

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 01 2003

CITY OF KANKAKEE,)

Petitioner,)

v.)

COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)

Respondents.)

PCB 03-03-125

(Third-Party Pollution Control
Facility Siting Appeal)

STATE OF ILLINOIS
Pollution Control Board

MERLIN KARLOCK,)

Petitioner,)

v.)

COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)

Respondents.)

PCB 03-133

(Third-Party Pollution Control
Facility Siting Appeal)

MICHAEL WATSON,)

Petitioner,)

v.)

COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)

Respondents.)

PCB 03-134

(Third-Party Pollution Control
Facility Siting Appeal)

KEITH RUNYON,)

Petitioner,)

v.)

COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)

Respondents.)

PCB 03-135

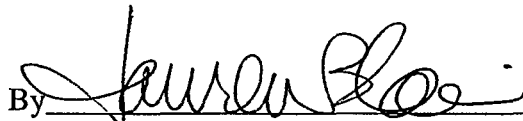
(Third-Party Pollution Control
Facility Siting Appeal)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on May 1, 2003, we filed with the Illinois Pollution Control Board, the attached **Motion to Quash the Subpoenas issued to Saundra Listenbee, Registrar of Richard J. Daley College, and to Mary Ann Powers of Richard J. Daley College** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

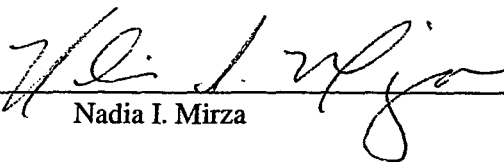
Lauren Blair
One of Its Attorneys

Donald J. Moran
Lauren Blair
PEDERSEN & HOUP
Attorneys for Petitioner
161 N. Clark Street
Suite 3100
Chicago, IL 60601
Telephone: (312) 641-6888

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **ADDITIONAL APPEARANCE** on Ms. Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board and on Hearing Officer Bradley Halloran by hand delivery at their addresses listed below on or before 10:45 a.m. on the 1st day of May, 2003, by mail and by facsimile at the remaining addresses and facsimile numbers listed below on or before 10:45 a.m. on the 1st day of May, 2003:

Ms. Dorothy M. Gunn, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601	George Mueller, Esq. 501 State Street Ottawa, IL 61350 (815) 433-4705 (815) 433-4913 (fax)
Charles F. Helsten, Esq. Richard S. Porter, Esq. Hinshaw & Culbertson 100 Park Avenue P.O. Box 1389 Rockford, IL 61105-1389 (815) 490-4900 (815) 963-9989 (fax)	Elizabeth Harvey, Esq. Swanson, Martin & Bell One IBM Plaza Suite 2900 330 North Wabash Chicago, IL 60611 (312) 321-9100 (312) 321-0990 (fax)
Kenneth A. Leshen, Esq. One Dearborn Square, Suite 550 Kankakee, IL 60901 (815) 933-3385 (815) 933-3397 (fax)	L. Patrick Power, Esq. 956 North Fifth Avenue Kankakee, IL 60901 (815) 937-6937 (815) 937-0056 (fax)
Jennifer J. Sackett Pohlenz, Esq. 175 W. Jackson Boulevard, Suite 600 Chicago, IL 60604 (312) 540-7540 (312) 540-0578 (fax)	Keith Runyon 1165 Plum Creek Drive, Unit D Bourbonnais, IL 60914 (815) 937-9838 (815) 937-9164 (fax)
Bradley Halloran, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11th Floor Chicago, Illinois 60601 (312) 814-8917 (312) 814-3669 (fax)	Kenneth A. Bleyer 923 W. Gordon Terrace #3 Chicago, IL 60613 (815) 937-9838 (815) 937-9164 (fax) Patricia O'Dell 1242 Arrowhead Drive Bourbonnais, IL 60914



Nadia I. Mirza

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 01 2003

MICHAEL WATSON,)		
)		
Petitioner,)	PCB 03-134	STATE OF ILLINOIS Pollution Control Board
)		
v.)	(Third-Party Pollution Control	
)	Facility Siting Appeal)	
COUNTY OF KANKAKEE, COUNTY)		
BOARD OF KANKAKEE, and WASTE)	(Consolidated with PCB 03-125, 03-	
MANAGEMENT OF ILLINOIS, INC.,)	133, 03-135)	
)		
Respondents.)		

**WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO QUASH
PETITIONER MICHAEL WATSON'S *SUBPOENAS* TO REGISTRAR SAUNDRA
LISTENBEE & MARY ANN POWERS OF RICHARD J. DALEY COLLEGE**

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys,
Pedersen & Houpt, in support of its Motion to Quash the *Subpoenas* issued to Sandra Listenbee,
Registrar of Richard J. Daley College, and to Mary Ann Powers of Richard J. Daley College
states as follows:

1. Petitioner Michael Waston's *Subpoenas* to Sandra Listenbee, Registrar of
Richard J. Daley College, and to Mary Ann Powers of Richard J. Daley College, to appear at the
hearing in this matter set for May 6, 2003 should be quashed as improper attempts to collaterally
attack the credibility of Patricia Beaver-McGarr, WMII's expert witness who testified at the
public hearing on criterion (iii).

2. Petitioner has raised jurisdictional and fundamental fairness claims in his appeal.
As part of his fundamental fairness claims, Petitioner asserts that the public hearing was unfair

due to WMII's alleged failure to present documentation concerning Ms. McGarr's qualifications, and due to WMII's alleged failure to present Ms. McGarr for supplemental recross-examination on the issue of her educational background. It should be noted, however, that Petitioner fails to demonstrate how said alleged failures prejudiced him or other participants in the public hearing.

3. On April 30, 2003, Petitioner served *Subpoenas* on Ms. Listenbee and Ms. Powers in an attempt to compel their appearance at the hearing on May 6th. The *Subpoenas* also request that Ms. Listenbee and Ms. Powers bring to the hearing "the entire contents of the Richard J. Daley College file for Ms. Patricia Beaver-McGarr (formerly Patricia Beaver)."

4. Petitioner seeks to have Ms. Listenbee and Ms. Powers testify at trial to collaterally impeach the testimony Ms. McGarr gave at the public hearing about her educational background in an attempt to discredit her expert testimony concerning criterion (iii). The Board, however, is not permitted to reweigh a witness's credibility on appeal. CDT Landfill Corp. v. City of Joliet, No. PCB 98-60, slip op. at 10 (March 5, 1998).

5. Section 40.1(b) of the Illinois Environmental Protection Act (the "Act") provides that the review before the Board shall be based "exclusively on the record before the county board or the governing body of the municipality." 415 ILCS 5/40.1(b). Even when reviewing fundamental fairness issues, it is improper for the Board to hear new evidence unless such evidence necessarily lies outside of the record. Land & Lakes Co. v. Pollution Control Board, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

6. In this case, the issue of Ms. McGarr's qualifications as an expert witness was raised and thoroughly exhausted by Petitioner at the public hearing. Petitioner subjected Ms.

McGarr to extensive cross-examination on the issue of her educational background. At Petitioner's request, an affidavit from Richard J. Daley College was furnished at the hearing concerning Ms. McGarr's affiliation with the college, which is part of the record on appeal. Petitioner made his record concerning his objection to Ms. McGarr's qualifications as an expert witness, and the record was closed at the end of the public comment period. He cannot now reopen this issue and introduce additional evidence in an attempt to get a second bite of the apple on appeal.

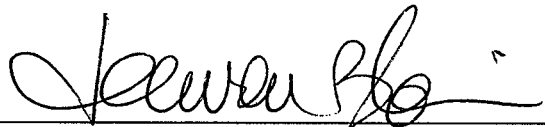
7. The County Board of Kankakee issued its decision granting local siting approval, subject to certain conditions, on January 31, 2003, despite Petitioner's challenges and objection to Ms. McGarr's qualifications as an expert. The Board cannot make its own findings of fact concerning Ms. McGarr's qualifications, and cannot reweigh the evidence concerning her credibility as an expert witness.

8. Moreover, the Board's determination of whether the proceedings were fundamentally unfair due to WMII's alleged failure to present documentation concerning Ms. McGarr's qualifications, and due to WMII's alleged failure to present Ms. McGarr for supplemental recross-examination on the issue of her educational background does not require a review of evidence outside of the record. Therefore, there is no legitimate basis for presenting the testimony of Ms. Listenbee or Ms. Powers at the hearing on May 6th, and Petitioner's *Subpoenas* should be quashed.

WHEREFORE, WMII requests that the Hearing Officer quash Petitioner Michael Watson's *Subpoenas* issued to Sandra Listenbee, Registrar of Richard J. Daley College, and to

Mary Ann Powers of Richard J. Daley College, and provide such further and other relief as he deems appropriate.

Respectfully Submitted,
WASTE MANAGEMENT OF ILLINOIS, INC.

By: 
One of Its Attorneys

Donald J. Moran
Lauren Blair
PEDERSEN & HOUP, P.C.
161 North Clark Street
Suite 3100
Chicago, Illinois 60601
(312) 641-6888