

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ATKINSON LANDFILL COMPANY)	
)	
Petitioner)	
)	
v.)	PCB 13-8
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that I have electronically filed with the Office of the Clerk of the Pollution Control Board, Atkinson Landfill Company's Response to Respondent's Motion to Quash Discovery, copies of which are herewith served upon you.

ATKINSON LANDFILL COMPANY,



By: Joshua R. More

Dated: November 29, 2012

Joshua R. More
 SCHIFF HARDIN LLP
 233 South Wacker Drive
 Suite 6600
 Chicago, Illinois 60606
 Tel: 312-258-5769
 Email: jmore@schiffhardin.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
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ATKINSON LANDFILL COMPANY’S RESPONSE TO RESPONDENT’S MOTION TO QUASH DISCOVERY

Pursuant to Section 101.500(d) of the Board’s Procedural Rules, 35 Ill. Adm. Code § 101.500(d), Petitioner Atkinson Landfill Company (“Atkinson”) submits this Response to the Illinois Environmental Protection Agency’s (“IEPA’s”) Motion to Quash Discovery, stating, in support thereof, as follows:

The only issue before the Board in this matter is whether local siting approval granted by the Village of Atkinson continues to be valid under Section 39.2(f) of the Environmental Protection Act (the “Act”), 415 ILCS 5/39.2. On July 6, 2012, IEPA issued a denial of permit finding, among other things, that the local siting approval for the proposed landfill extension had expired on September 4, 2011. In its permit denial, IEPA stated it was barred from granting a development permit to expand the landfill unless Atkinson provides proof of new local siting approval; at same time, IEPA also raised a number of technical issues. Atkinson is prepared to submit a revised permit application addressing those technical issues in a timely manner. Thus, Atkinson agrees with IEPA’s assertion that “[t]he issues which the Board will ultimately be called on to decide in this case are legal, not factual, in nature.” (IEPA’s Motion, p.1.)

As the Board found in *Saline County Landfill, Inc. v. IEPA*, PCB 04-117, May 6, 2004, slip op. at 14, IEPA's interpretation of Section 39.2(f) of the Act is not entitled to deference or, in fact, any greater weight than Atkinson's interpretation of the Act. However, Atkinson anticipates that IEPA will argue that, contrary to *Saline County Landfill*, its interpretation of Section 39.2(f) of the Act is entitled to deference.

If IEPA is willing to stipulate that IEPA's interpretation is not entitled to deference or the Board concurs that IEPA's interpretation of Section 39.2(f) of the Act is not entitled to deference, then Atkinson will concede that the Board's review should be based solely on the record before IEPA and withdraw its First Set of Interrogatories, attached hereto as Exhibit A. If, however, IEPA argues that its interpretation is entitled to deference, then Atkinson requests that the Board deny IEPA's motion to quash discovery in this matter. Information responsive to Atkinson's First Set of Interrogatories may be necessary to assess the consistency of IEPA's prior decisions with its decision in this case.

WHEREFORE, Atkinson respectfully submits its Response to IEPA's Motion to Quash Discovery.

Respectfully submitted,

ATKINSON LANDFILL COMPANY

By: Joshua R. More
By its Attorneys

Joshua R. More
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606
(312) 258-5769

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**PETITIONER'S
FIRST SET OF INTERROGATORIES TO IEPA**

Pursuant to Section 101.620 of Title 35 of the Illinois Administrative Code, Petitioner Atkinson Landfill Company requests that Respondent Illinois Environmental Protection Agency ("IEPA") answer in writing and under oath the following interrogatories within twenty-eight (28) days of the date of this request.

DEFINITIONS AND INSTRUCTIONS

1. Agency: The term "Agency" means the IEPA, including any one or more of its departments, agencies, and/or instrumentalities, its agents and all other persons acting or purporting to act on its behalf.
2. All/Each: The terms "all" and "each" shall be construed as all and each.
3. And/Or: The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
4. Concerning: The term "concerning" means relating to, referring to, describing, evidencing or constituting.

5. Documents: The term “documents” means all original written, recorded or graphic matter whatsoever (including electronic information and documents), and all non-identical copies thereof (including drafts of documents), interpreted to the fullest extent permissible under the Federal Rules of Civil Procedure, that are in the possession, custody or control of the United States of America and/or any one of its departments, agencies or instrumentalities. A draft or non-identical copy is a separate document within the meaning of this term.

6. Identify: Where the term “identify” is used, please include the full name of each Person identified and his or her mailing address and telephone number.

7. Include: The terms “including” and “include” do not limit the preceding terms.

8. Number: The use of the singular form of any word includes the plural and vice versa.

9. Petition: The term “Petition” means the Petition filed by the Atkinson Landfill Company before the Illinois Pollution Control Board (“Board”), PCB 12-58.

10. Person: The term “Person” means any individual, sole proprietorship, natural person, partnership, corporation, association, union, government entity or agency, every other type of organization or entity, or any director, officer, employee, consultant, or agent thereof.

11. You & Your: The term “You” and “Your” shall mean the IEPA, including any one or more of its departments, agencies, and/or instrumentalities, its agents and all other persons acting or purporting to act on its behalf.

12. If You object to any portion of any interrogatory on the grounds that it seeks privileged information or attorney work product, please identify: (1) all persons to whom such information was, and has been, communicated; (2) the general nature of such information; (3) the

nature of the privilege asserted; and (4) the dates of any communication for which said privilege is asserted.

13. When an interrogatory calls for identification of a document as to which You claim a privilege, set forth as to each document: (1) a brief description of the document; (2) the subject matter of the document; (3) the author(s) and recipient(s) of the document; and (4) the basis for the privilege or protection claimed.

14. The interrogatories contained herein shall be deemed to be continuing in nature and shall include information which is discovered after any initial compliance with these interrogatories. Information discovered after initial compliance with these interrogatories shall be produced within 30 days of discovery.

INTERROGATORIES

INTERROGATORY NO. 1: Has the Agency ever denied an application for a permit to develop a pollution control facility or landfill on the grounds that because the application was administratively incomplete the application for purposes of meeting Section 39.2(f) of the Illinois Environmental Protection Act was not made and as such the local siting approval expired? If yes, please identify the name of the entity that applied for the development permit and the date the application was submitted to the Agency.

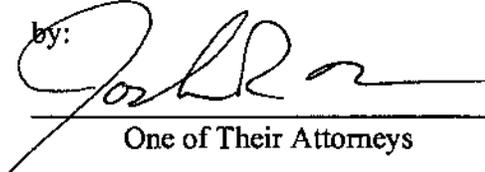
INTERROGATORY NO. 2: Please identify all Persons with knowledge of any facts relating to any instances where the Agency denied an application for a permit to develop a pollution control facility or landfill on the grounds that because the application was administratively incomplete the application for purposes of meeting Section 39.2(f) of the Illinois Environmental Protection Act was not made and as such the local siting approval expired.

INTERROGATORY NO. 3: Has the Agency ever issued a permit to develop a pollution control facility or landfill where additional information was provided to the Agency in connection with the application to develop the facility after the local siting approval would have expired? If yes, please identify the Persons involved with issuing the permit, the name of the entity that applied for the development permit and the date the application was submitted to the Agency.

INTERROGATORY NO. 4: Since January 1, 2002, what percentage of applications for a permit to develop a pollution control facility or landfill is found to be administratively incomplete?

Respectfully submitted,
Atkinson Landfill Company

by:



One of Their Attorneys

Dated: October 24, 2012

Joshua More
Amy Antonioli
SCHIFF HARDIN, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
312-258-5500

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 24th day of October, 2012, I have served electronically and via U.S. Mail Petitioner's First Set of Interrogatories to IEPA, upon the following persons:

Evan J. McGinley
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602



By: Joshua R. More

Dated: October 24, 2012

Joshua More
Amy Antonioli
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
312-258-5500

CERTIFICATE OF SERVICE

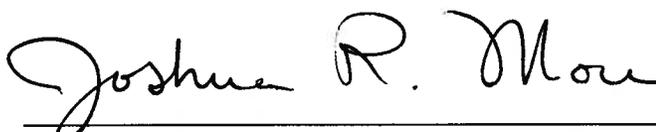
I, the undersigned, certify that on this 29th day of November, 2012, I have served by first class mail the attached, Atkinson Landfill Company's Response to Respondent's Motion to Quash Discovery, upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

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

Michelle Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Evan J. McGinley
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602



By: Joshua R. More

Dated: November 29, 2012

Joshua R. More
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
312-258-5769
jmore@schiffhardin.com