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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**THE CITY OF KANKAKEE, an Illinois
Municipal Corporation**)
)
)

Plaintiff)

VS.)

**COUNTY OF KANKAKEE, a body politic and
Corporate; KANKAKEE COUNTY BOARD;
And WASTE MANAGEMENT OF ILLINOIS,
INC.,**)
)
)

Defendants)

No. PCB 03-125

**(Pollution Control Facility
Siting Appeal)**

**PETITION FOR HEARING
TO CONTEST SITE LOCATION APPROVAL**

Now comes Petitioner City of Kankakee, a Municipal Corporation, ("City"), by and through its attorneys, L. Patrick Power and Kenneth A. Leshen, Assistant City Attorneys, and respectfully requests a hearing to contest the decision of the Kankakee County Board ("County Board") granting site location approval for a new regional pollution control facility. In support of this Petition, the City states as follows:

1. This petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act, (the "Act") (415 TLCS 5/40.1).

2. On August 16, 2002, Waste Management of Illinois, Inc. ("WMII") filed an application with the County Board for a new regional pollution control facility immediately adjacent to its existing landfill.

3. On January 31, 2003, following service and publication of notice and public hearings conducted before the County Board, the County Board formally approved the siting request. A true and correct copy of the decision of the County Board is attached hereto and incorporated herein as Exhibit A.

4. The City appeared and participated in the hearings held before the County Board.

5. The City contests and objects to the County Board's siting approval because the siting process and procedures used by the County Board in reaching its decision were fundamental unfair for the following reasons:

- (a) Members of the County Board prejudged the siting application;
- (b) The County Board did not make available to the public required documents;
- (c) Procedural irregularities rendered the hearings fundamentally unfair; and,
- (d) The application was not complete and neither the County Board nor WMII followed the local siting ordinance requirements;

6. The City further contests and objects to the County Board's siting approval because the County Board lacked jurisdiction to conduct the siting hearing and because of the failure of WMII to give statutory notice to each of the required parties.

7. The City further contests and objects to the County Board's siting approval because the evidence presented by WMII failed to establish that WMII met the following criteria as established in §39.2 of the Act, to wit:

(A) That the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

Specifically, the evidence submitted by WMII and considered by the County Board fell short in one or more of the following particulars:

- (i) WMII has mischaracterized the permeability, thickness and regularity of the in situ materials relied upon to protect the public safety;
- (ii) The groundwater impact assessment is based on incorrect input parameters and is thus of no value;
- (iii) The inward hydraulic gradient is not sufficiently established or understood; and,

(iv) The regional bedrock aquifer underneath the existing adjacent facility has been contaminated and impacted by the existing facility and the safety of leachate recirculation and the proposed tie-in of the new facility to the old facility have not been established.

(v) No statistics or testimony were presented by WMII to show the effects of recirculation of leachate upon the safe operation of the facility.

(vi) WMII failed to submit any plans whatever for monitoring the site during its operation for radioactive waste.

(vii) WMII failed to do a piezometric surface map of the clay beneath the liner in the proposed plan.

(viii) WMII failed to provide data that would establish that the proposed ground water monitoring system would be effective.

(B) That the facility is located so as to so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding properties.

Specifically, the evidence submitted by WMII and considered by the County Board fell short in one or more of the following particulars:

(i) WMII's expert witness, J. Christopher Lannert failed to testify as to the plan "minimizing incompatibility" and therefore did not speak to this criterion at all.

(ii) WMII's expert witness, Patricia Garr, misrepresented her credentials as an expert and further, her analysis of the estimated effect of the proposed facility on the value of farmland and residential land in the area is unpersuasive.

(C) That the plan of operation for the facility is designed the minimize the dangers to the surrounding area from fire, spills, or other operational accidents.

(D) That the traffic patterns to or from the facility is so designed as to minimize the impact of the existing traffic flow.

8. The City further contests and objects to the County Board's siting approval because the proposed facility is not consistent with the County Solid Waste Plan in that it prohibits location of a new regional pollution control facility above a major aquifer and because no Property value Guarantee program was independently prepared and approved by the County Board.

WHEREFORE, the City prays that the Board enter its order as follows:

- A. Setting for hearing this contest of the County Board Siting Decision;
- B. Reversing the County Board's siting decision; and
- C. Providing for such other and further relief as this Board deems to be just, necessary and proper.

Respectfully submitted,

The City of Kankakee

By:



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