

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEB 25 2004

STATE OF ILLINOIS
Pollution Control Board

SALINE COUNTY LANDFILL, INC.,)
)
 PETITIONER,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 RESPONDENT.)
)
)
 COUNTY OF SALINE,)
)
 INTERVENOR.)

No. PCB 2004-117
(PERMIT APPEAL)

COUNTY OF SALINE'S MOTION TO QUASH DEPOSITION NOTICE

COMES NOW the COUNTY OF SALINE, Intervenor, through its undersigned State's Attorney, and moves to quash the Notice of Deposition served by Petitioner, proposing to depose Joyce Munie, P.E., Permit Section Manager, on Friday, February 27, 2004. In support of this motion, Intervenor states as follows:

1. Attached is a purported "Notice of Deposition," along with the Proof of Service utilized to mail the Notice of Deposition. A mail copy of this Notice was received by Intervenor on Monday, February 23, 2004.
2. The Notice of Deposition proposes to schedule the discovery deposition of Joyce Munie on Friday, February 27, 2004.
3. The hearing is scheduled in this matter for Wednesday, March 3, 2004. The hearing date was set at the insistence of Petitioner, which has refused to extend the decision deadline in this case.
4. The Notice of Deposition is improper for at least two reasons.

A. Section 101.616(c) of this Board's procedural rules, 35 Ill. Adm. Code Section 101.616(c), requires that all discovery be completed at least ten days prior to the scheduled hearing. The proposed deposition would be held only five days before the hearing, two of which are weekend days.

B. Section 101.622(d) of this Board's procedural rules, 35 Ill. Adm. Code Section 101.622(d), requires that service of a subpoena requiring attendance of a witness at a deposition be completed no less than ten days prior to the proposed deposition date. Procedural Rule 101.304(c), 35 Ill. Adm. Code Section 101.304(c), allows service by mail, personal delivery, or messenger; facsimile transmission is not included. Accordingly, assuming the proposed deponent received her copy of the notice on the same day Intervenor received its copy, only four days separate the completion of service from the date of deposition, rather than the required ten days. Even if service by facsimile transmission were allowed, only seven days separate the completion of facsimile service from the date of deposition, again contrary to the ten day minimum established by rule.

5. Accordingly, the Notice of Deposition is improper, and should be stricken. Pursuant to Section 101.622(d) of this Board's procedural rules, the hearing officer has authority to quash this notice of deposition. 35 Ill. Adm. Code Section 101.622(d).

WHEREFORE, Intervenor, COUNTY OF SALINE, through the undersigned Saline County State's Attorney, requests that this Board, through its hearing officer, quash the Notice of Deposition, order that all discovery in this proceeding is at an end, and award to Intervenor such other and further relief as may be just and appropriate.

Respectfully submitted,
Saline County, Intervenor
By its attorney.

By



Rod Wolf

State's Attorney for Saline County

Rod Wolf
Saline County State's Attorney
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NOTICE OF FILING AND PROOF OF SERVICE

To: Brian E. Konzen, Esq.
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Fitzhenry
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Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 South Second Street, Suite 402
Springfield, IL 62704

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center
Suite 11-500
Chicago, IL 60601-3218

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

PLEASE TAKE NOTICE that on the 24th day of February, 2004, we sent via FedEx delivery to the Clerk of the Pollution Control Board the original and four copies of the COUNTY OF SALINE'S MOTION TO QUASH DEPOSITION NOTICE for filing in the above entitled cause.

The undersigned certifies that a true and correct copy of the above-described document was served upon each of the above-identified individuals via FedEx (a private courier), by enclosing the same in envelopes properly addressed and by depositing said envelopes in a FedEx dropbox in Harrisburg, Illinois, all on the 24th day of February, 2004.



Rod Wolf

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THIS FILING IS SUBMITTED ON RECYCLED PAPER