

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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MAY 06 2011

STATE OF ILLINOIS
Pollution Control Board

AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY,
ILLINOIS, HENSON DISPOSAL, INC., and
TKNTK, LLC

Respondents.

No. PCB 11-60

(Pollution Control Facility Siting
Application)

NOTICE OF FILING

TO: See Attached Proof of Service

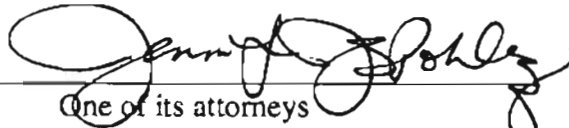
PLEASE TAKE NOTICE that on May 6, 2011, we filed with the Illinois Pollution Control Board, the attached Petitioner's Response to 35 IAC 101.506 Motion to Strike & Dismiss *and* Petitioner's Motion for Leave.

Dated: May 6, 2011

Respectfully submitted,

AMERICAN DISPOSAL SERVICES, INC.

By:



One of its attorneys


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CERTIFICATE OF SERVICE

Christine Clayton, a non-attorney, certifies that she served the foregoing **Notice of Filing, Petitioner's Response to 35 IAC 101.506 Motion to Strike & Dismiss, and Petitioner's Motion for Leave** on the following parties by facsimile, hand delivery, e-mail, and/or depositing same in the U.S. mail at 175 West Jackson Boulevard, Chicago, Illinois 60604, as indicated below, before 5:00 p.m. on this 6th day of May 2011.

Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Suite 11-500 Chicago, Illinois 60601 Original & 9 Copies (10 total) via hand delivery	Hearing Officer Carol Webb Illinois Pollution Control Board 1021 North Grand Avenue East P.O. Box 19274 Springfield, Illinois 62794-9274 Via U.S. Mail & E-mail (webbc@ipcb.state.il.us)
Richard T. Marvel Attorney at Law 202 N. Center Street, Suite 2 Bloomington, IL 61701 Via U.S. Mail & E-mail (marvelr@me.com) Attorney for Respondents Henson Disposal, Inc. and TKNTK, LLC	Amy Jackson Rammelkamp Bradney, P.C. 232 West State Street Jacksonville, Illinois 62650 Via U.S. Mail & E-mail (ajackson@rhlawyers.net) Co-Counsel for Respondents Henson Disposal, Inc. and TKNTK, LLC
Hanna Eisner McLean County State's Attorney's Office 104 W. Front Street, Rm. 605 Bloomington, IL 61702 Via U.S. Mail & E-mail (hannah.eisner@mcleancountyil.gov)	

Under penalties as provided by law pursuant to Illinois Rev. Stat. Chap. 110-, Sec. 1-109, I do certify that the statements set forth herein are true and correct.



Christine Clayton

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PETITIONER'S RESPONSE TO 35 IAC 101.506 MOTION TO STRIKE & DISMISS

Petitioner American Disposal Services of Illinois, Inc. ("ADS"), by and through its attorneys at Querrey & Harrow, Ltd., responds in opposition to the Motion to Strike and Dismiss ("Motion") filed by Respondents Henson Disposal, Inc. and TKNTK, LLC, (collectively "Henson") as follows:

I. INTRODUCTION

If Henson Disposal, Inc.¹ "filed" its siting application on August 9, 2010, as represented in its Motion, then the Illinois Pollution Control Board ("Board") should determine, based on Henson Disposal, Inc.'s admission in a pleading and the certified record by the McLean County Clerk that contains no pre-filing property owner notification as required by 415 ILCS 39.2(b), that McLean County ("County") had no jurisdiction. Thus, Henson Disposal, Inc.'s siting was never even filed with or approved by the County. (Henson's Motion p.1²). Notwithstanding and without waiving this argument, should the Board address the substance of Henson's Motion, it must fail.

¹ TKNTK, LLC is believed not to have filed an application.

² There are no page numbers on Henson's Motion, thus the references to page numbers herein are based on a count of the pages with the caption page being the first.

Henson's Motion is nearly as confusing as its siting "application(s)." Beyond, the "Overview" failing to follow the Record on Appeal (or even explain the inconsistencies³), the Motion raises arguments that have no merit and have been repeatedly denied by this Board. The Motion should be denied by this Board, because ADS: (A) timely filed its Petition; (B) participated in the siting hearing in this matter in accordance with how "participated" is defined under Board opinions; (C) meets the pleading sufficiency requirements for standing and the basis for the Petition; and (D) improperly seeks a judgment as a matter of law in a motion that attacks the sufficiency of the Petition. For these reasons, as explained further below, Henson's Motion should be denied.

II. ARGUMENT

Henson identifies that it has filed its Motion pursuant to 35 IAC 101.506, attacking the sufficiency of ADS' Petition. (Motion p. 1). The applicable regulations governing the procedure for a petition to the Board concerning a local siting decision are found in 35 IAC 107.502 (and as otherwise referenced in 107.502). Section 107.101(a) specifies that it applies to petitions to review local siting decisions. Section 107.101(b) identifies that, although the Board's general procedural regulations apply, if there is a conflict Section 107 applies. If Henson's Motion is arguing the sufficiency of ADS' Petition pursuant to Section 107.502 then there is no "conflict."

³ Henson asserts that its siting application was filed on August 9, 2010, with a December 9, 2010, public hearing, and a February 15, 2010 County Board decision approving the siting application. (Motion pp.1-2). However, the Record on Appeal, identifies an April 2010 dated "application" with an apparent file stamp of April 19, 2010 (C2-C55), a July 20, 2010 letter with an a possible August 9, 2010 file stamp (C64-C76), and insufficient and defective notice under 415 ILCS 5/39.2(b) for both the April 2010 "application" and the July 20, 2010 letter (C1, C63). While the Index of the Record on Appeal identifies the July 20, 2010 letter as an "amendment," it is doesn't appear to be so defined within the Record on Appeal.

A. *ADS timely filed its Petition*

Shockingly, Henson claims to be a “victim of circumstances, which lie outside of their control” in arguing in Section I of its Motion that this Petition should be dismissed, because the County did not decide on the siting application within the statutory timeframe. First, the *only* persons with “control” in this siting were Henson and the County. Henson failed to raise any objection during the course of the siting proceedings to the timeliness of the County’s hearing and decision. In fact, it fails to object to the County’s timing of a public hearing, which was held on December 9, 2010, outside the timeframes provided by 415 ILCS 5/39.2(d)(application) and (e)(amendment). Because Henson did not object to the County’s timing on its decision during the process, it cannot object to it now. *CARL v. Pollution Control Board, et al.*, 178 Ill.App.3d 686, 696, 533 N.E.2d 401, 408 (4th Dist. 1988).

Additionally, Henson participated, without objection, in the public hearing, which was held outside of the statutory timeframes no matter how you categorize its various filings (i.e., the April 2010 filing with an August 9, 2010 amended application, or simply an August 9, 2010 application). Further, Henson signed and filed with the County on February 15, 2011, a “Performance Agreement” (C-155-C-161) that was not otherwise contained in the earlier dated public record.

Similar to Henson, the siting applicant in *CARL* both participated in the public hearing after the date had passed and made a filing after the date for the County’s decision had past. *Id.* Because Henson did not object to the County’s extended timeframe for its decision, it waived that argument in response to this Petition. *Id.* at 696-697, 533 N.E.2d at 409. (“The requirement that objections must be specifically asserted before the trier of fact is equally applicable to

administrative proceedings, especially where the administrative tribunal could easily have remedied the alleged defect in the proceedings.”)(*citations omitted*). Additionally, Henson waived its objection to the County’s belated decision when it actively participated in the extended timeframe, after the statutory public hearing and decision deadlines had past.

Further, the timing for a participant to file a petition before the Board is not dependent on a timely decision by the County, as suggested by Henson. Rather, the plain language of 415 ILCS 5/40.1 states the petition filing deadline is “within 35 days after the date on which the local siting authority granted siting approval . . .”, not within 35 days after the statutory deadline date. This is structured intentionally for fairness reasons. Not only is it unfair to make objections on appeal after concealing the real nature of the objections from the lower court (*Id.*, citing, *DeMarco v. McGill*, 402 Ill. 46, 83 N.E.2d 313 (1948)), but it imposes a hardship on the citizens of the County to refuse to adjudicate Henson’s application on the merits, based on an application and public hearing that had (and still has during this review) a moving target in terms of its filing dates.

Therefore, the Board should find (again, as it already has so found in its April 7, 2011, Order) that the Petition was timely filed, as it was filed within 35-days of the County’s February 15, 2010 decision. Additionally, the Board should find that whether the County misses its 180-day decision making timeframe set by 415 ILCS 5/39.2 is irrelevant to the timing of a citizen’s Petition under 415 ILCS 5/40.1, as long as the County did make a decision on the siting application. Finally, if the Board finds that the statutory decision deadline under 415 ILCS 5/39.2, rather than actual local siting authority’s decision, controls the deadline for filing a citizen petition under 415 ILCS 5/40.1(b), then the Board should find that Henson’s failure to

object and active participation after the statutory decision deadline expire resulted in its waiver of this argument.

B. ADS Participated in the Public Hearing through Attendance

Henson argues in Section V of its Motion that ADS did not establish that it participated in the public hearing as required by 415 ICLS 40.1(b) and 35 IAC 107.200(b). However, the Board has, on at least five other occasions, decided this exact question and made it clear that “mere attendance” at the public hearing is sufficient to meet the participation hurdle. *Rosaur v. , et al. v. Onyx Waste Services Midwest, Inc., et al.*, PCB 05-1 (October 7, 2004); *CARL v. American Disposal Services, et al.*, PCB 03-236 (July 24, 2003); *Zeman, et al. v. Village of Summit, et al.*, PCB 92-174, 92-177 consolidated (December 17, 1992); *Valessares et al. v. The County Board of Kane County et al.* PCB 87–36 (July 16, 1987); *Board of Trustees of Casner Township et al. and John Prior v. Couty of Jefferson*, PCB 84–175, 84–176 consolidated (April 4, 1985). In this case, Henson admits that ADS was in attendance at the hearing and it is further evident from the Record on Appeal (Motion p. 5; C-49-C-50).

Thus, the Board should stand by its precedent and past practice, continue to define “participate” as mere attendance, and deny Henson’s Motion. *See City of Kankakee v. County of Kankakee*, PCB 03-125 (April 17, 2003), Slip Op. 2 (Board adheres to past practice). Alternatively, should the Board determine to modify its long-standing precedent, ADS’ Petition should still stand and Henson’s Motion be denied because ADS relied on that precedent in effectuating its participant status at the public hearing.

C. ADS’ Petition Is Sufficiently Plead

Henson argues in Sections III and IV of its Motion that the Petition is factually insufficient. Henson contends that ADS did not specify sufficiently how it is “affected” by the

proposed site for purposes of standing and that Paragraphs 9-12 of the Petition are insufficient fact pleading. Henson's Motion must be denied as the Petition meets the pleading standard of the Board and is in accord with pleadings that have, in the past, been found sufficient by the Board. Further, the single case relied on by Henson, *Campbell v. Haiges*, 152 Ill.App.3d 246, 504 N.E.2d. 200 (2nd Dist. 1987), is not applicable.

In *Campbell*, the plaintiffs attempted to hold defendant parents liable for actions of their minor son. In Illinois, a prerequisite of such a claim is that the complaint alleges specific instances of prior conduct that would put the parents on notice that an act that is complained of was likely to occur. *Id.* at 251, 504 N.E.2d at 204. In *Campbell*, however, the plaintiffs failed to make any such allegation in their complaint, instead arguing that the defendants' act of hiring a babysitter for their son was sufficient to meet the notice element. Thus, *Campbell* fails to support or be applicable to Henson's argument.

Indeed, in ADS' Petition, there are factual allegations to meet each of the elements required in 35 IAC 107.208(b) and (c).

The Petition sufficiently pleads facts under Section 107.208(b), as follows:

4. Pursuant to Section 107.208(b), the following Paragraphs, 5-7, provide a statement as to how ADS, the filing party, is a proper Petitioner under Section 107.200 of the Pollution Control Board Regulations, because, among other things, ADS participated in and attended the local site location review public hearing and submitted written comment on the Application.
5. ADS is a company that does business in McLean [County].
6. On December 9, 2010, ADS entered its appearance at the siting hearing on the subject Application. Additionally, ADS attended the public hearing and decision in the subject local siting review.
7. Further, ADS, through its attorneys, timely filed written comments concerning or relating to the subject application with McLean [County].

(Petition p. 2).

Additionally, the Petition sufficiently pleads facts under Section 107.208(c) as follows:

9. As an initial matter, McLean [County] did not have proper jurisdiction to conduct the local public hearings or make a decision on Henson's siting Application. The pre-filing notice was not accurate, was misleading, and was insufficient under the requirements of Section 39.2(b) of the Act. (415 ILCS 5/39.2(b) (2003)). The Illinois Pollution Control Board and Illinois Courts have consistently held that Section 39.2(b) pre-filing notice requirements are a jurisdictional prerequisite to the local new pollution control facility site location process. *See, Ogle County Bd. ex rel. County of Ogle v. Pollution Control Bd.*, 272 Ill. App. 3d 184, 208 Ill. Dec. 489, 649 N.E.2d 545 (1995); *Kane County Defenders, Inc. v. Pollution Control Bd.*, 139 Ill. App. 3d 588, 93 Ill. Dec. 918, 487 N.E.2d 743 (2nd Dist. 1985).

10. Additionally, Criteria 1, 2, 3, 4, 5, 6, 7, 8, and 9 were not met by Henson, and McLean [County]'s approval of Henson's siting Application on those Criteria is not supported by the record and against the manifest weight of the evidence

11. Further, McLean [County] did not make a finding as to Criterion 4, and incorrectly determined that Criterion 4 was not applicable.

12. Finally, the local siting review procedures, hearings, decision, and process, individually and collectively, were fundamentally unfair due to, at a minimum, the unavailability of the public record. ADS reserves its rights to incorporate additional fundamental fairness issues during the course of this proceeding.

(Petition p. 2-3).

The Board's past practice is to find pleadings that set forth the above elements sufficiently plead. *See, Waste Management of Illinois, Inc. v. City of Kankakee, et al.*, PCB 04-34 (October 2, 2003). In fact, in this case, the Board already reviewed and determined that the Petition was sufficiently plead. *American Disposal Services of Illinois, Inc. v. Count Board of McLean, et al.*, PCB 11-60 (April 7, 2011). Moreover, even if the allegations are individually reviewed, they meet the sufficiency test of pleading. In assessing the sufficiency of pleadings,

the Board “requires the pleader to set out the ultimate facts which support his cause of action.” *Grist Mill Confections*, PCB 97-174, slip op. at 4 (citing *Village of Mettawa*, 249 Ill. App. 3d at 557, 616 N.E.2d at 1303); *see also College Hills*, 91 Ill. 2d at 145, 435 N.E.2d at 466-67. However, a petitioner is not required “to plead all facts specifically in the petition, but to set out ultimate facts which support his cause of action.” *City of Wood River*, PCB 98-43, slip op. at 2.

“Despite the requirement of fact pleading, courts are to construe pleadings liberally to do substantial justice between the parties.” *Grist Mill Confections*, PCB 97-174, slip op. at 4 (citations omitted). Fact-pleading does not require a complainant to set out its evidence: “To the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts.” *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308, 430 N.E.2d 1005, 1008-09 (1981) (citations omitted). Not only is ADS’ Petition consistent with what has previously been found to be sufficient pleading before the Board, the Board has already found it to be sufficient, and it meets the requirements of fact pleading as described above. Therefore, Henson’s Motion should be denied. Alternatively, if the Board finds some insufficiency, ADS should be allowed, and herein so moves, to amend its Petition. *See Landfill 33, Ltd v. Effingham County Board, et al.*, PCB 03-43 (October 17, 2002).

D. Henson Improperly Seeks Summary Judgment in a Sufficiency of Pleading Motion, but Even if the Issue Is Considered (over ADS’ objection) Based Only on What Is in the Record on Appeal, ADS Is an “Affected” Party

Henson’s final argument is made in the alternative and, although not labeled as such, seeks summary judgment. This portion of Henson’s Motion should be stricken. Section 107.101(b) provides that, although the Board’s general procedural regulations are applicable, if there is a conflict Section 107 applies. Henson makes a Section 101.506 sufficiency argument, “as a matter of law,” which creates a conflict that should result in this portion of Henson’s

Motion being stricken because, in circumstances of conflict, Section 107 applies and Henson cannot raise this issue through a Section 101.506 motion.

Additionally, summary judgment is not proper when there is no responsive pleading on file and there has been no discovery (or even discovery schedule) yet set in the case.⁴ Therefore, ADS objects to and moves to strike Section VI of Henson's Motion because it is not properly brought as a Section 101.506 motion and it is improper when there is no responsive pleading on file and there has been no discovery. Alternatively, if the Board declines to strike Henson's Motion, ADS moves the Board to allow discovery on this issue.

Finally, even if the Board considered this portion of Henson's Motion, it should be denied as Henson's own testimony at the public hearing proves that ADS is an "affected" party. Indeed, as described in Henson's testimony at the public hearing, it is the intent of the proposed site to "affect" ADS. (C-95-C-96).

It is a matter of public record that ADS is the owner and operator of McLean County Landfill. *See, e.g., Nonhazardous Solid Waste Management and Landfill Capacity in Illinois, Twenty-Third Annual Capacity Report – 2009*, Exhibit A (the first five pages of the section in the report concerning Region 4). McLean County Landfill is the only landfill in the County. *Id.*

Although no service area is identified by Henson, Thomas Kirk (Henson's only witness) testified at the public hearing that "I'd like to see materials come in outside of McLean County, but I don't know that it would be feasible. We're going to be competing against the disposal costs at a landfill. . ." (C-95-C-96). Additionally, Mr. Kirk testified that he believed McLean

⁴ ADS, through its counsel, requested a discovery schedule be set at the first status in this matter on April 7, 2011 however, give the statutory deadline waiver filed by Henson, no schedule was set at that status.

County Landfill to have accepted 463 tons per day last year (*i.e.*, 2010) and the proposed site will seek to accept 500 tons per day. (C-94).


While Henson argues that *Ogle County Board, et al. v. Pollution Control Board*, 272 Ill.App.3d 184, 649 N.E.2d 545 (2nd Dist. 1995) supports its position, it does not. Like ADS in this matter, the petitioner in *Ogle County Board* resided in and did business in the service area and testified that he would lose business due to the landfill and anticipated an increase in waste disposal costs. 272 Ill.App. at 191, 649 N.E.2d at 550. Additionally, in *Ogle County Board*, the petitioner *Id.* In this case, ADS has not testified. Rather, Henson Disposal, Inc., testified that *it believed* there would be an impact on ADS' business and the applicant would be able to divert tonnage from the service area from ADS.⁵ (C-94-C-96). Therefore, if the Board declines ADS' motion to strike or deny Section VI of Henson's Motion, and determines that, given Henson Disposal, Inc.'s own testimony concerning ADS, further testimony is unnecessary, Henson's Motion should be denied because ADS is "affected" by the proposed site, or at the very least, Henson's own testimony raises an issue of material fact as to whether ADS is "affected."

⁵ ADS does not agree with and objects to the mischaracterization by Henson that anything received by ADS is landfilled. (C-95-C-96). However, for purposes of this argument the accuracy of this assertion is not relevant.

Dated: May 6, 2011

Respectfully submitted,

AMERICAN DISPOSAL SERVICES, INC.

By: 
One of its attorneys

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Region Four: East Central Illinois

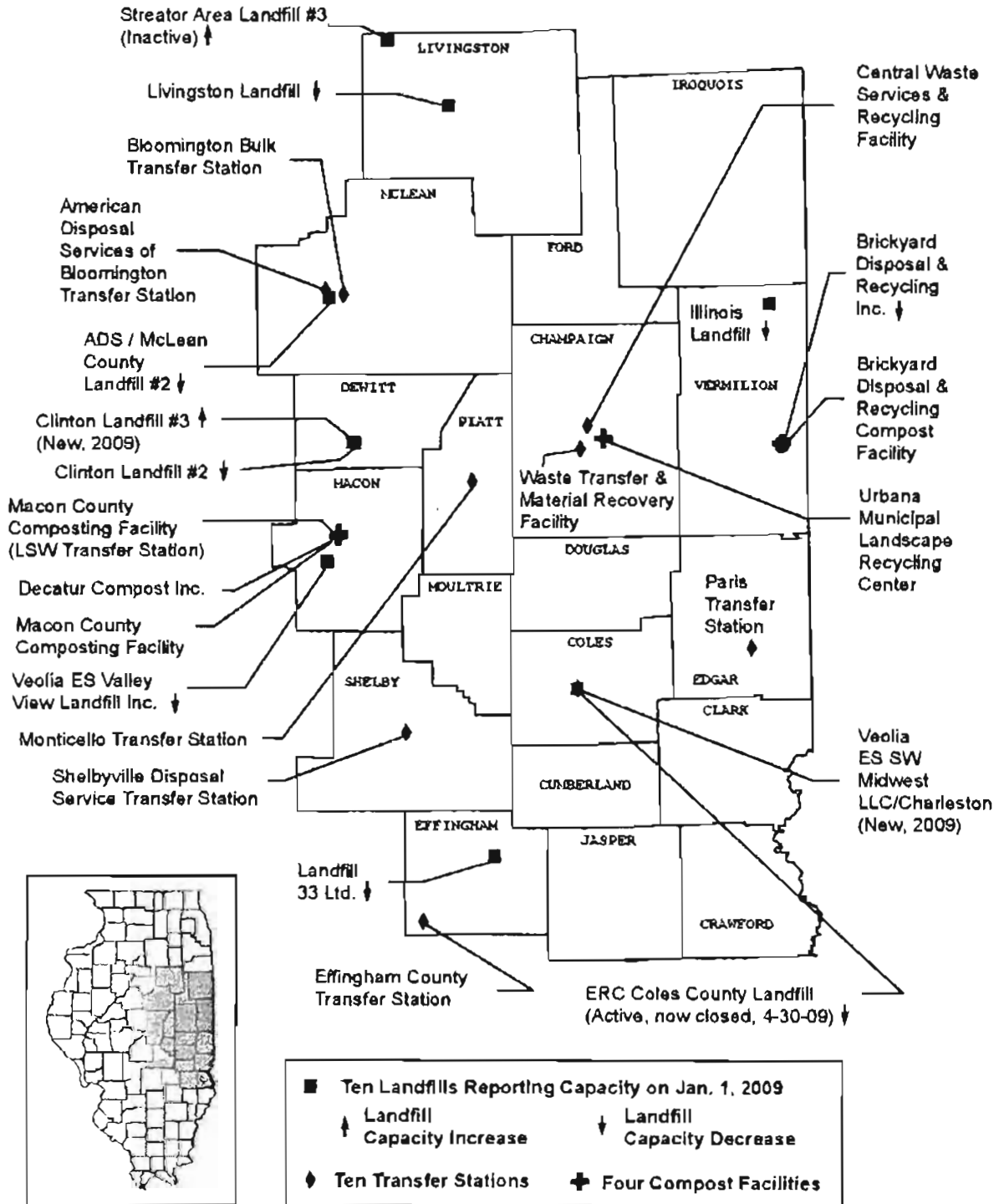
Landfills Transfer Stations Compost Facilities



Matthew Zhang
Countryside School, Champaign

EXHIBIT
A

Landfills, Transfer Stations and Compost Facilities Active and Inactive in 2009



MORE THAN 6.2 MILLION GATE CUBIC YARDS OF WASTE WAS accepted in nine East Central Illinois landfills during 2009. This figure is down more than 518,099 thousand gate cubic yards from the previous year, a difference of 7.6 percent. Livingston Landfill, Pontiac, took in 49.7 percent of the Region's waste receipts, and was fifth in the State's rankings in terms of waste receipts. Livingston Landfill accepted more than 3.1 million gate cubic yards of waste for disposal. This was the only landfill in the region to appear in the State's top 10 list. Livingston received less than one percent of its waste receipts (195 gate cu/yds) from Indiana.

New landfill open near Clinton

Clinton Landfill #2 is near to closure, however it is not closed yet. Clinton Landfill #3 is a new landfill located in close proximity to Clinton Landfill #2. A developmental permit was issued on Mar. 2, 2007. A permit to operate the site was given on Sept. 30, 2008, and it was opened for business in July 2009.

Transfer station in Charleston replaces closed landfill

ERC/Coles County Landfill, Charleston, closed on Apr. 30, 2009. A transfer station opened at the landfill location near Charleston on May 1, 2009 under another operator, Veolia ES Solid Waste Midwest.

Available capacity down 13.1 percent

Available capacity reported at nine landfills in the region on Jan. 1, 2010 totaled slightly more than 196.5 million gate cubic yards.

Streator Area Landfill #3, Streator, again reported capacity at the year's beginning, though it has been inactive since 2005.

A total of 29.6 million less gate cubic yards of landfill capacity was available in East Central Illinois at the beginning of 2010. This figure amounted to a 13.1 percent decrease in capacity year to year. Still, 31 years of landfill capacity remain for the East Central Illinois Region.

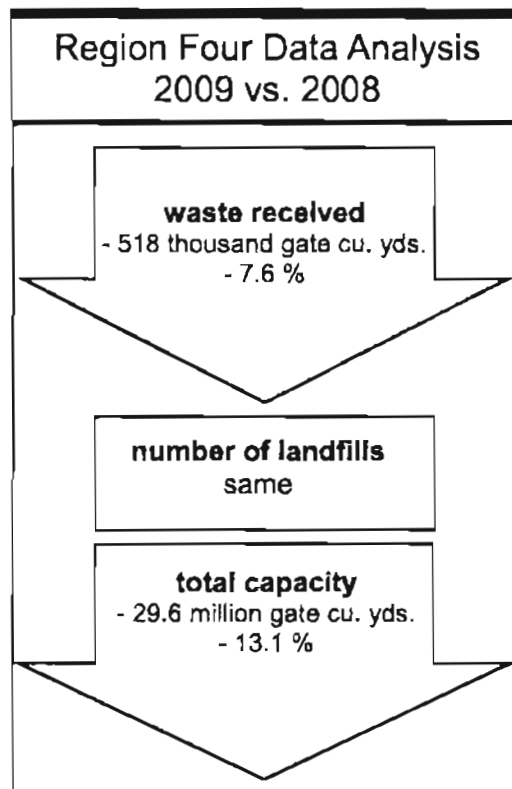
Two landfills rank in the top 10 list for available capacity

Together, 14.2 percent of the landfill capacity available in the State is found at Livingston Landfill, which also ranked third in the State's capacity rankings and at recently opened Clinton Landfill #3 which ranks sixth.

Temporarily closed landfills may still report capacity

One landfill did not accept any waste during 2007 to 2009 because it was temporarily closed. Streator Area Landfill #3 became inactive in 2005, while the landfill's vertical expansion was under construction.

The operator of Streator Area Landfill #3 has also withdrawn the submittal of a permit application for a horizontal expansion for 4.7 million additional cubic yards air space. Final closure activities are underway at this time.



Region Four Solid Waste Statistics

Counties	19
Area (square miles)	12,096
Population (est.)	910,131
Landfill life expectancy	
Years remaining	31 *
Landfills	
Active in 2009	9
Closed In 2009	1
Temporarily closed	1
Transfer Stations	
Active In 2009	10
New In 2009	1
Compost facilities	
Active In 2009	4

*Total remaining capacity (from table below) divided by total waste accepted. Tells how long the region may be served by local landfills at current disposal rates, barring capacity adjustments, until capacity is depleted.

Horizontal expansion permit application withdrawn *

Landfill	Town	Airspace
Streator Area LF #3	Streator	4.7 million cu. yds.

*Withdrawn by operator on 3-5-10.

Waste was also received from four other states at five landfills

Five of the region's landfills accepted a total of 44,750 cubic yards of waste from four states besides Illinois. Waste imported into East Central Illinois region came from Indiana, Iowa, Minnesota and Missouri. Waste haulers from Indiana sent waste to landfills in Danville, Hoopeston and Pontiac. Indiana's waste amounted to five, six and less than one percent respectively of the waste received at these three landfills, presumably because of their proximity to the Illinois-Indiana border.

Clinton Landfills #2 and #3, Clinton, both also accepted waste from Indiana, as well as Iowa, Minnesota and Missouri. Still, out-of-state waste only amounted to less than one percent of Clinton Landfill's total waste receipts in 2009.

New areas open at landfills in 2008-2009

Landfill	Area	Date
ADS/McLean Co.	Phase 2B	11-14-08
Brickyard D & R	Cell 6A & B	1-9-09
Landfill 33	Cell 5	4-23-09
Livingston LF	Cell C-2 SW	12-24-09

Illinois EPA approved construction plans for expansion at Bloomington's landfill

Earlier landfill capacity came in 2007 from expansions such as the 14.9 acre lateral expansion at ADS/McLean County Landfill, Bloomington that added 1.5 million cubic yards of capacity. On Mar. 13, 2007, construction of this area had begun after receiving Agency approval. Another Illinois EPA requirement at this landfill was the significant modification to operate (SMO) permit that was approved on Sept. 14, 2007.

Landfills: Waste Accepted 2009; Remaining Capacities Jan. 1, 2010

	Municipality	County	Waste Rec'd.		Capacity		Disp. Area Acres	Close Year
			Cu. Yds.	Rank ¹	Cu. Yds.	Rank ²		
ADS/McLean County Landfill #2 ³	Bloomington	McLean	385,067	27	1,760,000	39	43.2	2014
Brickyard Disp. and Recyc. Inc. ⁴	Danville	Vermilion	784,948	17	14,449,000	22	152	2028
Clinton Landfill #2 ⁴	Clinton	DeWitt	653,512	18	105,000	45	63.9	2010
Clinton Landfill #3 ⁴	Clinton	DeWitt	437,171	25	56,075,000	6	157.5	2061
ERC/Coles County Landfill ⁵	Charleston	Coles	49,424	41	0	NA	43	2009
Illinois Landfill ⁴	Hoopeston	Vermilion	101,452	40	19,532,000	17	109.2	2203
Landfill #33 Ltd.	Effingham	Effingham	257,647	33	2,501,000	37	40.6	2019
Livingston Landfill ⁴	Pontiac	Livingston	3,112,134	5	100,438,000	3	254	2042
Streator Area Landfill #3 ⁶	Streator	Livingston	0	NA	343,000	43	20.4	2010
Veolia ES Valley View Landfill Inc.	Decatur	Macon	475,557	23	1,312,000	40	64.1	2012
Totals			6,256,912		196,515,000			

⁴ Five landfills accepted out-of-state waste from Indiana, Iowa, Minnesota and Missouri during 2009 totaling 44,750 gate cubic yards, or less than one percent of the region's total.

¹ Standing among 44 landfills that accepted waste during 2009.

² Standing among 47 landfills that reported capacity as of 1-1-10.

³ Lateral expansion was under construction after approval was granted on 3-13-07. Phase 2A and 2B opened in 2007 and 2008.

⁴ New landfill permitted to operate on 9-30-08; site actually opened on 7-14-09.

⁵ Site ceased accepting waste on 4-30-09. Site not yet certified closed.

⁶ Site temporarily closed. Permit application for horizontal expansion was withdrawn by operator on 3-5-10.

Central Waste Services & Recycling leads transfer activity

Six of the Region's 10 active transfer stations (60 percent) reported amounts of solid waste accepted in 2009. Therefore, the figure of 140,560 tons of waste received underrepresents what waste amount is actually transferred in the region. Sixty-five percent of waste reported as transferred was managed at one site, Central Waste Services & Recycling, Urbana. A new site: Veolia Environmental Services Solid Waste Midwest LLC, Charleston, opened at the closed landfill location on May 1, 2009.

Transfer Stations: Waste Handled 2009

	Municipality	County	Tons
Central Waste Services & Recycling	Urbana	Champaign	92,145
Veolia ES SW MW LLC/C ¹	Charleston	Coles	31,560
Waste Transfer & Mat'l. Recovery	Champaign	Champaign	8,000
Paris Transfer Station	Paris	Edgar	5,199
Bloomington Bulk Transfer Station	Bloomington	McLean	2,256
Monticello Transfer Station	Monticello	Piatt	1,400
American Disp. Svs. TS ²	Bloomington	McLean	0
Effingham County Transfer Station ²	Mason	Effingham	0
Macon County Composting LSW TS ²	Decatur	Macon	0
Shelbyville Disposal Service TS ²	Shelbyville	Shelby	0
Total			140,560

¹ Reporting for partial year, opened on 5-1-09.

² Active in 2009, but operator did not report quantity

Urbana site leads in composting

City owned and operated Urbana Municipal Landscape Recycling Center processed 58.7 percent of the total composted in the Region.

The amount of 22,109 gate tons of landscape waste were processed at four compost facilities located in the East Central Illinois Region.

The City of Danville operates the compost site located at the active Brickyard Disposal and Recycling facility.

LSW Compost Facilities: Waste Accepted 2009

	Municipality	County	Tons
Urbana Municipal Landscape	Urbana	Champaign	12,974
Macon County Composting	Decatur	Macon	6,180
Brickyard Disp. & Recy. ¹	Danville	Vermillion	1,563
Decatur Compost Inc.	Decatur	Macon	1,392
Total			22,109

¹ Operated by City of Danville

Questions and Complaints

Illinois EPA Region Four personnel investigate reports of suspected illegal waste disposal, and inspect the region's landfills, transfer stations and compost facilities, except in **Crawford, Macon and Vermillion counties**, where responsibility has been shared with local authorities.

Questions or complaints concerning pollution control facilities, open dumping or other incidents should be directed to the office having jurisdiction over the site:

Illinois EPA, Bureau of Land
2125 S. First St.

Champaign, IL 61820

Phone: 217-278-5800

Fax: 217-278-5808

<http://www.epa.state.il.us/land/regions/region-4.html>

Ambraw Valley Solid Waste Agency
P.O. Box 62

Bridgeport, IL 62417-2105

Phone: 618-945-7707

Fax: 618-945-7118

No web site

Macon County Environmental Management Department

141 S. Main, Ste. 408

Decatur, IL 62523-1293

Phone: 217-425-4505

Fax: 217-424-1459

<http://www.co.macon.il.us/environmental.php>

Vermillion County Health Department

200 S. College St., Suite A

Danville, IL 61832-6744

Phone: 217-431-2662

Fax: 217-431-7483

<http://www.vchd.org>

Region 4's Organic Compost Facilities¹

Site Name	Municipality
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Eldon Steidinger Farm	Strawn
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ISU Farm Compost	Lexington
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¹ Annual data is not required to be reported.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY,
ILLINOIS, HENSON DISPOSAL, INC., and
TKNTK, LLC

Respondents.

No. PCB 11- 60
(Pollution Control Facility Siting
Application)

RECEIVED
CLERK'S OFFICE

MAY 06 2011

STATE OF ILLINOIS
Pollution Control Board

MOTION FOR LEAVE TO FILE *INSTANTER*
PETITIONER'S RESPONSE TO 35 IAC 101.506 MOTION TO STRIKE & DISMISS

Petitioner American Disposal Services of Illinois, Inc. ("ADS"), by and through its attorneys at Querrey & Harrow, Ltd., moves the Hearing Officer (or, alternatively, the Illinois Pollution Control Board) to grant it leave to file its Response to Respondent Henson Disposal, Inc. and TKNTK, LLC's Motion to Strike & Dismiss. In support thereof, Petitioner states:

1. Respondents Henson Disposal, Inc. and TKNTK, Inc. (collectively herein referenced as "Henson") mailed their joint Motion to Strike & Dismiss on April 18, 2011. If service is presumed complete four days after mailing, then the deadline for filing the Petitioner's Response to 35 IAC 101.506 Motion to Strike and Dismiss is today and no leave is required.

2. However, Petitioner's counsel received Henson's Motion to Strike & Dismiss on April 21, 2010, which could make the deadline for filing the Response May 5, 2010.

3. Notwithstanding, Petitioner's counsel spoke with counsel for Henson (Richard Marvel) on May 5, 2010 and was informed that Henson had no objection to Petitioner filing its Response on May 6, 2010.


4. Additional good cause exists for the requested one day extension in the briefing schedule, should the extra day be determined to be necessary to be timely, including, but not limited to the mother-in-law of the counsel primarily responsible for drafting the response (Jennifer J. Sackett Pohlenz) having died on April 24, 2011.

WHEREFORE, Petitioner seeks leave, *instanter*, if it is determined necessary, to file its Response to 35 IAC 101.506 Motion to Strike & Dismiss.

Dated: May 6, 2011

Respectfully submitted,

AMERICAN DISPOSAL SERVICES, INC.

By: 
One of its attorneys

Jennifer J. Sackett Pohlenz
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Fax: (312) 540-0578