

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEORIA DISPOSAL COMPANY,)	
Petitioner,)	
)	
vs.)	PCB 06-184
)	(Pollution Control Facility
PEORIA COUNTY BOARD,)	Siting Appeal)
Respondent.)	

MOTION SUBMITTED TO THE HEARING OFFICER
TO LIMIT THE SCOPE OF DOCUMENTS SOUGHT TO BE PRODUCED AT
SUBPOENAED DEPOSITIONS

Now come Tessie Bucklar, Cara Rosson, Jean Roach, John McLean, Ted Converse, and Kim Converse, individually and as members of Peoria Families Against Toxic Waste ("PFATW"), and Joyce Blumenshine, individually as a member of Sierra Club, Heart of Illinois Group ("Sierra Club"), (collectively PFATW and Sierra Club being the "Opposition Groups"), by and through their attorney, David L. Wentworth II of HASSELBERG, WILLIAMS, GREBE, SNODGRASS & BIRDSALL, and for their Motion to Limit the Scope of Documents Sought to be Produced at Subpoenaed Depositions of Joyce Blumenshine, Tessie Bucklar, Cara Rosson, Jean Roach, John McLean, Ted Converse, and Kim Converse (collectively the "Deponents") relating to items 1, 2, and 9-32 of each Rider A of each Subpoena, filed pursuant to Section 101.622(d), and in accordance with Sections 101.502(a), 101.610(m), and 101.614 of the General Rules of the Illinois Pollution Control Board (35 Ill. Admin. Code, Part 101), state and allege as follows:

1. By Subpoenas duces tecum, the Deponents have been asked to give depositions by, and produce 32 categories of documents listed on an attached "Rider A" to, Peoria Disposal Company ("PDC"). See October 4, 2006 filing by PDC.

2. The Deponents (among many others) participated actively in the local pollution control facility siting public hearings before the Peoria County Board which are the subject of the Petition to Review filed by PDC in the instant case.

3. The Deponents are members of one or both of PFATW and Sierra Club. They were represented at said proceedings by legal counsel; the Opposition Groups cross-examined witnesses; the Opposition Groups presented affirmative expert evidence in opposition to the application for siting approval; and the Opposition Groups filed detailed briefs with the Peoria County Board. See Record on Appeal, Transcripts of Site Hearings (C7267-C7934), and various other filings of Opposition Groups as set forth in the Record on Appeal, "Amended Index" filed by Peoria County Board on August 17, 2006.

4. The individual Deponents did an incredible amount of research, preparation, writing, and other similar work to mount an effective position in opposition to the Application filed by PDC and heard before the Peoria County Board.

5. That PFATW is a voluntary unincorporated association of citizens in the community of Peoria, and the Sierra Club, Heart of Illinois Group, is a similar voluntary non-profit group of local citizens.

6. PDC's Petition for Review, filed June 7, 2006, identifies at paragraph 9 specific claimed errors in the hearing procedures conducted by the Peoria County Board. A fair reading of the paragraph indicates that only 3 of the 14 subparts of paragraph 9 of the Petition to Review (reciting the specific claimed errors at the Peoria County Board level) could possibly apply to an opponents, including the Deponents:

G. The action of the Peoria County Board was not based upon the evidence.

H. The action of the Peoria County Board was based on matters outside the record.

* * * *

K. Objectors to the Application including, but not limited to, participants of Sierra Club, Heart of Illinois Group, and Peoria Families Against Toxic Waste engaged in prejudicial *ex-parte* contacts with the Peoria County Board and promoted and advocated prejudicial *ex-parte* contacts by others with the Peoria County Board.

7. In short, the only matter PDC alleges (and could possibly allege in this pollution control facility siting appeal) in its Petition for Review having anything to do with citizen opponents, including the Opposition Groups and the Deponents, is ex parte contacts with the Peoria County Board. In this regard, PDC has the dual burden to prove that an ex-parte communication was actually made, and that it had a prejudicial impact on PDC.

8. Rider A to each subpoena served on the Deponents seeks all documents in the possession or control of the Deponent "referring to the Application" or "referring to Peoria Disposal Company" or "received from or authored by" any one of 23 specifically identified citizens [including all Deponents] or citizen groups [including the Opposition Groups] who spoke or otherwise participated in opposition to the Application. See items 1, 2, and 9-32 of each Rider A. The word "Document" in each Rider A is defined broadly, even to the point of seeking documents the Deponent "had access to in the past". Nothing in the subpoena or Rider A limits the time period for which the documents are sought.

9. The requests of PDC to have the Deponents produce evidence relating to items 1, 2, and 9-32 of each Rider A, independently, and magnified when read with the

definition of "Documents": (a) are incredibly and unduly broad; (b) impose a heavy burden of undue time and expense on the Deponents and their legal counsel to assemble and review; (c) are unreasonable in scope and time frame; (d) are unreasonable by definition in that the overwhelming majority, if not one-hundred percent, of the requested documents have nothing to do with purported ex parte communications with members of the Peoria County Board placed at issue by PDC; and (e) are wholly irrelevant to the sole issue raised by PDC in the instant case, ex parte communications.

10. By asking for any and all documents by and between any of the Opposition Groups, PDC is basically seeking to find out what the opposition thought, when they thought it, what they considered, and what strategy was ultimately employed. This request is made regardless of whether any of the communications resulted in a purported ex-parte contact or not. Based on what the PDC has placed at issue before the Pollution Control Board, the only documents that would be relevant to such issues would be items 3 through 8 of each deposition subpoena Rider A.

11. In good faith, the undersigned attempted to limit the scope of Rider A by contacting counsel for PDC on or about October 6, 2006 and generally discussing the above objections. The undersigned indicated that meetings with the Deponents had been scheduled to determine the exact size of documents potentially subject to the Rider A.

12. By letter dated October 6, 2006, and received October 10, 2006, counsel for PDC agreed to limit the time period in question from when the Application was filed (November 8, 2005) until the final vote of the Peoria County Board (May 3, 2006). No other limitation of the scope of Rider A was made or has been made by PDC as of the

date of the instant motion. The October 6, 2006 letter confirmed that the Deponents "reserve their rights, if any, to object to the scope of the document production request."

13. The Deponents have informed the undersigned over the period of the last week that the nature and extent of documentation within the scope of Rider A (even as modified by the October 6th letter), collectively amounts to literally thousands of emails and documents, and places an undue burden on the citizen volunteers (and their lawyer) to review these documents. By letter dated October 20, 2006, the Deponents notified PDC of the instant objections, a copy of which is attached as Exhibit A. As of the date of this motion, no response has been heard from PDC, and the Deponents file this motion in a timely basis in advance of the first deposition set for Monday October 23, 2006 at 8:00 am. Deponents have no objection to producing all documents regarding items 3 through 8 of each deposition subpoena Rider A, including any grassroots efforts that educated and informed the general public. See Exhibit A.

14. The broad nature of the discovery request in Rider A is not only outside the evidence reasonably necessary for resolution of the matters currently before the Pollution Control Board, it may be a tool to learn information such that PDC could bring a separate lawsuit outside of the Pollution Control Board framework against the opponents.

15. The Opposition Groups have expended all their resources in the underlying hearing before the Peoria County Board. This broad discovery request would place further burden on the Opposition Groups and weaken the entire opposition cause in the unlikely event that the matter is remanded back to the Peoria County Board.

16. That PDC has already done significant discovery on potential ex-parte communications with the Peoria County Board, as evidenced by depositions (with document requests) of the board members and the multiple documents which are subject to the pending Requests to Admit. Any further discovery, outside the scope of strictly ex-parte issues, would either be cumulative or be to gather information for a lawsuit against the Deponents and/or the Opposition Groups.

WHEREFORE, the Opposition Groups respectfully pray that:

- A. The scope of the Rider to each subpoenae be further limited to provide Peoria Disposal Company with Documents in any way related to communications with Peoria County Board members as outlined above;
and
- B. The Hearing Officer grant such other and further relief that she deems just and proper.

Respectfully Submitted,
Joyce Blumenshine, Tessie Bucklar, Cara Rosson,
Jean Roach, John McLean, Ted Converse, and Kim
Converse

By: _____
David L. Wentworth II,
One of their attorneys

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NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 22, 2006, David L. Wentworth II caused to be filed with the Illinois Pollution Control Board via electronic filing as authorized by the Clerk of the Pollution Control Board the Motion to Limit the Scope of Documents Sought to be Produced at Subpoenaed Depositions.

By: _____
David L. Wentworth II, Attorney

CERTIFICATE OF SERVICE

The undersigned, the attorney for the Deponents certify that I served a true and correct copy of the foregoing Notice, together with a copy of the Motion to Limit the Scope of Documents Sought to be Produced at Subpoenaed Depositions, upon the person(s) indicated via email and/or regular mail as indicated in the Service List on the 22nd day of October, 2006.

David L. Wentworth II, Attorney

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