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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD NOV 27 2002

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF KANKAKEE and EDWARD D. SMITH,)
STATE'S ATTORNEY OF KANKAKEE COUNTY,)

Petitioners,)

vs.)

THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC., and KANKAKEE REGIONAL)
LANDFILL, L.L.C.,)

Respondents,)

NO. PCB 03-31

(Third-Party Pollution Control
Facility Siting Appeal)

BYRON SANDBERG,)

Petitioner,)

vs.)

THE CITY OF KANKAKEE, ILLINOIS,)
CITY COUNCIL, TOWN AND COUNTRY)
UTILITIES, INC., and KANKAKEE REGIONAL)
LANDFILL, L.L.C.,)

Respondents,)

PCB 03-33

(Third-Party Pollution Control
Facility Siting Appeal)

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.)

PCB 03-35

(Third-Party Pollution Control
Facility Siting Appeal)

(Consolidated)

BRIEF IN SUPPORT OF SITING APPLICATION OF
TOWN AND COUNTRY UTILITIES, INC. AND
KANKAKEE REGIONAL LANDFILL, L.L.C. WITH THE CITY OF KANKAKEE

NOW COMES the Respondent, CITY OF KANKAKEE (hereinafter "City"), by and through its attorney, Assistant Corporation Counsel, KENNETH A. LESHEN, and filing this brief in support of the siting application of Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C. (hereinafter collectively Town and Country) for local siting approval of a new regional pollution control facility (hereinafter "siting application"), states as follows:

INTRODUCTION

On March 13, 2002, the Respondents, Town and Country, filed an application with the City of Kankakee for local siting approval of a new regional pollution control facility. The siting hearing began on June 17, 2002 and continued for 11 days, concluding on June 28, 2002. On August 19, 2002, the City Council of Kankakee adopted Findings of Fact and Conclusions of Law and approved the siting application with a number of conditions by a 13-0 vote with one abstention.

Town and Country has filed a brief addressing the issues raised by the Petitioners. The issues raised by the Petitioners appear to be that the hearings were not fundamentally fair, and that the decision of the City Council was against the manifest weight of the evidence on Criteria 2, 5, and 8.

The City endorses and ratifies the Brief of Town and Country and adopts the same as its own. However, the City will further address the issues concerning the fairness of its own hearing insofar as the

Petitioners may ask this Board to infer that Hearing Officer Christopher Bohlen was biased and that the failure of the City to accommodate every single person of an unexpected overflow crowd on the first night of the eleven day hearing violated the requirements of a public hearing and was fundamentally unfair. (All references to the transcripts of the Board's review hearing will be cited as "IPCB 11/4/02 Tr. at _____").

I. **The Hearing Officer conducted a fundamentally fair hearing.**

Christopher W. Bohlen, the Hearing Officer, conducted himself in a fair and impartial manner, setting aside any personal feelings he had against the siting of the landfill. At each juncture, Hearing Officer Bohlen opted for the most expansive view allowable regarding public participation, in order to ensure that persons who elected to participate in the hearing process as objectors would be able to avail themselves of that opportunity. His evidentiary rulings and motions reflect an evenhanded and unbiased approach to all parties.

The transcript is bereft of any evidence establishing that even a single person who wanted to fully participate in the hearings was prevented from doing so. In fact, the record is replete with instances where Hearing Officer Bohlen opted for the most expansive interpretation of the governing rules in order to allow all persons seeking to register as participants to do so. Hearing Officer Bohlen allowed people to register the day of the evening to fully participate in the hearings. IPCB 11/4/02 Tr. at 307 & 308 and instructed both Officer Kadow and Assistant Corporation Counsel L. Patrick Power to go to the hallway, read off the names of people who had registered as objectors, and to inform people in the foyer that they could sign in throughout the night to appear

and participate in the hearing process. Hearing Officer Bohlen also directly imparted that information to the gathering. IPCB 11/4/02 Tr. at 327.

Hearing Officer Bohlen not only allowed persons to register as participants during the first night of the siting hearing, but also allowed participant registration after the first night of the hearing. For example, Ms. O'Dell was allowed to register as a full participant even after the first day of the hearings. IPCB 11/4/02 Tr. at 331.

The City filled the Council Chambers to its maximum legal capacity. The City placed 105 chairs in the spectator section of the City Council in addition to ensuring accommodations for the aldermen, the Mayor, the City consultant, the press and objectors. IPCB 11/4/02 Tr. at 321 through 323.

Hearing Officer Bohlen accommodated both the Petitioner and the objectors regarding scheduling of witnesses. IPCB 11/4/02 Tr. at 337. The transcripts of the siting hearing indicate that Hearing Officer Bohlen treated all parties equally in sustaining and overruling objections and in his efforts to accommodate all parties fairly and impartially.

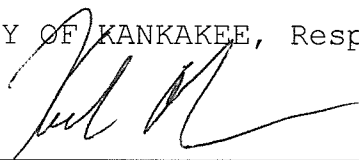
CONCLUSION

The local siting process and procedures used by the City in making its decision to approve local siting were fundamentally fair and the actions of the hearing officer were consistently directed to ensuring the maximum possible participation in the process by members of the public who chose to fully participate in the hearings. The City's August 19, 2002 decision granting local siting approval to Town and Country for its proposed landfill was fully consistent with the manifest weight of the evidence and should be approved.

Respectfully submitted,

CITY OF KANKAKEE, Respondent

BY:



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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 November 27, 2002, the original of the foregoing Brief was personally hand delivered to and filed with Dorothy M. Gunn, Clerk, Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph Street, Suite 11-500, Chicago, IL 60601-3218, and

a copy of the foregoing was served upon:

Richard S. Porter, Hinshaw & Culbertson, 100 Park Avenue, P. O. Box 1389, Rockford, IL 61105-1389

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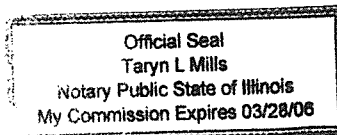
by depositing a copy thereof, enclosed in an envelope in the United States Mail at Kankakee, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.

Paul J. Jawer

SUBSCRIBED AND SWORN TO before me
this 27th day of November, 2002.

Taryn L. Mills

Notary Public



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