

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LANDFILL 33, LTD.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 20-18
)	(Land - Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

RESPONDENT'S RESPONSE TO REQUESTS FOR ADMISSION

Now comes Respondent, Illinois Environmental Protection Agency, by and through its attorneys, and submits this response to the following Requests for Admission propounded by Petitioner, Landfill 33, Ltd.

1. Admit that the document attached hereto as Exhibit A is a true, correct, genuine copy of relevant portions of the Request for Local Siting Approval for Vertical Expansion of Landfill 33 (the "Landfill"), IEPA Site No. 0498100007 filed with the Effingham County Board on September 27, 1999.

RESPONSE: Respondent objects to this Request #1 as being irrelevant, given that it references a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal.

Respondent additionally objects to this Request #1 to the extent it requests a legal conclusion regarding which portions of the Request for Local Siting Approval for Vertical Expansion of Landfill 33, IEPA Site No. 0498100007 filed with the Effingham County Board on September 27, 1999 are "relevant."

Notwithstanding these objections, Respondent lacks sufficient information to admit or deny what specific materials were filed with the Effingham County Board on September 27, 1999.

2. Admit that the September 27, 1999 Request for Vertical Expansion explicitly provided that "the waste footprint of approximately 41 acres will remain unchanged. The applicant intends to expand the capacity by reconfiguring the top of the disposal unit."

RESPONSE: Respondent objects to this Request #2 as being irrelevant given that it references a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, deny the characterization of the Request for Vertical Expansion, which speaks for itself.

3. Admit that the September 27, 1999 Request for Vertical Expansion explicitly provided that "the site will be used for disposal of municipal solid waste and non-hazardous special waste...."

RESPONSE: Respondent objects to this Request #3 as being irrelevant given that it references a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, deny the characterization of the Request for Vertical Expansion, which speaks for itself.

4. Admit that the document attached hereto as Exhibit B is a true and accurate copy of the February 21, 2000 Resolution to Approve Landfill Expansion ("Siting Resolution") which was unanimously passed by the Effingham County Board on that same date.

RESPONSE: Admit.

5. Admit that the Effingham County Board made Findings of Fact that each of the applicable criteria of Section 39.2 of the Illinois Environmental Protection Act had been met.

RESPONSE: Respondent objects to this Request # 5 as being vague and ambiguous. To the extent that the Request refers to the February 21, 2000 Resolution to Approve Landfill Expansion, referenced above, admit.

6. Admit that the document attached hereto as Exhibit B contains a true and accurate copy of the Effingham County Board Findings of Fact Regarding Request for Expansion of Existing Landfill Facility Submitted by Landfill 33, LTD.

RESPONSE: Admit.

7. Admit that the Effingham County Board February 21, 2000 Resolution approved the entire 40.6 acre horizontal landfill site boundary and the vertical expansion of same without restrictions or conditions.

RESPONSE: Respondent objects to this Request # 7 to the extent it requests a legal conclusion regarding the effect of the Effingham County Board February 21, 2000 Resolution ("Resolution"). Notwithstanding this objection, deny that the Resolution approved a vertical expansion "without restrictions or conditions," insofar as the Resolution approved the "facility's expansion, as proposed by Landfill 33 LTD."

8. Admit that that the Effingham County Board February 21, 2000 Resolution contained no volumetric calculations, conditions, or restrictions.

RESPONSE: Respondent objects to this Request # 8 to the extent it requests a legal conclusion regarding the effect of the Effingham County Board February 21, 2000 Resolution ("Resolution"). Notwithstanding this objection, admit that the Resolution contained no volumetric calculations. Deny that the Resolution approved a volumetric expansion without "conditions" or "restrictions," insofar as the Resolution approved the "facility's expansion, as proposed by Landfill 33 LTD."

9. Admit that the document attached hereto as Exhibit C is a true and accurate copy of the September 19, 2000 Certification of Siting Approval (LPC-PA8) executed by the Effingham County Clerk, certifying that on February 21, 2000 the County Board of Effingham County approved the Vertical Expansion of Landfill 33.

RESPONSE: Respondent objects to this Request #9 as being irrelevant given that it refers to a document that is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, admit.

10. Admit that on June 29, 2001, Landfill 33 submitted supplemental permit modification application Log No. 2001-248 to the Illinois Environmental Protection Agency for the vertical expansion of the Landfill 33 pollution control facility.

RESPONSE: Admit.

11. Admit that the document attached hereto as Exhibit D is a true and accurate copy of the June 28, 2002 correspondence from the Illinois Environmental Protection Agency approving the modification of Permit No. 1995-231-LFM, modification 9, Log. No. 2001-248.

RESPONSE: Respondent objects to this Request #11 as being irrelevant given that it references a document is not in the administrative record as filed by the Agency and that was never submitted to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, admit that the document is a true and accurate copy of the Illinois Environmental Protection Agency's June 28, 2002 correspondence.

12. Admit that on June 28, 2002 the Illinois Environmental Protection Agency approved the modification of the Landfill 33 Permit, explicitly providing that "the revised maximum final elevation is 644 msl" (644 feet mean sea level) and "there is no change to the acreage of the waste footprint of the 40.6 acre disposal unit approved by 1995-231-LFM and by modification No. 9".

RESPONSE: Respondent objects to this Request #12 as being irrelevant given that it references a document that is not in the administrative record as filed by the Agency and that was never presented to the Agency in connection with the permit application that is the subject of this appeal. Notwithstanding this objection, deny the characterization of the contents of the correspondence, which speaks for itself.

13. Admit that the document attached hereto as Exhibit E1 is a true and accurate copy of the April 5, 2019 cover letter to the Application for Significant Modification of Illinois EPA Permit No. 1995-231-LFM.

RESPONSE: Admit.

14. Admit that April 5, 2019 cover letter to the Application for Significant Modification of Illinois EPA Permit No. 1995-231-LFM explicitly provided that the request was to "revise the final cover contours and stay below the maximum elevation of 644 MSL".

RESPONSE: Deny the characterization of the contents of the correspondence, which speaks for itself.

15. Admit that the April 5, 2019 cover letter to the Application for Significant Modification of Illinois EPA Permit No. 1995-231-LFM explicitly provided that "This application has been provided to and discussed with the Effingham County Board. In the opinion of the Effingham County Board the proposed final cover modification is consistent with the previous Siting Approval, so long as the final maximum elevation of 644 MSL is not exceeded".

RESPONSE: Deny the characterization of the contents of the correspondence, which speaks for itself.

16. Admit that the April 5, 2019 Significant Modification Application does not seek or request the vertical expansion of the landfill beyond the previously approved 644 foot MSL boundary.

RESPONSE: Respondent objects to this Request #16 as being vague and ambiguous, and to the extent it requests legal conclusions regarding the effect of April 5, 2019 Significant Modification Application and previous approvals. Notwithstanding these objections, deny.

17. Admit that the proposed final contour changes provide that the vertical height of the Landfill will not exceed an elevation of 644 feet MSL.

RESPONSE: Respondent objects to this Request #17 as being vague and ambiguous. To the extent that the Request refers to "proposed final contour changes" as proposed within the April 5, 2019 Significant Modification Application referenced above, admit.

18. Admit that the April 5, 2019 Significant Modification Application did not seek or request to expand the 40.6 acre horizontal facility boundary.

RESPONSE: Admit.

19. Admit that the April 5, 2019 Significant Modification Application contained drawings which depict the same horizontal boundaries as originally approved by the Effingham County Board in 1999.

RESPONSE: Respondent objects to this Request # 19 as being vague and ambiguous and to the extent it requests legal conclusions regarding the facility's approved horizontal boundaries. Notwithstanding these objections, deny.

20. Admit that the document attached hereto as Exhibit E2 is a true and accurate copy of the Illinois Environmental Protection Agency's May 3, 2009 correspondence, indicating that "increase in the waste disposal capacity will result in an expansion beyond the currently permitted boundary" which the Agency concluded needed a local siting hearing and approval.

RESPONSE: Admit that the document is a true and accurate copy of the Illinois Environmental Protection Agency's May 3, 2019 correspondence. Deny the characterization of the contents of the correspondence, which speaks for itself.

21. Admit that, in pertinent part, the case of *Ill. Env'tl. Prot. Agency v. Illinois Pollution Control Board and Brickyard Disposal and Recycling, Inc.*, 2018 II App (4th) 170144, P38 (2018) provided that "Section 3.330(b)(2) plainly applies to a request to expand 'beyond the boundary of a currently permitted pollution control facility' not 'currently permitted waste boundaries' and that local siting review is not triggered by changes in waste volume within the boundaries of an existing landfill."

RESPONSE: Respondent objects to this Request # 21 to the extent that the content of an Illinois appellate court opinion is not a factual matter properly the subject of a request for admission of fact. Notwithstanding this objection, admit that the Request accurately sets forth language within the cited opinion.

22. Admit that attached hereto as Exhibit F1 is a true and accurate copy of the Andrews Engineering Correspondence dated June 7, 2019 to the IEPA addressing each of the purported incompleteness deficiencies.

RESPONSE: Admit that Exhibit F1 is a true and accurate copy of correspondence to IEPA dated June 7, 2019. Deny the characterization of the contents of the correspondence, which speaks for itself.

23. Admit that the April 5, 2019 Significant Modification proposal does not expand or exceed the physical boundaries of the facility previously established by the Effingham County Board in its February 21, 2000 Resolution to Approve Landfill Expansion.

RESPONSE: Deny.

24. Admit that in the June 7, 2019 correspondence Andrews Engineering opined that the April 5, 2019 Significant Modification proposal does not expand or exceed the physical boundaries of the facility previously established by the Effingham County Board in its February 21, 2000 Resolution to Approve Landfill Expansion.

RESPONSE: Deny the characterization of the contents of the correspondence, which speaks for itself.

25. Admit that the document attached hereto as Exhibit F2 is a true and accurate copy of the July 5, 2019 correspondence from the Environmental Protection Agency, again claiming that local site review was required because additional capacity would be gained from the proposed changes to final contours.

RESPONSE: Admit that Exhibit F2 is a true and accurate copy of July 5, 2019 correspondence from IEPA to Petitioner. Deny the characterization of the contents of the correspondence, which speaks for itself.

26. Admit that the document attached hereto as Exhibit F3 is a true and accurate copy of the Andrews Engineering August 7, 2019 correspondence to the IEPA addressing each of the July 5, 2019 Agency comments, Log No. 2019-119 as to the April 5, 2019 Significant Modification Permit No. 1995-231-LFM.

RESPONSE: Admit that Exhibit F3 is a true and accurate copy of correspondence to IEPA dated August 7, 2019. Deny the characterization of the contents of the correspondence, which speaks for itself.

27. Admit that the document attached hereto as Exhibit G is a true and accurate copy of the Illinois Environmental Protection Agency's September 6, 2019 correspondence reiterating its determination of incompleteness.

RESPONSE: Admit that Exhibit G is a true and accurate copy of the September 6, 2019 correspondence. Deny the characterization of the contents of the correspondence, which speaks for itself.

28. Admit that local siting review was conducted by the Effingham County Board in the form of the February 21, 2000 Siting Resolution before the Illinois Environmental Protection Agency approved the vertical expansion modification request of Landfill 33 of a 644 ft MSL on June 28, 2002.

RESPONSE: Respondent objects to this Request # 28 as being vague and ambiguous and to the extent it requests legal conclusions regarding the effects of the February 21, 2000 Siting Resolution and IEPA's June 28, 2002 approval of a permit modification. Notwithstanding these objections, admit that the Effingham County Board's February 21, 2000 Siting Resolution preceded IEPA's June 28, 2002 approval of a permit modification. Deny the remainder.

29. Admit that the April 5, 2019 Significant modification request did not exceed the 644 ft MSL facility vertical boundary.

RESPONSE: Respondent objects to this Request # 29 to the extent it requests a legal conclusion regarding the facility's approved vertical boundary. Notwithstanding this objection, deny.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
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BY: s/Christina L. Nannini

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Date: February 10, 2020

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VERIFICATION

Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Imran Syed, have reviewed Respondent Illinois Environmental Protection Agency's responses to Landfill 33's Requests for Admission, and certify 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 to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By: Imran M. Syed
Imran Syed
Environmental Protection Engineer
Permit Section, Bureau of Land
Illinois Environmental Protection Agency.

CERTIFICATE OF SERVICE

I hereby certify that I did on February 10, 2020, caused to be served by electronic mail, a true and correct copy of the following instrument entitled Respondent's Response to Requests for

Admission upon the following:

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s/Christina L. Nannini
Christina L. Nannini
Assistant Attorney General