup>10</sup> This three percent increase is based on traffic levels at the time of analysis (14% capacity) compared to traffic levels in 2013 with the Expansion traffic included (17% capacity). *See supra* at 6.

traffic patterns to minimize the impact of safety hazards caused by existing traffic flows.” Reply at 1-2. WMII argues that the hazards caused by slow-moving, oversized farm vehicles are existing traffic hazards on Somonauk Road and not the type of hazards that Criterion VI was designed to address. *Id.* at 2.

To address the County’s concerns about farm equipment requiring vehicles to pull onto the shoulder and displacing gravel, WMII argues that “the County Board acknowledges that this is an existing issue and will continue to be one regardless of whether the landfill expands.” Reply at 4. WMII reminds that the minimal, one percent increase in traffic on Somonauk Road as a result of the Expansion, has no effect on the LOS and “demonstrates that WMII has ‘minimized’ the effect of its traffic patterns on existing traffic flows.” *Id.* at 5.

WMII argues that Condition 32 lacks support in the record:

there is no evidence indicating the number, type, frequency and time of farm vehicles traveling on Somonauk Road between the I-88 overpass and Route 38. There is no evidence of any accidents or incidents involving farm vehicles on Somonauk Road, including any events where farm vehicles pulled off the road and moved over or onto the shoulder. Reply at 6.

Even if WMII concedes an impact to existing traffic patterns, it argues there is nothing in the record that supports the County’s position that the specific parameters of Condition 32 would mitigate the impact. *Id.* WMII concludes that the traffic issue the County attempts to address with Condition 32 predates the proposed Expansion and therefore is not proper under Criterion VI. *Id.* at 8.

### **STATUTORY FRAMEWORK**

Before the IEPA can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the facility from the local government (*e.g.*, the county board if the facility is located in an unincorporated area) pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (2012)). *See* 415 ILCS 5/39(c) (2012). Section 39.2 of the Act governs pollution control facility siting applications and the processing of those applications by local authorities. *See* 415 ILCS 5/39.2 (2012). Specifically, Section 39.2 addresses, among other things, the proof required of siting applicants, public hearings before the local siting authority, the opportunity for public comment, and the form of the siting decision. For example, Section 39.2(a) requires the applicant to submit to the local siting authority sufficient details describing the proposed facility to demonstrate compliance with each of the nine criteria of Section 39.2(a). *See* 415 ILCS 5/39.2(a) (2012); *see also* Town & Country Util., Inc. v. PCB, 225 Ill. 2d 103, 866 N.E.2d 416 (2007) (“a negative decision as to one of the criteria is sufficient to defeat an application for site approval of the pollution control facility”).

For purposes of this case, only Criterion VI (Section 39.2(a)(vi) of the Act) is at issue:

- (a) The county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, shall approve or

disapprove the request for local siting approval for each pollution control facility which is subject to such review. An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets the following criteria:

\*\*\*

- (vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows; 415 ILCS 5/39.2(a)(vi) (2012).

The local siting authority must hold at least one public hearing and allow any person to file written public comment. *See* 415 ILCS 5/39.2(c), (d) (2012). The local siting authority's decision must be "in writing, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section." 415 ILCS 5/39.2(e) (2012). Pursuant to Section 39.2(e), "[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) (2012).

If the local government denies siting approval or grants siting approval with conditions, "the applicant may . . . petition for a hearing before the Board to contest the decision of the county board." 415 ILCS 5/40.1(a) (2012). Section 40.1(a) of the Act also provides, in pertinent part:

In making its orders and determinations under this Section the Board shall include in its consideration the written decision and reasons for the decision of the county board or the governing body of the municipality [and] the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2. 415 ILCS 5/40.1(a) (2012).

Petitioner has the burden of proof on appeal. *See* 415 ILCS 5/40.1(a) (2012). Hearings before the Board are based exclusively on the record before the County. *Id.*

### **STANDARD OF REVIEW**

In reviewing a local siting authority's imposition of a condition on siting approval, the Board must determine whether the condition is reasonable and necessary to accomplish the purposes of Section 39.2 of the Act. *See Peoria Disposal Co. v. Peoria County Board*, PCB 06-184, slip op. at 6 (Dec. 7, 2006); *see also* 415 ILCS 5/39.2(e) (2012). Those purposes of Section 39.2 include the siting criteria of Section 39.2(a). *See County of Lake v. PCB*, 120 Ill. App. 3d 89, 98-99, 457 N.E.2d 1309, 1315 (2nd Dist. 1983). "When the issue is whether a condition is necessary to accomplish the purpose of a Section 39.2(a) siting criterion, the Board must determine whether the local government's decision to impose the condition is against the manifest weight of the evidence." *Waste Management of Illinois, Inc. v. Will County Board*, PCB 99-141, slip op. at 3 (Sept. 9, 1999), citing *County of Lake*, 120 Ill. App. 3d at 101-102,

457 N.E.2d at 1317-1318, *aff'd sub nom. Will County Board v. PCB*, 319 Ill. App. 3d 545, 747 N.E.2d 5 (3rd Dist. 2001).

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. *See 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 cannot reweigh the evidence, but rather must determine whether the local siting authority's decision is against the manifest weight of the evidence. *Id.*

### **BOARD ANALYSIS**

The parties dispute whether Condition 32 is "reasonable and necessary to accomplish the purposes" of Criterion VI of Section 39.2(a) of the Act (415 ILCS 5/39.2(a)(vi) (2012)). 415 ILCS 5/39.2(e) (2012). As discussed below, the Board finds no evidence in the record that Condition 32 is necessary to minimize the effect of traffic patterns to and from the Expansion on existing traffic flows. The Board, instead, finds that WMII's traffic analysis accounts for the relevant factors in minimizing that effect on existing traffic patterns. Because Condition 32 is contrary to the manifest weight of the evidence, the Board strikes the condition from the County's siting approval.

### **Condition 32**

Condition 32 applies only to the portion of Somonauk Road where both the existing WMII facility entrance exists and the proposed Expansion entrance is located. Condition 32 states:

The road shoulder width shall be increased to five (5) feet on either side of Somonauk Road from the I-88 overpass to Route 38 and shall be built to the standard slope for an aggregate shoulder, which is 6%. In addition, the slope of the embankments from the shoulder edge to the toe of slope shall be standard slope and fall within approved IDOT standards. In no case shall the embankment slope be steeper than 1 vertical to 3 horizontal (1V:3H). WMII shall be responsible for funding and maintaining the shoulder improvements and the slope improvements. Resolution at 11, C0008547.

Therefore, evidence in the record regarding traffic patterns on Somonauk Road is the relevant evidence for the Board's determination. I-88 runs adjacent to the north side of the WMII facility. C0000782. The entrance to the pre-Expansion landfill is off of Somonauk Road approximately 420 feet north of the Expansion entrance. C0000771, C0007263. Traffic traveling the route mandated by the Agreement must first pass through the portion of Somonauk Road subject to Condition 32 before passing over I-88 and then passing the pre-Expansion facility entrance before entering the Expansion. *See supra* at 3.

### **Somonauk Road Improvements**

The portion of Somonauk Road between Illinois Route 38 and the pre-Expansion facility entrance was upgraded to Class II truck route in 2009. C0000754. Additionally, the portions of Somonauk Road between the pre-Expansion facility entrance, south to just beyond the Expansion entrance, will be upgraded to a Class II truck route by the County pursuant to the Agreement. C0000754, C0001361. The change to a Class II truck route is described as increasing the road's weight limit to 80,000 pounds. There is no information indicating that the upgrade to Class II involves widening the roadway itself or the roadway shoulders.

With regard to traffic patterns on Somonauk Road, there is ample evidence in the record that Somonauk Road operates at a level of service, or LOS, of 'A' (*i.e.*, the best level of service) and will continue to do so after the Expansion. C0000759, C0000774, C0007260-61, *see supra* at 4. Mr. Miller testified that the capacity of Somonauk Road was 14 percent before the Expansion and when 2013 traffic was estimated it increases to 16 percent. C0007260-61. He estimated that it could increase to 17 percent as a result of the Expansion. C0007261. At the Board hearing, Mr. Schwartz testified that "the shoulders [of Somonauk Road] are all at least 4 feet wide and approximately half of [the section between I-88 north to Illinois Route 38<sup>11</sup>] are considerably wider, anywhere from 6 feet to upwards to [sic] 10 feet wide." Tr. at 11.

In addition to the County-funded upgrades to Somonauk Road, WMII also agreed to add a left hand turn lane to accommodate traffic off of southbound Somonauk Road into the Expansion entrance as a part of the siting application. C0000773, C0007263. Mr. Miller testified that this improvement was designed to allow transfer trailers turning into the Expansion "to be out of the way of the southbound through traffic on Somonauk Road." C0007263. He also testified that WMII agreed to the upgrade despite it being unwarranted based "on the volumes of traffic that are on Somonauk Road." *Id.*

The record, therefore, indicates that Somonauk Road will be improved to minimize the effect of Expansion traffic on existing traffic flows. Further, as described below, information in the record cited in support of the County's position that Condition 32 is necessary to accomplish the purpose of Criterion VI instead suggests that there is an occasional traffic flow problem caused by agricultural equipment, not related to the Expansion.

### **Pre-Expansion Traffic Pattern**

The record shows that Somonauk Road serves as a route for agricultural equipment in what is an agricultural section of DeKalb County. C0007344; Tr. at 7. A number of persons cross-examined Mr. Miller at the County hearing and filed public comments with the County expressing a concern for agricultural equipment traveling on Somonauk Road. *See, e.g.*, C0007270, C0007329, C0007343, C0007930, C0008012, C0008046. At the May 10, 2010 County Board Meeting, County Board member Larry Anderson commented that

---

<sup>11</sup> This is the same section of Somonauk Road to which Condition 32 applies.



[m]any farmers use Somonauk Road to move farm equipment. . . . I found the road shoulders were too narrow, too steep and uneven, especially the uneven part, to accommodate wide farm equipment using the shoulder while meeting traffic. With the increased truck traffic that will come, if this resolution is passed, upgrading the road shoulder is a cheap way to avoid accidents on this road in the future. C0008513.

The record includes no further County Board discussion on Condition 32 during the May 10, 2010 meeting or otherwise.

During the County hearing, Mr. Miller testified that, while agricultural equipment traffic is different from other traffic, the agricultural traffic, along with semi-trucks and other types of vehicles, are taken into account in the traffic analysis from a volume standpoint. C0007343-44. He also stated that the traffic analysis considered farm equipment “in a general way . . . from a capacity standpoint, from a sight distance standpoint, from a gap standpoint and in my opinion that [] was adequate.” C0007329. Notably, the traffic analysis took place during the months of April and May. C0000757. According to IDOT data, April and May “represent above average monthly conditions” for traffic volumes. *Id.* Mr. R. Steimel, who questioned Mr. Miller at the County hearing, agreed that April and May are two months with the heaviest agricultural equipment traffic. C0007329. Therefore, the Board finds that the traffic analysis on which Mr. Miller relied in his testimony adequately accounted for agricultural traffic for purposes of Criterion VI.

Throughout the record, agricultural equipment, not the Expansion, is cited as the justification for a wider shoulder. The County Board member who added Condition 32 to the Resolution stated clearly that the purpose was to “accommodate wide farm equipment” and “avoid accidents on this road in the future.” C0008513. However, the County’s Staff Report states, “The accident history along Somonauk Road, of which there is no reportable accidents in the vicinity of the existing facility, already takes into account the fact that the existing facility traffic currently does not interfere with agricultural traffic.” C0008323.

At the County hearing, during questioning by Mr. R. Steimel on safety on Somonauk Road, Mr. Miller said that the shoulders on Somonauk Road could be upgraded to address issues created when agricultural equipment encounters traffic on Somonauk Road. C0007271. Mr. Miller was responding to a concern, expressed by Mr. R. Steimel, that the shoulder was too steep as a result of the Class II truck route upgrade. *Id.* Mr. Miller also testified that other vehicles have to deal with the shoulders and the circumstance of wide agricultural equipment. *Id.* Mr. Miller testified that the Class II truck route upgrade did not address the problem presented by wide agricultural equipment. *Id.*

Mr. Schwartz testified that as vehicles drive off of the road, they tend to kick the gravel off of the shoulder, “[a]s that gravel [is] pushed off . . . you get a drop-off at the edge of the pavement.” Tr. at 11. Upon cross-examination, Mr. Schwartz testified that “larger vehicles or truck traffic is going to do that in an expedient manner,” referring to kicking gravel off the shoulder. Tr. at 23. He did not testify that the gravel shoulders result in accidents along Somonauk Road, instead indicating that he was unaware of the number of accidents on the

relevant stretch of Somonauk Road. Tr. at 25. When asked if he was aware of incidents on Somonauk Road, such as a vehicle going off the road, that would have been prevented with a five foot shoulder, Mr. Schwartz testified that he had not researched that information. *Id.*

Finally, Mr. Miller testified that the traffic analysis accounted for traffic accidents along the mandated transfer trailer route. C0007265. The traffic analysis revealed that traffic accidents were not a problem on Somonauk Road, especially at the existing facility entrance, where there were no accidents reported. *Id.* Therefore, the Board concludes that avoiding traffic accidents, of which there is no evidence in the record, is not a justification for Condition 32.

Evidence presented by the County in support of Condition 32 supports a conclusion that agricultural traffic is a problem on Somonauk Road with or without Expansion traffic. Nothing in the record enumerates agricultural equipment traffic on Somonauk Road or indicates that agricultural traffic will increase on Somonauk Road as a result of the Expansion. None of Mr. Schwartz's testimony before the Board tied the need for additional shoulder width on Somonauk Road to changes in traffic occurring as a result of the Expansion.

Further, the February 5, 2010 letter by the DeKalb County Highway Department (Mr. Schwartz's employer) to the DeKalb County Administrator states that the traffic analysis "is comprehensive and complete and this Department concurs with the conclusions presented. At this time we feel no changes are necessary." C0007884. The traffic analysis the highway department letter refers to is the same one Mr. Miller testified to at the County hearing. That traffic analysis, prepared before Condition 32 was imposed, concludes that WMII's siting application meets Criteria VI. C0000779.

An increase in traffic often is associated with any new or expanded landfill. Agricultural equipment forcing vehicles of all kinds to slow down and use the shoulder is a traffic condition on Somonauk Road that exists regardless of the Expansion. There is no evidence in the record, however, that the increased transfer trailers or other new traffic that will occur with the Expansion will affect the agricultural equipment traffic on Somonauk Road in a new or different way from pre-Expansion traffic conditions. As set out in Fairview Area Citizens Taskforce v. PCB, 198 Ill.App.3d 541, 554, 555 N.E.2d 1178, 1186 (3rd Dist. 1990), it is impossible to eliminate all traffic problems associated with a landfill siting. The Board also finds the court's opinion in Tate v. PCB, 188 Ill. App. 3d 994, 1024, 544 N.E.2d 1176, 1196 (4th Dist. 1989) instructive. In Tate, the court stated that the "existing flow of traffic into the existing facility is part of the *existing* traffic flow." *Id.* (emphasis in original). The record indicates that agricultural equipment has used Somonauk Road along with the landfill traffic for a number of years. A landfill expansion siting review is not the appropriate avenue for addressing traffic issues associated with the existing facility.

While the Board may not replace the County's judgment on this issue with its own, it is just as clear that the Board is authorized to modify or strike conditions where those conditions are either not supported by the record or contrary to the Act. Rochelle Waste Disposal, L.L.C., PCB 07-113, slip op. at 21 (Jan. 24, 2008); *see also* Browning Ferris Industries of Illinois v. Lake County Board of Supervisors and IEPA, PCB 82-101, slip op. at 14-15 (Dec. 2, 1982). As described above, the Board does not find support in the record for the County's inclusion of

Condition 32 in its siting approval. There is no evidence in the record that expanding the aggregate shoulder on Somonauk Road, by an additional one foot in some sections, is necessary to address the impact of Expansion traffic. Any need to widen the shoulder appears to be related to farm vehicle traffic and unrelated to the Expansion. The Board finds the record supports WMII's position that Condition 32 is unnecessary to accomplish the purpose of Criterion VI.

The only expert testimony regarding Expansion-related traffic indicated that Criterion VI was met prior to inclusion of Condition 32. *See, e.g.*, C0000779, C0007263. The Board also finds persuasive the DeKalb County Staff Report, filed on April 12, 2010, after the County hearing, but before inclusion of Condition 32, and the February 5, 2010 DeKalb County Highway Department letter. C0007821-83, C0007884. The County Report proposes two special conditions (one related to the mandated transfer trailer route and one related to covering waste trailers to prevent litter) for inclusion in the siting approval under Criterion VI, and states "County Staff concludes that Criterion 6 has been met." C0007870-71. Further, the Highway Department letter concurs with the conclusion of the traffic analysis that Criterion VI was met. C0007884.

These documents, authored by entities intimately familiar with the Expansion, further support the Board's conclusion that Condition 32 is not justified by the record and is unnecessary for WMII to accomplish the purposes of Section 39.2 of the Act. 415 ILCS 5/39.2(e) (2012). The relevant evidence indicates that WMII accounted for minimizing the impact of Expansion traffic on existing traffic flows. Based upon the Board's review of the evidence, it is clearly evident that the county erred in imposing Condition 32 on the siting approval. For these reasons, the Board strikes Condition 32 from the County's siting approval.

### **CONCLUSION**

The Board finds that WMII has met its burden of proof. On this record, the Board cannot find Condition 32 is necessary to minimize the impact of traffic patterns to and from the Expansion within the meaning of Criterion VI. The record instead indicates that with Condition 32, the County attempted to minimize the impact of farm vehicles on Somonauk Road rather than the impact of Expansion traffic. Because the County's decision to impose Condition 32 is contrary to the manifest weight of the evidence, the Board strikes Condition 32 from the County's siting approval.

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

### **ORDER**

The Board strikes Condition 32 from the County's siting approval as unnecessary to accomplish the purposes of the Act.

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) (2012); *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, and 102.702.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 6, 2014, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

John T. Therriault, Clerk  
Illinois Pollution Control Board