

MAR 25 2003

ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

CITY OF KANKAKEE,)

Petitioner,)

vs.)

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

Respondents.)

MERLIN KARLOCK,)

Petitioner,)

vs.)

COUNTY OF KANKAKEE, COUNTY)
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PCB 03-125
(Third-Party Pollution Control Facility
Siting Appeal)

PCB 03-133
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(Third-Party Pollution Control Facility
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PCB 03-135
(Third-Party Pollution Control Facility
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NOTICE OF FILING

TO: All Counsel of Record (see attached Service List)

PLEASE TAKE NOTICE that on March 24, 2003, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, an original and nine copies of the Appearance, copies of which are attached hereto.

STATE OF ILLINOIS

Pollution Control Board

Dated: March 24, 2003

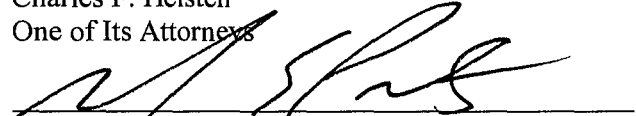
Respectfully submitted,

On behalf of the COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By: HINSHAW & CULBERTSON



Charles F. Helsten
One of Its Attorneys



Richard S. Porter
One of Its Attorneys

HINSHAW AND CULBERTSON
100 Park Avenue
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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 March 24, 2003, a copy of the foregoing was served upon:

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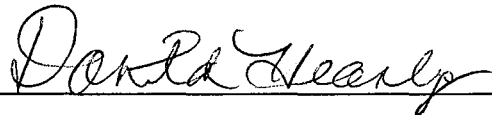
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Mr. Brad Halloran
Hearing Officer
Illinois Pollution Control Board
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By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford,, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above



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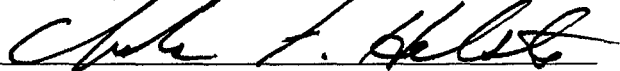
NOW COMES Hinshaw & Culbertson, and hereby enters its Appearance as counsel for
the Respondent, COUNTY OF KANKAKEE and COUNTY BOARD OF KANKAKEE, in the
above-entitled cause of action.

Dated: March 24, 2003

Respectfully submitted,

On behalf of the COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By: HINSHAW & CULBERTSON



Charles F. Helsten
One of Its Attorneys



Richard S. Porter
One of Its Attorneys

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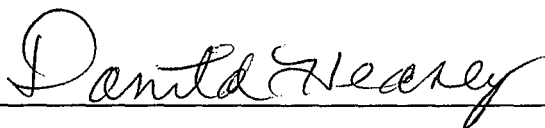
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STATE OF ILLINOIS
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PLEASE TAKE NOTICE that on March 24, 2003, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, an original and nine copies of the Motion to Dismiss Petition for Review Filed by the City of Kankakee, copies of which are attached hereto.

Dated: March 24, 2003

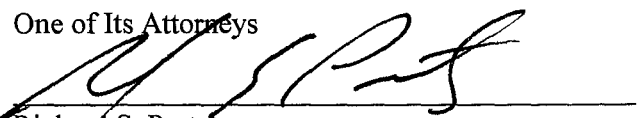
Respectfully submitted,

On behalf of the COUNTY OF KANKAKEE and
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By: HINSHAW & CULBERTSON



Charles F. Helsten
One of Its Attorneys



Richard S. Porter
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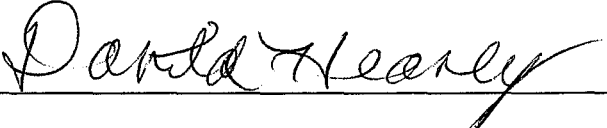
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MOTION TO DISMISS PETITION FOR REVIEW FILED BY
THE CITY OF KANKAKEE

STATE OF ILLINOIS
Pollution Control Board

NOW COMES The County of Kankakee, by and through its Attorneys, HINSHAW & CULBERTSON, and files this Motion to Dismiss Petition for Review of The City of Kankakee, pursuant to Illinois Pollution Control Board Rule 101.506, and in support thereof, states as follows:

1. On January 31, 2003, the Kankakee County Board ("County Board") approved the landfill siting request of Waste Management of Illinois, Inc. ("WMII"), for the expansion of the existing Kankakee County Landfill in the unincorporated areas of Kankakee County. On February 21, 2003, the City of Kankakee mailed its Petition for Hearing to contest the site location approval of the County Board.

2. Illinois Pollution Control Board Rule 101.506 provides that a motion attacking the sufficiency of a pleading may be filed within 30 days of service of said pleading.

3. In this case, the petition of The City of Kankakee should be dismissed because the Illinois Supreme Court has acknowledged that extraterritorial challenges by third party municipalities of the approval of a landfill siting request by another local unit of government are incompatible with the purposes of the Environmental Protection Act and, therefore, improper. *City of Elgin v. County of Cook*, 169 Ill.2d 53, 660 N.E.2d 875, 884 (Ill. 1995).

4. The Illinois Supreme Court specifically held, "[i]ndeed, if extraterritorial challenges by third-party municipalities are allowed in the courts of this State, it is unlikely that any significant landfill, regardless of how necessary and environmentally sound, will ever again be developed in Illinois. As evidenced in the instant case, no matter where a landfill is sited, neighboring units of local government not participating in the landfill's development will typically employ their considerable legal arsenals to prevent indefinitely the development of such facilities. Thus, where the appropriate unit of local government approves the siting of a pollution

control facility, pursuant to Section 39(c), and that facility is contained solely within that unit's own geographic boundaries, we hold that the extraterritorial third-party challenges to these siting decisions to the courts of this State are incompatible with the purposes of the Act." *Id.*

5. The *City of Elgin* case admittedly involved Cook County, which the Illinois Supreme Court specifically acknowledged was exempted from the siting criteria of Section 39.2 pursuant to Section 39.2(h) of the Act. Nonetheless, the rationale of the Illinois Supreme Court is dispositive of the issue in this case because the City of Kankakee is an extraterritorial neighboring unit of government and, therefore, should not be allowed to appeal the decision of the County.

6. Section 40.1(b) of the Act provides that if the County Board grants approval under Section 39.2 of the Act "a third party other than the applicant who participated in the public hearing conducted by the County Board or governing body of a municipality may petition the Board within 35 days for hearing to contest the approval of the County Board or governing body of the municipality." 415 ILCS 5/40.1(b); see also IPCB Rule 107.200(b).

7. Nonetheless, that same statute provides that if the Illinois Pollution Control Board "determines that such petition is duplicitous or frivolous, or that the petitioner is so located as to not be affected by the proposed facility," then it is appropriate for the petition to be dismissed. *Id.*

8. If a Petitioner is not "affected by" a proposed facility, that party has no standing to bring a Petition for Review before the Pollution Control Board. See *Ogle County Board v. Pollution Control Board*, 272 Ill.App.3d 184, 189-90, 649 N.E.2d 545, 550 (2d Dist. 1995) (explaining that the "affected by" inquiry of section 40.1(b) controls whether or not the petitioner has standing before the Pollution Control Board).

9. The *City of Elgin* case makes clear that the Supreme Court is of the opinion that neighboring third party municipalities are not adequately "affected by" a proposed facility and should not be allowed to challenge another unit of local government's siting decisions because such challenges would create an onerous burden upon the system.

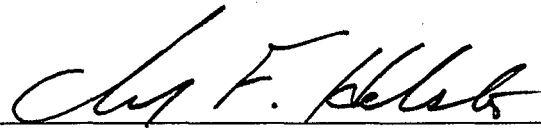
10. The City of Kankakee is a third party municipality and, accordingly, this Court should determine that the Petitioner is not located so as to be sufficiently affected by the proposed facility in light of the *City of Elgin* case. Consequently, the Court should find that The City of Kankakee has no standing to bring its Petition for Review before the Pollution Control Board.

WHEREFORE, The County of Kankakee prays that this Court strike the Petition for Review of The City of Kankakee.

Respectfully Submitted,

On behalf of the COUNTY OF KANKAKEE
and COUNTY BOARD OF KANKAKEE

By: Hinshaw & Culbertson



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