BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SALINE COUNTY LANDFILL, INC.,	)	
	)	
PETITIONER,	)	
	)	
v.	)	No. PCB 04-117
	)	(PERMIT APPEAL)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
RESPONDENT.	)	

NOTICE OF FILING

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

Rod Wolf
Saline County State's Attorney
10 E. Poplar
Harrisburg, Illinois 62946

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Ave. East
PO Box 19274
Springfield, Illinois 62794-9274

Please take notice that I have today filed with the Hearing Officer Petitioner's Response to County of Saline's Motion in Limine, and certificate of service, on behalf of Saline County Landfill, Inc., copies of which are herewith served upon you.

Brian E. Konzen, Esq.
Lueders, Robertson, Konzen LLC
1939 Delmar, P.O. Box 735
Granite City, Illinois 62040
Phone: (618) 876-8500
ARDC No.: 06187626

45117

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SALINE COUNTY LANDFILL, INC.,	)	
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PETITIONER,	)	
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	)	(PERMIT APPEAL)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
RESPONDENT.	)	

PETITIONER'S RESPONSE TO COUNTY OF SALINE'S MOTION IN LIMINE

Comes now Petitioner, Saline County Landfill, Inc., and responds to the County of Saline's motion in limine.

1. To the extent the motion in limine requests "advance rulings" on broad topics, it should be denied without prejudice by the Hearing Officer. The topics of evidence referenced in the motion in limine are defined too broadly to allow a ruling in advance of hearing, without significant risk of reversible error. Instead, Petitioner respectfully submits the Hearing Officer should hear the specific evidence on point proffered at hearing, if any, and then rule.

2. 35 Illinois Administrative Code 101.610 et seq., does not require advance rulings on evidentiary matters by a hearing officer.

3. The motion in limine requests a bar of evidence concerning permit decisions other than decisions with respect to Saline County Landfill, Inc. Paragraph 2A. The motion in limine argues Petitioner does not rely on any other permit application or decision with respect to the permit decision challenged in the instant appeal.

Petitioner can and will proffer evidence the IEPA acted inconsistently. Petitioner pleads in paragraph 5 of its petition for review that the IEPA's reversal of interpretation of Section 39.2 (f) of

the Environmental Protection Act was arbitrary and capricious. Whether the Agency inconsistently interpreted Section 39.2(f), is relevant as to whether it interprets the statute correctly today, and as whether the State's interpretation is entitled any deference. In the administrative record, Intervenor repeatedly argued for deference to its interpretation of sec. 39.2(f). Therefore, Petitioner must be allowed to respond by presenting evidence of the inconsistency of the State's interpretation of sec. 39.2(f). Reversible error will result otherwise.

4. The motion in limine argues complete files pertaining to permit actions or decisions with respect to other facilities have not been produced or made available to County of Saline, and the failure to produce them would be prejudicial to the County of Saline.

This argument should be directed to bar evidence proffered by the Party the Intervenor claims to support, the IEPA. The IEPA has responded to discovery served by Petitioner in this cause, stating the IEPA was unable to query specific information sought, as referenced in the motion in limine. See answers to interrogatories 6 and 12, attached. The failure to produce such information, or complete files pertaining to such information, is not the fault of the Petitioner. Petitioner timely served discovery requests, but did not receive all timely or complete answers. See Petitioner's previously filed motion to compel. Further, the deposition of Joyce Munie, taken February 27, did not fully provide all the information sought in such interrogatories. The Hearing Officer should not bar evidence proffered by Petitioner, due to Respondent's failure to fully answer. This portion of the motion in limine should therefore be denied as well.

5. The motion in limine further seeks to bar the admissibility of the IEPA's discovery responses, arguing that the County of Saline had "virtually no opportunity to address interrogatory responses through cross examination." Motion, paragraph 4.

In fact, the County of Saline had ample opportunity to cross-examine regarding the IEPA's

answers to interrogatories. Those answers to interrogatories were verified under oath, and marked as deposition exhibit number 3. Further, the deponent, Joyce Munie, is the same person who originally signed and verified the interrogatory answers as correct and truthful. See attached. The Party now moving in limine chose not to ask any questions at the deposition concerning the interrogatory answers. Therefore, the County of Saline cannot claim prejudice as asserted in the motion in limine, should the interrogatory answers be proffered as admissions, or as other evidence.

Therefore, Petitioner, Saline County Landfill, Inc., prays the motion in limine be denied.

Brian E. Konzen, Esq.
Lueders, Robertson & Konzen LLC
1939 Delmar, P.O. Box 735
Granite City, Illinois 62040
Phone: (618) 876-8500
ARDC No.: 06187626

45108

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SALINE COUNTY LANDFILL, INC.,	)	
	)	
PETITIONER,	)	
	)	
v.	)	No. PCB 04-117
	)	(PERMIT APPEAL)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
RESPONDENT.	)	

PROOF OF SERVICE

I, the undersigned, verify copies of the forgoing Petitioner's Response to County of Saline's Motion in Limine were served by fax and mail upon the following persons by 5:00 p.m., on this 26th day of March, 2004:

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

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Ave. East
PO Box 19274
Springfield, Illinois 62794-9274

Rod Wolf
Saline County State's Attorney
10 E. Poplar
Harrisburg, Illinois 62946

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

45108

Brian Konzen

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SALINE COUNTY LANDFILL, INC., Petitioner,	)	
v.	)	PCB No. 04-117
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	(Permit Appeal)
Respondent.	)	

RESPONSE TO PETITIONER'S INTERROGATORIES

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to the Illinois Pollution Control Board ("Board") Rules at 35 Ill. Adm. Code 101.616 and 101.620, hereby responds to the Interrogatories propounded by the Petitioner, Saline County Landfill, Inc. ("SCLI").

GENERAL OBJECTIONS

The Illinois EPA objects to each of the Petitioner's interrogatories, definitions, and instructions to the extent that, individually or cumulatively, they purport to impose upon the Illinois EPA duties or obligations which exceed or are different from those imposed upon the Illinois EPA by the Board's procedural rules.

The Illinois EPA further objects to each of the Petitioner's interrogatories, definitions, and instructions to the extent that they call for attorney-client communications, communications between or among Illinois EPA's counsel, attorney work product, or any other privileged matters. The Illinois EPA reserves the right to make further objections in the future if new information or circumstances warrant.

RESPONSE TO PETITIONER'S INTERROGATORIES

1. Identify all persons who participated in the decision to issue the permit denial dated December 5, 2003, in IEPA log no. 2003-113.

Answer:

Joyce Munie, Manager

Chris Liebman, Solid Waste ("SW") Unit Manager

Christine Roque, Environmental Protection Engineer III, SW Unit

Gwenyth Thompson, SW Groundwater Assistance Unit ("GAU") Manager

Paul Eisenbrandt, Environmental Protection Geologist III, GAU

Mike Summers, Environmental Protection Geologist III, GAU

All persons work in the Permit Section of the Bureau of Land of the Illinois EPA, located at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois, 62794-9276

2. For each person identified in your answer to interrogatory no. 1, above, list in detail the activities performed by that specific person to so participate in the decision to issue the permit denial, (i.e., recommended or directed a change in the IEPA's historic interpretation of 415 ILCS 5/39.2(f), drafted the language of the written permit denial, determined the reason stated for the permit denial, etc.).

Answer:

Joyce Munie: Reviewed and signed the final decision under appeal.

Chris Liebman: Reviewed and approved Christine Roque's draft of the final decision

Christine Roque: Reviewed permit application and drafted final decision pursuant to Joyce Munie's direction.

Gwenyth Thompson: Reviewed Paul Eisenbrandt and Mike Summers' recommendations related to potential impact to groundwater presented by the permit application.

Paul Eberbrandt: Reviewed permit application and prepared final recommendations for Gwenyth Thompson.

Mike Summers: Reviewed permit application and prepared final recommendations for Gwenyth Thompson.

3. For each person identified or referenced in your answers to interrogatories no. 1 and 2, above, state all the dates on which each person performed the activities you detailed.

Answer:

The Illinois EPA objects to this interrogatory on the grounds that it is unduly burdensome, in that it would require the review of bi-weekly time sheets submitted by all the identified personnel to determine exact dates upon which work was performed as described. Without waiving that objection, the activities described in answers to interrogatories nos. 1 and 2 took place during the time period of April 7, 2003, and December 5, 2003.

4. Identify all persons having knowledge of any of the facts stated in the language underlined in the attached letter dated March 12, 2003.

Answer:

The Illinois EPA objects to this interrogatory on the grounds that it is unduly burdensome, in that the Illinois EPA does not have access to knowledge of all persons outside of the Illinois EPA that may fall within the scope of the interrogatory. Without waiving this objection, the Illinois EPA identifies Joyce Munie, Chris Liebman and Christine Roque.

5. Identify all persons having knowledge of statements made by employees and representatives of the IEPA's Bureau of Land, that a landfill's local siting approval expires in 3 years only if a permit application has not been submitted to the IEPA during that 3-year period. Your answer should include the identity of each person told the local siting had not expired for

new landfill requested by that person, though local siting was granted over three years beforehand.

Answer:

The Illinois EPA objects to this interrogatory on the grounds that it is unduly burdensome, in that the Illinois EPA does not have access to or knowledge of all persons outside of the Illinois EPA that may fall within the scope of the interrogatory. Without waiving that objection, the Illinois EPA identifies Steve Hedinger.

6. List by name and site number each landfill in the State of Illinois that since 1996, received a developmental permit from the IEPA over three years after that landfill received local siting approval for some or all of the air space referenced in that developmental permit.

Answer:

The Illinois EPA objects to this interrogatory on the grounds that it is unduly burdensome, in that it seeks information that is not maintained in database form. Without waiving this objection, the Illinois EPA is attaching a printout of database information that identifies all action taken, if any, on applications for new landfills from 1996 through 2004. The Illinois EPA notes that some of the applications approved may fall within the scope of the interrogatory, but that it would require a file-by-file review of each application to determine whether the application does in fact fall within the scope of the interrogatory. Given the length of the list and the administrative constraints on the Illinois EPA staff qualified to review these applications, further answer is not possible at this time.

7. List by name and site number each landfill in the State of Illinois that, since 1996, received both a notice of denial of a permit application and a developmental permit from the IEPA, over three years after that landfill received local siting approval for some or all of the air

space referenced in that developmental permit. Limit your answer to landfills that received a denial of a permit application followed by a development permit.

Answer:

Since 1996, no landfills have received both a notice of denial of a permit application and a development permit from the Illinois EPA over three years after the landfill received local siting approval for some or all of the air space referenced in the development permit.

8. List each landfill in Illinois for which the IEPA denied a permit application since 1996, based in whole or in part on justification stated by the IEPA that local siting had expired. Limit your answer to landfills that had submitted to the IEPA an application for developmental permit within three years of receiving local siting approval. For each landfill listed, state the IEPA log number for which the IEPA denied the permit application, and the date of the notice of permit denial.

Answer:

Saline County Landfill, Inc., LPC #1658080001, Log No. 2003-113, December 5, 2003.

9. State whether the permit application in IEPA log no. 2003-113 was complete, except for the possibility local siting had expired.

If your answer is in the negative, explain how the permit application was incomplete. That is, state in detail all documents missing from the permit application, and detail all reasons in which the application failed to demonstrate compliance with the Illinois Environmental Protection Act, and with all statutes and regulations of the State of Illinois.

Answer:

The permit application described was deemed complete except for the possibility that local siting had expired.

10. For whether December 8, 2000, was the first time the IEPA denied an application for development permit based on the justification that local siting had expired, where the applicant had submitted to the IEPA a complete application for developmental permit within three years after local siting was granted for some or all of the air space approved at that local siting.

Answer:

The Illinois EPA objects to this interrogatory on the grounds that it is unduly burdensome, in that it seeks information that would date back to 1981. The Illinois EPA does not maintain a database that would allow a search for this type of information, and therefore the only means of fully answering the interrogatory would be to review all denials of development permits issued by the Illinois EPA over a 22 year period.

11. Identify all persons who answered, or assisted in answering, these interrogatories.

Answer:

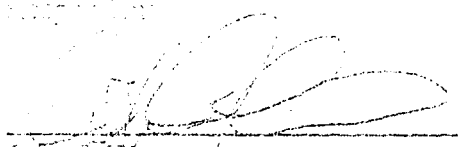
Joyce Munie, Chris Liebman, Christine Roque.

12. State the name of each landfill in Illinois that submitted to the IEPA a permit application since January 1, 1996. For each landfill listed, state the date the landfill received local siting approval, the date the permit application was submitted to the IEPA, and the date the IEPA issued the development permit for landfill expansion or for the new landfill. Please include the IEPA log number for each permit application listed.

Answer:

See the answer to Interrogatory No. 6.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



John L. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: February 24, 2004

Applications for New Landfills 1996-2004

LOG NO	NAME	SITE NO	FINAL ACT	MAILED
[illegible]	PEORIA CITY COUNTY LANDFILL	[illegible]	ISSUED	[illegible]
[illegible]	[illegible]	[illegible]	ISSUED	[illegible]
[illegible]	[illegible]	[illegible]	ISSUED	[illegible]
1996-311	ILLINOIS LANDFILL INC	1830450009	ISSUED	03/04/97
1996-314	RIVER BEND PRAIRIE	0310650003	ISSUED	10/21/96
1996-358	ENVIRONTECH INC	0638140002	ISSUED	11/26/97
1996-393	CIPS COFFEEN POWER STA	1358030005	ISSUED	09/06/99
1997-075	MACON COUNTY LANDFILL #2 & #3	1158040008	ISSUED	06/01/98
1997-140	COTTONWOOD HILLS RDF	1630755017	DENIED	10/15/97
1997-161	POLAND-BRIGGS	0950050003	DOI	05/29/97
1997-220	SPOON RIDGE LANDFILL	0578080002	ISSUED	12/12/97
1997-233	CIPS - NEWTON POWER STATION LF	0798085001	ISSUED	09/03/98
1997-261	LEE COUNTY LANDFILL	1030205110	ISSUED	06/22/98
1997-266	POLAND-BRIGGS	0950050003	DOI	10/27/97
1998-028	SETTLER'S HILL RDF	0890100009	ISSUED	07/31/98
1998-110	COTTONWOOD HILLS RDF	1630755017	ISSUED	07/15/99
1998-249	POLAND-BRIGGS	0950050003	DENIED	05/07/99
1999-047	DIXON, MARQUETTE CEMENT	1030205037	DOI	06/25/99
1999-173	UPPER ROCK ISLAND COUNTY LF	1618100014	ISSUED	10/06/00
1999-291	PRAIRIE VIEW RDF	1971105050	ISSUED	09/24/03
1999-295	WEST END DISPOSAL FACILITY	1650155005	ISSUED	05/16/01
1999-381	SALINE COUNTY LANDFILL	1658080001	DENIED	01/04/02
1999-387	ENVIRONTECH INC	0638140002	ISSUED	03/10/00
2000-064	PERRY RIDGE LF	1450105039	ISSUED	09/28/01
2000-131	SANGAMON VALLEY LANDFILL	1678220037	ISSUED	10/24/02
2000-199	MARION RIDGE LANDFILL	1990555136		
2000-300	KNOX COUNTY LANDFILL #3	0958160003	ISSUED	11/21/01
2000-455	ADS/MCLEAN COUNTY LANDFILL #2	1130200042	ISSUED	05/25/01
2001-021	HENRY COUNTY LANDFILL #2	0730200003	ISSUED	01/16/04
2001-152	COLES COUNTY LANDFILL	0298050007	ISSUED	05/13/02
2001-169	NATIONAL STEEL CORP-GRANITE CI	1190400001	ISSUED	03/21/02
2001-248	LANDFILL 33 LTD	0498100007	ISSUED	06/28/02
2002-007	ENVIROFIL WASTE MANAGEMENT	1098100003		
2002-046	ORCHARD HILLS LANDFILL	1410175005		
2002-280	SOUTHERN ILLINOIS REGIONAL LF	0770200002		
2002-341	ROXANA LANDFILL INC	1191900001		
2003-112	SALINE COUNTY LANDFILL	1658080001	DENIED	12/05/03
2003-239	WINNEBAGO RECLAMATION SVC	2018080001		
2003-344	LIVINGSTON LANDFILL	1058210002		

STATE OF ILLINOIS)
) SS
SANGAMON COUNTY)

AFFIDAVIT

I, Joyce Munie, upon my oath, do hereby state as follows:

1. I am employed as the Manager of the Permit Section for the Bureau of Land for the Illinois Environmental Protection Agency.
2. I have reviewed the Response to Petitioner's Interrogatories propounded in the case of Saline County Landfill, Inc. v. Illinois EPA, PCB 04-117.
3. To the best of my knowledge, the responses are factually true and accurate.

FURTHER AFFIANT SAYETH NOT.

Joyce Munie

Subscribed and sworn to before me
this 24th day of February 2004.

Notary Public

OFFICIAL SEAL
BRENDA BOEHNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-14-2005