

**RECEIVED  
CLERK'S OFFICE**

**AUG 09 2004**

**STATE OF ILLINOIS  
Pollution Control Board**

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2004

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 04-186
	)	(Pollution Control Facility
	)	Siting Appeal)
COUNTY BOARD OF KANKAKEE COUNTY,	)	
	)	
	)	
Respondent.	)	

**HEARING OFFICER ORDER**

This order memorializes in writing the oral ruling on the August 6, 2004 motion to limit the scope and duration of the subpoenaed deposition of Michael Watson, to be taken by counsel for Waste Management of Illinois, Inc. The deposition, already once rescheduled, is to begin at 11:00a.m., August 10, 2004 in Kankakee.

This order also relates the arguments leading up to the hearing officer's ruling made at a conference call on August 10, 2004, beginning at 1:30 p.m. The persons participating in the call were: counsel for Michael Watson, Jennifer J. Sackett Pohlenz; counsel for Waste Management, Inc. Donald J. Moran; counsel for the respondent County Board of Kankakee County, Richard S. Porter; and the undersigned Board Hearing Officer, Kathleen M. Crowley

**BACKGROUND**

While hearing officer orders do not ordinarily contain a description of the past history of a proceeding, this background is set out here to contextualize and abbreviate the later description of the premises of this motion and the arguments concerning it.

The siting approval process before the County and the appeal before the Board are governed by, respectively, Sections 39.2 and 40.1 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 and 40.1 (2002)). The Board opened this docket on April 22, 2004, upon receipt of the petition for review of Waste Management of Illinois, Inc. (WMII). WMII appeals the March 17, 2003 denial of siting approval by the County Board of Kankakee County for WMII's September 26, 2003 application for expansion of the existing Kankakee County landfill. WMII sought approval to expand around its existing 179-acre site, to result in an expanded site covering 664 acres, with a 302-acre disposal site. WMII challenges the fundamental fairness of the proceeding, and also contends that the County's finding that criteria 1, 3, and 6 of Section 39.2 had not been met was against manifest weight of the evidence.

The Board has 180 days from the filing of the petition to allow the parties to conduct discovery, and the Board to conduct a public hearing, receive briefs, conduct its deliberations, and issue a written opinion and order. Only the party who has applied for siting, here WMII, can

waive the decision deadline. As discussed at the August 5, 2004 status conference, the current decision deadline is December 2, 2004, as a result of WMII waivers.

This is the second appeal before the Board of a County decision concerning WMII's application for siting approval for this same proposed expansion. City of Kankakee v. County of Kankakee, Kankakee County Board and Waste Management of Illinois, Inc.; Merlin Karlock v. County of Kankakee, Kankakee County Board and Waste Management of Illinois; Michael Watson v. County Board of Kankakee County, Illinois and Waste Management of Illinois, Inc.; Keith Runyon v. County of Kankakee, Kankakee County Board, and Waste Management of Illinois, Inc., PCB 03-125, PCB 03-133, PCB 03-134, PCB 03-135 (cons.) (Aug. 7, 2003), *appeal pending sub. nom. Waste Management of Illinois, Inc. v. PCB, County of Kankakee, County Board of Kankakee, City of Kankakee, Merlin Karlock, and Keith Runyon*, No. 3-03-0924 (Third Dist.). (This set of cases will be referred to below as Kankakee (2003).)

On January 31, 2003, the Kankakee County Board reached a decision granting site location approval, with conditions, to Waste Management of Illinois, Inc. for a "regional pollution control facility". The County of Kankakee as well as Michael Watson, owner of United Disposal Systems (a competitor to Waste Management), and two individual citizens (Merlin Karlock and Keith Runyon) each filed separate appeals of the same County decision. The various appeals argued that the County lacked jurisdiction to decide siting (raised by all petitioners save Runyon), that the County proceedings were fundamentally unfair, and that the County decision finding that the statutory siting criteria had been met was against the manifest weight of the evidence.

In its August 7, 2003 opinion and order, the Board determined that the County lacked jurisdiction to decide the application because Waste Management had improperly failed to notify all landowners as required by Section 39.2 (b) of the Act. 415 ILCS 5/39.2(b)) (2002). The Board found that, although Robert Keller had been properly served, Brenda Keller had not been properly served. (The issue of jurisdiction was raised after hearing by, among others, Michael Watson.) The Board accordingly vacated the County decision without reaching the other issues presented.

(On the same day, in a separate order in a separate case, the Board granted Waste Management's motion to withdraw its appeal of the conditions the County had imposed on its grant of siting approval. *See Waste Management of Illinois, Inc. v. Kankakee County Board*, PCB 04-144 (Aug. 7, 2003).)

### **Watson's Motion and Supporting Arguments**

Watson's motion to limit the scope and duration of his scheduled August 10, 2004 deposition requests two forms of relief. The motion requests that the duration of the deposition be limited to one hour, and that its scope be limited to the scope of the July 7, 2004 *subpoena duces tecum*. In support of the request, the motion attaches three hearing officer orders issued in the Kankakee (2003) cases (Mot. Exh. A and B), correspondence between counsel for Watson and WMII regarding the duration and scope of the deposition (Mot. Exh. C and D), and a news article concerning various allegations made concerning activities of United Disposal, owned by Mr. Watson (Mot. Exh. E).

Ms. Pohlenz argued that the goal of the motion was entry of a protective order to prevent any harassment or intimidation of Mr. Watson. Ms. Pohlenz asserted that, as stated in the motion, the scope of the deposition should be limited to the scope of the documents listed in the deposition. In summary, these included documents relating to “communications between August 1, 2003 and May 30, 2004” that Mr. Watson had regarding the proposed expansion of the Kankakee County Landfill 1) “with any member of the Kankakee County Board”, and 2) “Mayor Donald Green, Bruce Harrison, Ronald Thompsen and Keith Runyon”. Mot. at 2.

Ms. Pohlenz stated her view that jurisdiction is not at issue in this case, and that the only issues raised in the appeal were fundamental fairness and whether the County decision on three criteria were against the manifest weight of the evidence. Mot. at 2. Ms. Pohlenz stated that any inquiry into the issues of Kankakee (2003) or the operations of United Disposal were beyond the scope of this proceeding. She also objected to any suggestion that it was improper for citizens to act in concert with one another to voice their opposition to siting application.

### **WMII’S RESPONSE IN OPPOSITION**

WMII did not file a written response to Watson’s motion. In response, Mr. Moran argued that there was no basis for limiting the duration of the deposition to a period of less than the three hours customarily allowed under the Board’s procedural rules.

Mr. Moran argued that there were at least three areas of relevant inquiry: jurisdiction, fundamental fairness and ex parte communications, and the record presented to the County Board. Mr. Moran stated that the courts have held that challenges to jurisdiction can be made at any time. He noted that the jurisdictional challenges regarding notice were brought up in the prior case by persons, including Mr. Watson, who have sought to intervene here and who would be participating at the Board’s hearing and filing *amicus* briefs.

Mr. Moran acknowledged that the operations of United Disposal were not relevant to this siting appeal.

### **THE COUNTY’S STATEMENT**

Mr. Porter stated for the record that, as counsel for the respondent County, he intended to be present at the August 10, 2004 deposition noticed up by WMII. Mr. Porter stated that the County had no intention of getting into issues concerning United Disposal during the deposition. Mr. Porter noted that, as stated in Watson’s motion, the County had separate litigation pending against Mr. Watson and United Disposal. Mot. at 7, referencing County of Kankakee v. United Disposal, Inc., Michael Watson, et al., 04-MR 427. The County reserves the right to pursue its own issues against Mr. Watson and United Disposal in its own litigation, and does not intend its failure to do so here to prejudice any rights elsewhere.

## THE RULING

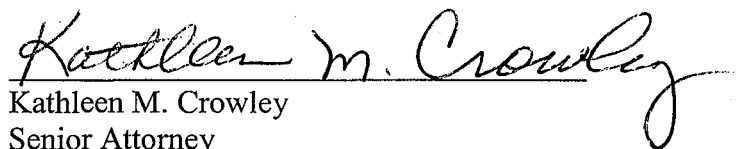
In summary, my ruling denies the Watson's motion to limit discovery. Ms. Pohlenz is correct that it is perfectly appropriate under the Board's rules to request an order regulating discovery where necessary to prevent, among other things, harassment, and "fishing expeditions" into irrelevant areas. See 35 Ill. Adm. Code 101.616(d). But, Watson has failed to demonstrate that a protective order is needed at this time.

The purpose of discovery is to uncover all relevant information and information calculated to lead to relevant information. See 35 Ill. Adm. Code 101.616 (a). WMII's petition for review challenges the County decision on the grounds of fundamental fairness and alleges that the decision on criteria 1, 3, and 6 were against the manifest weight of the evidence. For the purposes of discovery, Mr. Moran demonstrated the relevance of an inquiry into possible *ex parte* contacts, and of a limited inquiry into jurisdictional issues. As both WMII and the County seem to be well aware of which issues are and are not relevant in this siting appeal as framed by WMII's petition for review, I find that entry of a protective order is not presently warranted.

As to the requested limitation of the deposition's duration to one hour, I found this case distinguishable from Kankakee 2003, in part because the deadline date pressures that existed there are not present in this case. Given the issues that are legitimately within the scope of discovery here, the suggested one-hour limitation could be unduly constraining

In conclusion, this order denies the motion to limit the duration and scope of Mr. Watson's deposition. The parties are reminded to conduct this deposition as expeditiously as is practicable, mindful of the issues relevant in this siting appeal.

IT IS SO ORDERED.



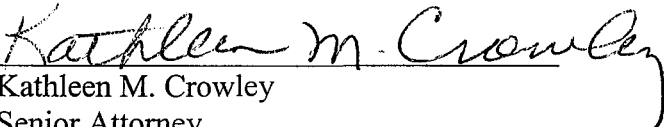
Kathleen M. Crowley  
Senior Attorney  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.6929

## CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order was mailed, first class, on August 9, 2004, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on August 9, 2004:

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

  
Kathleen M. Crowley  
Senior Attorney  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
312.814.6929