

ILLINOIS POLLUTION CONTROL BOARD

April 17, 1997

RESIDENTS AGAINST A POLLUTED)	
ENVIRONMENT AND)	
THE EDMUND B. THORNTON)	
FOUNDATION,)	
)	PCB 97-139
Petitioners,)	(Pollution Control Facility Siting
)	Appeal-Landfill)
v.)	
)	
COUNTY OF LASALLE AND)	
LANDCOMP CORPORATION,)	
)	
Respondents.)	

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a motion to clarify filed by Residents Against A Polluted Environment and The Edmund B. Thornton Foundation (Residents) on March 18, 1997. The respondent, LandComp Corporation (LandComp) filed a response to the motion to clarify on or about March 21, 1997. For the reasons stated below, the Board grants the motion to clarify and affirms its prior rulings barring the introduction of evidence of *ex parte* contacts prior to LandComp's filing of the application for siting on November 1, 1995 with the LaSalle County Board (County). The Board also bars any evidence pertaining to the adoption of the County's Solid Waste Management Plan, local conditions for siting approval, or procedural rules for the local hearing from being introduced at the Board hearing scheduled for April 22, 1997.

On September 19, 1996, in PCB 96-243 (the original appeal) the Board vacated the decision of the County to grant siting to LandComp for a municipal waste landfill. The Board decision found a lack of fundamental fairness in the County's proceedings and remanded the case to the County for further hearings. (Residents Against a Polluted Environment and the Edmund B. Thornton Foundation v. County of LaSalle and Landcomp Corporation, PCB 96-243 September 19, 1996.) On January 17, 1997, the County again granted siting approval to LandComp and the petitioners appealed the decision creating this case before the Board.

Prior to holding hearings on the original appeal, the Board granted a motion in limine filed by the respondents which barred the Residents from presenting evidence of *ex parte* contacts which allegedly occurred prior to the filing of LandComp's siting application on November 1, 1995. (Residents Against a Polluted Environment and the Edmund B. Thornton Foundation v. County of LaSalle and Landcomp Corporation, July 18, 1996, PCB 96-243 reaffirmed September 19, 1996.) This order also struck certain paragraphs of the Residents'

petition which related to the alleged *ex parte* contacts which occurred prior to the siting application being filed.

In their motion the Residents seek clarification as to whether the rulings by the Board in PCB 96-243 regarding the non-admissibility of evidence pertaining to *ex parte* contacts which occurred prior to the siting application being filed are applicable to this case. (Motion at 2.) Specifically, the Residents wish to know whether they will be barred from introducing evidence pertaining to paragraphs 8D, E, F, L, and W and whether they will be barred from putting into evidence any matters which occurred prior to November 1, 1995 for the purpose of showing predisposition and bias on the part of members of the LaSalle County Board. (Motion at 2.)

The motion to clarify requests that the Board state whether or not it will allow testimony which supports allegations 8(D), (E), (F), (L) and (W) of the petition for review.

Allegations 8(D), (E), (F), (L) and (W) of Resident s petition read:

8. The decision of the LaSalle County Board granting the application for siting approval of the proposed municipal solid waste landfill is improper, defective, illegal, void, voidable, and incorrect for the following reasons:

8(D). Certain members of the LaSalle County Board were predisposed to grant site approval and the decision of the County Board was reached as a result of fundamentally unfair procedures.

8(E). *Ex parte* contacts between certain members of the County Board and the Respondent, LandComp Corporation, and its agents and representatives, rendered the County Board incapable of reaching a fair and impartial decision based solely upon the evidence.

8(F). That both before and after the filing of the Application there existed a conspiracy between certain County Board members and LandComp Corporation and its principal owner, Paul Degroot, to approve an Application for siting approval by LandComp Corporation regardless of applicable laws, procedures, regulations, ordinances, and rules which would warrant a contrary outcome and regardless of any facts which would warrant disapproval of the Application.

8(L). That even prior to the filing of the Application, the Applicant, through its agents and employees, had improperly influenced the County Board members so that they would be predisposed in favor of the Applicant.

8(W). That the Respondent, LandComp Corporation, through it s officers, agents, and employees, was improperly allowed to influence and dictate the development of amendments to the LaSalle County Solid Waste Management Plan, local conditions for

siting approval, and the procedural rules, relating to the proceedings. All the foregoing served to predispose the County Board in favor of the Applicant, even before the Application was filed. Ultimately the County Board's decision was based not on the evidence but on this predisposition.

In support of their position that they should not be barred from presenting evidence relating to the above items, the Residents state that they reassert and re-allege all the arguments made by them on this issue in PCB 96-243. Residents also state that they believe evidence of corruption, undue influence, and overreaching is relevant to the case no matter when those acts may have occurred. Additionally, Residents argue that bias and predisposition on the part of the decision maker renders the proceedings fundamentally unfair no matter when it occurred. (Motion at 3.)

In its response, LandComp requests that the Board reaffirm its prior decision barring evidence relating to the adoption of the County Solid Waste Management Plan, the local procedural rules, the local siting criteria, and *ex parte* contacts claimed by the petitioner. (Response at 4 and 5.) LandComp argues that the Board was correct when it ruled that evidence relating to actions between LandComp and the County Board which took place prior to the filing of the siting application were not reviewable under Section 40.1 of the Act. (415 ILCS 5/40.1.) (Response at 2.)

LandComp argues that the Board only has the authority to review "the fundamental fairness of the procedures used by the County Board or the governing body of the municipality in reaching its decision," as allowed by Section 40.1 of the Act. Thus, LandComp argues, the Board does not have the authority to review the legislative process of the local decisionmaker in enacting the Solid Waste Management Plan, local siting conditions, procedural rules, or alleged *ex parte* contacts prior to the siting application being filed. (Response at 4.)

LandComp states that although it denies any improper conduct, it is not requesting that the Board bar any evidence of corruption or of a "fix" (as alleged by the Residents) relating to any County Board Member's vote in favor of the siting application. (Response at 5 and 6.) LandComp summarizes that what should be barred is evidence relating to LandComp's "constitutionally protected participation in the prior legislative process." (Response at 6.)

The Board affirms its prior decisions in Residents Against a Polluted Environment and the Edmund B. Thornton Foundation v. County of LaSalle and LandComp Corporation, PCB 96-243 July 18, 1996, reaffirmed PCB 96-243 September 19, 1996, finding that contact between the decisionmakers and an applicant prior to the application being filed is not an impermissible *ex parte* contact. In the July 18, 1996 Order the Board barred the introduction of evidence of *ex parte* contacts prior to the filing of the application on November 1, 1995. The Board affirms its prior decision which relied upon Citizens for a Better Environment v. City of Beardstown, PCB 94-98 January 11, 1995 (See also Southwest Energy Corporation v. Illinois Pollution Control Board, Beardstown Area Citizens for a Better Env., and the City of Beardstown, No. 4-95-0128 slip op. (Fourth District, March 15, 1996) (Unpublished Rule 23

order)) and hereby bars any evidence of *ex parte* contacts prior to the filing of the application for siting by LandComp on November 1, 1995 from being introduced at hearing.

The Board notes, however, that this decision does not bar Residents from introducing all evidence related to allegations 8(D), 8(E), 8(F), 8(L), and 8(W). Only that evidence relating to *ex parte* contacts predating November 1, 1995 is barred. For example, Residents may introduce evidence in support of allegation 8(D) as long as that evidence concerning contacts post-dating November 1, 1995. The same is true concerning allegation 8(E). At allegation 8(F), Residents seek to prove that a conspiracy existed both before and after the application was filed. Under today's ruling, Residents may not enter evidence pre-dating the application being filed, but they may enter evidence post-dating the application. However, Residents premise allegation 8(L) on the time prior to the siting application being filed. In accordance with today's reaffirmation, evidence to support allegation 8(L) is barred.

The Board also affirms its prior decision that evidence pertaining to the development of the County Solid Waste Management Plan, local conditions for siting approval, and the procedural rules for the local hearing is barred. In its July 18, 1997 order, the Board stated:

Residents do not allege that the County's Plan and amendment procedures *were* fundamentally unfair, nor do Residents claim that the County failed to *follow* its adopted procedures. Rather, Residents allege that actions taken by LandComp's officers, agents and employees improperly influenced the *adoption* of the County's Plan and procedures. However, this type of allegation is not proper for the Board to consider in a Section 40.1 landfill appeal. A reviewable Section 40.1 allegation would refer to the procedures employed by the County during the siting process and whether those procedures were followed and hence comport with standards of fundamental fairness.¹ No such allegation is before the Board. (Residents Against a Polluted Environment and the Edmund B. Thornton Foundation v. County of LaSalle and Landcomp Corporation, PCB 96-243 July 18, 1996, at 4 and 5.)

In the current appeal, in paragraph 8(W) of the Residents' petition for review, the Residents again allege that LandComp improperly influenced the adoption of the County's Solid Waste Management Plan, local conditions for siting approval, and the procedural rules for the local hearing. Evidence supporting these allegations is hereby barred from introduction at hearing.

¹ See 415 ILCS 5/40.1(b), referencing 40.1(a), which requires that the Board review the procedures employed below by the local siting authority to determine whether they were fundamentally fair .

The Board grants the motion to clarify and affirms its prior rulings barring the introduction of evidence of *ex parte* contacts prior to the filing of the application for siting on November 1, 1995. Additionally any evidence pertaining to the adoption of the County's Solid Waste Management Plan, local conditions for siting approval, or procedural rules for the local hearing is also barred from admission at the Board's hearing.

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the _____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board