BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Kenda C. Hess, Theresa C. Adams, Lori Shields, John and Joyce Borcher, Lois Rooney, Charles Archibald, Yolanda Taylor-Hudson, and Mary Mann Reifsteck,	)	
	)	**PCB No. 2027-002**
Petitioners,	)	
v.	)	
Area Disposal Service, Inc. and Village of Rantoul,	)	
Respondents.	)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 28, 2026, Area Disposal Service, Inc. electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached document titled **AREA DISPOSAL SERVICE, INC'S RESPONSE TO PETITIONERS' MOTION TO COMPEL DISCOVERY RESPONSES**, a copy of which is hereby served upon you.

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CERTIFICATE OF E-MAIL SERVICE

The undersigned attorney certifies that she served a copy of the foregoing NOTICE OF ELECTRONIC FILING and the following **AREA DISPOSAL SERVICE, INC'S RESPONSE TO PETITIONERS' MOTION TO COMPEL DISCOVERY RESPONSES**, to the parties on the attached service list, by sending a copy to the email addresses designated on the service list on or before 4:30 p.m. on October 28, 2026.

/s/ Janaki Nair
One of the Attorneys for Area Disposal Service, Inc.

Electronic Filing: Received, Clerk's Office 10/28/2026

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AREA DISPOSAL SERVICE, INC'S RESPONSE TO PETITIONERS' MOTION TO COMPEL DISCOVERY RESPONSES

Respondent, Area Disposal Services, Inc., by its undersigned counsel, hereby submits the following response in opposition to Petitioners' Motion to Compel Discovery Responses. In support of this response, Area Disposal states as follow:

A. Petitioners Are Not Entitled to Discovery in Search of Speculative Reasons for Why the Siting Hearing Might Not Have Been Fundamentally Fair.

The central issue in this discovery dispute is whether Petitioners may use the discovery process to investigate theories of relief far removed from the claims they have made in this case. Petitioners assert a right to embark on a fishing expedition to see if they can find any other reasons to contend that the siting hearing was not fundamentally fair. Illinois law is clear that they may not. Indeed, "'fishing expeditions' are a recognized form of litigation abuse." *Allen v. Peoria Park Dist.,* 2012 IL App (3d) 110197, ¶ 14. Although discovery rights are liberal, they are limited by the principle that "[d]iscovery should be used only to illuminate the actual issues in the case." *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 42. The issues in a case are those actually pled by the petitioners, not other, theoretical claims that a petitioner speculates might

be available, but which it has not pled or otherwise alleged. *See Sander v. Dow Chem. Co.*, 166 Ill. 2d 48, 64 (1995) ("In order to determine the appropriate scope of relevant discovery, it is necessary that the pleadings set forth the claims and defenses in the lawsuit."); *see also Allen*, 2012 IL App (3d) 110197, ¶ 14 ("We hold that the trial court erred in allowing plaintiffs to conduct discovery to determine if they could discover a cause of action.")

Here, the only issue in the case for which discovery is permissible is, at most[1], whether the siting hearing was not fundamentally fair because the Rantoul Trustees or the Mayor were unfairly biased, or prejudged the law or facts at issue in the siting application. (*See* Petition at 41-43). It is axiomatic that Petitioners' claim of alleged prejudice and bias can relate only to the Trustees or the Mayor. No other individuals could possibly "prejudge" the application, as no other individuals judged it—that is, voted on it—at all. Likewise, any other person's biases were irrelevant because, not having a vote, their views, by definition, did not affect the outcome of the siting application.

No discovery is relevant to any other claims in this appeal. In its Petition, Petitioners allege that Area Disposal's siting application does not satisfy four of the criteria required for siting approval under Section 39.2 of the Act, 415 ILCS 5/39.2. It is well-settled, however, that for such claims, the Board's review is limited to the record that was developed before the siting authority. *See Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 58. Petitioners also allege that the process was not fundamentally fair because one former petitioner "believes that she timely submitted a written public comment on or about May 15, 2026, but her comment does not

[1] Area Disposal disputes that the fundamental fairness claim is adequately pled in the Petition, and thus any discovery at all is appropriate. Area Disposal's motion to dismiss this claim is still pending, as it was not addressed by the Board in its October 15, 2026 Order and Area Disposal timely moved for reconsideration of that decision. See 35 Ill. Admin. Code 101.520(c) ("A timely-filed motion for reconsideration or modification stays the effect of the order until final disposition of the motion.") For the purposes of its discovery responses and this motion, however, Area Disposal assumed that the fundamental fairness claim is valid.

appear in the record." (Petition at 43). But that individual, Mary Mann Reifsteck, has been dismissed from the case, and in any event none of the disputed discovery relates to that purported public comment.

Despite this, Petitioners contend that they are entitled to discovery into theoretical, unpled reasons the siting hearing *could have* been unfair. In support of this position, they cite to *Clean Quality Resources, Inc., Petitioner v. Marion Cnty. Board, Respondent,* 1991 WL 171684 (PCB 91-72, August 26, 1991), for its statement that the Board's review of the fundamental fairness of a proceeding is not limited to reasons listed in the pleadings. That case, however, does not concern the scope of discovery rights. Rather, in *Clean Quality Resources,* the Board merely found that, *where lack of fundamental fairness at the hearing itself was apparent from the record before it*, it was incumbent upon the Board to remand the case to the siting authority. Nothing in the holding or reasoning of that case indicates that Petitioners in siting appeals have right to speculative discovery into unpled grounds for a fundamental fairness claim.

Moreover, Petitioners' position that they may cast such a wide discovery net is fundamentally at odds with the role of the Board's review of siting decisions. The Act provides that the hearing in this matter is limited to the record developed before the siting authority. *See* 415 ILCS 5/40.1(a). Although the Board has acknowledged that there are limited circumstances where discovery is permitted to test well-pleaded fundamental fairness claims, that is supposed to be an exception, not the rule. *See Fox Moraine*, 2011 IL App (2d) 100017, ¶ 58 (recognizing that the Board's review of siting decisions is "usually confined to the siting authority's record of the proceedings.") If Petitioners are entitled to use discovery to engage in such a sweeping inquiry into *possible* bases as to which the process could have been unfair, as their motion contends, it would mean every other petitioner in every other siting appeal would be as well. No authority

supports this dramatic divergence from the plain language of the Act and long-standing Board precedent. Therefore, as explained in more detail below, Petitioners' discovery requests are improper and the Motion should be denied.

B. Area Disposal's Objections Are Proper and Valid.

Petitioners take issue with the form of Area Disposal's objections, and particularly the articulation of general objections at the beginning of both written discovery responses. This criticism is misguided. Although Area Disposal's responses include a section of general objections, Area Disposal did not rely on them for any of its specific responses. For all of the discovery requests for which Area Disposal declined to provide information or documents, it specified which objections were applicable to that request. As explained above, the common thread throughout is the requests' lack of relevance. Area Disposal sufficiently explained why each request was not relevant. For example, Area Disposal declined to provide information about any and all legal matters and hearings involving Area Disposal and the hearing officer or the hearing officer's law firm because "Petitioners have not made any allegations of bias or wrongdoing by William Andrichik or Michael Best & Friedrich LLP. Any hearings or other matters involving Area Disposal and William Andrichik and/or Michael Best & Friedrich LLP would not indicate any bias or prejudgment by the Mayor or Village Board of Trustees." *See* Answer to Interrogatory No. 4. These objections adequately explain why the specific requests are irrelevant.

Area Disposal's objections based on requests being vague and ambiguous were also specific to certain discovery requests and adequately explained. To be clear, however, Area Disposal did ***not*** refuse to answer any discovery requests based on the objection that the request was vague and ambiguous. Rather, Area Disposal noted which specific terms it found to be vague or ambiguous, and then answered the discovery request based on its best understanding of the

vague terms. For example, Area Disposal objected that the term "legal advice" in Interrogatory No. 15 is ambiguous, but went on to explain that it "did not provide legal advice to Rantoul relating to solid waste and/or the Rantoul Transfer Station." Area Disposal does not have an obligation to re-write Petitioners' discovery requests to make them more precise, but it is entitled to point out where Petitioners' word choices rendered the requests unclear.

C. Interrogatory Nos. 2 and 9 and Document Request No. 13 (Communications with Rantoul Relating to Rantoul Transfer Station).

Area Disposal properly responded to these Interrogatories with respect to communications with the Mayor and Trustees only, and not non-voting members of the Rantoul government. As explained above, any communications with other members of the government are not plausibly relevant to the fundamental fairness claim in this case. Gathering and reviewing this information would also pose an unreasonable burden. The requests as drafted would encompass any communications about the potential transfer station between any employee or agent of Area Disposal and any employee or agent of Rantoul.

In support of their argument, Petitioners cite *Timber Creek Homes, Inc., Petitioner v. Village of Round Lake Park, Round Lake Park Village Board and Groot Industries, Inc., Respondents,* 2014 WL 1117955 (PCB 14-99, March 20, 2014), arguing that it permits discovery into prefiling contacts not involving the siting authority decision makers. Petitioners' reliance is misplaced. Nothing in that case suggests a petitioner is entitled to conduct discovery into entirely speculative theories of how the siting process might not have been fundamentally fair. Significantly, in *Timber Creek Homes*, testimony during the siting hearing had given rise to a theory of collusion between the applicant and a person retained by the village, which the petitioners had raised with the hearing officer at the time, and the requested discovery was aimed at proving

that collusion. *Id*. at *3-5. Here, in contrast, Petitioners identify no valid fundamental fairness theory involving members of the village staff.

D. Interrogatory Nos. 5-8 and Document Request No. 5 (Communications with and Related to the Hearing Officer).

These interrogatories and document request are irrelevant and improper for similar reasons as the discovery requests for information about contacts with village staff members. There are no claims in this case that the hearing officer was biased, and Petitioners point to no facts or evidence—inside or outside the record—to indicate that the hearing officer said or did anything that could possibly indicate that the hearing was not fundamentally fair. Petitioners merely speculate that because it is theoretically *possible* that the hearing officer *could have* an improper relationship with Area Disposal, and argue that they are therefore entitled to use the discovery process to try to find out "whether the Hearing Officer was biased." (Motion at 10). They are not.

Petitioners rely on *Concerned Citizens For A Better Environment v. City of Havana and Southwest Energy Corporation,* PCB 94-44 (May 19, 1994), 1994 WL 235432, which does not suggest a right to engage in a fishing expedition to examine the relationship (if any) between the applicant and the hearing officer. *City of Havana* did not involve a discovery dispute. The Board's decision in that case indicates nothing about the scope of a petitioner's discovery rights in siting decision appeals. Rather, in *City of Havana*, the Board was presented with evidence that the hearing officer had been retained and paid by the applicant, instead of the city. The Board reasoned that Section 39.2 specifically allows counties and municipalities to charge applicants to cover their costs, and that the City, rather than the applicant, was therefore required to pay the hearing officer. *Id*. at *9. There is "bias inherent in a situation where the applicant participates in hiring, remunerating, or possibly, terminating the Hearing Officer." *Id*.

Petitioners do not, either in their Petition or their motion, suggest that Area Disposal paid the hearing officer's fees (and it did not). Nor do they identify any authority showing that even if there was some sort of tangential connection between an applicant and a hearing officer—such as that the applicant had ever retained anyone from the same firm as the hearing officer—that would render the siting process fundamentally unfair. As with their other requests, Petitioners do not hide the fact that they are merely trying to use discovery to investigate an unpled and speculative theories of unfairness, which is not what discovery in siting appeals is for.

E. Interrogatory Nos. 11 and 12 and Document Request No. 6 (Information Related to Foth Infrastructure and Environmental).

Petitioners seek information about any potential relationship between Area Disposal and Foth Infrastructure and Environmental, which was retained by Rantoul in connection with the pre-filing review of the siting application, as well as all documents and communications between Area Disposal and Foth related to the transfer station. Again, these requests seek information that is, on its face, irrelevant to the claims that Petitioners are making in this case. There is no allegation that Foth was improperly biased or had any improper relationship with Area Disposal. Yet, Petitioners now, for the first time, suggest that perhaps they will discover that the Trustees and Mayor did not, as alleged, prejudge the application, but instead relied on the recommendation from their consultant that was somehow improperly influenced by Area Disposal. This theory is entirely different than the one pled in the Petition.

In addition to being irrelevant, the burden of providing this information would be substantial. Area Disposal was required by the siting ordinance to submit information about the siting application to Foth for review in advance of submitting its application to Rantoul. There was a rigorous review process involving various Area Disposal employees and outside consultants.

Gathering, reviewing, and producing all of this irrelevant information would require significant time and impose needless expense on Area Disposal.

F. Interrogatory No. 10 and Request No 8 (Information Related to the Drafting of the Solid Waste Ordinance)

Who drafted Rantoul's solid waste ordinance is irrelevant to this dispute. The ordinance is the law of Rantoul. It is axiomatic that the Trustee's adoption of the ordinance was legislative action, taken in their legislative capacity, before the beginning of the siting process for the transfer station. The fundamental fairness rights on which Petitioners' claim is based relate solely to the siting authority's "quasi-legislative and quasi-adjudicative" role in the siting-approval process itself, which by definition follows and is separate from the enactment of the solid waste ordinance. *See Stop the Mega-Dump v. Cnty. Bd. of De Kalb Cnty.*, 2012 IL App (2d) 110579, ¶ 27.

As with its other discovery requests, Petitioners' attempt to inquire into the drafting process for the ordinance is entirely speculative. Petitioners contention that these inquiries could turn up relevant information is even less plausible than for the other subjects discussed above. Here, Petitioners do not even identify any authority suggesting that participation by the siting applicant in the drafting of a siting ordinance could be an indicia that the resulting siting process is not fundamentally fair.

Furthermore, the only specific provision of the ordinance Petitioners purport to be concerned about is the party appearance requirement, which was at issue in Area Disposal's motion to dismiss for lack of standing. The Board, however, has already rejected this legal argument and denied Area Disposal's motion to dismiss for lack of standing. Thus, even assuming this discovery was ever relevant (which is denied), it is now moot.

G. Area Disposal is not Withholding Any Documents Based Solely on Privilege

As Area Disposal explained to Petitioners during a conferral about its discovery requests, Area Disposal is not withholding any documents based solely on privilege, and that is why it has not provided a privilege log. Area Disposal objected to certain discovery requests because they do call for privileged information, but as explained above, those requests are improper for separate reasons, and therefore the documents are not required to be logged.

WHEREFORE, Area Disposal Service, Inc. respectfully requests that Petitioners' Motion to Compel Discovery Responses from Respondent Area Disposal Service, Inc. be denied, and that Area Disposal be awarded such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

AREA DISPOSAL SERVICE, INC.,
Respondent

By: /s/ Janaki Nair
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