

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITIZENS AGAINST LANDFILL)
EXPANSION,)
)
Petitioner,)
)
v.)
)
AMERICAN DISPOSAL SERVICES OF)
ILLINOIS, INC. and LIVINGSTON COUNTY,)
BOARD, LIVINGSTON, ILLINOIS,)

RECEIVED
CLERK'S OFFICE
SEP 05 2003
STATE OF ILLINOIS
Pollution Control Board

Case No. PCB-03-236

Hearing Officer Bradley Halloran

Defendant.

NOTICE OF FILING

TO: Carolyn K. Gerwin
705 S. Locust St.
Pontiac, IL 61764

Douglas E. Lee
Ehrmann, Gehlbach, Badger & Lee
215 E. First Street, Suite 100
Dixon, IL 61021

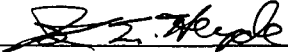
Larry M. Clark
Suite 200
700 North Lake Street
Mundelein, IL 60060

Bradley Halloran, Hearing Officer
Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218

PLEASE TAKE NOTICE that, on September 5, 2003, I caused to be filed with the Illinois Pollution Control Board, by hand delivery, an original and nine copies of the accompanying Limited Appearance and Motion to Quash Subpoena.

Respectfully submitted,

WILLIAM DWYER

By: 
One of His Attorneys

William G. Dickett
John M. Heyde
SIDLEY AUSTIN BROWN & WOOD LLP
Bank One Plaza
10 South Dearborn St.
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Dated: September 5, 2003

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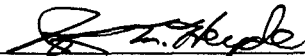
Defendant.

LIMITED APPEARANCE

I hereby enter my special, limited appearance as counsel for William Dwyer, pursuant to 35 Ill. Admin. Code § 101.400(a)(5), for the limited purpose of contesting jurisdiction and quashing a subpoena served on Mr. Dwyer on September 2, 2003.

Respectfully submitted,

SIDLEY AUSTIN BROWN & WOOD LLP

By:  _____

William G. Dickett
John M. Heyde
SIDLEY AUSTIN BROWN & WOOD LLP
Bank One Plaza
10 South Dearborn St.
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Dated: September 5, 2003

CERTIFICATE OF SERVICE

John M. Heyde, an attorney, hereby certifies that he caused a true and correct copy of the foregoing Limited Appearance to be served upon all counsel of record on this 5th day of September, 2003, as follows:

By overnight messenger service (Saturday morning delivery requested) to:

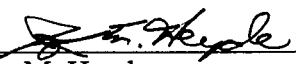
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By messenger to:

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John M. Heyde
Attorney for William Dwyer

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Defendant.

MOTION TO QUASH SUBPOENA

William Dwyer respectfully moves the Board to quash a subpoena issued to him by petitioner Citizens Against Landfill Expansion, purporting to require Mr. Dwyer's attendance on September 8, 2003 (the "Subpoena"). (The Subpoena is attached to this motion as Exhibit 1.) Mr. Dwyer asks the Board to quash the Subpoena because it is untimely and, therefore, null and void on its face. In addition, the Subpoena is burdensome and unlikely to add any meaningful information to the hearing.

In support of this motion, Mr. Dwyer states as follows:

1. Mr. Dwyer is a senior attorney for BP Corporation North America Inc.
2. On September 2, 2003, Mr. Dwyer received the Subpoena by certified Express U.S. mail. The subpoena requests his attendance at a "hearing/deposition" on September 8, 2003, at 9 a.m., in Pontiac, Illinois.

3. The Board's procedural rules require that service of a subpoena "must be completed no later than 10 days before the date of the required appearance." 35 Ill. Admin.

Code § 101.622(b). The Board's rules further provide that:

In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing.

35 Ill. Admin. Code § 101.300(c).

4. Because Mr. Dwyer received the Subpoena on September 2, service of the Subpoena was not complete until September 2. As a result, service was complete a mere six days before the scheduled appearance, in violation of the Board's rules. Since the Subpoena was not timely served, it is null and void on its face and should be quashed.

5. In addition, attendance at a September 8 hearing would be burdensome. Mr. Dwyer neither lives nor works in Livingston County; he works in DuPage County, and he lives in Cook County. Requiring Mr. Dwyer to take a day out of his busy schedule to travel to Pontiac on short notice is burdensome and unreasonable.

6. Finally, any testimony Mr. Dwyer could provide would be of little relevance. As it has been explained to him, petitioner plans to call Mr. Dwyer to testify as to whether a process server attempted to serve him on behalf of a company called "Amoco CCPS" in November 2002. However, Mr. Dwyer has no recollection one way or the other as to whether a process server contacted him or what he might have said to the process server, if anything. Moreover, Mr. Dwyer is and never has been an officer or a registered agent for any company

called "Amoco CCPS." As a result, Mr. Dwyer cannot shed any meaningful light on the adequacy of any attempt to serve "Amoco CCPS."

For the foregoing reasons, Mr. Dwyer respectfully requests that the Board quash the Subpoena.

Respectfully submitted,

WILLIAM DWYER

By:  _____
One of His Attorneys

William G. Dickett
John M. Heyde
SIDLEY AUSTIN BROWN & WOOD LLP
Bank One Plaza
10 South Dearborn St.
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Dated: September 5, 2003

CERTIFICATE OF SERVICE

John M. Heyde, an attorney, hereby certifies that he caused a true and correct copy of the foregoing Motion to Quash Subpoena to be served upon all counsel of record on this 5th day of September, 2003, as follows:

By overnight messenger service (Saturday morning delivery requested) to:

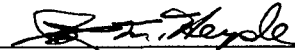
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By messenger to:

Bradley Halloran, Hearing Officer
Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218



John M. Heyde
Attorney for William Dwyer

Exhibit 1

RECEIVED
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Before the Illinois Pollution Control Board

SEP 02 2003

STATE OF ILLINOIS
Pollution Control Board

CITIZENS AGAINST LANDFILL)
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 v.)
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AMERICAN DISPOSAL SERVICES OF)
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ILLINOIS, INC. and LIVINGSTON)
COUNTY BOARD, LIVINGSTON)
COUNTY, ILLINOIS,)
)
 Respondent.)

PCB -03-236

SUBPOENA DUCES TECUM

TO: William Dwyer
 Senior Attorney
 BP Corporation of America Inc.
 4101 Winfield Road
 Warrenville IL 60555

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e)

(2002)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give

testimony at the hearing/deposition in the above-captioned matter at 9:00

a .m. on September 8, 20 03, at

115 W. Howard Street, Pontiac, IL 61764.

You are also ordered to bring with you documents relevant to the matter under

consideration and designated herein, _____

Failure to comply with this subpoena will subject you to sanctions under 35 Ill.

Adm. Code 101.622(g) and 101802.

ENTER:

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Pollution Control Board

Date: August 12, 2003

I served this subpoena duces tecum by handing a copy to _____

_____ on _____, 20_____.

Subscribed and sworn to before me this _____ day of _____,

20_____.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2003, I served this Subpoena Duces Tecum by U.S. Mail, postage prepaid for guaranteed overnight delivery, return receipt requested, on:

William Dwyer
BP Corporation North America Inc.
4101 Winfield Road
Warrenville IL 60555

With one copy by regular First Class Mail to:

Douglas E. Lee
Ehrmann, Gehlbach, Badger & Lee
215 E. First Street, Suite 100
P.O. Box 447
Dixon, Illinois 61021

Larry M. Clark
Suite 200
700 North Lake Street
Mundelein IL 60060

Brad Halloran, Hearing Officer
Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

And one original and four copies by regular First Class Mail to:

Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

Carolyn K. Gerwin
Carolyn K. Gerwin
Counsel for Petitioner

Subscribed and sworn to before me this 29th day of August, 2003.

Diana E. Tull

