

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

AUG 10 2012

STATE OF ILLINOIS
Pollution Control Board

AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY,
ILLINOIS, HENSON DISPOSAL, INC., and
TKNTK, LLC

Respondents.

No. PCB 11-60

(Pollution Control Facility Siting
Application)

ORIGINAL
RETURN TO CLERK'S OFFICE

NOTICE OF FILING

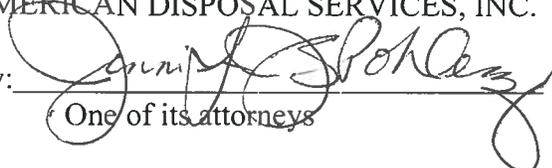
TO: See Attached Proof of Service

PLEASE TAKE NOTICE that on August 10, 2012, we filed with the Illinois Pollution Control Board: (1) this Notice of Filing; (2) the attached Petitioner's Response to Respondents' Objections to Interrogatories; and (3), the attached Petitioner's Response to Respondents' Objections to Document Production Requests.

Dated: August 10, 2012

Respectfully submitted,

AMERICAN DISPOSAL SERVICES, INC.

By: 
One of its attorneys

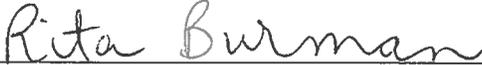
Jennifer J. Sackett Pohlenz
Clark Hill, PLC
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PROOF OF SERVICE

I Rita Burman, a non-attorney, swear or affirm that I served the document identified in the attached Notice of Filing on the following parties as identified below and when service is by depositing same in the U.S. mail, it was done from 150 N. Michigan Avenue, Suite 2700, Chicago, Illinois 60602, before 5:00 p.m. on this 10th day of August 2012.

Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Suite 11-500 Chicago, Illinois 60601 <i>Hand Delivery</i>	Hearing Officer Carol Webb Illinois Pollution Control Board 1021 North Grand Avenue East P.O. Box 19274 Springfield, Illinois 62794-9274 <i>Via E-mail (webbc@ipcb.state.il.us)</i>
Richard T. Marvel Attorney at Law 202 N. Center Street, Suite 2 Bloomington, IL 61701 <i>Via E-mail (marvelr@me.com) & U.S. Mail</i> Attorney for Respondents Henson Disposal, Inc. and TKNTK, LLC	Amy Jackson Rammelkamp Bradney, P.C. 232 West State Street Jacksonville, Illinois 62650 <i>Via E-mail (ajackson@rblawyers.net) & U.S. Mail</i> Co-Counsel for Respondents Henson Disposal, Inc. and TKNTK, LLC
Hanna Eisner McLean County State's Attorney's Office 104 W. Front Street, Rm. 605 Bloomington, IL 61702 <i>Via E-mail</i> <i>(hannah.eisner@mcleancountyil.gov) & U.S. Mail</i>	

Under penalties as provided by law pursuant to Illinois Rev. Stat. Chap. 110-, Sec. 1-109, I do certify that the statements set forth herein are true and correct.


Rita Burman

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY,
ILLINOIS, HENSON DISPOSAL, INC., and
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STATE OF ILLINOIS
Pollution Control Board

PETITIONER'S RESPONSE TO RESPONDENTS' OBJECTIONS TO
INTERROGATORIES

Petitioner American Disposal Services of Illinois, Inc. ("ADS"), by and through its attorney, Jennifer J. Sackett Pohlenz at Clark Hill PLC, responds in opposition to the objections to Interrogatories propounded by ADS, made by Respondents County Board of McLean County ("County Board"), and Henson Disposal, Inc. and TKNTK, LLC (collectively referenced herein as "Henson"), as follows:

INTRODUCTION

On May 8, 2012, ADS propounded Interrogatories on Respondents. A true and correct copy of the Interrogatories served is attached as **Exhibit 1**. On July 19, 2012, and July 20, 2012, the County Board and Henson, respectively, filed their objections to certain of the Interrogatories issued by ADS. This Response addresses the objections to the Interrogatories in order by Interrogatory number.

During the Illinois Pollution Control Board telephonic status conference on July 23, 2012, counsel for the County Board clarified that no objection was being made to Interrogatory No. 5, and, thus, this Response has not addressed that Interrogatory. Likewise, counsel for

Henson clarified that no objection was being made to Interrogatory Nos. 1, 2 and 5, despite those Interrogatory Nos. being identified on the page titled “Henson Disposal, Inc. and TKNTK, LLC’s Objections to Petitioner’s Interrogatories.”

RESPONSE TO OBJECTIONS TO INTERROGATORIES

Petitioner’s Interrogatory No. 3:

This Interrogatory asks a number of questions concerning jurisdictional, pre-filing notice and fundamental fairness.

Objection: The County Board and Henson object to Interrogatory No. 3 on the basis of work product privilege and, as respects, specifically, subparts (d)-(f), as irrelevant and beyond the scope of discovery.

Response: No work product is sought in Interrogatory No. 3. It is a factually based interrogatory, and asks a party to explain the basis for a defense is not objectionable. While the Respondents assert Illinois Supreme Court Rule 201(b) for its privilege objection, the language of that Rule that relates to work product is limited and clearly allows what is requested by Interrogatory No. 3:

. . . Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney. . .

In a case referenced in the Notes to the Rule, *Monier v. Chamberlain*, the Illinois Supreme Court states that “only those memoranda, reports or documents which reflect the employment of the attorney's legal expertise, those ‘which reveal the shaping process by which the attorney has arranged the available evidence for use in trial as dictated by his training and experience’” are privileged. *Monier v. Chamberlain*, 35 Ill. 2d 351, 359 (Ill. 1966). Clearly, seeking each basis for the Respondents’ defense to the jurisdictional claim does not fit into that category of

privilege. However, even if there is a “litigation plan,” for example, that was prepared by an attorney for the Respondents, the proper procedure to implement in answering this Interrogatory is to disclose and list that document as an item not being produced, identifying the privilege being asserted. A summary claim of work product privilege does not serve as a rationale for non-disclosure in response to the entire Interrogatory.

Further, the topics of who should have been sent notice, what was done to identify those people, and the dates the notice was or was not served is squarely within the jurisdictional issue and should be disclosed. For example, in *County of Kankakee, et al. v. City of Kankakee, et al.*, the applicant testified concerning how it identified the persons that were to be sent notice. PCB 03-31 (January 9, 2003, p. 8).

Therefore, the Hearing Officer should overrule the objection by the Respondents and require them to answer Interrogatory No. 3 by a date certain.

Petitioner’s Interrogatory No. 4:

This Interrogatory seeks information concerning what steps were taken to ensure the public record was available for review at the McLean County Clerk’s Office.

Objection: The Respondents object to this Interrogatory as “vague” as it “does not describe the documents that constitute the ‘public record’ or ‘record.’”

Response: The objection is ridiculous, as it is clear that the local-level record on this siting application is the subject of this Interrogatory. “Vague” means it is so speculative that you cannot identify its meaning. Here, even if someone were to legitimately be confused by the terms “public record” or “record,” the context of the detailed Interrogatory makes clear that the local-level record is the subject.

Notwithstanding, that a plain reading of this Interrogatory makes clear what is being sought, state law and McLean County's own ordinance, clearly mandate development of a "record." Section 39.2 provides that "[t]he public hearing shall develop a record sufficient to form the basis of appeal of the decision in accordance with Section 40.1 of this Act." (415 ILCS 5/39.2). Further, McLean County Ordinance Section 33.11-1 identifies the specific content of that record (referenced therein as the "Hearing Record" even though it contains matters outside of the hearing). (**Exhibit 2**).

Therefore, nothing is "vague" about the Interrogatory and the Hearing Officer should overrule the objection and require the Respondents to answer Interrogatory No. 4 by a date certain. Alternatively, insert "the record as required by 415 ILCS 39.2, including, but not limited to, the 'Hearing Record' as provided in Section 33-11 of the McLean County Code" as the definition of "public record" or "record" for Interrogatory No. 4 and require the Respondents to answer by a date certain.

Petitioner's Interrogatory Nos. 6-12:

These interrogatories seek Respondents to identify communications that occurred between them after the filing of the siting application; within specific dates that are based on the filing dates of the application and the public hearing that may be referenced in the Record on Appeal (C-23, C-144); explain why a non-County Board member signed a second (and different) Certification of Siting Approval; and to explain the basis for the second (and different) Certification of Siting Approval in the siting approval decision by the County Board.

Objections: The County Board objects to these Interrogatories "because it seeks information outside of the record of the proceedings before the County Board." In support of its objection, the County Board cites *Peoria Disposal Company v. Illinois Pollution Control Board*,

385 Ill. App. 3d 781, 896 N.E. 2d 460 (3rd Dist. 2008); *E & E Hauling, Inc. v. Pollution Control Board*, 116 Ill.App. 3d 586, 451 N.E.2d 555 (2nd Dist. 1983); *Land and Lakes Company v. Pollution Control Board*, 319 Ill. App. 41, 743 N.E. 2d 188 (3rd Dist. 2000), and *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, 969 N.E.3d 1144 (2nd Dist 2011). Although, the crux of the County Board’s objection, without citation to any supporting authority, appears to be that no discovery on fundamental fairness should be allowed outside of the specific allegations in the Petition: “Respondent maintains that the only discovery available to Petitioner, given the pleadings, should be as to the unavailability of the public record. . . .”

Additionally, the County Board objects to Interrogatory Nos. 6-12 as “not relevant” and Nos. 6 and 10 as “not relevant and overly broad.”

Henson objects to a portion of these Interrogatories, specifically Nos. 6, 8, 9, and 10, incorporating the objections of the County Board fully for its own. For ease of reference, and since the County Board articulated the basis for the objections, the Response below references the “County Board,” but is intended to include Henson for those Interrogatories to which Henson has incorporated the County Board’s objections.

Response: Pursuant to Illinois Pollution Control Board Rule, Section 101.616(a), “[a]ll relevant information and information calculated to lead to relevant information is discoverable. . . .”(excluding protected materials). The purpose of discovery is to avoid surprise and prevent a party from obtaining an unfair advantage through non-disclosure. Petitioner has a right to investigate fundamental fairness issues outside the record and outside its Petition (which has already been found by the Illinois Pollution Control Board Furthermore, discovery outside the record for issues of fundamental fairness, among others, is not only allowed, it is required by the Illinois Pollution Control Board Rule and its applicability to siting reviews.

Further, the County Board's objection, with respect to Interrogatory Nos. 6-12, that the discovery sought is outside those allegations of specified fundamental unfairness in the Petition, is no more than a second attempt at the same argument all Respondents lost in the Motion to Dismiss. In its February 16, 2012, Order, the Illinois Pollution Control Board ruled that the Petition was sufficiently pled. (PCB 11-60, February 16, 2012, p. 35). The reality is that due to the nature of fundamental fairness, a party who objects to something as being unfair is normally an outsider to the alleged unfair activity and, therefore, the only opportunity the objecting party has to investigate the unfair activity is during discovery before the Illinois Pollution Control Board.

Indeed, the "whole purpose of discovery is to attempt to uncover relevant evidence or evidence calculated to lead to relevant evidence that is outside the record, evidence that is presumably unknown to the party propounding the discovery." *Fox Moraine, LLC v. United City of Yorkville, et al.*, PCB 07-146 (March 27, 2008, Hearing Officer Order, p. 2). For example, in *Stop the Mega-Dump v. County Board of DeKalb, et al.*, there were at least 15 discovery depositions on the topic of fundamental unfairness. PCB No. 10-103 (March 17, 2011, p. 14). Likewise, in *Waste Management of Illinois, Inc. v. County Board of Kankakee*, there were at least 22 individuals deposed as part of discovery into fundamental unfairness. PCB 04-186 (January 24, 2008, p. 26).

Additionally, the County Board's reliance on *Peoria Disposal Company* is misplaced, and none of other cases it cites stands for the position that a Respondent has a right to limit discovery to what is specifically pled in the Petition. In *Peoria Disposal Company*, the Appellate Court never mandated that the petition for review be based solely on the record before the county board. 385 Ill.App.3d 781, 896 N.E. 2d 460 (3rd Dist. 2008). In fact, the page citation

referenced by the County Board is in the section of the court's opinion that addresses the specific Section 39.2 criterion, which is not a subject of the Interrogatory at issue. (415 ILCS 5/39.2). Thus, *Peoria Disposal Company* does not stand for what the County Board asserts. Indeed, it is a case in which the court made no reference to any discovery dispute and its fundamental fairness issues dealt primarily with asserted bias.

The County Board's relevancy objection is duplicative of its general objection that the discovery sought in these Interrogatories is not specifically pled in the Petition. As already discussed above, that is no more than a backdoor attempt to undermine a Petition already determined by the Illinois Pollution Control Board to be sufficient and there is no legitimate basis to the objection. The County Board's objections to Interrogatory Nos. 6 and 10 as "overly broad" is likewise baseless. These two Interrogatories seek communications between Henson and McLean County and/or the County Board from the time McLean County received the siting application until the time it made its decision (and from April 19, 2010 to February 15, 2011, referenced on C-23, C-144). It is not for the County Board to decide what content is appropriate or not, as *any* communication between the County Board and Henson during the siting process is *ex parte* and is discoverable as part of a fundamental fairness inquiry. Further, any communication between McLean County (*e.g.*, attorneys, staff, employees) and Henson during the siting process is likewise important to a fairness evaluation, particularly in this instance where the parties were actively negotiating a host agreement and another agreement, behind closed doors, during the siting process. Finally, the County Board fails to provide any justification for the summarily asserted "overly broad" claim, asserting no enormity to the volume of communications or other alleged prejudice. Indeed, the County Board does not assert any objection based on an alleged burden placed on it to respond to these Interrogatories.

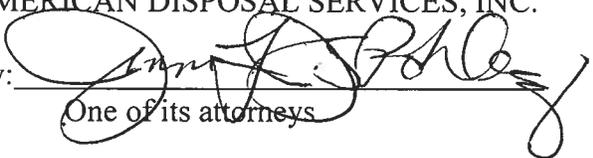
Therefore, there is no basis in the County Board's objections to Interrogatory Nos. 6-12, and the objections should be overruled. The Respondents should be required to answer Interrogatory Nos. 6-12 by a date certain.

WHEREFORE, American Disposal Services of Illinois, Inc. respectfully requests the Illinois Pollution Control Board Hearing Officer to overrule Respondents' objections to Petitioner American Disposal Services' Interrogatories, and to require Respondents answer the Interrogatories by a date certain.

Dated: August 10, 2012

Respectfully submitted,

AMERICAN DISPOSAL SERVICES, INC.

By: 

One of its attorneys

Jennifer J. Sackett Pohlenz
Clark Hill, PLC
150 N. Michigan Avenue, Suite 2700
Chicago, Illinois 60601
Direct Dial: 312.985.5912
Fax: 312.985.5971
Email: jpohlenz@clarkhill.com

AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY, ILLINOIS, HENSON DISPOSAL, INC., and TKNTK, LLC

Respondents.

No. PCB 11-60

(Pollution Control Facility Siting Application)

PETITIONER'S INTERROGATORIES TO RESPONDENTS

<p>TO: Richard T. Marvel Attorney at Law 202 N. Center Street, Suite 2 Bloomington, IL 61701 <i>Via Fax 309.827-8139 & E-mail (marvelr@me.com)</i> Attorney for Respondents Henson Disposal, Inc. and TKNTK, LLC</p>	<p>Amy Jackson Rammelkamp Bradney, P.C. 232 West State Street Jacksonville, Illinois 62650 <i>Via Fax 217. 243-7322 & E-mail (ajackson@rblawyers.net)</i> Co-Counsel for Respondents Henson Disposal, Inc. and TKNTK, LLC</p>
<p>Hanna Eisner McLean County State's Attorney's Office 104 W. Front Street, Rm. 605 Bloomington, IL 61702 <i>Via Fax 309.888-5429 & E-mail (hannah.eisner@mcleancountyil.gov)</i></p>	

The Petitioner, by and through its attorney, Jennifer J. Sackett Pohlenz, at Clark Hill, PLC, propounds the following Interrogatories upon Respondents to be answered within twenty-eight (28) days, or as otherwise ordered by the Hearing Officer.

PETITIONER AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC.,

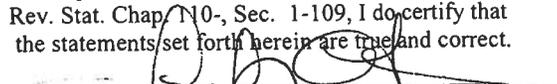
Clark Hill PLC
150 N. Michigan Ave., Suite 2700
Chicago, Illinois 60601
Phone: 312-985-5912

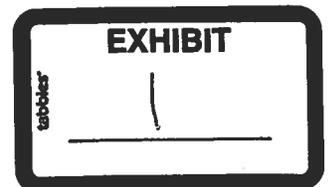
BY: 
One of its attorneys

PROOF OF SERVICE

I Jennifer Felker, a non-attorney, swear or affirm that I served the foregoing **Petitioner's Interrogatories to Respondents** on the parties identified above by facsimile, hand delivery, e-mail, or depositing same in the U.S. mail, as indicated above, from 150 N. Michigan Avenue, Suite 2700, Chicago, Illinois 60602, before 5:00 p.m. on this 8th day of May 2012.

Under penalties as provided by law pursuant to Illinois Rev. Stat. Chap. 110-, Sec. 1-109, I do certify that the statements/set forth herein are true and correct.


Jennifer Felker



INTERROGATORIES

1. Identify the Person(s) answering these Interrogatories, by providing their name, address, phone number, and the name of their current employer.

2. Identify all Person(s) who the Respondent answering this Interrogatory intends to call as a witness at the hearing in this matter, by providing their name, address, phone number, the name of their current employer, and a description of their expected testimony.

3. Identify and describe each and every basis for the defense, if any, of the Respondent answering this Interrogatory, to the assertion: jurisdiction for the Henson Disposal, Inc. pollution control facility siting did not vest with the McLean County Board as pre-filing notice pursuant to Section 39.2(b) was not complete. 415 ICLS 5/39.2(b) "Pre-filing notice" means the following requirement:

(b) No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided.
Id.

In answering this Interrogatory, please provide, at minimum, the following information

- a. The date the Henson Disposal, Inc. siting application was first submitted to McLean County;
- b. The date the Henson Disposal, Inc. siting application was first received by McLean County;
- c. Any other date you assert is relevant to jurisdiction and an explanation why it is relevant;
- d. Identification of each person who should have notice pursuant to Section 39.2(b);
- e. A description of what was done to identify the persons who are required to be served notice under Section 39.2(b);
- f. The date(s) such notice was served as respects each person identified by the Respondent in answer to subsection d. above.

4. Identify what measures were taken by the Respondent answering this Interrogatory to ensure the public record for the Henson Disposal, Inc. siting application was available for review at the McLean County Clerk's Office. In answering this Interrogatory, please identify, at a minimum, the following information:

- a. Identification of each person in the McLean County Clerk's Office charged with the responsibility of maintaining the public record for the Henson Disposal, Inc. siting application; and
- b. Identification of any person with knowledge of a request to review the record being denied, either by lack of knowledge of what is the record, lack of knowledge of the Henson Disposal, Inc. siting, lack of documentation for the record, or another reason.

5. Describe any testimony or evidence, not already described above, that the Respondent answering this Interrogatory intends to present at the hearing in this matter.

6. Identify each and every communication that occurred between the Respondent Henson Disposal, Inc. (including, but not limited to its officers, directors, employees, agents, attorneys, or contractors) and McLean County (including, but not limited to any employee, attorney, Board Member or other appointed or elected officials, or agents of the County), during the period of time from McLean County's receipt of the Henson Disposal, Inc. siting application and the final decision of the McLean County Board. In answering this Interrogatory, please identify the following:

- a. The persons participating in the communication;
- b. The date(s) of each communication;
- c. The form of the communication (e.g., email, telephone call, in person meeting, fax, written correspondence, etc.); and
- d. The subject matter of the communication.

7. Please identify any and all communications that occurred between April 19, 2010 and February 15, 2011., involving Henson Disposal, Inc. (including, but not limited to its officers, directors, employees, agents, attorneys, or contractors) and McLean County (including, but not limited to any employee, attorney, Board Member or other appointed or elected officials, or agents of the County) concerning the host agreement entered into between Henson Disposal, Inc., TKNTK, LLC, and McLean County on February 15, 2011.

8. Please identify any and all communications that occurred between April 19, 2010 and February 15, 2011., involving Henson Disposal, Inc. (including, but not limited to its officers, directors, employees, agents, attorneys, or contractors) and McLean County (including, but not

limited to any employee, attorney, Board Member or other appointed or elected officials, or agents of the County) concerning the performance agreement entered into between Henson Disposal, Inc., TKNTK, LLC, and McLean County on February 15, 2011.

9. Please identify what communications (written or oral) occurred between McLean County staff and the McLean County Board Members from April 19, 2010 to February 15, 2011, concerning the Henson Disposal, Inc. siting application or performance agreement or host agreement by providing the dates(s), persons involved, type of communication (email, in person, phone, fax, etc.), and description of the communications.

10. To the extent not otherwise disclosed above, please identify whether any of the following persons communicated in writing or orally with anyone from Henson Disposal, Inc., (including, but not limited to its officers, directors, employees, agents, attorneys, or contractors), whether such communication was initiated by the person listed below or by someone else, at any time or date from April 19, 2010 to February 15, 2011, by providing the date(s), substance, and persons present during each communication:

- a. Any attorney representing the McLean County Board during the time period stated above (please identify the attorney's name in your answer)
- b. Matt Sorenson
- c. William Caisley
- d. Don Cavallini
- e. George Gordon
- f. Stan Hoselton
- g. John McIntyre
- h. Ed McKibbin

- i. Sondra O'Connor
- j. Benjamin Owens
- k. Erik Rankin
- l. Susan Schafer
- m. Paul Segobiano
- n. James Soeldner
- o. George Wendt
- p. Laurie Wollrab
- q. Scott Black
- r. Diane Bostic
- s. John Butler

11. Please explain why Philip Dick executed another Certification of Siting Approval (LPC-PA8) after the one dated February 15, 2011, and identify the date, if any, of County Board approval for the change made to the second or subsequent Certification of Siting Approval signed by Mr. Dick.

12. Please identify the basis in the siting approval by the McLean County Board for the change to the Certification of Siting Approval.

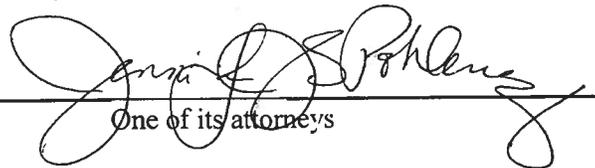
Dated: May 8, 2012

Respectfully submitted,

PETITIONER AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC.,

Clark Hill PLC
150 N. Michigan Ave., Suite 2700
Chicago, Illinois 60601
Phone: 312-985-5912

BY:


One of its attorneys

CERTIFICATION

Under penalties of perjury, as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that they believe the same to be true.

Dated this ____ day of _____, 2012.

- (1) McLean County Solid Waste Management Program
- (2) McLean County Building and Zoning Department
- (3) McLean County Regional Planning Commission
- (4) McLean County Highway Department
- (5) McLean County Administrator's Office
- (6) McLean County State's Attorney's Office
- (7) McLean County Health Department
- (8) Any professional consultant retained by the County Board.

(A) The staff siting review coordinator is authorized to call inter-departmental meetings and set deadlines for the submittal of staff reports, recommendations and/or evidence.

(B) A representative of the forenamed departments shall attend the public hearings and may ask such questions as are needed to assist them in reaching their recommendation.

(Amended 7/20/93)

33.08-2 Power of departments. The forenamed departments are authorized to prepare and submit reports, recommendations and/or evidence in connection with the request.

(A) Preliminary reports prepared by the staff, summarizing and analyzing the proposed site request, the written comments, reports, studies and exhibits concerning the appropriateness of the proposed site may also be filed with the County Clerk in advance of the public hearings.

(B) Copies of any departmental reports shall be available for public inspection in the office of the County Clerk and members of the public shall be allowed to obtain a copy of said documents upon payment of the actual cost of reproduction.

33.08-3 Final reports and recommendations. Upon completion of the evidentiary hearings, the forenamed departments shall have reasonable time to file any final reports and recommendations with the County Clerk. Copies of the final reports shall be available for public inspection in the office of the County Clerk prior to reconvening the hearing and members of the public shall be allowed to obtain a copy of said documents upon payment of the actual cost of reproduction.

(Amended 1/20/87)

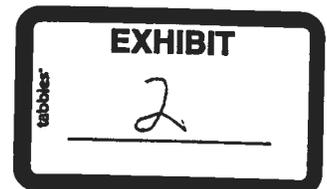
33.09 - 33.10 RESERVED

33.11 HEARING RECORD

The County Clerk of his/her designee shall be responsible for keeping the record of the hearing/and site review process.

33.11-1 Hearing record. The record shall consist of the following:

- (A) The request for siting approval.
- (B) Proof of notice as described in Section 33.30 C hereof;
- (C) Proof of notice given by applicant pursuant to Section 39.2(b) of the Environmental Protection Act (Ch. 111-1/2, par. 1039.2(b), Ill. Rev. Stat.).



- (D) Written comments filed by the public and received by the County Clerk or postmarked within 30 days of the last public hearing.
- (E) All reports and recommendations as described in Section 33.08.
- (F) All evidence, reports, studies, exhibits or documents admitted into evidence at the public hearing;
- (G) A complete transcript of the public hearing(s);
- (H) The findings of fact and recommendation of the McLean County Pollution Control Site Hearing Committee; and
- (I) A copy of the Resolution containing the final decision of the County Board.

33.11-2 Written certification. The County Clerk shall be responsible for certifying all copies of the record.

33.12 HEARING COMMITTEE

The McLean County Pollution Control Site Hearing Committee shall consist of the members of the McLean County Board's Land Use and Development Committee and the Chairman of the County Board.

(A) Chairman of Committee. The Chairman of the County Board shall serve as the Chairman of the Pollution Control Site Hearing Committee.

(1) In the event that said Chairman cannot serve, the Chairman of the Land Use and Development Committee shall assume the duties of Chairman of the Committee in relation to the public hearings on the application.

(2) In the event neither is in attendance at a public hearing, the members present shall select a chairman pro tem from among those members present who shall preside over the hearing session.

(B) Quorum. Four (4) members of the Committee shall constitute a quorum for the purpose of holding the public hearing.

33.13 PUBLIC HEARING PROCEDURES

(A) Within a reasonable time from the date the request for site approval is filed, the Chairman of the County Board shall determine the date, time and location upon which such public hearing shall be held. The initial public hearing shall be scheduled no sooner than ninety (90) days but no later than one hundred twenty (120) days from the date the request for site approval was filed with the County Clerk.

(B) If, in the Chairman's opinion, County facilities are not sufficient to accommodate the number of persons expected to attend the hearing, the Chairman may arrange for the hearing to be conducted at another site. In such an event, the Chairman is authorized to lease an adequate auditorium and sound system for the hearing. Any and all costs associated with such acquisition shall be paid from the filing fee, consistent with Section 33.03.

(C) The Chairman of the County Board shall promptly notify the County Clerk of the date upon which such hearing shall be held and the County Clerk shall cause notice of such hearing to be made as set forth in the Environmental Protection Act. (415 ILCS 5/39.2). Such notice shall be given as follows:

- (1) At least once per week for three successive weeks in the legal notice section of a newspaper of general circulation published in the County.
- (2) At least once during the week preceding the public hearing, as display as in a newspaper of general circulation throughout the County. Such notice shall consist of all items hereinafter described.
- (3) Written notice sent by certified mail to all members of the General Assembly from the district in which the proposed site is located.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

AUG 10 2012

STATE OF ILLINOIS
Pollution Control Board

AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY,
ILLINOIS, HENSON DISPOSAL, INC., and
TKNTK, LLC

Respondents.

No. PCB 11-60

(Pollution Control Facility Siting
Application)

**PETITIONER'S RESPONSE TO RESPONDENTS' OBJECTIONS TO DOCUMENT
PRODUCTION REQUESTS**

Petitioner American Disposal Services of Illinois, Inc. ("ADS"), by and through its attorney, Jennifer J. Sackett Pohlenz at Clark Hill PLC, responds in opposition to the objections to Document Production Requests propounded by ADS, made by Respondents County Board of McLean County ("County Board"), and Henson Disposal, Inc. and TKNTK, LLC (collectively referenced herein as "Henson"), as follows:

INTRODUCTION

On June 19 2012, ADS propounded Document Production Requests on Respondents. A true and correct copy of the Document Production Requests served is attached as **Exhibit 1**. On July 1, 2012 and July 20, 2012, the County Board and Henson, respectively, filed their objections to Document Production Request Nos. 1, 2, 5, and 6. Henson incorporated the County Board's objections, without expounding on them. This Response addresses the objections to the Document Production Requests in the order of the Request number.

RESPONSE

Petitioner's Document Production Request Nos. 1, 5 and 6:

Request No 1 is a very traditional Request, seeking the production of “all documents reviewed, used, referenced in, responsive to or relevant to any Respondents’ answers to Interrogatories.” **Request Nos. 5 and 6** seek production of all documents related to the Host County Agreement and the Performance Agreement between Henson and the County (as both those agreement appear to have been negotiated, behind closed doors, during the siting process).

Objections: The Respondents object to Request Nos. 1, 5 and 6 “because they seek information outside of the record of proceedings before the County Board and . . . [are] overly broad.” In support of its objection, the Respondents assert that “Petitioner has very limited rights to discovery” and allege, as they did in their objections to the Petitioner’s Interrogatories, that Petitioner should only be entitled to what is specifically, and not generally, alleged in its Petition.

Response: As submitted in the Petitioner’s Response to Respondent’s Objections to Interrogatories, this is no more than a backdoor attempt to undermine the Petition which was already upheld by the Illinois Pollution Control Board. There is no basis to Respondents’ objections. *See*, Petitioner’s Response to Respondents’ Objections to Interrogatories, pp. 4-7, which are incorporated as fully set forth herein.

Further, Respondents are blatantly wrong in their assertion that Petitioner’s rights to discovery are “very limited.” Not surprisingly, that statement by Respondents lacks any citation to statute or case law. As also referenced in Petitioner’s Response to Respondents’ Objections to Interrogatories, the “whole purpose of discovery is to attempt to uncover relevant evidence or evidence calculated to lead to relevant evidence that is outside the record, evidence that is

presumably unknown to the party propounding the discovery.” *Fox Moraine, LLC v. United City of Yorkville, et al.*, PCB 07-146 (March 27, 2008, Hearing Officer Order , p. 2).

Therefore, Respondents objections should be overruled and the Respondents should be required to respond to Document Production Request Nos. 1, 5 and 6 by a date certain.

Petitioner’s Document Production Request No. 2

Request No. 2 seeks all documentation concerning pre-filing notice.

Objection: Respondents object asserting that “all documents related to the pre-filing notice are contained in the county record of proceedings.”

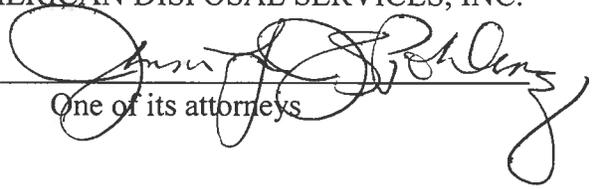
Response: Producing documents is not a basis for an objection. If the response to Request No. 2 is that there are no documents other than those in the Certificate of Record on Appeal filed by the County Board in this matter, then that should be stated. Additionally, particularly since the County objected to as vague the terms “public record” and “record” in the context of Interrogatory No. 4, it should be required to identify whether the “county record of proceedings” to which it refers in its objection is the same (and if not, the differences) as the Certificate of Record on Appeal.

WHEREFORE, American Disposal Services of Illinois, Inc. respectfully requests the Illinois Pollution Control Board Hearing Officer to overrule Respondents’ objections to Petitioner American Disposal Services’ Document Production Requests, and to require Respondents Respond to the Requests by a date certain.

Dated: August 10, 2012

Respectfully submitted,

AMERICAN DISPOSAL SERVICES, INC.

By: 
One of its attorneys

Jennifer J. Sackett Pohlenz
Clark Hill, PLC
150 N. Michigan Avenue, Suite 2700
Chicago, Illinois 60601
Direct Dial: 312.985.5912
Fax: 312.985.5971
Email: jpohlenz@clarkhill.com

AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY, ILLINOIS, HENSON DISPOSAL, INC., and TKNTK, LLC

Respondents.

No. PCB 11-60

(Pollution Control Facility Siting Application)

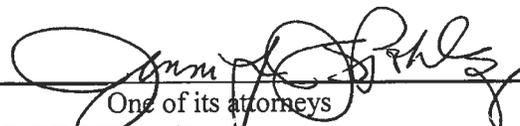
PETITIONER'S DOCUMENT PRODUCTION REQUESTS TO RESPONDENTS

<p>TO: Richard T. Marvel Attorney at Law 202 N. Center Street, Suite 2 Bloomington, IL 61701 <i>Via Fax 309.827-8139 & E-mail (marvelr@me.com)</i> Attorney for Respondents Henson Disposal, Inc. and TKNTK, LLC</p>	<p>Amy Jackson Rammelkamp Bradney, P.C. 232 West State Street Jacksonville, Illinois 62650 <i>Via Fax 217. 243-7322 & E-mail (ajackson@rblawyers.net)</i> Co-Counsel for Respondents Henson Disposal, Inc. and TKNTK, LLC</p>
<p>Hanna Eisner McLean County State's Attorney's Office 104 W. Front Street, Rm. 605 Bloomington, IL 61702 <i>Via Fax 309.888-5429 & E-mail (hannah.eisner@mcleancountyl.gov)</i></p>	

The Petitioner, by and through its attorney, Jennifer J. Sackett Pohlenz, at Clark Hill, PLC, propounds the following Document Production Requests upon Respondents to be answered within twenty-eight (28) days, or as otherwise ordered by the Hearing Officer.

PETITIONER AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC.,

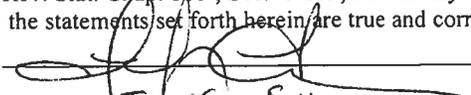
Clark Hill PLC
150 N. Michigan Ave., Suite 2700
Chicago, Illinois 60601
Phone: 312-985-5912

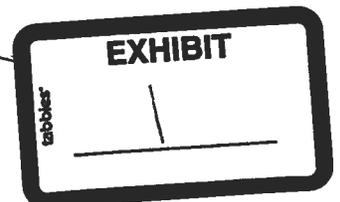
BY: 
One of its attorneys

PROOF OF SERVICE

I Jennifer Felker, a non-attorney, swear or affirm that I served the foregoing **Petitioner's Document Production Requests to Respondents** on the parties identified above by facsimile, hand delivery, e-mail, or depositing same in the U.S. mail, as indicated above, from 150 N. Michigan Avenue, Suite 2700, Chicago, Illinois 60602, before 5:00 p.m. on this 19th day of June 2012.

Under penalties as provided by law pursuant to Illinois Rev. Stat. Chap. 110-, Sec. 1-109, I do certify that the statements set forth herein are true and correct.


Jennifer Felker



DOCUMENT PRODUCTION REQUESTS

1. Please produce all documents reviewed, used, referenced in, responsive to, or relevant to any Respondent's answers to Interrogatories.

2. Please provide all documents related to Henson Disposal, Inc.'s pre-filing notice pursuant to 415 ICLS 5/39.2(b) "[P]re-filing notice," whether or not capitalized, means the following requirement:

(b) No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided.
Id.

3. Please produce all documents the Respondents, individually or jointly (in any combination), intend to present at the hearing in this matter.

4. Please produce all documents the Respondents, individually or jointly (in any combination), intend to present at any deposition in this matter.

5. Please produce all documents related to the Host County Agreement between all or part of the Respondents, including but not limited to email, communications, notes, and drafts.

6. Please produce all documents related to the Performance Agreement between all or part of the Respondents, including but not limited to email, communications, notes, and drafts.

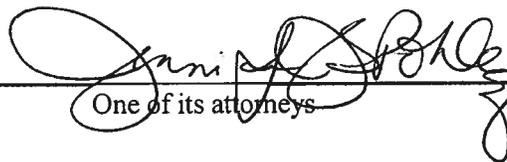
Dated: June 19, 2012

Respectfully submitted,

PETITIONER AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC.,

Clark Hill PLC
150 N. Michigan Ave., Suite 2700
Chicago, Illinois 60601
Phone: 312-985-5912

BY:


One of its attorneys

CERTIFICATION

Under penalties of perjury, as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that _____
_____'s responses to and documents produced pursuant to the Petitioner's Document Production Requests are complete.

Dated this ____ day of _____, 2012.
