

ILLINOIS POLLUTION CONTROL BOARD

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APR 30 2003

STATE OF ILLINOIS

Pollution Control Board

PCB 03-125

(Third-Party Pollution Control Facility Siting Appeal)

CITY OF KANKAKEE,

Petitioner,

vs.

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

Respondents.

MERLIN KARLOCK,

Petitioner,

vs.

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,

vs.

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,

vs.

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

Respondents.

PCB 03-135

(Third-Party Pollution Control Facility Siting Appeal)

WASTE MANAGEMENT OF ILLINOIS, INC.,

Petitioner,

vs.

COUNTY OF KANKAKEE,

Respondent.

PCB 03-144

(Pollution Control Facility Siting Appeal)

NOTICE OF FILING

TO:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, IL 60601-3218

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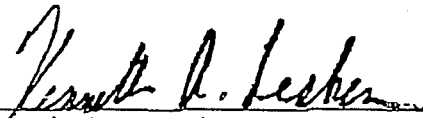
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PLEASE TAKE NOTICE that I have on the 30th day of April, 2003, filed the original and nine (9) copies of the following document:

RESPONSE TO COUNTY OF KANKAKEE'S RESPONSE TO CITY'S
MOTION TO RECONSIDER DISCOVERY RULINGS

with Dorothy M. Gunn, Clerk, Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph Street, Suite 11-500, Chicago, IL 60601-3218, and a true and correct copy thereof was served upon you on April 30, 2003, by depositing a copy thereof, enclosed in an envelope in the U. S. Mail at Kankakee, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above, and by facsimile to those parties with facsimile numbers listed above.



Kenneth A. Leshen
Assistant City Attorney
City of Kankakee

Kenneth A. Leshen
Assistant City Attorney
One Dearborn Square, Suite 550
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815/933-3385
Reg. No. 03127454

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

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

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

MERLIN KARLOCK,)
)
Petitioner,)
vs.)
)
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,)
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Petitioner,)
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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,)
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Petitioner,)
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KANKAKEE, and WASTE MANAGEMENT OF)
ILLINOIS, INC.)
Respondents.)

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

WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
Petitioner,)
vs.)
)
COUNTY OF KANKAKEE,)
Respondent.)

PCB 03-144
(Pollution Control Facility
Siting Appeal)

ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE)	
Petitioner,)	PCB 03-125
v.)	PCB 03-133
COUNTY OF KANKAKEE,)	PCB 03-134
COUNTY BOARD OF KANKAKEE, and)	PCB 03-135
WASTE MANAGEMENT OF)	(consolidated)
ILLINOIS, INC.,)	(Pollution Control
Respondents.)	Facility Siting Appeals)

RESPONSE TO COUNTY OF KANKAKEE'S RESPONSE TO CITY'S MOTION TO RECONSIDER
DISCOVERY RULINGS

NOW COMES the CITY OF KANKAKEE, by and through assistant City Attorney, KENNETH A. LESHEN, and responding to the County's Response to City's Motion to Reconsider Discovery Rulings, states as follows:

1. On April 29, 2003, the County of Kankakee, by and through its Attorney, Elizabeth S. Harvey, filed a Response to City's Motion to Reconsider Discovery Rulings with the Illinois Control Board.

2. The Response references and incorporates Affidavits by Elizabeth Harvey, Attorney at Law, and Charles F. Helston, Attorney at Law.

3. Since said attorneys responded to the Motion by opening the door and providing affirmative testimony through their Affidavits, the Petitioners now have at least the right to cross examine them on Affidavits they submitted in support of their Response Brief. Further, whatever claim of privilege or other objections raised by the County and said attorneys to providing testimony on the subject of their ex parte

communications has now been waived through the submittal of their Affidavits and therefore their depositions should be allowed.

4. After the filing of the City's Motion, the Petitioners took the discovery deposition of Leonard "Shaky" Martin. Mr. Martin has been a Kankakee County Board member for 30 years and was previously the chairman of the Kankakee County Board.

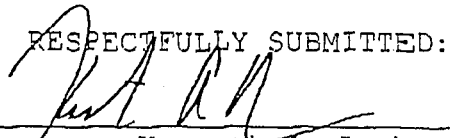
5. In his deposition Mr. Martin testified that Mr. Helston had contact with Waste Management of Illinois, Inc. (hereinafter, "WMII") regarding the conditions imposed by the County on WMII in the County's approval of WMII's siting application and that he believed that Mr. Helston made those contacts prior to January 31, 2003 (See, page 23, line 9 through page 25, line 17 of Leonard Martin's deposition attached hereto and incorporated herein as Exhibit A).

6. The Affidavits of Attorneys Harvey and Helston deny any substantive contacts with WMII during the time period in which the siting application was pending. WMII's responses to discovery requests concede that Donald Moran made contacts with the County's Attorneys regarding conditions during the prohibited time period. Leonard Martin's sworn testimony supports the position that prohibited contacts were made. It is precisely this type of factual dispute that is best served by scrutiny through the discovery process.

7. The County proposes that the depositions of these attorneys should be limited to the specific phone call. Leonard Martin's deposition testimony requires that these depositions be taken and that the City of

Kankakee and other Petitioners be allowed to inquire into the full range of contacts referenced by Leonard Martin in his deposition.

RESPECTFULLY SUBMITTED:


Kenneth A. Leshen
Assistant City Attorney

Prepared By:
Kenneth A. Leshen
Attorney at Law
One Dearborn Square, Ste. 550
Kankakee, IL 60901
815/933-3385
Reg. No. 03127454

CITY POLLUTION CONTROL/RESP.MOT.REC.

1 Q. Do you know whether any County employees
2 had contacts with Waste Management regarding those
3 conditions?

4 A. I don't know.

5 Q. Do you know whether any County Board
6 Members had contacts with Waste Management regarding
7 those conditions?

8 A. I don't know.

9 Q. Do you know whether Mr. Helsten had
10 contact with Waste Management regarding those conditions?

11 A. I believe that he did.

12 Q. When do you believe he had contact with
13 Waste Management regarding those conditions?

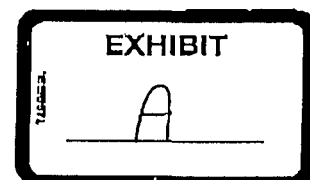
14 A. I think shortly after the conditions were
15 set into effect.

16 In other words, after the County Board
17 passed the siting and the application from Waste
18 Management I think that he was -- he was told by the
19 County that he could negotiate conditions on behalf of
20 the County Board.

21 Q. Before January 31st, -- let's focus on the
22 time before January 31st. Do you know whether Mr.
23 Helsten had contact with Waste Management?

24 A. I believe he was.

MARILYNN MROZYNSKI, CSR, KANKAKEE, ILLINOIS
815-439-1390 FAX 815-439-8370



1 Q. You believe he did have?

2 A. Yes.

3 Q. And upon what do you base that belief?

4 A. County Board discussions and meetings.

5 Q. Okay and in the County Board discussions
6 and meetings Mr. Helsten was present, is that correct?

7 A. Yes.

8 Q. And he informed you that he had contact
9 with Waste Management, is that correct?

10 A. Yes.

11 Q. And that was in the time period before
12 January 31, 2003?

13 A. I can't be sure of that, but I think it
14 was, yes.

15 MR. LESHEN: Mr. Porter, I'm going to
16 ask you to stop nodding because even if it's not intended
17 to communicate with the deponent, I still find it
18 distracting. So I'd appreciate it.

19 MR. PORTER: I am certainly not
20 communicating with the deponent. I will face the other
21 direction.

22 MR. LESHEN: That is why I phrased it in
23 my dual way of saying it. I just want to make sure.

24 Q. What information did you -- there were

1 meetings before I take it then before the January 31,
2 2003 meeting?

3 A. I believe there were.

4 Q. Do you know which meetings those were
5 where that happened?

6 A. No.

7 Q. Were you a participant in those meetings?

8 A. No.

9 Q. Who told you about the meetings?

10 A. They were at County Board Meetings that
11 those things were discussed.

12 Q. And how did you become aware that they
13 were discussed at those meetings?

14 A. Just by being there and listening.

15 Q. You were present at the meetings where
16 those things were discussed?

17 A. Yes.

18 Q. Do you know whether -- let me tap into
19 your expertise as the ex-County Chairman.

20 Did there come a point when the County
21 changed its policy to provide for tape recordings of
22 meetings?

23 A. That had been at -- that has been the
24 modus operandi like for four or five years.