

RECEIVED
CLERK'S OFFICE

APR 26 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SUTTER SANITATION, INC. and)
 LAVONNE HAKER,)
)
 Petitioners,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

Case No. PCB 2004-187

PETITION FOR REVIEW OF AGENCY PERMIT DENIAL

NOW COMES the Petitioner, Sutter Sanitation, Inc., and LaVonne Haker, ("Petitioners") by and through their attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Charles J. Northrup, of counsel, and pursuant to 415 ILCS 5/40(1) and 35 Ill. Adm. Code 105.204 hereby petitions the Illinois Pollution Control Board to review the Illinois Environmental Protection Agency's ("Agency") denial of Petitioners's Application for Permit to develop a solid waste management site in Effingham County. In support of the Petition, Sutter states:

1. On or about September 29, 2003, Petitioners filed with the Agency an Application for Permit to develop a solid waste management site, specifically a garbage transfer station, in Effingham County, Illinois.
2. On March 31, 2004 the Agency issued a denial of Petitioner's Application for Permit referenced in paragraph one above. The denial was served upon Petitioners on April 1, 2004. A copy of the denial is attached as Exhibit A.
3. The Agency's denial of Petitioners' Application for Permit referenced in paragraph one above was improper in a number of respects including, but not limited to, the following:

a.) The Agency's denial point no. 1 predicated upon an insufficient demonstration that the "tipping floor" might not prevent the release of waste such that Sections 12(a) and 21(a) of the Act might be violated: is not supported by the administrative record; is inconsistent with prior Pollution Control Board findings and orders; and is otherwise improper;

b.) The Agency's denial point no. 2 predicated upon a failure to include "specific waste handling and management procedures:" is not supported by the administrative record; is inconsistent with prior Pollution Control Board findings and orders; fails to identify any specific statutory or regulatory prohibition that might be violated, and is otherwise improper;

c.) The Agency's denial point no. 3 predicated upon a possible violation of Section 22.14 of the Act is: a misinterpretation of the statutory provision at issue; inconsistent with prior legal precedent; inconsistent with public policy, and otherwise improper;

d.) The Agency violated Petitioner's due process rights by relying upon information submitted by third parties outside of the application and by failing to notify Petitioners of such information and allowing Petitioner's to respond;


e.) The Agency further erred in denying the Application for Permit in that none of the proper grounds set forth in Section 39 of the Act existed in the present case and that granting the Application for Permit would not have resulted in the violation of any section of the Act or associated regulations.

WHEREFORE, Sutter Sanitation respectfully requests that this Board accept this Petition for Review; schedule this matter for hearing, reverse the decision of the Agency, and any other relief that the Board deems appropriate.

Respectfully submitted.

SUTTER SANITATION, INC., and
LAVONNE HAKER, Petitioners

By: _____


One Of Their Attorneys

Sorling, Northrup, Hanna
Cullen & Cochran, Ltd.
Charles J. Northrup, of Counsel
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705
Telephone: 217.544.1144

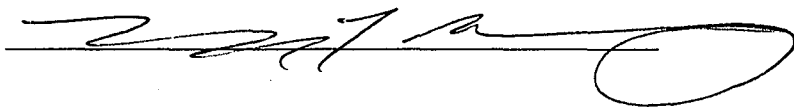
PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served by placing same in a sealed envelope addressed:

Dorothy M Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Il. 60601

John J. Kim, Attorney
Renee Cipriano, Director
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 N. Grand Avenue, East
Springfield, Il. 62794-9276

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

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



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

CERTIFIED MAIL
7001 2510 0002 1279 4630
7001 2510 0002 1279 4647

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

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

A

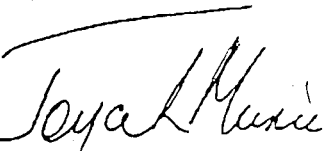
Page 2

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.