BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SALINE COUNTY LANDFILL, INC., PETITIONER,	)	
v.	)	No. PCB 2004-117
	)	(PERMIT APPEAL)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.	)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Brian E. Konzen, Esq.
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PLEASE TAKE NOTICE that on the 1st day of MARCH, 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 IN LIMINE 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 1st day of MARCH, 2004.

Rod Wolf

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	)	
RESPONDENT.	)	
	)	
COUNTY OF SALINE,	)	
	)	
INTERVENOR.	)	

COUNTY OF SALINE'S MOTION IN LIMINE

COMES NOW the COUNTY OF SALINE, Intervenor, through its undersigned State's Attorney, and for its Motion in Limine, states as follows:

1. This motion in limine is directed to the hearing officer, requesting advance rulings on certain evidentiary issues which may or are likely to arise at hearing.

2. The County of Saline asks that the hearing officer prohibit Petitioner from eliciting any testimony concerning permit decisions by the Illinois Environmental Protection Agency ("IEPA") other than decisions with respect to facility 165808001 (Petitioner's facility, known as Saline County Landfill, Inc.), for the following reasons:

A. This case concerns only the Saline County Landfill, Inc., and no other facility. Hence, decisions concerning other facilities have no relevance to this proceeding. In this permit appeal proceeding, the IEPA's permit denial letter frames the issues for review. That denial letter stated that the permit application was denied because granting it would cause a violation of the Illinois Environmental Protection Act or the Board's regulations (see Petition for

Review of Permit Denial Per 415 ILCS 40(a)(1), at paragraph 2), and specifically that "[t]he application did not provide proof of local siting approval pursuant to Section 39(c) of the Act. The siting provided in the application expired." (See Petition for Review of Permit Denial Per 415 ILCS 40(a)(1), at paragraph 3). Neither the IEPA's permit denial letter, nor Petitioner's Petition for Review, rely upon any other permit application or decision with respect to the permit decision being challenged.

B. Petitioner's Petition for Review does not assert any basis why decisions with respect to other permit applications could have any bearing upon this proceeding. The issue before the Board in this case is the correct interpretation of the statute and whether this specific permit application, if granted, would violate the Act; this issue is not whether the IEPA has ever been faced with other permit decisions in other cases with similarities to this one.

C. Petitioner has served upon the IEPA certain discovery requests relating to other facilities; however, the files pertaining to permit actions or other decisions with respect to such facilities have not been produced or made available to the County of Saline. In light of Petitioner's failure to have timely produced these documents or made them available in support of the Petition, the County of Saline will be extremely prejudiced by any attempt by Petitioner to introduce any evidence relating to any such other facilities.

D. If Petitioner is permitted to introduce evidence concerning permit decisions with respect to other facilities, then such evidence should be permitted only on condition that the entire permit files for each such facility and permit decision be also introduced. In the absence of complete production, neither this Board nor the parties (and particularly not the County of Saline) will have any assurance that the information introduced is accurate and relevant, or if instead it had been superceded, withdrawn, or otherwise is for some reason

incomplete or inaccurate information, or for any reasons the permit decision was not analogous or similar to the decision at issue here.

E. Petitioner has served a substantial number of discovery requests upon the IEPA seeking information regarding other IEPA decisions involving other facilities. Although pursuant to this Board's procedural rules these requests may be "relevant" for discovery purposes, they are not necessarily also relevant for purposes of introduction at hearing. Indeed, Board procedural rule 101.616(e), 35 Ill. Adm. Code 101.616(e), specifically recognizes that relevance for purposes of discovery is much broader than for purposes of trial. See also 35 Ill. Adm. Code 101.616(a). For this reason, the mere fact that Petitioner was permitted to ask such questions in discovery is no justification for their introduction in evidence.

F. Hence, County of Saline requests that this Board, through its hearing officer, enter an order in limine barring Petitioner from presenting evidence not relevant to any issue in this proceeding concerning other IEPA permit decisions regarding other facilities.

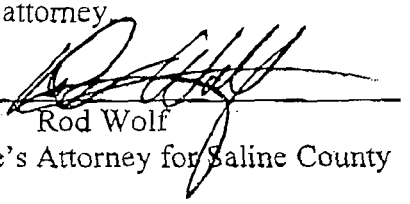
3. In addition, County of Saline requests that the hearing officer memorialize the oral ruling made during the February 26, 2004 conference call, that the February 27, 2004 deposition of Joyce Munie will be for purposes of discovery only, and the transcript will not be offered or accepted into evidence. All parties agreed to this during the February 27 status conference call.

4. The County of Saline also requests that the hearing officer bar Petitioner from offering into evidence the interrogatory responses submitted by IEPA in response to interrogatories propounded by Petitioner. The interrogatories, and their responses, were made for discovery only; if information is contained therein that is relevant and admissible at hearing, Petitioner must present at hearing the testimony or documentary evidence. See Board procedural

rule 101.626, 35 Ill. Adm. Code 101.626 (setting forth the types of evidence admissible at hearing). Further, the County of Saline would strenuously object to simply introducing those responses into evidence because the County of Saline has had virtually no opportunity to address the interrogatory responses through cross examination. Though it may be appropriate for parties to work together to reduce the need for hearing on particular issues, this goal cannot be advanced over the needs of any individual party to present its own case, including cross examining other parties' witnesses. It would be highly inappropriate and prejudicial to the County of Saline for the discovery responses of the IEPA to simply be introduced into these proceedings as evidence; conversely, Petitioner, which propounded the interrogatories and obtained the answers, can reproduce responses it deems desirable at hearing, in a forum and in a manner that will permit the County of Saline to conduct its examination of the relevant witnesses, will suffer no prejudice whatsoever. See Supreme Court Rule 213(h) and 212(a) (stating interrogatories may be used for impeachment and as admissions, but only may be offered as evidence upon reasonable notice where party answering interrogatory is dead or otherwise unable to attend). Therefore the suggestion of Petitioner, made during the February 26 conference call, that the interrogatory responses might simply be introduced into evidence, should be denied, in advance, by the hearing officer, and the County of Saline hereby expresses its objection to any such procedure.

WHEREFORE Intervenor, COUNTY OF SALINE, asks that the hearing officer enter an order in limine limiting Petitioner's evidence as expressed above.

Respectfully submitted,
Saline County, Intervenor
By its attorney

By 
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FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (312) 814-3669

To: Attn: Clerk - Pollution Control Board
From: Rod Wolf
Re: Saline County Landfill, Inc. vs. IEPA Case No. PCB 2004-117
Date: March 1, 2004

DOCUMENTS	NUMBER OF PAGES*
Motion In Limine	6

COMMENTS: