

## Chapter 59 – REGIONAL POLLUTION CONTROL FACILITY SITING ORDINANCE

### Sec. 59-1 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Act* means the Illinois Environmental Protection Act, as amended (415 ILCS 5/1 et seq.).

*Applicant* means any person, firm or partnership, association, corporation, company or organization of any kind proposing to obtain site location approval and IEPA permits for a Pollution Control Facility in unincorporated DeKalb County, and includes the owner of such site, the proposed operator, and any other party with an interest in the site, such as a lessee, contract purchaser or land trust beneficiary.

*Board* refers to the Illinois Pollution Control Board.

*Committee* refers to the Pollution Control Facility Committee.

*County* refers to DeKalb County, Illinois.

*County Board* refers to the DeKalb County Board.

*Hazardous waste disposal site* means a site at which hazardous waste is disposed. Hazardous waste is waste as defined in the Illinois Environmental Protection Act, as amended (415 ILCS 5/1 et seq.) (the "Act").

*IEPA* means the Illinois Environmental Protection Agency.

*Incinerator* means any facility that destroys waste through thermal processes with or without energy or materials recovery and includes any form of pyrolysis, liquefaction or gasification.

*Mixed municipal waste* means municipal waste generated by households and commercial businesses that has not been separated for composting at the point of generation.

*Mixed municipal waste composting facility* is an entire mixed municipal waste composting operation.

*Mixed waste processing facility* means a transfer station where recyclables are separated from mixed municipal waste.

*Organic waste* means food waste, landscape waste, wood waste, or other non-hazardous carbonaceous waste that is collected and processed separately from the rest of the municipal waste stream. Household hazardous waste is not an organic waste.

*Organic waste composting facility* means an entire organic waste composting operation.

*PCF* refers to a Pollution Control Facility as defined in the Act. "PCF" includes a new Pollution Control Facility as defined by the Act.

*Pre-filing review* means any work or action performed on behalf of the County to review a draft or conceptual application from the applicant. This occurs prior to the submittal of a final application. A final application is submitted on the filing date.

*Refuse derived fuel facility* means a facility that produces fuel pellet or additive to be combusted for energy recovery alone or along with another energy source and where non-combustibles (including, but not limited to glass, ferrous metals, and fines) are separated from mixed municipal waste.

*Sanitary landfill* means a facility permitted by the state environmental protection agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, and regulations there under, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation or by such other methods and intervals as the pollution control board may provide by regulation.

*Transfer station* means a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment, or storage facility.

All other terms used in this article shall have the same meanings as the same terms as defined in the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and the implementing and interpreting administrative rules and regulations, in effect as of the date hereof, and as said statute and regulations and rules may be amended or modified from time to time.

*(Code 1979, § 17-26; Ord. 2007-12, 9-19-2007)*

### **Sec. 59-2 County Approval Required; Exceptions**

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

1. The proposal is completely within the boundaries of a municipality.
2. The proposal will be a storage site for certain PCB-containing materials regulated by federal regulations 40 CFR 761.42.
3. 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.
4. The proposal is a site or facility at which the state is performing removal or remedial action pursuant to section 22.2 of the act (415 ILCS 5/22-2).
5. The proposal is a transfer station used exclusively for landscape waste, where landscape waste is held no longer than 24 hours from the time it was received.

*(Code 1979, § 17-27; Ord. 2007-12, 9-19-2007)*

### **Sec. 59-3 Committee and Committee Chairman**

- A. A Pollution Control Facility Committee (the Committee) shall be established by the County Board and shall consist of six members of the County Board appointed by the Chairman of the County Board with the advice and consent of the board for a term of one year.
- B. The Chairman of the Pollution Control Facility Committee shall be appointed by the Chairman of the County Board and shall be a member of the County Board and shall be the seventh 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 chooses to assume the chair of the Pollution Control Facility Committee. The Chairman shall serve for one year; no Chairman shall serve for more than two consecutive terms. The Chairman shall vote only if there is a tie in the vote.
- C. All meetings and hearings of the Pollution Control Facility Committee shall be at the call of the Committee Chairman, or in his absence, the acting Chairman, at such times as may be required. Meetings may also be called by written request of two-thirds of the members of the Pollution Control Facility Committee. Such requests shall be in writing addressed to the Clerk of the board and shall specify the time and place of such meeting. The Clerk shall then give notice of the meeting to members of the board and to the general public as required by law.

- 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 shall serve at the pleasure of the Committee. Compensation for the services of the Hearing Officer shall be mutually agreed upon before a hearing. The duties of the Hearing Officers shall be provided for in the Articles of Rules and Procedures—Pollution Control Facility Committee—DeKalb County, Illinois (the articles of rules and procedures).

(Code 1979, § 17-28; Ord. 2007-12, 9-19-2007)

#### **Sec. 59-4 Procedure for Filing Application for Approval**

A. *Host agreement.*

1. Prior to submitting an application for siting approval for a PCF, the applicant shall enter into negotiations with the County Board to develop a host agreement. The host agreement must be approved by the County Board. The host agreement shall be signed by the applicant and the Chairman of the County Board before the applicant submits an application for siting of a PCF. The host agreement shall be completed prior to any pre-filing review of a conceptual PCF.
2. If the County and applicant agree that a pre-filing review is warranted, then a pre-filing deposit of \$75,000.00 shall be submitted prior to the County engaging professional services to review the draft concept application. Any pre-filing review shall occur completely prior to the applicant initiating the siting process described in section 39.2 of the Act. A Memorandum of Understanding between the applicant and County will be drafted and signed by each party prior to entering into pre-filing discussions. The memorandum of understanding shall define the roles of the County and applicant and the detail of how the deposit will be utilized by the County. Any part of the pre-filing deposit that is not utilized for costs will be returned to the applicant. Any costs incurred by the County associated with the pre-file review above and beyond the pre-filing deposit shall be the responsibility of the applicant. Nothing in this article requires that a pre-filing review be performed.
3. The applicant shall meet all notice requirements as required by 415 ILCS 5/1 et seq., as follows:
  - a. The applicant shall cause to be published no sooner than 30 days nor later than 15 days prior to a request for siting 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 properties:
    1. Within the subject area not solely owned by the applicant,
    2. Adjoining the subject property,
    3. That would be adjoining but for public right-of-ways and other easements that do not extend more than 400 feet from the subject property line, and
    4. Adjoining those properties above.

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. The County may also provide notice of such a request for siting approval by erection of a sign on the subject property, posted in a conspicuous place on the subject property allowing unobstructed public viewing.

- b. The applicant shall also serve, within 14 days prior to a request for siting 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 the 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.
    - c. The applicant shall file proof of all notice requirements with the County Board within 14 days of their publication.

B. *Application submittal and fee.*

1. In order to request siting approval of a proposed Pollution Control Facility or expansion of an existing Pollution Control Facility in the County, an applicant must file an application with the County Board, with a minimum of 31 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 (415 ILCS 5/7.1). The application may be obtained from the secretary of the County Board.

The application must be complete, with answers provided for each question on the application form. The application should contain consecutively numbered pages and it must contain, as specified in the articles:

- a. Identification of the applicant;
- b. Operation classification;
- c. Site location;
- d. Site history;
- e. Notice to adjoining landowners;
- f. Specific information by criteria in ten sections with attachments as described in section F of the application.

No application for site approval shall be deemed to have been filed or accepted for filing and the County Clerk shall not give a receipt or other indication of filing until such time as the County Clerk has determined that the application has been filed:

- a. With the correct number of copies as required by the articles and paragraph (B)(1) of this subsection,
- b. With the application fee as provided in paragraph (B)(2) of this subsection, and
- c. In the form required by the articles and paragraph (B)(1) of this subsection.

Within a reasonable period of time after delivery of an application (considered ten working days), the County Clerk shall advise the applicant either that the application appears substantially complete and that it has been accepted for filing, designating the date of filing as the date of final completeness determination; or that the application is not complete, specifying where it is deficient, and thus not filed.

Receipt and acceptance of an application by the County Clerk is pro forma, and does not constitute an acknowledgment that the applicant has complied with the Act or this article. It is the responsibility of the applicant to ensure that the application contains all studies, analyses, site plans, exhibits, maps and documents required by this article and by the articles of rules and procedures.

The date that the County determines that the applicant has filed a complete application in proper form, together with the applicable filing fee deposit, with the County Clerk, shall be considered the official filing date for all time limit purposes.

2. In addition, the applicant must file with the County Board a deposit fee of:
  - a. One hundred seventy-five thousand dollars for a transfer station or mixed waste processing facility;
  - b. Three hundred thousand dollars for either a refuse derived fuel facility, an organic and/or mixed municipal waste composting facility, or a new or expanded sanitary landfill;
  - c. Five hundred thousand dollars for a hazardous waste disposal site or for an incinerator or PCF that burns refuse derived fuel; or

- d. An amount to be negotiated with the County for other types of pollution control facilities. Appropriate methods of payment of filing fees include only the following: wire transfer to the County bank account, cashier's check, negotiable money order, or certified check with Treasurer, DeKalb County, Illinois listed as the payee.

The fee as applicable is intended to defray the reasonable and necessary costs of processing the application, including space rental, Hearing Officer, 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 the 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 state 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.

3. The application must be answered completely with information provided for each question, accompanied by all site plans, exhibits, maps and documents as specified in subsection (a)(1) 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 the completion by the applicant of the presentation of the applicant's factual evidence and any opportunity for cross-questioning by the County Board and any participants, the applicant may file not more than one amended application upon payment of an additional fee of \$50,000.00 pursuant to section 39.2(k) of the act (415 ILCS 5/39.2(k)) and subsection 17-29(c)(2) of this section. The County may waive or reduce the fee for the amended application upon review of its expenses and costs to date. However, the time limitation for final action set forth in section 39.2(e) of the act (415 ILCS 5/39.2(e)) and subsection 50-57(b) of this article shall be extended for an additional period of 90 days.

*C. Distribution of copies; study and review.*

1. Upon receipt of a completed application, and payment of the deposit fee, the secretary 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 director of the department of planning, zoning and building, one copy to each municipality within 1½ miles of the proposed facility and one copy to the Chairman of the Pollution Control Facility Committee.
2. In order to develop a record sufficient to form the basis of an appeal of the County Board decision, the 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.

- D. *Public inspection.* 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 and at a library or libraries specified by the County. 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 (5 ILCS 140/1 et seq.).

*(Code 1979, § 17-29; Ord. 2007-12, 9-19-2007)*

### **Sec. 59-5 Procedure for Filing Written Comments to an Application**

- A. Any person may file a written comment with the County Board concerning the appropriateness of the proposed site for its intended purpose pursuant to this article. The County Board shall consider any comment received or postmarked from the date of acceptance of the application through and until 30 days after the date of the last public hearing in making its final determination. The written comments shall be sent or delivered to the Office of the DeKalb County Board, 110 E. Sycamore Street, Sycamore, Illinois 60178. 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.

*(Code 1979, § 17-30; Ord. 2007-12, 9-19-2007)*

### **Sec. 59-6 Hearings on Applications**

- A. At least one public hearing shall be held by the Pollution Control Facility Committee no sooner than 90 days but no later than 120 days from the receipt of the request for site approval under this article. The public hearing shall develop a record sufficient to form the basis of any appeal.
- B. The applicant is to cause to be published a notice of the hearing in a newspaper of general circulation published in the County not later than 15 days before the hearing, and notice by certified mail to all members of the general assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the municipality in which the proposed site is to be located, and to the state environmental protection agency. The County may also provide notice of such hearing by erection of a sign on the subject property, posted in a conspicuous place on the subject property allowing unobstructed public viewing.
- C. The Chairman of the Committee shall notify the applicant in writing of the date of the public hearing before the Committee, at least 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:
  - 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 floodplain 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 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 will be located within a regulated recharge area, any applicable requirements specified by the state pollution control board for such areas have been met.
  - 9. The facility is consistent with any current solid waste management plan adopted by the County Board.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 (2) and (5) above and of section 39.2(a) of the act (415 ILCS 5/39.2(a)).
- E. A Hearing Officer 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 article and the articles of rules and procedures of the Committee. However, the Hearing Officer shall make all rulings and decisions in accordance with fundamental fairness. No procedural ruling of the Hearing Officer shall be appealable to the County Board.
- F. The decision of the Committee on the application is to be in writing, specifying the reasons for the decision, such reasons to be in accordance with subsection (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 pollution control facilities as set forth in this article 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. If siting approval is granted, the site shall be designated for "special use" on County Zoning Maps.

*(Code 1979, § 17-31; Ord. 2007-12, 9-19-2007)*

### **Sec. 59-7 Decisions**

- A. Once the Committee has made its recommendation under this article and reduced its recommendation to writing, the written recommendation shall be submitted to the full County Board for its decision as to the ultimate approval or disapproval of the proposed site location. Four 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 the 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 decisions, such reasons to be in conformity with section 39.2(a) of the act (415 ILCS 5/39.2(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 state 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 180 days after the filing of the request for site approval, the applicant may deem the request approved.
- C. Whether the board approves or disapproves of the proposed site location, a resolution shall be passed to that effect, stating the reasons 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 the criteria in subsections 50-56(D)(1) through (9) and of section 39.2(A) of the act (415 ILCS 5/39.2(a)), within the preceding two years.

*(Code 1979, § 17-32; Ord. 2007-12, 9-19-2007)*

### **Sec. 59-8 Articles of Rules and Procedures**

The Committee shall establish articles of rules and procedures for the application and hearing process governing pollution control facilities. These rules and procedures must also be followed by any applicant. Any additional information or requirements mandated by the rules and procedures must be submitted or followed by the applicant.

*(Code 1979, § 17-33; Ord. 2007-12, 9-19-2007)*