

97-08

KENDALL COUNTY SITE APPROVAL ORDINANCE FOR  
REGIONAL POLLUTION CONTROL FACILITIES

WHEREAS, as of November 12, 1981, P.A. 82-682 entitled "An Act relating to the location of sanitary landfills and hazardous waste disposal sites" (415 ILCS 5/39.2) became effective and amended the "Environmental Protection Act" (415 ILCS 5/1 et seq.), and which has subsequently been amended; and

WHEREAS, said Act restricts the authority of the Illinois Environmental Protection Agency to issue permits for the development or construction of new Regional Pollution Control Facilities in unincorporated areas unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board of the county in which the proposed site is located; and

WHEREAS, said Act requires an applicant to file a request for location approval with the County Board; and

WHEREAS, said Act provides that any person may file written comment with the County Board concerning the appropriateness of the proposed site; and that the County Board shall consider any comment received or postmarked not later than 30 days after the date of last public hearing; and

WHEREAS, said Act requires the County Board to hold at least one public hearing no sooner than 90 days but no later than 120 days from receipt of the request for site approval, such hearing to be preceded by published notice in a newspaper of general circulation published in the county of the proposed site, and notice by certified mail to all members of the General Assembly from the district in which the proposed site is located and to the Illinois Environmental Protection Agency; and

WHEREAS, said Act provides that the public hearing shall develop a record sufficient to form the basis of appeal of any decision, and that appeals shall be based exclusively on the record made before the County Board; and

WHEREAS, decisions of the County Board with respect to requests for location approval for such facilities are quasi-judicial determinations, and therefore are required to be based solely upon the evidence received at said public hearing and the written comments from persons received or postmarked not later than 30 days after the date of last public hearing; and

WHEREAS, decisions of the County Board regarding such matters are required to be in writing, specifying reasons for the decision, and shall be made within 180 days after the receipt for site approval has been filed; and

WHEREAS, failure to take final action on a request for site approval within 180 days of the filing is deemed by the Act to be approval of the site location; and

WHEREAS, by its terms the Act supersedes local zoning ordinances and requires the County Board to evaluate requests for site location approval for Regional Pollution Control Facilities only in accordance with 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 the surrounding property;
4. The facility is located outside the boundary of the 100-year flood plain or the site is flood-proof;
5. The plan of operations for the facility is designed to minimize the dangers 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, 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 Board for such areas have been met.

WHEREAS, the Act provides that the County Board, in granting approval for a site, may impose such conditions as may be reasonable and necessary to satisfy the purposes of said Act as long as said conditions are not inconsistent with regulations imposed by the Illinois Pollution Control Board; and

WHEREAS, it is also apparent to the County Board that unless the information provided can be evaluated by qualified professionals, the County Board cannot accomplish what the legislature has mandated; and that the employment of such qualified professions will impose a financial burden upon the County; and that because it would be impossible for the County Board to anticipate in any given year whether any or how many applications for approval of new regional pollution control facilities may be filed in Kendall County, the County Board cannot justify the employment of those competent professionals as salaried employees; and it is assumed the legislature was cognizant of those facts; and

WHEREAS, recognizing that a single county should not bear the substantial financial burden of the cost of determining the appropriateness of such a regional facility, the Act provides that a county may impose a reasonable fee upon an applicant to cover reasonable and necessary costs incurred in the siting review process; and

WHEREAS, in order to protect the public interest and to promote the orderly conduct of the hearing process and insure that full and complete information is made available to the County Board, it is necessary that procedures be established for conducting the public hearings and making decisions regarding site approval requests; and therefore,

BE IT RESOLVED by the County Board of Kendall County, Illinois that the following procedures shall be established with respect to requests for site approval for Regional Pollution Control Facilities:

Article 1. DEFINITIONS

1-1 The terms used in these procedural rules and regulations shall have the same meanings as the same terms are defined in the Environmental Protection Act of the State of Illinois, in effect as of the date hereof and as said Act may be amended or modified from time to time.

Article 2. FILING OF REQUEST

2-1 A minimum of Thirty (30) complete copies of requests for site approval shall be filed in the office of the County Clerk by the applicant. Upon receipt of any such requests and the filing fee as provided in Section 3-1, the County Clerk shall date stamp same, retain one copy, and deliver the remaining copies to the County Board Office. All exhibits that the applicant wishes to have considered as evidence by the Board must be attached to the request for site approval at the date of filing.

2-2 At any time prior to the completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the Kendall County Pollution Control Site Hearing Committee and any participants, the applicant may file not more than one amended request for site approval upon payment of an additional fee as set forth in Section 3-1 of this Ordinance. In the event an amended request is filed, it shall comply with Section 3-1 of this Ordinance. The time limitation for final action as set forth by the Environmental Protection Act shall be extended for an additional period of 90 days.

2-3 The request for site approval shall contain a sworn statement by the applicant that all statutory requirements for request for site approval have been met by the applicant, specifically stating the actions taken by the applicant to comply with such requirements and documentation of any and all receipts, etc.

### Article 3.

### FILING FEE

3-1 There shall be paid to the County Clerk for delivery to the County Treasurer for deposit in a special fund at the time of the filing of a request for site approval a fee of \$300,000 (Three Hundred Thousand Dollars). In the event an amended request is filed pursuant to Section 2-2 of this Ordinance, an additional filing fee of \$300,000 (Three Hundred Thousand Dollars) shall accompany said amended request. A fee of \$500,000 (Five hundred thousand dollars) is required if said facility is designed as a Hazardous Waste Disposal Site. In the event an amended request is filed pursuant to Section 2-2 of this Ordinance, an additional fee of \$500,000 (Five Hundred Thousand Dollars) shall accompany such amended request.

3-2 The County Board may use the fee to pay any costs incurred by the County in reviewing the request, employing qualified professional persons to evaluate the information contained in the request, to pay the costs involved in any hearing, including the fees of Court reporters and expert witnesses employed by the County to clarify or refute any information contained in the request, to pay any costs incurred in the appeal of any decision of the County Board as to the request and to pay any other cost or expenses in any way connected with the request, including, but not limited to, remand hearings.

3-3 If the costs incurred by the County under Article 3-2 exceed the amount of the filing fee, the County shall present a claim to the Applicant for the excess. Payment of this excess is due within 30 days of the date the claim is presented to the Applicant.

Article 4. CONTENTS OF REQUEST FOR SITE APPROVAL

4-1 Background of Applicant. The request for site approval shall contain the following information concerning the applicant.

1. Applicant's full name, address, and telephone number. If applicant is a partnership, the names and addresses of each partner.
2. If applicant is a corporation:
  - a. the names and addresses of all officers, directors, all stockholders owning five percent or more of the capital stock of the corporation and the name, address, and telephone number of the corporation and the registered agent of the corporation; and
  - b. the Articles of Incorporation and the most recent annual report.
3. If applicant is a corporation and more than ten percent of its capital stock is owned by another corporation, either directly or derivatively, then the requirements of this section shall apply to such corporation.
4. Balance sheet and statement of profit and losses, each certified by a certified Public Accountant, for each of the last five years.
5. A list of any and all court actions or administrative proceedings of any kind in which the applicant (including any person, corporation or partnership identified pursuant to this section) has been a named party and the subject matter was related to waste hauling or disposal. Such list shall identify the court or agency, the number of the case, and a brief summary of the facts and decision of the case.
6. With respect to each individual named in the request for site approval, said request for site approval shall state the prior employment history and qualifications of such person as it relates to the proposed site operation.
7. If the applicant (or any person, partnership, or corporation identified by the section) has previously closed any facility regulated by the United States or Illinois Environmental Protection Agencies, the applicant shall make available, upon request, a copy of all closure documents. The terms of this paragraph shall apply to facilities which were owned or operated by a corporation or partnership of which the applicant was the owner of more than ten percent of the ownership interest of the corporation or partnership which owned or operated the facility.

4-2 Site Description. The request for site approval shall contain the following information concerning the description of the proposed site:

1. Legal description of the site for the proposed use.
2. Vertical height of site as it exists and vertical height of the site as it would exist upon closure.
3. Name, address, and telephone number of the owner(s) of the property. The requirements of Section 4-1 shall apply to owners of the property and such information should be provided at the time the request for site approval is filed by applicant.
4. If the site is not owned by the applicant, then documents giving the applicant the right to develop the proposed use must be attached to the request for site approval by the applicant.
5. A map, prepared and certified by a licensed professional engineer, of sufficient size, showing, but not limited to:
  - a. Location of the site;
  - b. Location and depths of all water wells within 1 1/2 miles of the boundaries of the proposed site and such wells as may be affected by the proposed use;
  - c. Location of all aquifers, streams, ponds, rivers and lakes and such bodies of water as may be affected by the proposed use;
  - d. Location of all roads and bridges and transportation structures that may be affected by the proposed use; and
  - e. Location of all buildings within 500 feet of the proposed site and all buildings that may be affected by the proposed use.
6. A complete hydrologic study of the site by a qualified hydrologist, including but not limited to:
  - a. Studies completed by any federal or state agency;
  - b. General description of the hydrologic conditions of site and the surrounding area;

c. Complete log of each boring made during the exploratory program, including but not limited to:

- (1) Textural classification (USDA);
- (2) Particle size distribution for representative samples;
- (3) Coefficient of permeability based on field and laboratory determinations; and
- (4) Ion-exchange capacity and ability to absorb and fix heavy metal ions.

d. If bedrock was encountered:

- (1) Depth of bedrock;
- (2) Physical character and hydrologic characteristics of the bedrock formation; and
- (3) Names and ages of the formation encountered.

7. Information on any existing surface or sub-surface mining on the site within an area that may be affected by the proposed use, including but not limited to:

- a. Legal description of areas mined;
- b. Materials removed by mining; and
- c. Approximate size of displacement.

8. Information on any other activity that has occurred on the site in which the natural condition of the soil or support of the surface has been disturbed.

4-3 Proposed Service Area/Volume

1. The request for site approval shall specify the geographic area that the proposed site is intended and designed to serve.

2. List the location of each Regional Pollution Control Facility (RPCF) within the proposed service area and within 50 miles of the perimeter of the proposed service area, providing the following information:

- a. Dimensions of the RPCF (including permitted vertical air space) that remains unfilled by waste, estimating life span of such facility;

- b. Owner and operator; and
  - c. Classification of permit.
3. Complete documentation of the facts and reasons supporting applicant's assertion that the facility is necessary to accommodate the waste needs of the proposed service area.

4-4 Site Development Plan. The request for site approval shall contain the following information concerning the Site Development Plan:

1. Detailed topographic map of the site as it exists at the time of the request for site approval, prepared and certified by a licensed professional engineer, drawn to a scale of not less than 1" = 200', showing:
  - a. Five-foot contour intervals on sites, or portions thereof, where the relief exceeds 20 feet, and two (2) foot contour intervals on sites, or portions thereof, having less than 20 feet of relief; and
  - b. Location of all buildings, ponds, streams, wooded areas, bedrock outcrops, underground and overhead utilities, roads, fences, culverts, drainage ditches, drain tiles, easements, streets, boundaries, areas previously mined or where soil has been disturbed from its natural condition, the location and elevations of borings made under Section 4-2 hereof, and any other item that may be affected by the proposed use.
2. Detailed topographic map of the site as it is to be developed, prepared and certified by a licensed professional engineer, drawn to a scale of not less than 1" = 200', showing the same types of information as the map in Section 4-4, and more specifically:
  - a. Location and description of all monitoring devices which will be utilized on the site; and
  - b. Location of all buildings and equipment to be utilized by the proposed use.
3. Detailed topographic map of the site as it will appear at the time of closure, prepared and certified by a licensed professional engineer, drawn to a scale of not less than 1" = 200', showing the same types of information as the map in Section 4-4, and more specifically:



- a. Location and description of all monitoring devices which will be utilized on the site after closure; and
  - b. Location of all buildings and equipment that will remain after closure.
4. Approximate period of time for which the proposed facility will be in operation.

4-5 Operating Procedures. The request for site approval shall contain the following information concerning the operating and closing procedures of the proposed facility:

1. Detailed operating procedures for the facility;
2. Specific details for the following items:
  - a. Personnel requirements; including training and supervision.
  - b. Traffic control on the site;
  - c. Method of determining the quantity and contents of waste delivered to the facility; and
  - d. Method of chemical analysis of waste.

4-6 The request for site approval shall include information on contingency and emergency plans, including, but not limited to:

1. List of possible emergency situations which might occur at or near this facility which might affect the operations of the facility, including, but not limited to, explosion, fire, spills, tornadoes, and vandalism.
2. The applicant's plan to insure against risks of injury to the person and property of others, including copies of insurance policies or commitment letters.
3. Detailed Closure Plan. The request for site approval shall contain a detailed plan for voluntary or involuntary closure of the facility, including but not limited to:
  - a. Financial planning;
  - b. Technical information and planning; and
  - c. Closure planning in accordance with current Illinois Pollution Control Board regulations.

#### 4-7 Flood Plain

1. The request for site approval shall include a statement that the facility is within or outside the 100-year flood plain as determined by the Federal Emergency Management Agency.
2. There shall be filed with the request for site approval a map prepared and certified by a licensed professional engineer documenting the boundaries of the 100-year flood plain.
3. If the site is within the 100-year flood plain, there shall be filed:
  - a. Evidence that the site has been flood-proofed to meet the requirements of the Federal Emergency Management Agency and the requirements of any other federal or state agency; and
  - b. Evidence of approval by applicable federal and state agencies.

4-8 Traffic Patterns There shall be filed with the request for site approval:

1. A map of the county, prepared by a licensed professional engineer, showing the roads which will be used to transport material to and from the site.
2. A traffic study showing the present traffic flows on said roadways and the impact that the traffic generated by this facility will have thereon.
3. A statement of the estimated number of motor vehicles and the types and weights (loaded and empty gross) thereof which will be entering and exiting the site during each month of operation
4. A statement of the load limitations of any and all roads and bridges that will be utilized by traffic entering and exiting the site.

#### Article 5. PUBLIC INSPECTION AND COMMENT

5-1 A copy of the request for site approval shall be made available for public inspection in the offices of the County Clerk and members of the public shall be allowed to obtain a copy of the request for site approval or any part thereof upon payment of actual costs of reproduction to the County Clerk. All copying requests shall be fulfilled by the County Clerk in accordance with the Illinois Freedom of Information Act.

5-2 The County Clerk shall receive and date stamp written comments from any person concerning the appropriateness of the proposed site for its intended purpose.

5-3 Copies of written comments shall be made available for public inspection in the offices of the County Clerk, and members of the public shall be allowed to obtain a copy of any written comment upon payment of actual cost of reproduction. All copying requests shall be fulfilled by the County Clerk in accordance with the Illinois Freedom of Information Act.

5-4 Any written comment received by the County Clerk postmarked not later than 30 days after the date of the last public hearing shall be made part of the record of the public hearings as hereinafter described and the County Board shall consider any such timely written comments in making its final determination. In the event that the 30th day falls on a Saturday, Sunday, a federal or Kendall County holiday, the next day of which mail is received by the Kendall County Clerk shall be considered the 30th day for purposes of this paragraph.

Article 6 RETENTION OF EXPERTS

6-1 The County Board may, at its discretion, retain the services of one or more professional consultants to assist the Board and County staff in the process of reviewing any site approval request. Any expense shall be paid from the filing fee.

Article 7. RECORD

7-1 The County Clerk or his/her designee shall be responsible for keeping the record of the hearing/and site review process.

7-2 The record shall consist of the following:

1. The request for siting approval.
2. Proof of notice as described in Section 8-4-3 hereof.
3. Proof of notice given by applicant pursuant to Section 39.2(b) of the Environmental Protection Act (415 ILCS 5/39.2(b)).
4. Written comments filed by the public and received by the County Clerk or postmarked within 30 days of the last public hearing.
5. All evidence, reports, studies, exhibits or documents submitted into evidence at the public hearing.
6. A complete transcript of the public hearing(s).

7. The finding and recommendations of the Kendall County Pollution Control Site Hearing Committee.
8. A copy of the Resolution containing the final decision of the County Board.

Article 8. KENDALL COUNTY REGIONAL POLLUTION  
CONTROL SITE HEARING COMMITTEE/PUBLIC HEARING

8-1 COMMITTEE The Kendall County Pollution Control Site Hearing Committee shall be appointed by the Kendall County Board.

1. The County Board shall appoint five people to serve on the Pollution Control Site Hearing Committee. The County Board shall also designate a chairman of the Committee. The Committee may include Board members, professional consultants or any other individuals the Board, at its discretion, merits appointment. Compensation for the Committee will be funded by the request for site approval filing fee.
2. QUORUM. One (1) member of the Committee shall constitute a quorum.

8-2 HEARING OFFICER The County Board shall appoint a Hearing Officer to govern the proceedings under this Ordinance. The Hearing Officer will preside over the quasi-judicial process and be responsible for ruling on preliminary motions, objections or any other contested legal issues. The Hearing Officer shall be a licensed attorney in the State of Illinois. The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, to maintain order and to ensure development of a clear, complete and concise record.

8-3 EVIDENTIARY STANDARDS

1. The Hearing Officer shall receive evidence which is admissible under the rules of evidence as applied in the Courts of Illinois pertaining to civil actions except as this Ordinance otherwise provides. The Hearing Officer may receive evidence which is material, relevant, and would be relied upon by reasonably prudent persons in the conduct of serious affairs provided that the rules relating to privileged communications and privileged topics shall be observed.
2. When the admissibility of evidence depends upon an arguable interpretation of substantive law, the Hearing Officer shall admit such evidence.
3. Relevant scientific or technical articles, treatises or materials may be introduced into evidence subject to

refutation or disputation through any introduction of comparable documentary evidence or expert testimony.

8-4 PUBLIC HEARING

1. Within a reasonable time from the date the request for site approval is filed, the Pollution Control Site Hearing Committee shall determine the date, time and location upon which such public hearing shall be held. The initial public hearing shall be scheduled no sooner than 90 days but no later than 120 days from the date the request for site approval was filed with the County Clerk.
2. If, in the Committee's opinion, County facilities are not sufficient to accommodate the number of persons expected to attend the hearing, the Committee may arrange for the hearing to be conducted at another site. In such an event, the Committee is authorized to lease an adequate auditorium and sound system for the hearing. Any and all costs associated with such acquisition shall be paid from the filing fee.
3. The Committee shall cause notice to be published in accordance with the applicable provisions of the Act.
4. The State's Attorney, or an assistant, shall serve as legal advisor for the Kendall County Regional Pollution Control Site Hearing Committee.
5. Members of the public shall be allowed to obtain copies of any documents filed upon payment of the actual cost of reproduction.
6. All testimony at any public hearing shall be under oath or affirmation.
7. The applicant requesting site approval shall have the burden of going forward with evidence of the suitability of the site for its proposed use.
8. Any person appearing at the public hearing shall have the right to give testimony and comment on the suitability of the proposed use for the site location. Any person testifying shall be required to state their name and address.
9. The opportunity for any person appearing at the public hearing(s) to cross-examine any witness may be limited by the Hearing Officer. The Hearing Officer reserves the right to limit testimony, questions, comments and cross-examination to prevent argumentative comments, and

personal attacks on other parties, to maintain order and decorum during the hearing process, and to prevent cumulative, repetitive or irrelevant materials in the record. The Committee reserves the right to ask questions of any party testifying in order to clarify an issue, statement, or fact.

10. The Committee shall have the right to obtain and consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (any subsidiary or parent corporation) in the field of solid waste management when considering statutory criteria ii and v in Section 39.2(a) of the Environmental Protection Act (415 ILCS 5/39.2(a)).
11. Any person shall have the right to be represented by a licensed attorney-at-law at the public hearing(s). Such attorneys shall have the right of reasonable cross-examination. Any person not represented by an attorney shall also have the right to reasonable cross-examination of witnesses. The scope of cross-examination shall be determined by the Hearing Officer.

Article 9. SITE APPROVAL DECISION

9-1 After the public hearing(s) or any continuation thereof, the Kendall County Regional Pollution Control Site Hearing Committee shall hold a public review meeting for the purposes of establishing findings of fact and a recommendation concerning the site approval request. Any findings of fact and recommendation shall be supported by the record and shall be presented by the Committee to each County Board Member.

9-2 The County Board shall consider the record of the public hearing, the findings of fact and the recommendations of the Pollution Control Site Hearing Committee and shall make a written decision concerning a site approval request not more than 180 days from the date of the County Clerk's receipt of the site approval request. In the event a request for site approval is amended, the County Board shall render a decision within 270 days. The County Board may accept a request for site approval and impose conditions in accordance with Section 39.2(e) of the Illinois Environmental Protection Act (415 ILCS 5/39.2(e)).

Article 10. ADMINISTRATION OF FEES AND COSTS

10-1 The filing fee received pursuant to Article 3 shall be deposited with the County Treasurer. The County Treasurer is hereby authorized and directed to receive and hold said filing fee until payment is directed as described below.

10-2 All expenses incurred by the County of Kendall as a result of the request for site approval and the hearing process set forth herein may be paid from the filing fee.

10-3 All costs incurred by the County, its staff officials, departments as a result of administering the hearing process herein shall be reported to the County Board.

1. Upon approval by the County Board, the Board may authorize reimbursement for expenditures and payment of all bills upon proper documentation.
2. Upon termination of any proceedings under the hearing process, the County Clerk shall prepare a final accounting and summary of all bills and expenses which shall be presented for approval to the County Board.

Article 11. SEVERABILITY

11-1 The sections, subsections, paragraphs, and provisions of this Resolution shall be deemed severable and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.


Article 12. REPEAL

12-1 Any or all Ordinances pertaining to a procedure for hearing site approval requests for new regional pollution control facilities prior to the enactment of this Ordinance are hereby repealed.

Article 13. EFFECTIVE DATE

13-1 This Ordinance shall become effective upon its adoption by the County Board of Kendall County, Illinois.

Adopted by the County Board of Kendall County, Illinois this 18<sup>th</sup> day of MARCH, 1997.

ATTEST:  
  
\_\_\_\_\_  
County Clerk  
Kendall County, Illinois

APPROVED:  
  
\_\_\_\_\_  
Chairman  
Kendall County Board