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0198-001

ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

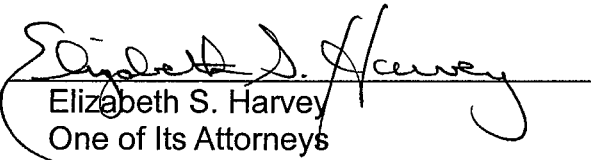
CITY OF KANKAKEE,	)	
	)	PCB 03-125
Petitioner,	)	PCB 03-133
	)	PCB 03-134
.v.	)	PCB 03-135
	)	(consolidated)
COUNTY OF KANKAKEE, COUNTY	)	(Pollution Control Facility Siting Appeals)
BOARD OF KANKAKEE, and WASTE	)	
MANAGEMENT OF ILLINOIS, INC.	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 5th day of May 2003, the following County's **Motion in Limine to Bar Evidence Relating to the Host Agreement**, directed to the hearing officer, was filed with the Illinois Pollution Control Board, attached and herewith served upon you.

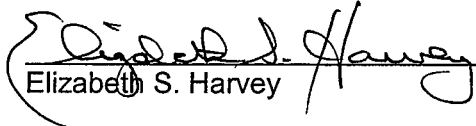
COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

By:   
Elizabeth S. Harvey  
One of Its Attorneys

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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 (at hearing) and via hand-delivery (at hearing)/U.S. Mail to all persons listed on the service list on May 5, 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**  
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MANAGEMENT OF ILLINOIS, INC.	)		
	)		
Respondents.	)		

STATE OF ILLINOIS  
*Pollution Control Board*

**COUNTY'S MOTION IN LIMINE TO BAR EVIDENCE RELATING TO THE HOST AGREEMENT**

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby moves the hearing officer to bar the introduction, at hearing, of any evidence regarding the adoption of the Host Agreement between the County and respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"). In support thereof, the County states:

1. Petitioners have conducted discovery (both written discovery and depositions) regarding the adoption of the Host Agreement between the County and WMII. That Host Agreement was adopted by the County on December 21, 2001. Petitioners' inquiry into the adoption of the Host Agreement was pursuant to the hearing officer's ruling that WMII and the County must respond to discovery regarding the Host Agreement "to the extent that the reference to the "Host Agreement" pertains to the eventual siting decision." (Hearing Officer Order, April 17, 2003, at page 3.)
2. However, petitioners should be prohibited from introducing evidence relating to the adoption of the Host Agreement at hearing. The Host Agreement in this case does not pertain to the eventual siting decision.

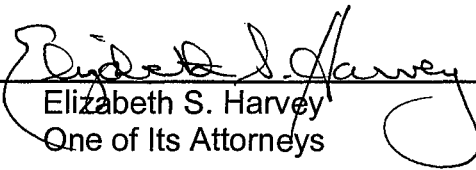
3. It is well-settled that adoption of a host agreement between an applicant and the decisionmaker is a legislative function which is not an indication of prejudgment or bias. In *Residents Against a Polluted Environment v. County of LaSalle and Landcomp*, PCB 96-243 (Sept. 16, 1996), the Pollution Control Board upheld the hearing officer's refusal to allow petitioners to introduce evidence (at the Pollution Control Board hearing) regarding the adoption of a host agreement between the applicant and the decisionmaker. The Board, relying on the decisions in *E & E Hauling v. Pollution Control Board*, 107 Ill.2d 33, 481 N.E.2d 664 (1985); *Fairview Area Citizens Taskforce (FACT) v. Pollution Control Board*, 198 Ill.App.3d 541, 555 N.E.2d 1178 (3d Dist. 1990); *Woodsmoke Resorts v. City of Marsailles*, 174 Ill.App.3d 906, 529 N.E.2d 275 (3d Dist. 1988); and *Gallatin National v. Fulton County Board*, PCB 91-256 (June 15, 1992), found that the host agreement was "not indicative of predisposition or bias", but was a "permissible preliminary step". *LaSalle*, PCB 96-243 (Sept. 16, 1996, slip op. at 16-17). The Board made the same finding in *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139 (June 19, 1997), *aff'd* 293 Ill.App.3d 219, 687 N.E.2d 552 (3d Dist. 1997).
4. The Board's rulings were consistent with its ruling earlier in the first *Landcomp* case that any *ex parte* contacts between the applicant and the decisionmaker prior to the filing of the application are irrelevant, since any such contacts are not impermissible. *Residents Against a Polluted Environment v. County of LaSalle*, PCB 96-243 (July 18, 1996, slip op. at 3-4), *citing* *Citizens for a Better Environment v. City of Beardstown*, PCB 94-48 (January 11, 1995).
5. In short, the Board has repeatedly held that the events surrounding the adoption of a host agreement are irrelevant to a local siting appeal, as the adoption of a host agreement is not indicative of predisposition or bias. Additionally, the Board has held that contacts between an applicant and a decisionmaker prior to the

filing of the application are irrelevant. Thus, the events surrounding the adoption of the Host Agreement in this case (adopted on December 21, 2001, twenty months prior to the filing of the siting application on August 16, 2002) cannot be used to determine whether the County's siting proceeding was fundamentally fair.

WHEREFORE, the County moves that the hearing officer bar the introduction at hearing of any evidence relating to the December 21, 2001 Host Agreement, and for such other relief as the hearing officer deems appropriate.

Respectfully submitted,

COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

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