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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 23 2003

CITY OF KANKAKEE,)
)
Petitioner,)
)
v.)
)
)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

PCB 03-03-125 STATE OF ILLINOIS
Pollution Control Board
(Third-Party Pollution Control
Facility Siting Appeal)

MERLIN KARLOCK,)
)
Petitioner,)
v.)
)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

PCB 03-133
(Third-Party Pollution Control
Facility Siting Appeal)

MICHAEL WATSON,)
)
Petitioner,)
v.)
)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

PCB 03-134
(Third-Party Pollution Control
Facility Siting Appeal)

KEITH RUNYON,)
)
Petitioner,)
v.)
)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

PCB 03-135
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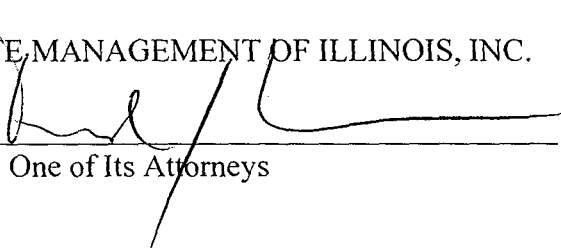
NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on or before 10:00 a.m. on April 23, 2003, we filed with the Illinois Pollution Control Board, the attached **WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS TO PETITIONERS' WITNESS LIST** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By


One of Its Attorneys

Donald J. Moran
Lauren Blair
PEDERSEN & HOUP
Attorneys for Petitioner
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Telephone: (312) 641-6888

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **WASTE MANAGEMENT OF ILLINOIS, INC.'S WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS TO PETITIONERS' WITNESS LIST** on Ms. Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board and on Bradley Halloran by hand delivery at their addresses listed below on or before 10:00 a.m. on the 23rd day of April, 2003 and by facsimile at the facsimile numbers listed below on or before 10:00 a.m. on the 23rd day of April, 2003:

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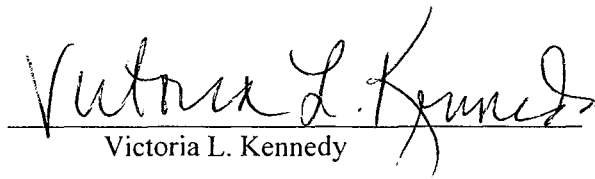
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Victoria L. Kennedy

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PCB 03-03-125

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STATE OF ILLINOIS)
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**WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS
TO PETITIONERS' WITNESS LIST**

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt, objects to the witness list submitted or to be submitted by Petitioners in this matter as follows:

1. On April 17, 2003, pursuant to a telephonic conference, the Hearing Officer imposed a deadline on the parties to provide a list of witnesses they wish to depose on or before April 22, 2003.
2. Neither Petitioners Karlock, Watson and Runyon, nor Respondents WMII and County of Kankakee County Board ("County") submitted any witness/deponent lists. However, on April 22, 2003, Petitioner City of Kankakee ("City") submitted its list of deponents, which identified a total of twenty-three (23) individuals to be deposed within the eight (8) business days that remain before the hearing commences on May 5, 2003.
3. WMII first objects to the City identifying Donald J. Moran ("Moran") and Dennis Wilt ("Wilt") as deponents. Moran is WMII's attorney of record in this matter, and Wilt is WMII's General Counsel.
4. The Illinois Pollution Control Board ("Board") has emphatically expressed its disfavor with the practice of deposing opposing counsel because it "constitutes an invitation to delay, disruption of the case, harassment and perhaps disqualification of the attorney to be deposed." Citizens Against Regional Landfill (C.A.R.L.) v. The County Board of Whiteside County, No. PCB 92-156, slip op. at p.16 (February 25, 1993). The Board held that "the deposition of opposing counsel should be limited to situations where the party seeking the

deposition has shown that (1) no other means exists to obtain the information than to depose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case." C.A.R.L., slip op. at p. 17.

5. In this case, none of the information known to Mr. Moran or Mr. Wilt is in any way unique to them or known only by them. Mr. Moran did not attend any meetings with County representatives without Dale Hoekstra or Chris Rubak. Mr. Moran's phone conversations with attorneys for the County related to procedural matters in the local siting process and are not probative of any fundamental fairness challenge. Mr. Wilt represented WMII in connection with the Host Agreement and on the occasions he met with the County, he was always accompanied by Mr. Hoekstra, WMII's Director of Operations. Both Mr. Rubak and Mr. Hoekstra are identified on the City's list and are available to be deposed by the City, as are other individuals identified on its list. Moreover, the City has not made any showing that the information it seeks from Mr. Moran and Mr. Wilt is crucial to its case. In fact, the City has yet to make any allegations of specific instances of prejudgment or fundamental unfairness. Because the City has failed to show a legitimate basis for identifying Mr. Moran and Mr. Wilt, the City appears to seek their depositions for the improper purposes of disruption of the proceedings, harassment and possible disqualification of WMII's counsel of choice.

6. WMII also objects to the City identifying Lee Addleman ("Addleman"), WMII's Director of Business Development, on its list of deponents. As WMII stated in its Answers to the City's Interrogatories, which were served on April 18, 2003, Mr. Addleman had liver transplant surgery on February 17, 2003, is currently on medical leave of absence, and will be unavailable to assist or provide information regarding his involvement in the subject siting

matter. The City was well aware of Mr. Addleman's condition at the time it prepared its list of deponents, which further indicates that the City has identified Mr. Addleman solely to harass.

7. In addition, WMII asserts a general objection to the number of deponents identified by the City. As stated above, the City has identified twenty-three (23) individuals to be deposed within eight (8) business days. Yet, the City has not articulated any specific instances of prejudgment or any relationship between the named individuals and any alleged fundamental unfairness in its petition for review. Before the City is allowed to seek information relating to alleged prejudgment of adjudicative facts or fundamental unfairness, it must allege specific instances or evidence of pre-filing collusion or prejudgment. Land and Lakes Co. v. Village of Romeoville, No. PCB 92-25, slip. op. at 4 (June 4, 1992); DiMaggio v. Solid Waste Agency of Northern Cook County, No. PCB 89-138, slip op. at 7 (October 27, 1989). Rather than do so, the City simply casts a wide net hoping to find information to support its petition. However, unlimited discovery in the nature of a fishing expedition should not be not permitted. Without allegations of any specific instances of misconduct, the City's extensive witness/deponent list is not justified, and appears only to serve the City's goals to harass the Respondents, delay these proceedings and unnecessarily increase the costs of this litigation.

8. Under Section 101.616(d) of the Board's Procedural Rules, the Hearing Officer has the power to deny, limit, condition or regulate discovery to prevent unreasonable expense, harassment or delay. In light of the foregoing, the City should be required to either articulate the relationship between the proposed deponent and the alleged prejudgment, or eliminate that individual from its list. In addition, the Hearing Officer should impose time limits (one-hour limit) on the depositions that are allowed to proceed.

9. As a final matter, because Petitioners Karlock, Watson and Runyon have failed to submit witness lists within the deadline imposed by the Hearing Officer, those parties should be precluded from noticing any witnesses for deposition or calling them at the hearing.

WHEREFORE, WMII requests that the Hearing Officer:

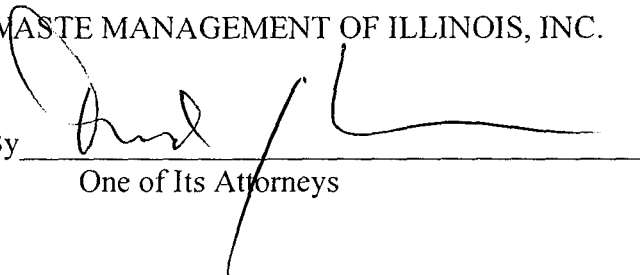
- A. Deny Petitioner City of Kankakee's request to depose WMII's attorneys Donald J. Moran and Dennis Wilt, and WMII's Director of Business Development Lee Addleman;
- B. Order Petitioner City of Kankakee to either articulate the relationship between the listed deponents and the alleged prejudice, or eliminate that individual from its list;
- C. Impose a one-hour time limit on the depositions that are allowed to proceed in this matter;
- D. Preclude Petitioners Karlock, Watson and Runyon from noticing any witnesses for deposition or calling them at the hearing; and
- E. Order such further and other relief as he deems appropriate.

Dated: April 23, 2003

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By


One of Its Attorneys

Donald J. Moran
Lauren Blair
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