BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

LANDFILL 33, LTD., Petitioner, v. EFFINGHAM COUNTY BOARD and SUTTER SANITATION SERVICES, Respondents.	)	PCB 03-43 (Third-Party Pollution Control Facility Siting Appeal)
STOCK & CO., Petitioner, v. EFFINGHAM COUNTY BOARD and SUTTER SANITATION SERVICES, Respondents.	)	PCB 03-52 (Third-Party Pollution Control Facility Siting Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

To:

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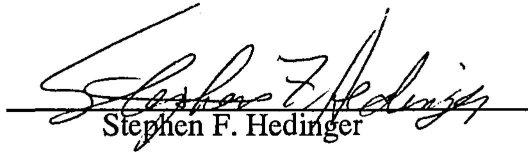
PLEASE TAKE NOTICE that on the 16th day of January, 2003, we sent via Federal Express to the Clerk of the Pollution Control Board the original and nine copies of the RESPONSE BRIEF OF PETITIONER LANDFILL 33, LTD. for filing in the above entitled cause.

The undersigned certifies that a true and correct copy of the RESPONSE BRIEF OF PETITIONER LANDFILL 33, LTD. was served upon each of the above-identified individuals via hand delivery (or, as to Edward C. Deters, via Federal Express, by enclosing the same in envelopes properly addressed, with postage fully prepaid, and by depositing said envelopes before 5:30 p.m.

in a FedEx drop box, on the 16th day of January, 2003, for delivery) on the 17th day of January, 2003.



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THIS FILING IS SUBMITTED ON RECYCLED PAPER.

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RESPONSE BRIEF OF PETITIONER LANDFILL 33, LTD.

NOW COMES Petitioner, LANDFILL 33, LTD. (hereinafter "Landfill 33"), through its undersigned attorney, and for its response brief in this landfill siting review case, states as follows:

Response to Motions to Strike

In their closing briefs filed with this Board, both Sutter Sanitation Services (hereinafter "Sutter Sanitation") and the Effingham County Board (hereinafter "County Board") asked that this Board strike from Landfill 33's closing brief any discussion of failure of the County Board to provide fundamentally fair proceedings. According to Sutter Sanitation and the County Board, justification for this harsh penalty was that Landfill 33 had not pled with detail all of the facts and circumstances supporting the fundamental fairness challenge in Landfill 33's petition for review filed with this Board.

The motions to strike of Sutter Sanitation and the County Board are themselves untimely, and improper, and should be stricken.

Pursuant to Section 101.506 of this Board's procedural rules, 35 Ill. Adm. Code 101.506, any motion attacking the sufficiency of a pleading filed with this Board must be filed within 30 days of service of the pleading. Obviously the purpose of this rule is to provide both the opportunity to closely consider the basis for a motion attacking the sufficiency of the pleading, and to allow ample time to replead, in the interests of justice, if the challenge is one that can be cured through a new pleading.

Landfill 33 filed its petition before this Board on October 8, 2002. This Board reviewed that initial petition, and ordered Landfill 33 to file an amended petition, setting forth additional facts to establish that Landfill 33 is a proper petitioner in this proceeding.

Landfill 33 filed its amended petition on October 17, 2002. Thereafter, at least two telephonic status conference calls were conducted by the hearing officer, and a hearing was held by this Board on December 19, 2002. At no time during any of those conference calls or during the hearing did either Sutter Sanitation or the County Board raise any objection or complaint about the sufficiency of Landfill 33's amended petition. Similarly, neither Sutter Sanitation nor the County Board has ever filed any written pleading with this Board or the hearing officer challenging or objecting in any way to the sufficiency of Landfill 33's amended petition, until their closing argument, filed after the hearing and at the 11th hour, on January 9, 2003.

Clearly the motions directed to Landfill 33's complaint were timed so as to prejudice Landfill 33, and to deprive this Board of the opportunity to consider the positions of the parties with respect to the motions. The motions were made some 75 days after the amended petition was filed, and neither Sutter Sanitation nor the County Board have tendered any explanation for the delay.

Moreover, Sutter Sanitation and the County Board are wrong in their interpretation of this Board's procedural rules. Section 107.208 of this Board's procedural rules, 35 Ill. Adm. Code 107.208, sets forth the petition content requirements for landfill siting review cases such as this. That section, in pertinent part, requires "specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence."

Landfill 33 followed precisely the requirements of Section 107.208, and provided, in its petition, the specification that both fundamental fairness and manifest weight of the evidence issues were being raised. Moreover, as required by Section 107.208, Landfill 33 provided identification of the particular criteria which it claimed were decided by the County Board against the manifest weight of the evidence. To any extent Section 107.208 can be interpreted as requiring more, that interpretation had not previously been made. Sutter Sanitation and the County Board waited until there was insufficient time to either meaningfully debate the meaning of Section 107.208, or to allow Landfill 33 the opportunity to replead following that debate, if necessary.

Sutter Sanitation also claims that the fundamental fairness issues should be stricken for failure of Landfill 33 to have supplied Sutter Sanitation with all theories of fundamental unfairness in response to a discovery request.

Sutter Sanitation did not include a copy of its discovery requests, or of Landfill 33's response, with its answer. Hence, even if this were a legitimate issue, Sutter Sanitation has waived it.

In addition, the discovery request relied upon by Sutter Sanitation did not obligate Landfill 33 to set forth its theories of fundamental unfairness. To the contrary, the discovery request merely asked for identification of the facts relating to fundamental unfairness claims, and Landfill 33 truthfully and accurately stated that all such facts known to it were included in the record. Indeed, to any extent Sutter Sanitation sought, through its discovery, any information beyond facts known to Landfill 33 relevant to issues pertaining to the siting appeal, clearly such discovery requests were improper and beyond the scope of proper discovery, and Landfill 33 objected to the requests to that extent.

Moreover, again the timing of Sutter Sanitation's motion is improper and supports the striking of its motion. Pursuant to this Board's procedural rule section 101.616, "[a]ll discovery disputes will be handled by the assigned hearing officer." 35 Ill. Adm. Code Section 101.616. Despite that rule, Sutter Sanitation waited until after the hearing, until it filed its closing brief, to

raise its purported discovery dispute. This is an improper attempt to circumvent this Board's procedural rules.

Further, if Sutter Sanitation had been sincere in its desire for the information, and sincere in claiming the right to that information, it should have sought hearing officer review prior to the hearing, rather than waiting until the 11th hour, at which time it could surprise Landfill 33 with its motion. No pre-hearing discovery motions were filed, and neither did Sutter Sanitation raise any objection during status conference calls or the hearing.

Sutter Sanitation's motion also fails to acknowledge that Landfill 33's answer to the discovery request was made subject to Landfill 33's objection to that discovery request; Sutter Sanitation has never sought the hearing officer's review of that objection, and so has waived it at this time.

Finally, even if there were any legitimacy to Sutter Sanitation's argument, the proper remedy is not to strike the allegations of the complaint. Pursuant to this Board's rule 101.616(f), 35 Ill. Adm. Code 101.616(f), sanctions for such matters are only available in the event of a failure to comply with "any order regarding discovery." Because Sutter Sanitation never raised these issues previously with the Board or the hearing officer, no order has been entered with which Landfill 33 is not in compliance. Sanctions are therefore unavailable.

And, even if sanctions were somehow available, this Board's Rule 101.800, 35 Ill. Adm. Code Section 101.800, establishes a sliding scale, and the "death penalty" sanction of the striking of pleadings is considered not to be the first choice of appropriate sanctions, but rather is a last choice. Again, an appropriate sanction would be to order that the discovery request be responded to, but Sutter Sanitation's timing has precluded that as a possibility. It is Sutter Sanitation, not Landfill 33, which should bear the consequences of that.

Fundamental Unfairness

Unavailable Transcript

In its opening brief, Stock and Co. (PCB 03-52) complained that it had sought the transcript of proceedings from the County Board, but that transcript was never made available by the County Board until long after the time came to file an appeal, let alone prior to the close of the public comment period. Obviously it would impossible to "prove the negative" and identify every other citizen who was prejudiced by the mysteriously missing transcript, but public comments filed with this Board identify at least three other people who complain of the situation (Bridie Knierim (P.C. #1), Raleigh A. Wharton (P.C. #3), and Susan K. Stock (P.C. #7)). The missing transcript would appear to be a facial violation of the County Board's procedural obligations, and as such warrant this Board's reversal on that basis alone.

In responding to the issue, Sutter Sanitation belligerently claimed that the prejudice of the missing transcript somehow was Stock's own fault (and no doubt the fault of the other citizens who sought the transcript). Curiously absent from Sutter Sanitation's analysis, though, was any explanation as to why it, rather than the County, served as the caretaker for that transcript, apparently throughout the entirety of the public comment period, and even after that. Sutter Sanitation's initial brief before this Board admits that the Effingham County Clerk told Stock "that Effingham County did not have a copy of the transcript, but that he should contact Sutter's attorneys (PCB tr. 52). However, at no time did Petitioner Stock make such a request (PCB tr. 52)." (Sutter Sanitation brief, at 7). What in the world was Sutter Sanitation doing with the official transcript, at a time when the record was supposed to be available for public viewing, and in fact wasn't even complete yet? This is no less fundamentally improper than would be, say, this Board allowing a Petitioner to safeguard the record during the pendancy of a proceeding, or a circuit clerk doing the same thing with trial exhibits before the close of a case.

That Sutter Sanitation would be made the County Board's delegate custodian of the official County record is outrageous, and a clear violation of the requirements that siting proceedings be fundamentally fair. A clean remand for new proceedings is required to rectify this situation.

Recycling

The minutes of the County Board's September 16, 2002 meeting, at which the County Board discussed and voted upon Sutter Sanitation's siting proposal, reveal that at least one County Board member, C. Voelker, expressly voted in favor of Sutter Sanitation's proposal because Sutter Sanitation claimed it would also operate a recycling center, but not without the transfer station. (C.432). Somehow, curiously, Sutter Sanitation attempts to turn this record evidence in its own favor, with the claim that this evidence reveals that the County Board had no pre-existing bias in favor of Sutter Sanitation's proposal.

Sutter Sanitation has completely missed the point. The prejudice to Landfill 33 came not so much because the County Board was biased in favor of Sutter Sanitation (in fact, one could say Sutter Sanitation forced its facility on the County Board through its intimidating threats), but rather because Landfill 33 was not given the same and equal opportunity as others (including, of course, Sutter Sanitation itself, as well as one or more commenters) to address the recycling issue. Landfill 33 was specifically told by the County Board Chairman not to worry, because the County Board would not consider the recycling issue in deciding the merits of Sutter Sanitation's application, and rather than argue the point, Landfill 33 was pleased that the County Board would take that position. Sutter Sanitation claims that this constitutes "waiver" of the recycling issue, and perhaps that would be so, except for the fact, conveniently overlooked by Sutter Sanitation, that the County Board did consider the recycling issue in reaching its decision on Sutter Sanitation's application!

Finally, Sutter Sanitation attempts to portray the County Board's decision as constituting a lone county board member concerning himself with recycling issues, while the others went a different way. Of course, Nancy Deters, the most vocal proponent of Sutter Sanitation's proposal, felt that the issue was recycling, both for herself, for the County Board, and for everyone else (except, of course, Landfill 33) present at the hearing! Moreover, the County Board did not include

a transcription of the September 16 meeting with the official record it has filed in this case, and so it cannot be said, one way or another, as to whether only one, or more than one, of the County Board members might have commented on the recycling issue. The fact that the majority voted for this facility on all criteria (and particularly the "need" criterion) is stark evidence that the County Board was swayed by the one-sided recycling evidence.

The matter must be remanded to allow Landfill 33 to place of record the recycling considerations it wished to raise during the hearing.[1]

Visits by the County Board

At the hearing before this Board, it came out that the County Board had made one trip to Sutter Sanitation's proposed facility in July, 2002, without providing notice to any interested citizens who may have desired to accompany them. Moreover, Sutter Sanitation has also admitted that just prior to filing the application, several County Board members came and visited the "recycling center," at which the transfer station is supposed to also operate, and got a red carpet tour. Curiously, though, Sutter Sanitation had nothing to say about these ex parte visits in its closing brief. Hence, there is little to respond to in this response. However, Landfill 33 will point out that, having had opportunity to address the issue but not taking it, Sutter Sanitation should be considered to have waived any argument respecting this issue, and to have conceded the impropriety of the site visits by the County Board.

Challenged Criteria

The very first sentence of the "Criteria 1" discussion of Sutter Sanitation's application for siting approval says: "The service area for the proposed transfer station is expected to include an approximate 30 to 50 mile radius from the transfer station." (C.14). Although the application fails to identify anticipated waste generation within that "service area," Sutter Sanitation did identify eight separate landfills, with disposal capacities ranging from 59,000 gate cubic yards to over 30

[1] To any extent Sutter Sanitation may claim public comment accomplished Landfill 33's purpose, that comment was submitted not under oath, and this Board itself has noted that such materials are given far less weight than record, sworn evidence. This "second class citizen" approach to Landfill 33's evidence in no way sufficed to rectify the fundamental unfairness of having precluded Landfill 33 from making its case.

million gate cubic yards within or in close proximity to the "service area." (C.14; see also C.17). Based upon this information, Sutter Sanitation opined that "the regional waste disposal capacity appears to be adequate to accommodate refuse capacities generated in Effingham county and the surrounding area in the near future," (C.15); however, Sutter Sanitation stated that the "need" for the facility hinged upon something else: "the current dilemma exists in maintaining a viable out of county waste disposal source and a method to transfer county generated waste to one or more of these facilities." (C.15).

As Landfill 33 noted, in both its presentation before the County Board and its opening brief before this Board, Sutter Sanitation's approach does not constitute a typical or traditional "needs" analysis. (C.206). Although in its closing brief Sutter Sanitation disagreed (Sutter brief, at 18-19), Sutter Sanitation never explains what about its analysis is typical or even appropriate. In fact, Sutter Sanitation appears now to have abandoned the "needs" analysis it made in its application, and instead is attempting to modify its service area from that identified at C.14 of the record, to one that is exclusive to Effingham County. The argument in its brief, in fact, virtually ignores all but one of the landfills located so as to provide capacity for this intended service area, and focuses solely upon Landfill 33, and an asserted (and manufactured) ambiguity in the capacity of that landfill. In doing so, Sutter Sanitation confuses the burden of proof before the County Board, by suggesting that somehow Landfill 33 was remiss in not presenting its own full "needs" analysis, or providing specific volumetric calculations of its available airspace as of the night of the public hearing. (See Sutter brief, at 18-19: "of course, Mr. Sheffer [Landfill 33's witness] failed to offer any [traditional needs] analysis either," and "Mr. Sheffer even admitted that he had no evidence in the record to support that Landfill 33 has twenty-nine years worth of capacity left (C.227)").

Landfill 33, though, had no burden of proof before the County Board; instead, the burden was solely upon Sutter Sanitation, and if, as Sutter Sanitation claims, the existence of its proposed facility hinged upon the specific, current capacity of Landfill 33, then it was incumbent upon Sutter Sanitation, and not Landfill 33, to offer that proof. And in fact, the unrebutted evidence supplied by Landfill 33's engineer, who was responsible for siting and permitting the Landfill 33 expansion,

was that there is twenty-nine years' capacity at the facility in its current permitted situation. (C.234-C.235). (In contrast, Mr. Sheffer unambiguously informed Sutter Sanitation's lawyer that he had no responsibility for the expansion or permitting of the expansion of Landfill 33, but that he had relied upon information provided to him by Mr. Johnsrud).

Sutter Sanitation's attempt to prove its "needs" analysis through reference to Effingham County's Solid Waste Management Plan and Landfill 33's capacity was misplaced. Again, doing so modifies the service area from that disclosed and discussed by the application ("an approximate 30 to 50 mile radius from the transfer station") to one inclusive only of Effingham County, which at the very least constitutes an amendment of Sutter Sanitation's siting application. To be sure, it is the siting applicant, and no one else, who determines the proposed facility's intended service area, but it is equally clear that, once having identified a service area, that is the service area the applicant is stuck with.

Hence, although Sutter Sanitation could have limited its proposed service area to Effingham County alone, it did not do so in its application, and its amendment, made at the last day of public comments following the hearing, came too late. And while it is true that manifestly it is absurd to place a transfer station out in the middle of nowhere, except close to one of the region's larger waste facilities, Sutter Sanitation's contention that this was the only point raised by Landfill 33 is untrue. Apparently Sutter Sanitation was not paying attention during Mr. Sheffer's testimony, when he utilized Sutter Sanitation's own methodology to show that, even without the transfer station, the eight facilities identified by Sutter Sanitation as available for the disposal capacity for the service area are all easily within the range identified by Sutter Sanitation as a reasonable hauling distance (30 to 50 miles). (See Landfill 33's opening brief, at 10-11). Moreover, for good measure, Mr. Sheffer did exactly what Sutter Sanitation is now suggesting as necessary for its "needs" case, and he hypothesized the non-existence of Landfill 33--even then, Sutter Sanitation's service area is well-served by the other facilities identified by Sutter Sanitation as having available disposal capacity for the service area, with the entire service area located within 50 miles of one or more landfills. That Sutter Sanitation would claim that the "only argument offered at the hearing in

opposition to the demonstrated need by Sutter" concerned the life expectancy of Landfill 33 is completely baseless, and sheer fantasy.

The long and the short of it is that Sutter Sanitation admitted no "need" exists for this transfer station, but that it might be convenient for Sutter Sanitation's own business purposes. As expressed in Landfill 33's opening brief, though, convenience to the operator is not the standard by which the first criterion is measured, but rather the criterion is only satisfied if the facility is "necessary to accommodate the waste needs of the area it is intended to serve." The circular service area identified by Sutter Sanitation has many options available to it to fulfill its waste disposal needs, and even if, for some reason, Landfill 33 were not considered to be a part of that (although clearly the evidence would not support any such hypothesis), Sutter Sanitation's transfer station is unnecessary. (It is notable, in fact, that although we know Sutter Sanitation intends to run six to eights trucks a day through this transfer station facility, never does it identify the size of those loads, or what impact those loads might have on the waste within the service area needing disposal).

As it did in its application, Sutter Sanitation lumps its consideration of the County's Solid Waste Management Plan with its discussion of the "need" criterion. Of course, this is improper since the service area extends far beyond the boundaries of Effingham County. Moreover, Sutter Sanitation must also meet the eighth siting criteria (establishing this facility as consistent with Effingham County's Solid Waste Management Plan), and its novel approach to the issue fails to accomplish that. Again, "need" is different than solid waste management plan consistency, and even if through some stretch Sutter Sanitation were to have shown a "need" for its facility, that does not, in and of itself, prove that the facility is consistent with Effingham County's Solid Waste Management Plan. And yet, that is the very justification given by Sutter Sanitation. The discussion of this issue in its initial brief again focuses upon the asserted imminent closure of Landfill 33 (as though 29 years' capacity isn't enough) as a basis for Sutter Sanitation's proposed transfer station. The County Solid Waste Management Plan, though, makes no such leap.

Sutter Sanitation's plan consistency argument focuses upon a table in chapter 4 of the Effingham County's Planning document, which provided several alternatives to address solid waste

management. One of those included as a possible waste management strategy was the siting of a waste transfer station to export county waste to out-of-county landfills. (Page 4-8; see Sutter brief, at 19). Unfortunately, though, chapter 4 of the Planning document is, by its own terms, a preliminary step of the planning process, in which alternatives are set forth: "After the list of potential waste management components for each county had been compiled and evaluated by the respective county-level solid waste advisory committee, the next step in the planning process involved assembling such components into 'alternative waste management systems'." (Planning document, at 4-1). After that step, chapter 5 provided for the evaluation of those alternatives: "After the various program and facility options were assembled into three alternative waste management systems, the next logical step in the planning process focused upon 'an evaluation' of the relative benefits and limitations of each of the three alternative systems." (Planning document, at 5-1). Finally, chapter 6 contains the "Recommended Waste Management Plan," following the previous steps of the process: "Following the development and evaluation of individual program and facility options and the further evaluation of these options after assembly into alternative waste management systems, the final step in the selection process was to choose the program and facility options that would be included in the recommended waste management plan (Plan)." (Plan, at 6-1). The recommended waste management plan for Effingham County supported continued disposal of Effingham County waste at in-county and out-of-county landfills, as discussed in the "Components" section of the planning document (see page 3-25). In short, Sutter Sanitation is focusing upon components of the plan that were proposed but not adopted for Effingham County, which instead adopted the proposals set forth at pages 6-41 to 6-42 of the Plan, and which specifically chose to retain as the waste disposal method direct haul to Landfill 33 and other nearby landfills. (6-41). "The basic recommendation for landfill disposal of Effingham County waste over the 20 year planning period is to continue to use the two landfills discussed above [i.e., Landfill 33 and E.R.C. Landfill in Coles County]." (6-41). Indeed, the Effingham County specific Plan called for the development of no new programs or facilities, and the plan update did not change that; Sutter Sanitation's new transfer station is therefore inconsistent.

There is no need for this facility, and neither is it consistent with Effingham County's Solid Waste Management Plan.

Criteria 2, 5 and 6

The only issue discussed by Sutter Sanitation in its initial brief with respect to criteria 2,5 or 6 was the fact that, until it filed its public comment with the County Board, it had no idea how thick the floor of the proposed facility was, or whether the floor would handle the weight of the packer trucks or semi trailers that would utilize the facility. Astounding as it is that Sutter Sanitation did not know this basic fact, Sutter Sanitation's public comment did provide information which, if true, might establish that the floors are sufficient. Of course, that public comment was not under oath, and could be misrepresentative of the entire floor. Still, it does provide a scintilla of evidence to support the County Board's decision with respect to that particular issue.

However, Sutter Sanitation's initial brief was virtually silent as to a string of other issues raised during the hearing which reveal serious, and unaddressed, design flaws for this facility. First, Sutter Sanitation knows that there is a dwelling on its property, and it knows that another dwelling is located across the street, and yet Sutter Sanitation failed to address the basic location standard set forth in Section 22.14 of the Illinois Environmental Protection Act, 415 ILCS 5/22.14, which prohibits the establishment of this transfer station facility within 1,000 feet of such dwellings. Sutter Sanitation's silence should be interpreted as acquiescence and agreement that this is a fatal flaw.

Similarly, Sutter Sanitation is silent about the danger of the wood framing on the interior of this grain storage facility that Sutter Sanitation wants to transform into a transfer station. Rot, decay, vectors, and fire hazards all await this proposal, should it ever be brought to life, and Sutter Sanitation presented virtually no evidence that the wood framing is safe or proper for this type of use, even in the fact of testimony that it is <u>not</u> appropriate. The same is true about Sutter Sanitation's failure to address the lack of push walls..

Sutter Sanitation was also revealingly silent about the fact that it had admitted, through Tracy Sutter's own testimony, that its ceiling heights were so low that common roll-offs would bang into, catch upon, crash into, and otherwise come into forceful contact with the rafters, ceiling beams, or doorways. Although Mr. Sutter's small packer trucks will apparently not crash into the ceilings or doorways, the unrebutted evidence shows that other commonly used packer trucks will, and nothing in Sutter Sanitation's application would limit use of the facility to Sutter Sanitation alone, nor explain how the facility will be made safe for the public utilizing it.

Landfill 33's opening brief also pointed out numerous other deficiencies with Sutter Sanitation's application, including lack of information concerning facility staffing, the amount or what will be done with leachate generated at the facility, and the specific traffic routes that will be utilized to prevent accidents or injuries. Sutter Sanitation said nothing about these issues in its initial brief filed with this Board.

Just one week ago this Board decided County of Kankakee v. City of Kankakee, PCB 03-31, 03-33 and 03-35 (consolidated) (January 9, 2003), reversing the decision of the local siting authority on its criterion 2 decision, because the siting applicant had inaccurately characterized the geology underlying the proposed landfill as an aquitard rather than an aquifer. Although the city had addressed the issue by including a condition requiring protection of aquifers from contamination through the permitting process, this Board held such a condition to be insufficient, because it is the siting authority which must determine whether the second siting criterion--is the facility so located, designed and proposed to be operated so as to protect the public health, safety and welfare--has been met; the siting authority "cannot simply defer to the Agency when there is insufficient evidence to support an applicant's siting request." (Slip op. at 28).

Here that precise situation exists. Rather than present evidence on the multitude of design features one would expect in a transfer station, such as floor thickness, leachate control, ceiling heights, compliance with location standards, interior framing and other fire dangers, push walls, floor slopes and gutters, facility staffing, and traffic control details, Sutter Sanitation took the approach that the County Board need not be bothered with these details. Mr. Deters, Effingham

County's State's Attorney, asked Sutter Sanitation's engineer, with respect to the unknown thickness of the facility's floors, whether that is "an issue that the IEPA would follow up on to make sure that you're in some sort of a compliance, or is--or is that not something that they would do?" Mr. Kimmel responded, "Yes. The reality is that a majority of the items that Mr. Johnsrud has presented are items--technical items that the agency reviews as part of the application process and generally are not considered when considering the nine criteria that the board is utilizing to evaluate the facility. Again, all of those issues will have to be addressed with the agency during the permit application process." (C.269). Sutter Sanitation's attorney attempted to get Landfill 33's engineer, Bryan Johnsrud, to admit the same thing, but Mr. Johnsrud refused to go down that path: "Q: You agree that the IEPA--and I think you already said this, but I want to make sure--looks at some of these technical requirements. You're--yes or no? They do, right?" Mr. Johnsrud responded: "Yeah, IEPA would look at it in a more technical nature than--they're expected to do that as part of their responsibility more than--than that's given to the State or the County Board. However--and my experience has been that they do not always have the time or the qualifications to really answer those questions or to--or to ask the right questions without preventing problems. You know, I mean, that...probably 60 percent of my business is trying to fix problems that somebody else created, rather than building something new and building it right the first time." (C.286-C.287).

Sutter Sanitation attempted to retrofit an old abandoned grain storage facility into a modern pollution control facility, a transfer station, and Landfill 33 pointed out numerous design defects that rendered the facility incapable of protecting the public health, safety and welfare, or of implementing safe traffic patterns or operating plans. Sutter Sanitation never provided missing information or other evidence to support its bare claim that this facility meets the statutory siting criteria, but instead convinced the County Board not to worry about performing its statutory duties, because it could rely upon (it could defer to) the Illinois Environmental Protection Agency to do the job for it. As this Board stated only a week ago, that is improper. This siting approval should be reversed outright.

WHEREFORE, Petitioner LANDFILL 33, LTD., requests that this Board find that the Effingham County Board's decision granting local siting approval to the proposed transfer station of Sutter Sanitation Services is against the manifest weight of the evidence, and therefore reverse that approval. Alternatively, Landfill 33, Ltd. asks that this Board dismiss this proceeding as a consequence of the failure of Sutter Sanitation Service to establish jurisdiction over this proceeding. Finally, alternatively, Landfill 33, Ltd. requests that this Board reverse these proceedings and dismiss, for failure to provide fundamentally fair proceedings, or in the alternative reverse and remand to the Effingham County Board for further proceedings calculated to eliminate the fundamentally unfair circumstances.

Respectfully submitted,

LANDFILL 33, LTD.,
Petitioner,

By its attorney,

HEDINGER LAW OFFICE

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