

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 27 2003

CITIZENS AGAINST LANDFILL EXPANSION,

Petitioner,

vs.

AMERICAN DISPOSAL SERVICES OF ILLINOIS,
INC. and LIVINGSTON COUNTY BOARD,
LIVINGSTON COUNTY, ILLINOIS,

Respondents.

STATE OF ILLINOIS
Pollution Control Board

No. PCB 03-236

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 27, 2003, I caused to be filed by first class mail with the Illinois Pollution Control Board an original and four copies of the attached Respondent, Livingston County Board's Livingston County, Illinois, Response to Petitioner's Motion to Compel.

LIVINGSTON COUNTY BOARD

Larry M. Clark

PROOF OF SERVICE

The undersigned, under oath, states that on August 27, 2003, he served a true and correct copy of the foregoing Notice of Filing together with the attached Respondent, Livingston County Board's, Livingston County, Illinois, Response to Petitioner's Motion to Compel, upon the following persons, at the addresses indicated, by first class mail and that prior to 3:00 p.m. on August 27, 2003, said Response to Petitioner's Motion to Compel was sent by email to the Hearing Officer and counsel for the parties, at the email addresses indicated:

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Subscribed and sworn to before me, a Notary Public, this 27th day of August, 2003.

Notary Public

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Citizens Against Landfill Expansion,)
Petitioners,)
vs.) PCB 03-236
(Pollution Control Facility Siting Appeal)
American Disposal Services of Illinois, Inc.,)
Respondent.)
and)
Livingston County Board, Livingston)
county, Illinois,)
Respondent.)

RESPONDENT LIVINGSTON COUNTY BOARD'S, LIVINGSTON COUNTY
ILLINOIS, RESPONSE TO PETITIONER'S MOTION TO COMPEL

NOW COMES, the Livingston County Board, Livingston County, Illinois, by its attorneys, Larry M. Clark and C. Thomas Blakeman, and for Response to Petitioner's Motion To Compel, states as follows:

1. That Petitioner alleges that the Livingston County Board should be required to answer Interrogatory Questions 1-4 because such questions are alleged to bear upon the issue of fundamental fairness of the Petition (sic).
2. The issue of fundamental fairness goes to the fact of whether the public hearing was conducted in such a manner that the Petitioner and other interested parties had an opportunity to participate in such hearing and whether the County Board Members were biased in reaching their decision.
3. None of the questions posed in Interrogatories 1-4 go to the hearing process itself. Rather, each and every interrogatory was posed to go into the mind of the County Board members so as to determine what they reviewed or "studied" prior to their vote on the merits of the application for local siting approval. Respondent will address each Interrogatory to illustrate said purpose.
4. Interrogatory No. 1 asks for the Board Members to identify each document they reviewed ("read or studied") prior to their vote. Clearly this question is

an attempt to determine what each Board Member relied upon in making their decision(s). This line of inquiry is patently improper. See Ash v. Iroquois County Board, PCB 87-29 (1987) where the Pollution Control Board states in response to a question to the County Board Members as to whether the "County Board Members 'had read the transcript'". Quite simply put, that question should never have been asked. There exists a substantial body of case law supporting the principle that one cannot invade the mind of the decision maker."

5. Interrogatory No. 2 similarly attempts to ascertain when and where the material was reviewed. It again simply attempts to invade the mind of the decision maker. Furthermore it cannot and will not lead to any relevant information.
6. Interrogatory No. 3 is an attempt to ascertain which Board Members attended the public hearings. The basis upon which each County Board Member makes their decision is not subject to inquiry. Rather it is appropriate only that each Board Member have an opportunity to review the transcript and the record, not whether or how they did so.
7. Interrogatory No. 4 is a similar question in that it can not lead to any relevant information other than to be used to argue that the Board Members made their decisions on one or more basis that the Petitioner does not agree with. Any answers to these four interrogatories cannot be used.
8. Petitioner also request that the Livingston County Board be required to answer Interrogatory No. 5. The Livingston County Board, through its local siting ordinance has provisions under which they may create a Independent Review Team. Said Independent Review Team is described in more detail in the Siting Ordinance, but its name is indicative of its function. It has an independent nature in that it does not answer or respond to the Livingston County Board directly, but rather only doe so through a recommendation made to the Board after all of the testimony, evidence, and public comment has been received.
9. Interrogatory No. 6 is overly broad in that it states no time frame for which the question is posed. Clearly Petitioner's argument is that the County approved the siting Petition because they were afraid of the City of Pontiac annexing the subject property. However, the County Board has 24 members, each of which may or may not have discussed the issue of possible annexation at any time over their period of incumbency or before! In order to make any claim of such failure to judge the merits of the Application Petitioner must narrow its question in order to allow an answer. Petitioner continues to request an answer to this Interrogatory despite the fact that American Disposal has provided a document that demonstrates that

the County Board was put on notice that American Disposal would not be seeking annexation to the City of Pontiac. Petitioner is guilty of the same conduct that she accuses the County of in that she seeks answers to questions that she has the answer for, at considerable time and effort to the County Board Members.

10. In seeking an answer to Interrogatory No. 8, Petitioner is requesting information that is not relevant to an issue of bias or prejudice by the Livingston County Board. This is a factual issue only and the public hearing has been closed for all facts relating to the criteria. The sole purpose of discovery at this juncture is to determine whether the public hearing was held in a fundamentally fair manner and whether or not the County Board Members were biased in any manner. This question does not and will not lead to any such information. It is clearly posed only in an attempt to inject certain factual information into the record, which has already been closed.
11. Interrogatories 9, 13, and 14 were argued together and will be responded to together as well. Again, each question clearly attempts to enter the mind of the decision makers, the County Board Members. It goes even further in that it asks the ultimate question as to how each County Board Member would vote in different scenarios. This is patently improper as discussed above. Furthermore, answers to these questions would not further any argument as to alleged bias or prejudice on behalf of the Board Members. The record is clear that the County will receive additional host fees if their approval is upheld. No answer to these interrogatories will lead to additional relevant information.
12. Interrogatories 10 and 29 request information regarding meetings that may have occurred since January 1, 2001 in regard to host fees or the expansion of the landfill. The County originally refused such questions in that they occurred outside of the time-frame during which an Application for local site approval was pending. The Honorable Hearing Officer has indicated that the PCB rulings may have changed in regard to the prior law since the ruling in the Kankakee case last January, 2003, (PCB 03-31). This PCB opinion differs in some regards to the issues raised in this appeal. In the Kankakee case, the Petitioners raised issues of fundamental fairness because the prior contacts between the parties. The PCB apparently agreed that such information may be admitted, although they did indicate that the weight to be allotted to such information may be slight. This case attempts to request of each County Board Member information regarding each and every contact. Such discovery would be difficult and onerous to the County in that the Board consists of 24 members. If the Hearing Officer is so inclined to order answers to such questions, the County would request that only the members who voted in favor of the Application be required to answer, presumably in that the remaining members who voted against the

Application, have subsequently died or abstained from voting would not lead to information not already held by Petitioners.

13. Interrogatory No. 29 not only asks for the County Board Members to answer certain questions, but also requests the Livingston County Board's "consultants" to respond to contacts with American Disposal between the pendency of the Previous Application and the Application. Any such responses would appear to yield little additional information to the argument of bias or fundamentally fair hearings. The only "consultants" that the County has retained is the Independent Review Team that had no contact with the County Board Member until they presented their recommendations to the Ag Committee. None of the members of the Independent Review Team voted or communicated with the County Board members regarding the Application until they forwarded their final recommendation to the Ag Committee.
14. Interrogatories 11, 12, and 18 request certain information regarding contracts between the Board Members and American Disposal. Although the County objected to Interrogatory No. 11, the question was answered anyway in that all such agreements are part of the record. Interrogatory No. 12 was responded to with the answer "None". What does Petitioner desire further? Finally Interrogatory No. 18 asks the County Board Members to describe all "interests" that a County Board Member may have with a contractor doing work for American Disposal. Such request is not limited in any manner. For instance, if a County Board Member buys gravel from the same vendor as supplies gravel to the landfill, he or she has a "relationship" with a third party contractor. How is each individual County Board Member supposed to know who does business with the Livingston Landfill in an amount in excess of \$5,000.00 per year? Furthermore it is impossible to venture a guess as to who may be doing business with the Livingston Landfill in the future. County Board Members are not clairvoyant. Many such relationships may exist without the Board Member even being aware of such a "relationship". This Interrogatory is overly broad and onerous in that requests substantial information with little likelihood of such information leading to relevant information. The County would not object to this question if it could be narrowed so as limit innocuous contacts, but as written, it is overly broad.
15. Interrogatory No. 15 is a request for information regarding ownership of land within 2 miles of the landfill. Counsel argues that this question is relevant because it may show that most County Board Members do not own property within 2 miles of the landfill and therefore approval of the Application will not directly impact their lives if statutory criteria were not met. However Counsel misinterprets the duty and responsibility of the Board Members. They are to vote on the merits of the Application and are presumed to do so. Counsel actually attempts to argue that if they own property within 2 miles, they would be more inclined to vote against the Application. Such a contortion of the law

would be grossly improper. Answering this question, using Petitioners basis, would not lead to any relevant information. Indeed, it would appear that County Board Members owning property within 2 miles should not have been permitted to vote, under Petitioner's logic, because they would consider things other than the record and that County Board Members owning property beyond two miles should not vote because the landfill has no direct impact upon their lives!

16. Interrogatory 17 requests information regarding independent environmental investigations performed by the Livingston County Board. It does not limit in time or nature the type of investigations requested. Petitioners Motion To Compel does not adequately describe the reasons such answer should be required. Petitioners actually argue that if such an "independent environmental investigation" was performed, it could support the Boards decision. Even if such an investigation was done, it could not support the Boards decision in that it would have contained information outside the record. Counsel has not indicated why or how this interrogatory would lead to relevant information.
17. Interrogatory No. 23 requested the process by which the County's Independent Review Team was formed and instructed. The County responded by indicating that it was formed and instructed pursuant to the Siting Ordinance. It is directly responsive to the question posed. It indicates that the Independent Review Team is to conduct a review of the Application "independent from the Agricultural Committee and the County Board". Such Siting Ordinance has been made a part of the record. If Petitioner wanted additional information other than what was directly asked, such specific information should have been specifically requested.
18. Interrogatory No. 25 requested information related to the Independent Review Teams "working on matters relating to Livingston County Landfill" from 1995 to the present. The County responded that members of the Independent Review Team continue to be employed by the County with regard to this Landfill. Although, based upon PCB 03-31, the County would state further that Charles T. Schopp has and continues to be employed by the County in his regular capacity. Gary J. Deigan did not supply any services to the County prior to the Application for local siting approval for the Streater Landfill and continues to provide services to the County in a variety of matters. Larry M. Clark provided legal services to the County in negotiation with American Disposal for an amendment to the Host Fee Agreement dated February 15, 2001, and continues to provide services to date.

19. Interrogatory No. 26 is a hypothetical question that cannot be answered with any degree of accuracy. What members of the Review Team may do in the future is simply not relevant.
20. Interrogatory No. 27 cannot be answered by the County. It is more appropriately directed to American Disposal.
21. Interrogatory No. 28 cannot be answered in that it calls for certain conclusions. Livingston County reiterates its response to the original question and further states that this type of information is not calculated to lead to relevant information.
22. Interrogatory No. 30 requests "detailed basis for denials to Petitioner's Requests for Admissions. Livingston County respectfully suggests that it did supply a basis for said denials when responding to same.
23. Interrogatory No. 31 does not seek additional responses.
24. Notice To Produce No. 7 requests a broad spectrum of information. Livingston County has indicated that due to a lack of specificity, it cannot answer such a request. Should it be narrowed down, the County could attempt to provide responses to this Notice To Produce.
25. Notice To Produce No. 13 again attempts to invade the mind of the decision maker. The information solicited not only would serve to determine which Board Member checked out certain information, but has the audacity to request handwritten notes, presumably of the Board Members. Such an inquiry cannot be made in that it invades an impermissible area.
26. That with regard to Interrogatories Nos. 1, 3, 4, 9, 10, 11, 12, 13, 14, 18 and 29 and Notice to Produce No. 7, Petitioner states that it is concerned with whether Members of the Livingston County Board, sitting as the siting authority who voted in favor of the Application pre-judged or failed to judge whether the Applicant had satisfied the statutory criteria and/or whether any of these members of the Board had a bias, prejudice or financial interest, and seeks specific information from each of the 24 Board Members. That to the extent Respondent may be required to provide information from the individual Board Members, that such inquiry be limited only to those Board Members who voted in favor of the siting application who are still alive. Excluded would be the 4 Board Members who voted against the Application, the Board Member who abstained, and the 1 Board Member who passed away on May 21, 2003, Ronald Flessner, and his replacement to the Board, Ronald L. Deany, who was appointed to the Board in June of 2003, after the vote on the siting application occurred on May 15, 2003. Certainly, Petitioner can have no quarrel or demonstrate any impropriety as to those Board

Members who voted against the Application or abstained. Also excluded from any individual inquiry would be those Board Members whose terms of office expired on November 30, 2002, prior to the date the Application was filed on December 4, 2002, and who are no longer on the Board and who did not vote on the Application on May 15, 2003.

Respectfully submitted,

LIVINGSTON COUNTY BOARD,
Livingston County, Illinois

By: _____
One of Its Attorneys

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STATE OF ILLINOIS

Pollution Control Board

FAX COVER SHEET

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From: C. Thomas Blakeman
Re: CALE vs. American Disposal, et al.; PCB 03-236

Date: August 27, 2003

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