

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

SUTTER SANITATION, INC. and)
LAVONNE HAKER,)

Petitioners,)

v.)

Case No. PCB 04-187

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

(Permit Appeal - land)

Respondent.)

RESPONSE TO ILLINOIS EPA'S MOTION TO STRIKE

NOW COMES Petitioners Sutter Sanitation, Inc. and Lavonne Haker (collectively "Sutter") and hereby responds to Respondent Illinois Environmental Protection Agency's (Illinois EPA") "Motion to Strike Portions of the Petitioners' Motion for Partial Summary Judgment" in the above captioned matter. In support of this Response, Sutter states:

1. As noted in the Illinois EPA's Motion to Strike, on August 2, 2004 Sutter filed its Motion for Partial Summary Judgment. Attached to Sutter's Motion were 10 exhibits. These exhibits included: exhibits 1, 2 and 7, portions of the transcript of the siting hearing held before the Effingham County Board and included as part of the record in Pollution Control Board case 03-43 and 03-52 (consolidated); exhibit 3, portions of the hearing transcript held before the Pollution Control Board in Pollution Control Board case 03-43 and 03-52 (consolidated); exhibits 4, 5, 6, and 7 portions of the administrative record of the Effingham County Board siting proceedings and included as part of the record in Pollution Control Board case 03-43 and 03-52 (consolidated); exhibit 8, the Pollution Control Board Order in Pollution Control Board case 03-42 and 03-52 (consolidated); exhibit 9, the unpublished Order of the Illinois Supreme Court affirming the Pollution Control Board Order in case 03-42 and 03-52 (consolidated); and, exhibit 10, a Merriam-

Webster internet definition of “establish.” By its Motion to Strike, the Illinois EPA seeks to strike exhibits 1 through 9.

2. As an initial matter, even if the referenced exhibits were stricken, the facts central to the issue before the Pollution Control Board in the parties summary judgment motions are not disputed nor would their absence detract from that issue. Those central facts which are not disputed, nor called into question by the Illinois EPA’s Motion to Strike, are that subsequent to Sutters filing of an application for local siting approval for a solid waste transfer station with Effingham County, and Effingham County’s approval of that siting application, a neighboring landowner placed a mobile home on property within the 1000 foot setback requirements of Section 22.14 of the Illinois Environmental Protection Act.

3. Sutter is mindful of the court and Pollution Control Board precedent the Illinois EPA sets out in its Motion to Strike. However, and notwithstanding the matter raised in paragraph two above, the exhibits attached to Sutters Motion for Partial Summary Judgment should not be stricken. The Pollution Control Board is allowed to take “official notice” of all facts of which judicial notice can be taken (35 Ill. Adm. Code 101.630). Judicial notice allows a tribunal to consider public documents, that are readily verifiable. Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk and Western RR Co., 195 Ill.2d 356, 254 Ill. Dec. 707 (Ill. 2001). This rule has been specifically applied to the Pollution Control Board. ESG Watts, Inc. v. Pollution Control Board, 282 Ill. App.3d 43, 218 Ill. Dec. 183 (4th Dist. 1996) (An administrative tribunal may take judicial notice of matters of record in another administrative order, determination, or judgment, especially where these proceedings are related and involve the same parties.) In this case, all the facts cited by Sutter fall within this rule.

First, under the cited authority there should be no reasonable dispute that the Orders of the Pollution Control Board and Appellate Court referenced in exhibits 8 and 9 are improper, should be stricken, or otherwise not considered by the Pollution Control Board. Second, the facts referenced

by exhibits 1, 2 and 3 concerning the agricultural nature of the surrounding area and the pre-existing use of the Sutter site as a recycling drop off point are identified in the Pollution Control Board Order (exhibit 8) itself. (In addition, the fact referenced and supported by exhibit 2 is supported by a specific reference to the administrative record in this permit appeal and thus should not be stricken in any event.) Third, the facts referenced in exhibits 4, 5, 6 and 7 relating to public notice of Sutter's initial siting application are also contained in the public record of the siting appeal filed, heard and decided (as reflected in exhibit 8) by the Pollution Control Board. In addition, these facts, as a necessary precursor of obtaining siting approval, can be at least generally referenced in this case because Sutter noted in its permit application with the Illinois EPA that it had obtained local siting approval thereby evidencing compliance with the Act's requirements with respect to proper notice to neighboring landowners and the public. Finally, Sutter notes that the Illinois EPA did not object to exhibit 10, a dictionary definition of the term "establish."

WHEREFORE, for the reasons cited above, Petitioners respectfully request that the Pollution Control Board deny the Illinois EPA's Motion to Strike.

Respectfully submitted,

SUTTER SANITATION, INC., and
LAVONNE HAKER, Petitioners

By: 
One Of Their Attorneys

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PROOF OF SERVICE

The undersigned hereby certifies that an original and ten copies of the foregoing document was served by placing same in a sealed envelope addressed:

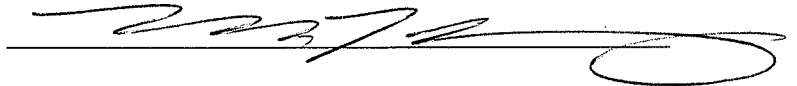
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and by depositing same in the United States mail in Springfield, Illinois, on the 23rd day of August, 2004, with postage fully prepaid.

A handwritten signature in black ink, appearing to be "J. Kim", written over a horizontal line.