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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

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

STATE OF ILLINOIS
Pollution Control Board

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

PCB 03-134
(Third Party Pollution Control
Facility)

PCB 03-135
Third Party Pollution Control Facility
Siting Appeal

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1 BRIEF IN SUPPORT OF KANKAKEE COUNTY RESIDENT AND PETITIONER
KEITH RUNYON'S THIRD PARTY APPEAL

Petitioner Keith Runyon , resident of Kankakee County, represented by himself, hereby submits this brief in support of his third party appeal of the January 31, 2003 decision ("Decision") of the County of Kankakee, Illinois, Board of the County of Kankakee ("County") granting application of Waste Management of Illinois, Inc. and Kankakee Landfill (Kankakee Recycling and Disposal Facility) and for siting approval of a new pollution control facility.

PROCEDURAL HISTORY

On March 29, 2002 Waste Management of Illinois filed an Application for a local siting approval with the County of Kankakee pursuant to Section 39.2 of the Illinois Environmental Protection Act for a new 302 acre sanitary landfill on a property with a land mass of 664 acres located in Otto Township, at 6259 South U.S. Route 45-52. On July 22, 2002 a Siting Hearing was convened and quickly terminated as a result of a notification deficiency. The Application was withdrawn.

On August 16, 2002, Waste Management of Illinois Inc. filed an application for local siting approval with the County of Kankakee pursuant to Section 39.2 of the Illinois Environmental Protection Act ("Act") for a new 302 acre- sanitary landfill located in Otto Township at the 6259 South Route 45-52A. A public hearing on the on Siting Application was conducted over 11 days from November 18, 2002 through December 6,

The hearing was conducted before the Kankakee County Regional Planning Commission.

Waste Management presented eight witnesses who testified in support of the Siting

Application. One witness testified in opposition. Seven objectors opposed siting the facility. There were numerous parties who presented public comment during the proceedings. The record was closed on January 6th. 2003. The Regional Planning Commission forwarded its recommendation for siting to the County Board. On January 31st. 2003, the County Board rendered its decision granting Waste Management of Illinois, Inc. local siting approval.

Keith Runyon filed his petition for a review of the Decision with the Illinois Pollution Control Board ("Board") on February 28, 2003 in accordance with Section 40.1(b) of the Act. The Board consolidated petitions for review of the County's siting decision from the City of Kankakee, Merlin Karlock, Mike Watson and Keith Runyon along with Waste Managements petition for review of County imposed siting stipulations. Subsequently, Waste Management's petition for review was severed from the consolidated hearing by the Board and made a part of a separate hearing which was conducted on May 6, 2003 after the conclusion of the consolidated hearing of petitioners Watson, Karlock, Runyon and the City of Kankakee.

1. Statement of Fact Relevant to Applicants Failure to Comply With the County Solid Waste Management Plan.

This case is not about what the Applicant presented during the Siting Hearing it is about what the Applicant failed to present which would demonstrate compliance with the Kankakee County Solid Waste Management Plan. It is too late for the for the Applicant to meet the conditions of compliance or to even suggest compliance beyond what is in the hearing record.

Respondent's case is very simple and straight forward. Respondent will highlight the hearing record to prove that the County and Waste Management, in their rush to riches, chose to ignore the major conditions of the Kankakee County Solid Waste Plan,; therefore, the application fails to comply with that plan. For this reason the Siting should overturned on the basis that under Criterion VIII . the Applicant failed to present a plan "Consistent with the requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act . 2 Vol.1, pg. 7, 221347 I, txt 11-18-02

Ms. Sheryl Smith Presented Applicant's testimony only on three conditions from this comprehensive plan County Solid Waste Management Plan.

- 1)One landfill in the county,
- 2) A host fee agreement and,
- 3)landfill as the preferred method of waste disposal.

The host fee agreement provision is the only one relevant to respondent's case.

Ms. Smith chose to exclude:

- 1)Required public involvement in the site selection process.
- 2)Prohibition of siting a landfill above or near a groundwater recharge zone or a heavily used aquifer.
- 3)Existence of a valid host fee agreement prior to the siting hearing.
- 4)A Property Value Guarantee Program prepared by an independent entity acceptable to the County.

The Application failed to comply with the provisions of the plan that requires 1)No siting of a landfill on or near a major aquifer.2)public involvement in the initial stages of site selection of a landfill, and 3)that a valid host fee agreement be in place prior to the siting hearing, and 4) Value Guarantee Program prepared by an independent entity acceptable to the County.

The plain language of the Solid Waste Management Plan establishes that the County desired the aforementioned conditions to be met in the siting of a pollution control facility. The previously cited provisions were included in the original County Solid Waste Management Plan and lived as substantial plan provisions throughout the life of the plan including amendments to the Kankakee Solid Waste Management Plan from 1993 , 1995, 2000, 2001, and March 20002. PC #16 c1837-c2204 pg 28, Michael Watson's Summary. The continuing life of these requirements, through the several amendments to the plan, prove the absolute intent of the these conditions.

1)Groundwater Hydrogeology. The protection of the groundwater is one of the primary concerns of siting a landfill. A site should not be located above or near a groundwater recharge zone or a heavily utilized water supply aquifer. Pg 330 County Solid Waste Management Plan.

2)Additional Siting Criteria. Public involvement is crucial throughout the landfill site selection process and should be solicited from the initial stages of the process. Through solid waste advisory committees, public hearings, etc., local criteria should be developed to identify a site which reflects the concerns of the public. Pg 334 County Solid Waste Management Plan.

3)Prior to granting of a siting approval pursuant to Section of 39.2 of the Illinois Environmental Act, a host-benefit fee shall be established with the applicant. Pg 344 County Solid Management Waste Plan.

“Any applicant requesting site location approval for a landfill expansion or a new sanitary landfill within the County should agree, in a Host Community Agreement negotiated with the County, to pay an appropriate host fee. The Host Community Agreement should be signed prior to submitting a siting application pursuant to Section 39.2 of the Illinois Environment Protection Act. The host fee will be negotiated on a per ton basis and the landfill must install a scale. The final host fee per ton will be escalated

based on the appropriate Consumer Price Index for the Host County. *Pg. 354 County Solid Waste Management Plan*

4)The owner or operator of a proposed new landfill or landfill expansion in the County shall be required to establish a Property Value Guarantee Program for all households within a site specific distance from the proposed landfill site. Such Property Value Guarantee Program to be prepared by an independent entity satisfactory to the County. *Paragraph 7, pg. 345. County Solid Waste Plan*

The following is a review of the testimony, on the record, regarding each of the four conditions of the Solid Waste Management Plan with which the Applicant comply.

II)Applicant Failed to comply with this pillar condition of the County Solid Waste Management Plan that prohibits siting a landfill above or near a groundwater recharge zone or a heavily utilized water supply aquifer.

1)Groundwater Hydrogeology. The protection of the groundwater is one of the primary concerns of siting a landfill. A site should not be located above or near a groundwater recharge zone or a heavily utilized water supply aquifer. *Pg 330 County Solid Waste Management Plan.*

The applicant not only failed to comply with this condition of the Solid Waste Plan but in fact supported this in testimony. Applicant's attorney testified that "what we found at the cite (sic) is between the base of this proposed expansion and the silurian dolomite bedrock or the aquifer there is a significant layer of low permeability materials, in situ materials meaning soils present at the site which will extend across the base of this landfill and provide additional protection beneath the base of the landfill to that dolomite aquifer". *Tr. Vol. 3 221354 III. txt 11-18-02, pg 7. lines 5-13*

Applicant's attorney reinforced that the proposed site is in non-compliance with the solid waste plan in his closing statement. He also purposely deceived the Regional Planning Commission by misstating the content of the prohibition condition of the solid waste plan. Mr Moran stated: "But the plan doesn't prohibit the siting or location a facility above any aquifer within the county because if that were the case, the plan would have been simple because we've all heard silurian dolomite, which is an a major aquifer in this county, underlies this entire county. There wouldn't be a site ever located. The plan would have had said no landfills in the county, none." *Tr. Vol. 29 222445 XXIX. txt 12-06-02 pg. 131*

Mr. Moran's statement is an admission that the proposed site is above an aquifer. It is also a distortion of the wording and intent of the solid waste plan which prohibits siting a landfill above or near a groundwater recharge zone or a heavily utilized water supply aquifer. Mr. Moran omitted the qualifier, " a heavily utilized water supply aquifer" from his closing remarks. Distortion would obviously confuse an audience which had not read the applicable condition of the Solid Waste Management Plan.

Proof that the proposed facility is located above a heavily used aquifer is clear and abundant.

Applicant witness Nicodem used a regional report on aquifer patterns when profiling the proposed site. The witness did not present site specific information. When asked if he was aware that the State Geological Survey classified the proposed site "probably one of the least desirable sites to have a landfill"? A. "No I'm not aware of that". *Tr. Vol. 15 221390 XV. txt 11-22-02, pg 74*. This fact was reiterated in petitioner Runyon's closing statement: "And no.2, the geological setting, the Illinois Geological Survey tells us that's one of the least suitable sites in the county for the landfill, one of the very least suitable. *Tr. Vol. 29 222445 XXIX. txt 12-06-02. pg. 107, lines 8-11.*

The fact that the chosen site is one of the least sites desirable in the County for a landfill was never challenged by the Applicant or the County.

Witness Norris, testifying for objector Karlock stated authoritatively that the proposed facility is located above a heavily used aquifer. "A. The Silurian bedrock, Silurian dolomite aquifer certainly is the principal aquifer that's used by most of the small communities, most of the ranchers, the reported investigation that I cited discussing the water balance issues gives a pretty good description of both community development, individual wells as well as irrigation pumping, so it certainly is used for all of those . I think there also is an alluvial aquifer in places along the major streams that may be used but for the most part I think the highest percentage of the population are using the Silurian dolomite aquifer." "Q, Is the proposed landfill juxtaposed above or near that regional aquifer"? A. "NO it is being constructed, installed directly over it". *Tr. Vol. 24 221425 XXIV. txt 12-03-02, lines 1-17*

Lines 1-17

No testimony was presented by the Applicant or the County to refute this site location.

Witness Norris testified that the proposed facility is to be built above the major aquifer that supplies the water to the Kankakee metropolitan area. He also opined that the solid waste plan prohibition of placing a facility above the heavily used aquifer was a legitimate prohibition. Mr. Norris testified that: "place, but it's being installed over that aquifer, and in fact over a local recharge area of that aquifer". Q. Are you aware of where the metropolitan area, Kankakee metropolitan including Bradley, Bourbonnais, Kankakee and so on get their water"? A. "No I'm not".

Q."Would you be shocked to learn that is comes from the Kankakee River"? A. " It would not surprise me. I would guess that that would be a more efficient way to get a municipal water supply for that size of population as opposed to using the Silurian aquifer"?

Q."Since the County solid waste management plan stated that a site should not be located above or near a ground water recharge zone or a heavily utilized water supply aquifer, would you think that that would be a legitimate prohibition for the solid waste plan management plan to make"? A. "I think that there is a great deal of inherent wisdom in

that kind of a regulation". *Tr. Vol. 24 221425 XXIV. txt 12-03-02 pg 104 lines 18-22, pg 105, lines 1-17*

None of the preceding testimony was challenged by either the Applicant or the County.

Witness Norris reinforced that the aquifer above which the proposed facility is to be located is a heavily used water supply aquifer under cross examination from objector Murray: Mr. Murray: Q. The aquifer that we're dealing with or the portion of the aquifer that we're dealing with in this particular subject, does this serve, you know a great number of people? Or are there a large number of people, or is this heavily used"? A, "Well, throughout this area, is the principal aquifer that people are using, with the exception of municipal—the larger water supply may use the rivers for their water. And actually, discharge from this aquifer provides a base load of those rivers. So, even in a way, they're using this aquifer for water. It's the principal aquifer of the area. This site is surrounded on all sides by people using the aquifer. So I would say it is heavily used."

Neither the Applicant nor the County refuted this evidence.

Tr. Vol. 25 221429 XXV. txt 12-04-02, Ppg. 66 14-22, Ppg. 67. lines 1-8.

Objecting attorneys agreed that the proposed facility is situated above a heavily used aquifer and is non-compliant with the County Solid Waste Management Plan.:

Attorney Mueller stated that " have heard testimony that the solid waste Management Plan precludes siting a landfill above an aquifer and above a recharge area. You have heard that the facility is sited above and, in fact, immediately on top of a heavily used Silurian dolomite aquifer. *Tr. Vol. 28 221441 XXVIII. txt 12-05-02, pg 169 line 17-2. pg. 169 line 1*

Attorney Power concluded that the Applicants application failed to meet the plan consistency test. He stated: " Finally , with regard to the consistency with the County Solid Waste Management Plan, ladies and gentlemen, it's your plan. And I'm only going to indicate one particular point that it fails totally, There was some question , again, from

County Board Members as to whether or not this was a,, quote heavily used aquifer that was under this proposed site. And the testimony was yes, it's a heavily used aquifer. Your plan, your own Waste Management Plan says no building of a landfill on a heavily used aquifer. That should be enough for the Petitioner to fail that issue. And I think it has failed on that issue". *Tr. Vol. 29 222445 XXIX. txt 12-06-02 pg55 lines10-22*

Neither the Applicant nor the County challenged the evidence that proves the proposed facility is located above a heavily used water supply aquifer.

Conclusion

The Preponderance of the evidence clearly proves that the Applicant has proposed a facility above a heavily used water supply aquifer in violation of the County Solid Waste Management Plan which prohibits such placement. Applicant has failed to meet the conditions of Criterion VIII which requires the Application to be "Consistent with the requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act". For this reason the County siting of the proposed facility should be overturned.

III)The Applicant failed to conduct and facilitate crucial public involvement, beginning with site selection, as required by the County Solid Waste Management Plan.

Additional Siting Criteria, Public involvement is crucial throughout the landfill site selection process and should be solicited from the initial stages of the process. Through solid waste advisory committees, public hearings, etc. local criteria should identify a site which reflects the concerns of the public. *Pg. 334 County Solid Waste Management Plan*

In their rush to riches, the Applicant and the County chose to ignore this pillar condition of the solid waste plan for the sake of expediency. Neither the Applicant nor the County provided one shred of evidence that the actions required under this condition were performed. In fact, the Applicant's witnesses all stated that they had not involved the public even after site selection was agreed to by Applicant and the County in secrecy

and without public involvement. Not one witness admitted to any public involvement even after the fact. Mr. Lannert did not offer evidence of public involvement before or after the site selection had been made secretly by the Applicant and the County; nor did Mr. Corcoran, nor did Ms. Beaver McGarr, nor did Ms Smith, nor did Mr. Nicodem, nor did Mr. Rubak, nor did Ms Underwood, nor did Mr. Addleman who repeatedly refused, through his attorney, to testify.

Attorney Bleyer stressed Applicant's failure to involve the public when he stated: "We have a record here that shows that not only did all of Waste's paid consultants neglect public involvement –and I said all. Remember they were asked— but Waste Itself did not involve the public in the site selection process either", *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg. 76, lines 7-11.*

Mrs. Leland Milk, who lives near the proposed site confirmed that there was no public involvement in he public comment: "We met Mr. Lee Adelman at a County Board meeting for Waste Management. All conversations were told to us what was going on but never asked for any input from neighbors or farmers". *Tr. Vol. 24 221425 XXIV. txt 12-03-02, pg24, lines 17-20*

The Applicant chose not to include this mandatory condition in it's review of the Solid Waste Management Plan for plan consistency. Nonetheless, the plain language of the plan carefully spells out the requirements under this condition. Attorney Bleyer highlighted this: "Public Involvement is crucial throughout the landfill site selection process and should be solicited from the initial stages of the process. Though solid waste advisory committees, public hearings, et cetera, local criteria should be developed to identify a site, which reflects the concerns of the public. Now you might think these words came from a contemporary text on how to site a landfill, but, in fact, they do not. These words are at page 334 of your very own Solid Waste Management Plan and are listed as additional siting criteria that the applicant, not you, the Members of the County Board, but that the Applicant must meet in order to comply with the Solid Waste Management Plan. Take a look. Look it up." *Tr. Vol. 29 222445 XXIX. txt 12-06-0, pg. 73, lines 7-21*

Mr. Ron Greenburg, Otto Township Road Commission also confirmed that Waste Management did not involve the public in the site selection process by his public comment. Mr. Greenburg stated: “ On Wednesday, June 19 of this year Mr. Lee Adelman from Waste Management met with myself and Bob Marco, who is township trustee. We had a meeting in our township garage just introducing himself, and he explained about the expansion of the existing landfill, the proposed expansion of the existing landfill. *Tr. Vol. 21 221402 XXI.txt 11-26-02, pg. 12, lines 1-4*

It is obvious that this meeting took place some two years after the Applicant and County had agreed privately to expand at the present site. There was no public site selection involvement evidenced here.

Waste Management conducted some informational activities to inform the public of what it and the County had secretly agreed to do. This obviously is not public involvement as required and defined in the County Waste Management Plan.

Attorney Bleyer stated clearly documents that there was no public involvement in siting process; “We did hear Mr. Nicodem testify and suggest tht Mr. Addleman caused a presentation, or perhaps even two, to be made to some members of the public for the purpose of informing the public about the company’s intentions. Ladies and gentlemen, please be clear on this point. Informing the public is not the same as involving the public as involving the public. Public comment is not public involvement. Even if such public information meetings did occur—And we have no evidence in this record that they did, information did occur, there is absolutely no evidence in this application or the record over the past few weeks regarding when such presentations took place, how notice of them was given, where they were had, what the ground rules were and what materials were made available. Most importantly, we do not know how the public’s involvement in these meetings affected the site location or other issues or operation plans. Even though the obligation to produce this evidence in the application is the sole responsibility of the applicant, we tried our very best throughout these proceedings to make a record on these matters since the application is absolutely silent as to this requirement of the Solid

Waste Management Plan". *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg 76, lines 12-21, pg.77, lines 1-21*

Attorney Bleyer warned of a last minute document or documents which might be submitted by Waste Management, the purpose of which would be to attempt to ameliorate this compliance failure on the part of the Applicant. Bleyer: "affidavits—I tell you now, look for more affidavits from Mr. Moran and his witnesses to creep into the record in the form of public comment. And when they magically appear, please bear in mind, as to all such affidavits, neither you, nor I, nor any member of the public will be able to question their authenticity. Any uncertainties or doubts that may come about over the course of these proceedings can and probably will. There will be an attempt to explain them away. It was just some simple hearing". *Tr. Vol. 29 222445 XXIX. txt 12-06-02 pg. 87, lines 20-22, pg. 88, lines 1-7.*

Like clockwork, as predicted, Lee Addleman of Waste Management entered a document into the public comments on Jan 31, 2003 at 1:34 p.m, which enumerates a number of public communications initiated by Waste Management.

The document, however, failed to produce any evidence of activities conducted by Waste Management to involve the public from the initial stages in the site selection process. The events described were all actions that were informational, telling people what the Applicant and the County had secretly agreed to do for the siting of a new landfill.

This document reinforces the contention that Waste Management failed to involve the public from the beginning of the process including site selection. *Lee Addleman, Public Comment PC#5 c1283-c1285*

The Applicant and the County, acted in secret, to reach an agreement on site selection for a new facility, resulting in the systematic exclusion of the public from involvement in the site selection process as required by the County Solid Waste

Management Plan. “ Now, the first backdrop is that this plan is in direct contradiction to the County Solid Waste Management Plan because, because first of all, the public has been excluded from the process. There’s supposed to be three parties involved here; Waste Management, the County, and the third party, which is the most important, is the constituency of this county. That’s the voting public. They have been systematically eliminated from this process and in contradiction to the County’s own plan. “ No.!, the most important party in this process has been totally left out of it and that’s the public. The whole landfill process contrary to the Solid Waste Management Plan, requiring public input has simply been shut out of this” *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg. 94, lines 7-16*

Applicant failed to refute the contention that that he did not meet the Solid Waste Management plan requirement to involve the public from the beginning of the process including site selection.

Applicant’s attorney attempted to confuse the Regional Planning Commission by presenting a false argument. His answer was the public could participate here during the 39.2 hearing. Obviously this is subterfuge intended to divert attention away from Applicant’s failure to meet the public involvement requirement and his failure to present any evidence that the Applicant involved the public in the site selection process, by suggesting that the public could participate in the 39.2 hearing.

Everyone who has any knowledge of the process knows that participation in the 39.2 hearing is commentary on the already developed plan at the end of the process, and not involvement at the beginning of the process.

Here is what Attorney Moran said: “And the statements that suggest that somehow the Applicant was less that diligent in involving members of the public in the well, gee, this application and Mr. Bleyer stated, all of these members of the public want to come in and they want to participate in reviewing and commenting upon and helping review that request and that application and that design, that’s been something Waste Management

has encouraged all along. It has been something that has occurred prior to this hearing with a number of people. Unfortunately, perhaps Mr. Bleyer's clients or the people he's spoken to feel that they have not been able to participate in any event. They could have participated here. They could have come here and reviewed the application and provided comment, told us what they liked, what they didn't like. I didn't see them. Nobody was here. Nobody I heard". *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg 127 lines 10-22, pg 128, lines 1-5*

The Applicant did not offer one shred of evidence that would indicate any actions taken by the Applicant to involve the public from the beginning of the process starting with site selection. Mr. Moran's closing is an unmitigated distortion. He certainly understands that public involvement, as defined in the County Solid Waste Management Plan does not begin at the end of the process at the 39.2 hearing. Perhaps this is all one can do, when his client has failed, so acutely, it's responsibility to meet the plan requirement of public involvement.

It is obvious from the testimony, on the record, that the Applicant has failed to comply with the County Solid Waste Management plan which calls for public involvement in the process from the beginning. including site selection.

:

Restatement of the plan condition:

"Public Involvement is crucial throughout the landfill site selection process and should be solicited from the initial stages of the process. Through solid waste advisory committees, public hearings, et cetera, local criteria should be developed to identify a site which reflects the concerns the public. Now you might think these words came from a contemporary text on how to site a landfill, but, in fact they do not. These words are at page 334 of your very own Solid Waste Management Plan and are listed as additional siting criteria that the applicant, not you, the Members of the County Board, but that the applicant must meet in order to comply with the Solid Waste Management Plan. Take a look. Look it up.

Conclusion:

The preponderance of the evidence indicates that the Applicant failed to comply with the County Solid Waste Management Plan which requires public involvement from the beginning of the process and; therefore, fails to meet the conditions of Criterion VIII on plan consistency. For this reason the County siting decision should be overturned.

IV) The County Solid Waste Management Plan requires a valid Host Fee Agreement established before the granting of siting approval.

The plain language of the County solid Waste Management Plan requires a Host Fee Agreement Must be established with the Applicant. "Prior to granting of a siting approval pursuant to Section 39.2 of the Illinois Environment Act, a host benefit fee shall be established with the applicant". *Page 344 County Solid Waste Plan.*

"Any applicant requesting site location approval for a landfill expansion or a new sanitary landfill within the County should agree, in a Host Community Agreement negotiated with the County, to pay an appropriate host fee. The Host Community Agreement should be signed prior to submitting a siting application pursuant to Section 39.2 of the Illinois Environmental Act." *County Solid Waste Management Plan page 345.*

There was no valid host fee agreement was in effect at the time the Applicant's application was filed on Aug. 16, 2002.

An application was previously filed on March 29, 2002. A Host Fee Agreement was agreed to by the County on December 11, 2001. That application was subsequently withdrawn on July 22, 2002. because of a notification deficiency. The application was re-filed on August 16, 2002.

Hearing officer McCarthy states: I think my ruling July 22 is dispositive of this motion, as well. At that time, I said even though the applicant doesn't use the word "withdraw," it seems to me that in effect, what they're talking about is withdrawing the application and refilling it. And giving proper notice under the statute, the hearing would then be reset for 90 to 120 days from the date of the filing of the application. It is true that Mr. Moran never did use the word "withdraw". I'm not sure even this day why he didn't, but it seems to me that it was clear that the application was withdrawn and refilled August 16. *Tr. Vol. 2 k3L1118.V1 11-18-02, pg. 29, lines 19-2, pg. 30, lines 1-10.*

Mr. McCarthy further states at the severed hearing of July 22, 2002 "Even though those words were not used by the applicant, I take it that that's what's happening here. Any other comment? (no response) Hearing none and hearing no further objections, this public hearing is closed" *Report of Proceedings had during the public hearing before Mr. McCarthy, Hearing Officer, at the Quality Inn, 800 North Kinzie Avenue, Bradley, Illinois, on the 22nd day of July 2002. pg 15, lines 9-22*

Because the original application was withdrawn on July 22, 2002, The Host Fee agreement automatically terminated on that date, absent a written extension for good cause, from the County Board. No letter of extension was entered into the record, Attorney Bleyer entered a motion to dismiss the hearing on the basis that there was no valid host agreement.

Mr. Bleyer stated: "I am taking up part B of the motion to dismiss entitled host agreement of record. Referencing back to you the comments made, Mr. McCarthy this morning when we all convened, that in fact, The applicant had filed a record the host agreement, which purports to be the agreement between it and the County regarding hosting the expanded facility. I feel it's important to point out, as I have in this motion, that the host agreement specifically states, that in pertinent part Waste Management shall file a siting application..." *Tr. Vol. 2 k3L1118.V1 11-18-02, pg 5, lines 11-22.*

Bleyer continued: "for the expanded facility on or before June 1, 2002 unless the County consents in writing to an extension of this period for good cause shown. If Waste Management does not file its siting application for the expanded facility on or before June 1, 2002 and absent the County's consent in writing to an extension of the filing deadline for good cause shown, this agreement shall become null and void *Tr. Vol. 2 k3L1118.V1 11-18-02 pg.6, lines 1-10*

There was no attempt on the part of the County to carry the process forward. Consequently the Host Fee Agreement was null and void at the commencement of the hearing. Bleyer Continued: Now what we have here is a situation where the application, the underlying application that we are assembled for today was filed on August 16 of this year. The prior application which they previously filed prior to June 1, of this year was—there was no process taken forward on that after a preliminary problem with notice and the matter was then dropped. *Tr. Vol. 2 k3L1118.V1 11-18-02, pg. 6, lines 11-19*

Neither the Applicant nor the County offered proof that a letter of extension had been granted. In fact Applicant's witness Sheryl Smith who was responsible for plan compliance,, could not offer proof of the County, extending in writing, the deadline for the expiration of the Host Fee Agreement.

Under questioning from Attorney Bleyer:

"Q. Okay, But I'm asking you if you are aware if there was any written extension made by the County to—Mr. McCarthy: I think she's answered that question, Mr. Bleyer. Mr. Bleyer: Well I'm sorry, sir I didn't hear her answer. I don't recall. BY MR BLEYER: Q. Have you answered that question? A. I did answer that question. Q. And you're saying yes, you do know of such an extension or no, you don't? Mr. Moran: Objection. Mr. McCarthy: On what basis? Mr. Moran: It's cumulative. Asking the same question. Mr. Mc Carthy: Well, he says he didn't hear the answer. So. I will allow her to answer at again. BY MR. BLEYER: A. I'm not aware. Mr. Bleyer: Okay, I have now further" *Tr. Vol. 2 k3L1118.V1 11-18-02*

Attorney Bleyer opined that the Host Fee Agreement was not valid when he stated: "And I submit, as a matter of law on it's face, is void. Clearly stating that this application would have had to have been filed by June 1 of this year. This application was not filed June 1 of this year. It was filed August 16 of this year; and so therefore, that is not the host agreement between these two parties. "Tr. Vol. 2 k3L1118.V1 11-18-02, pg. 8. lines 2-9.

The validity of the condition of self -nullification contained within the Host Fee Agreement was eloquently argued by Waste Management's attorney Moran: "this agreement was appropriate, whether the County or Waste Management should have entered into it. The document is here. It speaks for itself. It is clear in all of its details. It seems to me it would be inefficient, inappropriate and not helpful in any way to evaluate and explore that agreement as part of this hearing. That's really what the basis of my concern is by allowing an inquiry into the host agreement". *Tr. Vol. 18 221394XVIII. txt 11-25-02, pg. 21. lines 1-8*

In further support of the contention that the Applicant and County did not have a valid Host Fee Agreement, Attorney Mueller stated: "Very briefly, I interpret Mr. Bleyer's motion really as being one for summary judgment since the Eight Criterion is that the County Board must make a finding that the application is consistent with the local Solid Waste Management Plan". *Tr. Vol. 2 k3L1118.V1 11-18-02 pg 10 , lines 15-22*

Mueller Continued: I recall Mr. Moran arguing this morning that only those nine siting criteria should be considered and if each one of them is met, the board must approve the application. Well, to the extent that there is a County Solid Waste Management plan here, which calls for a host agreement, and Mr. Bleyer argued most eloquently that the host agreement on the face is void, expired or no longer in effect, it would seem to become a factual impossibility that Criterion Eight can be proven and therefore, the chair should grant summary judgment in favor of the objectors and dismiss the application. *Tr. Vol. 2 k3L1118.V1 11-18-0 ,pg.11, lines 1-12.*

Applicant failed to directly refute or deny the argument that the absence of a Host Fee Agreement constitutes non-compliance with the County Solid Waste Management Plan. Instead, Mr. Moran again attempted to confuse the Regional Planning Commission by through obfuscation, by arguing a different point. He contended that the 39.2 rules do not require a host fee agreement to be in place in advance of a siting hearing. In so doing he avoided confronting the legitimate argument that the Solid Waste Management Plan requires a valid host fee agreement prior to a siting hearing.

The real argument is that the application is not consistent with the County Solid Waste Plan. Mr. Moran failed to address the plan consistency with his argumentation: "And if we do look at the host agreements that's contained in Section 39.2 and the subsection if F, I believe, which talks about a host agreement. I'm sorry it's not in F. It's actually in D. It says at any time prior to making a final local siting hearing decision, in other words, before the County Board Ultimately decides the siting application, if there is an agreement that is reached between the local governing body and the applicant, by way of a host agreement, that must be disclosed. That must be included as part of the proceedings. So even if one were to grant that the contract in place now is a void contract, that has absolutely no effect on whether this proceeding ought to go forward or whether the board has jurisdiction to consider it. *Tr. Vol. 2 k3L1118.VI 11-18-02, pg. 9, lines 1-20.*

To the contrary, Criterion VIII is very specific on the issue of where authority resides in communities which have adopted a Solid Waste Management Plan. "If the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the requirements of the local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan. *Tr. Vol. 1, 221347 I, txt 11-18-02, pg. 6, lines 20-2 pg 7, lines 1-6.*

In his closing argument, Attorney Bleyer made it clear that the plan did not satisfy the condition of the Solid Waste Management Plan and Siting Ordinance: "One more, Here's your duck: the entire Host Agreement is contingent upon Waste filing its application for siting by June 1st, 2002. The Application for siting by June 1, 2002. The

application for siting that relies upon that Host Agreement, the one we are here for now, was filed on August 16th. of this year. According to it, there's no Host Agreement And the terms of the County Solid Waste Management Plan and siting ordinance are therefore unsatisfied. *Tr. Vol. 29 222445 XXIX. txt 12-06-02 pg. 90, lines 6-15.*

Waste Management's Attorney declined to address the absence of a valid host fee agreement in his closing arguments. Silence on closing, coupled with the lack of refutation in the body of the record clearly indicates that the Applicant failed to comply with this pillar of the County Solid Waste Management Plan.

Conclusion:

The County solid Waste Management Plan requires a Host Fee Agreement prior to submitting a Siting Application. The preponderance of the evidence proves that the Applicant failed to submit an valid agreement prior to the Siting Hearing and thus Criterion VIII—consistency with the solid waste management plan has not been met and the siting should be overturned.

V) The Property Value Guarantee Program Contained In the Application Is not Consistent With The Solid Waste Management Plan.

The plain language of Solid Waste Management Plan requires a Property Value Guarantee Program be established by an independent entity.

Attorney Bleyer posited this argument: "Now I refer you to the March 12th amendment to the Solid Waste Management Plan at paragraph 7 on page 345 that specifically states—Here's a copy of it. And I quote, The owner or operator of a proposed new landfill or landfill expansion in the County shall be required to establish a Property Value Guarantee Program for all Households within a site-specific distance from the proposed landfill site. Such Property Value Guarantee Program to be prepared by an independent entity satisfactory to the County". *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg. 82, line 22, pg. 83, lines 1-13.*

The Property Value Guarantee Program submitted by the Applicant is not an independently prepared program, it is Waste Management's own In-house Property Value Guarantee Program. Consequently, the Property Value Guarantee Program of record is not consistent with the County Solid Waste Management Program . This was pointed out by attorney Mueller:

“

“However, it is unequivocal that the County Solid Waste Management Plan calls for an independently prepared property value guarantee program, and this proper value guarantee program which has been put in by a number of people is not independently prepared. It's Waste Management's in-house program. Now whether it's as good or better or worse than an independently prepared program, I don't know. The Point is it's not consistent with the requirement of the Solid Waste Management Plan”. *Tr. Vol.28 221441.txt XXVIII 12-05-02, pg. 169, lines 6-16*

The Applicant was unable to counter the argument that the Property Value Guarantee program was not independently prepared. Attorney Bleyer amplified this point when he said: “ Like Mr. Mueller indicated last night, I, too have lots of questions about the Property Value Guarantee Agreement, and I'm definitely interested in pressing for answers for them, too. But Waste never called a witness who could explain when the agreement was promulgated, who drafted it, when it was distributed, what the response rate to the offers were or other pertinent and still yet unresolved matter. Most importantly, Waste never disclosed, in the application or through testimony, who the independent party satisfactory to the County was that drafted the agreement” *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg. 82, lines 2-13*

The fact that the Applicant did not substantiate that the Property Value Guarantee Program was independently prepared, renders the application inconsistent the County Solid Waste Management Plan. Bleyer continued: “We know, of course, Waste cannot establish that it's application is consistent with the Solid Waste Management Plan and, therefore, once again fails to meet the standard called for under Criteria 8, unless they

did, in fact, have the agreement that was sent to Lee Milk and others like him that live near the site prepared by an independent third party acceptable to the County” *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg 82, lines 13-21*

The Applicant and the County, in their rush to riches, decided to again ignore the County Solid Waste Management Plan, this time as it pertains to the Property Value Guarantee Program.: “Folks let’s not kid ourselves. Everybody has talked about this anyway. This landfill is about money. The applicant wants to build it for the profits, and the County is interested in it for the Host Fee Agreement. *Tr. Vol. 29 222445 XXIX. txt 12-06-02, Pg 86, lines 9-13*

Waste management failed, once again to demonstrate compliance with the Solid Waste Management Plan: “ there’s not a shred of evidence that the Property Value Guarantee Agreement filed by Mr. Moran in this hearing was prepared by an independent this party deemed acceptable to the County. Waste has failed to demonstrate compliance with Criterion 8, and for that reason, you must deny this request for siting”.
. *Tr. Vol. 29 222445 XXIX. txt 12-06-02, pg 87, lines 9-15*

Applicant made no attempt to establish that it is in compliance with this condition of the Solid Waste Management Plan.

Conclusion

The preponderance of the evidence clearly indicates that the Applicant failed to meet plan consistency, in establishing a Property Value Guarantee Program. Consequently, Criterion 8 has not been met and the siting decision should be overturned.

VI)Summary Conclusion:

The County and the applicant in their rush to riches totally ignored the pillar conditions of the County Solid Waste Management Plan. A County finding that the proposed Waste Management waste disposal facility is consistent with the Solid Waste Management Plan is against the Manifest Weight of the evidence. Criterion Eight of Section 39.2 of the Act requires a showing that: "if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan." 415 ILCS 5/39.2(a)(viii) The plain language of the County Plan clearly demonstrates that the development of Waste Management's proposed landfill is inconsistent with the County Plan.

Evaluation of the consistency of the proposed plan with the County Plan, required the County to look to the plain language of the plan and to consider any language indicating that the plan does not support the proposed facility. T.O.T.A.L. v. City of Salem. No. PCB 96-7 and 96-82(cons.), slip op. At 24 (March 7, 1996) If the intent of the plan does not allow or provide for proposed facility, consistency cannot be established. Waste Hauling, Inc. v. Macon County Board, PCB 91-223, slip op. at 17-18 (May 7, 1992)

The plain language of the County Plan clearly provides that any proposed landfill must:

- 1)Not be sited above or near a groundwater recharge zone or a heavily utilized water supply aquifer, and
- 2)Have involved the public from the initial stages and throughout the landfill site selection process, and
- 3)Have a valid Host Fee Agreement prior to granting a siting approval, and
- 4)Have a Property Value Guarantee Program independently prepared by an entity satisfactory to the County.

Because the Applicant failed to meet these pillar conditions of the Solid Waste Management Plan and because the local siting process used by the County failed

to address the issue of Plan Consistency, the manifest weight of the evidence clearly indicates that the siting of the proposed landfill should be overturned.

VII) PROCEDURAL PROBLEM

On May 5th. during the hearing session, respondent Runyon complained to the Hearing Officer that he had been left out of three scheduled teleconference calls.

Respondent respectfully apologizes for a misstating one aspect of the complaint. Respondent said in open session that he had been excluded from three teleconference calls.

After review of Hearing Officer's order dated April 17, 2003, respondent discovered that the scheduled call of April 23, at 11:30 A.M. was moved to 1:30 P.M. on April 24th, 2003.

In the interim, respondent spoke with County attorney Porter who informed respondent of the schedule change. Based upon Porter's input, respondent stayed by his phone (815 937 9838) from 1 P.M. until approximately 5:15 P.M. on April 24th. Respondent received no teleconference call.

Later, respondent was informed of a call scheduled for May 1, 2003. Respondent was not made a party to this call either. During open session, the Hearing Officer said that the County sent a fax to respondent informing him of a number to call in to complete this call. Respondent never received said fax. The County alleged that it had received a fax delivery confirmation notice for a fax delivered to respondent. No hard copy evidence of said confirmation was presented at the time of the verbal representation.


On April 27th. respondent sent a fax to Hearing Officer Halloran, which said: "I waited by my phone on April 23rd, until noon and go no conference call. I learned from another attorney that the their (sic) was a call on the 24th. I did not get that call either. "

Respondent's phone and fax equipment is of professional quality. It has served respondent flawlessly for several years.

Respondent does not understand why he was excluded from these phone calls.

The Foregoing Was Respectfully Submitted to the Clerk of the Illinois Pollution Control Board in the volume of one original and nine copies via Prioity Mail on May 29, 2003. Each of the parties on the attached Affidavit of Service were also sent a copy of the foregoing on the same date.

Respectfully Submitted


Keith L Runyon, Petitioner

Keith L. Runyon
Resident of Kankakee County
Petitioner, Represently Himself
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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 perjury under the laws of the United States of America, certifies that on **May 29, 2003** was served a copy of the foregoing Brief via letter:

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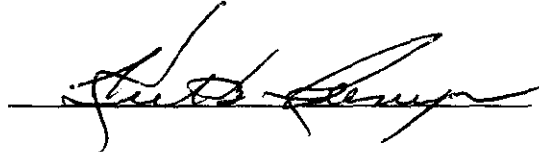
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By depositing a copy thereof, enclosed in an envelope in the United States Mail at Bourbonnais, Illinois, proper postage prepaid, before the hour of 5:00 P.M., on May 29th, 2003 addressed as above.

A handwritten signature in black ink, appearing to read "Keith Runyon", written over a horizontal line.

Keith Runyon
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