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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
April 17, 2003

ORIGINAL

CITY OF KANKAKEE,)	
)	
Petitioner,)	
)	
v.	)	PCB 03-125
	)	(Third-Party Pollution Control Facility
COUNTY OF KANKAKEE, COUNTY	)	Siting Appeal)
BOARD OF KANKAKEE, and WASTE)	
MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondents.)	

MERLIN KARLOCK,)	
)	
Petitioner,)	
)	
v.	)	PCB 03-133
	)	(Third-Party Pollution Control Facility
COUNTY OF KANKAKEE, COUNTY	)	Siting Appeal)
BOARD OF KANKAKEE, and WASTE)	
MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondents.)	

MICHAEL WATSON,)	
)	
Petitioner,)	
)	
v.	)	PCB 03-134
	)	(Third-Party Pollution Control Facility
COUNTY OF KANKAKEE, COUNTY	)	Siting Appeal)
BOARD OF KANKAKEE, and WASTE)	
MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondents.)	

KEITH RUNYON,)	
)	
Petitioner,)	
	)	PCB 03-135
v.	)	(Third-Party Pollution Control Facility
	)	Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)	
BOARD OF KANKAKEE, and WASTE)	
MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondents.)	

WASTE MANAGEMENT OF ILLINOIS,)	
INC.,)	
)	
Petitioner,)	
	)	PCB 03-144
v.	)	(Pollution Control Facility
	)	Siting Appeal)
COUNTY OF KANKAKEE,)	
)	
Respondent.)	

HEARING OFFICER ORDER

The parties have filed a plethora of motions and objections regarding the discovery that has been served thus far. The rulings on the respective motions and objections are set forth below.

On April 10, 2003, respondent Waste Management of Illinois, Inc., (Waste Management), filed objections to petitioners Keith Runyon and Michael Watson's interrogatories. Waste Management also filed objections to Watson's document requests. Runyon appeals on the grounds that the County of Kankakee (County) decision was against the manifest weight of the evidence on one of the criteria in Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (2002)). Watson appeals on the grounds that the County lacked jurisdiction, the County's decision was against the manifest weight of the evidence on seven of the criteria in Section 39.2 of the Act, and the County's proceedings were fundamentally unfair.

When a party challenges statutory criteria, Section 40.1 (b) of the Act requires that the review before the 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, 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 (cons.) (Jan. 23, 2003). Further, 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). Finally, Section 101.616 of the Board's procedural rules, allows discovery of all relevant information and information calculated to lead to relevant information.

Waste Management's objections to Runyon's interrogatories nos. 2, 3, 4, 5, 6, 7, 8, and 9, are sustained where the interrogatories appear to seek information outside of the record and therefore not relevant to Runyon's petition for review. To the extent some of the requests involve information in the record, Runyon has access to that information.

Waste Management's objection to Watson's interrogatory no. 3 is overruled and Waste Management is directed to answer. Waste Management's objection to Watson's interrogatories nos. 5, 6, 7, 8 and 9 are overruled to the extent that the reference to the "Host Agreement" pertains to the eventual siting decision. Pre-filing contacts may be probative of prejudgment of adjudicative facts. Waste Management's objections to Watson's interrogatories nos. 10 and 11 are sustained. Information concerning the adoption of the County's Solid Waste Plan involves a legislative process and therefore falls outside the purview of the Board. Waste Management's objections to Watson's interrogatories nos. 12 and 13 are sustained where the requests are overly broad and not limited to the landfill expansion at issue in this appeal. Waste Management's objections to Watson's interrogatories nos. 14, 15, and 16 are overruled subject to information sought regarding statutory criteria, to which Waste Management's objections are sustained. Waste Management's objections to Watson's interrogatories nos. 17, 18, 20, 21, 22, and 23 are overruled and Waste Management is directed to answer. Waste Management's objections to Watson's interrogatories nos. 19 and 24 are sustained.

Waste Management's objections to Watson's document requests nos. 1 and 2 are sustained. The requests are overly broad and without specific's, may seek disclosure of information protected by the attorney-client privilege. Waste Management's objections to Watson's document requests nos. 3 and 4 are overruled and Waste Management is directed to comply. Pre-filing contacts may be probative of prejudgment of adjudicative facts. Waste Management's objections to Watson's document requests nos. 5 and 6 are sustained. Information concerning the adoption of the County's Solid Waste Plan involves a legislative process and therefore falls outside the purview of the Board. To the extent that reference to the "Host Agreement" pertains to the eventual siting decision, Waste Management's objection to Watson's document request no. 7 is overruled and Waste Management is directed to comply. Pre-filing contacts may be probative of prejudgment of adjudicative facts. Waste Management's objections to Watson's document requests nos. 8, 9, 10, and 11, are overruled and Waste Management is directed to comply. Pre-filing contacts may be probative of prejudgment of adjudicative facts. Waste Management's objections to Watson's document requests nos. 12, 14 and 16 are sustained. Watson's document requests nos. 12, 14, and 16 are overly broad. Waste

Management's objections to Watson's document requests nos. 13 and 15 are overruled and Waste Management is directed to comply. The information requested is not overly broad and may be probative of prejudgment of adjudicative facts. Waste Management's objection to Watson's document request no. 17 is sustained. Information concerning the adoption of the County's Solid Waste Plan involves a legislative process and therefore falls outside the purview of the Board. Waste Management's objection to Watson's document request no. 18 is sustained. Watson's document request no. 18 is overly broad and may seek disclosure of information protected by the attorney-client privilege.

Waste Management filed a motion to quash petitioner Watson's subpoena to Patricia Beaver-McGarr, Jeremy R. Walling, and Integra Realty Resources. This motion was also filed on April 10, 2003. On April 11, 2003, Watson filed its response. Waste Management's motion is granted. It appears that the *subpoena duces tecum* requested documents relating to criterion (iii). Review of statutory criteria is limited to the record before the county board or the governing body of the municipality. Waste Management also filed a motion to quash petitioner Watson's *subpoena* to David Miller, Stephen Cocoran, and Metro Transportation Group, Inc. Watson filed its response. Waste Management's motion is granted. It appears that the *subpoena duces tecum* requested documents relating to criterion (vi). Review of statutory criteria is limited to the record before the county board or the governing body of the municipality.

On April 10, 2003, Waste Management filed objections to petitioner City of Kankakee (City), interrogatories and objections to the City's document requests. The City filed its response on April 11, 2003. The City appeals on the grounds that the County's decision was against the manifest weight of the evidence on four of the criteria in Section 39.2 of the Act, and the County's proceedings were fundamentally unfair.

Waste Management's objections to the City's interrogatories nos. 2, 3, and 5 are overruled and Waste Management is directed to answer. Pre-filing contacts may be probative of prejudgment of adjudicative facts. Waste Management's objection to the City's interrogatory no. 4 is granted in part and denied in part. Information that was exchanged or occurred at the siting hearings is not required to be answered. However, the remaining requests for information may be probative of prejudgment adjudicative facts and therefore Waste Management is directed to answer.

Waste Management's objections to the City's document requests nos. 1, 3, 4, and 10 are overruled and Waste Management is directed to comply. Waste Management's objections to the City's document requests nos. 2 and 5 are overruled subject to the requests to produce documents regarding the County's Solid Waste Management Plan, to which the objections are sustained. The Solid Waste Management Plan involves a legislative process that falls outside the purview of the Board. Waste Management's objection to the City's document request no. 6 is overruled subject to the contractual relationship between the siting applicant and its witnesses, to which the objection is sustained. Waste Management's objections to the City's document requests nos. 7, 8, and 9 are sustained subject to its duty to supplement. Waste Management's objection to the City's document request no. 11 is overruled subject to any attorney-client or work-product privilege, to which Waste Management's objection is sustained.

On April 10, 2003, the County filed its objections to petitioner Watson's interrogatories and its objections to Watson's document requests.

The County first objects to the definition of Watson's "relevant period" which states as "the period between August 1, 2001 and February 28, 2003." The County argues that "events outside the time period from August 16, 2002 (the date of the siting application) to January 31, 2003 (the date of the Count Board's decision on the siting application) are irrelevant to this appeal." The County's objection is overruled. The requested information may be relevant or lead to relevant information regarding the fundamental fairness allegation.

The County's objections to Watson's interrogatories nos. 5, 6, 7, 8, 9, 24, and 25 are overruled subject to any attorney-client or work-product privilege, to which the objection is sustained. The County's objection to Watson's interrogatories nos. 10 and 11 are sustained. The information requested involves the County's Solid Waste Management Plan and therefore falls outside the purview of the Board. The County's objections to Watson's interrogatories nos. 12 and 13 are sustained. Watson's request is overly broad where it is not limited to the landfill expansion at issue in this appeal. The County's objection to Watson's interrogatory no. 14 is overruled subject to information requested involving statutory criteria or involving attorney-client or work-product privilege, to which the objection is sustained.

In its objections to Watson's request to produce, the County first objects to the definition of Watson's "relevant period." As above, the County's objection is overruled.

It appears the County has erred in its numbering of its objections. The hearing officer assumes that the first objection is to Watson's document request is no. 3, and not no. 5. To that end, the County's objection to Watson's document requests 3, 9, 10, 22, 26 and 27 are overruled subject to information involving the attorney-client or work-product privilege, to which the County's objections are sustained. The County's objections to Watson's document requests nos. 4, 11, 12, 13 and 23 are overruled subject to the expansion not at issue in this appeal, and any attorney-client or work product privilege, to which the County's objections are sustained. The County's objection to Watson's document request nos. 5, 6, 7, 8, 18, 19, and 21 are sustained. The documents requested involves the County's Solid Waste Management Plan and therefore falls outside the purview of the Board. The County's objections to Watson's document request nos. 14, 15, 16, and 17 are sustained, as they are overly broad. In addition, document request no. 17 involves the County's Solid Waste Management Waste Plan and is therefore is beyond the purview of the Board. The County's objection to Watson's document request nos. 25 and 28 are sustained as they are overbroad and not likely to lead to relevant evidence.

On April 10, 2003, the County filed a motion to quash petitioner Watson's subpoena served on the County. Watson filed his response representing that because the County and Watson have reached a stipulation, Watson requests that that the hearing officer deem the motion and the subpoena to be moot. Watson's request is granted.

Before proceeding with the following rulings, it is noted that Section 101.620 of the Board's procedural rules allows for a maximum of 30 written interrogatories, including subparts. The hearing officer finds that Watson has run afoul of this rule in the most extreme way. For

example, the interrogatories served on the County totals roughly over 140 interrogatories, including subparts. The hearing officer, however, reluctantly declines to strike these additional interrogatories due to the time constraints in this matter that would not allow Watson to amend its pleadings.

On April 10, 2003, the County filed a notice of filing its "objections to City of Kankakee's interrogatories" and its "objections to City of Kankakee's document requests." The documents themselves, however, are entitled "defendant's answers to City of Kankakee's interrogatories" and "response to City of Kankakee's document requests." The hearing officer again assumes that these are the documents referred to in the notice. In any event, in objecting to the City's document request, the County failed to set forth the requested documents and only noted its objection. Since the hearing officer is unaware of the document requests, he is unable to rule on the County's objections. *See also* Illinois Supreme Court Rules, Rule 213.

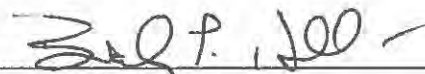
The County's objections to the City's interrogatories nos. 2 and 3 are overruled subject to information involving the County's Solid Waste Management Plan, to which the County's objections are sustained. The Solid Waste Management Plan involves a legislative process that is beyond the purview of the Board. The County's objections to the City's interrogatories nos. 4, 5, and 6 are overruled subject to any attorney-client or work-product privilege, information exchanged or occurred at the siting hearing, or involving the mental processes of the County Board members, to which the County's objection is sustained.

Finally, the County filed objections to Runyon's interrogatories on April 10, 2003. Runyon is reminded that he appealed on the ground that the County's decision was against the manifest weight of the evidence regarding statutory criteria. As such, the review before the Board shall be based "exclusively on the record before the county board or the governing body of the municipality." The County's objections to Runyon's interrogatories nos. 2, 3, 4, 5, 6, 7, 8, and 9 are sustained where all of the interrogatories seek to elicit information that is outside the record on review.

Due to this order being filed on April 17, 2003, instead of April 15, 2003, the deadlines for discovery motions and responses must be revised. To that end, responses to written discovery are now due on or before April 21, 2003. Further, the parties are to provide a list of witnesses they wish to depose on or before April 22, 2003. Any objections to the list to be filed on or before 10:00 a.m. on April 23, 2003. Responses due to be filed on or before 2:30 p.m. on April 23, 2003. Mailbox rule does not apply. Facsimile will be accepted with hard copies to follow.

The parties or their legal representatives are directed to participate in a telephonic conference with the hearing officer on April 24, 2003, at 1:30 p.m. The parties are to note the change of time and date. The April 23, 2003 telephonic status conference is hereby cancelled. The conference will be initiated by the hearing officer.

IT IS SO ORDERED.



Bradley P. Halloran
Hearing officer
Illinois Pollution Control Board
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were faxed and mailed, first class, to each of the following on April 17, 2003:

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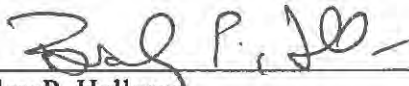
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It is hereby certified that a true copy of the foregoing order was hand delivered to the following on April 17, 2003:

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