

0198-001

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JUN 23 2003

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 23<sup>rd</sup> day of June 2003, the following were filed with the Illinois Pollution Control Board, attached and herewith served upon you:

- County Board's Motion to Exceed the Page Limit
- County Board's Motion to Strike the Briefs of Petitioners Watson and Karlock
- County Board's Response to Watson's Motion to Strike Public Comments Numbers 3 and 4

COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

By:   
Elizabeth S. Harvey  
One of Its Attorneys

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SWANSON, MARTIN & BELL  
One IBM Plaza, Suite 2900  
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Telephone: (312) 321-9100  
Firm I.D. No. 29558

CERTIFICATE OF SERVICE

I, the undersigned, state that I served a copy of the described documents on June 23, 2003, in the above-captioned matter as indicated on attached service list.

  
\_\_\_\_\_  
Jeanette M. Podlin

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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ILLINOIS POLLUTION CONTROL BOARD

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*Pollution Control Board*

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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.	)	

**COUNTY BOARD'S MOTION TO EXCEED THE PAGE LIMIT**

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby moves the Board for leave to file a brief in excess of the page limit:

1. There are four petitioners in this matter, all of whom have filed briefs. Those brief total 137 pages, presenting petitioners' arguments. The extensive arguments include claims regarding jurisdiction, fundamental fairness, and the manifest weight of the evidence.

2. The County Board has done its best to stay within the 50-page limit on briefs. (35 Ill.Adm.Code 101.302(k).) However, it is impossible to adequately address the myriad of arguments raised by petitioners within the 50 page limit.

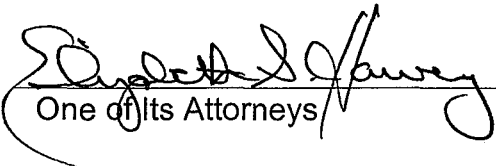
3. The County Board will be prejudiced if it cannot respond to all arguments raised by petitioners.

4. Therefore, the County Board seeks leave to file a brief in excess of the 50-page limit.

WHEREFORE, the County Board seeks leave to file its brief in excess of 50 pages, and for such other relief as the Board deems appropriate.

Respectfully submitted,

COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

By:   
One of Its Attorneys

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ILLINOIS POLLUTION CONTROL BOARD

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BOARD OF KANKAKEE, and WASTE	)	
MANAGEMENT OF ILLINOIS, INC.	)	
	)	
Respondents.	)	

STATE OF ILLINOIS  
*Pollution Control Board*

**COUNTY BOARD'S MOTION TO STRIKE THE BRIEFS OF  
PETITIONERS WATSON AND KARLOCK**

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby moves the Board to strike the briefs filed by petitioners Watson and Karlock:

1. Pursuant to the briefing schedule agreed to by the parties, and adopted by the hearing officer, petitioners' opening briefs were to be filed on or before June 2, 2003. The hearing officer specifically stated that the mailbox rule did not apply to those deadlines, such that the parties must receive the briefs on June 2, 2003. IPCB Hearing Transcript, May 6, 2003, at 130-131.

2. Petitioner Karlock's brief was not received by either of the County Board's attorneys on June 2, 2003. Instead, Karlock's brief was mailed, via regular mail, to all parties. The certificate of service for Karlock's brief indicates that, while Karlock's brief may have been filed, via hand delivery, with the Board on June 2, 2003, the copies served on the parties were sent via regular mail. (See Exhibit A.) The County Board's attorneys received that brief on June 4, 2003.

3. Karlock's late delivery of the brief to the County Board's attorneys violated the hearing officer's ordered briefing schedule, and prejudiced the County Board. Thus,

Karlock's brief should be stricken as untimely.

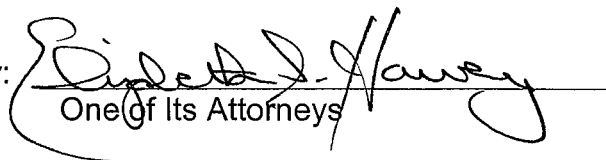
4. While petitioner Watson's brief was timely served on the County Board's attorneys, that brief violates the 50-page limit on briefs. (35 Ill. Adm. Code 101.302(k).) While the brief contains exactly 50 pages, it is clear that Watson resorted to artificial means to keep that brief at 50 pages. Those means include presenting large portions of argument through the use of single-spaced "bullet points" (Watson Br. at 39-49), the use of charts utilizing a small font (Watson Br. at 48-49), and "incorporating" arguments from the public comment filed by Watson in the county proceeding, without making those arguments in the brief before the Board (Watson Br. at 45). Although Watson could have filed a motion to file a brief in excess of 50 pages (see 35 Ill. Adm. Code 101.302(k)), he did not do so.

5. Watson's brief clearly contains more than 50 pages of argument, and thus violates Section 101.302(k) of the Board's procedural rules. The County Board moves the Board to strike the portions of the brief beginning at page 39, which is the place where Watson begins to use artificial means to squeeze his claims into 50 pages.

WHEREFORE, the County Board moves the Board to strike Karlock's brief as untimely and in violation of the hearing officer's order, to strike pages 39 through 50 of Watson's brief as being in violation of Section 101.302(k) of the Board's procedural rules, and for such other relief as the Board deems appropriate.

Respectfully submitted,

COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

By:   
One of Its Attorneys

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312/321-9100



rec'd  
6-4-03  
*[Signature]*

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)

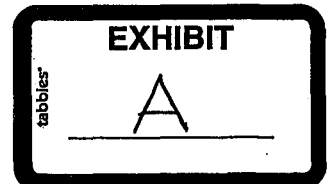
NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on June 2, 2003 there has caused to be filed with the Clerk of the Illinois Pollution Control Board located at the James R. Thompson Center, Suite 11-500, 100 W. Randolph St., Chicago, Illinois, via hand-delivery an original and 9 copies of the following documents, a copy of which is attached hereto:

Brief And Argument Of Petitioner, Merlin Karlock

*[Signature]*  
GEORGE MUELLER, Attorney at Law



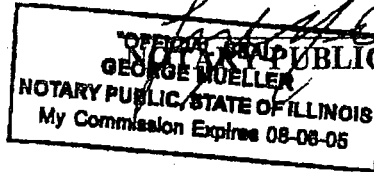
**PROOF OF SERVICE**

I, Pat Wheeler, a non-attorney, on oath state that I served a copy of the above listed documents by sending the same to each of the parties listed on the attached Service List via U.S. Mail from Ottawa, Illinois, at 5:00 P.M. on June 2, 2003, with proper postage pre-paid.

*Pat Wheeler*

Pat Wheeler

SUBSCRIBED AND SWORN TO before  
me this 2nd day of June, 2003.



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

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STATE OF ILLINOIS  
*Pollution Control Board*

**COUNTY BOARD'S RESPONSE TO WATSON'S MOTION TO STRIKE PUBLIC COMMENTS NUMBERS 3 AND 4**

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby responds in opposition to petitioner Watson's motion to strike Public Comments 3 and 4:

1. Watson has filed a motion to strike Public Comments 3 (the affidavit of Joan Lane) and 4 (the affidavit of Mike Van Mill). Those public comments were submitted by the County on May 23, 2003, within the public comment period established by the hearing officer. (IPCB Hearing Transcript, May 6, 2003, at 130-131.)
2. Watson's motion to strike Public Comments 3 and 4 are based upon his claim that these affidavits present new evidence not present in the record on appeal. To the contrary, however, the two affidavits simply respond to information and argument made in the proceeding before the County Board. On November 18, 2002, on the first day of the local hearings, petitioner Karlock filed a motion to dismiss the proceeding on fundamental fairness grounds. Among other issues, that motion raised a number of claims about the alleged relationship between Waste Management and the law firm of Hinshaw and Culbertson, the County's

special counsel. C695-795; C1245 at 46-71. The motion to dismiss, and the subsequent argument, discussed issues relating to Hinshaw and Culbertson's invoices, and whether or not references to the "Kankakee County Landfill" indicated that Waste Management was the "true" client.

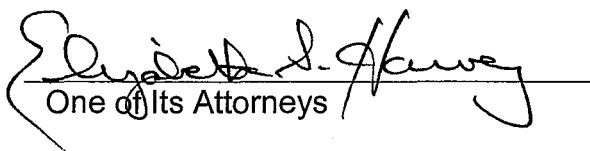
3. The affidavits submitted as Public Comments 3 and 4 respond to and discuss issues related to the invoices, and thus are simply "arguments or comments based on evidence contained in the record." *American Bottom Conservancy v. Village of Fairmont City*, PCB 01-159 (Oct. 18, 2001; 2001 Ill. ENV LEXIS 489, \*15) citing 35 Ill. Adm. Code 101.628(c)(2). In fact, petitioner Karlock raises those same arguments from his motion to dismiss at the local level, in his brief before the Board. He alleges that issues relating to Hinshaw and Culbertson's billing demonstrate "collusion and pre-determination" of the issues. (Karlock's Br. at 13-16.) Thus, Watson is simply wrong when he contends that the subject matter of the public comments is not based on evidence in the record. The public comments do indeed relate to evidence in the record, and are proper.
4. If the Board somehow decides that the issue of Hinshaw and Culbertson's billing is not based on evidence in the record, such that the public comments are not proper, the County moves that the Board strike pages 13-16 of Karlock's brief, in which he discusses that issue.
5. Finally, Watson asserts that the public comments should be stricken because the two affiants (Ms. Lane and Mr. Van Mill) were not subject to cross-examination. However, that claim goes to the weight to be given to the affidavits, not to whether the comments are properly filed. The Board is more than capable of assessing the relative weight to be given to sworn affidavits as opposed to testimony which was subject to cross-examination. The lack of cross-examination is not a basis to strike the public comments.

WHEREFORE, the County asks that the Board deny Watson's motion to strike

public comments, and for such other relief as the Board deems appropriate.. In the alternative, if the Board decides that the issue of Hinshaw and Culbertson's billing is not based upon evidence in the record, the County asks that the Board strike pages 13-16 of Karlock's brief.

Respectfully submitted,

COUNTY OF KANKAKEE and  
COUNTY BOARD OF KANKAKEE

By:   
One of Its Attorneys

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