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' FRK'S OFFICE BOARD MAY 0 5 1999 **BEFORE THE ILLINOIS**

LAND AND LAKES COMPANY, Petitioner,

46437-70

STATE OF ILLINOIS Pollution Control Board

RECI

VS.

WILL COUNTY BOARD AND WASTE MANAGEMENT OF ILLINOIS, INC. Respondents.

PCB 99-139 (Pollution Control Facility Siting Appeal)

NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on the 5th day of May, 1999, there was filed with the Pollution Control Board, State of Illinois, certain Land and Lakes' Response to the County Board's Motion for More Definite Statement.

LAND AND LAKES COMPANY

BY Elizabeth S. Harvey **One of Their Attorneys**

STATE OF ILLINOIS

)) SS.

COUNTY OF COOK)

The undersigned, being first duly sworn on oath, deposes and states that the foregoing Notice of Filing and Land and Lakes' Response referred to therein on the 5th day of May, 1999, was hand-delivered to Mr. John Knittle, faxed to Ms. Christine Zeman and mailed to all other persons on the attached service list.

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Subscribed and sworn to before me this 5th, day of May, 1999,

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State of the state

Michael J. Maher Elizabeth S. Harvey McKenna, Storer, Rowe, White & Farrug 200 North LaSalle Street, Suite 3000 Chicago, Illinois 60601 312-558-3900

THIS DOCUMENT IS FILED ON RECYCLED PAPER

45437.70 PCB 99 Mr. Charles Helsten Hinshaw & Culbertson 100 Park Avenue P. O. Box 1389 Rockford, IL 61105-1389 Mr. Donald Moran Pederson & Houpt 161 N. Clark Street, Suite 3100 Chicago, IL 60601 Mr. John C. Knittle Hearing Officer Illinois Pollution Control Board 100 West Randolph, Suite 11-500 Chicago, IL 60601 Mr. Albert F. Ettinger Staff Attorney State Autorities Environmental Law and Policy Center 35 Wacker Drive Suite 1300 Chicago, IL 60601-2208 Ms. Kathleen Konicki 13325 167th Street Lockport, IL 60441 Ms. Christine G. Zeman Hodge & Dwyer 808 South Second Street Springfield, IL 62704 Fax: 217/523-4948

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SERVICE LIST

RECEIVED MAY 05 1999 BEFORE THE ILLINOIS POLLUTION CONTROL BO SHIFE OF ILLINOIS Pollution Control Boar Pollution Control Board 46437-70 SIERRA CLUB, MIDEWIN TALLGRASS) ESH:psw PRAIRIE ALLIANCE, AUDUBON RAINE ALLIANCE, AUDUDUN COUNCIL OF ILLINOIS, AND ILLINOIS рСВ 99-136 (Pollution Control Facility AUDUBON SOCIETY, Siting Appeal) Petitioners WILL COUNTY BOARD and WASTE MANAGEMENT OF ILLINOIS, INC., Respondents. LAND AND LAKES COMPANY, PCB 99-139 (Pollution Control Facility Siting Appeal) Petitioner, WILL COUNTY BOARD and WASTE WILL WUNLI DUANU ANU WADLE MANAGEMENT OF ILLINOIS, INC., Respondents. PCB 99-140 (Pollution Control Facility KATHLEEN KONICKI, Siting Appeal) Petitioner, LAND AND LAKES' RESPONSE TO THE COUNTLY BOARD'S MOTION FOR MORE DEFINITE STATEMENT WILL COUNTY BOARD and WASTE WILL WUNI I DUANU and WADIE WILL WUNI I DUANU AND WADIE MANAGEMENT OF ILLINOIS, INC., Respondents.

LAND AND LAKES COMPANY (LALC), by its attorneys, hereby responds to respondent THE WILL COUNTY BOARD's (County Board) "Motion to Make More Definite the Petition for Review of Land and Lakes Company".

- The County Board contends that LALC's petition for review¹ lacks sufficient detail to allow the County Board to prepare its defense. The County Board cites Section 103.122(c) of the Board's procedural rules in support of its position.
- Initially, it must be noted that Section 103.122(c) of the Board's rules applies to enforcement cases, not to appeals of pollution control facility siting decisions. The Board's current procedural rules do not address siting appeals.
- 3. The County Board asks that LALC be ordered to "state facts on which it bases its conclusion that the siting process was fundamentally unfair and which criteria it contends were not satisfied." (Motion, page 4.)
- 4. LALC has no objection to making its petition for review more definite, and will file an amended petition. However, LALC does object to any claim by the County Board that LALC must state <u>all</u> facts in support of its claim of fundamental unfairness. As the Board noted in another siting appeal, Illinois does not require a petitioner to plead all facts specifically in the petition, but to set out ultimate facts which support his cause of action. <u>Sierra Club v. City of Wood River</u> (November 6, 1997), PCB 98-43, 1997 WL 728179,
 - *2. Pleading requirements for administrative review are less exacting than for other

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¹ LALC's petition for review was filed with the Board on April 7, 1999, not on April 12, 1999 as alleged by the County Board. The date of filing is important because a petition for review filed on April 12, 1999 would have been filed more than 35 days after the County Board's decision.

causes of action. <u>Id.</u> To require all facts to be pled in the petition for review would negate the value of discovery, which is ongoing in this case under the hearing officer's scheduling directions.

- 5. LALC does not wish to turn this motion into a battle over the specificity with which facts must be pled. LALC will amend its petition for review to identify the specific criteria it believes were not satisfied, and to plead ultimate facts to support its belief that the siting process was not fundamentally fair. Because discovery is ongoing until May 27, 1999, however, LALC reserves its right to seek leave to further amend its petition for review based upon the information gathered through the discovery process.
- LALC will file an amended petition for review no later than May 11, 1999, or as otherwise directed by the Board.

Respectfully submitted,

LAND AND LAKES COMPANY

By: Harvev Qne of its Attorneys

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