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0198-001

ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

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

**NOTICE OF FILING**

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 1st day of May 2003, the following County's **Motion to Bar**, directed to the hearing officer, was filed with the Illinois Pollution Control Board, attached and herewith served upon you.

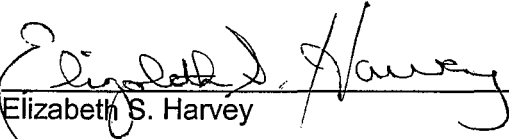
COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

By:   
Elizabeth S. Harvey  
One of Its Attorneys

Elizabeth S. Harvey  
SWANSON, MARTIN & BELL  
One IBM Plaza, Suite 2900  
330 North Wabash Avenue  
Chicago, Illinois 60611  
Telephone: (312) 321-9100  
Firm I.D. No. 29558

CERTIFICATE OF SERVICE

I, the undersigned, state that I served a copy of the described document in the above-captioned matter via hand-delivery to the hearing officer and via facsimile/U.S. Mail to all persons listed on the service list on May 1, 2003.

  
Elizabeth S. Harvey

- Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

**SERVICE LIST**  
**KANKAKEE COUNTY/WMII LANDFILL SITING**

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Charles F. Helsten  
Richard Porter  
Hinshaw & Culbertson  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105

Kenneth A. Leshen  
One Dearborn Square  
Suite 550  
Kankakee, IL 60901

Donald Moran  
Pedersen & Houpt  
161 North Clark Street  
Suite 3100  
Chicago, IL 60601-3242

George Mueller  
George Mueller, P.C.  
501 State Street  
Ottawa, IL 61350

L. Patrick Power  
956 North Fifth Avenue  
Kankakee, IL 60901

Jennifer J. Sackett Pohlenz  
Querry & Harrow, Ltd.  
175 West Jackson Boulevard  
Suite 1600  
Chicago, IL 60604

Keith Runyon  
165 Plum Creek Drive  
Bourbonnais, IL 60914

Kenneth A. Bleyer  
Attorney at Law  
923 West Gordon Terrace, #3  
Chicago, IL 60613-2013

Leland Milk  
6903 S. Route 45-52  
Chebanse, IL 60922-5153

Patricia O'Dell  
1242 Arrowhead Drive  
Bourbonnais, IL 60914

MAY 01 2003

0198-001

ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
*Pollution Control Board*

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

**MOTION TO BAR**

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby move the hearing officer to bar petitioner MERLIN KARLOCK ("Karlock"), and any other party, from calling County attorneys as witnesses at hearing.

1. On April 29, 2003, Mr. Karlock's attorney faxed a "notice to produce at time of hearing" to the County's attorneys. That notice requests that the County produce Brenda Gorski, Charles Helsten, Edward Smith, and Elizabeth Harvey, among other persons, at the Board hearing in this matter. (See Exhibit A.)
2. As has been previously discussed in this matter, Mr. Smith is the elected State's Attorney of Kankakee County, and Ms. Gorski is an Assistant State's Attorney for Kankakee County. Mr. Helsten represented the County staff during the local proceeding on WMII's siting application, and Ms. Harvey represented the County Board and the Regional Planning Commission during the local siting proceeding. Both Mr. Helsten and Ms. Harvey currently represent the County of Kankakee and the Kankakee County Board in this pending appeal.
3. Karlock seeks to call Ms. Gorski, Mr. Smith, Mr. Helsten, and Ms. Harvey as

witnesses at the hearing. However, Karlock has articulated no basis for his request. Further, the notice to produce attorneys attempts to run an “end around” of the hearing officer’s prohibition on the depositions of these attorneys.

4. The hearing officer has already upheld the County’s objections to petitioners’ request to depose the County’s counsel, both orally during the April 24, 2003 status conference and in his written order of April 30, 2003. The Board has previously held that depositions of counsel are to be allowed only in very limited cases. *Citizens Against Regional Landfill (CARL) v. County Board of Whiteside County*, PCB 92-156 (February 25, 1993). The Board has noted that “unbridled depositions of attorneys constitutes an invitation to delay, disruption of the case, harassment and perhaps disqualification of the attorney to be deposed.” *CARL*, slip op. at 8.
5. If the County’s attorneys in this case cannot be deposed, it is clear that they cannot be called as witnesses at hearing. The reasons that the Board and the courts greatly restrict the depositions of attorneys (harassment, delay, disruption, privilege issues, and possible disqualification of the attorney) apply in even greater force where an opposing party seeks to call opposing counsel as an adverse witness at hearing. To allow petitioners to call the County’s attorneys as adverse witnesses could create a media circus, endangers the attorney-client privilege, and invites motions to disqualify the County’s attorneys, leaving the County in the position of contemplating whether to retain yet additional counsel.
6. Additionally, there has been no demonstration of what relevant information the petitioners could elicit from the County’s attorneys. Given the presumption against allowing an opposing party to call opposing counsel as a witness, Karlock must articulate relevant information which can only be obtained from that particular attorney. Petitioners have been unable to do so in the context of deposing the County’s attorneys, and they cannot do so in the context of calling

those attorneys as witnesses at hearing.

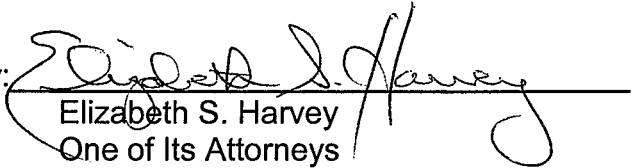
7. Petitioners seem to have lost sight of the relevant inquiry into the fundamental fairness of a local siting proceeding. The only issue is the alleged bias or conflict of interest of the decisionmakers, not of their advisors. *ESG Watts Incorporated v. Sangamon County Board*, PCB 98-2 (December 3, 1998)(also ruling that it is improper to seek the deposition of a state's attorney, even if that state's attorney had voiced an opinion on the application). The County's attorneys were not decisionmakers---they were, at most, advisors to the decisionmakers.
8. Two of the named attorneys were not even advisors to the decisionmakers on this application. Ms. Gorski did not appear on behalf of the County Board or the Regional Planning Commission (RPC) during the proceeding, and Mr. Helsten appeared on behalf of the County staff. Mr. Helsten has already submitted an affidavit to the Board stating that he had no substantive contact with the County Board or the RPC regarding the application, and that he did not provide legal representation to either entity. (See Exhibit B.) Thus, it is impossible to see how the testimony of Ms. Gorski and Mr. Helsten could possibly be relevant on the alleged bias of the decisionmakers.
9. In sum, allowing Karlock or any other person to call the County's attorneys as witnesses at hearing would violate the presumption that opposing parties cannot call opposing counsel as witnesses at hearing, and would delay and disrupt the proceeding by inviting a media circus. Further, allowing the calling of the County's attorneys could raise issues of the possible disqualification of the County's elected and chosen attorneys, and invade attorney-client privilege. Most importantly, neither Karlock or any other petitioner has identified any relevant information they cannot obtain through other means. Karlock and all other persons should be barred from calling the County's attorneys at hearing.

WHEREFORE, the County moves that the hearing officer bar Karlock and all other

persons from calling attorneys Gorski, Smith, Helsten, and Harvey, and for such other relief as the hearing officer deems appropriate.

Respectfully submitted,

COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

By:   
Elizabeth S. Harvey  
One of Its Attorneys

Charles F. Helsten  
Richard Porter  
Hinshaw & Culbertson  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
815/490-4900

Elizabeth S. Harvey  
Swanson, Martin & Bell  
One IBM Plaza, Suite 2900  
330 North Wabash Avenue  
Chicago, IL 60611  
312/321-9100

**BEFORE THE 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, )  
 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)

Exhibit A

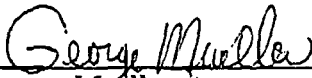


**NOTICE TO PRODUCE AT TIME OF HEARING**

**TO: COUNTY OF KANAKEE  
c/o Attorney Charles Helsten  
P.O. Box 1389  
Rockford, IL 61105-1389**

Now comes **Merlin Karlock**, by and through his Attorney, **George Mueller, P.C.**, and pursuant to Illinois Pollution Control Board Rule 101.616 and 101.624, Illinois Supreme Court Rule 237 and Section 2-1102 of the Illinois Code of Civil Procedure, hereby requests The County Of Kankakee, Illinois to produce the following persons at the hearing in the instant matter beginning on May 5, 2003 at 1:00 p.m. at City Hall, City Council Chambers, 385 E. Oak St., Kankakee, Illinois:

Brenda Gorski  
Esther Fox  
Bruce Clark  
Charles Helsten  
Ed Smith, the duly elected State's Attorney of Kankakee County  
Elizabeth Harvey

  
\_\_\_\_\_  
George Mueller, Attorney at Law

**GEORGE MUELLER, P.C.**  
*Attorney at Law*  
*501 State Street*  
*Ottawa, IL 61350*  
*Phone: (815) 433-4705*  
*Fax: (815) 433-4913*

**BEFORE THE 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)**

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**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.** )

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

**NOTICE OF FILING**

**TO: See Attached Service List**

**PLEASE TAKE NOTICE** that on April 29, 2003 there caused to be filed via U.S. Mail with the Illinois Pollution Control Board an original and a copy of the following document, a copy of which is attached hereto:

**Notice To Produce At Time Of Hearing  
(Directed To County of Kankakee)**

BY: George Mueller  
Attorney for Merlin Karlock

\*\*\*\*\*

**PROOF OF SERVICE**

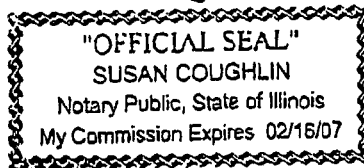
STATE OF ILLINOIS     )  
  )SS.  
COUNTY OF LASALLE    )

The undersigned, being first duly sworn, state that I served a true and correct copy of the foregoing Notice, together with a copy of each document referred to therein, upon the person(s) indicated at their address(es) indicated in the Service List via facsimile (if applicable) and by mailing the same in Ottawa, IL before the hour of 5:00 p.m. on the 29th Day of April, 2003.

Dawn Wheeler

**SUBSCRIBED and SWORN TO** Before Me This 29th Day of April, 2003.

Susan Coughlin  
Notary Public



**GEORGE MUELLER, P.C.**  
*Attorney at Law*  
501 State Street  
Ottawa, IL 61350  
Phone: (815) 433-4705  
Fax: (815) 433-4913

**CERTIFICATE OF SERVICE**

It is hereby certified that true copies of the foregoing document were mailed, first class, to each of the following on April 29, 2003:

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph St., Suite 11-500  
Chicago, IL 60601  
Fax: (312) 814-3669

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

Richard S. Porter  
Charles F. Helsten  
Hinshaw & Culbertson  
100 Park Avenue, P.O. Box 1389  
Rockford, IL 61105-1389  
Fax: (815) 490-4901

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

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

Donald J. Moran  
Pedersen & Houpt  
161 N. Clark St., Suite 3100  
Chicago, IL 60601-3224  
Fax: (312) 261-1149

Elizabeth S. Harvey  
Swanson, Martin & Bell  
One IBM Plaza, Suite 2900  
Chicago, IL 60611  
Fax: (312) 321-0990

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

Karl Krause, Chairman  
Bruce Clark, Kankakee County Clerk  
Kankakee County Board  
189 Court St.  
Kankakee, IL 60901

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

Edward Smith  
Kankakee County State's Attorney  
450 East Court St.  
Kankakee, IL 60901

Patricia O'Dell  
1242 Arrowhead Drive  
Bourbonnais, IL 60914

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

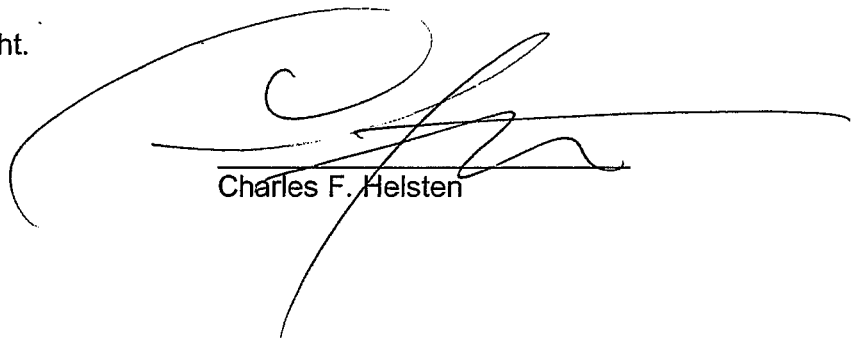
Kenneth A. Leshen  
One Dearborn Square, Suite 550  
Kankakee, IL 60901  
Fax: (815) 933-3397

**AFFIDAVIT OF CHARLES HELSTEN**

I, Charles F. Helsten, having been sworn, hereby states the following:

1. I am a licensed attorney in the State of Illinois. I was retained to provide legal representation to the County staff during the local siting proceeding on the application for site expansion approval filed by Waste Management of Illinois, Inc. (WMII). I currently serve as co-counsel for the County in this appeal before the Pollution Control Board.
2. As part of my representation of the County staff, I provided legal advice and representation regarding the preparation of the staff's summary and report on the application. That summary and report was filed, in the public record with the County Clerk, on January 6, 2003.
3. During my representation of the County staff, while the application was pending before the County Board (August 16, 2002 to January 31, 2003), I had no substantive contact with the County Board or the Regional Planning Commission (RPC) regarding the application, nor did I provide legal representation to either entity.
4. In January 2003, I received a voice mail message from Mr. Moran, counsel for WMII. Mr. Moran's message made only a general statement that the subject of his inquiry was certain of the special conditions being recommended by County staff in the summary and report which had been filed for the record on January 6, 2003.
5. I returned Mr. Moran's call, but did not speak to him. I left a voice mail message indicating that notwithstanding the fact I only represented County staff on this matter and nor the Regional Planning Commission or the County Board, nonetheless, I did not feel it was appropriate to discuss this matter with him.
6. I had no substantive conversations with Mr. Moran at any time while WMII's application was pending.

Further affiant sayeth naught.

  
Charles F. Helsten

Sworn to before me this  
29 day of April, 2003.

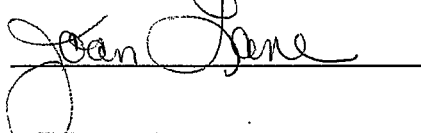
  
Joan Lane



Exhibit B