

ORDINANCE NO. 90-20

THE REGIONAL POLLUTION CONTROL
FACILITY SITING ORDINANCE

BE IT ORDAINED by the County Board of the County of Kendall, Illinois:

WHEREAS, the Illinois Environmental Protection Act (Illinois Revised Statutes, Chapter 111 1/2, Paragraph 1001 et seq.) has provided for approval of the county board of a county as to the site location suitability for each new Regional Pollution Control Facility, the following ordinance is intended to delineate the substance and procedure for the application and hearing of such proposed site locations, and shall be called "The Regional Pollution Control Facility Siting Ordinance."

SECTION 1: DEFINITIONS

(a) "Act" is the Illinois Environmental Protection Act, as amended (Ill. Rev. Stat. 1987, Ch. 111 1/2, Paragraph 1001 et seq.).

(b) "Applicant" is any person, firm or partnership, association, corporation, company or organization of any kind.

(c) A "Hazardous Waste Disposal Site" is a site at which hazardous waste is disposed. "Hazardous Waste" is waste as defined in the Illinois Environmental Protection Act, as amended (Illinois Revised Statutes, Chapter 111 1/2, Paragraph 1001 et seq.) the "Act").

(d) A "Regional Pollution Control Facility" is any waste storage site, sanitary landfill, waste disposal site, waste transfer station or waste incinerator that accepts waste from or that serves an area that exceeds or extends over the boundaries of any local general purpose unit of government. For purposes of this Ordinance a local general purpose unit of government is Kendall County. A Regional Pollution Control Facility is also any facility defined as such in the Act.

(e) "County" is Kendall County, Illinois.

(f) "County Board" is the Kendall County Board.

(g) "IEPA" is the Illinois Environmental Protection Agency.

In addition, all other words used in this Ordinance and defined in the Act shall have the same definitions and meanings as found in said Act.

SECTION 2: COUNTY APPROVAL OF REGIONAL
POLLUTION CONTROL FACILITIES

No site approval for the development or construction of a new Regional Pollution Control Facility or expansion of an existing Regional Pollution Control Facility in Kendall County may be granted by the Kendall County Board unless an application is filed for approval of such a site and is submitted for consideration to said County Board. An application for site approval need not be submitted if:

- A) The proposal is completely within the boundaries of a municipality and/or county and intends to serve only that entity; or
- B) The proposal will be a storage site for certain PCB-containing materials regulated by Federal regulations 40 CFR, Part 761.42; or
- C) The proposal is a site or facility used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person; or
- D) The proposal is a site or facility at which the State of Illinois is performing removal or remedial action pursuant to Section 22.2 of the "Act."

SECTION 3: REGIONAL POLLUTION CONTROL FACILITY
COMMITTEE AND COMMITTEE CHAIRMAN

- (a) A regional Pollution Control Facility Committee (the "Committee") shall be established by the Kendall County Board and shall consist of four (4) members. Two (2) County Board members from each district are to be appointed by the Chairman of the County Board for a term of one (1) year.
- (b) The Chairman of the Regional Pollution Control Facility Committee shall be appointed by the Chairman of the County Board and shall be the fifth (5th) member of the Committee. One member of the Committee shall be designated Acting Chairman in the event of the Chairman's absence. In the alternative, the Chairman of the County Board may elect if he/she chooses, to assume the chair of the Regional Pollution Control Facility Committee. The Chairman shall serve for one (1) year; no Chairman shall serve for more than two (2) consecutive terms. The

Chairman shall vote only in the event that there is a tie in the vote.

- (c) All meetings and hearings of the Regional Pollution Control Facility Committee shall be at the call of the Committee Chairman, or in his/her absence, the Acting Chairman, at such times as may be required.
- (d) The Committee shall elect a hearing officer or officers to serve during any public hearing concerning an application for site approval. The hearing officer(s) shall serve at the pleasure of the Committee. Compensation for the services of the hearing officer(s) shall be mutually agreed upon before a hearing. The duties of the hearing officer(s) shall be provided for in the "Articles of Rules and Procedures-Regional Pollution Control Facility Committee-Kendall County, Illinois" (the "Articles of Rules and Procedures").

SECTION 4: PROCEDURE FOR FILING AN APPLICATION FOR APPROVAL OF A REGIONAL POLLUTION CONTROL FACILITY

- (a) (i) In order to request approval of a proposed Regional Pollution Control Facility or expansion of an existing Regional Pollution Control Facility in Kendall County, an applicant must file an application with the County Board, with a minimum of thirty (30) copies of the application and the substance of the applicant's proposal showing sufficient details describing the proposed facility to demonstrate compliance, including all site plans, exhibits and maps, and all documents, if any, submitted as of that date to the IEPA pertaining to the proposed facility in connection with said applicant's application except trade secrets as determined under Section 7.1 of the Act (Ill. Rev. Stat., Ch. 111 1/2, Par. 1007.1). Said application may be obtained from the secretary of the Kendall County Board.
- (ii) In addition, the applicant must file with the County Board a deposit fee of \$125,000.00 (ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS) when applying for site approval of a Regional Pollution Control Facility, except that a deposit fee of \$200,000.00 (TWO HUNDRED THOUSAND AND 00/100 DOLLARS) is required if said facility is designed as a Hazardous Waste Disposal Site. The fee as applicable is intended to defray the reasonable and necessary costs of processing the application, including: space rental, hearing officer(s), court reporter, transcription costs, public notice, staff review times, Committee per diems, State's Attorney and County consultants (including tests, exhibits and testimony, if any, provided by said consultants), any other relevant costs incident to the consideration of an application,

and the costs of preparing the record for appeal, if any appeal of a County Board decision is made to the Illinois Pollution Control Board. If the costs to the County are less than the amount paid in the form of the deposit, the excess shall be refunded to the applicant. Should there be any additional costs incurred by the County over the amounts paid as deposit, the applicant shall bear any and all additional costs.

(iii) The application must be answered completely with information provided for each question, accompanied by all site plans, exhibits, maps and documents as specified in (a)(i) above. The date the applicant files the application with the office of the County Board shall be considered the official filing date for all time limit purposes. At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the County Board and any participants, the applicant may file not more than one amended application upon payment of additional fees pursuant to Section 39.2(k) of the Act and SECTION 4(a)(ii) of this Ordinance. Provided, however, that the time limitation for final action set forth in this Section 39.2(e) of the Act and SECTION 7(b) of this Ordinance shall be extended for an additional period of 90 days.

(b) (i) Upon receipt of a completed application, and payment of the deposit fee, the Administrative Aide of the County Board shall date stamp all the copies and immediately deliver one copy to the Chairman of the County Board, one copy to the Building & Zoning Administrator, one copy to each municipality within one and one-half miles of the proposed facility and one copy to the Chairman of the Regional Pollution Control Facility Committee.

(ii) In order to develop a record sufficient to form the basis of an appeal of the County Board decision, the Kendall County Department of Health and the State's Attorney's Office may retain consultants on behalf of the County. The consultants and the County agencies shall then commence a study of the application. The applicant shall cooperate fully with the consultants and the technical staff of the County in their review of the application.

(c) A copy of the application and all related documents or other materials on file with the County Board shall be made available for public inspection in the office of the County Board. Members of the public shall be allowed to obtain a copy of said request or any part thereof upon payment of actual cost of reproduction and proper request as outlined in the Freedom of Information Act (Illinois Revised Statutes, Chapter 116, Paragraph 201 et seq.).

(d) The applicant shall meet all notice requirements as required by Illinois Revised Statutes, Chapter 111 1/2, Paragraph 1001 et seq., to wit:

(i) The Applicant shall cause to be published no sooner than thirty (30) days nor later than fourteen (14) days prior to a request for location approval a written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within two hundred fifty (250) feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the two hundred fifty (250) feet requirement; provided, further, that in no event shall this requirement exceed four hundred (400) feet, including public streets, alleys and other public ways.

(ii) The applicant shall also serve, within fourteen (14) days prior to a request for location approval, written notice upon members of the General Assembly from the legislative district in which the proposed facility is located and this notice shall be published in a newspaper of general circulation published in Kendall County. Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the County Board, a description of the right of persons to comment on such request as hereafter provided and any other information as may be required by the Committee Rules and Procedures.

(iii) The applicant shall file proof of all notice requirements with the County Board within fourteen (14) days of their publication.

SECTION 5: PROCEDURE FOR FILING WRITTEN COMMENTS TO AN APPLICATION FOR APPROVAL OF A REGIONAL POLLUTION CONTROL FACILITY

(a) Any person may file written comment with the County Board concerning the appropriateness of the proposed site for its intended purpose. The County Board shall consider any comment received or postmarked from the date of acceptance of the application through and until thirty (30) days after the date of the last public hearing in

making its final determination. Said written comments shall be sent or delivered to the Office of the Kendall County Board, 110 West Ridge Street, Yorkville, Illinois 60560. Upon receipt the County Board Secretary shall date stamp the comment.

- (b) These comments shall become a part of the record of the proceedings of the Committee.

SECTION 6: HEARINGS ON APPLICATIONS

- (a) At least one public hearing shall be held by the Regional Pollution Control Facility Committee no sooner than ninety (90) days but no later than one hundred twenty (120) days from the receipt of the request for site approval.
- (b) The applicant is to cause to be published a notice of said hearing in a newspaper of general circulation published in Kendall County not later than fourteen (14) days before said hearing, 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. The public hearing shall develop a record sufficient to form the basis of any appeal.
- (c) The Chairman of the Committee shall notify the applicant in writing of the date of the public hearing before the Committee, at least twenty one (21) days before that hearing, in order that the applicant may publish notice of that hearing.
- (d) During the course of the public hearing before the Committee, the Committee shall receive testimony, such testimony to be recorded, from the applicant and witnesses the applicant may call, any County witnesses, and other witnesses or objectors, and shall recommend approval only if the proposed facility meets the following criteria:
 - (i) The facility is necessary to accommodate the waste needs of the area it is intended to serve.
 - (ii) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.
 - (iii) The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.
 - (iv) The facility is located outside the boundary of the

100 year flood plain or the site is flood-proofed.

(v) The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents.

(vi) The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

(vii) If the facility will be treating, storing or disposing 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.

(viii) If the facility will be located within a regulated recharge area, any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met.

(ix) The facility is consistent with any current solid waste management plan adopted by the County Board of the County.

The Committee and the County Board may also 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 (ii) and (v) above and of Section 39.2(a) of the "Act."

- (e) A hearing officer or officers, appointed by the Committee, shall preside at the public hearing and shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted subject to this Ordinance and the Articles of Rules and Procedures of the Committee. However, the hearing officer(s) shall make all rulings and decisions in accordance with fundamental fairness. No ruling of the hearing officer(s) shall be appealable to the County Board.
- (f) The decision of the Committee on the application is to be in writing, specifying the reason(s) for the decision, such reason(s) to be in accordance with (d) of this Section. The Committee shall submit its report to the County Board as soon as practicable.
- (g) The siting approval, procedures, criteria and appeal procedures provided for in the Act for new Regional Pollution Control Facilities as set forth in this Ordinance shall be the exclusive siting procedures and

rules and approval procedures. Local zoning or other local land use requirements shall not be applicable to such siting decisions.

SECTION 7: DECISIONS

- (a) Once the Committee has made its recommendation and reduced its recommendation to writing, the written recommendation shall be submitted to the full County Board for their decision as to the ultimate approval or disapproval of the proposed site location. Four (4) copies of the record of the public hearing shall also be made available to the full County Board in the County Board Office as soon as said transcript becomes available.
- (b) The County Board shall make a decision based on the record from the public hearing and review of the recommendation of the Committee. The decision of the County Board shall be in writing, specifying the reasons for the decision, such reasons to be in conformity with Section 39.2(a) of the Act (Illinois Revised Statutes, Ch. 111 1/2, Par. 1039.2(a)). In granting approval for a site, the County Board may impose such conditions as may be reasonable and necessary to accomplish the purposes of the Act and as are not inconsistent with regulations promulgated by the Illinois Pollution Control Board. Such decision shall be available for public inspection at the office of the County Board and may be copied upon payment of the actual cost of reproduction. If there is no final action by the County Board within one hundred eighty (180) days after the filing of the request for site approval, the applicant may deem the request approved.
- (c) Whether the County Board approves or disapproves of the proposed site location, a Resolution shall be passed to that effect, stating the reason(s) for the decision.
- (d) An applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved, pursuant to a finding against the applicant under any of criteria (i) through (ix) of SECTION 6(d) above and of Section 39.2(a) of the Act, within the preceding 2 years.

SECTION 8: ARTICLES OF RULES AND PROCEDURES

The Committee shall establish Articles of Rules and Procedures for the application and hearing process governing Regional Pollution Control Facilities. These rules and procedures must also be followed by any applicant. Any additional information or requirements mandated by said rules and procedures must be submitted or followed by said applicant.

SECTION 9: SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 10: ORDINANCE REPEALED

All ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

BE IT FURTHER ORDAINED that this amended Ordinance take effect on the 10 day of July, 1990.

DATED at Yorkville, Kendall County, Illinois, this 10 day of July, 1990.

Kenneth E. Cole
Chairman
Kendall County Board

(SEAL)

ATTEST:

John G. Brady
County Clerk

VOTING AYE: _____

VOTING NAY: _____

ABSTAINING: _____

ABSENT: _____