65448-POH

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON, Petitioner, v. COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondent.	No. PCB 03-134 (Pollution Control Facility Siting Appeal) Consolidated With PCB 03-125, 03-133, 03-135)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on October 10, 2003, we filed with the Illinois Pollution Control Board, the attached **Petitioner Michael Watson's Motion for Leave to File Reply to Kankakee County's and WMII's Responses to Watson's Motion to Reconsider** AND an **Additional Appearance**, copies of which are attached hereto and served upon you.

Dated: October 10, 2003

Respectfully Submitted,

PETITIONER, MICHAEL WATSON

By: _____
One of his Attorneys

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PROOF OF SERVICE

I, Ronnie Faith, a non-attorney, on oath state that I served the foregoing **Notice of Filing, along with copies of document(s) set forth in this Notice,** on the following parties and persons at their respective addresses and/or fax numbers, as stated below, this 10th day of October 2003, by or before the hour of 4:30 p.m. in the manners stated below:

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65448-FOH

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON, Petitioner, vs. COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondent.	No. PCB 03-134 (Pollution Control Facility Siting Appeal) Consolidated With PCB 03-125, 03-133, 03-135, 03-144)

ADDITIONAL APPEARANCE

The undersigned, as attorney, enters his Additional Appearance of the Petitioner Michael Watson:

DAVID E. NEUMEISTER

QUERREY & HARROW, LTD.

David E. Neumeister

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Document #: 817910

65448-POH

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON, Petitioner, v. COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondent.	No. PCB 03-134 (Pollution Control Facility Siting Appeal) Consolidated With PCB 03-125, 03-133, 03-135)

PETITIONER MICHAEL WATSON'S MOTION FOR LEAVE TO FILE REPLY TO KANKAKEE COUNTY'S AND WMII'S RESPONSES TO WATSON'S MOTION TO RECONSIDER

NOW COMES Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd. and moves the Illinois Pollution Control Board for leave to file a Reply Brief. In support of this Motion, Petitioner Watson states as follows:

1. The County of Kankakee file a Response to Watson's Motion to Reconsider, concerning that portion of Watson's Motion related to certification of the record and that portion related to lack of pre-filing notice with respect to Mr. Keller. With respect to that portion of the County's Response concerning the taxing of costs of certification of the record on Watson, the County makes misstatements or misleading statements, which Petitioner Watson addresses in the attached Reply brief. For example, the County misstates the law on motions for reconsideration as recognized by the Illinois Pollution Control Board (IPCB) and misstates the "evidence" contained in pages 64-67 of Ms. Keller's testimony at the local hearing.

2. Additionally, with respect to Waste Management of Illinois, Inc.'s and the County's Response to that portion of Waston's Motion to Reconsider concerning the IPCB's error in determining that a certified mailing is completed when mailed pursuant to Section 39.2(b) (*i.e.*, that there was pre-filing notice of Mr. Keller), there is likewise misstatements which Watson

addresses in the attached Reply Brief. For example, the County incorrectly alleges that Watson misquotes Avdich v. Keinert, 69 Ill.2d 1, 270 N.E.2d 504 (1977).

3. Thus, Watson is potentially prejudiced if not given an opportunity to address these misstatements or misleading statements, as addressed in the attached Reply Brief, and seeks leave from the IPCB to be allowed to file the attached Reply Brief, *instanter*.

WHEREFORE, Petitioner Watson respectfully requests the Illinois Pollution Control Board grant this Motion and allow Watson to file the attached Reply Brief, *instanter*.

Dated: October 10, 2003

Respectfully Submitted,

PETITIONER MICHAEL WATSON

By: _____
One of his Attorneys

Jennifer J. Sackett Pohlenz, Illinois Attorney No.6225990
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65448-POH

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON, Petitioner, vs. COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondent.	No. PCB 03-134 (Pollution Control Facility Siting Appeal) Consolidated With PCB 03-125, 03-133, 03-135)

PETITIONER MICHAEL WATSON'S REPLY IN SUPPORT OF HIS MOTION TO RECONSIDER PORTIONS OF THE POLLUTION CONTROL BOAR RULING OF AUGUST 7, 2003

I. INTRODUCTION

As an initial matter, the County of Kankakee appears to argue that there are only three circumstances, as prescribed by IPCB Rule 101.904(b), in which the IPCB may grant a motion for reconsideration: new evidence, fraud, and void order. The County is incorrect about its application of Rule 101.904(b) and fails to consider Rule 101.902. Rule 101.902 *specifically* addresses motions for reconsideration and, in so doing, states that: "In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error." Watson's Motion to Reconsider presents "new evidence" with respect to that portion of it concerning the IPCB's ruling on the County's motion to compel Watson to pay a share of the costs of certifying the record on appeal, as that motion was filed by the County so as not to allow sufficient time for a response from Watson. Additionally, Watson's Motion to Reconsider sets forth errors in the IPCB's application of existing law with respect to both the costs issue as well as pre-filing notice as it pertained to Robert Keller.

While Rule 101.902 does not specify errors in application of the law as a basis for granting a motion for reconsider, it does not limit the IPCB to only two of the traditionally considered three possible factors for a motion to reconsider. *See*, (*Universal Scrap Metals, Inc. v. J. Sandman and Sons, Inc.*, 786 N.E.2d 574 (1st Dist. 2003)((1) newly discovered evidence; (2) changes in the law; and (3) errors in the Court's prior application of existing law). Further, not only does it evade common sense that the IPCB would not, by its own rules, allow itself to reconsider and vacate its own decisions, when it has made an error in the application of the law, it, by the *very case cited by the County* is simply not the law. In fact, the IPCB has previously recognized the three traditional elements, one of which is necessary for maintaining a motion to reconsider:

> In ruling upon a motion for reconsideration, the Board is to consider factors including, but not limited to, errors in the previous decision and facts in the record which are overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. The County Board of Whiteside County, (March 11, 1993), PCB 93-156, the Board stated that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court's previous application of the existing law." *Shaw, et al. v. Board of Trustees of Village of Dolton, et al.*, PCB 97-68, p. 3-4 (April 3, 1997), *citing, Korogluyan v. Chicago Title & Trust Co.*, (1st Dist. 1992), 213 Ill. App.3d 622, 572 N.E.2d 1154.)

Thus, Watson's Motion to Reconsider is properly brought, pursuant to the IPCB Rules and Illinois case law and should stand.

A. The IPCB Decision Requiring Watson to Pay a Share of the Costs of Certifying the Record on Appeal was in Error and the County of Kankakee's Response

The County claims that the portion of Watson's Motion to Reconsider related to the payment of a share of the costs of certifying the record on appeal should be denied, because: (1) the County claims that Watson knew as early as March 6, 2003 that the IPCB was ordering him to pay costs and did not provide a reason why he could not respond to the County's July 30, 2003, motion; and (2), the County contends that Watson's status as an officer in a corporation which does business in the waste management field should supercede his status as a County citizen, taxpayer and beneficial landowner surrounding the site which is the subject of the expansion. Both these claims by the County must fail, and Watson's Motion should be granted.

First, as respects the County's claim that Watson knew as early as March 6, 2003 that he was ordered by the IPCB to pay a share of the costs, there is not only no evidence of such knowledge, but, additionally, the IPCB's Order excepts "citizens" and "citizen's groups" from such payment, by its specific reference to IPCB Rule 107.306, which provides that such reimbursement of costs is required, unless the petitioner is a "citizen or citizen's group." Thus, as a citizen of Kankakee County, Mr. Watson is and should be found by the IPCB to be exempt from such costs, notwithstanding whatever business in which he is involved or of which he is a shareholder or even officer. Further, the County's claim of "knowledge" should ring false, when the County, through one of its attorneys, on April 29, 2003, subsequent to the IPCB's March 6th Order, sent a letter requesting costs from Watson, to which Watson responded on May 5th. (*See*, copies of County's April 29th and Watson's May 5th letters attached as **Exhibits A and B**, respectively).

Rather than address the issue presented with Watson in response to his attorney's May 5th letter, or file a motion with the IPCB at that time, which would have allowed sufficient time for Watson to respond within the fourteen-day response period pursuant to IPCB Rule 101.500(d), the County waited until shortly before the IPCB deadline to file its Motion, knowing from Watson's attorney's July 28, 2003, letter that, due to his attorney's work schedule his counsel need to utilize the full fourteen-day response time for any County motion. (*See*, copies of the County's July 24th and Watson's July 28th letters attached as **Exhibits C and D**, respectively). Interestingly, on August 1, 2003, Waste Management of Illinois, Inc. (WMII) filed a waiver of statutory deadline, which then allowed a full fourteen-day response time to the County's motion against Watson, except that the IPCB ruled on August 7th which was the deadline in effect prior to WMII's August 1st waiver. Thus, not only had Watson's attorney informed the County's attorneys of the necessity to utilize the full fourteen-day response time prior to the County filing its Motion, but subsequent to that, WMII filed a waiver, reasonably leading a party to believe that the fourteen-days under IPCB Rule 101.500 would apply, since the exception to this allowance for a response brief, *i.e.*, "deadline driven proceedings where ***no waiver*** has been filed. .", did not apply. (IPCB Rule 101.500(d))(emphasis added). Thus, not only should Watson not have to justify not being able to file a response in less than fourteen days, as contended by the County, as the fourteen day provision was reasonably interpreted to be in effect given WMII's August 1st waiver, but Watson had previously informed the County of one of the work conflicts of his attorney that would necessitate the use of the full fourteen days.

Second, the County's claim that Watson's status as an officer in a corporation that does business in the waste management field should supercede his status as a County citizen, taxpayer and beneficial landowner surrounding the site which is the subject of the expansion, has no basis

in the law and does not support the IPCB's August 7th decision. The County only cited two instances of "evidence" originally, in support of its motion to compel, that it argued proved Watson was not a "citizen" rather was a landfill competitor. However, in its Response to Watson's motion, the County only relies pages 64-67 of the public hearing of December 5, 2002 at 6 p.m., containing the cross-examination of Ms. Keller and does not address its previous and improper reliance on a portion of Watson's closing argument on pages 19-20 of the public hearing of December 6, 2002, which was not "evidence" as it was a closing argument of counsel.

Thus, the only "evidence" the County relies on in support of its motion to compel is Ms.Keller's testimony concerning her husband, Mr. Keller and his relationship with Mr. Watson. This pages of testimony, 64-67, (attached as Exhibit 1 to Watson's Motion to Reconsider) are woefully insufficient to show Watson fits within Senator Karpiel's statement of an exception which was made during a session of the General Assembly, namely that an owner or operator of a landfill facility does not qualify for the exception for a "citizen" or "citizen group." Further, the County's statements in its Response to Watson's Motion to Reconsider that Ms. Keller's testimony, referenced above, shows he is a "hands-on participant in the daily operations" is nothing more than false, as Ms. Keller's testimony does not, in any respect, state, show or otherwise support that statement. The "gist" of Ms. Keller's testimony was that her husband, Mr. Keller, occasionally drives a garbage truck that picks up garbage for United Disposal, a company in which Watson has an interest. That is insufficient to make Watson a landfill competitor, even if the legislative history exception was found to be sufficient to essentially overrule the language of the applicable IPCB Rule and Section of the Act. Therefore, for the reasons stated in Watson's Motion for Reconsider and this Reply, the IPCB's August 7th decision

with respect to the County's Motion to Compel should be vacated and the County's Motion to Compel should be denied.

B. Notice Solely Upon Mailing With Return Receipt Requested, Without Actual Receipt of Notice by a Property Owner, Is Not Sufficient to Perfect Service of Notice Under Section 39.2(b) of the Act. Thus, Mr. Keller Never Received Proper Notice

The notice provision of Section 39.2(b) for the Act, by its clear language as construed by Illinois courts of review, requires actual receipt of notice via certified mail by a property owner rather than mere mailing of notice via certified mail with return receipt requested. The respondents' only true arguments against this proposition are that: (1) the only authority addressing this issue, Ogle County Board v. Pollution Control Board, 272 Ill.App.3d 184, 649 N.E.2d 545 (2d Dist. 1995), was wrongly decided; and (2), the issue is instead controlled by a case, People *ex rel.* Devine v. $30,700 U.S. Currency, (2002), 199 Ill.2d 142, 776 N.E.2d 1084, that did not even address Section 39.2(b). These arguments fail. Ogle County Board is legitimate authority for Watson's position whether Respondents accept its reasoning or not. Also, additional language in the statute at issue in People *ex rel.* Devine distinguishes that case from both Ogle County Board and the instant case.

The key to resolving this issue is the relevant statutory language in Avdich v. Keinert, (1977), 69 Ill.2d 1, 270 N.E.2d 504 (which provided the basis for the opinion in Ogle County Board), and Section 39.2(b). The statutory language at issue in People *ex rel.* Devine is sufficiently distinct such that that case is not controlling.

1. Statutory Language in *People ex. rel. Devine*

The statute at issue in People *ex. rel.* Devine was the Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 *et seq* (West 2000).

The notice provision of that statute outlines the method of notice required to apprise individuals of pending forfeiture proceedings. The method of service depends upon the State's knowledge of the identity and location of the claimant at the time of service. Section 4, entitled "Notice to Owner or Interest Holder," provides that:

> "if the owner's or interest holder's name and current address are known, then [notice or service shall be given] by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address." 725 ILCS 150/4(A)(1) (West 2000).

The statute requires notice by publication in the event the address or name of the owner or interest holder is unknown. 725 ILCS 150/4(A)(3) (West 2000). However, the statute also contained an additional provision stating when notice became effective:

> "Notice served under the Act is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier." 725 ILCS 150/4(B) (West 2000).

The statute at issue specifically stated that service was effective upon the mailing of written notice.

2. **Statutory Language in *Ogle County Board***

The statute as issue in Ogle County Board was the same one at issue in the instant action, Section 39.2(b) of the Act.

The pertinent part of Section 39.2(b) of the Act provides that:

> "No later than 14 days prior to a request for location approval the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property...
>
> Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is

> located and shall be published in a newspaper of general circulation published in the county in which the site is located." 415 ILCS 5/39.2(b) (West Supp. 1993).

The court in Ogle County ruled that that language required actual receipt of notice by a property owner in order to perfect proper service. Significantly, Section 39.2(b) does not contain a provision – as did the statute in People *ex. rel.* Devine – that states that service is effective upon the mailing of written notice.

The respondents both completely ignore the difference in this statutory language. Neither acknowledges that the language at issue in People *ex rel.* Devine contained a separate provision specifically stating that notice was effective upon the mailing of written notice.

Both respondents emphasize various relevant principles of statutory construction. One such principal in determining the intent of the legislature is the legislature's ability to specify the particular conditions under which service of notice becomes effective. (*See, i.e.*, County of Kankakee's response at p. 7, *citing* People *ex rel.* Devine). The legislature clearly did so in the Drug Forfeiture Act by including a clause specifically stating that notice of service becomes effective upon the mailing of written notice. Conversely, Section 39.2(b) contains no such clause. The legislature plainly demonstrated its ability to specify when mailing of notice is sufficient to perfect service of notice. It did so by including a specific clause in the Drug Forfeiture Act that said so. Because no such clause exists in Section 39.2(b), it is clear that the legislature did not intend to make service of notice effective upon mere mailing of the notice.

When viewed in this light, the decision in Ogle County construing Section 39.2(b) to require actual receipt of notice is correct. To argue that Ogle County is wrongly decided ignores the clear difference in the statutory language between the Drug Forfeiture Act in People *ex rel.*

Devine and Section 39.2(b) as construed by the Court in Ogle County. Along that line, the contention that the Supreme Court in People *ex rel.* Devine effectively overruled Ogle County is wrong.

The Respondents place a great deal of emphasis on the difference between the language of Section 39.2(b) and the language at issue in the Supreme Court's opinion in Avdich v. Kleinert, (1977), 69 Ill.2d 1, 370 N.E.2d 504. In Avdich, the Supreme Court interpreted the inclusion of similar language in the notice provision of a statute to indicate that the legislature intended that service of a notice was not to be considered complete until it was received by the addressee. Ogle County Board, 272 Ill.App.3d at 195-96 (*citing* Avdich, 69 Ill.2d at 9.

Contrary to respondents' contention, Watson accurately quoted the statutory language at issue in Avdich, which provided:

> "Any demand made or notice served ... by sending a copy of said notice to the tenant by certified or registered mail, with a returned receipt from the addressee."

Avdich, 69 Ill.2d at 5. The Supreme Court in Avdich ruled that this language required actual receipt by the addressee in order to perfect service of the notice. Avdich, 69 Ill.2d at 8-9. The point to be made about the statutory language in Avdich is that it is both: (1) substantially similar to Section 39.2(b); and (2), most significantly, devoid of a provision similar to that in *People ex rel. Devine* specifically stating that service of notice is effected upon mailing of the notice. Neither Section 39.2(b) nor the statute at issue in *Avdich* had such a provision. In that regard, the IPCB erroneously disregarded the principles of statutory construction in construing a statute according to its plain meaning. The IPCB apparently, and incorrectly, read the additional

provision allowing service by mailing alone in People *ex. rel.* Devine into Section 39.2(b), even though Section 39.2(b) does not contain such language. Nothing in People *ex. rel.* Devine can be construed as overruling Ogle County Board, which correctly applied Avdich and controls this issue in this action.

The Board's ruling was a clear mistake in the application of this law, and should be reversed.

WHEREFORE, Michael Watson, by and through its attorneys, respectfully requests that the Illinois Pollution Control Board enter an order: (1) vacating those portions of its August 7, 2003 ruling (a) taxing the costs of certifying the record against Watson and (b) holding that Section 39.2(b) of the Environmental Protection Act requires only mailing of notice to a property owner in order to perfect service; and (2) holding that (a) Watson is not required to pay the costs of certifying the record and (b) Section 39.2(b) of the Environmental Protection Act requires actual receipt of notice by a property owner in order to perfect service. Watson requests any additional relief that the Board deems appropriate.

Dated: October 10, 2003

Respectfully Submitted,

PETITIONER MICHAEL WATSON

By: _____
One of his Attorneys

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David E. Neumeister, Illinois Attorney #6207454
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Exhibit A

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April 29, 2003

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Re: ***City of Kankakee v. County of Kankakee***
PCB 03-125, 03-133, 03-134, 03-135 (cons.)
Waste Management v. Kankakee County Board
PCB 03-144

Dear Counsel:

Pursuant to Section 39.2(n) of the Environmental Protection Act, as well as Section 107.306 of the Board's procedural rules, petitioners in siting appeals are required to pay the costs incurred by the County in preparing and certifying the record on appeal. 415 ILCS 5/39.2(n); 35 Ill.Adm.Code 107.306. The Board directed the petitioners in these appeals to pay those costs, in its March 6, 2003 order.

This demand for payment is directed to Waste Management of Illinois, Inc. (WMII), the City of Kankakee, and Mr. Watson. None of those parties is a "citizen" or a "citizens group" who would be exempt from payment of the costs. Enclosed please find the bill for the copying of the voluminous record, in the amount of $4206.19. The County hereby demands that WMII, the City, and Mr. Watson each pay one-third of the copying bill, which computes to $1402.07 each. Please make your check payable to IKON Office Solutions, but mail the check to me. I will then forward the three checks directly to IKON, to insure proper credit for the payment.

Please forward your check to me no later than May 13, 2003, so that the invoice can be paid promptly. If we do not receive your check by that date, the County will assume you have no objection to the County making payment on the invoice, and then pursuing reimbursement from you.

Very truly yours,

SWANSON, MARTIN & BELL

Elizabeth S. Harvey

ESH:jp

Enclosure

cc: E. Smith
C. Helsten
R. Porter
B. Gorski

IKON Office Solutions

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Exhibit B

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May 5, 2003

VIA FACSIMILE ONLY (312) 321-0990

Ms. Elizabeth Schroer Harvey
Swanson Martin & Bell
One IBM Plaza
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Chicago, IL 60611

Re: Watson v. WMII and Kankakee County Board, PCB 03-134

Dear Ms. Harvey:

I received your notice of April 29, 2003 requesting payment from my client, Mr. Watson, for preparing and certifying the record on appeal pursuant to the Board's March 6, 2003 order. However, the order merely references Section 39.2(n) of the Environmental Protection Act and does not name specifically what parties are responsible for payment. On it's face, this Section clearly exempts citizens and citizens' groups from paying the costs of preparing the record. All case law regarding citizen petitioners follows this plain reading of this Section. As Michael Watson is a citizen and beneficial landowner of property adjacent to the proposed expansion, he would be affected by the expansion of this site.

I am curious why Petitioners Merlin Karlock and Keith Runyon were not included in this notice, while Mr. Watson was included. You surely cannot be alleging that these parties are considered citizens, while Mr. Watson is not. As with Mr. Karlock and Mr. Runyon, Mr. Watson has appeared in his individual capacity at the hearings and throughout the petition proceedings. Accordingly, as Mr. Watson is a citizen, please modify your letter and calculations of the bill for preparation of the record to remove Mr. Watson as he is exempt from payment. If you think I am misinterpreting Section 39.2(n), please call me or write me to explain. I want to be clear this is an objection and not an outright denial of your request. Further, this is not an approval of your request. I am asking you to provide me with your rationale as to why Mr. Watson and not Messrs. Karlock or Runyon were included in your letter.

Sincerely,

Jennifer J. Sackett Pohlenz

Document #: 823716

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	DATE	TIME	TO FROM	MODE	MIN/SEC	PGS	STATUS
001	5/05	12:44P	312 321 0990	UF--S	00' 36"	002	OK

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Wheaton, IL

Representative U.K. Office:
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FAX TRANSMISSION SHEET

DATE: May 5, 2003

TO:	**NAME / COMPANY:**	**FAX NUMBER:**
	Elizabeth S. Harvey / Swanson, Martin & Bell	(312) 321-0990

FROM: Jennifer J. Sackett Pohlenz

USER NO.: 9328

CMR NO.: 65448

NUMBER OF PAGES BEING SENT (INCLUDING COVER SHEET): 2

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RETURN TO: POH **SENT BY: DJH**

Exhibit C

SWANSON, MARTIN & BELL

ATTORNEYS AT LAW
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Writer's Direct Dial Line
(312) 923-8260

Writer's E-mail Address
eharvey@smbtrials.com

July 24, 2003

VIA FACSIMILE (312/540-0578)

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

Re: ***Watson v. WMII and Kankakee County Board***
PCB 03-134

Dear Ms. Pohlenz:

In April I wrote you, along with counsel for the City of Kankakee and for WMII, requesting that Mr. Watson pay one-third of the County's costs incurred in preparing the County record for submission to the Pollution Control Board. You subsequently wrote me, claiming that Mr. Watson is exempt from the statutory and regulatory requirement that petitioners pay the costs of the record. You contend that Mr. Watson appeared as an individual.

The record is replete with references to Mr. Watson as the owner and operator of United Disposal. It is clear, by the legislative history of Section 39.2(n), that owners and operators of competing disposal companies are not exempt as "citizens groups." When defining "citizens groups," Senator Karpiel (the sponsor of the citizens group exemption) specifically stated that "citizens group" means:

> a group of individual citizens that have joined together to participate in a regional pollution control facility siting hearing....It also does not include persons owning or operating a nearby competing landfill facility, or units of local governments acting alone
>
> State of Illinois 86th General Assembly Regular Session Senate transcript, 52nd legislative day, June 22, 1989, *quoted in Shaw v. Village of Dolton*, PCB 97-68 (November 21, 1996), and *Zeman v. Village of Summit*, PCB 92-174 (December 17, 1992).

SWANSON, MARTIN & BELL

Mr. Watson is the owner of a competing disposal facility, and thus is not a "citizens group." Therefore, he is not exempt from payment of costs under Section 39.2(n).

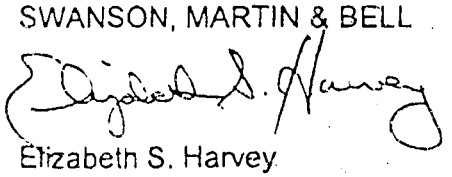
I renew the County's demand for payment of one-third of the County's costs. Those costs totaled $4206.19, so that one-third is $1402.07. Please make the check payable to the County of Kankakee, and send it to me.

I will file a motion to compel payment of costs with the Pollution Control Board on **Monday afternoon, July 28, 2003**. If I have not heard from you by noon on July 28, I will include Mr. Watson in the motion to compel.

Please call me if you have any questions.

Very truly yours,

SWANSON, MARTIN & BELL



Elizabeth S. Harvey

ESH:jp

cc: R. Porter

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FACSIMILE TRANSMISSION

Date: July 24, 2003

Pages Transmitted: 3
(including cover page)

Re: ***Watson v. WMII and Kankakee County Board***
PCB 03-134

User's Direct Dial Line: (312) 923-8260

Client No.: 0198-001

Transmitting to: **Jennifer J. Sackett Pohlenz -- (312) 540-0578**
Rick Porter -- (815) 490-4901

Received from: Elizabeth S. Harvey

If you do not receive all transmitted pages, please call Shel at (312) 321-9100.

Exhibit D

Querrey & Harrow

65498
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July 28, 2003

VIA FACSIMILE ONLY (312) 321-0990

Ms. Elizabeth Schroer Harvey
Swanson Martin & Bell
One IBM Plaza
330 N. Wabash Ave, Suite 2900
Chicago, IL 60611

Re: Watson v. WMII and Kankakee County Board, PCB 03-134

Dear Ms. Harvey:

I find it odd that you have waited nearly three months to reply to my May 5th letter responding to your July 24th request for payment from Mr. Waston for certification of the record. However, regardless of the timing, I do not accept your conclusory statement that the "record is replete with references to Mr. Watson as the owner and operator of United Disposal" as evidence that Mr. Watson is required under Section 39.2(n) of the Illinois Environmental Protection Act (Act) to pay for the cost of certifying the record on appeal, and I again object to your request. My objection is based on, at a minimum, the following reasons. By providing you with this rationale, I am not waiving Mr. Watson's rights to raise additional argument or objections should this issue be presented to the IPCB.

First, you fail to reference any "evidence" in the record supporting your allegation that Mr. Watson is participating in this appeal as anything but a local landowner.

Second, there is undisputed evidence in the record an ***no party*** has contested Mr. Watson's standing in his proceeding as a beneficial property owner.

Third, on it's face, Section 39.2(n) of the Act clearly exempts citizens and citizens' groups from paying the costs of preparing the record and all case law regarding citizen petitioners follows this plain reading of this Section. Thus, your reliance on legislative history (although not even relevant) should not be considered, since there is no ambiguity in the law.

Fourth, even if the legislative history is considered, it does not prevent a landowner and citizen, irrespective of that individual's business interests, from personally appealing and being

exempt from costs of certifying the record under Section 39.2(n). Additionally, your proposed expanded application of Senator Karpiel's statements is not applicable to this case, since there is no evidence in the record before the IPCB or otherwise, that either Mr. Watson or the corporation, United Disposal of Bradley, Inc., to which you may have intended to refer, but misstate in you letter, "own or operate a nearby landfill facility." In fact, according to WMII's testimony at the local hearings, there is no operating or permitted landfill in Kankakee other than WMII's landfill, and no evidence was presented concerning a surrounding landfill bearing any name similar to "United Disposal" as you state in your letter.

Finally, it simply is neither logical nor consistent with Section 39.2(n) to argue that an individual landowner, like Mr. Watson, particularly in his case where he is a beneficial owner of land adjacent to the proposed expansion on at least two sides, is required to carry an extra financial burden on appeal that other citizens of the County are relieved of, when he is also a shareholder in a corporation which is in the solid waste management business. Does this mean that Kankakee will seek the exclusion of Section 39.2(n) from every citizen of Kankakee who owns shares of Allied Waste, Inc.?

As I stated before, in May when I initially responded to your letter, Mr. Watson has appeared in his individual capacity at the hearings and throughout the petition proceedings. Accordingly, as Mr. Watson is a citizen, and whether he is employed by, an officer or shareholder of, or a cheerleader for, a corporation that conducts itself in the solid waste management field has and should have no bearing on his role as an individual citizen and landowner. Please modify your letter and calculations of the bill for preparation of the record to remove Mr. Watson as he is exempt from payment. If you think I am missed some evidence or law that supports your argument, please call me to discuss it. I want to be clear that this is a continuing objection to your request, and neither an outright "denial" nor "approval" of your request.

I start a jury trial tomorrow, on July 29, 2003, that is expected to last two weeks. If you intend on filing a motion to compel as referenced in your letter, I will be objecting to that motion and I will utilize my full fourteen-day response period, pursuant to the IPCB Rules, for filing the objection.

Sincerely,

Jennifer J. Sackett Pahlenz

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Representative U.K. Office:
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FAX TRANSMISSION SHEET

DATE: July 28, 2003

TO:	**NAME / COMPANY:**	**FAX NUMBER:**
	Elizabeth S. Harvey / Swanson, Martin & Bell	(312) 321-0990

FROM: Jennifer J. Sackett Pohlenz

USER NO.: 9328

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FILE NO.= 031

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