BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BYRON SANDBERG, Petitioner, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C. Respondents.	)	No. PCB 04-33 (Third-Party Pollution Control Facility Siting Appeal)
WASTE MANAGEMENT OF ILLINOIS, INC., Petitioner, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C. Respondents.	)	No. PCB 04-34 (Third-Party Pollution Control Facility Siting Appeal)
COUNTY OF KANKAKEE, ILLINOIS and EDWARD D. SMITH, KANKAKEE COUNTY STATE'S ATTORNEY, Petitioner, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C. Respondents.	)	No. PCB 04-35 (Third-Party Pollution Control Facility Siting Appeal) (Consolidated)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on January 20, 2004, we will file with the Illinois Pollution Control Board, the attached **REPLY BRIEF OF WASTE MANAGEMENT OF ILLINOIS, INC.** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: _____
One of Its Attorneys

Donald J. Moran
Lauren Blair
PEDERSEN & HOUPT
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
(312) 641-6888
Attorney Registration No. 1953923

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BYRON SANDBERG, Petitioner, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C. Respondents.	)	No. PCB 04-33 (Third-Party Pollution Control Facility Siting Appeal)
WASTE MANAGEMENT OF ILLINOIS, INC., Petitioner, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C. Respondents.	)	No. PCB 04-34 (Third-Party Pollution Control Facility Siting Appeal)
COUNTY OF KANKAKEE, ILLINOIS and EDWARD D. SMITH, KANKAKEE COUNTY STATE'S ATTORNEY, Petitioner, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C. Respondents.	)	No. PCB 04-35 (Third-Party Pollution Control Facility Siting Appeal) (Consolidated)

REPLY BRIEF OF PETITIONER, WASTE MANAGEMENT OF ILLINOIS, INC.

Petitioner, WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by and through its attorneys, Pedersen & Houpt, submits this brief in reply to the following matters raised in the brief of Respondents, TOWN & COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, LLC ("Town & Country").

I. TOWN & COUNTRY'S FAILURE TO SERVE NOTICE ON ALL INDIVIDUALS LISTED AS OWNERS OF THE BRADSHAW/SKATES PARCEL DIVESTED THE CITY OF JURISDICTION TO HEAR AND DECIDE THE APPLICATION

Town & Country failed to comply with Section 39.2(b) of the Illinois Environmental Protection Act ("Act") by failing to individually serve each of six record owners of Parcel No. 13-16-23-400-001 ("Bradshaw/Skates Parcel") at their respective addresses as identified in the authentic tax records of Kankakee County. Section 39.2(b) requires Town & Country to serve notice of its request for site approval "on the owners of all property within 250 feet in each direction of the lot line of the subject property, *said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located.*" 415 ILCS 5/39.2(b) (2000) (Emphasis added).

In its Brief [1], Town & Country concedes that the property index record card maintained at the Kankakee County assessor's office lists the following six owners of the Bradshaw/Skates Parcel: Gary Bradshaw, James Bradshaw, Jay Bradshaw, Ted Bradshaw, Denise Fogle and Judith Skates. (T&C Br. at 8). Town & Country further concedes that the single address listed for all record owners, except Judith Skates, is 22802 Prophet Road, Rock Falls, Illinois. (T&C Br. at 8). However, rather than serve Gary Bradshaw, James Bradshaw, Jay Bradshaw, Ted Bradshaw and Denise Fogle at their Rock Falls address, Town & Country attempted to serve them by mailing a single group notice "in care of" Judith Skates at her separate address of 203 S. Locust Street, Onarga, Illinois. The Bradshaws and Ms. Fogle did not receive the notice.

Town & Country contends that its attempt to serve the owners of the Bradshaw/Skates Parcel complied with Section 39.2(b). Town & Country argues that it was not required to give the Bradshaws and Ms. Fogle notice because they were not consistently identified as owners in

---

[1] References to Town & Country's Brief will be cited as "(T&C Br. at __)."

Kankakee County's authentic tax records. Town & Country argues further that, even if it were required to give those five owners notice, it was sufficient to mail it to them in care of the sixth owner, Ms. Skates, at her Onarga address because (i) their address was changed from the Rock Falls address to the Onarga address; and (ii) upon information and belief, they did not actually reside at the Rock Falls address. Based upon the Board's recent holding in *City of Kankakee v. County of Kankakee*, PCB 03-125, 03-133, 03-134, 03-135 (consol.) (August 7, 2003) (referred to herein as "*City of Kankakee*"), Town & Country's arguments fail.

A. Town & Country is obligated to comply with the plain language of the notice requirements of Section 39.2(b)

In the *City of Kankakee*, the Board made clear that the notice requirements of Section 39.2(b) of the Act are to be strictly construed. *Id.*, slip op. at 17. When an applicant for local siting approval fails to comply with the plain language of Section 39.2(b), the local siting authority lacks jurisdiction to review the siting application. *Id.*

In *City of Kankakee*, the Board identified three distinct requirements of Section 39.2(b):

> First, *property owners listed on the authentic tax records must be served notice*. Second, property owners who own property within 250 feet of the lot line of the proposed facility must be notified. Third, *service on those property owners must be effectuated using certified mail return receipt requested or personal service*.

Id., slip op. at 15 (emphasis added). If each of these requirements has not been satisfied, the Board must find that the local siting authority lacked jurisdiction.

In *City of Kankakee*, the Board held that Kankakee County lacked jurisdiction based upon the Board's finding that the wife of a record property owner was not properly served via personal service or certified mail service. Both Robert Keller and Brenda Keller were identified in the authentic tax records of Kankakee County as the owners of the property located at 765 East 6000 South Road, Chebanse, Illinois. While Mr. Keller was found to have been properly served via

certified mail at that address, the Board found that Mrs. Keller was not properly served. The Board also found that service of notice upon Mr. Keller was not sufficient to find notice upon Mrs. Keller, and the Board ruled that Kankakee County lacked jurisdiction. *Id.*, slip op. at 17.

Based on *City of Kankakee*, and as further discussed below, Town & Country cannot establish that its attempt to serve record owners Gary Bradshaw, James Bradshaw, Jay Bradshaw, Ted Bradshaw and Denise Fogle by mailing a single group notice "in care of" Judith Skates at her separate Onarga address complied with Section 39.2(b).

B. Kankakee County's authentic tax records consistently identified the names and addresses of all six owners of the Bradshaw/Skates parcel

Town & Country argues that it was not obligated to serve separate notice upon the five owners of the Bradshaw/Skates Parcel who maintained the Rock Falls address because of conflicting authentic tax records. (T&C Br. at 9-10, 12). Town & Country contends that the assessor's office has "three distinct and different authentic tax records" (namely, a property index record card, a name and address change card, and a tax bill), and while the property index record card identifies Ms. Skates at the Onarga address and the other five owners at the Rock Falls address, the name and address change card and tax bill "suggest that only Judith Skates was entitled to receive notice" at the Onarga address. (T&C Br. at 9, 13). Hence, Town & Country argues that there was "conflicting information as to who the owners are" (T&C Br. at 13), and that this purported conflict in the record of the assessor's office permitted it to conclude that only Ms. Skates was entitled to notice. Town & Country is wrong.

There is no conflict among the records maintained at the assessor's office. The three tax records that Town & Country refers to serve distinct and different purposes. Although these records may, at times, contain different information, that does not create a conflict among them. Rather, they are designed to work together. The property index record card records the names

and addresses of property owners. It is the master record. At the time Town & Country attempted to serve notice in connection with its 2003 Application, the property index record card identified all six owners of the Bradshaw/Skates Parcel and the address listed for the Bradshaws and Ms. Fogle was 22802 Prophet Road, Rock Falls, Illinois. (T&C Br. at 8). Only Ms. Skates was listed as maintaining an address at 203 S. Locust Street, Onarga, Illinois. This record is determinative of the identity and addresses of property owners.

The name and address change card is the form that is available to property owners who wish to change their name and/or address. The property index record card is updated to reflect any such changes. However, the name and address change card is kept on file so that there is an official record of a property owner's requested changes. Therefore, at the time Town &Country searched the records of the assessor's office, the information in the property index record card would have already been updated to include the information in the name and address change card filed by Ms. Skates.[2] The most up-to-date property index record card identified the Bradshaws and Ms. Fogle as owners under the Rock Falls address and Ms. Skates at the Onarga address.

The tax bill is an invoice that is mailed as directed by the property index record card. The property index record card may "flag" a particular mailing address to receive tax bills and other notices from the assessor's office. However, the "mail and notice flag" does not alter or trump the record owner information contained in the property index record card.

Hence, despite Town & Country's arguments, there is no conflict among the three foregoing tax records maintained at the assessor's office as to the identities and addresses of the record owners. Those owners were the Bradshaws and Ms. Fogle at the Rock Falls address and

---

[2] *See* I.C. of this Reply Brief, below, for discussion on why Ms. Skates' name and address change card did not change the address of the other five owners.

Ms. Skates at the Onarga address. As such, *City of Kankakee* requires Town & Country to serve notice personally or by certified mail to each of them. *City of Kankakee*, slip op. at 16-17.

C. Town & Country was obligated to individually serve all five record owners at their Rock Falls address, regardless of where they resided, not in care of Judith Skates at her Onarga address

Town & Country argues that, even if the other five owners were entitled to notice, it was not required to serve them at their Rock Falls address because (i) Judith Skates changed their address to the Onarga address; and (ii) they did not reside at the Rock Falls address. These arguments are completely without merit.

While Judith Skates filed a name and address change card changing *her* address to the Onarga address, she did not change the address of the other five record owners. Although the card contains the Bradshaw/Skates Parcel number and the words "Skates, Judith and Bradshaw," those notations are meant to identify the property, not the owner requesting the change. The only owner who specifically requested a change of address was Judith Skates, who signed the card on her own behalf.

Town & Country's argument that Ms. Skates intended to change the address of the other five owners is not only unsupported by the record, but also wholly irrelevant to determining the identities of the official record owners of the Bradshaw/Skates Parcel. Kankakee County's Chief Assessment Officer, Sheila Donahoe, testified before the Board[3] that Ms. Skates could not have made any changes concerning the other five owners unless they granted her power of attorney to do so. (Bd. Tr. 12/2/03 at 62-63). Therefore, the key inquiry is whether Ms. Skates had the *authority* to change the address of the other five owners. Town & Country presented no

[3] References to the transcripts of the hearings before the Board are cited as ("Bd. Tr. __/__/04 at __").

evidence that Ms. Skates had any authority, actual or apparent, to change the address of the other record owners. In fact, Ms. Skates, in her Affidavit, swore that she had not been authorized by the other owners to receive notices concerning the property.

It is clear from the record that the name and address change card filed by Ms. Skates did not change the address of the Bradshaws or Ms. Fogle from the Rock Falls address to the Onarga address. Therefore, Town & Country's attempt to serve those five owners through Ms. Skates at the Onarga address was ineffective. *See City of Kankakee*, slip op. at 13-17 (service of notice on husband at couple's home address not sufficient notice to wife).

Here, none of the individual five owners who maintained the Rock Falls address per the authentic tax records were sent notice via certified mail. Town & Country's reliance on *Wabash and Lawrence Counties Taxpayers and Water Drinkers Assoc. v. Pollution Control Board*, 198 Ill. App. 3d 388, 555 N.E.2d 1081 (5th Dist. 1990) to support its attempt to serve the five owners collectively in care of Ms. Skates is misplaced. Although the Fifth District in *Wabash* held that it was sufficient for the applicant in that case to have effected service on one out of several heirs, there was only one heir listed in the authentic tax records. *Id.*, at 390-91, 555 N.E.2d at 1084. In this case, all six owners and their respective addresses were listed in the authentic tax records. Town & Country was, therefore, required to serve individual notice on Ms. Skates at her Onarga address, and on the remaining five owners at their Rock Falls address in order to satisfy Section 39.2(b).

Town & Country's final argument, that it was not required to serve notice on the Bradshaws and Ms. Fogle at their Rock Falls address based upon its information and belief that they did not reside there, is equally lacking in merit. Town & Country cites no authority for the

proposition that record owners need not be served at the address appearing in the authentic tax records, if there is some suggestion or fact indicating that they do not actually reside there. Such a proposition would lead to absurd results given that property owners commonly list post office boxes as their address in the authentic tax records. Moreover, Section 39.2(b) specifically requires that notice be served on property owners at the address appearing in the authentic tax records, not at their domicile. Thus, it is irrelevant to the notice issue presented as to whether the Bradshaws and Ms. Fogle actually resided at the Rock Falls address. Even if residency were relevant, Town & Country presented no evidence that the Bradshaws and Ms. Fogle resided with Ms. Skates at the Onarga address. Therefore, based on Town & Country's own argument, if the other five owners did not reside at the Onarga address, its attempt to serve them at that address would have been ineffective.

WMII agrees with Town & Country that a siting applicant bears a draconian, and at times absurd, burden regarding service of notice under Section 39.2(b) and the decisions construing it. (T&C Br. at 15). This Board's decision in *City of Kankakee* nullified three weeks of public hearing and a substantive review and decision by Kankakee County on a two-volume siting application because the wife of a property owner who was served notice claimed that she did not receive notice. *City of Kankakee*, slip op. at 13-17. As unfair as it might appear to a siting applicant, *City of Kankakee* is the law and it must be applied here. *City of Kankakee* strictly construes Section 39.2(b), and requires that each property owner listed in the authentic tax records must be served notice by personal service or certified mail. *Id.*, slip op. at 15. The evidence is undisputed that notice was not sent to or served on Gary Bradshaw, James Bradshaw, Jay Bradshaw, Ted Bradshaw or Denise Fogle by certified mail or personal service. A certified

mailing to Judith Skates is not notice to any of the Bradshaws or Denise Fogle. *Id.*, slip op. at 17. Thus, proper service on the Bradshaws and Ms. Fogle was not effectuated and the City lacked jurisdiction to hear and decide the Application.

II. TOWN & COUNTRY HAS FAILED TO DEMONSTRATE THAT THE 2003 APPLICATION IS NOT SUBSTANTIALLY THE SAME AS THE 2002 APPLICATION

Town & Country's 2003 Application is substantially the same as its 2002 Application. The City lacks jurisdiction to review and decide a siting application that is substantially the same as an application that was disapproved within the preceding two years. 415 ILCS 5/39.2(m). Town & Country seeks to avoid Section 39.2(m)'s prohibition by claiming that (i) that section does not apply in this case; and (ii) even if it applies, the two applications are different. Town & Country's arguments are unsupported by the record.

A. Section 39.2(m) of the Act prohibits the re-filing of the substantially same application within two years, regardless of which administrative or judicial body denies a grant of local siting approval

Town & Country initially argues that Section 39.2(m) of the Act does not apply in cases like this one where a local siting authority's grant of local siting approval is reversed on appeal to the Board. (T&C Br. at 19-20). Town & Country concedes that no legal authority exists in support of its position, but nonetheless contends that the concepts of disapproval and approval are limited to the local siting authority's decision, and therefore, the use of the word "disapproved" in Section 39.2(m) is evidence of the legislature's intent that the section only applies when the local siting authority denies an application for local siting approval. (T&C Br. at 19-20).

Town & Country's argument ignores the practical reality that the Board, in effect, disapproves local siting approval when it reverses a grant of local siting approval based on a finding that any of the nine statutory criteria in Section 39.2(a) has not been satisfied. Town & Country's argument also runs counter to the stated goal of Section 39.2(m), which is "to prevent the duplicitous and repetitive filings of applications for siting approval to conserve administrative and judicial resources." *Laidlaw Waste Systems v. Pollution Control Board*, 230 Ill. App. 3d 132, 136, 595 N.E.2d 600, 603 (5th Dist. 1992). Regardless of the stage at which an application for local siting approval is denied for failure to meet the statutory criteria – whether at the local or Board level -- the re-filing within two years of the denial of an application that contains substantially the same information that was unable to satisfy the nine statutory criteria in the first place will result in the unnecessary expenditure of significant administrative, judicial and public resources.

Town & Country cites to *Turlek v. Illinois Pollution Control Board*, 274 Ill. App. 3d 244, 653 N.E.2d 1288 (1st Dist. 1995) for "guidance." In *Turlek*, the initial application was approved by the local siting authority, but reversed by the Board due to the local siting authority's failure to make the application available to the public. *Id.*, at 247, 653 N.E.2d at 1290. However, the issue in *Turlek* was not whether Section 39.2(m) applies only when the local siting authority disapproves an application. The issue in *Turlek* was whether the applicant filed a new application when a substantially similar application was still pending, and whether that scenario violated Section 39.2(m). *Id.*, at 247-48, 653 N.E.2d 1291. Although the *Turlek* court, in dicta, stated that the original application was approved, not disapproved by the local siting authority,

the court made the distinction that the reversal by the Board was "*on grounds unrelated to those contained in Section 39.2(a).*" *Id.*, at 249, 653 N.E.2d at 1291. (Emphasis added). *Turlek* does not hold that Section 39.2(m) of the Act is inapplicable when an original application is approved by the local siting authority, and subsequently reversed by the Board. In fact, the dicta indicates that the distinguishing factor for the court as to whether Section 39.2(m) applies is not which administrative agency (local or the Board) denied the local siting approval, but whether the denial was based on the applicant's failure to satisfy the statutory criteria.

In this case, the Board reversed the City's original grant of local siting approval on the grounds that the proposed landfill was not designed and located to protect the public health, safety and welfare as required by criterion two. Therefore, if Town & Country is permitted to re-file an application that is substantially the same as the original application, Section 39.2(m) should apply to prevent the unnecessary and wasteful expenditure of administrative, judicial and public resources.

B. The 2003 Application and the 2002 Application are substantially the same

Town & Country claims that its 2003 Application is not substantially the same as its 2002 Application because the former contains supplemental information. However, Section 39.2(m) does not require that the subsequent application be identical to a prior application to be barred. *Worthen v. Village of Roxana*, PCB 90-137, slip op. at 5 (September 9, 1993). The question of whether prior and subsequent applications are substantially the same is determined by reviewing the two applications in terms of the statutory criteria, and assessing whether there are sufficiently significant differences between them. *Laidlaw*, 230 Ill. App. 3d at 139, 595 N.E.2d at 604.

In an attempt to show that the two applications are not substantially the same, Town & Country points to the following differences between them: (i) the service area; (ii) the hydrogeologic data; (iii) the design; and (iv) the proofs regarding its consistency with the Kankakee County Solid Waste Management Plan ("Plan"). (T&C Br. at 22-23). For the following reasons, these purported "differences" do not significantly differentiate the 2003 Application from the 2002 Application.

First, the reduction in the service area proposed in the 2003 Application is slight, representing only a 4% reduction in the overall amount of waste generated in the service area. (6/24/03 Tr. Vol. 1-B, 48). This reduction in the service area does not change the amount of waste Town & Country intends to accept each day (3,500 tpd), the landfill's waste capacity (50.9 million cubic yards) or the operating life of the landfill (30 years). The landfill will be serving essentially the same service area described in the 2002 Application, as measured by the amount of waste generated in the service area and disposed of at the landfill.

Likewise, there is no meaningful difference between the hydrogeologic information contained in the two applications. Town & Country points to the three additional volumes that were filed with the 2003 Application. However, the material contained in those volumes do not contain significantly different hydrogeologic data sufficient to render the 2003 Application not substantially the same as the 2002 Application. The data concerning the additional soil borings attempts to bolster the same conclusions contained in the 2002 Application that the Silurian Dolomite bedrock is an aquitard, despite the Board's finding in *County of Kankakee v. City of Kankakee*, PCB 03-31, 03-33, 03-35 (consol.) (January 9, 2003) (referred to herein as "*Town &*

Country I") that such a conclusion is contrary to prevailing scientific characterization of the Silurian Dolomite bedrock in the area.

Even though the Board in *Town & Country I* raised a concern about the design of the landfill proposed in the 2002 Application, the landfill design proposed in the 2003 Application is the substantially the same, except that the 2003 Application includes information about an *optional* geosynthethic clay liner (GCL) composite, which Town & Country does not recommend and does not believe is necessary or appropriate for the proposed landfill. (June 26, 2003 Tr. Vol. 3A at 38-42). The GCL composite was simply offered as an alternative to a double composite liner in the event the City felt inclined to impose a condition requiring some additional protection beyond that provided by the proposed composite liner. (June 26, 2003 Tr. Vol. 3A at 39-42). A design feature which is not proposed or recommended by the applicant, but only offered as an alternative if the municipality deems it necessary, does not constitute a design change that renders an application substantially not the same as a prior one.

Finally, as a result of the County's amendment to its Plan on February 11, 2003, Town & Country submitted a revised report in an effort to comply with criterion eight of Section 39.2(a). However, the revised report contains substantially the same analysis of the landfill's consistency with the Plan as was contained in the 2002 Application, and the conclusion on criterion eight is precisely the same.

A review of the two applications clearly demonstrates that the proposal for the Town & Country landfill in the 2003 Application has not changed from the 2002 Application. The additional information provided to support Town & Country's conclusions concerning criteria one, two, five and eight do not make the 2003 Application substantially not the same as the 2002

Application. The information concerning criteria three, four, six, seven and nine are the same in both applications. Thus, the 2003 Application is substantially the same as the 2002 Application, and Section 39.2(m) of the Act precluded the City's ability to review and decide it.

III. ADOPTION AND INCORPORATION OF THE ARGUMENTS RAISED IN THE COUNTY'S REPLY BRIEF

WMII hereby adopts and incorporates the County's argument regarding (a) the design and hydrogeologic characterization of the site, (b) criterion eight and (c) fundamental fairness, contained in pages 13 through 38 of the County Reply Brief.

CONCLUSION

The City's August 18, 2003 grant of local siting approval should be reversed on the grounds that the City lacked jurisdiction to decide the Town & Country siting application, and for the other grounds set forth by the County in its opening and reply briefs.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By: _____
One of Its Attorneys

Donald J. Moran
Lauren Blair
Pedersen & Houpt
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
(312) 641-6888

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **REPLY BRIEF OF WASTE MANAGEMENT OF ILLINOIS, INC.** on the following parties as set out below:

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11th Floor
Chicago, Illinois 60601
via hand delivery

Mr. George Mueller
Attorney at Law
501 State Street
Ottawa, IL 61350
via facsimile transmission - (815) 963-9989

Edward Smith
Kankakee County State's Attorney
Kankakee County Administration Building
189 East Court Street
Kankakee, Illinois 60901
via facsimile transmission - (815) 937-3932

Mr. Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389
via facsimile transmission - (815) 963-9989

Mr. Byron Sandberg
109 Raub Ave
Donovan IL 60931
via electronic transmission-
byronsandberg@starband.net

L. Patrick Power, Esq.
956 North Fifth Avenue
Kankakee, IL 60901
via facsimile transmission - (815) 937-0056

Mr. Kenneth Leshen
Assistant City Attorney
One Dearborn Square
Suite 550
Kankakee, IL 60901
via facsimile transmission - (815) 933-3397

Christopher Bohlen
Barmann, Kramer and Bohlen, P.C.
300 East Court Street, Suite 502
P.O. Box 1787
Kankakee, IL 60901
via facsimile transmission - 815/939-0994

by electronic transmission to Mr. Byron Sandberg at the e-mail address noted above and by facsimile transmission to the parties with facsimile numbers indicated above, and by depositing a copy thereof enclosed in an envelope in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601 on the 19th day of January, 2004 and by hand delivery to Mr. Bradley Halloran on the 20th day of January, 2004.

Victoria L. Kennedy