

## CHAPTER 28

### POLLUTION CONTROL FACILITY SITING

#### ARTICLE I - RULES AND REGUALTIONS

##### **28-1-1      DEFINITIONS.**

(A)            The terms used in these rules and regulations shall have the same meanings as the same terms 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.

(B)            The terms "sufficient detail", "sufficiently complete", or "sufficiently detailed" as utilized to describe the application shall be defined solely by the judgment of the City Council and Mayor of the City.

(C)            The term "applicant" shall be defined throughout the application unless otherwise specified in a specific section as the name or entity provided on the face sheet of the application.

##### **28-1-2      APPLICATION.**

(A)            **One (1)** original and **fifteen (15) copies** of the application and all exhibits thereto shall be filed with the City Clerk.

(B)            The application shall be on paper **eight and one-half (8.5) inches** by **eleven (11) inches** in size.

(C)            The application shall contain the information specified in **Sections 28-1-2** through **28-1-10** hereof.

(D)            The application shall be signed by the applicant or if the application is filed by a corporation, it shall be signed by its principal executive officer.

(E)            The face sheet of the application shall contain only the following information:

- (1)      A statement that it is an application for approval to site a new pollution control facility;
- (2)      A statement indicating whether it is an application for a waste, hazardous waste or special waste storage site, sanitary landfill, waste, hazardous waste or special waste disposal site, waste, hazardous waste or special waste transfer station or waste, hazardous waste or special waste incinerator, waste or hazardous waste traditional gasifier, waste or hazardous waste plasma gasifier, waste, hazardous waste, or special waste treatment or recycling facility, or any combination thereof;
- (3)      The name of the applicant;
- (4)      The principal business address and telephone number of the applicant; and
- (5)      The name, address, telephone number and title of the person designated by the applicant as its agent for service of notices.

(F)            The application shall be sworn under oath by the applicant, or if a corporation, the principal executive officer thereof, who shall state that the person signing said application has read the application, that he knows the contents thereof and that each statement made therein is true in substance and in fact.

(G) If any portion of the application or exhibits is prepared by anyone other than the applicant, the name, address and telephone number of any such person should be clearly shown together with an indication of the portion prepared by said person.

(H) The applicant shall provide, within **ten (10) business days** prior to the beginning of the public hearing for the application, names and addresses and a complete list of the qualifications of all persons who conducted tests, borings, surveys, examinations, experiments, or produced any information or rendered any opinion which is included within the application.

(I) The applicant shall also provide a copy of the entire application in electronic "pdf" format on CD-Rom such that the application may be uploaded to the City website and that "read only" copies of the application may be provided on CD-Rom format to members of the public that request same.

(J) The application shall address each of the nine criteria listed in Section 39.2(a) of the Act and the previous operating experience of the applicant in ten separate sections. Other sections may be added as deemed desirable by the applicant. The application shall also include appropriate drawings, figures and/or site plans including a full size set of drawings and a reduced set of drawings typically no larger than **11" x 17"** (if applicable). Full size drawings which are specific to the site, and depict on-site conditions and development, as required in **Section 28-1-6** of this Chapter, shall be at a minimum of **1" = 200' scale**. Full size drawings utilized to depict the features within **one and one-half (1 ½) mile** setbacks or other regional characteristics shall be at the largest scale practical on standard full size drawings. Reduced drawings shall not have a scale requirement.

### **28-1-3**

#### **BACKGROUND OF APPLICANT.**

(A) The application shall contain the following information concerning the applicant:

- (1) Applicant's full name, address and telephone number, if a partnership, the names and addresses of all partners and the telephone number of the partnership. If a corporation, the names and addresses of all officers and directors, and the names and addresses of all shareholders owning **five percent (5%)** or more of the capital stock of said corporation and the telephone number of the corporation.
- (2) If the applicant is a corporation copies of the current articles of incorporation thereof shall accompany the application as an exhibit. If applicant is a corporation and more than **five percent (5%)** of its capital stock is owned by another corporation, either directly or derivatively, then the requirements of this part shall be applicable to said other corporation or corporations also.
- (3) Unless otherwise agreed between the City and the applicant in a host community agreement, attached to the application shall be a copy of the balance sheet of the applicant as of the end of the last **five (5) years** preceding the filing and a copy of the profit and loss statement of the applicant for each of the **five (5) years** preceding the filing. In the event the applicant has not been a legal entity for at least **two (2) years** as of the date of the filing of the application, the requirement for submission of a balance sheet is waived. Each balance sheet and profit and loss statement

shall be certified to by a certified public accountant in the usual form of said certification.

- (4) The application shall contain a listing of any environmental lawsuits or related court proceedings/administrative proceedings in which any person or entity named in subsections (1) and (2) of this part has been a party during the **five (5) years** preceding the filing of this application. With respect to each such listing, the court or agency shall be identified and the number of such case, and a brief summary of the nature of each and the decision thereon shall be provided.
- (5) With respect to each individual named in subsection (1) of this part, the application shall contain a statement of his respective prior employment history for the **five (5) years** preceding the filing of this application.
- (6) A statement detailing the prior experience of the applicant and of any officer and employee of the applicant in the activity in which the applicant intends to be engaged if the application is approved.
- (7) If the applicant has previously closed any facility defined and permitted as a hazardous waste disposal site, a regional pollution control facility, a sanitary landfill, a storage site or a waste disposal site, either voluntarily or involuntarily, the applicant shall provide the following information:
  - (a) The name and location of the facility which was closed;
  - (b) The date on which the process of closing started and ended;
  - (c) The closure plan (if required to have been prepared by state or federal regulation);
  - (d) The financial assurance of closure mechanism if required to have been utilized by state or federal regulation;
  - (e) Certification of closure by the regulating authority or correspondence regarding the on-going closure obligations of the company;
  - (f) The terms of this subsection shall apply to facilities which were closed when the applicant was the owner or operator of said facility, and also to facilities which were owned or operated by a corporation or partnership of which the applicant was owner of more than **five percent (5%)** of the ownership interest of said corporation or partnership. If the applicant is a corporation or a partnership, this subsection shall also apply to anyone owning more than a **five percent (5%)** interest in the applicant.

#### **28-1-4**

#### **SITE.**

- (A) The application shall contain a legal description of the proposed site.
- (B) The application shall set forth the names, addresses, and telephone numbers of the owners of the site, if other than the applicant. If the site is owned by a trust, the names, addresses and telephone numbers of all of the beneficiaries shall be set forth and a copy of the trust agreement shall be attached to the application as an exhibit. If the site is owned by a corporation or partnership, all of the information required by the paragraphs of

**Section 28-1-3(A)(1)** and **(2)** shall be furnished in the application as to the owning corporation or partnership.

(C) There shall be filed with the application a copy of the City Assessor's or tax map (or equivalent) or combination of maps showing, to the extent they are existing or known:

- (1) The location of the site;
- (2) The location and depths of all water wells registered/recorded with the governing community or state agency within **one and one-half (1 ½) miles** of the boundaries of the proposed site in each direction;
- (3) The location of all streams, ponds, rivers and lakes within a **one and one-half (1 ½) mile** radius of the site;
- (4) The zoning of all lands within a **one and one-half (1 ½) mile** radius of the site;
- (5) The location of all roads and bridges within a **one and one-half (1 ½) mile** radius of the site; and
- (6) The location of buildings within **fifteen hundred (1,500) feet** of the proposed site.

(D) There shall be filed with the application a hydrogeologic study or research report of sufficient detail of the site. The hydrogeologic study shall include an exploratory boring program which must include site specific borings if the proposed facility is a landfill or will store waste below grade. If the facility does not store or dispose of waste below grade, then the applicant may use publicly available records to complete relevant portions of the hydrogeologic study. The City must have sufficient data to address the evaluation of criteria 2, 5, and 9 of Section 39.2 of the Illinois Environmental Protection Act as listed in **Section 28-1-17(B)** of this Code. The study shall include:

- (1) A description of the regional geography and geology within **one and one-half (1 ½) miles** of the proposed facility.
- (2) A summary of the regional hydrogeologic conditions within **one and one-half (1 ½) miles** of the proposed facility;
  - (a) A complete log of each boring made during any exploratory program (if applicable). If an exploratory boring program was conducted, and if bedrock was encountered during said boring program, the following information should be provided: Depth(s) to bedrock;
  - (b) Physical character and hydrogeological characteristics of the bedrock formation;
  - (c) Names and ages of the formations encountered during the boring operation and/or which crop out on or adjacent to the site.
- (3) If an exploratory boring program was conducted, the following information shall be provided for samples taken during the boring operation. If no exploratory boring program was conducted, the information may be based on literature reviews:
  - (a) Textural classification (USDA system);
  - (b) Particle size distribution for representative samples;
  - (c) Coefficient of permeability based on filed or laboratory determinations;
  - (d) Ion-exchange capacity and ability to absorb and "fix" heavy metal ions.

- (4) If an exploratory boring program was conducted, the following information regarding the hydrogeologic flow system shall be provided:
  - (a) Depth to water in boreholes at time of boring completion and periodic measurements until the water level has stabilized;
  - (b) Rate and direction of groundwater movement;
  - (c) Interaction of water wells identified in **Section 28-1-4(C)(2)** and any bodies of water identified in **Section 28-1-4(C)(3)**.
- (5) If the facility will be located within a regulated recharge area, the applicant shall confirm that any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met.

(E) Unless otherwise agreed between the City and the applicant in a host community agreement, there shall be filed with the application as exhibits copies of all other applications filed with respect to said site with any state or federal agency and copies of any responses thereto from said agencies.

(F) The application shall stipulate the requested maximum storage and throughput capacity of the proposed facility, in a manner consistent with Illinois Environmental Protection Agency permitting and reporting requirements for the type of facility.

(G) The application shall state, or show on plans/maps, whether any surface or subsurface mining exists/existed on the site or within **one and one-half (1 ½) miles** of the perimeter of the site. If any such mining has ever been done, the type of mining shall be sufficiently described including an identification of the product removed if such data is publicly available, the approximate quantity of product and soil removed, the depth from which removal was made, the time when the mining was done and a locational description of the land which was mined.

**28-1-5 PROPOSED SERVICE AREA.** The application shall define the geographic area that the proposed facility is intended to serve.

There should be included either in the body of the application or in an exhibit filed therewith a definition of the types of waste that will be accepted into the facility along with a list of examples of typical wastes and waste generators. There shall be filed with the application a preliminary market analysis. This analysis shall set forth the reasons and facts supporting the applicant's assertion that the proposed facility is necessary to accommodate the waste disposal needs of the area it is intended to serve.

**28-1-6 SITE DEVELOPMENT PLAN.**

(A) There shall be filed as a part of the application a sufficiently detailed topographic map, or series of maps/plans, of the site as it exists at the time of filing the application. Full size drawings shall be drawn to a scale of not less than **one (1) inch equals two hundred (200) feet**. If deemed adequate and accurate this data may be developed from publicly available USGS quadrangle maps. The map should show:

- (1) **Five (5) foot** contour intervals on the site.
- (2) The location of buildings, ponds, streams, wooded areas, bedrock outcrops, underground and overhead utilities, roads, culverts, streets, boundaries, areas previously mined, and any other item of

significance which may affect development of the proposed facility.

(B) There shall also be filed a separate map of the site as it is proposed to be developed at the same scale as above, including the proposed/existing locations of buildings, storage areas, loading/unloading areas, and other structures. It is understood that the facility layout and design presented in the siting application may be preliminary. In cases of preliminary design the layout and design can be changed within the general scope of the application at the discretion of the applicant or as required by IEPA through the permitting process. In these cases it is understood that the final technical design and layout of the facility will be contingent upon the approval of the Illinois EPA (IEPA) and that modifications to the proposed facility layout included in the siting application may also occur as a result of the IEPA permitting process.

(C) If the site is proposed to be utilized as a landfill, a topographic map, prepared and certified by a registered land surveyor, or licensed professional engineer, drawn to the same scale as provided above shall be filed showing the final contours of the closed and covered site.

(D) If the site is proposed to be utilized as a landfill, the applicant shall provide with the application plans any required leachate collection and treatment system. Said plans shall be drawn to a scale of not less than **one (1) inch equals two hundred (200) feet**, which shall include cross-sections of the systems and the following information:

- (1) Type, location and construction of the subsurface collection system and attendant devices;
- (2) Location, dimensions, volume and surface elevations of any treatment lagoon;
- (3) Detailed written narrative of the methods and processes of the treatment system;
- (4) Applicant's program for monitoring the performance and effectiveness of the system;
- (5) Discharge points of effluent.

(E) The application shall be filed with sufficient detail specific to development of the proposed type of facility. For new facilities it is recognized that these plans, drawings and specifications are preliminary and subject to modification. The final design and site layout will be subject to the requirements and recommendations of the IEPA through the permitting process.

- (1) There shall be filed with the application a sufficiently detailed description of the procedures, processes, methods and construction proposed to be utilized to prevent spills or entry of contaminants into the environment.
- (2) If the application is for approval of the site for waste storage or as a sanitary landfill, the following information shall be provided:
  - (a) The period of time during which it is proposed that the site will be used for such purpose;
  - (b) A sufficiently complete description of the Closure Procedures which the applicant will follow upon termination to assure that there will be no danger to the public health and safety.
- (3) If the application is for a waste, hazardous waste, or special waste treatment, storage or disposal facility (TSDF) the applicant shall state the manner in which these wastes will be stored.



- (4) If the application is for approval of the site as a waste, hazardous waste or special waste transfer station, the application shall state the estimated average waste processing period from receipt to processing in number of days.
- (5) If the site is proposed to be used for incineration or traditional non-plasma gasification, the following exhibits shall be filed with the application:
  - (a) Sufficiently detailed designs, specifications and/or construction plans of the incinerator or traditional gasifier and auxiliary equipment;
  - (b) A statement identifying the location of any similar facility within the proposed service area and within **one hundred (100) miles** of the perimeter of the Site;
  - (c) Operating procedures and maintenance requirements concerning the proposed facility;
  - (d) Procedure for waste handling during shut-downs;
  - (e) Proposed materials/wastes to be incinerated or gasified, identifying or designating them by chemical/physical composition or waste classification number/regulatory definition.
- (6) If the site is proposed to be used for plasma gasification, the following exhibits shall be filed with the application:
  - (a) Sufficiently detailed or proposed designs and specifications of the plasma gasifier and auxiliary equipment;
  - (b) A statement identifying the location of any similar facility within the proposed service area and within **one hundred (100) miles** of the perimeter of the Site;
  - (c) Procedure for waste handling during shut-downs;
  - (d) Proposed materials/wastes to be disposed of utilizing the plasma gasifier, identifying or designating them by regulatory definition.
- (7) The application shall list the categories of wastes proposed to be received at the site. The potential for the wastes to interact chemically or otherwise shall be addressed. The methods proposed to be utilized to control and prevent such interaction shall be described, along with a discussion of anticipated regulatory requirements which will dictate these methods and analysis.

(F) The application shall also include a statement setting forth the reasons and facts supporting applicant's assertion that the proposed 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.

#### **28-1-7      OPERATING PROCEDURES.**

(A) There shall be filed with the application sufficiently detailed operating procedures for the proposed facility. For new facilities it is recognized that these procedures are preliminary and subject to modification based on the requirements and recommendations of the IEPA through the permitting process. The discussion of operating procedures should include, but not be limited to:

- (1) Personnel training and supervision requirements;
- (2) Waste acceptance procedures;
- (3) Confirmation of waste classification prior to acceptance.

(B) The application shall include a statement setting forth the reasons and facts supporting applicant's assertion that the facility is consistent with Ford County's Integrated Solid Waste Management Plan.

(C) The application shall provide information as to the anticipated or typical schedule for monitoring at the site or similar sites. For new facilities it is recognized that these procedures are preliminary and assumed and subject to modification based on the requirements and recommendations of the IEPA through the permitting process. This information should include information such as the schedule/frequency of various monitoring activities, notification/reporting to City and state and federal agencies, and the availability of this information. For new facilities it is recognized that these schedules are preliminary and subject to modification based on the requirements and recommendations of the IEPA through the permitting process.

#### **28-1-8      EMERGENCY RESPONSE/CONTINGENCY PLANS.**

(A) The application shall list emergency situations which might occur at the facility, or during transportation to/from the facility.

(B) The application shall explain in sufficient detail the procedures proposed for dealing with emergencies. If such plans and procedures require or suggest the participation therein of any governmental unit, official or department, the application shall describe the proposed participation. For new facilities it is recognized that these plans are preliminary and subject to modification based on the requirements and recommendations of the IEPA through the permitting process.

(C) If the applicant proposes to insure against the risks of injury to person or property the application shall so state.

(D) If the facility for which application is made is a hazardous waste facility, a copy of the contingency plan that is in use, or a template of a typical plan format to be prepared for proposed facilities, that is consistent with the requirements of the IEPA shall be attached as an exhibit.

#### **28-1-9      FLOODPLAIN.**

(A) The application shall include a statement that the facility is within or outside of the boundary of the one-hundred-year floodplain as determined by FEMA/National Flood Insurance Program.

(B) There shall be filed with the application a copy of the FEMA/National Flood Insurance Map showing the one-hundred-year floodplain as aforesaid within a **one and one-half (1 ½) mile** radius of the site, and clearly depicting the location of the facility on the map.

(C) If the site is within the one-hundred-year floodplain, there shall be filed with the application:

- (1) Evidence that the site will be flood-proofed to meet the standards and requirements of FEMA/National Flood Insurance Program; and
- (2) Evidence of the ability to gain approval of the site by said department.

#### **28-1-10      TRAFFIC PATTERNS.**



(A) There shall be filed with the application a map of the City showing the roadways which will be used to transport material to and from the site.

(B) There shall be filed with the application a traffic study showing the present traffic flows on said roadways and the anticipated impact that the traffic generated by this facility will have thereon.

(C) The application shall state the estimated number of motor vehicles and the types and weights thereof which will be entering and leaving the site via such roadways during each month of a typical year of operation during the first **five (5) years**.

(D) The application shall contain a statement setting forth the procedures which will be utilized by applicant, if any, to assure that only the roadways specified shall be utilized.

(E) The application shall state the load limitations, if any, on all of the Gibson City roads and bridges surrounding the site which the applicant proposes to use or may use in the course of operating the facility.

(F) The application shall state what types of vehicles will be used to deliver waste to the site, as well as the empty weight of each of the types of vehicles proposed to be used, and the maximum gross weight of the vehicles when loaded.

(G) The traffic study shall provide sufficiently detailed information to assure that criteria as listed in **Section 28-1-17(B)(6)** is satisfied.

#### **28-1-11      DATE OF FILING.**

(A) Responsibility for completeness of the application shall rest solely with the applicant. Upon filing, the City Clerk or the City administrative assistants, shall date stamp the original application and provide a receipt to the applicant showing the date and time of the filing and the amount of the filing fee paid. The date stamp on the original application shall be the date used for purposes of this Chapter.

(B) Upon receipt of the application, the City Clerk or the City administrative assistants, shall date stamp the same and immediately deliver **one (1) copy** to the Mayor of the City; **one (1) copy** to the City planning and zoning administrator; **two (2) copies** of the director of the Ford/Iroquois County Health Department; and **two (2) copies** to the state's attorney.

(C) 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 City Council, Mayor and any hearing participants, the applicant may file not more than **one (1)** amended application. In the event that an amended application is filed, the time limitation for final action as set forth in **Section 28-1-17(A)** and Section 39.2 of the Illinois Environmental Protection Act, shall be extended for an additional period of **ninety (90) days**.

#### **28-1-12      FILING FEE.**

(A) There shall be paid to the City Clerk for delivery to the City Treasurer for deposit in a special fund at the time of the filing of an application for site approval a fee of:

- (1) **Twenty Thousand Dollars (\$20,000.00)** for an organic waste composting facility; and
- (2) **Thirty Thousand Dollars (\$30,000.00)** for all other types of pollution control facilities.

(B) The fee paid hereunder with any application shall be used to defray the costs incurred by the City in connection with the application for site approval to which the fee is applicable. The City Council may use the fee to pay any costs incurred by the City in reviewing

the application, employing qualified professional persons to evaluate the information contained in the application, to pay the costs involved in any hearing, including the fees of a hearing officer, court reporters, attorneys, the City Council, City Clerk, the Mayor and expert witnesses employed by the City to clarify or refute any information contained in the application, to pay any costs incurred in the appeal of any decision of the City Council as to the application and to pay any other costs or expense in any way connected with the application.

(C) The City Clerk shall accept no application for filing unless said fee has been paid.

**28-1-13 REVIEW OF APPLICATION.** The Mayor, together with the assistance of special counsel to the City, shall be responsible for coordinating the review of the application by the City staff and its consultants and to render such reports, advice or recommendations to the City Council as the Mayor shall deem prudent to assisting the City Council in making their decision. The Mayor is authorized to call meetings and set deadlines for the submittal of reports and recommendations in preparation for submission through the public hearing process. The Mayor, special counsel, the City staff and the City's consultants shall not discuss the application or the review thereof with, nor submit reports or recommendations to, the Mayor, City Council or the City Attorney except in accordance with the public hearing process set forth below.

**28-1-14 PARTICIPATION AND INFORMATION FROM OTHER PARTIES.**

(A) **Applicant.** The applicant is a participant.

(B) **City.** The City is a participant. For purposes of this act, the City and its employees and staff, and any experts, consultants, investigators or attorneys hired by the City to review, investigate, present at hearing, or otherwise work for the City concerning the petition, all constitute one participant. To the extent the City employees and staff wish to participate in the public hearings outside their roles or employment with the City, they must submit a notice of participation, as do other members of the public.

(C) **Notice of Participation.** Any person other than those described in subsections (A) and (B) of this Section must file a written "notice of participation" on a form supplied by the City Clerk notifying the City Clerk and counsel for the applicant of that person's or entity's intent to participate.

(1) Every notice of participation must be filed with the City Clerk before the adjournment of the first day of public hearing. In the case of counsel of record for any participant, said counsel shall, on or before the **eightieth (80<sup>th</sup>) day** from the date of filing, serve a letter upon the City Clerk and upon counsel for the applicant entering his or her appearance for the participant.

(2) Every notice of participation shall provide the following information: the name, address, daytime phone number and, if available, facsimile number of the participant or counsel; whether the participant will be participating on his/her own behalf or as a representative/spokesperson of another person or entity (and if on behalf of another person or entity, identify the name of that person or entity); whether the person (or the entity or association he/she represents) will be represented by an attorney during the public hearings; and whether the person intends on providing oral testimony or comment during the public hearing. All members of

the public who desire to present sworn testimony, unsworn comment, or submit written questions to the hearing officer must file a notice of participation.

- (3) No person may become a participant after the first day of the hearing except for good cause shown. The hearing officer shall liberally interpret this limitation if the additional participation shall not delay the process or unfairly prejudice a prior participant. No late participant shall be entitled to recall a witness who has previously testified.

(D) **Participant Rights.** Participants have the right to present sworn testimony and witnesses. Participants have the right to cross examine or question witnesses who provide sworn testimony. Participants who are not represented by counsel may provide witnesses, evidence and sworn testimony subject to cross examination by others; provide unsworn testimony or comment during the public hearing (subject to the hearing officer's judgment and consistent with fundamental fairness); or, as is the case for members of the public generally, submit written questions to the hearing officer who, in his/her sole discretion, shall decide whether such questions shall be posed and the manner of posing such questions.

(E) **Attorneys.** Any attorneys acting as counsel and representing a participant must be licensed and in good standing to practice law in the State of Illinois, or if licensed and in good standing to practice law in another state which is part of the United States, shall be allowed to serve as a counsel for a participant upon motion made to and granted by the hearing officer.

(F) **Witnesses.** All witnesses (other than those called purely for purposes of rebuttal) and the subject matter on which they will testify shall be disclosed, and all reports, studies, exhibits or other evidence, or copies thereof, that any person, other than the applicant, desires to submit as evidence for the record at the public hearing must be filed with the City Clerk and with counsel for the applicant no later than **eighty (80) days** after the date of filing of the application. In the event that the **eightieth (80<sup>th</sup>) day** after the date of filing falls on a Saturday, Sunday or legal holiday, the next business day shall be considered the date by which all such information must be filed. Copies of all such information shall also be available for copying by the public upon the payment of the actual costs of reproduction. Evidence or witnesses not so disclosed by the required date shall be admissible at the hearing only where the hearing officer shall find that the admission of such evidence is necessary to provide fundamental fairness to the parties.

## **28-1-15 PUBLIC HEARING.**

(A) **Hearing Date.** The public hearing shall be held no sooner than **ninety (90) days** from the date of filing and shall not commence any later than **one hundred twenty (120) days** from the date of filing. The public hearing shall be at such times and places as is convenient for the public generally but convenience of the public shall be subservient to the requirement that the City render a decision prior to the **one hundred eightieth (180<sup>th</sup>) day** from the date of filing, and accounting for the **thirty (30) day** period for written comment following the close of the public hearing, and accounting for sufficient time for the corporate authorities to deliberate and render a decision. The Mayor shall determine the date(s), time(s) and location(s) for the public hearing and cause the City Clerk to publish the same as soon as is practical but in no event later than **thirty (30) days** after the date of filing.

(B) **Notice.** Once determined by the Mayor, the City Clerk shall notify the applicant of the date, time and location of the public hearing and shall request that the applicant cause notice of the public hearing to be made as follows:

- (1) Publish **two (2)** legal notices in a newspaper of general circulation published in Ford County. The first such notice shall be published no sooner than **fifty (50) days** from the date of filing and no later than **sixty (60) days** from the date of filing; the second such notice shall be published no sooner than **sixty-five (65) days** from the date of filing no later than **seventy-five (75) days** from the date of filing. Said notices shall consist of the following:
  - (a) The name and address of the applicant;
  - (b) The owners of the site and, if ownership is in a land trust, the names of the beneficiaries of said trust;
  - (c) The legal description of the site;
  - (d) The street address of the property and, if there is no street address for the property, a description of the site with reference to location, ownership or occupancy or in some other manner that will reasonably identify the property to the residents of the neighborhood;
  - (e) The nature and size of the proposed development;
  - (f) The nature of the activity proposed;
  - (g) The probable life of the proposed activity;
  - (h) The date of filing and the time and date of the public hearing;
  - (i) The location of the public hearing;
  - (j) A reference to the ordinance codified herein and a statement that witness lists and copies of reports and other evidence are to be filed with the City Clerk and counsel for the applicant no later than the **eightieth (80<sup>th</sup>) day** from the date of filing.
- (2) Certified mail to all members of the Illinois General Assembly from the district in which the proposed site is located.
- (3) Certified mail to the Illinois Environmental Protection Agency.
- (4) Certified mail to the City of Gibson City and all municipalities or townships within **one and one-half (1.5) miles** of the proposed facility.
- (5) Public hearing notice in a newspaper of general circulation published as a display at least once during the week preceding the public hearing. Such notice shall consist of all items described in subsection (B)(1) of this Section except for subsection (B)(1)(c) of this Section.
- (6) All other public notice requirements established in Section 39.2 of the act, as from time to time amended.

(C)

**Hearing Procedures.**

- (1) **Hearing Officer.** The Mayor shall appoint a hearing officer to preside over the public hearing and the hearing officer shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted, subject to this Chapter. The hearing officer shall make all decisions and rulings in accordance with fundamental fairness. The hearing officer may exclude irrelevant, immaterial, incompetent or unduly repetitious testimony or other evidence. Rulings of the hearing officer shall

be appealable to the City Council, but may be reversed only upon a vote of **three-fourths (3/4)** of the corporate authorities present. All testimony and all public meetings concerning the petition shall be in the presence of a certified court reporter who shall report all proceedings regarding consideration of the petition. The hearing officer shall have the following powers or duties:

- (a) Administer oaths and affirmations.
- (b) Conduct a public meeting, prior to the start of the public hearings, to explain the public hearing procedure and site location review process.
- (c) Arrange for the presence of a certified court reporter to attend and transcribe the conduct of all public hearings for the public record.
- (d) Regulate the course of the hearing, including, but not limited to, controlling the order of proceedings consistent with this Section, and to grant recesses for good cause shown. For example, good cause may be found when issues, facts, data or other pieces of evidence arise in the course of the hearing that were not reasonably foreseeable to the party requesting the recess. No recess may extend past **five (5) days** except due to the availability of a suitable forum for the hearing.
- (e) Require a witness or person presenting unsworn public comment to state his/her position either for, against, or undecided with respect to the proposed facility.
- (f) Examine a witness and direct a witness to testify.
- (g) Establish reasonable limits on the duration of public hearing consistent with the act and this Chapter, including, but not limited to, the reasonable limitation of sworn testimony, unsworn oral comment, direct and cross examination of any witnesses, and the limitation of repetitive or cumulative testimony and questioning.
- (h) Rule upon objections and evidentiary questions, with the understanding that such rulings must be consistent with fundamental fairness, but need not be in strict compliance with the Illinois Supreme Court, Illinois code of civil procedure, or any local rules of evidence governing a civil judicial trial in the State of Illinois.
- (i) Allow the introduction of late filed evidence, be it written or testimonial, on behalf of any participant, provided good cause is shown for the late filing, the evidence is offered in and is relevant to the rebuttal portion of the applicant's or participant's case, and evidence was filed with the City Clerk at least **one (1) day** before the public hearing at which it is offered, and fundamental fairness to all parties will be preserved.
- (j) The hearing officer shall be an attorney, licensed to practice in Illinois. The hearing officer shall confer with the Mayor and City Council concerning the petition, between the date of filing of the petition and the Council's

decision on the petition. Given the hearing officer's role of communicating with the Mayor and the City Council, the hearing officer may not confer with the participants (members of the public, applicant and City included) concerning the petition, unless such conference takes place during the public hearing, is through correspondence which is filed with the City Clerk (and, thus, available for everyone to view), or concerns location, time or other similar scheduling aspects of the public meeting or public hearing, or the notices for same. The only additional exception from this restriction is that the hearing officer may confer with the City Clerk about the upkeep or status of the public record, make a request to review or copy the public record, or confer with the City Clerk regarding the scheduling or location of the public meeting or hearing, or arrangements for the notices of the public meeting and hearing.

(k) At the conclusion of the public hearing and after consideration of all timely filed written comments, the hearing officer shall submit draft written findings (of law or fact) to the City Council and Mayor and file a copy of such findings with the City Clerk.

(l) The hearing officer does not have the right or the power to vote, as a City Council member votes or the Mayor votes to break any tie vote by the City Council, on the petition.

(2) **Conduct.** Conduct of the public hearing shall be substantially as follows:

- (a) Call to order with determination of a quorum;
- (b) Introduction of the Mayor and the City Council members who are present;
- (c) Introduction of the hearing officer;
- (d) Recognition of the applicant and identification of the petition;
- (e) Recognition of fees, notices, and date of filing of the petition;
- (f) Recognition of the City staff and attorney present, and any other experts, consultants or attorneys employed by the City for the proceedings;
- (g) Recognition of all other participants who have filed the notice of participation;
- (h) Recognition of all reports, exhibits, maps or documents of record as filed pursuant to Subsection (C)(2)(e) of this Section;
- (i) Applicant, participants represented by counsel, and special counsel for the City may then make an opening statement;
- (j) The City Council shall then hear testimony from the applicant and/or any witnesses the applicant may wish to call. Upon the close of the applicant's testimony, participants represented by counsel may present sworn testimony, including any witnesses and evidence they wish



to present. Upon the close of all such testimony, the City may present sworn testimony, including witnesses and evidence it may wish to present. The hearing officer, in the exercise of his or her discretion, may then permit rebuttal testimony and surrebuttal testimony;

- (k) All witnesses shall testify under oath and be subject to reasonable questioning as follows: direct examination by counsel; cross examination by other participants or the City, the City Council and/or the hearing officer (including the use of written questions submitted by members of the public to the hearing officer); redirect examination; recross examination;
- (l) Following the testimony outlined in Subsection (C)(2)(j) of this Section, any participant not represented by counsel that wishes to provide sworn testimony subject to cross examination by others may proceed;
- (m) Following the testimony, if any, outlined in Subsection (C)(2)(l) of this Section, any participant that has not otherwise presented testimony may provide unsworn testimony or comment, subject to the hearing officer's judgment and consistent with fundamental fairness;
- (n) Closing statements, if any, by counsel for the applicant, participants represented by counsel, and counsel for the City;
- (o) Rebuttal statement, if any, by the applicant, subject to limitations as imposed by the hearing officer;
- (p) Hearing declared closed.

(3) **Public Comment; Written and Oral.**

- (a) Any person has the right to file written comment concerning the appropriateness of the proposed facility, or its compliance with the requirements of Section 39.2 of the act, with the City Clerk, at any time after the filing of a petition and within the time limitation provided in Subsection (C)(3)(d) of this Section.
- (b) The City Clerk, on behalf of the City Council, shall receive written comment from any person concerning the appropriateness of the proposed site. Upon receipt of any such written comment, the City Clerk shall date stamp same, shall serve copies of the same on counsel for the applicant and counsel for the City; and shall file written comment and the postmarked envelope in which comment is received.
- (c) Copies of such written comments shall be made available for public inspection in the offices of the City Clerk, and members of the public shall be allowed to obtain a copy of any written comment upon payment of actual cost of reproduction.
- (d) Any written comment received by the City Clerk or postmarked no later than **thirty (30) days** after the date of the last public hearing shall be made part of the record

at the public hearing as hereinafter described and the City Council shall consider any such timely written comments in making its final determination concerning said petition. In the event that the **thirtieth (30<sup>th</sup>) day** falls on a Sunday or a federal holiday, the next day on which mail is delivered shall be considered the **thirtieth (30<sup>th</sup>) day** for purposes of this subsection.

- (e) Any person has the right to provide oral, unsworn comment during the course of the public hearing, upon reasonable notice to the hearing officer that the person desires to provide such comment. This type of comment, since it is not provided under oath, is not subject to cross examination.

- (4) **Ex Parte Communications Prohibited.** In recognition of the quasi-judicial role of the Mayor and members of the City Council, and the City Attorney's office, ex parte communications concerning the application are prohibited between the date of filing and the date of the final decision of the City Council (or the **one hundred eightieth (180<sup>th</sup>) day** after the date of filing). This prohibition applies equally to the applicant, members of the public and members of the City Council. Members of the public are directed to use the procedures for public comment provided for in this Chapter. This prohibition is a statement of existing law, and is intended to comply with the decisions of the Illinois Pollution Control Board and relevant judicial opinions. It is not intended to create any new rights, prohibitions or penalties. Although the Mayor and members of the City Council are encouraged not to attend meetings at which the members know the application may be discussed, it is inevitable that due to their regular legislative duties over the course of time during the consideration of the application they may be in attendance at such meetings. As such, the Mayor or City Council member is required to obtain and file a transcript of any meeting, where such meeting has been transcribed or recorded, or otherwise disclose such meeting in the public records (such as disclosing it on the record during the transcribed public hearings or during the written comment period provided for in this Section). The transcript shall not, however, be utilized by the City in reaching its decision.

#### **28-1-16      RECORDS KEPT.**

(A) The City Clerk or the City of Gibson City administrative assistants shall be responsible for keeping the records of said hearing. The records shall consist of the following:

- (1) The application and all amendments thereto;
- (2) Proof of the required notices;
- (3) Notices of participation;
- (4) Written comments filed by the public (either received by the City Clerk's office or postmarked between the date of filing and **thirty (30) days** after the close of the hearing);

- (5) All reports, studies, exhibits, documents or statements received in evidence at the public hearing;
- (6) The transcript of the public hearing;
- (7) Any motions filed during the public hearing;
- (8) All transcripts when available or disclosures of meetings other than the public hearings held pursuant to this Chapter, at which the Mayor or a City Council member was in attendance and the application was discussed;
- (9) The hearing officer's proposed findings of fact and recommendations to the City Council (including any conditions of approval);
- (10) The resolution containing the final decision of the City Council;
- (11) Although late filed public comments are not part of the public record pursuant to this Section, they shall be retained by the City Clerk with any evidence of date of filing, such as the City Clerk's date stamped copy of the written comment or the postmark, if the written comment was mailed.

(B) The City Clerk shall be responsible for certifying all copies of the record of the public hearing.

#### **28-1-17 SITING APPROVAL DECISION.**

(A) On or before the **one hundred eightieth (180<sup>th</sup>) day** following the date of filing, or on or before the **two hundred seventieth (170<sup>th</sup>) day** following the date of filing if the applicant filed an amendment to the application in compliance with the timing requirements of the act, the City Council shall, by written resolution, upon the vote of a majority of its members with the Mayor voting to break a tie vote by the City Council, decide whether to:

- (1) Grant the petition, without any conditions; or
- (2) Grant the petition, but with conditions on such approval, provided such conditions are reasonable and necessary to accomplish the purposes of Section 39.2 of the act and are not inconsistent with the regulations promulgated by the Illinois pollution control board; or
- (3) Deny the petition.

(B) In making its recommendation on the request for siting approval, the City Council and Mayor shall base its decision on the following criteria:

- (1) That the facility is necessary to accommodate the waste needs of the area that it is intended to serve;
- (2) That the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- (3) That 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) That a) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain or the site is flood-proofed; b) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or if the facility is a facility described in subsection (b) of Section 22.19a, the site is flood-proofed;
- (5) That the plan of operations for the facility is designed to minimize the danger to the surrounding area for fire, spills, or other operational accidents;
- (6) That traffic patterns to or from the facility are so designed 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 the 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.

(C) The City Council and Mayor shall consider as evidence the previous operating experience and past record of violations and penalties of the applicant or proposed operator (and any subsidiary, parent corporation, subsidiary of the parent corporation, or manager or member of the company) in the field of solid waste management as delineated in **Section 28-1-3** herein when considering criteria 39.2(a)(ii) and 39.2(a)(v) of the act and Subsection (B) of this Section.

(D) No determination by the City Council and Mayor of a siting approval request may be reconsidered, except to the extent it is reversed and remanded on appeal and the City Council is directed by the Illinois pollution control board or Illinois appellate court to conduct all or part of the review process again.

(E) A local siting approval granted under this Chapter shall expire at the end of **two (2) calendar years** from the date upon which it was granted, unless the local siting approval granted under this Chapter is for a sanitary landfill operation, or hazardous waste treatment, storage or disposal facility, in which case the approval shall expire at the end of **three (3) calendar years** from the date upon which it was granted, and unless within that period the applicant has made application to the Illinois Environmental Protection Agency for a permit to develop the site. In the event that the local siting decision has been appealed, such expiration period shall be deemed to begin on the date upon which the appeal process is concluded.

(F) Siting approval obtained pursuant to this Chapter is transferable and may be transferred to a subsequent owner or operator with the written approval of the City Council and Mayor. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the City Council and Mayor pursuant to this Section as well as any modifications to these conditions as documented in connection with the Mayor and City Council's written approval of the transfer of the siting approval. Further, in

the event that siting approval obtained pursuant to this Chapter has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes all rights and obligations and takes the facility subject to any and all terms and conditions of any existing host agreement between the prior owner or operator and the City.

(G) In making its decision, the City Council and Mayor shall consider the public record of the hearing proceedings. The City Council shall give greater evidentiary weight to sworn testimony and evidence presented during the public hearings than to unsworn oral or written comment.

**28-1-18      ADMINISTRATION OF FEES AND COSTS.**

(A) Upon termination of any proceedings under this Chapter, a final accounting and summary of all authorized expenditures and reimbursements shall be presented to the City Council and Mayor.

(B) Any portion of an application fee not required for reimbursement to the City for costs and expenses incurred by the City under this Chapter shall be returned to the applicant. Should there be costs and/or expenses in excess of the amount paid by the applicant in the application fee, the applicant shall bear any and all additional costs.

(C) In order to properly administer the application fee received with respect to this Chapter, the City Treasurer is hereby authorized and directed to receive and hold such application fees for administration subject to the review and approval of the City Council and Mayor.

(D) In order to expedite payment of all bills incurred as a result of administering this Chapter, all bills and questions concerning billing should be directed to the City Treasurer.

**(Ord. No. 10-06; 03-22-10)**