

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS,)	
INC. and KENDALL COUNTY LAND)	
AND CATTLE, LLC,)	PCB 09-43
)	
Petitioner)	(Pollution Control Board Facility Siting
)	Appeal)
v.)	
)	
COUNTY BOARD OF KENDALL)	
COUNTY, ILLINOIS,)	
)	
Respondent)	
)	

NOTICE OF FILING

To: All Counsel of Record, See Attached Service List

PLEASE TAKE NOTICE that the undersigned has, on this 17th day of February, 2009, caused to be filed with the Clerk of the Illinois Pollution Control Board, via electronic filing, the attached *Notice of Demand for Bill of Particulars* on behalf of the County Board of Kendall County, Illinois, a copy of which is herewith served on you.

Respectfully submitted,

County Board of Kendall County, Illinois

By: /s/James S. Harkness

James F. McCluskey (ARDC No. 3124754)
James S. Harkness (ARDC No. 6237256)
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PROOF OF SERVICE

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, Sabrina Sanders, the undersigned non-attorney certifies that she served a true and correct copy of the foregoing Notice of Demand For Bill of Particulars, by (1) e-mail transmission and (2) U.S. Mail to all respective addresses as listed on the Service List from Lisle, Illinois 60532 on February 17, 2009.



Sabrina Sanders

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COUNTY, ILLINOIS,)	
)	
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)	

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Kendall County Clerk
111 Fox Street
Yorkville, IL 60560

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.))	
and KENDALL COUNTY LAND AND)	
CATTLE, LLC,)	PCB 09-43
)	
Petitioners,)	(Pollution Control Board Facility
)	Siting Appeal)
vs.)	
)	
COUNTY BOARD OF KENDALL COUNTY,)	
ILLINOIS,)	
)	
Respondent.)	

NOTICE OF DEMAND FOR BILL OF PARTICULARS

To: See Attached Service List

Please take notice that Respondent, COUNTY BOARD OF KENDALL COUNTY, ILLINOIS ("County Board"), pursuant to 735 ILCS 5/2-607 and 35 Ill. Adm. Code 107.208(c), demands that Petitioners, WASTE MANAGEMENT OF ILLINOIS, INC. and KENDALL COUNTY LAND AND CATTLE, LLC, (collectively, "Petitioners") file and serve a copy upon MOMKUS McCLUSKEY, LLC, attorneys for Respondent, a Bill of Particulars of the allegations contained in Petitioners' *Petition for Hearing to Contest Site Location Denial* ("the Petition") within twenty-eight (28) days of service of this demand. In support of this demand, the County Board states as follows:

1. Petitioners' only allegation, contained in paragraph 7 of the Petition is both a conclusory statement and fails to meet the pleading requirements of 35 Ill. Adm. Code 101(c) and 35 Ill. Adm. Code 107.208(c). The Petitioners' sole allegation states:

"WMII and KLC contest and object to this decision and its denial of criteria (ii) and (iii) as fundamentally unfair, unsupported by the record and against the manifest weight of the evidence." (Petition, paragraph 7).

2. The standard articulated in the Pollution Control Board Regulations, 35 Ill.

Adm. Code 107.208, requires that:

"In addition to the requirements of 35 Ill. Adm. Code 101, Subpart C, the petition must also include:

* * *

- c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence."

3. In *Konicki v. Will County Board and Waste Management of Illinois, Inc.*, PCB 99-140 (consolidated with PCB 99-136 and PCB 99-139), the Illinois Pollution Control Board, on May 6, 1999, granted a "Motion to Make More Definite the Petition for Review" that was filed by the County Board of Will County because the Petition in that case was "insufficient to allow the Respondent to prepare its defense" and failed to "allege any facts that support [Land and Lakes Company's] contention that the siting process was fundamentally unfair..." (May 6, 1990 Order). The Illinois Pollution Control Board required the Petitioner to amend its Petition to allege facts to support its contention that the siting process was fundamentally unfair. *Id.*

4. The Petition in this case is analogous to the *Konicki* case, as it is vague and alleges conclusory statements without factual support. As a result, Respondent is currently unable to prepare its defense.

5. Therefore, pursuant to 735 ILCS 5/2-607, Respondent demands that Petitioners file and serve upon Respondent's counsel a Bill of Particulars of the allegations contained in their *Petition for Hearing to Contest Site Location Denial* within twenty-eight (28) days of service of this demand. Respondent demands that the bill, in detail, state and/or include:

- a. Identify what portions of the underlying site proceeding were fundamentally unfair;

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b. Identify the date, time, place and content of any and all activities of any of the County Board members, before during or after the site proceeding, that support allegations of fundamental unfairness and specifically name which member(s) participated in said activities;

c. Identify the date, time, place and content of any and all communications of any of the County Board members, on or off the record, that support allegations of fundamental unfairness and specifically name which member(s) participated in said communications;

d. Identify the date, time, place and content of any and all statements made, on or off the record, by any of the County Board members that support allegations of fundamental unfairness and specifically name which member(s) made said statements;

e. Identify the date, time, place and content of any and all activities of the hearing officer, before during or after the site proceeding, that support allegations of fundamental unfairness;

f. Identify any and all rulings made by the hearing officer that were fundamentally unfair and detail how and why those rulings were fundamentally unfair;

g. Identify the date, time, place and content of any and all statements made by the hearing officer, on or off the record, that support allegations of fundamental unfairness;

h. Identify the date, time, place and content of any and all communications made by the hearing officer, on or off the record, that support allegations of fundamental unfairness;

i. Identify the date, time, place and content of any and all activities of the Kendall County Clerk, before during or after the site proceeding, that support

allegations, if any, of non-compliance with the Kendall County Site Approval Ordinance for Pollution Control Facilities;

j. Identify the date, time, place and content of any and all communications of the Kendall County Clerk that support allegations, if any, of non-compliance with the Kendall County Site Approval Ordinance for Pollution Control Facilities;

k. Identify the date, time or place during the site proceeding wherein Petitioners sought to be heard by the County Board, but where not;

l. Identify any date, time, and place during the site proceeding wherein Petitioners sought to cross-examine an adverse witness, but were not granted leave to do so;

m. Identify any and all rulings made by the hearing officer that were impartial, unfair and/or biased and state specifically how and why those rulings were impartial, unfair and/or biased;

n. Identify the date, time and place of any and all acts of fundamental unfairness on the part of any individual, group, entity or party during the site proceeding;

o. State any and all factual support for Petitioners' allegation that the County Board's decision to deny the Application was fundamentally unfair;

p. State any and all factual support for Petitioners' allegation that the County Board's finding that criteria (ii) was not met ("criteria (ii) finding") was unsupported by the record;

q. Identify any and all evidence presented during the site proceeding, including, but not limited to, expert reports, exhibits, and testimony, that supports the allegation that the County Board's criteria (ii) finding was unsupported by the record;

r. State any and all factual support for Petitioners' allegation that the County Board's criteria (ii) finding was against the manifest weight of the evidence presented during the siting proceeding;

s. Identify any and all evidence presented during the site proceeding, including, but not limited to, expert reports, exhibits and testimony, that supports the allegation that the County Board's criteria (ii) finding was against the manifest weight of the evidence;

t. State any and all factual support for Petitioners' allegation that the County Board's finding that criteria (iii) was not met ("criteria (iii) finding") was unsupported by the record;

u. Identify any and all evidence presented during the site proceeding, including, but not limited to, expert reports, exhibits, and testimony, that supports the allegation that the County Board's criteria (iii) finding was unsupported by the record;

v. State any and all factual support for Petitioners' allegation that the County Board's criteria (iii) finding was against the manifest weight of the evidence presented during the siting proceeding;

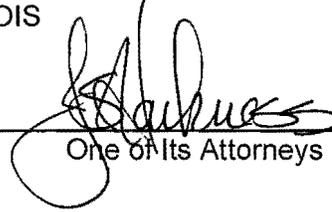
w. State any and all factual support for all allegations of non-compliance with the Kendall County Site Approval Ordinance for Pollution Control Facilities during the site proceeding;

x. Identify any and all evidence presented during the site proceeding, including, but not limited to expert report, exhibits and testimony, that supports the allegation that the County Board's criteria (iii) finding was against the manifest weight of the evidence;

Date:

COUNTY BOARD OF KENDALL COUNTY
ILLINOIS

By: _____



One of Its Attorneys

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