

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CITIZENS AGAINST LANDFILL EXPANSION,

Petitioners,

vs.

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

Respondents.

STATE OF ILLINOIS
Pollution Control Board

Case NO.: PCB 03-236

MOTION TO DISMISS

Now comes American Disposal Services Of Illinois, Inc., Respondent, by its attorneys, Douglas Lee and George Mueller, and moves this Board to dismiss the Petition To Review Pollution Control Facility Siting Decision filed by Citizens Against Landfill Expansion (CALE), and in support thereof states as follows:

1. 415 ILCS 5/40.1(b) states in pertinent part that, "a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of the municipality may petition the Board within 35 days for a hearing to contest the approval of the county board or governing body of the municipality."

2. There is no question that Carolyn Gerwin, as an individual objector, participated in the siting hearings before the Livingston County Board and would be entitled to bring a Petition To Review the siting decision in her own name. However, Citizens Against Landfill Expansion (CALE), an unincorporated voluntary association of residents as referred to in the Petition To Review, did not participate in the siting hearings before the County Board.

3. Attached hereto and made a part hereof as Exhibit "A" is the Entry of Appearance filed by Carolyn K. Gerwin on February 21, 2003, wherein she indicates that she will be participating as both a witness and as an objector. No mention is made of her representation of any other persons or groups.

4. During the local siting hearings, Carolyn K. Gerwin never mentioned or otherwise indicated that she was representing a citizens' group in general, or the Citizens Against Landfill Expansion in particular. While Ms. Gerwin did vaguely indicate that she was acting as the attorney for some other objectors, she declined to name those individuals or to be more specific as evidenced in the transcript. Attached hereto and made a part hereof as Exhibit "B" is page 14 of the transcript of the local siting hearings where, when Ms. Gerwin was initially asked by the Hearing Officer to identify herself stated, "Carolyn Gerwin on behalf of myself and several private citizens." At the outset of her opening statement, Carolyn Gerwin stated, "My name is Carolyn Gerwin, and I am here today officially as an objector and as objectors' counsel." (Siting Hearing Transcript Page 19 attached hereto and made a part hereof as Exhibit "C"). Ms. Gerwin also made an unsworn public comment where she stated in pertinent part, "You will hear from me in two different modes today, public comment and closing arguments. Public comment as a citizen, closing arguments as an objector's representative attorney." (Siting Hearing Transcript Page 1410 attached hereto and made a part hereof as Exhibit "D").

5. There are only two references in the entire siting hearing record to Citizens Against Landfill Expansion, the first a reference in an unsworn public comment by a citizen named Julie Russow, (Siting Hearing Transcript Page 641 attached hereto and made a part hereof as Exhibit "E"), and a reference in a question by Ms. Gerwin to one of the applicant's witnesses, (Siting Hearing Transcript Page 1169 attached hereto and made a part hereof as Exhibit "F").

6. Whether a citizens' group opposed to the siting application existed at any time prior to the hearings is irrelevant. The record is clear that Carolyn Gerwin was more of an active objector than a representative of objectors. Due to the fact that she is an attorney, she was able to avail herself of the right to give opening and closing statements and to present and cross-examine witnesses. However, there is no indication in the record that she represented anyone other than herself.

WHEREFORE, for the foregoing reasons, the Petition To Review Pollution Control Facility Siting Decision filed by Citizens Against Landfill Expansion should be dismissed.

American Disposal Services of Illinois, Inc.

BY: George Mueller
One Of Its Attorneys

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FILED

FEB 21 2003

JUDITH K. McGLASSON
LIVINGSTON COUNTY CLERK

February 21, 2003

Judith K. McGlasson
Livingston County Clerk & Recorder
112 West Madison
Pontiac IL 61764

Re: Public Hearings on Siting of Expansion of Livingston Landfill

Dear Mrs. McGlasson,

This is to notify you that I would like to participate in the hearings on expansion of the Livingston Landfill. I will be participating as both a witness and an "objector," i.e., a person who may ask questions. I am a registered attorney, Illinois Registration Number 6197167.

Exhibits: I plan to present the exhibits attached hereto. *

Witness List: Doris & Archie Burnside; Julie Russow; Bett Schmidt; Dr. Joseph Gerwin; Sondra Sixberry and Keith Runyon.

Yours truly,

Carolyn K. Gerwin
Carolyn K. Gerwin

Enc.

* In addition, I will present the documents and materials filed with your office for the hearing as scheduled October 8, 2002. Those materials were filed under cover of a letter to your office dated September 27, 2002. If you need an additional copy of said documents, please call. Thank you.

EXHIBIT A

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than 180 days from the date the request was filed.

Now at this time I would like the members of the Agricultural Committee of the Livingston County Board who are present to stand and identify themselves for the record. I believe they are seated behind the counsel tables here. Members of the board?

MR. GOEMBEL: I'm Jon Goembel. I'm the chairman of the Ag & Zoning Committee.

MRS. WOODBURN: I'm Delores Woodburn.

MR. KIRKTON: I'm Roger Kirkton.

MR. FLOTT: Bill Flott.

MR. NATZKE: Arnold Natzke.

HEARING OFFICER: And I would like the members of the Livingston County Board who are present to stand and identify themselves for the record.

MRS. RAPP: Jeanne Rapp, chair of the board.

MS. KUDRICK: Catherine Kudrick, board member.

MR. FLESSNER: Ronald Flessner.

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MR. SPAFFORD: John Spafford.

MR. HOGAN: Dan Hogan.

MR. FAIRFIELD: Bill Fairfield.

MR. KNUDSEN: George Knudsen.

MR. WAHLS: Roger Wahls.

MS. HOLZ: Helen Holz.

MR. BORNGASSER: Carl Borngasser.

HEARING OFFICER: Thank you. Now I would like counsel for the respective parties to stand and identify themselves for the record starting with Mr. Lee.

MR. LEE: Doug Lee.

MR. MUELLER: George Mueller.

MR. CLARK: Larry Clark on behalf of the Agricultural Committee.

MR. BLAKEMAN: Tom Blakeman, advisor for the Ag Committee and the Livingston County Board.

MRS. GERWIN: Carolyn Gerwin on behalf of myself and several private citizens.

HEARING OFFICER: Are there any preliminary motions or matters that should be taken up at this time? Hearing none, are

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1 there any stipulations with regard to the
2 hearing notices or any other matters?

3 MR. LEE: Mr. Hearing Officer, I
4 believe there is a stipulation among counsel
5 that the Applicant's Exhibit 1 be and is
6 identified as the application as supplemented
7 including the drawings and the operating
8 record which is at the County Clerk's office,
9 and we thought it would be easiest not to
10 clutter this room even further with that
11 exhibit. I believe it's stipulated that that
12 exhibit be admitted.

13 HEARING OFFICER: And that would
14 include the seven volumes, the drawings, and
15 also the supplemental volume. Is that
16 correct?

17 MR. LEE: Plus the operating record.

18 HEARING OFFICER: Any objection to
19 that being admitted as Applicant's Exhibit 1?

20 MRS. GERWIN: Do we need to use
21 these all the time?

22 HEARING OFFICER: You know, I think
23 it would be helpful. I think there are
24 people in the back that may have difficulty

16

1 hearing us without them.

2 MRS. GERWIN: On behalf of the
3 citizens, we were not able to access parts of
4 the operating record. It wasn't filed along
5 with the rest of it right away, and we just
6 want to note that that, you know, we don't
7 stipulate that that was timely. I just want
8 to preserve that issue.

9 HEARING OFFICER: Mr. Lee?

10 MR. LEE: Well, I don't think that's
11 quite correct. It was all filed at the
12 courthouse at the same time. There was an
13 additional copy made available at the
14 library. The volumes of the application were
15 made available before we learned that there
16 was a desire for the operating record compact
17 disks, but it was all filed officially at one
18 time.

19 HEARING OFFICER: Including the
20 operating record?

21 MR. LEE: Yes.

22 HEARING OFFICER: Okay. I'm going
23 to allow the application and the operating
24 record to be admitted as Applicant's Exhibit

EXHIBIT B

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1. Would the Applicant like to make an opening statement?

MR. LEE: Yes. Thank you. As Mr. McCarthy said and as I identified myself earlier, my name is Doug Lee, and I'm privileged to be one of the attorneys representing the Applicant, American Disposal Services of Illinois, this morning. I am a partner in a small firm in Dixon and sometimes -- which is about two hours north of here. And sometimes people think that if somebody comes from some distance away, he must be very smart or must really know something that's relevant to the proceedings. Maybe when we are done, you'll think that. I fear, however, that I'll always be remembered in Livingston County as the dope who forgot to notify the Leonards the first time through. So that's on me. That's why we're here now, and I apologize for the inconvenience that caused everybody.

With us this morning is our co-counsel, George. Mueller. Mr. Mueller probably knows more about hydrogeology than

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any other lawyer and I'm pleased to have him here today. Representing the Applicant are John McDonnell and Dave Bryant whom most of you know. The lead engineer on the application is Devin Moose who is also here, and there are a number of other folks and witnesses that you will hear from as the hearing progresses.

I won't -- I'll try not to speak long here, but I think everybody realizes that this is a large project for American Disposal Services, for its parent company, Allied Waste, for Livingston County Board, and for the residents of Livingston County. There's a lot at stake here for everybody. We, therefore, anticipate and expect that you will give the application and this hearing the seriousness and the attention that it requires and deserves.

Mr. McCarthy referenced briefly the unique situation the County Board finds itself in, not as legislators, but as members of the jury. And he also mentioned the burden of proof that has with the criteria,

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the nine and ten criteria that he talked about. It is a burden of proof that we have. It is a burden of proof that we welcome. It's an opportunity we welcome. We're anxious to start telling our story. We are very proud of this project.

And we're confident that after you've heard all the evidence, you'll find that not only did we satisfy the criteria but also that we demonstrated that the project is a good one for Allied Waste, for American Disposal, for Livingston County, for the citizens of Livingston County. And we appreciate your attention. Thank you.

HEARING OFFICER: Mr. Mueller, do you desire to make any comments?

MR. MUELLER: We do not, Mr. McCarthy.

HEARING OFFICER: Mrs. Gerwin?

MS. GERWIN: Good morning. My name is Carolyn Gerwin, and I am here today officially as an Objector and as Objectors' counsel. I am an attorney in the Illinois bar. I was admitted in 1987. I practiced

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environmental law in the corporate world for nine of those years on behalf -- we used to say we represented the polluters, just to be real clear about it, but my area was not in trial work but was in negotiation and merger and acquisition type work. So this is a new and strange milieu for me. So I apologize if I'm not as smooth as some of the other counsel here today.

I see my role as an advocate, an advocate and a champion of the County, the local people, and the County Board which may surprise some of you given how things have gone the last few months, but that in fact is our intent and motivation.

A preliminary matter that I just wanted to address this morning is the issue of annexation by the City. There have been rumors about the City annexing or wanting to annex the landfill, and I know that would be a concern to the board. And my fear is that if that concern is not addressed, that the actual factual criteria will take a back seat to the issue of the intergovernmental

EXHIBIT C

1409

1 not the public." And that was as per their
2 opinion.

3 And there was also representatives
4 there that were concerned about the Stauffer
5 Chemical superfund site, and they did mention
6 that the former EPA omnibusman was forced to
7 resign because he came under fire by the U.S.
8 EPA. He had to spend all his time defending
9 his actions in helping the citizens with
10 their complaints that he had no time to
11 devote to the job, so he resigned. And I'm
12 sure that there's somewhere that you can get
13 all that information on that C-Span2
14 presentation.

15 I realize that all the employees at
16 the landfill work very hard and they are
17 conscientious in doing their job, and I hope
18 that the board members came here with an open
19 mind and are going to really consider all the
20 evidence that was presented to them.

21 But I am mostly concerned about the
22 health and welfare of the Livingston County
23 residents, those who use the water sources,
24 and also for the employees of the landfill

1410

1 who work so closely around the fumes and all
2 the other exposures there. Money cannot buy
3 health.

4 That's the conclusion of my talk.

5 HEARING OFFICER: Thank you. Miss
6 Gerwin, you wanted to make a public comment?

7 MS. GERWIN: If it's all right, I'd
8 like to stand over here by my box of papers.
9 Well, this is it. It's Friday. You will
10 hear from me in two different modes today,
11 public comment and closing arguments. Public
12 comment as a citizen. Closing arguments as
13 an Objector's representative attorney. I
14 promise to be as brief as I can and try not
15 to repeat anything. I do have to maintain a
16 certain pace for the court reporter she tells
17 me.

18 First thing I want to say is that
19 yesterday I decided I didn't have to testify
20 because I don't think I need to put into the
21 official record of this proceeding anything
22 more than the written versions of the
23 information that we have collected. And if
24 you've seen Mr. Mueller's cross-examination

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1 techniques, you know why I might hesitate to
2 testify. He is one scary dude. To a trial
3 lawyer, that's a very high compliment. I'm
4 very impressed with his skills.

5 So I will make a brief statement of
6 some of the facts we have gathered that
7 relate to the criteria. I'm going to rapidly
8 describe some of the most helpful info that
9 we found which we will submit as written
10 comments or documents in our written comment
11 in this 30-day period. I have extra copies
12 of some of them; and if anyone wants to get a
13 headstart on their homework and would like to
14 look at a particular document, just ask me,
15 and I'll see if I've got a copy. I've got
16 extra copies of some things but not
17 necessarily everything.

18 My public comment will also deal
19 with what I see as the choices now before us.
20 Now that we have hopefully absorbed all this
21 various information; and when I say we, I
22 mean the County because I believe we are all
23 in this together. Of course, only the
24 Board's vote will determine our future. You

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1 have an unbelievably serious duty here.

2 Then we will have closing arguments
3 in which I will briefly review the facts that
4 I think are particularly important to the
5 siting criteria.

6 So public comment. Very quickly,
7 I'm going to go through these documents. And
8 if I'm going too fast, flag me down. We have
9 -- I'm going to show you a copy of the
10 American -- or Illinois-American Water
11 Quality Test. We've gotten a lot of
12 questions about that during the past months.
13 You can get this from the water company, and
14 they will indicate what the levels are in the
15 drinking water.

16 Another question I would get quite
17 often is concerns about cancer and other
18 diseases in the community, and I have been
19 hearing that since I came here. And I
20 decided, well, let's see if we can really
21 find out what is going on. And so somebody
22 at the hospital, I don't know this person,
23 but they provided some documentation, and
24 then I followed up on it and found the

EXHIBIT D

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1 citizens' concerns than we are here. And
 2 this is the kind of activity that Citizens
 3 Against Landfill Expansion would like to see
 4 our own county officials take. And we
 5 believe it's their obligation and
 6 responsibility to the local citizens.

7 When I phoned the McHenry Solid
 8 Waste Coordinator, she relayed to me that at
 9 the present time, there is not a landfill in
 10 McHenry County. Presently, discussion is
 11 underway to promote a transfer station. And
 12 when I spoke to their office on Friday of
 13 last week, I was informed they are involved
 14 in hearings right now regarding the transfer
 15 station. And she also continued by sharing
 16 the most exciting information of all, that
 17 being a new technology called closed loop
 18 gasification.

19 Regarding the closed loop
 20 gasification process, the City of Morris is
 21 researching the subject as we speak. I
 22 discussed this with the Grundy County Solid
 23 Waste Management Coordinator who referred me
 24 to the mayor, Dick Kopczick, with whom I

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1 talked to just last week. Mr. Kopczick
 2 stated the general feeling there is that
 3 Grundy County has done its fair share of
 4 collecting waste from other communities.
 5 This parallels with the feeling of many
 6 people here. There, county board
 7 representatives met with city officials
 8 together so they could all know what was
 9 going on.

10 There are also numerous health
 11 issues to think about as well as the concern
 12 for water supplies. Unfortunately, I have no
 13 data to present. I feel that we all seem to
 14 take these two precious gifts for granted and
 15 may want to admit there is no evidence that
 16 living near landfills promotes good health in
 17 the long run.

18 The current issues regarding
 19 expansion have caused me to think about many
 20 topics, and you've just heard a couple of
 21 them, and I'm thankful for what I have
 22 learned. However, I have to say the focus of
 23 my comments comes back to the County Board
 24 for so much responsibility lies within this

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1 governing body.

2 It seems odd to me, more like
 3 unbelievable, that the only hope you appear
 4 to have for economic development in this area
 5 is a landfill. I'm not always at the
 6 meetings, so I'm sure you are working on
 7 other topics. But it seems like a lot of
 8 reliance is placed on the money that's going
 9 to come from this landfill should the
 10 expansion go through.

11 Is this all the better you think of
 12 the citizens? Pontiac has so much potential.
 13 Look around you. We are situated in a place
 14 that could and would benefit greatly with
 15 some creative, positive thinking. With
 16 Chicago only a couple hours to our north
 17 and Bloomington, Springfield, and St. Louis
 18 to the south and being situated along a major
 19 interstate, there should be plenty of
 20 opportunity for Pontiac.

21 Last fall, I was drawn to the cover
 22 of the current Pontiac phone book the minute
 23 I laid eyes on it, and I brought it here for
 24 you to see. The historic courthouse, the

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1 park, the geese in the forefront, and the
 2 river bridge. How could a person not be
 3 drawn to it? It's very appealing.

4 The citizens of this community
 5 deserve the scene presented on this
 6 publication, not one that sits in the shadow
 7 of garbage. Which would you rather be known
 8 for? I'd be happy to pass these around if
 9 anybody is interested. And I'd like to just
 10 ask when is enough enough?

11 I don't blame anybody for selling
 12 their property to the landfill because who
 13 wants to live next to one? The total and
 14 absolute responsibility falls to the County
 15 Board members of today and of the recent past
 16 for allowing the landfill to grow to such
 17 magnificent proportions.

18 And also, this is one of those
 19 what-ifs Mr. Vogel was referring to. Since
 20 closed loop gasification is being considered
 21 as near to us as Morris, this might be a
 22 worthy what-if. If this new closed loop
 23 gasification process catches on, and it may
 24 take several years, then the financial burden

EXHIBIT E

1 It's that that may happen during the peak
2 time of construction for a month or two-month
3 period of time.

4 Q. That figure appeared on some of the
5 materials that our Objector's group or CALE
6 had circulated, right?

7 A. Yes.

8 Q. And was that the figure that was
9 presented by Mike Friend at Issues & Eggs at
10 the Elk's Club?

11 A. It was.

12 Q. As a manager, I take it that you are
13 probably aware of new studies on the issue of
14 the human health hazards from diesel exhaust,
15 correct?

16 A. I'm aware that there has been a
17 study done. That's really all I know about
18 it.

19 Q. Are you aware that the new
20 regulations greatly burden the sale of diesel
21 engines that don't meet new standards for the
22 production of pollutants?

23 A. I'm not aware of that standard.
24 What I am aware of is that the manufacturers

1 of heavy equipment are continually building
2 product to reduce emissions.

3 Q. On page 1, you also have information
4 about weather closures?

5 A. Yes.

6 Q. And I'd like to ask about gusting
7 conditions. Do you also have a limitation on
8 your operations if there are intermittent
9 gusts?

10 A. No.

11 Q. Isn't it true that the facility has
12 filed for a Title V air permit in the past
13 year?

14 A. Yes, it has.

15 Q. And that permit was published
16 sometime it was either summer or fall of
17 2002, right?

18 A. I don't know. I can't speak to
19 that.

20 Q. Who handles the air permitting
21 issues at the facility?

22 A. The permitting issues are typically
23 done by the environmental manager in
24 conjunction with consultants that he has

1 hired in order to do that.

2 Q. Who is the environmental manager?

3 A. John McDonnell would be the
4 environmental manager.

5 Q. And are you aware that a public
6 hearing on that Title V draft permit is going
7 to be held sometime in the near future?

8 A. I was made aware of that, I think,
9 the day before yesterday.

10 Q. Have you been given a date for that
11 hearing?

12 A. No, ma'am.

13 Q. Neither have I. You indicated that
14 in 1997 was when the facility started to get,
15 quote, busier, end quote?

16 A. Yes.

17 Q. And by that, you mean that there
18 were more trucks coming in out at the
19 facility, right?

20 A. Yes.

21 Q. Is it also true that the facility
22 was becoming substantially more visible to
23 people from the highway at that time?

24 A. The site had always been visible

1 from the highway. I mean the height was --
2 it was starting to get higher. There's no
3 question about that.

4 Q. On the slide on page 4 entitled -- I
5 still say slides. I guess I'm kind of dating
6 myself. I don't know what you call them in
7 PowerPoint screens.

8 A. Slides are fine.

9 Q. Okay. Start talking about records
10 pretty soon. I don't know what that is
11 anymore. I-55 litter under your
12 three-strikes-and-it's-out policy, you note
13 you began keeping score in April 2002,
14 correct?

15 A. Yes.

16 Q. And that was approximately one month
17 before notice was published that American
18 Disposal was going to seek this major
19 expansion, correct?

20 A. Yes.

21 Q. Is the three-strikes-and-you-are-out
22 policy required under our current host
23 agreement?

24 A. No.