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STATE OF ILLINOIS
Pollution Control Board

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

Respondents.)

MICHAEL WATSON,)

Petitioner,)

vs.)

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

Respondents.)

KEITH RUNYON,)

Petitioner,)

vs.)

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

Respondents.)

PCB 03-125
(Third-Party Pollution Control Facility
Siting Appeal)

PCB 03-133
(Third-Party Pollution Control Facility
Siting Appeal)

PCB 03-134
(Third-Party Pollution Control Facility
Siting Appeal)

PCB 03-135
(Third-Party Pollution Control Facility
Siting Appeal)

REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PETITION FOR REVIEW
FILED BY THE CITY OF KANKAKEE

NOW COME Respondents, COUNTY OF KANKAKEE and COUNTY BOARD OF KANKAKEE, by and through their attorneys, HINSHAW & CULBERTSON, and as and for their Reply Brief in Support of Motion to Dismiss Petition for Review filed by the City of Kankakee, state as follow:

I. THE MOTION TO DISMISS WAS TIMELY FILED

In the conclusory fashion the City of Kankakee argues that the County's Motion to Dismiss "was filed more than 30 days after the service of the City of Kankakee's Petition for Review" and further argues that the "motion was not filed in a timely manner". (See City brief, Section I). The City's argument is factually and legally erroneous.

The City's original Petition was filed on February 20, 2003 and an Amended Petition was filed on February 21, 2003. Obviously, when the City filed the Amended Petition the time for dismissing said Petition did not begin to run until the filing of said Amended Petition. Regardless, 30 days from the date of the filing of the original Petition was Saturday, March 22, 2003. 30 days from the filing of the Amended Petition (which was filed on February 21, 2003) was Sunday, March 23, 2003. Section 101.300 of the IPCB rules specifically provides:

Computation of any period of time prescribed in the Act, other applicable law, or these rules will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or a national or state legal holiday.

35 Ill.Admin.Code § 101.300(a) (2002) (emphasis added).

Section 101.300(b)(2) provides:

If a document is filed by U.S. Mail subsequent to a filing deadline, yet the postmark precedes the filing deadline, the document will be deemed filed on the postmark date, if all filing requirements are met as set forth in Section 101.302 of this Part.

35 Ill.Admin.Code § 101.360(b)(1) (2002).

In this case, the Motion to Dismiss was filed by mail and postmarked Monday, March 24, 2003. Because 30 days from the filing of the Original and Amended Petitions fell on Saturday, March 22 and Sunday March 23, 2003, pursuant to § 100.300(a) and (b)(1). The date by which the Reply was to be placed in the U.S. Mail was March 24, 2003. The Reply Brief was mailed on that date and accordingly, pursuant to the plain language of the Board rules, the pleading was timely filed and the Petitioner's statement to the Board otherwise is either intentionally or negligently erroneous.

II. THE CITY'S ARGUMENT THAT THE MARCH 6, 2003 ORDER SOMEHOW DEFEATS THE MOTION TO DISMISS, IS ERRONEOUS

In Section II of its brief, the City points out that on March 6, 2003 the Illinois Pollution Control Board ("Board") issued an Order establishing the hearing decision and deadline. Said Order mentions that at that time "no evidence for the Board indicates that this action is duplicitas or frivolous. The Board accepts Petitioner's Petition for Hearing." (See IPCB Order, March 6, 2003). In a novel argument, the Petitioners are asserting that by the Board issuing the March 6th order accepting the February 25 and March 3 Petitions; the Motion to Dismiss is somehow untimely. The City of Kankakee provides no authority for such a ludicrous position.

The Illinois Pollution Control Board Rule 101.506 explicitly provides that a party may file a motion attacking the sufficiency of a petition within 30 days after service of the challenged document. Furthermore, 101.500 provides that the Board may entertain any motions a party wishes to file which are permissible under the Act or applicable law of these rules of the Illinois Code of Civil Procedure. Obviously pursuant to the plain language of the rules a Respondent is allowed 30 days to file a motion attacking the sufficiency of a petition. The fact that the Board promptly and efficiently issued an order accepting the petitions as timely filed and establishing a decision deadline. The City's argument is disingenuous, in no way affects the right of a

Respondent to file a motion to dismiss within 30 days of receiving a petition, is misleading and should obviously be rejected.

III. THE ILLINOIS SUPREME COURT HAS ACKNOWLEDGED THAT THIRD PARTY MUNICIPALITIES ARE NOT LOCATED AS TO BE SUFFICIENTLY AFFECTED BY FACILITIES PROPOSED TO BE LOCATED WITHIN ANOTHER UNIT OF LOCAL GOVERNMENT'S JURISDICTIONAL BOUNDARIES

The only argument raised by the City of Kankakee is that "since the City of Kankakee is allowed to participate in these hearings as an objector and since the issue of lack of standing was not raised prior to the hearing by the County, that issue if it has any merit whatever was waived, accept for the grounds contained in Section 5/40.1(b)." (See City Brief, Section III and IV). Once again, the City's argument is erroneous.

The City has provided no authority for its conclusion that the failure to raise the objection at the County level is in any way a waiver. Furthermore, though Section 40.1(b) does allow anyone who participated in the public hearing conducted by the County Board to petition the Board for a hearing to contest the approval by County Board, that section also provides that if the Board finds that a petition is duplicitous, frivolous, or finds a petitioner is not located as to be affected by the proposed facility, then his petition must be dismissed. Therefore, a party to a 39.2 proceeding is not automatically affected by the proposed facility then the petition may be dismissed. In this case, the City of Kankakee has not refuted the fact that the Illinois Supreme Court has held that when a local governmental entity issues a siting approval, other municipalities should not be allowed to use their considerable public budgets to file challenges as the likely result is that the nearby municipalities will always object to a landfill thereby overburdening the process and usurping the role of a local governmental authority to protect the interests of the public.

This case is a perfect example of the concern that the Supreme Court raised. The City of Kankakee is using its budget to object to a landfill which is not within its borders, and is not even

contiguous to the City borders. The City has cited no case in support of its position that it is sufficiently affected and instead merely attempts to distinguish, unsuccessfully, the *Ogle County* case. In this case, the IPCB may find as a matter of law that foreign municipalities are not sufficiently affected to file an appeal and such a ruling will result in substantial justice by avoiding the very problem that was foreseen by the Illinois Supreme Court in the *City of Elgin* case.

WHEREFORE, Respondent, COUNTY OF KANKAKEE, prays that this Court dismiss the Petition of the City of Kankakee, with prejudice.

Respectfully Submitted,

On behalf of the COUNTY OF KANKAKEE

By: Hinshaw & Culbertson

A handwritten signature in black ink, appearing to read 'C. Helsten', written over a horizontal line.

Charles F. Helsten
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One of Attorneys

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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 April 9, 2003, a copy of the foregoing was served upon:

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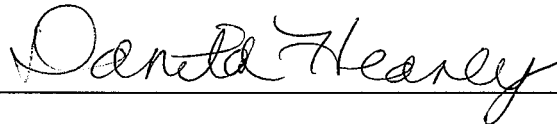
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