

 ORIGINAL

BEFORE THE 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)

RECEIVED
CLERK'S OFFICE

JUN 18 2014

STATE OF ILLINOIS
Pollution Control Board

MOTION TO STAY PROCEEDINGS

NOW COMES the Respondent, Henson Disposal, Inc. and TKNTK, LLC, by and through their attorney, Richard T. Marvel, and for their Motion to Stay Proceedings, states as follows:

I. That these proceedings should be stayed based upon the Amended Site Application filed with the County of McLean on April 5, 2014.

1. That American Disposal filed the present Petition for Review of Decision concerning siting of a new pollution control facility, pursuant to Sections 39.2 and 40.1 of the Illinois Environmental Protection Act on March 22, 2011.

2. The parties have been actively engaged in the appeal process since that time.

3. Most recently American filed a Motion for Summary Judgment on Jurisdiction on or about April 5, 2014.

4. The County of McLean filed a Response to the Motion for Summary Judgment on/or about May 9, 2014.

5. That Henson Disposal, Inc. and TKNTK, LLC filed a Response to the Motion for Summary Judgment as to Jurisdiction filed by American Disposal Services of Illinois, Inc. on or about May 23, 2014.

6. Since the filing of this case Henson Disposal, Inc. has noticed and filed an Amended Siting Application with the County of McLean for the operation of its facility located at 2148 Tri-Lakes Road, Bloomington, Illinois, which is the same location as involved in the present appeal, which application was filed on April 3, 2014.

7. Henson Disposal, Inc. and TKNTK, LLC request the Pollution Control Board stay these proceedings pending the McLean County Board's decision on the Amended Site as presently pending.

8. Staying these proceeding involves fundamental principals of judicial economy and efficiency. In addition, all parties will be able to conserve the resources and time until the County address the Amended Site Application.

9. Pursuant to 35 IAC Section 101.500(a), the Illinois Pollution Control Board "may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these Rules, or the Illinois Code of Civil Procedure." The Illinois Administrative Code provides motions to stay proceedings may be directed to the Board accompanied with sufficient information detailing why a stay is needed. *35 Ill. Adm. Code 101.514 (2014)*.

10. "The power of a trial court to stay proceedings is an attribute of its inherent power to control the disposition of cases before it." *Vasa North Atlantic Insurance Co. v. Selcke*, 261 Ill. App. 3d 626 (1st Dist. 1994). The Court's power is "incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248 (1936). See also *Disciplined Inv. Advisors, Inc. v Schweih*s, 272 Ill. App. 3d 681 (1st Dist. 1995) ("State Order Improves Judicial Economy")

11. The Illinois Circuit Courts have the discretion to consider factors such as the orderly administration of justice and judicial economy, as well as the inherent authority to control the disposition of the cases before it. *TIG Ins. Co. v. Canel*, 389 Ill. App. 3d 366 (1st Dist. 2009).

12. In this matter the alleged deficiencies in the Siting Application on or about August 9, 2010. The filing of the Amended Site Application on April 3, 2014 was for the same facility at the same location, merely expanding the size of the site. This Amended Application is now pending, and if approved by the County of McLean will resolve the issues present with this particular siting, notwithstanding the fact the Petitioner may appeal or the applicant, Henson Disposal, Inc. and TKTNK, LLC may appeal, depending on the outcome of the matter. The significant aspect of the Amended Application is that it resolves the pending matter with either decision. i.e., this siting is allowed wherein the Petitioner has the right to initiate a new proceeding or the siting is not allowed in which instance Henson Disposal, Inc. and TKNTK, LLC could appeal that decision or rely upon the present siting. In either event staying this proceeding would increase the judicial economy of this matter as well as save the parties the time and expense in pursuing matters which may be moot.

13. The traditional standards considered for staying a matter include:

- a) Whether the stay applicant has made a strong showing that he or she is likely to succeed on the merits;
- b) Whether the applicant will be irreparably injured absent a stay;
- c) Whether issuance of the stay will substantially injure the other parties interested in the proceeding;
- d) Where the public interest lies.

14. In this matter based upon the nature of the Amended Site Application the posture of the parties will change following the decision of the County Board. Furthermore the Petitioner in this matter, American Disposal Services of Illinois, Inc., shall not be injured or harmed by virtue of a stay due to the fact that even if they prevail on the jurisdictional component of this case the applicants can simply, and already have, refiled an Amended Application, which has expanded the foot print of the site and in the interest of judicial economy this matter should be stayed to save judicial resources that could otherwise be addressed and directed to other matters.

15. In this case a stay will conserve the Pollution Control Board's and the parties' resources. A stay will prevent all parties from undertaking unnecessary and costly matters, including additional discovery, a full hearing on this matter over the next few months and weeks.

WHEREFORE, the Respondents, HENSON DISPOSAL, INC. and TKNTK, LLC respectfully request that the Pollution Control Board grant this motion and enter an order staying these proceedings until the County of McLean has ruled on the pending Amended Site Application.

II. These proceedings should be stayed based upon pending House Bill 4606.

1. That Representative Jay Hoffman introduced House Bill 4606, amending the Environmental Protection Act providing the portion of a site or facility that accepts exclusively general construction or demolition debris and is operated and located in accordance with Section 22.38 of the Act is not a pollution control facility (previously required the facility to be located in a County with a population over 3 million as of January 1, 2000 or in a County that is contiguous to such a County to fall under the exemption).

2. House Bill 4606 passed the House on March 5, 2014.

3. House Bill 4606 passed the Senate with a vote of 55 yea's and 0 nays on May 21, 2014.

4. This Bill is presently set to become law on or about August 21, 2014, subject only to the Governor's veto.

5. Once House Bill 4606 is passed the Henson Disposal, Inc. Recycle Facility will no longer need siting as required by the Illinois Environmental Protection Act.

6. In an effort to proceed as efficiently as possible and conserve resources and time for all parties, this matter should be stayed.

WHEREFORE, the Respondents, HENSON DISPOSAL, INC. and TKNTK, LLC respectfully request the Pollution Control Board grant this motion and enter an order staying these proceedings until either the County of McLean has ruled on the pending Amended Site Application or in the alternative pending the enactment of House Bill 4606.

HENSON DISPOSAL, INC.
and TKNTK, LLC, Defendants

By: 

Their attorney

MARVEL LAW P.C.
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ARDC No: 6275455

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN DISPOSAL SERVICES OF
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CERTIFICATE OF SERVICE

The undersigned certifies that he served the foregoing Motion to Stay Proceedings 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 16 day of June, 2014:

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

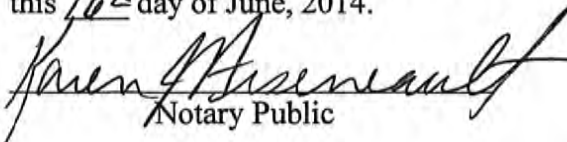
Jennifer J. Sackett Pohlenz
Clark Hill PLC
150 N. Michigan Ave., Suite 2700
Chicago, IL 60601

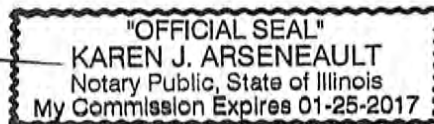
Amy L. Jackson
Rammelkamp Bradney, P.C.
232 West State Street
Jacksonville, IL 62650

Hannah R. Eisner
County of McLean
115 E. Washington, Rm. 401
Bloomington, IL 61701



Subscribed and sworn to before me
this 16th day of June, 2014.


Notary Public



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STATE OF ILLINOIS
Pollution Control Board

Deborah Moore, Of Counsel

June 16, 2014

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, IL 60601

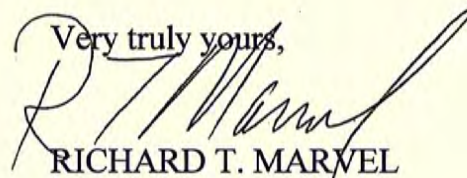
RE: American Disposal v. County Board of McLean County, et al
PCB 11-60

Dear Sir:

Enclosed please find a Motion to Stay Proceedings in regard to the above. I have enclosed and original and eight copies and a copy to be file-stamped and returned in the enclosed stamped envelope.

Thank you for your assistance in regard to this matter.

Very truly yours,



RICHARD T. MARVEL

RTM:ka
Enclosures