

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MICHAEL WATSON,

Petitioner,

v.

COUNTY BOARD OF KANKAKEE COUNTY,
ILLINOIS, and WASTE MANAGEMENT OF
ILLINOIS, INC.

Respondents.

MAR 7 2003

No. PCB 03-134

STATE OF ILLINOIS
Pollution Control Board

(Pollution Control Facility Siting
Application)

**AMENDED PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A
NEW POLLUTION CONTROL FACILITY, PURSUANT TO SECTIONS 39.2 AND 40.1
OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT**

Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., files this Amendment Petition for a review of the decision of the County Board of Kankakee County, Illinois (Kankakee) conditionally approving the Site Location Application for the Kankakee County Landfill Expansion (Application) filed by Waste Management of Illinois, Inc. (WMII). In further support of this Amended Petition, Petitioner states as follows:

1. This Amended Petition is filed pursuant to Section 40.1(b) of the Illinois Environmental Protection Act (Act) and Sections 107.200-107.208 of the applicable Illinois Pollution Control Board Regulations. (415 ILCS 5/40.1(b) (2003) and 35 IAC 107.200-208). The Petitioner's first Petition is referenced and incorporated herein.

2. Pursuant to Section 107.208(a), a copy of Kankakee's January 31, 2003 written decision is attached to this Petition as **Exhibit A**.

3. The subject new pollution control facility is the expansion of the Kankakee County Landfill which was proposed by WMII and approved, subject to conditions, by Kankakee.

4. Pursuant to Section 107.208(b), the following Paragraphs, 5-7, provide a statement as to how Mr. Watson, the filing party, is a proper Petitioner under Section 107.200 of the Pollution Control Board Regulations, because, among other things, he has an ownership interest of land adjacent to and surrounding the landfill expansion, and due to his participation and attendance at the local site location review public hearings.

5. Mr. Watson is a resident of Kankakee County and a beneficiary of trusts which own property located adjacent to and surrounding the subject landfill expansion.

6. On October 28, 2002, Mr. Watson filed a notice with Kankakee (copies to the local siting hearing officer and WMII, among others) to participate in the public hearing scheduled to be held before Kankakee and its hearing committee. Additionally, Mr. Watson, personally or through his attorneys, attended all of the public hearings in the subject local siting review.

7. Further, Mr. Watson, individually and through his attorneys, timely filed written comments concerning or relating to subject landfill expansion. Mr. Watson incorporates these comments, which are a part of the hearing record and will, thus, be included as part of the Record on Appeal, into this Amended Petition.

8. Pursuant to Section 107.208(c), the following Paragraphs 9-12, set forth the grounds for this appeal.

9. As an initial matter, Kankakee did not have proper jurisdiction to conduct the local public hearings or make a decision on WMII's siting request for the landfill expansion. Pre-filing notice to Brenda and Robert Keller, owners of property within 250 feet of the proposed facility, was insufficient under the requirements of Section 39.2(b) of the Act. (415 ILCS 5/39.2(b) (2003)). Illinois Courts have consistently held that Section 39.2(b) pre-filing notice

requirements are a jurisdictional prerequisite to the local new pollution control facility site location process. *See, Ogle County Bd. ex rel. County of Ogle v. Pollution Control Bd.*, 272 Ill. App. 3d 184, 208 Ill. Dec. 489, 649 N.E.2d 545 (1995), *appeal denied*, 163 Ill. 2d 563, 212 Ill. Dec. 424, 657 N.E.2d 625 (1995); *Kane County Defenders, Inc. v. Pollution Control Bd.*, 139 Ill. App. 3d 588, 93 Ill. Dec. 918, 487 N.E.2d 743 (2nd Dist. 1985). Although not a prerequisite to raising a jurisdictional issue on appeal, Mr. Watson, through his attorneys, filed a motion during the course of the local public hearings, to dismiss WMII's siting application as WMII failed to properly and timely notify Brenda and Robert Keller of the siting application, prior to its filing with the Kankakee County Clerk's Office and Kankakee.

10. Additionally, the local siting review procedures, hearings, decision, and process, individually and collectively, were fundamentally unfair. The areas of fundamental fairness, that are sought to be addressed in this appeal, include, but are not limited to, the following. Mr. Watson specifically reserves his rights to add to the following list of fundamental fairness subjects, during or following discovery and the public hearing in the appeal before this Board.

A. The Illinois Environmental Protection Agency Records or existing site records allegedly filed by WMII with the Kankakee County Clerk were not available to members of the public at the Kankakee County Clerk's Office to review and, in fact, members of the public were affirmatively told by the Clerk's Office that no such records were filed.

B. Exhibits A1 and A2 to the to the Host Community Benefit Agreement were not included in the "official copies" of WMII's siting application maintained at Adcraft Printers by or on behalf of Kankakee or the Kankakee County Clerk's Office, and

numerous participants, even the hearing officer for the local public hearings, did not have those Exhibits. Numerous participants, including Mr. Watson, were disadvantaged due to the missing Exhibits, and in particular, were prejudiced in their ability to review these Exhibits, a purported property value protection plan, and prepare for the public hearings in a manner so as to address questions or issues concerning these Exhibits. Additionally, there is a question concerning the availability of these Exhibits at the Kankakee County Clerk's Office.

C. On information and belief, improper *ex parte* communications during the pendency of the WMII's siting application created unfair proceedings, inherently prejudicial to other participants. See, Southwest Energy Corporation v. IPCB, et al., 275 Ill. App. 3d 84, 355 N.E.2d 304 (4th Dist. 1995).

D. On information and belief, other fundamental fairness issues exist concerning the communication, conduct and decision-making process of Kankakee, the committee that made recommendations to and advised Kankakee, and WMII, however, discovery is needed to review these issues on appeal.

E. The public hearings were not fair, due to unavailability of WMII's witnesses who had substantial input in the preparation of the siting application and its Criteria-specific reports. For example, WMII refused to present Mr. Miller from Metro for cross-examination even though Mr. Miller signed the Criterion 6 report in WMII's siting application, and WMII's Criterion 6 witness, Mr. Corcoran, testified that Mr. Miller had substantial input in the preparation of the report and analysis of traffic impact.

F. The public hearings were not fair, due to WMII's failure or refusal to present documentation concerning the alleged qualifications of Ms. Patricia Beaver-McGarr, WMII's sole witness concerning that portion of Criterion 3 related to property values, and WMII's failure or refusal to present this witness for further cross-examination. As a result, participants and Kankakee were denied access to information needed to fully examine this witness and her alleged qualifications.

G. The local siting review was fundamentally unfair due to WMII's failure to follow, and Kankakee's failure to specifically waive in a properly noticed public meeting, local requirements for substance and content of a siting application.

H. Finally, Mr. Watson reserves his right to add specific fundamental fairness issues or delete from the above list, during discovery, hearing, and briefing during the continued siting process before the Illinois Pollution Control Board.

11. Criteria (i), (ii), (iii), (v), (vi), (vii), and (viii) of the nine criteria established in §39.2 of the Act were not met by the WMII, and Kankakee's approval of the siting application on those Criteria is not supported by the record and is against the manifest weight of the evidence. Petitioner raises particular concerns regarding the evidence and testimony presented for the criteria including, but not limited to, the following. Petitioner specifically reserves his rights to add or remove from the following list of issues during this proceeding.

a. The County's decision on Criterion (i), is against the manifest weight of the evidence, and WMII did not prove that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve, as, among other things:

- (1) Evidence presented by WMII's own witness in support of this Criterion is inconsistent and contradictory, and against the manifest weight of the evidence;
- (2) WMII failed to present sufficient evidence to meet the Criterion, and its witness relied on incomplete and inaccurate information in formulating her opinions;
- (3) WMII's witness in support of this Criterion was biased;
- (4) Testimony provided by WMII witnesses in support of other Criteria, contradicted witnesses who testified in support of this Criterion
- (5) WMII failed to show expediency as a requirement of this Criterion;
- (6) Economics of the proposed facility was given an improper weight in the decision-making process on this Criterion; and
- (7) Recycling, generation and capacity data were misstated.

b. The County's decision on Criterion (ii), is against the manifest weight of the evidence, and WMII did not prove that the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected, as, among other things:

- (1) The evidence presented by WMII's own was inconsistent and contradictory, and against the manifest weight of the evidence;
- (2) WMII failed to present sufficient evidence to meet the Criterion, and its witness relied on incomplete and inaccurate information in formulating their opinions;

- (3) WMII's witnesses in support of this Criterion were biased;
- (4) Testimony provided by WMII witnesses in support of other Criteria, contradicted witnesses who testified in support of this Criterion;
- (5) WMII failed to provide substantive, and in some cases, any response to portions of the Kankakee County siting ordinance;
- (6) WMII did not prove that the hydrogeological character of the location was sufficient to meet this Criterion, and it based its conclusions of such sufficiency on incorrect and insufficient data;
- (7) WMII ignored and presented no substantive evidenced that the location of the facility was incorporated and analyzed as a factor of the design;
- (8) WMII failed to substantively address current contamination of the site in its proposal;
- (9) WMII failed to prove that its proposed design would be capable of maintaining at or below the required leachate level on the liner;
- (10) WMII failed to present sufficient evidence to support a decision on Criterion 2, as related to the existing and proposed monitoring of the site;
- (11) The information considered by WMII and presented to the County concerning the location of the site was, in relevant part, inaccurate; and

(12) The operation plan failed to consider and address the operating history at the site, and failed to address the quantity of waste expected to be received at the site.

c. The County's decision concerning Criterion (iii) is against the manifest weight of the evidence, and WMII did not prove that the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimized the effect on the value of the surrounding property, as, among other things:

- (1) WMII's proposal and testimony concerning Criterion (iii) are inconsistent and contradictory, and against the manifest weight of the evidence;
- (2) WMII's witnesses who testified in support of Criterion (iii) are biased;
- (3) WMII failed to present sufficient evidence to meet the Criterion, and its witness relied on incomplete and inaccurate information in formulating their opinions;
- (4) WMII's witness who testified concerning the property value portion of this Criterion, did an incomplete and inaccurate analysis, lacks credibility, and was not proven as qualified to testify or present evidence on the subject matter she presented;
- (5) WMII's evidence was, in relevant respects, inaccurate; and
- (6) The property value guaranty proposed and promoted by WMII during the proceedings does not and cannot "correct" or minimize

incompatibility or impact on property values, and, as written, provides little or no value protection, particularly when, as written, such plan is arguably or actually not applicable to farm property;

(7) Testimony provided by WMII witnesses in support of other Criteria, contradicted witnesses who testified in support of this Criterion.

- d. The County's decision concerning Criterion (v) was against the manifest weight of the evidence, and WMII did not prove that the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operation accidents, as, among other things, the plan was not complete, relied on inaccurate or incomplete information as its basis, did not sufficiently, or in some cases at all, provide for emergency response scenarios, testimony provided by WMII witnesses in support of other Criteria contradicted witnesses who testified in support of this Criterion, and WMII did not adequately or sufficiently consider existing operations or the existing site.
- e. The County's decision concerning Criterion (vi) was against the manifest weight of the evidence, and WMII did not prove that the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows, as, among other things:

(1) Testimony provided by WMII witnesses in support of other Criteria, contradicted witnesses who testified in support of this Criterion;

- (2) WMII failed to present sufficient evidence to meet the Criterion, and its witness relied on incomplete and inaccurate information in formulating his opinions;
 - (3) WMII failed to consider the increased size of vehicles and traffic volume from an expansion in its traffic study; and
 - (4) WMII refused the request to have one of the persons who was substantially involved in the preparation of the traffic study to testify.
- f. The County's decision concerning Criterion (vii) was against the manifest weight of the evidence, and WMII did not prove that the facility would not be treating, storing or disposing of hazardous waste, therefore the conclusion of the County that this Criterion was not applicable and that an emergency response plan which includes notification, containment and evacuation procedures to be used in case of an accidental release was not necessary, is not supported by the evidence, as, among other things, WMII's did not provide adequate testimony to prove that the current leachate extracted from and stored at the site is not hazardous.
- g. The County's decision concerning Criterion (viii) is against the manifest weight of the evidence, and WMII did not prove that the following Criterion was met: if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act

(415 ILKCS 10/1 *et seq.* or 415 ILCS 15/1 *et seq.*), the facility is consistent with that plan, as, among other things:

- (1) WMII's proposal and testimony concerning Criterion (viii) are inconsistent and contradictory, and against the manifest weight of the evidence;
- (2) WMII's witness who testified in support of Criterion (viii) is biased;
- (3) WMII failed to present sufficient evidence to meet the Criterion, and its witness relied on incomplete and inaccurate information in formulating her opinions;
- (4) Testimony provided by WMII witnesses in support of other Criteria, contradicted witnesses who testified in support of this Criterion; and
- (5) The evidence and opinions presented by WMII fail to meet the prerequisite standard for consistency set by the County, in its adoption of requirements for any siting application contained in the Solid Waste Management Plan(s).

12. Finally, in the alternative and in the event the County's decision on this siting application is upheld, the Petitioner contests the conditions to the approval imposed by the County, as they are less than what is reasonable and necessary to require or assure that WMII meets its burden with respect to the Criteria, and they were amended, on information and belief, in some circumstances, based solely on a stated economic rationale.

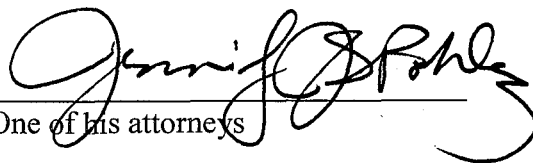
WHEREFORE, Petitioner Michael Watson respectfully requests the Board enter an order (a) finding that no jurisdiction existed on Waste Management of Illinois, Inc.'s siting

application and, therefore, the County Board of Kankakee County's decision is not valid and void; (b) alternatively and notwithstanding or waiving the jurisdictional issues, setting for hearing this contest of the County Board siting approval decision, (c) alternatively and notwithstanding or waiving the jurisdictional issues, reversing the County Board of Kankakee County's approval and denying Waste Management of Illinois, Inc.'s siting application; (d) alternatively and notwithstanding or waiving the jurisdictional issues or item (c), above, remanding this matter for further local public hearings to address the fundamentally unfair local proceeding; (e) alternatively, and without waiving other issues raised in this appeal, modifying the conditions, should the County's decision be upheld, such that the required Criteria have been or have assurances of being met, and such that the conditions are reasonable and necessary where they now require less than what is reasonable and necessary; and (f) providing such other and further relief as the Illinois Pollution Control Board deems appropriate.

Dated: March 7, 2003

Respectfully submitted,

MICHAEL WATSON

By: 
One of his attorneys

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