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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN - 7 2004

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BYRON SANDBERG,)

Petitioner,)

vs.)

CITY OF KANKAKEE, ILLINOIS, THE CITY)

OF KANKAKEE, ILLINOIS CITY COUNCIL,)

TOWN AND COUNTRY UTILITIES, INC.,)

and KANKAKEE REGIONAL LANDFILL,)

L.L.C.,)

Respondents.)

Case No. PCB 04-33

WASTE MANAGEMENT OF ILLINOIS,)
INC.,)

Petitioner,)

vs.)

THE CITY OF KANKAKEE, ILLINOIS CITY)

COUNCIL, TOWN AND COUNTRY)

UTILITIES, INC., and KANKAKEE)

REGIONAL LANDFILL, L.L.C.,)

Respondents.)

Case No. PCB 04-34

COUNTY OF KANKAKEE, ILLINOIS and)

EDWARD D. SMITH, KANKAKEE COUNTY)

STATE'S ATTORNEY,)

Petitioners,)

vs.)

CITY OF KANKAKEE, ILLINOIS, THE CITY)

OF KANKAKEE, ILLINOIS CITY COUNCIL,)

TOWN AND COUNTRY UTILITIES, INC.,)

and KANKAKEE REGIONAL LANDFILL,)

L.L.C.,)

Respondents.)

Case No. PCB 04-35

**RESPONSE TO TOWN & COUNTRY UTILITIES, INC.'S MOTION TO STRIKE
PETITIONER COUNTY OF KANKAKEE'S POST-HEARING BRIEF**

NOW COME the Petitioners, THE COUNTY OF KANKAKEE, ILLINOIS, ("Kankakee County") and EDWARD D. SMITH, State's Attorney of Kankakee County ("Kankakee State's Attorney") by and through their undersigned counsel of record, and for their Response to Town & Country Utilities, Inc's Motion to Strike Petitioner County of Kankakee's Post-Hearing Brief, state as follows:

1. On December 19, 2003, Petitioners County of Kankakee, Illinois and Edward Smith served its Motion to Exceed Page Limits For Post Hearing Brief to the Hearing Officer, the Board and all interested parties by mail. That Motion requested leave to file a post hearing brief of up to 125 pages.

2. The Respondents admit they received the motion on December 22, 2003, prior to the date that Petitioners' Post Hearing Brief was due to be filed and 18 days prior to the due date of Respondent's Post Hearing Brief. Therefore, Respondent was provided ample notice that Petitioners' Post Hearing Brief would exceed 50 pages.

3. On December 24, 2003, Petitioners timely filed their post hearing brief, consisting of 109 pages, 16 pages less than the number of pages requested in its Motion to Exceed Page Limits. Thereafter, Respondent had 16 days to draft its Response Brief, providing ample time for Respondent to do so.

4. Petitioners County of Kankakee, Illinois and Edward D. Smith were not acting in bad faith by not filing their Motion to Exceed Page Limit For Post Hearing Brief or discussing the length of their post hearing brief prior to December 19, 2003. Rather, the transcripts of the IPCB hearing were not available until December 15, 2003 and within four days the Petitioner's

determined approximately how far the brief would exceed the page limitation and filed the motion as soon as practicable.

5. Respondent contends that Petitioners have disregarded the Board's rules by filing a brief in excess of 50 pages; however, this contention is simply untrue. As explained above, Petitioners did not defy or disregard this Board's page limit rules, but explicitly filed a motion when they realized that their brief would exceed this Board's page limit. That motion was filed prior to the due date of Petitioners' brief.

6. Respondent also contends that Petitioners' post hearing brief should be stricken because it contains arguments and facts already presented to this Board in a prior proceeding; however, this is also an untrue statement because the notices at issue in this case were not the notices at issue in regard to the 2002 application. Furthermore, there are numerous new facts for this Board to consider regarding the sufficiency of notices sent by Respondent, including testimony from Kankakee officials specifically explaining that the records of the Assessor's office and Treasurer's office are not in conflict.

7. Respondent's assertion that it will be unduly prejudiced by the length of Petitioners' brief should also be disregarded because Respondent was well aware of the issues in this case and cannot and has not asserted surprise as to any issue.

8. The Respondent pointed out to the hearing officer that it could begin drafting its brief even before receiving Petitioner's brief and thus sixteen days is clearly ample time to respond to Petitioners' brief, especially since the brief is allegedly "redundant," according to Respondent. (See Motion to Strike, Para. 12). Petitioner only had 9 days to draft its own post-hearing brief after the transcripts were made available.

9. As explained in Petitioners' Motion to Exceed Page Limit For Post Hearing Brief, it was necessary for Petitioners to draft a brief in excess of 50 pages in order to fully and fairly present Petitioners' case to this Board. This is true because Petitioners appealed the granting of landfill siting authority by the City of Kankakee on numerous bases involving a great deal of factual and technical information.

10. The hearings at the Pollution Control Board level alone produced hundreds of pages of transcripts, and the hearing transcripts and documentary evidence from the local siting hearing were thousands of pages. Furthermore, the entire local siting record for the application filed in 2002, and the entire IPCB record for that case are part of the record at issue in this case and relevant not only to fundamental fairness and the Section 39.2 criteria, but also the issue of filing substantially similar applications in violation of Section 39.2(m).

11. Finally, a review of the Petitioner's brief clearly shows that no arguments in that brief are redundant or even overly verbose. To the contrary, each argument is succinct, to the point, and absolutely necessary to address the issues of this case. Most arguments are handled in less than one or two pages.

12. The length of the Petitioner's brief was necessitated by the unusual amount of highly improper, prejudicial, and unfair conduct that has occurred in relation to the 2003 application. Specifically, the City and the Applicant colluded to grant siting approval despite the fact that the 2003 application was substantially the same as the 2002 application. The City Council did not have jurisdiction because the owners of property within 250 feet of the proposed landfill were not served, the proceedings were fundamentally unfair due to improper communications and procedures, and the manifest weight of the evidence establishes criteria ii and viii were not met. All of these issues had to be addressed independently which required a

brief that was longer than usual. There simply is an "embarrassment of riches" as to the grounds for reversing the siting approval. Perhaps the Applicant should spend time addressing these issues rather than filing motions to strike the brief.

13. If Petitioners were not able to present all of the information and arguments contained in their post hearing brief, Petitioners would be unduly prejudiced because they would not be able to present a thorough and clear case to this Board.

WHEREFORE, Petitioners, COUNTY OF KANKAKEE and EDWARD D. SMITH, STATE'S ATTORNEY OF KANKAKEE COUNTY, request that this Board deny Respondent's Motion to Strike Petitioner County of Kankakee's Post Hearing Brief.

Dated: January 5, 2004

Respectfully submitted,
EDWARD D. SMITH KANKAKEE COUNTY
STATE'S ATTORNEY AND THE COUNTY
OF KANKAKEE

By: HINSHAW & CULBERTSON



Richard S. Porter
One of Its Attorneys

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AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on January 5, 2004, a copy of the foregoing was served upon:

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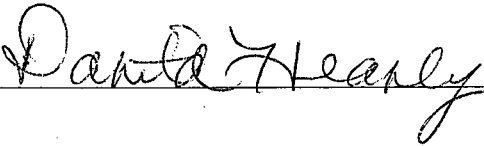
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By depositing a copy thereof, enclosed in an envelope in the UPS Overnight Mail at Rockford, Illinois, before the hour of 5:00 P.M., addressed as above.



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