BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STOP THE MEGA-DUMP,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 10-103
	)	(Pollution Control Facility Siting Appeal)
COUNTY BOARD OF	)	
DEKALB COUNTY, ILLINOIS	)	
AND WASTE MANAGEMENT	)	
OF ILLINOIS, INC.,	)	
	)	
Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

PLEASE TAKE NOTICE that on the 31st day of January, 2011, I filed with the Clerk of the Illinois Pollution Control Board, **Reply Brief of Petitioner, Stop the Mega-Dump** true and correct copies of which are attached hereto and herewith served upon you.

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CERTIFICATE OF SERVICE

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STOP THE MEGA-DUMP, Petitioner, v. COUNTY BOARD OF DEKALB COUNTY, ILLINOIS AND WASTE MANAGEMENT OF ILLINOIS, INC., Respondents.	)	PCB 2010-103 (Pollution Control Facility Siting Appeal)

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I Introduction

The County and WMII filed briefs which are one sided in their review of the evidence and which seriously misrepresent the existing law. The facts regarding fundamental fairness are mostly indisputable, and so they attempt to incorrectly redefine the issues and completely misstate the law applicable to those issues. This is particularly true of the County brief which argues principles of law that simply do not exist and which relies on authorities and precedents that do not come remotely close to supporting the points for which they are cited. Much of what is covered in the County and WMII briefs has already been addressed in STMD's opening brief and does not need to be rehashed. This reply brief will,

therefore, focus on the most egregious misstatements and arguments in the County and WMII briefs. Failure to mention here all the points raised in the opening brief is not a waiver of those points. STMD hereby reiterates and realleges all points and arguments from its opening brief as if they were fully set forth herein.

II The Proceedings were not Fundamentally Fair

In order to have any integrity and credibility the pollution control facility siting process has to be open and transparent. The proceedings in this case were neither. WMII ingratiated itself for a long time with County board members in an obvious and successful attempt to win their favor before the public hearing on the application ever began. The private, guided tours of WMII's Will County Landfill were the most blatant of these measures. After that, full public participation in the siting process was discouraged in numerous ways. Adoption by the County of a siting Ordinance and Rules with a restriction on participation that is fundamentally unfair on its face was the worst of those measures. The Board has received a flood of public comments by outraged members of the community. Given the undeniable fact that the proceedings here were neither open nor transparent, such volume of outrage is hardly a surprise,

A The County Ordinance

The County and WMII attempt to avoid the natural conclusions arising from what occurred during the proceedings by limiting the scope of the inquiry. For example, in considering whether the improper limitation on participation in the County siting ordinance rendered the proceedings unfair, they suggest that

the ordinance is irrelevant if it was not enforced once the public hearing began. The County alleges that STMD has misperceived the issue, in that fundamental fairness must be determined based on whether the proceedings as they occurred were actually fair, rather than on whether those proceedings, if they had followed the local ordinance, would have been unfair. This completely misses the point that a fairly conducted hearing is no cure for those who failed to prepare or failed altogether to attend because they did not think they would be allowed to participate. WMII argues that STMD cannot identify a single person who failed to attend based on the improper restriction on participation. This avoids the obvious truth, that it is impossible to identify the person in the empty chair. What makes the County ordinance so dangerous in this case is that we can never know how many people were kept away by its chilling and oppressive language. That is why the Board has consistently recognized that procedures that have a "dampening effect" on participants are fundamentally unfair. *Board of Trustees of Casner Township v. County of Jefferson and Southern Illinois Landfill Inc., PCB 84-175 (April 4, 1985, slip op. at Pg. 9).*

Full public participation is one of the key elements of the pollution control facility siting process. Anything that dampens or chills public participation or preparation cannot be tolerated and must be found fundamentally unfair as a matter of principle. The Second District Appellate Court has characterized the procedure for deciding landfill-siting applications as one in which, "public participation not only is encouraged but is required by statute." *Waste Management of Illinois v. Pollution Control Board, 123 IL. App.3d 1075 (2d Dist.*

1984). That principle announced in the early days of siting appeals remains alive and well in one of the most recent siting appeal cases, *Peoria Disposal Company v. Peoria County Board*, where this Board reiterated that, "the public hearing before the local governing body is the most critical stage of the site approval process." (PCB 06-184, Slip op. at 36 June 21, 2007).

The County, in a surprising footnote on page nineteen of its brief, suggests that STMD has failed to identify any law requiring that all members of the public be permitted to present evidence and cross examine witnesses at a local citing proceeding, arguing that there is no legal basis for finding that the restrictions on participation set forth in the local ordinance and Articles of Rules and Procedures, are not fundamentally unfair. However, on the previous page of their Brief, in defining the elements of fundamental fairness, the County acknowledges that minimal standards of procedural due process include the opportunity to be heard and the right to cross examine adverse witnesses, citing *Land and Lakes v. Pollution Control Board, 319 IL. App.3d at 48, 748 NE 2d at 193* (3rd Dist. 2000). Therefore, the County's footnote notwithstanding, its siting ordinance and Articles of Rules and Procedures do not meet the minimal standards of procedural due process required in these hearings.

The foregoing is just one of the many misstatements of law in the County brief. Obviously, if conducting the actual public hearing in a fair manner remedies all fundamental fairness problems created by discouraging public preparation and participation prior to the start of that public hearing, then this

Board would not have reversed the local finding in *American Bottom Conservancy (PCB 00-200).*

Comparing the local ordinance, which improperly restricted participation with cases in which there were unforeseen overcrowding or scheduling issues at the actual public hearing, resulting in some minimal restrictions on participation is not appropriate. In all the cases that the County cites, where the Board affirmed the local decision despite problems which arose at the public hearing, the common threads are that the problems which arose were unforeseen and the hearing officer did his best under the circumstances to address the issues. These cases represent examples of "balancing" the individual's interest in participation against society's interest in effective and efficient government operation. In the case at bar the County's advance and unequivocal restriction on participation was premeditated, intentional, and unrelated to any balancing of interests.

In suggesting that the Board has previously upheld restrictions on participation far more onerous than the County's Ordinance here, which on its face bars almost all members of the public from participation, the County cites the Board opinion in *City of Columbia* for the proposition that lack of hearing room capacity and restrictions on public comments during the hearing did not render the proceedings fundamentally unfair. Actually, the Board's Ruling is the opposite of what is advanced by the County, in that the Board is considering the lack of seating capacity, the duration of the hearing into the early morning hours, and restrictions on public comment stated, "Even if, arguably, no single one of the above factors would have rendered these proceedings fundamentally unfair,

certainly in combination, these factors had a dampening and prejudicial effect." The Board added, "Were the Board not required to vacate the County's decision on the grounds that notice defects deprived the County of jurisdiction, the Board would be required to remand this action to the County to cure the unfairness." *City of Columbia v. County of St. Clair, PCB 85-177 (April 3, 1986, slip op. at 14)*.

Similarly, the reliance of the County and Waste Management on the Board's refusal to find overcrowding on the first night at the *County of Kankakee* hearings to be fundamentally unfair is misplaced. The Board in *County of Kankakee* noted that the overcrowding only occurred on the first day of a ten day hearing, most of the testimony taken on that day was stricken anyway, a transcript of the proceedings of the first day was promptly made available to the public, and individuals who did not get into the hearing room on the first day were allowed to participate actively thereafter. (PCB 03-31, slip op. at 23, 24)

B The Private Tours of A Similar WMII Landfill

The facts of the private tours conducted and escorted door to door by WMII are uncontested. The admitted purpose of these tours was to provide County board members with information about another WMII landfill with similar design and operational characteristics to the proposed expanded landfill. These tours were conducted in a controlled environment and in small groups, which avoided Open Meetings Act problems and which gave WMII opportunity for close one on one contact. The County and WMII do not argue these facts, but defend the tours on two grounds, that they are not *ex parte* contacts because they took place before the siting application was filed and because tours are expressly

permitted by the law. Both of these legal arguments misstate the law and are utterly incorrect.

The County's Brief states at page 27, "neither the Board nor Illinois Courts, furthermore, have ever held that pre-filing contacts could constitute impermissible *ex parte* communications or could render post-filing siting proceedings fundamentally unfair." That is a pure and simple fabrication which ignores this Board's express holding in *County of Kankakee* and the Appellate Court's holding in *Land and Lakes, 319 IL. App. 3d at 51*. The relevance and admissibility of pre-filing *ex parte* contacts in fundamental fairness determinations was conclusively established by the Board in *County of Kankakee v. City of Kankakee, PCB 03-31 (Jan 9, 2003).* In overruling the hearing officer's decision to deny evidence of pre-filing contacts, the Board explained at length that such contacts have to be evaluated on a case-by-case basis, and the fact that the contacts occurred before the application was filed goes to their weight rather than to their admissibility. The Board reviewed the same cases offered in this appeal by the County and WMII and found that those cases "do not create a general prohibition against the admission of pre-filling contacts into evidence." (Slip op. at Pg. 5). The Board further stated that, "pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing fundamental fairness." The statement of the County that *ex parte* contact can only occur after an application is filed and that pre-filing contacts without limitation "are specifically permitted under Illinois law" is simply wrong. (County Brief, Pg. 26).

Since the County Brief cites *County of Kankakee* for other propositions, we know that the authors of the County's Brief read the decision. Accordingly, the Board should consider sanctioning the County for what can now not be construed as anything other than an intentional misstatement of the law.

The parties also rely on *Residents Against a Polluted Environment v. County of LaSalle, PCB 97-139 (June 19, 1997),* which predates *County of Kankakee*, in support of their misguided belief that pre-filing *ex parte* contacts cannot be considered in assessing fundamental fairness. In *Residents Against a Polluted Environment*, the Board did not allow evidence of contacts between the applicant and the County Board concerning adoption of the County's solid waste management plan. The Board found evidence of these contacts was not relevant to the siting criteria and was, therefore, not indicative of pre-decisional bias of the siting authority. The Board in *Residents Against a Polluted Environment,* however, never intended to bar evidence of pre-filing contacts which <u>were relevant</u> to the siting criteria. Unlike amendment of a solid waste management plan, private tours of a comparable landfill, where WMII unabashedly indicated that features and operations being observed by County Board members were similar to what would be proposed in a siting application, are clearly relevant to the statutory siting criteria. What makes a contact between an applicant and a decision maker an impermissible *ex parte* contact is relevance, not timing.

The Appellate Court decision in *Residents Against a Polluted Environment* makes it clear that there can be prejudicial pre-filing *ex parte* contacts. The Court there only found that as a matter of law an applicant's involvement in amendment

of a County solid waste management plan does not create a suspicion of bias. The Appellate Court did not bar evidence of other pre-filing contacts and specifically noted that appellants had only pointed out bare allegations and no specific prejudicial contacts were identified. In fact, the Appellate Court concluded, "given the numerous opportunities the appellants had to point to specific *ex parte* contacts, and their continued failure to do so, we refuse to send this case back for a third set of public hearings based upon bare, unsupported allegations." (*Residents Against a Polluted Environment v. PCB, 293 IL. App. 3d 219, 687 NE2d 552, 3d Dist. 1997*).

The County also offers a brief pre-filing presentation by the applicant to the City Council in *County of Kankakee* as proof that the Board has endorsed an "anything goes" approach to pre-filing *ex parte* communications. On the contrary, what the Board found in *County of Kankakee* was that, under the circumstances, there was no prejudice in the applicant's presentation to the City Council because it was at a meeting open to the public, the press was invited to ask questions, and the same information was again submitted at the public hearing so that the public had knowledge of it and a right to cross examine. (PCB 03-31, Jan' 9, 2003, Slip. op. at 19, 20). This public aspect of the applicant's presentation is the critical distinguishing fact from the private tours which have been condemned expressly because it is impossible for opponents to appropriately address all the private impressions formed by the decision makers during the tour.

The other, equally incorrect, legal argument offered in defense of the private guided tours is that these are authorized by past decisions of the Board. Ignoring the reasoning expressed in *Concerned Citizens for a Better Environment v. City of Havana (PCB 94-44*) and *Concerned Citizens for a Better Environment v. City of Beardstown (PCB 94-98)* as well as *Southwest Energy Corp. v. Pollution Control Board (275 Il.App. 3rd 84)*, the County's Brief states at page 28, "pre-filing facility tours are specifically authorized by Illinois law and are not impermissible *ex parte* contacts. Indeed, this Court has recognized that pre-filing facility tours do not render subsequent siting proceedings fundamentally unfair." The County once again stretches its interpretation of the law beyond all credibility when it cites *County of Kankakee* in support of this proposition. What the Board actually said about the pre-filing tour in *County of Kankakee* was, "the record does not clearly indicate whether members of the public were invited to attend the Town & County sponsored bus trip to nearby landfills. Consequently, the Board finds there is insufficient evidence to determine whether there was equal access to information obtained by the council members, and the Petitioners have failed to prove that the bus trip was fundamentally unfair. (PCB 03-31, Jan. 9, 2003, Slip op. at Pg. 21). It is clearly a gigantic leap from the Board's finding that there was insufficient evidence to prove the particular trip about which very little was known in *County of Kankakee* unfair to the proposition advanced by the County here, that private tours, excluding the public, are expressly authorized by Illinois law.

Similarly, *Landfill 33 v. Effingham County Board* does not validate the private tours that occurred here. The only competent evidence in *Landfill 33* about a tour was that there had been a pre-filing visit by a County Board Committee to the applicant's recycling center. (PCB 03-43, Feb 20, 2003, Slip op. at 24). No detailed evidence regarding that visit is recited in the decision, but what is clear, is that the case was about siting approval of a new solid waste transfer station and not about a recycling facility. Therefore it is a stretch to even suggest that this case is about a comparable facility tour.

C Prejudice as a matter of Law

The County and WMII lastly fall back on the argument that there is no actual showing of prejudice from all the improper ex parte communications which took place in this case. To support their argument they cite the self serving conclusory testimony of County board members that they based their decision solely on the evidence. First of all this conclusory testimony is of dubious credibility when compared to the testimony of these same County board members about how impressed they were with their private tours of the WMII landfill in Will County, how much they learned and how that helped them at the siting hearing. Secondly, this testimony was elicited under circumstances which cast further doubt on its credibility. The self-serving responses by County board members to the question of whether they made their decision based on the evidence, is undermined by the fact that the question was put to them by counsel for WMII and there was no objection from counsel for the County. As further evidence of the ongoing and close relationship between WMII and the County, it

is striking that eight out of nine County board members who were asked the question testified that they met with counsel for WMII to prepare for their deposition. (Allen Dep. Pg. 33, Fauci Dep. Pg. 46, Haines Dep. Pg. 23, Oncken Dep. Pg. 20, Stoddard Dep. PG. 36, Tobias Dep. Pg. 11, Turner Dep. Pg. 20, Vary Dep. Pg. 23). Obviously then this County board testimony is suspect because it was rehearsed and orchestrated.

Most importantly, however, the testimony of County board members that, although they were engaged in prohibited *ex parte* communications, they did not consider those communications in rendering their local siting decision and they relied exclusively upon the record made during the siting hearing should not be considered by the Board because victims of such *ex parte* communication, in an attempt to prove prejudice, have historically been precluded from probing the decision makers' internal thought processes. Self-serving disclosure of those thought processes when it suits the decision makers should not be allowed.

The Board has long had a rule that local decision makers enjoy a "deliberative process privilege," whereby inquiry into the basis and reasons for their decision is prohibited. This rule has been uniformly enforced when Petitioners on review press local decision makers about how, why, and on what basis they made their decision. The deliberative process privilege has been an effective shield used by local decision makers to protect them against inquiries of this nature. This has created significant problems for Petitioners on review when arguing that county board members made a decision based on matters outside the record. Because of the deliberative process privilege such arguments must,

of necessity, be proven circumstantially. When it comes, however, to Respondents on review defending the local decision, the deliberative process privilege seems to be turned on its head. While these Respondents argue superficially that Petitioners cannot inquire into the decision makers' mental processes, they uniformly make exactly the same inquiry themselves, for the purpose of eliciting self-serving testimony from the decision makers that they based their decision solely on the evidence. However, such inquiries by the attorneys for the decision makers are an equally improper invasion of the decision maker's deliberative process.

The deliberative process privilege has been Board doctrine since the decision in *DiMaggio v. Solid Waste Agency of Northern Cook County, PCB 89-138 (1989)*. The line of authority relied upon by the Board in *DiMaggio* starts with *US v. Morgan, 313 US 409 (1941),* which held that the mind of the decision maker should not be invaded. *Morgan* is better understood, not as establishing a privilege, but as establishing a doctrine defining the proper scope of judicial review. *US v. Hooker Chemicals and Plastics Corp., 123 FRD 3, 23 (Appendix) (WDNY 1988)*. Therefore, the inadmissibility of a judicial or administrative decision maker's mental processes is not a privilege of the decision maker which can be waved, but rather is a limitation on the scope of what can be reviewed. Accordingly, the self-serving testimony of County board members, that they based their decision solely on the evidence, should not be considered in any event.

For the foregoing reason a demonstration of actual prejudice in order to succeed on an argument that the proceedings were fundamentally unfair, as incorrectly alleged by WMII in their Brief (Bg. 29), is not the standard. The disinterested observer test provides something closer to an objective standard and obviates the need for actual admission of prejudice by decision makers. The argument by the County that the presumption of validity of a public official's actions can only be overcome by a showing of actual bias, citing *Residents Against a Polluted Environment*, is incorrect in that evidence of the reasonable appearance of bias, from the standpoint of a disinterested, neutral observer, is all that is required. To hold otherwise would mean that there could never be proof of bias unless the decision maker affirmatively admitted the same. Such admission is not only unlikely to be forthcoming, but the question itself to the decision maker of whether he or she was biased would seem to be prohibited under the deliberative process privilege.

Moreover, some fundamental fairness violations are so blatant and so obviously prejudicial that prejudice is assumed as a matter of law. Historically these violations have revolved around the public's right to know and participate, the very rights impacted in this case. Accordingly, there was no demonstration of actual prejudice in *American Bottom Conservancy* (delayed access to the application), nor was there a demonstration of prejudice in the *Beardstown* and *Havana* cases (tours of comparable facilities).

III The siting approval was against the manifest weight of the evidence

Both the County and WMII continue to insist that the Board must affirm the

local finding on the criteria if there is any evidence in support of those criteria. Both the County and WMII insist that the Board cannot reweigh evidence. However, the holding in *Town & Country* requires the Board to conduct a hearing based on the record made at the local level, and requires the applicant to sustain a burden of proof regarding the evidence. The precise mandate of the Supreme Court in *Town & Country*, requires the Board to apply its "technical expertise in examining the record to determine whether the record supported the local authority's conclusions." (225 IL. 2d at 123). The Court in *Town & Country* only considered the local decision to be an "interim" decision. Units of local government have concurrent jurisdiction with the Board in siting, they only render interim decision, and the Board is required, "to make factual and legal determinations on evidence." (225 IL. 2d at 120). This requires the Board to do more than superficially examine the record to see if there is any evidence in support of a decision. This is exactly what the Board did in the underlying case that led to the *Town & Country* decision. The Board conducted a thorough, technical review of the evidence considered by local officials. After it carefully reviewed the quality of the evidence, the Board reversed the local officials' siting decision because, even though there was voluminous evidence to support the City Council's decision, the Board concluded their decision had been predicated on faulty scientific assumptions. *Id*. at 114, 124. The Board could never have reached such a conclusion, and so could not have reversed the local officials' siting decision if – as argued here – its duty was to simply accept the local officials' analysis.

A Need

Both the County and WMII Briefs misapprehend the requirement for establishing need for a new facility. WMII's only witness on the subject refused to characterize the need as urgent, and the statistical evidence presented by her affirmatively demonstrates that while there will be an eventual disposal capacity shortfall in the service area, the same will not occur for an extended period of time. Illinois Appellate Courts have uniformly required the proof of need to include a demonstration of urgent need. *File v. D & L Landfill 219 IL. App.3d 897, 579 NE2d 1228 (5th Dist. 1991); Tate v. Illinois Pollution Control Board, 188 IL. App.3d 994, 544 NE2d 1176 (4th Dist. 1989); Waste Management v. Pollution Control Board, 175 IL. App.3d 1023, 530 NE2d 682 (2d Dist. 1988); ARF Landfill Inc., v. Pollution Control Board 174 IL. App. 3d 82, 528 NE2d 390 (2d Dist. 1988); Waste Management v. Pollution Control Board, 123 IL. App.3d 1075, 463 NE2d 969 (2d Dist. 1984).* The bottom line is that the applicant here did not prove need as that term has been defined by the Appellate Courts.

B Public Health Safety and Welfare

Both the County and WMII Briefs completely ignore the elephant in the room, namely that the existing landfill is impacting ground water in at least two areas that have been identified by the Agency, that these impacts are sufficient to warrant remediation, and that WMII proposes to vertically expand over an area that is immediately adjacent to one of the impact related ground water management zones. The active leaking and contamination coming from the existing landfill should be a red flag for the local decision maker and for this

Board on review. This red flag should mandate an extraordinary amount of investigation and understanding regarding ground water movement and interaction at the site.

What both the County and WMII Briefs do instead is reference Ms. Underwood's (WMII's hydro-geologist) conclusion that the monitorable ground water zones do not represent a primary source of drinking water. That conclusion, by itself, it not completely reassuring without evidence regarding the hydraulic connection between this uppermost ground water and those lower zones which are the source for drinking water at private wells in the area. This connection was never explained or investigated by the applicant.

WMII identifies the Galena Aquifer as the ground water source for local water wells in the vicinity. (C6862). Counsel for the applicant, in opening statement, indicated that the confirmed drinking water impacts at the site are in the shallow ground water and not the "drinking water." (C6845). That the Galena Aquifer has not been impacted by the site is unproven, since that aquifer is not currently being monitored. Assuming, however, that the Galena Aquifer is not impacted, the controlling question becomes, what degree of connection exists between the impacted shallow ground water and the Galena Aquifer? In the application and in her testimony WMII's hydro-geologist, Joan Underwood, identifies the Maquoketa shale as the all-important barrier between these units. However, even a cursory review of the data in the siting application demonstrates that the extent of this shale barrier is grossly overestimated by Ms. Underwood and its viability as a confining barrier is not established by the evidence.

Ms. Underwood acknowledged that at the west end of the proposed site (the area of the existing leaking landfill), this shale unit thins out somewhat and she testified that it was only thirty feet in thickness at that point. (C7238). Actually, the geologic cross sections in the application depict this shale unit as being considerably thinner than Ms. Underwood recalled. Only eight soil borings went deep enough to completely penetrate the Maquoketa shale and encounter the Galena Aquifer. Of these eight borings, four of them depict the shale "barrier" as between approximately six and twenty-two feet thick. (C. 456, 463) What is more troubling however, than Ms. Underwood's exaggeration or flawed memory, is the fact that a review of the material classifications of the samples recovered, as seen on the cross sections, reveals that in three of these borings, there is no shale barrier whatsoever above the Galena Aquifer, and in a fourth one, there are only three feet of shale. Boring B801 is interpreted on the cross section as depicting six feet of shale above the aquifer but the boring log itself demonstrates that there is nothing but dolomite. Boring B802 is interpreted on the cross section as depicting thirteen feet of shale above the aquifer, but once again the boring descriptions show only dolomite. (Cross Section A-A', Drawing 9, C 456) Similarly, Boring B811 is interpreted as depicting twelve feet of shale barrier but the specific sample descriptions show no shale whatsoever and only dolomite. Boring B812 is interpreted as depicting twenty-two feet of shale and only three feet are actually seen in the boring logs. (Cross Section H-H', Drawing 16, C 463) The other four soil borings encountering the Galena Aquifer, all at the east end of the property, all grossly overstate the amount of protective shale present, in that

the geological unit named “undifferentiated shale” is actually shown on the boring logs to be dolomite. Dolomite is a fractured bedrock which can be a productive aquifer.

Lastly, not only is the amount of the supposed shale barrier grossly overstated, but the ability of that shale to perform as a barrier between the surface and lower aquifers is unproven and, in fact, contradicted by the data in the application. One would think that if this Maquoketa shale unit is the only protection between the local drinking water supply and the leaking landfill, that it would have been extensively tested. On the contrary, only one hydraulic conductivity (permeability) test was done in this shale unit, and that test revealed a hydraulic conductivity of 1×10^{-3} cm/sec, a value one would expect in a highly productive sand or gravel aquifer. In other words, we have a single test of the conductivity of the shale and it demonstrates an ability to transmit water equal to or greater than most of the other porous and conductive geologic materials at the site. In light of all the forgoing, it is not surprising that WMII does not propose to monitor the Galena Aquifer. As such, any conclusion that this facility is protective of the public health, safety, and welfare from a ground water, and hydro-geologic standpoint is unwarranted and dangerous.

Finally regarding hydrogen sulfide, WMII emphasizes the fact that their operations manager, Dale Hoekstra, testified at the public hearing, that hydrogen sulfide gas emissions are no longer a problem at the DeKalb County Landfill. However, this testimony is not credible in light of the numerous members of the public who indicated that they were still presently smelling the characteristic

rotten egg odor of hydrogen sulfide gas in Cortland and near the landfill. (Mr. Keys, C6895, Ms. Lovings, C6896, Ms. Wilcox, C6897, Mr. Chambliss, C6964, Mr. Charvat, C6970). This represents part of a continuing pattern on the part of WMII witnesses to underestimate problems and overstate the positive. Just the opposite should be occurring when the public health, safety and welfare for now and for future generations are at issue.

IV Conclusion

For all the foregoing reasons, as well as all the additional reasons cited in its opening brief, Stop the Mega-Dump respectfully prays that the decision of the DeKalb County board granting siting approval for expansion of the leaking DeKalb County Landfill be reversed. No other decision protects the integrity of the siting process and the public health, safety and welfare.

Respectfully Submitted,

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