

BEFORE THE VILLAGE BOARD OF THE VILLAGE OF ROUND LAKE PARK
SITTING AS POLLUTION CONTROL FACILITY SITING AUTHORITY

IN RE: APPLICATION FOR LOCAL SITING)
 APPROVAL FOR GROOT INDUSTRIES) 13-01
 LAKE TRANSFER STATION)

FINDINGS AND RECOMMENDATIONS
OF THE HEARING OFFICER

I. INTRODUCTION

On June 20, 2013, Groot Industries, Inc. ("Groot" or the "Applicant") filed an application for siting approval (the "Application") for a new pollution control facility in the nature of a recycling facility and transfer station (the "Facility") proposed to be located at 201 Porter Drive, Village of Round Lake Park. The Village of Round Lake Park's ("Village") authority regarding local siting approval for such a regional pollution control facility is governed by the provisions of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/39.2, as supplemented by Village Ordinance No. 12-14, known as the Village of Round Lake Park Pollution Control Facility Siting Ordinance (the "Ordinance").

The Village Board has the authority to approve or disapprove this request for local siting approval since the property in question is located in the Village. Under the Act, the Village Board shall only approve siting if the Facility meets the following criteria:

1. The facility is necessary to accommodate the waste needs of the area it is intended to serve;
2. The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
3. The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property;

4. The facility is located outside the boundary of the 100-year flood plain or the site is flood-proofed;
5. The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;
6. The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
7. If the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
8. If the facility is to be located in a county where the County Board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; and
9. If the facility will be located within a regulated recharge area, any applicable requirements specified by the County Board for such areas have been met.

In addition, the Village Board is authorized by the Act to "consider as evidence the previous operating experience and past record of convictions or admissions of violations of the Applicant (and any subsidiary or parent corporation) in the field of solid waste management" when considering Criteria 2 and 5. 415 ILCS 5/39.2.

The Village Mayor appointed Phillip A. Luetkehans as Hearing Officer pursuant to section 160.06(A) of the Ordinance, and a public hearing was held on the Application beginning on September 23, 2013. In addition, prior to the public hearing, a public informational meeting

was held on September 20, 2013 for the purpose of providing information concerning the hearing procedure to the public. Pursuant to section 160.06(G)(1) of the Ordinance, pre-hearing conferences were held on July 16 and September 17, 2013. Exhibits were introduced during the hearing and are part of the record. All parties at the public hearing, including Groot, the Village, the County of Lake, the Village of Round Lake, Timber Creek Homes, Inc. and other residents and citizens were given a full opportunity to present testimony and evidence and to cross-examine witnesses. At every hearing, time was set aside and the public was allowed to present their oral comments. Village Board members were present at every hearing, and the hearings were transcribed by a court reporter and are part of the record.

After the presentation of all evidence, the hearing was adjourned. Consistent with the Act and the Ordinance, an opportunity was provided to file written comments with the Village concerning the Facility not later than thirty (30) days after the date of the last public hearing. All timely-filed public comments are also part of the record herein and have been reviewed by the Hearing Officer. After the time for public comments, the parties were given seven (7) days to file any written responses to the public comments. The record has been available for public inspection during normal business hours at the office of the Village Clerk. Additionally, all of the evidence admitted at the hearing, the transcripts of the hearing and all briefs filed in this matter were made available on the Village's website (www.roundlakepark.us) and at the website www.swalco.org ("SWALCO's website").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. JURISDICTION AND PRELIMINARY MATTERS.

1. On June 21, 2013, Groot filed the Application in conformance with the requirements of section 160.04 of the Ordinance for siting approval for a new pollution control facility in the nature of a transfer station to be known as the Groot Industries Lake Transfer Station. (Groot Exhibit 1, "Application").

2. The Village Clerk took the necessary steps to comply with Section 160.05 of the Ordinance.

3. At least 14 days prior to filing the Application, Groot served written notice of its intention to file the Application in compliance with 415 ILCS 5/39.2(b). (Groot Ex. 2). Groot further complied with the public hearing notice requirements of 415 ILCS 5/39.2(d). (Groot Ex. 3).

4. The service and publication of said public hearing notice was in conformance with and satisfies the requirements of Section 39.2(d) of the Act and Section 160.06 of the Ordinance.

5. The Facility for which siting approval is sought is located at 201 Porter Drive, at the northeast corner of Illinois Route 120 (Belvidere Road) and Porter Drive, within the corporate limits of the Village, and consists of approximately 3.9 acres.

6. Groot filed the requisite fee with the Village in conformance with the provisions of Section 160.03 of the Ordinance.

7. The public hearing was held on September 23, 24, 25, 26 and 30 and October 1 and 2, 2013 pursuant to due and appropriate notice and in accordance with the requirements of Section 39.2 of the Act and Section 160.06 of the Ordinance.

8. Based upon the record, the Facility is not located within 1,000 feet from the nearest property zoned for primarily residential uses or within 1,000 feet of any dwelling. (Groot Ex. 1, Sec. 2.2). No evidence or testimony was admitted to contradict this fact.

9. One pretrial motion was filed by the attorney for Timber Creek Homes, Inc. regarding preliminary disclosures under the Ordinance. The Hearing Officer issued an Order on this motion dated September 11, 2013.

10. All disclosures, motions, Exhibits and Orders were posted on the Village's website and SWALCO's website to ensure easy access to the public.

11. In preparing these findings and making this recommendation, the Hearing Officer has reviewed all applicable statutory and case law, the public comments on file with the Clerk, the transcript of proceedings, the Exhibits entered into evidence, the Application and all the briefs filed. Because there was often testimony which conflicted, the Hearing Officer has been required to make credibility determinations about various witnesses. Accordingly and as noted herein, some witnesses' testimony have been afforded more weight than others based upon their relative credibility and experience. In addition, there were instances where witnesses were called to testify as to whether or not the Applicant had fulfilled certain criteria. In several instances, the Hearing Officer allowed witnesses to testify pursuant to the principles of fundamental fairness but determined that the witnesses' testimony was not competent or otherwise credible.

12. Given the Applicant's compliance with the pre-filing notice requirements and the compliance with the public hearing notice requirements of the Act, the Village Board has jurisdiction under Section 39.2 of the Act to approve, approve with conditions, or deny the Application.

B. SUBSTANTIVE PRELIMINARY MATTERS.

Section 40.1 of the Act requires that the procedures used during the hearing provide fundamental fairness to all parties. Timber Creek Homes, Inc. ("TCH") asserts that the hearing process violated the principle of fundamental fairness due to the participation of Glenn Sechen, an attorney who was retained to represent the Village during the hearing. The essence of TCH's argument is that Sechen's representation of the Village and participation in the hearing was unfair as he advocated approval of the Application.

A siting authority's role in the approval process is both quasi-legislative and quasi-adjudicative. *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 60, *appeal denied* 968 N.E.2d 81 (2012). "Recognizing this dual role, courts interpret the right to fundamental fairness as incorporating minimal standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence." *Id.* However, "[i]t is proper to have some blend of judicial and prosecutorial function in an administrative proceeding provided that the person performing the quasi-prosecutorial function is not a member of the decision-making body." *Waste Mgmt. of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1039, 530 N.E.2d 682, 694-95 (1988). Here, Mr. Sechen plays no role in the decision-making process as that role is limited to the Village Trustees. Hence, his participation in the hearing, even if viewed as an advocate in favor of approval, does not render the proceeding fundamentally unfair. *Id.* (finding the participation of State's Attorneys on behalf of interested parties in a siting hearing did not violate fundamental fairness where they neither acted in an advisory capacity nor participated in the ultimate decision making process).

Further, the Hearing Officer does not find any actions taken by Mr. Sechen in the hearing have in any way tainted the process or created any unfairness. It is also important to note that numerous members of the Village Board attended all or parts of the hearing. The Hearing Officer also observed that the Village Board members were attentive and engaged throughout the hearing. Accordingly, the Hearing Officer finds that Mr. Sechen's involvement and questioning in the hearing did not violate the principle of fundamental fairness.

C. STATUTORY CRITERIA.

In order for a Village Board to approve a proposed municipal solid waste transfer station, the applicant must prove that it has met all nine of the criteria set forth in Section 39.2 of the Act. *A.R.F. Landfill v. The Pollution Control Board*, 174 Ill. App. 3d 82, 90 (2d Dist. 1988); 415 ILCS 5/39.2 (West 2003). In deciding on such criteria, the Village Board must consider the evidence presented and must determine by a preponderance of the evidence that the applicant satisfies the criteria before granting approval. *Waste Management of Illinois v. County Board of Kane County*, 2003 WL 21512770 (Ill. Pollution Control Bd.). It is important to note, however, that the statute does not speak in terms of guaranteeing no increase of risk concerning any of the criteria. *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 907-08, 579 N.E.2d 1228, 1236 (5th Dist. 1991).

Following hereafter are the Hearing Officer's findings and conclusion of law concerning the record as it relates to the specific criteria enumerated in the Act. The Hearing Officer finds that much of the evidence relates to more than one of the criteria and his findings should be looked at as a whole. Accordingly, the Hearing Officer has attempted, to the extent practicable, not to restate evidence that could be discussed under, or relate to, more than one criteria.

Further, the findings as to the criteria are specifically subject to the Proposed Conditions of Operation enumerated in Appendix A.

1. WHETHER THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE INTENDED SERVICE AREA.

“Section 39.2(a)(i) requires that the applicant establish that the site location is necessary for the area to be served.” *Waste Management of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988). If, within the service area of a proposed facility, there are existing facilities which are capable of servicing the service area's needs, there is no need for a new facility. *Waste Management of Illinois v. Pollution Control Board*, 122 Ill. App. 3d 639, 644-45, 461 N.E.2d 542, 546-47 (3d Dist. 1984). Although an applicant need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois v. Pollution Control Board*, 234 Ill. App. 3d 65, 69, 600 N.E.2d 55, 57 (1st Dist. 1992). Reasonable convenience requires the applicant to show more than mere convenience. *Waste Management of Illinois v. Pollution Control Board*, 123 Ill. App. 3d 1075, 1084, 468 N.E.2d 969, 976 (2d Dist. 1984). Although petitioner need not show absolute necessity, it must demonstrate an urgent need for the new facility as well as the reasonable convenience of establishing a new facility or expanding an existing landfill. The applicant must show that the landfill is reasonably required by the waste needs of the area, including consideration of its waste production and disposal capabilities. *Fox Moraine, LLC v. The United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 110, citing *Waste Management of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d at 1031, 530 N.E.2d at 689.

Christina Seibert, an environmental scientist and solid waste planner with over 13 years of experience who has prepared or assisted in the preparation of solid waste needs assessments for 20 solid waste facilities in Illinois, testified that Criterion 1 has been met because the Facility is necessary to accommodate the waste needs of the intended service area. (TR 9/24/13C at 41). She has been an expert witness in eight local siting hearings and worked on permit applications for more than ten transfer stations in Northern Illinois. (TR 9/24/13C at 9-10). She has been a consultant to industry and government clients concerning the issue of solid waste management needs. (TR 9/24/13C at 10-11). She performed a needs analysis evaluating trends in managing waste in the service area and in the Chicago metropolitan area comparing available transfer and disposal capacity with projected waste generation. (TR 9/24/13C at 13). Ms. Seibert reviewed demographic projections, data concerning the trends in the waste disposal system, data concerning the landfill and transfer station capacity generally serving Lake County and the projections for the waste requiring disposal for the service area. (TR 9/24/13C at 13-15).

It is the applicant that selects the service area, and the Applicant has selected Lake County as its service area. *Metropolitan Waste Systems, Inc. v. Pollution Control Board*, 201 Ill. App. 3d 51, 55, 558 N.E.2d 785, 787 (3d Dist. 1990); (TR 9/24/13C at 15). No one has objected to Lake County as the designated service area of the Facility. Ms. Seibert explained that under the Solid Waste Planning and Recycling Act, 415 ILCS 15/1 *et seq.*, the County's 2004 Solid Waste Management Plan Update sought twenty (20) years of guaranteed disposal capacity for the waste generated within its borders. (TR 9/24/13C at 18). However, it should be noted that the most recent Lake County Solid Waste Management Plan Update no longer sets forth that twenty (20) year guarantee. (TR 9/24/13C at 18). Historically, Lake County has sent waste to Advanced Disposal's Zion Landfill, Waste Management's Countryside Landfill in Grayslake and

Waste Management's Pheasant Run Landfill just outside of Kenosha, Wisconsin. (TR 9/24/13C at 14). Ms. Seibert explained that the Countryside Landfill will have less than five (5) years capacity remaining when the Lake Transfer Station begins operating. (TR 9/24/13C at 19). American Disposal's Zion Landfill's capacity commitment to Lake County will expire in 2017, and that facility is projected to close within 12 years of the Lake Transfer Station opening. (TR 9/24/13C at 20). Finally, the Pheasant Run Landfill will not provide any significant disposal capacity for Illinois because Wisconsin has dramatically increased its tipping fees making that facility economically infeasible for waste disposal. (TR 9/24/13C at 36-37).

Ms. Seibert observed upon reviewing the appropriate data that Lake County was expected to experience growth in population, the number of households, as well as employment, resulting in increased quantities of waste needing to be managed. (TR 9/24/13C at 26-27). She testified that the Lake County landfills will not provide the needed twenty (20) years capacity and that new landfills are generally being developed farther and farther away from Lake County, thereby necessitating the use of transfer stations. (TR 9/24/13C at 42).

Ms. Seibert testified that the Lake County Solid Waste Management Plan cited a need to develop new facilities including transfer stations and that those facilities need to be developed prior to the closing of existing facilities. (TR 9/24/13C at 21-23). Ms. Seibert testified that there are no transfer stations currently operating in Lake County, which in her opinion results in a transfer capacity deficit far in excess of the proposed capacity of the Facility. (TR 9/24/13C at 34). Specifically, using the 2011 disposal rates, the projected daily waste requiring disposal for 2015 was 2,899 tons per day for the service area and 3,550 tons per day by 2035. (TR 9/24/13C at 29). Using the historical average rates from 1996 through 2011, the 2015 projected daily waste disposal need was 3,422 tons per day; and by the year 2035, the projected waste disposal

needs would be 4,191 tons per day. (TR 9/24/13C at 29-30). The Facility is designed to accept approximately 750 tons per day. (TR 9/24/13C at 34). The service area is in need of between 3,550 tons per day and 4,191 tons per day of disposal capacity to meet the twenty (20) year disposal capacity needs. All of the landfill capacity servicing Lake County will be exhausted in approximately twelve (12) years of the Facility beginning its operation. However, this capacity could be exhausted much sooner than that. (TR 9/24/13C at 20). Finally, Ms. Seibert testified that each of the regional landfills in the area have taken nine (9) years or more to permit and the planning for the Lake Transfer Station began in 2008, resulting in a projected development time frame of seven (7) years. (TR 9/24/13C at 22, 25). In addition, there is a growing trend for landfills to be farther and farther away from the Chicago and the collar county area, which creates a greater need for transfer station capacity. (TR 9/24/13C at 42).

TCH called John Thorsen to testify regarding Criterion 1. Mr. Thorsen is also a professional engineer. He has decades of experience in solid waste issues and holds a masters degree in regional planning. (TR 9/25/13B at 30-31). Mr. Thorsen also has experience in Lake County dating back to the 1980's. (TR 9/25/13B at 31-33). Approximately 20-25% of Mr. Thorsen's work has involved waste issues in Lake County. (TR 9/25/13B at 33-35, 44). Mr. Thorsen has also been involved as a member of the Lake County Solid Waste Advisory Committee, a planning group that dealt with County planning for solid waste management. (9/25/13B at 34-35).

Mr. Thorsen verified the data provided by Seibert and reviewed certain other information. Mr. Thorsen did not perform a separate independent needs analysis but accepted at face value Seibert's waste generation and disposal capacity figures for the two Lake County landfills. (TR

9/25/13B at 91). Based upon his analysis, Mr. Thorsen concluded that there is current Lake County landfill capacity until 2027. (9/25/13B at 36-37, 49-51).

However, upon cross-examination, Mr. Thorsen admitted that the landfills in Lake County could reach capacity sooner than 2027. (TR 9/25/13B at 81). Further, much of the capacity that Mr. Thorsen found as available was at the Zion Landfill. (TR 9/25/13B at 81). There was no dispute that the Zion Landfill has only guaranteed capacity to Lake County for the next six (6) years. (TR 9/25/13B at 87).

Here, the Facility will not open until at least 2015. (TR 9/24/13C at 143). However, it is important to note that the opening date of the Facility is not set in stone. With appeals and future approvals still having to occur, the opening of the Facility in 2015 is clearly not certain. Given the strong opposition to this matter, appeals of the Village Board's decision are likely. If the Village Board were to approve the siting of this Facility, those appeals could easily delay the opening of this Facility another two to three years. While the Applicant argues that one should look at the 20-year capacity due to language in the Solid Waste Planning and Recycling Act (the "Solid Waste Act") and the previous Lake County Solid Waste Management Plan, the Hearing Officer has found no case law, nor has anyone cited any, that states that the 20-year time period discussed in the Solid Waste Act controls for the purpose of Criterion 1. On the other hand, TCH argues that 12 possible years of capacity automatically requires a finding of a lack of necessity under Criterion 1. No case law has been cited to or found by the Hearing Officer to support this conclusion either.

The cases do not set forth a bright line approach but hold that the "better approach is to provide for consideration of other relevant factors such as future development of other disposal sites, projected changes in amounts of refuse generation within the service area and expansion of

current facilities.” *Waste Management of Illinois v. Pollution Control Board*, 175 Ill. App. 3d 1023, 1033-34, 530 N.E.2d 682, 691 (2d Dist. 1988). In essence, both experts found that with no changes in the projected amount of waste that the existing landfills would provide capacity until approximately 2027. (TR 9/24/13C at 35; TCH Ex. 2). However, both experts state that time period could change and that there is no guaranty of capacity after the next six years. (TR 9/25/13B at 81). Further, no evidence has been submitted showing that any expansions of those proposed landfills are proposed or would be allowed. There has been evidence submitted, however, that if both of the current landfills are closed in 2027, it will take approximately three to four, and maybe more, waste transfer stations of the size of this Facility to handle the waste generated by Lake County. (TR 9/24/13C at 33). The evidence also showed that waste transfer facilities can take seven or more years to site from start to finish. (TR 9/24/13C at 24). Accordingly, based upon current conditions, it appears that numerous waste transfer stations will need to be sited by 2027, if not sooner, in order to properly handle Lake County’s waste.

In this case, the Hearing Officer finds both Ms. Seibert and Mr. Thorsen credible. However, Ms. Seibert was the only expert who conducted an independent analysis of underlying generation and disposal rates in the service area. Mr. Thorsen did not dispute the fact that a need existed, he just disputed the timing of the need. (TR 9/25/13B at 80). However, he admitted that the date when a petition should be filed was not in his “wheelhouse.” (TR 9/25/13B at 82). This is not sufficient in the opinion of the Hearing Officer to counter the well reasoned and credible findings and opinions of Ms. Seibert that a need exists.

Against that backdrop and based upon the entirety of the record, the Hearing Officer finds that there is a need for the Facility to accommodate the needs of the area it intends to serve.

2. WHETHER THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED SO THAT THE PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED.

Criterion 2 empowers the Village Board to consider all public health, safety and welfare ramifications surrounding the design, location and operation of the proposed facility. *Waste Management of Illinois v. Pollution Control Board*, 160 Ill. App. 3d 434, 438, 513 N.E.2d 592, 594 (2d Dist. 1987).

The Applicant called Mr. Devin Moose of Shaw Environmental, who planned and designed the Facility on behalf of the Applicant. Mr. Moose testified not only concerning Criterion 2, but also Criteria 4, 5, 7 and 9. (TR 9/23/13A). Mr. Moose is the National Director of Solid Waste Consulting for Shaw Environmental, Inc., a CB&I Company. (TR 9/23/13A at 41). He is a professional engineer licensed in ten states, including Illinois, a diplomat of the American Academy of Environmental Engineers and has over thirty (30) years of experience in solid waste engineering. (TR 9/23/13A at 41). He has been the lead engineer on numerous transfer stations within the State of Illinois. (TR 9/23/13A at 42).

A. Design

Mr. Moose described the proposed Facility as being located on 3.9 acres of land in an industrial park on the northeast corner of Porter Drive and Route 120 (Belvidere Road). The anticipated throughput is 750 tons per day consisting of municipal waste, landscape waste, and/or recyclables. The transfer building will be a concrete and steel structure with cast-in-place concrete and pre-cast concrete panels on the steel skeleton. The transfer building will be approximately 27,800 square feet and a scale house of approximately 270 square feet will also be constructed. In addition, all access drives and interior circulation routes will be paved and inbound and outbound scales will be installed. A stormwater bio-swale of approximately 370

feet in length will be constructed along the northern limits of the property to convey stormwater into a sedimentation basin prior to off-site discharge. The proposed Facility is designed to be drive-thru which minimizes the number of openings to the outside. No doors will be located on the south side of the building along Route 120 or along the north side. The proposed Facility is similar to the Glenview Transfer Station, which Mr. Moose designed approximately 20 years ago. The Glenview Transfer Station is run by Groot, the Applicant here. (TR 9/23/13A at 44-48, 54; TR 9/23/13C at 43; TR 9/24/13B at 57; Groot Ex. 1, Sections 2.1-1 to 2.2-1).

Mr. Moose characterized the site as allowing sufficient room for stacking or queuing of trucks. (TR 9/23/12A at 59). Ingress and egress will be to and from Porter Drive. (TR 9/23/13A at 60). The exterior walls are all constructed of pre-cast concrete panels which helps to further minimize noise transmission. (TR 9/23/13A at 55). The design of the air handling system allows for air exchanges. (TR 9/23/13A at 49). Its design allows for plenty of natural light and uses skylights to help minimize electrical usage. (TR 9/23/13A at 48). The Facility's orientation minimizes the view of open doors from neighbors and Route 120. (TR 9/23/13A at 47).

Mr. Moose showed a computer animated video showing portions of the Facility in operation. Stormwater will be managed on a best management practices basis. The design of the stormwater system incorporates a bio-swale which provides filtering and the takeup of sediment and nutrients prior to the discharge of stormwater into the industrial park's stormwater system. (TR 9/23/13A at 54-62; Application 2.3) Sanitary sewer is available to the site and its use will be evaluated based on capacity. Otherwise a holding tank will be utilized. (TR 9/23/13C at 2-3).

B. Location

Mr. Moose testified that this Facility is a relatively moderately sized transfer station, proposing to accept approximately 750 tons per day, and that Groot owns much of the land

surrounding the proposed transfer station. (TR 9/23/13A at 45). The nearest residentially zoned property is over 1,500 feet away and the nearest dwelling is over 1,000 feet west of the proposed Facility, thereby meeting all residential setback requirements and complying with Section 22.14 of the Act. (TR 9/23/13A at 50). Mr. Moose testified any wetlands impacted would be mitigated pursuant to Illinois law. (TR 9/23/13A at 50). Furthermore, the Illinois Historic Preservation Agency has determined that there are no significant archaeological or historic sites and the Illinois Department of Natural Resources has determined that adverse effects on endangered or threatened species are unlikely. (TR 9/23/13A at 50). Likewise, the Illinois Nature Preserves Commission has submitted a letter indicating that the proposed site does not pose a threat to a dedicated nature preserve. (TR 9/23/13A at 50). Finally, the proposed transfer station would be located more than 5,000 feet from the runway protection zone of the nearest airport, thereby complying with separation distances recommended by the Federal Aviation Administration. (TR 9/23/13A at 51).

C. Operation

Mr. Moose testified that the Facility would utilize cast-in-place concrete as well as pre-cast concrete on a steel skeleton, which would blend into the area and suppress noise from the building. (TR 9/23/13A at 46). He explained that the Facility is designed to maintain a long life and utilizes a reinforced concrete tipping floor. (TR 9/23/13A at 47). The Facility also uses a drive through design reducing the need of vehicles to back up. (TR 9/23/13A at 47). The Facility will be oriented such that people traveling on the roadways will be unable to see into the Facility. (TR 9/23/13A at 47). The landscaping will be placed strategically along Porter Drive to obstruct views. (TR 9/23/13A at 47-48). Mr. Moose testified that the proposed transfer station is comparable to the Glenview Transfer Station, also operated by the Applicant, which

received awards from the American Public Works Association as well as the American Consulting Council. (TR 9/23/13A at 48). The building will use an air exchange program, thereby creating negative pressure within the building and exchanging air four (4) to six (6) times per hour. (TR 9/23/13A at 49). Mr. Moose noted that if one would stand next to a Facility door and light a match, one will actually see smoke enter the transfer station, a design which facilitates odor control. (TR 9/23/13A at 49).

In addition, Mr. Moose explained that the Facility will implement an Operations Plan, which assures that collection vehicles would be fully enclosed and covered and the Facility would be routinely patrolled for litter control. (TR 9/23/13A at 65). All waste transfer operations will be conducted within the building and the tipping floor would be cleared of waste on a daily basis. (TR 9/23/13A at 65). Waste materials will be continually transferred through the operating bay on a first-in first-out basis and any incoming waste with an unusually strong odor will be immediately transferred from the station. (TR 9/23/13A at 65-66). Customers found to habitually deliver waste with unusually strong odors will be denied access, and the Facility will use a non-toxic odor neutralizer in its misting system. (TR 9/23/13A at 66).

All of the on-site equipment will be equipped with mufflers and sound suppressing devices and the Facility is buffered from the neighbors by State Highway 120 and open space. (TR 9/23/13A at 68). The Facility also will be equipped with high performance rubber doors which can automatically open and close as the collection transfer vehicles enter and leave the building to the extent required. (TR 9/23/13A at 68). Dust will be controlled by paving all access drives, parking area and storage areas and the Facility will utilize a street sweeper. (TR 9/23/13A at 68). All public roads and right-of-ways within 1,000 feet of the Facility will also be swept. (TR 9/23/13A at 68). Finally, a misting system will be used within the Facility to help

mitigate dust. (TR 9/23/13A at 68). Ultimately, it was Mr. Moose's opinion that the Facility was designed, located and proposed to be operated so that the public health, safety and welfare will be protected. (TR 9/23/13A at 68-69).

It is also important to note that the Village's Host Agreement has certain requirements that the Facility would be subject to. The Village's Host Agreement restricts the storage of waste on transfer trailers as follows:

Waste may be kept temporarily in transfer trailers for no more than 24 hours (except on weekends and holidays), provided that such trailers are stored indoors and suitably covered. Empty transfer trailers may be stored outdoors for no more than 24 hours (except on weekends and holidays). (Groot Ex. 1, Appendix C.1, ¶ 11g)

In addition, here public roadways within 1500 feet of the Facility and private property within 500 feet of the Facility [with permission of the property owner] will be patrolled daily and litter will be collected and removed therefrom. More specifically, the Village's Host Agreement requires that the Applicant:

diligently patrol the Subject Property during hours of operation to collect any litter. In addition, the Company shall abide by the litter control plan approved by the Village as a result of the siting process. At a minimum the Company will diligently patrol and remove litter from the Subject Property, all property owned or controlled by the Company, and public street and corresponding right-of-way within 1500 feet of the Subject Property. In addition, the Company shall, at a minimum, patrol and remove litter from property within five hundred (500) feet of the aforesaid public streets and corresponding rights-of-way with the permission of the owner of said property, which permission the Company will diligently attempt to obtain. (Groot Ex. 1, Appendix C.1, ¶ 11a)

The Applicant will also see that the roadways within 1,000 feet of the Facility are cleaned utilizing a street sweeper. (TR 9/23/13A at 68). In fact, the Village's Host Agreement requires that the Applicant:

provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the

Company as well as public roads and right-of-ways included within the roadway boundaries within, at a minimum, one thousand (1,000) feet of the Subject Property on an as needed basis, but not less frequently than daily. (Groot Ex. 1, Appendix C.1, ¶ 11b)

Mr. Moose's testimony concerning the public health safety and welfare was largely un rebutted. TCH raises two major arguments as to Mr. Moose's testimony. First, TCH appears to argue that none of Mr. Moose's testimony should be relied upon by the Village Board because Mr. Moose is not a credible witness. However, instead of attempting to find areas where Mr. Moose was mistaken or was deceitful in this hearing, TCH spends most of its time discussing past testimony of Mr. Moose from over 15 years ago (which evidence was not admitted into the record) or picking on minor inconsistencies that may or may not have occurred in the hearing. The Hearing Officer hereby finds that Mr. Moose was a credible witness and finds no reason to determine that his testimony in this hearing was untrue or deceitful.

Second, TCH presented its own expert, Charles McGinley, to testify as to the issue of odor control. Mr. McGinley has approximately 40 years of experience in the field of odors and odor management. (TR 9/30/13A at 18). He has provided training services to companies relating to odor management development, odor management auditing, odor sampling and investigation. *Id.* He has also provided training to companies that provide services to the waste industry. (TR 9/30/13A at 20). Mr. McGinley has also authored or contributed to scholarly materials on the subject of waste and holds three patents for devices and processes in the fields of odor management and analysis. (TR 9/30/13A at 20-22). Mr. McGinley is a registered engineer in Minnesota but is not registered to practice engineering in Illinois. (TR 9/23/13A at 11). While a motion was made to strike Mr. McGinley's testimony because he is not a registered

engineer in Illinois, the motion was denied for the reasons stated by the Hearing Officer on the record. (TR 9/30/13B at 36-42).

Mr. McGinley testified that in his opinion the Facility “will not prevent odors from infringing or passing into the community specifically odors of air laden with garbage odor and would infringe upon the public welfare.” (TR 9/30/13A at 39). While Mr. McGinley’s report discusses the possible use of additional odor filtration systems such as scrubbers, he never advised whether those systems should be implemented or not – only that they should be considered. (TCH Ex. 4). Upon cross-examination, Mr. McGinley admitted that he is not recommending scrubbers and that Illinois does not require the use of scrubbers. (TR 9/30/13 at 56). TCH further argues that the USEPA Manual lists several “requirements” in order to minimize odors and that the Facility will not implement these “requirements.” *See* TCH’s Proposed Findings and Conclusions at 27-30. However, a closer look at the USEPA Manual relied upon by TCH states that the listed items are actually “practices that an urban transfer station should consider employing to mitigate facility impacts upon the neighboring community.” *See* USEPA Manual p. 36 attached to TCH Ex. 4 (emphasis added). While the record is unclear as to whether this Facility would be considered an urban transfer station, the USEPA Manual by its own language is very clearly not stating that the items listed are requirements – only things to be considered when a waste transfer station is designed and planned.

In this case, like many of TCH’s witnesses, Mr. McGinley failed to perform his own independent analysis of the odors that would emanate from the Facility, only a review of the Application and the testimony of Mr. Moose. (TR 9/30/13A at 45). Mr. McGinley did not perform any odor testing at any other transfer stations operated by Groot in the nearby area, even

though those other stations operate with the same technology and operational standards. (TR 9/30/13A at 44, 49; 9/23/13C at 27, 42-43, 49). Mr. McGinley did not attempt to testify as to or determine whether any particular home, residence, person or industrial property would be subjected to any odors from this Facility. (TR 9/30/13A at 53, 128)

The Hearing Officer is reluctant to recommend the refusal of the Facility without some actual contradicting study showing that the Application and the expert opinions propounded by the Applicant were independently tested and proven wrong. It is easy to testify that someone made some mistake or failed to properly review every possible contingency in their analysis but the uncertainty of Mr. McGinley's testimony as to whether any actual odors would be noticeable on nearby properties negatively affects the credibility of his conclusion.

The determination of this particular Criterion is purely a matter of assessing the credibility of expert witnesses. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill. App. 3d 541, 552, 555 N.E. 2d 1178, 1185 (3d Dist. 1990); *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). In the Hearing Officer's opinion, Mr. Moose's testimony was the more thorough and credible testimony on this issue.

Accordingly, the Hearing Officer finds that the Facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected, provided that the Applicant operates the Facility in accordance with the Conditions of Operation listed in Appendix A.