

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
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APR 10 2003

CITY OF KANKAKEE,)
)
Petitioner,)
)
v.)
)
)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

PCB 03-03-125 **STATE OF ILLINOIS**
(Third-Party Pollution Control *Pollution Control Board*
Facility Siting Appeal)

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 April 10, 2003, we filed with the Illinois Pollution Control Board, the attached **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO QUASH PETITIONER MICHAEL WATSON'S SUBPOENA TO DAVID MILLER, STEPHEN CORCORAN, AND METRO TRANSPORTATION GROUP, INC. and MOTION TO QUASH PETITIONER MICHAEL WATSON'S SUBPOENA TO PATRICIA BEAVER-McGARR, JEREMY R. WALLING, AND INTEGRA REALTY RESOURCES** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

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 **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO QUASH PETITIONER MICHAEL WATSON'S SUBPOENA TO DAVID MILLER, STEPHEN CORCORAN, AND METRO TRANSPORTATION GROUP, INC. and MOTION TO QUASH PETITIONER MICHAEL WATSON'S SUBPOENA TO PATRICIA BEAVER-McGARR, JEREMY R. WALLING, AND INTEGRA REALTY RESOURCES** on the following parties by facsimile to those parties with facsimile numbers listed below and by depositing same to all parties in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, at 5:00 p.m. on this 10th day of April, 2003:

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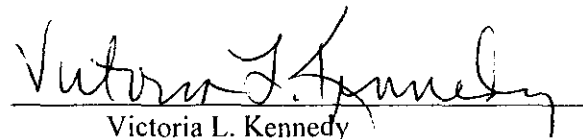
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(312) 814-3669 (fax)


Victoria L. Kennedy

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 10 2003

MICHAEL WATSON,)
)
 Petitioner,)
)
 v.)
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 COUNTY OF KANKAKEE, COUNTY)
 BOARD OF KANKAKEE, and WASTE)
 MANAGEMENT OF ILLINOIS, INC.,)
)
 Respondents.)

PCB 03-134

STATE OF ILLINOIS
Pollution Control Board

(Third-Party Pollution Control
Facility Siting Appeal)

(Consolidated with PCB 03-125, 03-
133, 03-135)

**WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO QUASH
PETITIONER MICHAEL WATSON'S *SUBPOENA* TO DAVID MILLER, STEPHEN
CORCORAN, AND METRO TRANSPORTATION GROUP, INC.**

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys,
Pedersen & Houpt, in support of its Motion to Quash the *subpoena* issued to David Miller
("Miller"), Stephen Corcoran ("Corcoran") and Metro Transportation Group, Inc. ("Metro"),
states as follows:

1. On March 7, 2003, Petitioner filed his Amended Petition for Review of Decision
Concerning Siting of A New Pollution Control Facility, Pursuant to Sections 39.2 and 40.1 of the
Illinois Pollution Control Act (the "Act"). Petitioner argues on appeal that (i) the County Board
of Kankakee County, Illinois ("Kankakee") lacked jurisdiction due to insufficient notice to two
property owners; (ii) the local siting review procedures, hearings, decision and process were
fundamentally unfair; and (iii) Kankakee's finding that criteria (i), (ii), (iii), (v), (vi) and (viii) of
the statutory criteria were satisfied was against the manifest weight of the evidence.

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2. As part of his fundamental fairness argument, Petitioner claims that the public hearings were not fair due to WMII's alleged refusal to present Miller from Metro for cross-examination on criterion (vi), even though Corcoran from Metro testified at the public hearing on criterion (vi) and was subjected to cross examination. Petitioner does not, however, allege how said alleged refusal prejudiced him or other participants.

3. On April 4, 2003, Petitioner served a *subpoena duces tecum* on Miller, Corcoran, and Metro. The rider to the *subpoena* requested the following documents:

Any and all documents concerning or related to the work and review by David Miller, Stephen Corcoran and Metro Transportation Group, Inc., . . . (collectively referenced herein as "Consultant") in preparation of or for the report submitted or prepared by Consultant and included in Waste Management of Illinois, Inc.'s Site Location Application For Expansion of the Kankakee Landfill which was filed with the Kankakee County on or about March 29, 2002 and August 19, 2002 ("Report"), including but not limited to any and all documents reviewed by Consultant in preparation of the Report, any and all documents created by Consultant in preparation of the Report, any and all documents provided to Consultant by anyone (including, but not limited to Waste Management of Illinois, Inc. or its employees, representatives, agents, and/or officers). Additionally, produce any and all documents reviewed, relied up, prepared, or received in preparation for, or which formed a basis of the testimony provided at the public hearing in the aforementioned Site Location Application for Expansion of the Kankakee Landfill filed on August 16, 2002. (Emphasis added).

4. The *subpoena* seeks extensive documentation relating to WMII's criterion (vi) expert's report and his testimony at the public hearing. Such discovery, which relates to criterion (vi), is clearly impermissible at the appeal stage.

5. Section 40.1(b) of the Illinois Environmental Protection Act (the "Act") provides

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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). While it may be proper for the Board to hear new evidence relevant to the fundamental fairness of the proceedings where such evidence necessarily lies outside of the record, a *de novo* review is not appropriate on a review of the statutory criteria. Land & Lakes Co. v. Pollution Control Board, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). The Board cannot make its own findings of fact concerning whether the statutory criteria was met, and is restricted to reviewing the factual findings rendered below using a manifest weight of the evidence standard. Id., 319 Ill. App. 3d at 48, 743 N.E.2d at 193; Kane County Defenders, Inc. v. Pollution Control Board, 139 Ill. App. 3d 588, 592, 487 N.E.2d 743, 746 (2d Dist. 1985). As such, the admission of evidence on appeal regarding the statutory criteria is prohibited.

6. A *subpoena* is a pretrial discovery tool in order to obtain relevant evidence that may be admissible at trial. In this case, all of the evidence relating to criterion (vi) has already been presented and the factual findings of Kankakee have been made. The public hearing before Kankakee was conducted on November 18 through December 6, 2002, the record was closed at the end of the public comment period, and Kankakee issued its decision granting local siting approval, subject to conditions, on January 31, 2003. As the facts cannot change at this stage of the case, there is no legitimate reason for the issuance of a *subpoena* that only seeks information relating to the basis of WMII's expert's opinions and testimony on statutory criterion (vi).

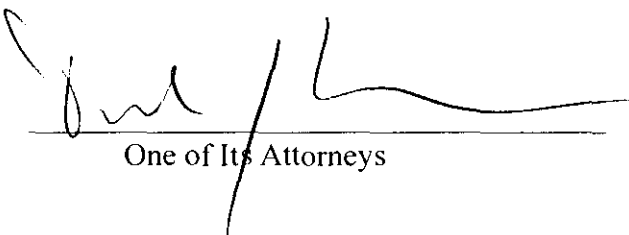
7. Evidence on criterion (vi) already exists in the record and the record on appeal has been certified. Allowing Petitioner to issue the *subpoena* to Miller, Corcoran and Metro, which

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seeks information completely unrelated to any fundamental fairness argument raised on appeal, would result in the addition of facts relating to criterion (vi) to the record, which is prohibited. Therefore, Petitioner's *subpoena* should be quashed.

WHEREFORE, WMII requests that the Hearing Officer quash Petitioner Michael Watson's *subpoena* issued to David Miller, Stephen Corcoran and Metro Transportation Group, Inc., 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.
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
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MICHAEL WATSON,)
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COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE) (Consolidated with PCB 03-125, 03-
MANAGEMENT OF ILLINOIS, INC.,) 133, 03-135)
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Respondents.)

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STATE OF ILLINOIS
Pollution Control Board

**WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO QUASH
PETITIONER MICHAEL WATSON'S *SUBPOENA* TO PATRICIA BEAVER-McGARR,
JEREMY R. WALLING, AND INTEGRA REALTY RESOURCES**

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys,
Pedersen & Houpt, in support of its Motion to Quash the *subpoena* issued to Patricia Beaver-
McGarr ("McGarr"), Jeremy R. Walling ("Walling"), and/or Integra Realty Resources
("Integra"), states as follows:

1. On March 7, 2003, Petitioner filed his Amended Petition for Review of Decision
Concerning Siting of A New Pollution Control Facility, Pursuant to Sections 39.2 and 40.1 of the
Illinois Pollution Control Act (the "Act"). Petitioner argues on appeal that (i) the County Board
of Kankakee County, Illinois ("Kankakee") lacked jurisdiction due to insufficient notice to two
property owners; (ii) the local siting review procedures, hearings, decision and process were
fundamentally unfair; and (iii) Kankakee's finding that criteria (i), (ii), (iii), (v), (vi) and (viii) of
the statutory criteria were satisfied was against the manifest weight of the evidence.

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). While it may be proper for the Board to hear new evidence relevant to the fundamental fairness of the proceedings where such evidence necessarily lies outside of the record, a *de novo* review is not appropriate on a review of the statutory criteria. Land & Lakes Co. v. Pollution Control Board, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). The Board cannot make its own findings of fact concerning whether the statutory criteria was met, and is restricted to reviewing the factual findings rendered below using a manifest weight of the evidence standard. Id., 319 Ill. App. 3d at 48, 743 N.E.2d at 193; Kane County Defenders, Inc. v. Pollution Control Board, 139 Ill. App. 3d 588, 592, 487 N.E.2d 743, 746 (2d Dist. 1985). As such, the admission of evidence on appeal regarding the statutory criteria is prohibited.

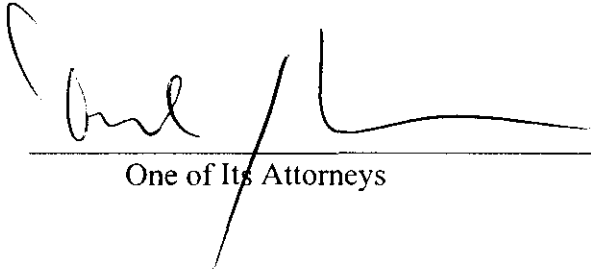
6. A *subpoena* is a pretrial discovery tool in order to obtain relevant evidence that may be admissible at trial. In this case, all of the evidence relating to criterion (iii) has already been presented and the factual findings of Kankakee have been made. The public hearing before Kankakee was conducted on November 18 through December 6, 2002, the record was closed at the end of the public comment period, and Kankakee issued its decision granting local siting approval, subject to conditions, on January 31, 2003. As the facts cannot change at this stage of the case, there is no legitimate reason for the issuance of a *subpoena* that only seeks information relating to the basis of McGarr's opinions and testimony on statutory criterion (iii).

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7. Evidence on criterion (iii) already exists in the record and the record on appeal has been certified. Allowing Petitioner to issue the *subpoena* to McGarr, Walling, and Integra, which seeks information completely unrelated to any fundamental fairness argument raised on appeal, would result in the addition of facts relating to criterion (iii) to the record, which is prohibited. Therefore, Petitioner's *subpoena* should be quashed.

WHEREFORE, WMII requests that the Hearing Officer quash Petitioner Michael Watson's *subpoena* issued to Patricia Beaver-McGarr, Jeremy R. Walling, and Integra Realty Resources, and provide such further and other relief as he deems appropriate.

Respectfully Submitted,
WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

One of Its Attorneys

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