

ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

CITY OF KANKAKEE,  
  
Petitioner,

) PCB 03-125  
) (Third-Party Pollution Control Facility  
) Siting Appeal)

APR 25 2003

STATE OF ILLINOIS  
*Pollution Control Board*

vs.

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

Respondents.

MERLIN KARLOCK,  
  
Petitioner,

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

vs.

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

Respondents.

MICHAEL WATSON,  
  
Petitioner,

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

vs.

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

Respondents.

KEITH RUNYON,  
  
Petitioner,

) PCB 03-135  
) (Third-Party Pollution Control Facility  
) Siting Appeal)

vs.

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

Respondents.

## OBJECTION TO DEPOSITIONS

NOW COMES The County of Kankakee, by and through its Attorneys, HINSHAW & CULBERTSON, and files its Objections to the list of Deponents proposed by the City of Kankakee, and in support thereof, states as follows:<sup>1</sup>

1. On March 22, 2003 the City of Kankakee served its list of deponents (attached hereto as Exhibit A). Included in the list are State's Attorney for County of Kankakee, Edward D. Smith, Assistant State's Attorney Brenda Gorski and Special Assistant State's Attorney Charles Helsten, and Elizabeth Harvey.

2. Upon receipt of a previous Notice of Deposition of State's Attorney Smith the undersigned attorney on behalf of Kankakee County spoke with counsel for the City, Mr. Kenneth Leschen, to determine the purpose of the proposed deposition. Attorney Leschen, on behalf of the City, only offered an explanation that he wanted to inquire into the passage of the Kankakee County Solid Waste Management Plan which designates that only the current Kankakee County landfill shall be expanded, which is operated by Waste Management of Illinois. It is Mr. Leschen's position that somehow the passing of the Solid Waste Management Plan is relevant to an alleged pre-adjudication of the merits of application by the Kankakee County Board.

3. The depositions of the State's Attorneys should not be allowed as they are an obvious attempt at harassment and seek irrelevant inadmissible evidence.

4. The Hearing Officer in its April 17, 2003 ruling held that discovery shall not be allowed regarding passage of a solid waste management plan or its amendments.

5. It is well established that evidence concerning the passage of a Solid Waste Management Plan is not admissible in a Section 39.2 hearing, and that discovery on how the Plan

---

<sup>1</sup> Mr. Watson agreed to accept the production response of the County of Kankakee by receiving the documents by overnight mail on April 22, 2003. Therefore, the County agreed to service of Mr. Watson's deponent list on April 23, 2003 and the County will file its objections to that list upon its receipt.

was passed is not allowed. *Residents Against Polluted Environment v. County of LaSalle*, PCB 26-243, pg. 2 (1996).

6. Furthermore, the Illinois Pollution Control Board has already ruled that it is improper to seek a deposition of a State's Attorney, even if that State's Attorney voices an opinion on an application. *ESG Watts Incorporated v. Sangamon County Board*, Respondent, PCB 98-2 (December 3, 1998). The only issue is the alleged bias or conflict of interest of the decision maker or hearing officer, not their advisors. *Id.*

7. If the purpose of the attorney depositions is to determine whether or not the Attorneys had any non-privileged communications with the decision-makers after the application was filed, such can be accomplished by written interrogatory which the City has already propounded. Attorney Leschen has indicated that perhaps there may be some evidence of pre-adjudication of the merits by the decision maker before the application was filed. First, this is complete conjecture and there is absolutely no evidence of such pre-adjudication. Second, the State's Attorneys Smith, Gorski, Helsten, and Harvey, were not the applicant at issue, and therefore even if they had any communications with the decision-makers, before the application was filed, such is irrelevant to the instant proceeding.

8. Another obvious basis for quashing the proposed depositions is the attorney-client privilege. "Courts have looked with disfavor on the practice of deposing opposing counsel, and find that such practice is disruptive of the adversarial process and lowers the standards of the legal profession." *Citizens of Regional Landfill v. County Board of Whiteside County and Waste Management of Illinois Inc.*, PCB 92-156(1993). Not only is there a concern of the right of a client to have unfettered representation by his attorney, but "[e]xperience teaches that countenancing unbridled depositions of attorneys constitutes an invitation to delay, disruption of the case, harassment, and perhaps disqualification of the attorney to be deposed." *Id.* The IPCB has acknowledged that "[i]t is appropriate to require the party seeking to depose an attorney to

establish a legitimate basis for the request and demonstrate that the deposition will not otherwise prove only disruptive or burdensome." *Id.* (emphasis added).

9. The Illinois Pollution Control Board has held that the deposition of opposing counsel should only be allowed when: "(1) no other means exist 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." *Id.*

10. In this case the City of Kankakee has provided none of these three elements. If the purpose is to determine the nature of the communications of the Applicant with the State's Attorney and then determine whether the State's Attorney relayed these communications to the County Board, such can, and has been, addressed by Kankakee County's responses to interrogatories. (There were no such communications). Second, there has been no attempt by the City to show that the information sought is non-privileged. Third, there has been no explanation as to how this deposition is crucial to the City's case.

11. The remaining depositions requested by the City should also be quashed because there is no good faith basis for taking the depositions. Illinois courts have held that "A plaintiff must possess a minimal level of information indicating defendant is liable to him to commence his litigation and force the defendant to undergo discovery. Otherwise Plaintiff is engaged in a 'fishing expedition' a recognized form of litigation abuse." *Yuretich v. Sole*, 259 Il. App. 3d 311, 631 NE 2d 767, 772 (4th Dist. 1993). "It is no justification that a fishing expedition might result in worthwhile information; the possibility of success must be sufficient to justify the inconvenience or expense to the opponent." *Id.* The City has provided no explanation for the proposed depositions other than an attempt to inquire into how the solid waste management plan was passed, which this Hearing Officer and the IPCB has already held is inadmissible and not discoverable.

12. It is anticipated that the City of Kankakee might argue that in a recent PCB action involving the application of Town & Country, Inc. to site a landfill in the City of Kankakee, the County of Kankakee conducted discovery of the hearing officer and the Mayor of the City about pre-filing contacts with the decision makers. That discovery is distinguished from the depositions requested in this case because in *Town & Country* there was evidence of a specific and direct communication that the applicant had in front of the decision makers a mere two weeks before the application was filed wherein the applicant presented evidence on the Section 39.2 criteria and impeached potential objectors witnesses. There is no evidence of such a communication in this case and therefore no reason to conduct this fishing expedition.

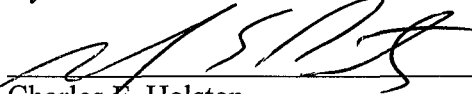
WHEREFORE, the County of Kankakee prays that the request of the City to take the Depositions of those individuals identified on Exhibit A, be denied.

Dated: April 23, 2003

Respectfully Submitted,

On behalf of the COUNTY OF KANKAKEE

By: Hinshaw & Culbertson



Charles F. Helsten

Richard S. Porter

HINSHAW AND CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
815-490-4900

**This document utilized 100% recycled paper products**

**AFFIDAVIT OF SERVICE**

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on April 23, 2003, a copy of the foregoing was served upon:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601-3218

Attorney George Mueller  
501 State Street  
Ottawa, IL 61350  
(815) 433-4705  
(815) 433-4913 FAX

Donald J. Moran  
Pederson & Houpt  
161 N. Clark Street, Suite 3100  
Chicago, IL 60601-3242  
(312) 261-2149  
(312) 261-1149 FAX

Elizabeth Harvey, Esq.  
Swanson, Martin & Bell  
One IBM Plaza, Suite 2900  
330 North Wabash  
Chicago, IL 60611  
(312) 321-9100  
(312) 321-0990 FAX

Kenneth A. Leshen  
One Dearborn Square, Suite 550  
Kankakee, IL 60901  
(815) 933-3385  
(815) 933-3397 FAX

L. Patrick Power  
956 North Fifth Avenue  
Kankakee, IL 60901  
(815) 937-6937  
(815) 937-0056 FAX

Keith Runyon  
1165 Plum Creek Drive  
Bourbonnais, IL 60914  
(815) 937-9838  
(815) 937-9164 FAX

Jennifer J. Sackett Pohlenz  
175 W. Jackson Boulevard  
Suite 1600  
Chicago, IL 60604  
(312) 540-7540  
(312) 540-0578 FAX

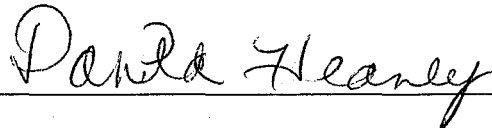
Kenneth A. Bleyer  
923 W. Gordon Terrace #3  
Chicago, IL 60613-2013

Patricia O'Dell  
1242 Arrowhead Drive  
Bourbonnais, IL 60914

Daniel J. Hartweg  
175 W. Jackson, Suite 1600  
Chicago, IL 60604  
(312) 540-7000  
(312) 540-0578 FAX

Mr. Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph, 11th Floor  
Chicago, IL 60601  
(312) 814-8917  
(312) 814-3669 FAX

By faxing and by depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford,, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above

  
\_\_\_\_\_

Firm No. 695  
HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, Illinois 61101  
(815) 490-4900





**AFFIDAVIT OF SERVICE**

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on April 22, 2003, a copy of the foregoing City of Kankakee's **LIST OF DEONENTS** was served upon:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601-3218

Donald J. Moran  
Attorney at Law  
161 N. Clark, Suite 3100  
Chicago, IL 60601  
(312) 261-2149  
(312) 261-1149 Fax

Charles F. Helsten  
Attorney at Law  
P.O. Box 1389  
Rockford, IL 61105-1389  
Fax: (815) 963-9989

Elizabeth Harvey, Esq.  
One IBM Plaza, Suite 2900  
330 N. Wabash  
Chicago, IL 60611  
(312) 321-9100  
(312) 321-0990 Fax

Kenneth Leshen  
One Dearborn Square, Suite 550  
Kankakee, IL 60901  
(815) 933-3385  
(815) 933-3397 Fax

Jennifer J. Sackett Pohlenz,  
Attorney at Law  
175 W. Jackson Blvd., Suite 1600  
Chicago, IL 60604  
(312) 540-7540  
(312) 540-0578 Fax

George Mueller  
Attorney at Law  
501 State Street  
Ottawa, IL 61350  
(815) 261-2149  
(815) 433-4913 Fax

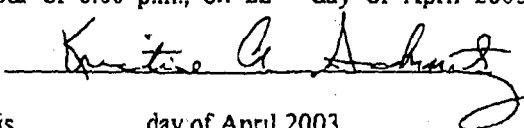
Leland Milk  
6903 S. Route 45-52  
Chebanse, IL 60922

Patricia O'Dell  
1242 Arrowhead Dr.  
Bourbonnais, IL 60914

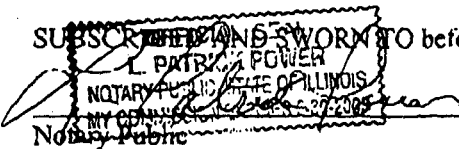
Keith Runyon  
1165 Plum Creek Dr. #D  
Bourbonnais, IL 60914  
(815) 937-9838  
(815) 937-9164 Fax

Brad Halloran, Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601-3218  
Fax: (312) 814-3669

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Kankakee, Illinois, proper postage prepaid, before the hour of 6:00 p.m., on 22<sup>ND</sup> day of April 2003, addressed as above.



SUBSCRIBERS AND SWORN TO before me this \_\_\_\_\_ day of April 2003.



Notary Public  
Prepared by L. Patrick Power  
Assistant City Attorney  
956 N. Fifth Avenue  
Kankakee, IL 60901  
(815) 937-6937

Kenneth A. Leshen  
Assistant City Attorney  
One Dearborn Square, Suite 550  
Kankakee, IL 60901  
(815) 933-3385