

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3	WASTE MANAGEMENT OF ILLINOIS,)	
	INC., a Delaware corporation,)	
4)	
	Petitioner,)	
5)	
	vs)	PCB No. 99-141
6)	
	WILL COUNTY BOARD,)	
7)	
	Respondent.)	

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13 RECORD OF PROCEEDINGS before JOHN C.
14 KNITTLE, Hearing Officer for the Illinois
15 Pollution Control Board, at the Will County
16 Courthouse, 14 West Jefferson Street, Room
17 300, Joliet, Illinois, scheduled to commence
18 at 2:00 o'clock p.m. on the 4th day of June,
19 A.D., 1999, commencing at 2:07 p.m.

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1 A P P E A R A N C E S :

2 PEDERSEN & HOUPPT,
3 161 North Clark Street
4 Suite 3100
5 Chicago, Illinois 60601
6 (312) 781-2149
7 BY: MR. DONALD J. MORAN

8 Appeared on behalf of the Petitioner,

9 HINSHAW & CULBERTSON,
10 100 Park Avenue
11 P.O. Box 1389
12 Rockford, Illinois 61105
13 (815) 963-8488
14 BY: MR. CHARLES F. HELSTEN

15 - AND -

16 HODGE & DWYER,
17 808 South Second Street
18 Springfield, Illinois 62704
19 (217) 523-4900
20 BY: MS. CHRISTINE G. ZEMAN

21 Appeared on behalf of the Respondent.

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1 HEARING OFFICER KNITTLE: Hello. My
2 name is John Knittle. I'm a hearing officer
3 with the Illinois Pollution Control Board.
4 I'm the assigned hearing office for the matter
5 set for hearing today, which is entitled Waste
6 Management of Illinois, Incorporated, a
7 Delaware corporation vs. Will County Board,
8 PCB 99-141. Today's date is June 4th. It's
9 approximately 2:07 p.m.

10 There are two members of the
11 public present who have stated before we
12 started this hearing they wish to provide
13 public comment. An opportunity will be made
14 for them to make a public comment after the
15 cases in chief are finished.

16 I want to introduce Marie
17 Tipsord, who is the only other employee of the
18 Illinois Pollution Control Board. Marie is
19 also the designated press liaison for this
20 matter. So if anybody wants to talk to the
21 Board about this case, please refer your
22 questions to Marie.

23 This hearing has been scheduled
24 in accordance with the Illinois Environmental

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2 rules and procedures. It will be conducted
3 according to procedural rules at 103.202 and
4 203 with some minor modifications.

5 As discussed at the prehearing
6 conference, I'm going to allow members of the
7 public to comment. They will also have the
8 opportunity to file their public comment after
9 the hearing. Any persons speaking will be
10 sworn and be subject to cross-examination.
11 The statement must be relevant to the case and
12 to the issues pending before the Illinois
13 Pollution Control Board in this matter.

14 As I've already stated, citizens
15 will be allowed to make their statements after
16 the parties present their case. I don't think
17 this applies, but if you have to leave before
18 the end of this case, let me know by raising
19 your hand and I'll make sure to get you on
20 before that time comes, but as this doesn't
21 appear to be a lengthy hearing, that shouldn't
22 be a problem.

23 Before we begin, I know I've
24 talked about this at the previous hearing, but

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1 this is a separate matter, and I want to
2 explain a little bit about the Board's hearing

3 process. I do not make the decision about
4 this case. The Illinois Pollution Control
5 Board will be making that decision. The Board
6 is comprised of seven members throughout the
7 state. They will view the transcript of these
8 proceedings and the rest of the record and
9 decide this case. My job is to ensure an
10 orderly hearing and a clear record so that the
11 Board can have all the pertinent information
12 before them in making its decision.

13 After the hearing, the parties
14 will have the opportunity to submit
15 post-hearing briefs. These, too, will be
16 considered by the Board and a statutory
17 decision deadline assigned to this case. That
18 means the Board by law has to decide this
19 matter by I think it's August 5th. It might
20 be a couple days later. Either way, we're
21 going to be -- it will be decided on August
22 5th because that is the last Board meeting
23 before the statutory decision deadline, and we
24 will save public comments for the end.

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1 At this point, I'd like to take
2 a moment to have the parties introduce
3 themselves starting with the petitioner.

4 MR. HELSTEN: Chuck Helsten on behalf
5 of the Will County Board. Excuse me. We're
6 not the petitioner. I'm sorry.

7 MR. MORAN: Donald Moran on behalf of
8 the petitioner, Waste Management of Illinois,
9 Inc.

10 HEARING OFFICER KNITTLE: Chuck, do
11 you want to go again?

12 MR. HELSTEN: I'm sorry. I think I
13 can get it right this time.

14 HEARING OFFICER KNITTLE: Well, I
15 looked at you. I think I threw you off.

16 MR. HELSTEN: Chuck Helsten on behalf
17 of the Will County Board, respondent.

18 MS. ZEMAN: Christine Zeman also on
19 behalf of the Will County Board.

20 HEARING OFFICER KNITTLE: Thank you.
21 I would like to address any preliminary
22 matters. I don't have any record of any such
23 matter.

24 Are there any outstanding

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1 motions before we get started?

2 MR. MORAN: None.

3 MR. HELSTEN: None.

4 HEARING OFFICER KNITTLE: Let's

5 proceed then. Do you want to make opening
6 statements? If we do, Mr. Moran, it's yours.

7 MR. MORAN: Well, I'll just simply set
8 the stage for the appeal itself. Waste
9 Management of Illinois, Inc. has filed an
10 appeal of one of the 57 conditions which were
11 made part of the Will County Board's siting
12 decision in which local site location approval
13 was granted for the proposed Prairie View
14 Recycling and Disposal facility. The
15 condition at issue relates to the continued
16 operation of the Wheatland Prairie Landfill,
17 and it is Waste Management's position that
18 this condition is neither supported by the
19 applicable law as set forth in the Illinois
20 Environmental Protection Act and also the
21 decisions construing that Act as it relates to
22 the appropriate and proper conditions to be
23 attached to a grant of siting approval. In
24 essence, the condition at issue here is in no

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1 way related to the legitimate objectives and
2 goals of the Act and serves no purpose related
3 to the siting, and as a result, it is our
4 position that this condition ought to be
5 stricken and for any other relief the Board

6 may deem appropriate.

7 HEARING OFFICER KNITTLE: Thank you,
8 Mr. Moran. Do have an opening statement on
9 behalf of the respondent?

10 MS. ZEMAN: I do. It's in the nature
11 of opening, closing, however you want to --
12 however you want to view it, but in the same
13 way, it kind of sets the stage for our
14 position in this appeal. Waste Management
15 asserted in its petition that there is
16 insufficient information in the record to
17 support the condition to close the Wheatland
18 Prairie Landfill, and that assertion is simply
19 not true. Waste Management's own need
20 analysis in the application and the testimony
21 on criterion one as well as criterion eight
22 support condition number six with respect to
23 the closure of the Wheatland Landfill. Cheryl
24 Smith was Waste Management's need expert as

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1 well as on consistency with the county plan.
2 Cheryl used the traditional methodology of
3 identifying the service area, identifying the
4 facilities serving the area, and then
5 identifying the waste generation needs, and
6 then estimating the remaining life of each

7 facility.

8 Now, in that process, she
9 clearly had to identify the Wheatland Landfill
10 here in Will County as servicing or capable of
11 serving the service area and identified the
12 remaining capacity of the landfill and
13 identified that based on the data that Waste
14 Management provided to the IEPA in that annual
15 capacity report Wheatland would close
16 April 2001.

17 She specifically used the
18 computation based on that closure to support
19 her finding of the capacity shortfall in her
20 basic finding that there was a need for the
21 Prairie View Landfill. Moreover, Ms. Smith
22 argued that the Prairie View facility is
23 necessary as a, quote, replacement due to the
24 closure of the Wheatland Landfill in

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1 April 2001. Her replacement theory, i.e.,
2 that one takes the place of the other, is
3 critical not only to our need analysis, but
4 also to the argument about consistency with
5 the county plan for two reasons.

6 Firstly, upon closure of the
7 Wheatland Landfill and if Prairie View were

8 not developed, Will County would otherwise be
9 forced to export its waste, and the county
10 plan makes perfectly clear that that waste
11 exportation is not within its planning
12 design.

13 More importantly, the county
14 plan recognizes only one primary landfill with
15 a minimum capacity of about 20 years. That
16 recognition of one primary landfill to service
17 the Will County waste generation needs is
18 based on the efficiency of dealing with one
19 landfill for the operator as well as other
20 concerns.

21 The continued operation of the
22 Wheatland Landfill once Prairie View is
23 operational is therefore inconsistent with the
24 plan. In that regard then, the record amply

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1 supports that the condition and the decision
2 is both reasonable and necessary to the county
3 board's finding on criterion one and eight.
4 We don't think that there's any way that Waste
5 Management can show that the condition is
6 against the manifest weight.

7 Finally, we believe that Waste
8 Management challenging the condition is not

9 only disingenuous, it also shows an element of
10 bad faith or unclean hands, and it should be
11 estopped from claiming that the condition is
12 improper. This was not necessarily a
13 unilateral decision of the county board simply
14 on its own merit or on the basis of the record
15 before it.

16 The idea and the impetus for the
17 condition grew out of a promise that a
18 vice-president for Waste Management made to
19 the citizens of the county, in particular, the
20 residents around the Wheatland Landfill. Case
21 law allows the county board in its
22 decision-making to sometimes use things
23 outside the record so long as the record
24 otherwise supports the decision and, as

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1 already is stated, we think that's perfectly
2 clear.

3 For these reasons, we think the
4 county board is more than justified in
5 requiring the closure of the Wheatland
6 Landfill as a part of the need analysis, as a
7 part of consistency with the county plan, and
8 believe the record itself more than amply
9 shows based on Waste Management's own data

10 that it's appropriate to close that landfill.

11 HEARING OFFICER KNITTLE: Thank you.

12 Mr. Moran, do you have a case you would like
13 to put on?

14 MR. MORAN: We have no witnesses to
15 present, no evidence to present inasmuch as
16 the issue that we have raised is purely a
17 legal issue that requires interpretation of
18 the applicable provisions of the Act, also the
19 applicable case law. We would simply reserve
20 the right to present our argument and our case
21 by way of written briefs, which will be
22 subsequently prepared and submitted.

23 HEARING OFFICER KNITTLE: Thank you,
24 sir.

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1 Do the respondents have a case
2 they would like to put on, any witnesses or
3 exhibits?

4 MS. ZEMAN: No, other than the members
5 of the public.

6 HEARING OFFICER KNITTLE: Okay. Thank
7 you very much. That closes the case in
8 chiefs. We have some members of the public
9 that would like to provide statements. Ma'am,
10 do you want to start us off?

11 MS. CALANNAN: Sure.

12 HEARING OFFICER KNITTLE: Could you
13 come up here? We're going to swear you in.
14 Is there a chair still here?

15 MS. CALANNAN: There's a couple.

16 HEARING OFFICER KNITTLE: Please have
17 a seat and the court reporter will swear you
18 in.

19 MS. CALANNAN: I want a solid one.

20 HEARING OFFICER KNITTLE: Sit wherever
21 you'd like. My only request is after she
22 swears you in, could you please identify
23 yourself with your name?

24 MS. CALANNAN: Sure.

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1 HEARING OFFICER KNITTLE: Thank you.
2 Could you swear her in, please?

3 (Witness sworn.)

4 MS. CALANNAN: I'm Karen A. Calannan,
5 county board member, district five, and I just
6 want to make one brief statement. I was the
7 county board member that requested this
8 condition be put in the application because I
9 believed based on their own need analysis that
10 they stated they only needed space at
11 Wheatland Prairie Landfill until April 2001,

12 and I believe that -- I wanted that in the
13 formal site application as a condition just to
14 make them keep their promise to the people
15 that, you know, we represent, the county board
16 represents, and although I did not vote for
17 the Waste Management contract for the county,
18 I thought if in case it did pass, which, of
19 course, the board did pass it, that I wanted
20 this on the record. That's all.

21 HEARING OFFICER KNITTLE: Thank you
22 very much, ma'am. You're going to be subject
23 to cross-examination. That means if one of
24 the attorneys wants to ask you some questions,

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1 you're going to have to answer those to the
2 best of your ability. I guess we should start
3 off with Mr. Moran.

4 C R O S S - E X A M I N A T I O N
5 by Mr. Moran

6 Q. Ms. Calannan, how did you vote on the
7 application for site location approval of the
8 Prairie View Recycling and Disposal facility?

9 A. As I just stated for the record, I
10 voted against the application.

11 MR. MORAN: That's all I have.

12 HEARING OFFICER KNITTLE: Ms. Zeman?

13 MS. ZEMAN: I don't have any
14 questions.

15 HEARING OFFICER KNITTLE: Well, thank
16 you very much. You can step down.

17 Sir, do you have a written
18 statement or do you want to offer oral
19 testimony?

20 MR. TRUPPA: I could offer oral
21 testimony. I also have a document that I
22 could submit for the record.

23 HEARING OFFICER KNITTLE: That's going
24 to be your call. You can do both if you'd

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1 like.

2 MR. TRUPPA: I'll do both.

3 HEARING OFFICER KNITTLE: Why don't
4 you come up here and we'll swear you in. Have
5 a seat. You can stand.

6 (Witness sworn.)

7 HEARING OFFICER KNITTLE: Please have
8 a seat, sir, and as before, could you identify
9 yourself by name when you get started?

10 MR. TRUPPA: My name is Anthony
11 Truppa. I'm a Wheatland Township trustee,
12 and, first of all, I'd like to thank everybody
13 for giving me an opportunity to express the

14 thoughts and concerns that the people in
15 Wheatland Township have regarding specifically
16 the way Wheatland Prairie Landfill is operated
17 by Waste Management.

18 We do feel confident that our
19 current county land use department is doing a
20 good job at monitoring the facility and
21 verifying that there's no problems with the
22 facility. However, we do have a concern that
23 I bring before you today regarding related
24 comments made by Waste Management when they

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1 indicated their willingness to cease
2 operations at this facility if, in fact, they
3 were awarded a site permit for the project at
4 one time called the Joliet Arsenal facility.
5 It's our understanding that there's been such
6 an award, however, it was contingent on
7 meeting 57 conditions detailed by the county
8 board.

9 One of these conditions was
10 closure of Wheatland Prairie Landfill
11 facility. It's also our understanding that
12 Waste Management is challenging the Prairie
13 View and Wheatland Prairie Landfill facility,
14 one of the conditions that was part of the

15 site, and, in fact, Mr. Bruce Malec,
16 vice-president of operations at Waste
17 Management, committed to Wheatland Township
18 official in a letter dated July 25th, 1996,
19 that Waste Management would cease operations
20 at the Wheatland Prairie facility if they were
21 awarded this Joliet Arsenal facility
22 business.

23 Prior to this in an annual town
24 meeting held on April 9th, 1996, where are

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1 State's Attorney Glasgow was in attendance, he
2 also made the same type of reference that we
3 believed that Waste Management would close the
4 Wheatland Prairie Landfill facility if they
5 had been in the future awarded the Joliet
6 Arsenal business, and it's our belief that
7 State's Attorney Glasgow would have made that
8 kind of statement only if he was given that
9 indication by somebody at Waste Management.

10 We believe that Waste Management
11 should abide by the previous commitments and
12 close the Wheatland Prairie Landfill facility
13 as promised.

14 Thanks for the opportunity to
15 speak and give this testimony.

16 HEARING OFFICER KNITTLE: Thank you,
17 sir. As I've stated earlier, you're going to
18 be subject to some cross-examination starting
19 with Mr. Moran.

20 MR. MORAN: I have no questions.

21 HEARING OFFICER KNITTLE: Ms. Zeman?

22 MS. ZEMAN: I have no questions.

23 HEARING OFFICER KNITTLE: Thank you
24 very much, sir.

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1 MR. TRUPPA: Can I leave these with
2 you?

3 HEARING OFFICER KNITTLE: Are you
4 wanting to submit those as a written public
5 comment?

6 MR. TRUPPA: Yeah. This is what I had
7 said, and I also have a copy of that Bruce
8 Malec letter that I referenced.

9 HEARING OFFICER KNITTLE: I'll accept
10 that as Public Comment No. 1.

11 MR. TRUPPA: Okay. Thanks.

12 HEARING OFFICER KNITTLE: Thank you.
13 Go off the record for a second.

14 (Discussion had
15 off the record.)

16 HEARING OFFICER KNITTLE: We are back

17 on the record after an off-the-record
18 discussion where we discussed briefing
19 schedules and the public comment period.

20 Mr. Moran has indicated that
21 they will be filing a waiver extending the
22 decision deadline, and correct me if I'm
23 wrong, Mr. Moran, until September 9th?

24 MR. MORAN: That is correct.

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1 HEARING OFFICER KNITTLE: Based on the
2 representation, we have agreed to the
3 following briefing schedule. First of all,
4 written public comments are going to be due at
5 the Board's offices on June 18th. The
6 petitioner's brief will be due July 16th. The
7 response brief will be due July 27th, and
8 petitioner's reply brief will be due on August
9 4th.

10 As in the other case, the
11 mailbox rule will not apply. So those briefs
12 and public comments have to be in the Board's
13 offices and served on the other party by that
14 time.

15 Mr. Helsten indicated to me also
16 off the record that he had a comment that he
17 wished to make about a public comment. So,

18 Mr. Helsten, go ahead.

19 MR. HELSTEN: Thank you, Mr. Knittle.

20 Mr. Truppa's public comment referenced Mr. Jim

21 Glasgow, the Will County State's Attorney.

22 Mr. Glasgow would have been here today but for

23 a prior conflicting engagement. He was asked

24 to participate in an anticrime handgun

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1 coalition meeting with the Cook County State's

2 Attorney, Mr. Devine, today, and, as such, he

3 could not participate, but he wanted me to

4 state for the record that he will be filing a

5 public comment in support of Mr. Truppa and

6 Ms. Calannan.

7 HEARING OFFICER KNITTLE: Thank you,

8 Mr. Helsten. Is there anything else from the

9 petitioner and the respondent?

10 It's about 2:35. I'm going to

11 keep this hearing open until 3:00 o'clock in

12 case some other member of the public wants to

13 come in and provide a comment. After that,

14 I'm going to close it. There were no

15 witnesses, so I do not have to issue a

16 credibility statement, and thank you all for

17 coming.

18 (Break taken.)

19 HEARING OFFICER KNITTLE: We're back
20 on the record. It is 3:00 p.m. We have had
21 no public comments, and I'm closing the
22 hearing. As I stated, I'm going to keep a
23 notice on the door outside advising anybody
24 who wishes to file written public comments

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1 that they may do so up until June 18th. Thank
2 you all very much.

3 (Whereupon, these were all
4 the proceedings had in
5 the above-entitled case.)
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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4 I, GEANNA M. IAQUINTA, CSR, do
5 hereby state that I am a court reporter doing
6 business in the City of Chicago, County of
7 Cook, and State of Illinois; that I reported
8 by means of machine shorthand the proceedings
9 held in the foregoing cause, and that the
10 foregoing is a true and correct transcript of
11 my shorthand notes so taken as aforesaid.

12

13

14 _____
Geanna M. Iaquina, CSR
15 Notary Public, Cook County, IL
Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO
before me this ____ day
18 of _____, A.D., 1999.

19

Notary Public

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