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AUG 26 2003

**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**

**STATE OF ILLINOIS
Pollution Control Board**

Citizens Against Landfill Expansion,)
Petitioners)
)
v.)
)
American Disposal Services of Illinois, Inc.)
Respondent,)
)
and)
)
Livingston County Board, Livingston County,)
Illinois, Respondent)

No. PCB 03-236

Bradley Halloran,
Hearing Officer

PETITIONER'S MOTION TO COMPEL AMERICAN DISPOSAL

Petitioner Citizens Against Landfill Expansion, an unincorporated association of residents of Livingston County (hereinafter "Petitioner" or "CALE"), through its attorney Carolyn K. Gerwin, moves for an order to compel Respondent American Disposal (hereinafter "American Disposal") to respond to Petitioner's Interrogatories, Requests for Admission and Requests for Production of Documents, which were served on August 22, 2003 (hereinafter collectively referred to as "Petitioner's Discovery Requests).

Petitioner's Discovery Requests must be relevant to matters at issue in the instant Petition for Review or be reasonably calculated to lead to relevant information. In its Petition for Review, Petitioner has stated the following claims: (a) that the County Board lacked jurisdiction to conduct the siting hearing due to the failure of Applicant to give required statutory notice under Section 39.2(b); that the process was fundamentally unfair based on the following: (1) upon information and belief, many members of the siting authority pre-judged or failed to judge whether the Applicant had satisfied the statutory criteria: (a) due to fear that if the County Board did not approve of the application, the City of Pontiac would annex the property in question and collect the host fees, and/or (b) due to an overpowering desire to obtain the \$162 million host fee that was previously negotiated, which figure included higher host fees for the existing landfill (almost double the rate per ton) if the County Board approved an unspecified expansion (assuming such expansion became final); and (2) any such other bases of fundamental unfairness as may hereafter be discovered and established; and (c) that the following statutory criteria were not met: (a) need; (b) health, safety and welfare; (c) minimization of incompatibility and property value impacts; and (d) consistency with the County's Solid Waste Management Plan. 415 ILCS 5/39.2(a)(i), (ii), (iii) & (viii). See Petition to Review Pollution Control Facility Siting Decision, pp. 2-4. Petitioner is unquestionably entitled to discovery on the issues of jurisdiction and fundamental fairness. Petitioner also requested discovery

(mainly admissions) on facts relating to statutory criteria preparatory to developing an agreed statement of fact on those issues, thereby streamlining the review process.

Due to extreme time limitations imposed, Petitioner hereby incorporates by reference its arguments concerning the scope of discovery that are set forth in its Motion to Compel Livingston County Board dated August 26, 2003. This relates to the time frame considerations (availability of discovery of contacts, contracts and documents relating to the time period prior to the filing of the Application) which is especially important to Interrogatories Nos. 7, 10 & 11; requests that relate to information relating to potential bias and/or financial interest of Board Members; and .

With regard to Interrogatory No. 4, Petitioner rejects the limitation "related to any issue set forth in the Petition to Review." The Interrogatory is not so limited, nor should it be. *Any* such communication relates to the issue of Applicant's failure to personally serve BP with notice of the Application.

American Disposal's answer to Interrogatory No. 8 does not indicate whether there are other such contracts with Board Members.

In addition, Petitioner hereby rejects the limitation of Interrogatory No. 12 to contracts "currently in force." The interrogatory is not so limited.

With regard to Interrogatory No. 6 and 19, information and documents regarding the Applicant's involvement in the local real estate economy was requested at the hearing but never produced. Petitioner was advised by the Hearing Officer that Petitioner had no power to compel production of documents on this or any other issue. This goes to the foundation of the real estate study done by Applicant. Similarly, information requested in Interrogatories Nos. 13 & 14 relates to the need criterion. Such information, though it could well disprove Applicant's need analysis, could not be compelled at the hearing.

In response to Interrogatory No. 18, American Disposal generally refers to "certain options to purchase real estate for the expanded facility" but does not identify or produce them in accordance with the discovery requests. Petitioner demands actual identification of such agreements and production thereof as they relate to fundamental fairness and the integrity of the hearing procedures.

With regard to production of the contract between American Disposal and Mrs. Jeanne Rapp, Petitioner objects to the redaction thereof. The deleted terms are likely to be highly relevant to issues of fundamental unfairness and possibly to the real property value criterion.

WHEREFORE, Petitioner requests the Hearing Officer to issue an Order to Compel the County Board to respond fully to Petitioner's Discovery Requests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2003, I electronically transmitted (receipt requested) the foregoing Motion to Compel Livingston County Board to:

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Larry M. Clark

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With a hard copy by U.S. Mail to:

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