



46437-70  
PCB 99

Mr. Charles Helsten  
Hinshaw & Culbertson  
100 Park Avenue  
P. O. Box 1389  
Rockford, IL 61105-1389

Mr. Donald Moran  
Pederson & Houpt  
161 N. Clark Street, Suite 3100  
Chicago, IL 60601

Mr. John C. Knittle  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph, Suite 11-500  
Chicago, IL 60601

Mr. Albert F. Ettinger  
Staff Attorney  
Environmental Law and Policy Center  
of the Midwest  
35 Wacker Drive, Suite 1300  
Chicago, IL 60601-2208

Ms. Kathleen Konicki  
13325 167<sup>th</sup> Street  
Lockport, IL 60441

Ms. Christine G. Zeman  
Hodge & Dwyer  
808 South Second Street  
Springfield, IL 62704  
Fax: 217/523-4948

SERVICE LIST

RECEIVED  
CLERK'S OFFICE

MAY 05 1999

STATE OF ILLINOIS  
Pollution Control Board

46437-70

ESH:psw

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB, MIDEWIN TALLGRASS )  
PRAIRIE ALLIANCE, AUDUBON )  
COUNCIL OF ILLINOIS, AND ILLINOIS )  
AUDUBON SOCIETY, )

Petitioners

vs.

WILL COUNTY BOARD and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )

Respondents.

PCB 99-136  
(Pollution Control Facility  
Siting Appeal)

LAND AND LAKES COMPANY, )

Petitioner,

vs.

WILL COUNTY BOARD and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )

Respondents.

PCB 99-139  
(Pollution Control Facility  
Siting Appeal)

KATHLEEN KONICKI, )

Petitioner,

vs.

WILL COUNTY BOARD and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )

Respondents.

PCB 99-140  
(Pollution Control Facility  
Siting Appeal)

LAND AND LAKES' RESPONSE TO THE COUNTY BOARD'S  
MOTION FOR MORE DEFINITE STATEMENT

LAND AND LAKES COMPANY (LALC), by its attorneys, hereby responds to respondent THE WILL COUNTY BOARD's (County Board) "Motion to Make More Definite the Petition for Review of Land and Lakes Company".

1. The County Board contends that LALC's petition for review<sup>1</sup> lacks sufficient detail to allow the County Board to prepare its defense. The County Board cites Section 103.122(c) of the Board's procedural rules in support of its position.
2. Initially, it must be noted that Section 103.122(c) of the Board's rules applies to enforcement cases, not to appeals of pollution control facility siting decisions. The Board's current procedural rules do not address siting appeals.
3. The County Board asks that LALC be ordered to "state facts on which it bases its conclusion that the siting process was fundamentally unfair and which criteria it contends were not satisfied." (Motion, page 4.)
4. LALC has no objection to making its petition for review more definite, and will file an amended petition. However, LALC does object to any claim by the County Board that LALC must state all facts in support of its claim of fundamental unfairness. As the Board noted in another siting appeal, Illinois does not require a petitioner to plead all facts specifically in the petition, but to set out ultimate facts which support his cause of action. Sierra Club v. City of Wood River (November 6, 1997), PCB 98-43, 1997 WL 728179, \*2. Pleading requirements for administrative review are less exacting than for other

---

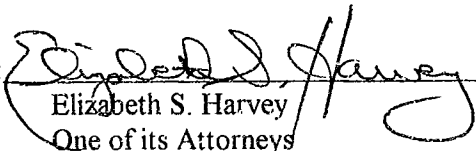
<sup>1</sup> LALC's petition for review was filed with the Board on April 7, 1999, not on April 12, 1999 as alleged by the County Board. The date of filing is important because a petition for review filed on April 12, 1999 would have been filed more than 35 days after the County Board's decision.

causes of action. Id. To require all facts to be pled in the petition for review would negate the value of discovery, which is ongoing in this case under the hearing officer's scheduling directions.

5. LALC does not wish to turn this motion into a battle over the specificity with which facts must be pled. LALC will amend its petition for review to identify the specific criteria it believes were not satisfied, and to plead ultimate facts to support its belief that the siting process was not fundamentally fair. Because discovery is ongoing until May 27, 1999, however, LALC reserves its right to seek leave to further amend its petition for review based upon the information gathered through the discovery process.
6. LALC will file an amended petition for review no later than May 11, 1999, or as otherwise directed by the Board.

Respectfully submitted,

LAND AND LAKES COMPANY

By:   
Elizabeth S. Harvey  
One of its Attorneys

Elizabeth S. Harvey  
McKenna, Storer, Rowe, White & Farrug  
200 N. LaSalle Street, Suite 3000  
Chicago, IL 60601  
312/558-3900