

August 25, 2008

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20080817 Request for Second Hearing
Illinois Pollution Control Board
Case AS 08-10

STATE OF ILLINOIS
Pollution Control Board

Issues raised in McGinnis Response to Rep. Bill Mitchell's request for a second hearing in DeWitt County.

1. Timely Hearing Demand – 21 days.
2. Peoria County is proper venue.
3. DeWitt County Citizens can arrive by car.
4. DeWitt County is aware of hearing.
5. Rights protected with Peoria hearing
6. Offered amendment makes K061 delisting no longer relevant

WATCH Response

We propose that a second hearing on case AS 08-10 should be held in DeWitt County. The failure to hold an additional hearing would result in material prejudice to the residents of DeWitt County for the following reasons.

1. We grant that the treatment process is site specific to Peoria. That said, the potential impact from this K061 delisting is effectively converting Subtitle D landfills into hazardous landfills without local siting approvals, if an error is made and the resulting residue starts to exhibit its previous hazardous characteristics at some time in the future.

While hearings at all Subtitle D locations statewide may not be practical, we feel hearings at two locations, and at the next closest PDC site outside of the geographic region of the 8/18/08 hearing, which is Clinton, is prudent.

2. DUE DILIGENCE

DeWitt County residents did not receive adequate notice of this hearing to enable their informed participation. But once WATCH become aware of the hearing, all due diligence was exercised to allow WATCH to

participate in this proceeding on a limited basis – we only had 11 days to prepare. Time did not allow informed participation by interested members of the general public of DeWitt County. Our burden of proving that due diligence was met in making this request, includes the following.

- 2.1. Notice was received about noon on Aug. 7, 2008, just 11 days prior to today's hearing. We received notice from the Heart of Illinois Sierra Club. We did not receive notice at any time during the 18 months that PDC was evaluating this process though PDC held public and private meetings during that time in DeWitt County with the public and elected officials.
- 2.2. After receiving notice, DeWitt County Board chairman Steve Lobb was contacted and made a decision on Friday – in one day -- to call an emergency special board meeting for last Wednesday, Aug. 13, 2008. The delay in calling the meeting was necessary due to the need to confirm that a quorum could be obtained and to satisfy the statutory 48-hour rule for meeting notices.
- 2.3. WATCH obtained a consensus of 11 of 12 county board members by Sunday evening, Aug. 10, 2008 that the meeting was needed, providing the necessary quorum. WATCH also obtained a consensus of 10 members who indicated support for a proposed resolution calling for an additional IPCB hearing in Clinton, Illinois.
- 2.4. Notice of the emergency special meeting of the county board was attended by active members of WATCH because of the inherent limitations of mass communications for DeWitt County residents:

Regional papers from Decatur and Bloomington did not publish the notice once it was announced. One local paper the Clinton Journal published a story in its next edition at noon on Tuesday. A second county weekly newspaper the Farmer City Journal did not publish the story in its Tuesday evening edition. The third county newspaper The DeWitt County Constitution is published on Thursday and was not able to publish notice about the meeting at all. The local radio station WHOW announced the meeting on the day of the meeting, Wednesday, Aug. 13.

The simple fact is that the primary communication method to DeWitt

County residents are the local newspapers and radio and, given their publishing schedules, DeWitt County residents received, at best, one day notice of the emergency special board meeting.

3. WRITTEN COMMUNICATIONS/ SUBMITTED COMMENTS WILL BE INADEQUATE

3.1. For the IPCB to receive adequate communication – either written or oral -- DeWitt County residents must be properly informed and knowledgeable of the issues related to the delisting of K061 waste.

3.2. Adequate knowledge is only obtained over a period of time for public discussion, publication of news and meetings of public boards. Peoria County residents have had since late April 2008 to learn of the delisting issues and decide whether or not to attend this hearing and express any concerns. DeWitt County residents – except those involved with WATCH – had no opportunity to make informed comments to the IPCB.

3.3. While written communication to the IPCB is possible in the future from DeWitt County residents, adequate time must be allowed for education and the forming of opinions on the delisting issue. For DeWitt County residents that may develop informed concerns and chose to submit written comments on this delisting issue, the amount of time necessary is probably best demonstrated by that afforded Peoria County residents – four months, instead of the 11 days allowed so far.

3.4. In the alternative, a second hearing scheduled for Clinton, Illinois with adequate time to prepare would focus DeWitt County residents on their prospective involvement. It would also allow time for public education by all parties in this case on the issues involved with the delisting. It would also remedy the current disparity between the four-month opportunity afforded residents of Peoria County and the 11-day notice given residents of DeWitt County so far.

4. Contrary to the assertion by PDC attorney Brian McGinnis in his response filed Aug. 14, 2008 in this case titled “Response of Peoria Disposal Company to Letter from Bill Mitchell, Dated August 11, 2008” WATCH asserts that DeWitt County residents would not have adequate

transportation to attend today's hearing and express their concerns.

- 4.1. DeWitt County is a rural county with a larger than average senior population living under fixed incomes and would find the cost of attending this hearing in Peoria prohibitive.
 - 4.2. DeWitt County has a larger than average poverty-level population who have inadequate private transportation to attend a hearing in Peoria.
 - 4.3. DeWitt County is only now studying the implementation of a countywide federally-subsidized rural transportation program and only has a very limited local transportation program is now available.
 - 4.4. WATCH attempted to raise donations to pay for a charter bus to allow concerned DeWitt County residents to attend this hearing. That effort fail, mainly due to the limited time available to seek donations due to receiving late notice of this hearing.
5. Illinois Rep. Bill Mitchell of the 87th Legislative District filed a request on Aug. 13, 2008 for a second hearing on case AS 08-10 to be held in Clinton, citing that he received "calls from constituents expressing concerns of the long term public health and safety" of this hearing's delisting question. While Rep. Mitchell cites 35 Ill. Adm. Code 104.420, the 21-day rule, the lack of any notice of this hearing, except to Peoria County officials and a legal notice published in the local Peoria newspaper, as required by statute, made the effectiveness of notice for residents impacted by this hearing outside of the Peoria area moot. This also effectively denied the public living outside the Peoria area their rights under the 21-day rule.
 6. There is direct evidence of the interest of DeWitt County residents over landfill-related issues if they are given adequate notice and time to consider their concerns. This evidence was most recently demonstrated in the Feb. 5, 2008 primary election during which a near-record 44% turnout of voters considered a public question of whether or not the USEPA should permit a Chemical Waste Landfill at Clinton. On that question, 74% (3,531) voted against the proposed permitting. Residents received information from both sides of the issue, including several direct mailings by PDC, over a period of three months prior to forming their

opinions, as expressed at the ballot box.

7. Another example of DeWitt County residents' interest in landfill-related issues occurred at the annual township meetings held April 8, 2008. Though exercised only once before in the past 11 years, the majority of voters in eight townships representing over three-quarters of the county approved a public question for the Nov. 4, 2008 ballot asking whether or not the county board's support for the proposed Chemical Waste Landfill should be rescinded.
8. Contrary to the assertion by PDC attorney Brian McGinnis in his response filed Aug. 14, 2008 in this case titled "Response of Peoria Disposal Company to Letter from Bill Mitchell, Dated August 11, 2008" WATCH asserts that concerns of DeWitt County residents were not adequately addressed by PDC's offering to amend the local hosting agreement with the DeWitt County Board to allow the DeWitt County Board the unilateral right to determine whether or not the K061 treated waste, if delisted as a result of this hearing, is ever disposed of at the landfill in Clinton, Illinois.

While such an agreement, if reduced to writing and approved by all parties, gives the DeWitt County Board control, it is not an adequate substitute for the right of concerned residents to express their concerns directly, as would be afforded them if a hearing was convened in Clinton, Illinois.

While the amendment offered by PDC would grant, if approved, DeWitt County an option of precluding local disposal of treated K061 waste, if that waste is delisted, it wholly lacks in addressing any of the public health, safety, and public policy questions inherent in the K061 delisting question before the IPCB.

It is WATCH's position that, while the option PDC presented to DeWitt County limits immediate risk that any disposal of K061 treated waste, if delisted, may pose to DeWitt County residents by possibly precluding it from ever coming to DeWitt County, its true effect and probable objective was simply to limit the involvement of DeWitt County authorities, who oversee one of the largest Subtitle D landfills in Central Illinois and one of the landfills "likely" to receive K061 treated waste, if

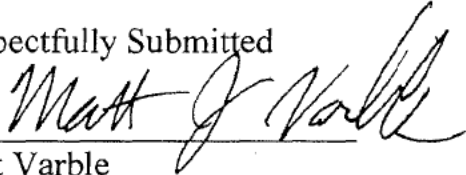
delisted, from participating in this hearing and making any concerns known.

SUMMARY:

Based upon the above stated reasons it is imperative a second hearing on case AS 08-10 be granted by the Illinois Pollution Control Board.

Respectfully Submitted

X


Matt Varble

President

WATCH

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