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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF)	
ILLINOIS, INC.,)	
)	
Petitioner,)	
)	
vs.)	No. PCB 10-104
)	
COUNTY BOARD OF)	
DEKALB COUNTY, ILLINOIS)	
)	
Respondent)	

**RESPONSE OF THE COUNTY BOARD OF DEKALB COUNTY TO
WASTE MANAGEMENT OF ILLINOIS, INC.'S MEMORANDUM
IN SUPPORT OF ITS APPEAL OF SPECIAL CONDITION 32**

Petitioner Waste Management of Illinois, Inc. ("WMII") sought siting approval from the County Board of DeKalb County ("County Board") which the County Board did grant. The County Board's approval included 32 conditions. Petitioner is now asking that Special Condition 32 be stricken. The County Board is asking that Petitioner's appeal be denied.

RELEVANT FACTS

Petitioner sought and has been granted site approval for an expansion of the DeKalb County Landfill located at 18370 Somonauk Road, DeKalb County. Much of the portion of Somonauk Road that will be traveled by trucks going to and from the expanded landfill is bordered by farmland and experiences traffic from farm vehicles. As Petitioner noted in their Memorandum, when farm vehicle equipment meets another vehicle on the roadway, the farm vehicle has to pull off the road which does create a safety issue because of the steepness of the shoulder. Any 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. (IPCB Tr. at 23) As the gravel is pushed off the shoulder, it creates

a drop-off at the edge of the pavement. (IPCB Tr. at 11) This creates safety concerns which, in the opinion of an engineer, could be alleviated by providing a wider shoulder.

Mr. John Heim conducted a traffic analysis for Patrick Engineering. Mr. Heim noted that Somonauk Road was currently operating at 14% and would increase to 17% when the landfill was fully operational. (Patrick Engineering Study, p. 44)

LEGAL STANDARD

It is Petitioner's burden to establish that the imposition of Special Condition 32 (was against the manifest weight of the evidence. "This court should not reweigh the evidence or substitute its judgment for that of the agency and a decision is contrary to the manifest weight of the evidence only if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. Petitioner's burden to establish that the DeKalb County Board's finding that Special Condition 39.2 satisfied the requirements of Section 39.2(a)(vi) of the Illinois Environmental Protection Act was against the manifest weight of the evidence.

"The final criterion which the parties dispute is whether the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. This criterion does not refer to traffic noise or dust, not does it relate to the potential negligence of the truck drivers. The operative word is "minimize" and it is recognized that it is impossible to eliminate all problems. . . Any impact on existing traffic flows will result only from any increase in traffic which, according to the evidence, should not be substantial." File v. D&L Landfill, Inc., 219 Ill.App.3d 897 (5th Dist. 1991)

ARGUMENT

Petitioner has not met its burden of establishing that the imposition of Special Condition 32 is against the manifest weight of the evidence. Petitioner asserts that the purpose of Special Condition 32 “is to address the fact that slow-moving, oversized farm vehicles traveling on Somonauk Road in Spring and Fall may slow the flow of traffic on Somonauk due to their low rate of speed and oversized widths” and further argues that this has nothing to do with the traffic patterns for vehicles traveling to and from the expanded landfill. (Petitioner’s Memorandum, p. 7). While this reflects Petitioner’s view of the evidence, this does not establish that Petitioner’s view is clearly evident, plain or indisputable. In fact, Petitioner’s view fails to consider the unique situation on Somonauk Road and fails to consider the necessary consequences of increasing traffic on Somonauk Road.

And traffic on Somonauk Road will be increased with the expanded landfill. While the overt numbers regarding the percentage by which traffic on Somonauk Road will be increased are relatively modest, simply looking at the numbers does not accurately describe the traffic flow issues on Somonauk Road because the numbers by themselves do not reflect the nature of the farm vehicle traffic on Somonauk Road. The modest 3% increase in vehicle traffic on Somonauk Road will correspondingly cause the farm vehicle traffic to pull off the road and onto the shoulders more often. Each and every time one of these farm vehicles encounters an oncoming vehicle on Somonauk Road, they must pull off the road and onto the shoulder. This 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. And every time a farm vehicle does pull off onto the shoulder, it displaces gravel which in turn causes a drop off at the edge of the pavement. This creates a safety hazard which can be minimized by widening the shoulders.

The shoulders could be widened for an estimated cost of \$50,000.00. (IPCB Tr. at 12)

Petitioner attempts to argue that Special Condition 32 should be stricken because it is not feasible. This ignores the testimony of Nathan Schwartz who testified that 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. While Petitioner has articulated that they do not agree with Mr. Schwartz's testimony, simply articulating a disagreement with Mr. Schwartz does not satisfy their burden of establishing that his testimony is against the manifest weight of the evidence. And certainly, the fact that the road is already there is evidence that the County already has an easement.

CONCLUSION

Petitioner sought siting approval to significantly expand the landfill in DeKalb County. The County Board granted the approval requested by Petitioner which included Special Condition 32, a condition which will aid in alleviating some of the problems that will naturally flow from increased traffic on Somonauk Road. A condition with a comparatively modest cost. Petitioner now seeks to maintain their siting approval but to avoid the requirements of Special Condition 32. Petitioner'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. Special Condition 32 is both reasonable and necessary to accomplish the purpose of Section 39.2(a)(vi) of the Act and is adequately supported by the record. Petitioner has not met their burden of establishing that Special Condition 32 is against the manifest weight of the evidence. At best, Petitioner has offered an alternative view of the evidence; Petitioner has not established that their view is clearly evident, plain, or indisputable. Petitioner's appeal should be denied.

COUNTY BOARD OF DEKALB COUNTY

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