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JUL 01 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

STOP THE MEGA-DUMP,)
)
Petitioner,)
)
v.)
)
COUNTY BOARD OF DEKALB COUNTY)
ILLINOIS and WASTE MANAGEMENT OF)
ILLINOIS, INC.,)
)
Respondents)

PCB 10-103
(Third-Party Pollution Control Facility
Siting Appeal)

ORIGINAL

WASTE MANAGEMENT OF ILLINOIS,)
INC.,)
)
Petitioner,)
)
v.)
)
DEKALB COUNTY BOARD,)
)
Respondent.)

PCB 10-104
(Pollution Control Facility Siting
Appeal)
(Consolidated)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 1, 2010, we filed with the Illinois Pollution Control Board, the attached Waste Management of Illinois, Inc.'s **Motion to Sever** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: Lauren Blair
One of Its Attorneys

Donald J. Moran
Lauren Blair
PEDERSEN & HOUP
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Chicago, Illinois 60601
(312) 641-6888
Attorney Registration No. 1953923

JUL 01 2010

STATE OF ILLINOIS
Pollution Control Board

PROOF OF SERVICE

I, Tasha Madray, a non-attorney, on oath states that she served the foregoing Waste Management of Illinois, Inc.'s **Motion to Sever** by enclosing same in an envelope addressed to the following parties as stated below, and by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, on or before 5:00 p.m. on this 1st day of July, 2010:

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ORIGINAL

Tasha Madray

Tasha Madray

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STATE OF ILLINOIS
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STOP THE MEGA-DUMP,)
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COUNTY BOARD OF DEKALB COUNTY,)
ILLINOIS and WASTE MANAGEMENT OF)
ILLINOIS, INC.,)
)
Respondents.)

PCB No. 10-103
(Third-Party Pollution Control
Facility Siting Appeal)

WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
Petitioner,)
)
v.)
)
DEKALB COUNTY BOARD,)
)
Respondent.)

PCB No. 10-104
(Pollution Control Facility Siting
Appeal)
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ORIGINAL

MOTION TO SEVER

Petitioner/Respondent, Waste Management of Illinois, Inc. ("WMII"), by its attorneys, Pedersen & Houpt, P.C., moves the Illinois Pollution Control Board ("Board"), pursuant to Section 101.408 of the Board's Procedural Rules ("Rules"), to sever WMII's appeal (PCB No. 10-104) from the Third-Party appeal filed by Third-Party Petitioner, STOP THE MEGA-DUMP ("STMD") (PCB No. 10-103). In support thereof, WMII states as follows:

1. On June 14, 2010, WMII filed a Petition for Review with the Board, PCB No. 10-104, contesting and objecting to the DeKalb County Board's ("County Board") inclusion of Special Condition 32, an "Additional Condition" to Criterion 6, in its May 10, 2010 Site Location Approval on the grounds that the special condition is neither reasonable nor necessary to

accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act ("Act"), is inconsistent with the regulations promulgated by this Board, is not supported by the record and has not been demonstrated to be either technically practicable or economically reasonable.

2. On June 11, 2010, STMD filed a Third-Party Petition to Review, PCB No. 10-103, on the grounds that the County Board lacked jurisdiction, the County Board's decision regarding the statutory criteria for Section 39.2(a)(i), (ii), (iii), (v) and (vi) was against the manifest weight of the evidence, and the proceedings were fundamentally unfair.

3. On June 17, 2010, the Board, *sua sponte*, consolidated WMII's appeal with STMD's Third-Party appeal. WMII asks the Board to sever its appeal in light of the standards for consolidation and severance of claims articulated in Sections 101.406 and 101.408 of the Rules.

4. Section 101.406 of the Rules provides that consolidation is proper only: "if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party." 35 Ill. Adm. Code Section 101.406 (2007). Section 101.408 similarly provides that the Board may sever claims involving a number of parties: "in the interest of convenient, expeditious, and complete determination of claims, and where no material prejudice will be caused." 35 Ill. Adm. Code Section 101.408 (2007).

5. In this case, the consolidation of WMII's appeal with STMD's Third-Party appeal will not serve the interests of a convenient and expeditious determination of claims. The challenge that WMII raises in its appeal -- *i.e.*, that Special Condition 32 is not reasonable or necessary to accomplish the purposes of Section 39.2 of the Act, nor supported by the record -- is wholly separate and distinct from the challenges to the Site Location Approval raised by STMD's

appeal. WMII is not challenging the siting approval; its arguments are specific to the County Board's Special Condition 32. WMII will be relying on facts in the record that are unique to its arguments and unrelated to the facts relied upon by STMD in its Third-Party challenge to the Site Location Approval. Thus, consolidating WMII's appeal with STMD's Third-Party appeal will unnecessarily complicate these proceedings by combining unrelated issues and divergent arguments based on different facts.

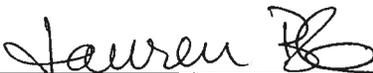
6. Based upon the standards set forth in Sections 101.406 and 101.408 of the Rules, severance of WMII's appeal from STMD's Third-Party appeal is proper and warranted. As the Board ruled in *Sierra Club v. Will County Board*, Nos. PCB 99-136, PCB 99-139, PCB 99-14 slip op. at 4 (April 15, 1999), the proper procedure under these circumstances is to "direct the Clerk of the Board and the assigned hearing officer to handle these cases in a coordinated fashion to the extent practicable, including for purposes of record maintenance and hearing."

7. Neither the DeKalb County Board nor STMD objects to this motion or to the severance of siting appeals No. 10-103 and No. 10-104.

WHEREFORE, WASTE MANAGEMENT OF ILLINOIS, INC. respectfully requests that the Board enter an Order severing PCB 10-104 from PCB 10-103, and providing such other and further relief as the Board deems appropriate.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By:  _____
One of Its Attorneys

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