

such evidence lies outside the record. *E & E Hauling, Inc. v Pollution Control Board* 116 Ill. App. 3d 586, 593 451 N.E.2d 555,561 (2d. Dist. 1983), *Land and Lakes Company v Pollution Control Board* 319 Ill. App. 3d 41, 48, 743 N.E. 2d 188, 194 (3d Dist. 2000) and *Fox Moraine, LLC. v United City of Yorkville* 2011 IL App (2d) 100017, ¶ 58, 969 N.E. 3d 1144, 1163 (2d Dist. 2011).

Discovery is limited to only that information necessary for and relevant to a consideration of the fundamental fairness of the proceedings. Petitioner has alleged in paragraph 12 of the Petition for Review that the local siting review procedures, hearings, decision and process, individually and collectively, were fundamentally unfair, but makes only one specific claim, the unavailability of the public record. Respondent maintains that the only discovery available to Petitioner, given the pleadings, should be as to unavailability of the public record and that discovery as to any other issue, particularly matters that go to the merits of the approval, should not be allowed.

2. Respondent objects to Document Production Request 2 for the reason that all documents related to the pre-filing notice are contained in the county record of proceedings.

Respectfully submitted,



Hannah Eisner

Hannah R. Eisner ARDC No. 6192101
McLean County State's Attorney's Office
115 E. Washington Street, Room 401
Bloomington, IL 61701
Ph. (309) 888 5110
Fax (309) 888 5111

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.

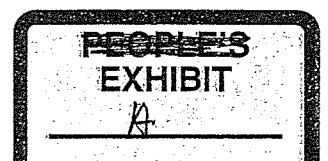
Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

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.

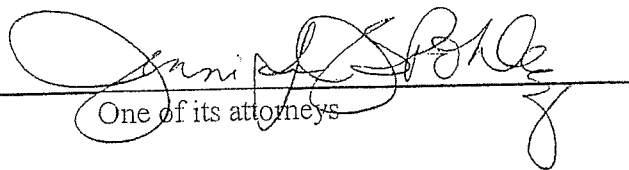
Dated: June 19, 2012

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: _____

A handwritten signature in black ink, appearing to read "Jennifer B. [unclear]", is written over a horizontal line. Below the line, the text "One of its attorneys" is printed.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

AMERICAN DISPOSAL SERVICES OF)
ILLINOIS)
Petitioner)
VS)
COUNTY BOARD OF MCLEAN COUNTY,)
ILLINOIS, HENSON DISPOSAL, INC., and)
TKNTK, LLC,)
Respondents)

No. PCB 11-60

MCLEAN COUNTY'S OBJECTIONS TO PETITIONER'S INTERROGATORIES

Respondent, McLean County, by and through counsel, Hannah Eisner, makes the following objections to the Interrogatories propounded on it by Petitioner, a copy of which are attached hereto as **Exhibit A** and incorporated herein by reference.

1. Respondent objects to Interrogatories 5, 6, 7, 8, 9, 10, 11 and 12 because they seek information outside of the record of the proceedings before the County Board. Petitioner has very limited rights to discovery. Section 40.1(b) of the Environmental Protection Act, 415 ILCS 5/40.1(b), provides that any hearing on a petition to review the granting of siting approval shall be based exclusively on the record before the county board. *Peoria Disposal Company v Illinois Pollution Control Board* 385 Ill. App. 3d 781,800, 896 N.E. 2d 460, 477 (3d. Dist. 2008). However, courts have allowed the consideration of evidence outside of the record for the limited purpose of considering the fundamental fairness of the proceedings, where such evidence lies outside the record. *E & E Hauling, Inc. v Pollution Control Board* 116 Ill. App. 3d 586, 593 451

N.E.2d 555,561 (2d. Dist. 1983), *Land and Lakes Company v Pollution Control Board* 319 Ill. App. 3d 41, 48, 743 N.E. 2d 188, 194 (3d Dist. 2000) and *Fox Moraine, LLC. v United City of Yorkville* 2011 IL App (2d) 100017, ¶ 58, 969 N.E. 3d 1144, 1163 (2d Dist. 2011).

Discovery is limited to only that information necessary for and relevant to a consideration of the fundamental fairness of the proceedings. Petitioner has alleged in paragraph 12 of the Petition for Review that the local siting review procedures, hearings, decision and process, individually and collectively, were fundamentally unfair, but makes only one specific claim, the unavailability of the public record. Respondent maintains that the only discovery available to Petitioner, given the pleadings, should be as to unavailability of the public record and that discovery as to any other issue, particularly matters that go to the merits of the approval, should not be allowed.

2. Respondent objects to Interrogatory 3 for the following reasons:

The interrogatory asks Respondent to describe the basis of its defense to the claim that jurisdiction for the Henson Disposal, Inc. pollution control facility siting did not vest with the McLean County Board. This calls for Respondent to disclose the theories, mental impressions or litigation plans of its attorney and as such is not subject to discovery pursuant to S. Ct. Rule 201(b)(2). The same is true of subpart (c) and (d) of Interrogatory 3 and Respondent objects to those subparts of Interrogatory 3 for the same reason.

Respondent objects to subparts (d), (e) and (f) of Interrogatory 3 as irrelevant and going beyond the limited scope of discovery. All information related to the notices given by Henson pursuant to Section 39. 2 are contained within the record. The Pollution Control Board took notice of the copies of certified mail receipts for notice to property owners within 250 feet of the

proposed pollution control facility and members of the General Assembly contained in the county record in its order of June 2, 2010. PBC Order dated June 2, 2010 pp. 3-6. The Board found it did not have an adequate record to determine if notice was proper and directed Henson to submit a filing addressing the adequacy of those notices under Section 39.2. Henson's response, filed on June 15, 2011, indicated that it did not have additional information to add to the record. Henson Disposal, Inc. Response to Illinois Pollution Control Board June 2, 2011 Order p. 4 and PBC Order dated February 16, 2011, p.36. The Pollution Control Board noted that the contents and substance of the record has not changed and reserved ruling on the matter. PBC Order dated February 16, 2011, p. 36. Petitioner has not raised the issue of whether notice was attempted on the correct individuals. Petitioner alleges that, even if these were the correct people, notice was not perfected within the statutory time frame. Petitioner's Response to the Board's June 2, 2011 Order p. 4. The question of who should have received notice is not relevant to this inquiry and all of the information with respect to the service that was made is contained within the record.

3. Respondent objects to Interrogatory 4 for the reasons that it is vague. Reference is made to the "public record" and the "record" but does not describe the documents that constitute the "public record" or "record". Without waiving this objection, Respondent has answered the interrogatory with respect to the siting application and materials filed in connection with the application.

4. Respondent objects to Interrogatory 6 for the reason that it is not relevant and it is overly broad. This objection is made in addition to the objection made in paragraph 1. The dates and nature of communications between Henson Disposal, Inc. and McLean County (including, but not limited to any employee, attorney, Board member or other appointed or elected officials)

are not relevant to the issues Petitioner has raised in its appeal, namely, defects in pre-filing notice, decision to approve siting not supported by the record and procedures, hearings, decision and process fundamentally unfair, due to at minimum, the unavailability of the public record. This interrogatory is overly broad because it asks for each and every communication, regardless of the content, and for communications with individuals who would not necessarily have any involvement with the siting application.

5. Respondent objects to Interrogatory 7 for the reason that it is not relevant. This objection is made in addition to the objection made in paragraph 1. The dates and nature of communications between Henson Disposal, Inc. and McLean County (including, but not limited to any employee, attorney, Board member or other appointed or elected officials) concerning the host agreement are not relevant to the issues Petitioner has raised in its appeal, namely, defects in pre-filing notice, decision to approve siting not supported by the record and procedures, hearings, decision and process fundamentally unfair, due to at minimum, the unavailability of the public record.

6. Respondent objects to Interrogatory 8 for the reasons that it is not relevant. This objection is made in addition to the objection made in paragraph 1. The dates and nature of communications between Henson Disposal, Inc. and McLean County (including, but not limited to any employee, attorney, Board member or other appointed or elected officials) concerning the performance agreement are not relevant to the issues Petitioner has raised in its appeal, namely, defects in pre-filing notice, decision to approve siting not supported by the record and procedures, hearings, decision and process fundamentally unfair, due to at minimum, the unavailability of the public record.

7. Respondent objects to Interrogatory 9 for the reasons that it is not relevant. This objection is made in addition to the objection made in paragraph 1. The dates and nature of communications between Henson Disposal, Inc. and McLean County Board concerning the siting agreement, performance agreement, and host agreement are not relevant to the issues Petitioner has raised in its appeal, namely, defects in pre-filing notice, decision to approve siting not supported by the record and procedures, hearings, decision and process fundamentally unfair, due to at minimum, the unavailability of the public record.

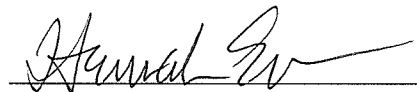
8. Respondent objects to Interrogatory 10 for the reasons that it is not relevant and overly broad. This objection is made in addition to the objection made in paragraph 1. The dates and nature of communications between Henson Disposal, Inc. and any attorney representing the McLean County Board and members of the McLean County Board are not relevant to the issues Petitioner has raised in its appeal, namely, defects in pre-filing notice, decision to approve siting not supported by the record and procedures, hearings, decision and process fundamentally unfair, due to at minimum, the unavailability of the public record. This interrogatory is overly broad because it asks for communications during a certain time period without describing the content of those communications.

9. Respondent objects to Interrogatory 11 for the reasons that it is not relevant. This objection is made in addition to the objection made in paragraph 1. Actions taken by a McLean County staff member with respect to the certification of siting approval after the McLean County Board approved the siting application are not subject to review in these proceedings and are not relevant to the issues Petitioner has raised in its appeal, namely, defects in pre-filing notice, decision to approve siting not supported by the record and procedures, hearings, decision and

process fundamentally unfair, due to at minimum, the unavailability of the public record and are not subject to review.

10. Respondent objects to Interrogatory 12 for the reasons that it is not relevant. This objection is made in addition to the objection made in paragraph 1. Actions taken by a McLean County staff member with respect to the certification of siting approval after the McLean County Board approved the siting application are not subject to review in these proceedings and are not relevant to the issues Petitioner has raised in its appeal, namely, defects in pre-filing notice, decision to approve siting not supported by the record and procedures, hearings, decision and process fundamentally unfair, due to at minimum, the unavailability of the public record and are not subject to review.

Respectfully submitted,


Hannah Eisner

Hannah R. Eisner ARDC No. 6192101
McLean County State's Attorney's Office
115 E. Washington Street, Room 401
Bloomington, IL 61701
Ph. (309) 888 5110
Fax (309) 888 5111

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.

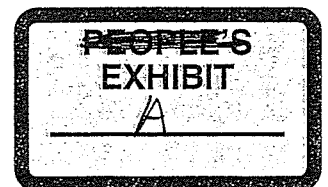
3. Identify and describe each and every basis for the defense, if any, of the Respondent answering this Interrogatory, to the assertion: jurisdiction for the Henson Disposal, Inc. pollution control facility siting did not vest with the McLean County Board as pre-filing notice pursuant to Section 39.2(b)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

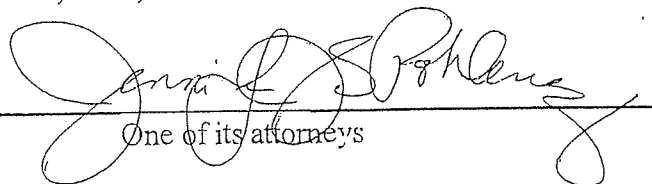
Dated: May 8, 2012

Respectfully submitted,

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

PETITIONER AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC.,

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.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN DISPOSAL SERVICES OF)
 ILLINOIS)
)
) Petitioner)
)
 VS)
)
) COUNTY BOARD OF MCLEAN COUNTY,)
)
) ILLINOIS, HENSON DISPOSAL, INC., and)
)
) TKNTK, LLC,)
)
) Respondents)

RECEIVED
 CLERK'S OFFICE
 JUL 27 2012
 STATE OF ILLINOIS
 PCB Pollution Control Board

CERTIFICATE OF SERVICE

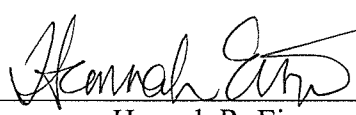
The undersigned certifies that she served the foregoing McLean County's Objections to Petitioner's Interrogatories and McLean County's Objections to Petitioner's Request for Production of Documents on the following named individuals by placing same in an envelope to the address indicated and depositing said envelope in the United States Mail, first class postage fully prepaid, at or about the hour of 5:00 p.m., this 19th day of July, 2012:

Carol Webb
 Hearing Officer
 Illinois Pollution Control Board
 1021 North Grand Avenue East
 P.O. Box 19274
 Springfield, IL 62794-9274

Jennifer J. Sackett Pohlenz
 Clark Hill PLC
 150 N. Michigan Ave. Suite 2700
 Chicago, IL 60601

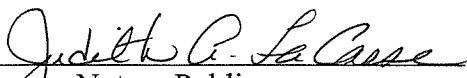
Amy L. Jackson
 Rammelkamp Bradney, P.C.
 232 West State Street
 Jacksonville, IL 62650

Richard T. Marvel
 Attorney at Law
 202 N. Center Street, Ste. 2
 Bloomington, IL 61701

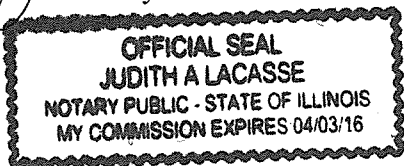


 Hannah R. Eisner

Subscribed and sworn to before me
 this 23rd day of July 2012.



 Notary Public



RON DOZIER

McLean County State's Attorney

Hannah R. Eisner
Assistant State's Attorney

Government Center
115 E. Washington St., Room 401
P.O. Box 2400
Bloomington, Illinois 61702-2400
(309) 888-5110
email: hannah.eisner@mcleancountyil.gov

July 24, 2012

John T. Therriault, Assistant Clerk
Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218

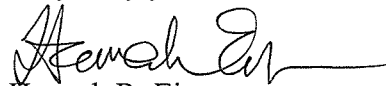
RECEIVED
CLERK'S OFFICE
JUL 27 2012
STATE OF ILLINOIS
Pollution Control Board

Re: PCB 11-60 – Third Party Pollution Control Facility Siting Appeal

Dear Mr. Therriault,

Enclosed please find one original and ten copies of McLean County's Objections to Petitioner's Document Production Request and McLean County's Objections to Petitioner's Interrogatories and Certificate of Service on the parties to be filed in the above referenced matter. I would appreciate it if you would file stamp and return one of the copies to me in the enclosed, self addressed stamped envelope.

Very truly yours,



Hannah R. Eisner
Assistant State's Attorney