

MAY 28 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUTTER SANITATION, INC. and
LAVONNE HAKER,

Petitioners,

vs.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 2004-187
(Permit Appeal – Land)

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA HAND DELIVERY)

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274
(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED LIST)

PLEASE TAKE NOTICE that I have today served for filing with the Office of the Illinois Pollution Control Board an original and nine copies of **MR. JESSE RUFFNER AND FAMILY, MR. LLOYD STOCK, AND STOCK & COMPANY, LLC'S MOTION TO INTERVENE** attached herewith, copies of which are herewith served upon you.

Respectfully submitted,

MR. JESSIE RUFFNER AND FAMILY
and MR. LLOYD STOCK

Dated: May 28, 2004

By: 
One of Their Attorneys

John M. Heyde, Esq.
SIDLEY AUSTIN BROWN & WOOD LLP
10 South Dearborn Street
Chicago, Illinois 60603
(312) 853-7716

THIS FILING SUBMITTED ON RECYCLED PAPER

RECEIVED
CLERK'S OFFICE

MAY 28 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
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SUTTER SANITATION, INC. and
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ILLINOIS ENVIRONMENTAL
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(Permit Appeal – Land)

**MR. JESSE RUFFNER AND FAMILY, MR. LLOYD STOCK,
AND STOCK & COMPANY, LLC'S MOTION TO INTERVENE**

NOW COME MR. JESSE RUFFNER and FAMILY ("Ruffner Family"), and MR. LLOYD STOCK ("Mr. Stock"), by their attorneys, SIDLEY AUSTIN BROWN & WOOD LLP, and STOCK & COMPANY, LLC ("Stock & Co."), by its attorneys, HODGE DWYER ZEMAN, and hereby move for intervention as party participants in this permit appeal pursuant to 35 Ill. Admin. Code § 101.402. In support of their motion, the Ruffner Family, Mr. Stock, and Stock & Co. state as follows:

1. On October 1, 2003, Sutter Sanitation, Inc. and Lavonne Haker ("Petitioners") filed an Application for Permit ("Application") with the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") to develop a garbage transfer station in Effingham County, Illinois (the "Site").
2. On March 30, 2004, the Agency denied the Petitioners' Application to develop the Site because Petitioners failed to provide proof that granting the Application would not result in violations of the Illinois Environmental Protection Act ("Act"). A copy of the denial letter is attached as Exhibit A.

Printed on Recycled Paper

3. The Agency's denial letter states in part that:

Issuance of a permit for this facility would violate Section 22.14 of the Act because the proposed garbage transfer station would be located closer than 1000 feet from a dwelling that was so located before the application was submitted to the Illinois EPA.

Denial Letter at 2.

4. On April 26, 2004, Petitioners filed the instant appeal with the Illinois Pollution Control Board ("Board") contesting the March 30, 2004, determination of the Agency denying the request for a permit to develop the Site.

5. The Board's procedural rules at 35 Ill. Admin. Code § 101.402, provide in relevant part:

- a) The Board may permit any person to intervene in any adjudicatory proceeding....
- b) In determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding.

- d) Subject to subsection (b) of this Section, the Board may permit any person to intervene in any adjudicatory proceeding if:

- 1) The person has a conditional statutory right to intervene in the proceeding;
- 2) The person may be materially prejudiced absent intervention; or
- 3) The person is so situated that the person may be adversely affected by a final Board order.

35 Ill. Admin. Code § 101.402.

6. A permit appeal is an adjudicatory proceeding pursuant to the definition of "adjudicatory proceeding" found in the Board's procedural rules at 35 Ill. Admin. Code § 101.202.

7. This Motion to Intervene is timely, and will not unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding. The Board accepted the Petitioners' appeal on May 6, 2004, and the Hearing Officer has set a telephonic status conference for June 3, 2004. The statutory decision deadline is August 24, 2004. In order to insure an efficient and orderly proceeding that does not result in undue delay, the Ruffner Family, Mr. Stock, and Stock & Co. propose to proceed, file all motions, briefs, and all other necessary legal documents, jointly in this matter.

8. As set forth in Sections 101.402 (d)(2) and (d)(3) allowing "any person" to intervene, the Ruffner Family, Mr. Stock, and Stock & Co. will be materially prejudiced absent intervention allowing full and meaningful participation in the Board proceeding and are so situated that they will be adversely affected by a final Board order overturning the Agency's denial in this matter. 35 Ill. Admin. Code § 101.402(d)(2)-(3).

9. Under Section 22.14 of the Act, 415 ILCS 5/22.14, it is illegal to establish a pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from any dwelling. As discussed below, there are currently two dwellings located within 1000 feet of the Site on property owned by Stock & Co.

10. The Ruffner Family currently resides at 2187 North 300th Street, Mason, Illinois, which is located directly across the street, and within 1000 feet, of the Site. The

Ruffner Family has lived in a dwelling at this address since October 1, 2003. The Ruffner Family is expecting the birth of their first child in June 2004. The Ruffner Family also submitted comments to the Agency after Petitioners submitted the Application. A Board decision contrary to the Agency's denial of the Application would infringe on the Ruffner Family's rights under Section 22.14. There is no doubt that the Ruffner Family would be adversely affected by a reversal of the Agency's decision and would be materially prejudiced absent intervention in this matter. Pursuant to Section 22.14, the Ruffner Family has an absolute right to live in their current dwelling without the development of a garbage transfer station within 1000 feet of their doorstep. Accordingly, the Board should permit the Ruffner Family to intervene pursuant to 35 Ill. Admin. Code § 101.402(d).

11. Mr. Stock is related to the owners of Stock & Co., but is not himself an owner in Stock & Co. Mr. Stock manages a number of homes in the Mason area, including both the mobile home, which he also owns, and a newer manufactured home, which are both across the street and within 1000 feet of the Site. The mobile home was rented and inhabited by two previous tenants beginning in the fall of 2002, before the Application was submitted to the Agency. Mr. Stock appeared and provided public comment at the Board hearing regarding the siting appeal and submitted comments to the Agency after Petitioners submitted the Application. A decision by the Board overturning the Agency's denial of the Application would infringe on Mr. Stock's financial and management interest in the mobile and manufactured homes located on the Stock & Co. property. Mr. Stock would be adversely affected by a reversal of the Agency's decision

and would be materially prejudiced absent the ability to intervene in this matter and represent his private interests. Development of the Site as a garbage transfer station would discourage the Ruffner Family from continuing to lease the property and further discourage any future potential tenants for the two homes managed by Mr. Stock. Accordingly, the Board should permit Mr. Stock to intervene pursuant to 35 Ill. Admin. Code § 101.402(d).

12. Stock & Co. owns farmland in Effingham County, along County Road 25, directly across the street and to the west of the Site. Historically, a dwelling was located on Stock & Co.'s property, although for several years a dwelling did not exist. Stock & Co. acquired this property on May 4, 1999, in part so as to locate homes, including the mobile home and manufactured home now present on the property. The mobile home located on the property was first inhabited in the fall of 2002. Prior to the Ruffner Family, Ms. Bridie Knierim and Mr. Andrew Wharton successively leased and inhabited the mobile home located on the Stock & Co. property.

On March 21, 2002, Stock & Co. received notice from Petitioners regarding the proposed development of the Site. On April 19, 2002, the Application for Local Siting Approval for Proposed Solid Waste Transfer Station was filed with the Effingham County Board and a representative of Stock & Co. (Mr. Duane Stock) attended the local siting hearing held on August 14, 2002, to ask questions of the witnesses and make public comments. Stock & Co. also participated in an appeal of the Effingham County siting decision before the Board and to the Fifth District Appellate Court, and submitted comments to the Agency after Petitioners submitted the Application. Thus, Stock & Co.

has been actively engaged in all of the proceedings related to the proposed development of the Site.

A decision by the Board overturning the Agency's denial of the Application would infringe on Stock & Co.'s rights, the property interests in the land and the mobile and manufactured homes located within 1000 feet of the Site, under Section 22.14 of the Act. Such a decision by the Board to allow development of the Site as a garbage transfer station would discourage the Ruffner Family from continuing to lease the property and discourage any future potential tenants due to the negative environmental and psychological effect of a garbage transfer station less than 1000 feet from their residence. Concomitantly, this impact on the tenants would have a negative financial effect on the property interests of Stock & Co., and would also limit any future development beyond that which has already occurred, development that was intended when the land was purchased in 1999, before any notice or siting proceedings in this matter. Stock & Co. would clearly be adversely affected by a reversal of the Agency's decision and would be materially prejudiced absent intervention in this matter. Accordingly, the Board should permit Stock & Co. to intervene pursuant to 35 Ill. Admin. Code § 101.402(d).

13. The participation of the Ruffner Family, Mr. Stock, and Stock & Co. is necessary to this proceeding to insure, along with the other reasons stated above, that the property, leasehold, financial, and business interests of all three entities are adequately represented and defended, in addition to the governmental interests that the Agency will be representing in defending its denial of the Application.

14. The Board's recent procedural rule revisions clearly allow the Board to permit the Ruffner Family, Mr. Stock, and Stock & Co. to intervene pursuant to 35 Ill. Admin. Code § 101.402. The Board has not addressed the issue of the intervention of private third parties since the adoption of the new procedural rules on January 1, 2001. However, the Board has addressed the issue of intervention in the context of local governmental units. In Saline County Landfill, Inc. (SCLI) v. Illinois EPA, PCB No. 02-108 (April 18, 2002) the Board allowed intervention and noted that the Village of Riverdale was denied intervention in a case involving a permit appeal "prior to the Board's new procedural rules which changed the Board's prior rule and policy on third party intervention (see 35 Ill. Adm. Code 101.402)." SCLI, PCB No. 02-108, slip op. at 4.

The Board's recent decision denying intervention to the Village of Cary ("Cary") in Lowe Transfer, Inc., et al. v. McHenry County Board, PCB No. 03-221 (July 10, 2003) is distinguishable from the present case. In Lowe Transfer, the McHenry County Board denied a siting request by a developer, as opposed to the denial of a permit by the Agency. Cary, as a governmental entity, proposed several reasons to the Board as to why intervention was necessary; however, those arguments primarily related to Cary's status as the protector of its citizens and the future development potential of Cary in the area of the proposed pollution control facility. These interests were similar, if not identical, to the interests of McHenry County, which was already a party. Cary did not own, live in, or manage a dwelling within 1000 feet of the proposed garbage transfer station, as Mr. Stock, the Ruffner Family, and Stock & Co. do in the present case. The significant

private property interests held by the three proposed interveners in this case set them apart and clearly warrant intervention pursuant to the Board's new procedural rule and policy.

The interests of the Ruffner Family, Mr. Stock, and Stock & Co. also make this case differ from cases in which citizen groups have sought to intervene to oppose permits. The Ruffner Family, Mr. Stock, and Stock & Co. are not groups advancing particular views of policy; rather, they are residents, homeowners, and a landowner within a specific radius that the General Assembly sought to protect in enacting Section 22.14. As a result, they have interests that would be more adversely affected should the Board reverse the Illinois EPA's permit decision than would most others who might seek to intervene in Board adjudications.

15. The Ruffner Family, Mr. Stock, and Stock & Co. through their undersigned attorneys, request this Board's leave to intervene and to participate fully as parties in this matter; however, as noted above, the Ruffner Family, Mr. Stock, and Stock & Co. propose to proceed, file all motions, briefs, and all other necessary legal documents, jointly in this matter.

16. Pursuant to Section 101.504, the facts asserted herein are substantially part of the record before the Illinois EPA and therefore, also of record in this proceeding before the Board, except primarily as to the material prejudice and adverse effect absent intervention. Accordingly, affidavits on behalf of the Ruffner Family, Mr. Stock, and Stock & Co. are attached as Exhibits B, C, and D. (Exhibits B and C were not available

in hard copy form at the time of this filing; faxed copies, therefore, are included. We will supplement this filing promptly with the hard copy originals as soon as we receive them.)

Wherefore, MR. JESSE RUFFNER AND FAMILY, MR. LLOYD STOCK, and STOCK & COMPANY, LLC request that they be allowed to intervene as parties in this proceeding. In the alternative, MR. JESSE RUFFNER AND FAMILY, MR. LLOYD STOCK, and STOCK & COMPANY, LLC request leave to file an *amicus curiae* brief in this matter.

Respectfully submitted,

MR. JESSE RUFFNER AND FAMILY
and MR. LLOYD STOCK

STOCK & COMPANY, LLC

By: 
One of Their Attorneys

By: Christine G. Zeman / JMH
Lead Attorney

Dated: May 28, 2004

John M. Heyde, Esq.
SIDLEY AUSTIN BROWN & WOOD LLP
10 South Dearborn Street
Chicago, Illinois 60603
(312) 853-7716

Christine G. Zeman
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

STOK:001/Fil/Appeal – PCB 2004-187/Motion to Intervene - redline

Exhibit A



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/524-3300

March 30, 2004

Owner

Mrs. LaVonne Haker
303 South Main Street
Altamont, Illinois 62411

Operator

Sutter Sanitation Service, Inc.
Attention: Mr. Tracy Sutter
Post Office Box 569
Shumway, Illinois 62461

CERTIFIED MAIL

7001 2510 0002 1279 4630

7001 2510 0002 1279 4647

Re: 0490305004 -- Effingham County
Sutter Transfer Station
Log No. 2003-366
Permit File

Dear Mrs. Haker and Mr. Sutter:

This will acknowledge receipt of your Application for Permit to develop a solid waste management site, dated September 29, 2003, etc., and received by the Illinois EPA on October 1, 2003, etc.

The application for Log 2003-366 consists of the following documents:

<u>Document</u>	<u>Dated</u>	<u>Date Received</u>
Original Application	September 29, 2003	October 1, 2003
Additional Information	November 24, 2003	November 26, 2003
Additional Information	December 3, 2003	December 4, 2003
Additional Information	December 12, 2003	December 15, 2003
Additional Information	December 12, 2003	December 16, 2003
Additional Information	December 23, 2003	December 29, 2003
Additional Information	January 21, 2004	January 26, 2004
Additional Information	January 29, 2004	January 30, 2004
Additional Information	January 30, 2004	January 30, 2004

Your permit application for a transfer station for municipal waste including garbage, is denied.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act (Act). Section 39(a) of the Act [415 ILCS 5/39(a)] requires the Illinois EPA to provide the applicant with specific reasons for the denial of permit. The following reason(s) are given:

EXHIBIT

Page 2

1. The application states the floor of the transfer building will be inspected and improved, but failed to describe the procedures for inspection or repair. Specifically, the application failed to identify what the inspection might accomplish or reveal, or what improvement might be necessary to the floor to make it suitable for use as a transfer station. Additional information requested in response to this issue, dated December 12, 2003, and received December 16, 2003, proposed no testing or criteria for pass/fail, only that the concrete floor consisted of 8.5 inches of concrete over 2-3 inches of aggregate subbase. The application indicated the two cores were removed from the floor, but test results on the cores and procedure for sealing were not provided. The applicant has not submitted adequate proof that the tipping floor is designed to prevent a release of waste to the environment in accordance with Sections 12(a) and 21(a) of the Act.
2. The application failed to include specific handling and management procedures to be followed when certain wastes not allowed for landfill disposal by Title V of the Act are discovered mixed in the waste received at the transfer station: Lead acid batteries (automotive), landscape waste, potentially infectious medical waste (PIMW), PCB waste, and used oil. The application failed to include handling and management procedures to be followed when wastes that require additional or special handling: Asbestos and used tires.
3. Issuance of a permit for this facility would violate Section 22.14 of the Act because the proposed garbage transfer station would be located closer than 1000 feet from a dwelling that was so located before the application was submitted to the Illinois EPA.

Based upon the deficiencies noted above, the application does not adequately demonstrate compliance with 35 IAC 807.207(a).

Within 35 days after the date of mailing of the Illinois EPA's final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

Sincerely,



Joyce L. Munie, P.E.
Manager, Permit Section
Bureau of Land

JLM:JAS:bjh\042761s.doc

cc: David Kimmle, P.E., Hurst-Rosche Engineers Inc.
Charles J. Northrup, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd.

Exhibit B

COUNTY OF EFFINGHAM)
) SS.
STATE OF ILLINOIS)

AFFIDAVIT OF JESSE RUFFNER

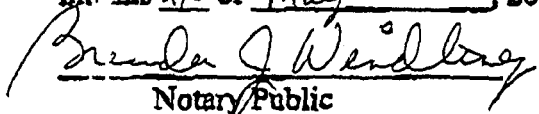
I, Jesse Ruffner, being first duly sworn, deposes and states as follows:

1. I live at 2187 North 300th Street, Mason, Illinois, with my wife who is expecting the birth of our first child in June 2004.
2. I live across the street and within 1000 feet of the proposed garbage transfer station.
3. I have read the foregoing Motion to Intervene, and it is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.


Jesse Ruffner

Subscribed and sworn to before
me this 27th of May, 2004.


Brenda J. Wendling
Notary Public

STOK:001/Fil/Appcal - PCB 2004-187/Affidavit - Jesse Ruffner

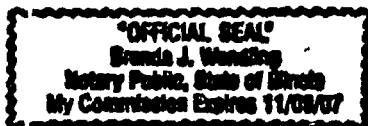


Exhibit C

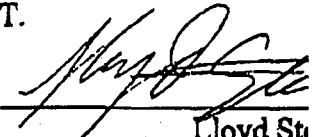
COUNTY OF EFFINGHAM)
) SS.
 STATE OF ILLINOIS)

AFFIDAVIT OF LLOYD STOCK


I, Lloyd Stock, being first duly sworn, deposes and states as follows:

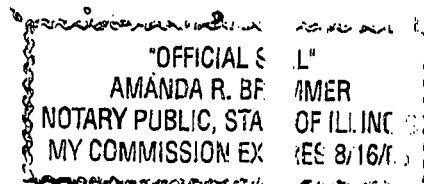
1. I own and manage the mobile home, which is across the street and within 600 feet of the proposed garbage transfer station.
2. I have leased the land on which the mobile home is located from Stock & Company, LLC since September of 2002.
3. I also manage the manufactured home that is located next to the mobile home and is also within 1000 feet of the proposed garbage transfer station.
4. I have read the foregoing Motion to Intervene, and it is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.


 Lloyd Stock

Subscribed and sworn to before
 me this 27th of May, 2004.


 Notary Public



STOCK:001/Fil/Appeal - PCB 2004-187/Affidavit - Lloyd Stock

Exhibit D

COUNTY OF CHRISTIAN)
) SS.
STATE OF ILLINOIS)

AFFIDAVIT OF DUANE RICHARD STOCK

I, Duane Richard Stock, being first duly sworn, deposes and states as follows:

1. I am the Registered Agent for Stock & Company, LLC ("Stock & Co."),
an Illinois limited liability company in good standing.

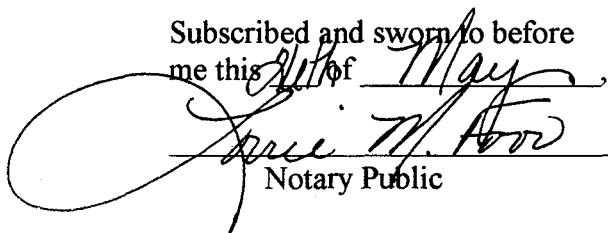
2. I own a business for farm management and real estate sales, D.R. Stock,
Inc., 205 South Washington Street, Post Office Box 151, Taylorville, Illinois.

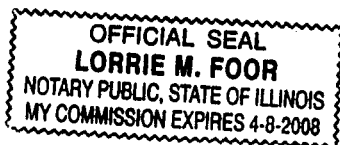
3. I have read the foregoing Motion to Intervene, and it is true and correct to
the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.


Duane Richard Stock

Subscribed and sworn to before
me this 21th of May, 2004.


Notary Public



CERTIFICATE OF SERVICE

I, John M. Heyde, the undersigned, hereby certify that I have served the attached
MR. JESSE RUFFNER AND FAMILY, MR. LLOYD STOCK, AND STOCK &
COMPANY, LLC'S MOTION TO INTERVENE upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

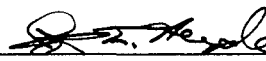
via hand delivery; and upon:

John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Charles J. Northrup, Esq.
Sorling, Northrup, Hanna,
Cullen and Cochran, Ltd.
Suite 800 Illinois Building
607 East Adams Street
Springfield, Illinois 62705

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9274

by depositing said documents in the United States Mail in Chicago, Illinois, proper
postage prepaid, on May 28, 2004.



John M. Heyde

STOK:001/Filings/Appeal-PCB – 2004-187/NOF-COS – Motion to Intervene