

**AUG 28 2003**

STATE OF ILLINOIS  
*Pollution Control Board*

ILLINOIS POLLUTION CONTROL BOARD

August 28, 2003

CITIZENS AGAINST LANDFILL	)	
EXPANSION (CALE),	)	
	)	
Petitioner,	)	
	)	PCB 03-236
v.	)	(Pollution Control Facility
	)	Siting Appeal)
AMERICAN DISPOSAL SERVICES OF	)	
ILLINOIS, INC., and LIVINGSTON	)	
COUNTY BOARD,	)	
	)	
Respondents.	)	

**HEARING OFFICER ORDER**

On August 26, 2003, petitioner Citizens Against Landfill Expansion (CALE) filed a motion to compel certain discovery from respondent American Disposal Services of Illinois, Inc. (American Disposal), and a motion to compel certain discovery from t respondent Livingston County Board (County Board). Also on August 26, 2003, respondents American Disposal and the County Board filed their respective motions to compel certain discovery against CALE. On August 27, 2003, CALE filed its response to American Disposal's motion to compel. CALE did not file a response to the County Board's motion to compel. Also on August 27, 2003, the respondents filed their respective responses to CALE motions to compel.

Due to the shortness of time before hearing and the number of discovery challenges, this order disposes of the contested issues in summary fashion. The order first sets out some general principles and Board precedent guiding the rulings. Then follows ruling on the various issues raised.

**General Principles and Precedent in Siting Appeals**

When a party challenges statutory criteria, Section 40.1 (b) of the Illinois Environmental Protection Act (Act), requires that the review before the Illinois Pollution Control Board (Board) shall be based "exclusively on the record before the county board or the governing body of the municipality." If, however, a party alleges that the proceedings before the county board or the governing body of the municipality were fundamentally unfair or involves jurisdictional defects, the Board may consider other evidence, such as pre-filing contacts, where pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing fundamental fairness. See County of Kankakee v. City of Kankakee, Town and Country Utilities, Inc., and Kankakee Regional Landfill, L.L.C., PCB 03-31, PCB 03-33, PCB 03-35 (consl.) (Jan. 9, 2003).

The Board will not review a county's Solid Waste Management Plan as that involves a legislative process which is beyond the purview of the Board. See Residents Against a Polluted Environment and The Edmund B. Thornton Foundation v. County of LaSalle and LandComp Corporation, PCB 96-243 (Sept. 19, 1996). Nor is it proper, absent a strong showing of bad faith or improper behavior, to invade the decision makers internal thought process. Dimaggio v. Solid Waste Agency of Northern Illinois PCB 89-138 (Jan. 11, 1990). Further, decision makers will not be held to biased simply because of a financial benefit which the county might derive from site approval. Dimaggio PCB 89-138. Finally, Section 101.616 of the Board's procedural rules allows discovery of all relevant information and information calculated to lead to relevant information.

### **County Board's Objections To CALE's Interrogatories**

The County Board's objections to CALE interrogatories nos. 1,2,3 and 4 are sustained since there has been no allegation of bad faith or improper behavior.

The County Board's objection to CALE's interrogatory no. 5 is overruled and the County Board is directed to answer. The County Board's objection to CALE's interrogatory no. 6 is overruled. However, the hearing officer agrees with the County Board that this interrogatory is overly broad and must be narrowed. To that end, the County Board is directed to answer to the extent that any non-privileged communications regarding annexation during the respective board members incumbency must be disclosed.

The County Board's objection to interrogatory no. 8 is sustained where information sought relating to criteria lies outside the record. The County Board's objections to CALE interrogatories nos. 9,13 and 14 are sustained. Hypothetical questions regarding the mental processes of the decision maker are improper.

The County Board's objections to CALE's interrogatories no. 10 and 29 are overruled. However, the hearing officer agrees with the County Board that the interrogatories are overly broad and must be narrowed. To that end, only board members who voted in favor of the application are required to answer. Furthermore, and to extent that the County Board has not already done so, the County Board is directed to include in their answer "consultants" that have had contacts with American Disposal between the pendency of the previous application and the application. The County Board's objections to CALE's interrogatories nos. 11,12 and 18 are overruled. The County is directed to answer to the best of its knowledge.

The County Board's objection to CALE's interrogatory no. 15 is sustained. The information sought is not relevant nor is it calculated to lead to relevant information. The County Board's objection to CALE's interrogatory no. 17 is sustained. It appears the interrogatory seeks information regarding criteria that lies outside the record and therefore is improper. The County Board's objection to CALE's interrogatory no. 23 is sustained. The County Board's answer is sufficient in light of the question asked. The County Board's objection to CALE's interrogatory no. 25 is sustained. The County Board's answer is sufficient. The

County Board's objections to CALE's interrogatories nos. 26 and 27 are sustained. The interrogatories either pose hypothetical questions or cannot be answered by the County Board.

The County Board's objection to CALE's interrogatory no. 28 is overruled. The County Board is directed to answer to the best of its knowledge.

The County Board's objection to CALE's interrogatory no. 30 is sustained. The hearing officer finds that the answers in CALE's request to admit are sufficient. The County Board's objection to CALE's interrogatory no. 31 is sustained in that it does not seek additional responses. To the extent that the County is directed to answer interrogatories nos. 10,11,12,18 and 29, such inquiry and answers are limited to those still-living board members who voted in favor of the siting application.

### **County Board's Objections To CALE's Request To Produce Documents**

The County Board's objection to CALE's request to produce no. 7 is overruled. However, the hearing officer finds the request overly broad and must be narrowed. Inquiries are limited to only those still-living board members who voted in favor of the siting application.

The County Board's objection to CALE's request to produce no. 13 is sustained. Information regarding the mental processes of the decision maker is improper. In CALE's motion to compel it objects to the County Board's responses in CALE's request to produce nos. 1,3,5,6,10,11,12 and 15 where the County Board merely referred petitioner to the record on appeal. The County Board did not respond. To the extent that the requests are not in the record on appeal, the County Board is directed to produce documents requested in nos. 1,3,6,10,11,and 12. CALE's request to produce no. 5 regards information on criteria and is improper. The County's objection is sustained.

### **American Disposal Objections to CALE's Interrogatories**

American Disposal's objections to CALE's interrogatories nos. 6,13,14 and 19 are sustained. The interrogatories are improper, as they appear to seek information regarding a criteria that lies outside the County record. American Disposal's objection to CALE's interrogatory no. 4 is sustained. Petitioner seeks information on whether or not "BP" was personally served with notice of the application. Petitioner does not allege that Section 39.2(b) of the Act was not properly followed with regards to notice.

American Disposal's objections to CALE's interrogatories nos. 7,10,11 and 12 are overruled. Any such communications may be relevant to petitioner's fundamental fairness allegation. American Disposal is directed to answer. American Disposal's objection to CALE's interrogatories nos. 8 and 18 are overruled to the extent that American Disposal has answered the interrogatories in its August 28, 2003, filing.

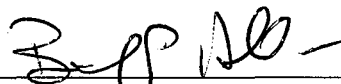
Finally, American Disposal's objection to CALE's request to produce the contract between Jeanne Rapp and American Disposal is sustained. The request is improper, as it appears to seek information regarding a criteria that lies outside the County record.

American Disposal's motion to compel CALE to answer interrogatory no. 20 is sustained. CALE is directed to answer.

#### Next Status Conference

The parties are reminded that a telephonic pre-hearing conference with the hearing officer is set for August 28, 2003, at 3:30 p.m. The telephonic pre-hearing conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the conference the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.



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Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
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312.814.8917

## CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order was faxed and mailed, first class, to each of the following on August 28, 2003:

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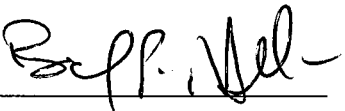
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It is hereby certified that a true copy of the foregoing order was hand delivered to the following on August 28, 2003:

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