ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE, 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)
MERLIN KARLOCK, Petitioner, vs. 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, vs. 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, vs. 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

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PLEASE TAKE NOTICE that I have on the 2nd day of June, 2003, filed the original and nine (9) copies of the following document:

BRIEF IN SUPPORT OF CITY OF KANKAKEE'S OPPOSITION TO DECISION OF KANKAKEE COUNTY CONCERNING SITING OF A NEW LANDFILL FACILITY, PURSUANT TO SECTION 39.2 AND 40.1 OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT

with Dorothy M. Gunn, Clerk, Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph Street, Suite 11-500, Chicago, IL 60601-3218, and a true and correct copy thereof was served upon you on June 2, 2003, by depositing a copy thereof, enclosed in an envelope in the U. S. Mail at Kankakee, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above (excluding Donald Moran of Pederson and Houpt), and by facsimile to those parties with facsimile numbers listed above, and by personal service to the law firm of Pederson and Houpt.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE CITY OF KANKAKEE, an Illinois Municipal Corporation **Petitioner** **v.** **COUNTY OF KANKAKEE, a body politic and Corporate; KANKAKEE COUNTY BOARD; And WASTE MANAGEMENT OF ILLINOIS, INC.,** **Respondent**	)	**No. PCB 03-125** **(Third-Party Pollution Control Facility Siting Appeal)**
MERLIN KARLOCK, **Petitioner** **v.** **COUNTY OF KANKAKEE, a body politic and Corporate; KANKAKEE COUNTY BOARD; And WASTE MANAGEMENT OF ILLINOIS, INC.,** **Respondent**	)	**No. PCB 03-133** **(Third-Party Pollution Control Facility Siting Appeal)**
MICHAEL WATSON, **Petitioner** **v.** **COUNTY OF KANKAKEE, a body politic and Corporate; KANKAKEE COUNTY BOARD; And WASTE MANAGEMENT OF ILLINOIS, INC.,** **Respondent**	)	**No. PCB 03-134** **(Third-Party Pollution Control Facility Siting Appeal)**
KEITH RUNYON, **Petitioner** **v.** **COUNTY OF KANKAKEE, a body politic and Corporate; KANKAKEE COUNTY BOARD; And WASTE MANAGEMENT OF ILLINOIS, INC.,** **Respondent**	)	**No. PCB 03-135** **(Third-Party Pollution Control Facility Siting Appeal)** **(Consolidated)**

BRIEF IN SUPPORT OF CITY OF KANKAKEE'S OPPOSITION TO DECISION OF KANKAKEE COUNTY CONCERNING SITING OF A NEW LANDFILL FACILITY, PURSUANT TO SECTION 39.2 AND 40.1 OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT

Petitioner, CITY OF KANKAKEE, by and through its attorneys, Kenneth A. Leshen and L. Patrick Power, Assistant City Attorneys for the City of Kankakee, hereby present this Brief in support of its request to overturn the decision of the County Board of Kankakee County, siting a new Landfill Facility, under Sections 39.2 and 40.1 of the Illinois Environmental Protection Agency, and argues as follows:

I. THE KANKAKEE COUNTY BOARD LACKS THE JURISDICTION TO CONDUCT HEARINGS OR MAKE THE DECISIONS WITH REGARD TO THE SITING APPLICATION OF WASTE MANAGEMENT OF ILLINOIS, INC. (WMII) BECAUSE OF ITS FAILURE TO COMPLY WITH SECTION 39.2(B) OF THE ILLINOIS POLLUTION CONTROL ACT.

LAW:

Section 39.2(b) requires that:

> "No later than 14 days prior to a request for location approval the Applicant shall cause written notice of such request be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the Applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is relocated; provided, that the number of all feet occupied by all public roads, streets alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and public ways."

Pre-filing notice requirements of this Section are jurisdictional and have been held to be so by the State Supreme and Appellate Courts. Ogle County Bd. Ex rel. County of Ogle v. Pollution Control Bd., 272 Ill. App. 3d 184, 208 Ill. Dec. 489, 649 N.E.2d 545 (1995), *appeal denied*, 163 Ill. 2d 563, 212 Ill. Dec. 424, 657 N.E.2d 625 (1995); Kane County Defenders, Inc. v. Pollution Control Bd., 139 Ill. App. 3d 588, 93 Ill. Dec. 918, 487 N.E.2d 743 (2nd Dist. 1985).

FACTS AND ARGUMENTS:

A. APPLICANT'S PETITION SHOWS DEFECTIVE NOTICE ON ITS FACE.

Pre-filing notice of WMII's application for siting approval was sent to Objector, Merlin Karlock by regular mail on July 29, 2002. The record is bereft of any evidence, other than the conclusory and unsworn statements by Donald Moran, WMII's attorney, that any efforts were made to personally serve Merlin Karlock. Donald Moran's sworn Affidavit attached to WMII's siting application in no way indicates that Merlin Karlock was served notice by registered mail, certified mail or personal service or that any efforts were made to effectuate personal service. Donald Moran's Affidavit on page 4 indicates that Merlin Karlock was sent regular mail notice on July 29, 2002. (Hearing 11/08/02 through 12/06/02, Volume 1, pgs. 45 - 61). (The transcripts from the hearings commencing in November, 2002 shall hereinafter be referred to as "Hearing I" and the transcripts from the hearings held in May, 2003 shall hereinafter be referred to as "Hearing II").

The statute does not allow proof of service by regular mail under Section 39.2(b) of the Environmental Protection Act. Therefore, proper notice pursuant to statute was not given to Merlin Karlock.

B. NOTICE TO RICHARD J. MEHRER.

Pre-filing notice to Richard J. Mehrer was posted on the door of a residence in Chebanse, Illinois both for Mr. Mehrer and his wife. (Hearing I, Volume I, page 62). Mr. Mehrer was the listed owner of a certain parcel of land located within 250 feet of the lot lines of the proposed facility. Mr. Mehrer is deceased and was deceased at the time notice was posted. Mrs. Mehrer was living at the time of the pre-filing notice. Again, the record is bereft of any evidence showing that efforts were made to personally serve either, Mr. Mehrer or Mrs. Mehrer. (Hearing I, Volume I, pages 62 through 68).

The only notice given with regard to that property was "posted service" (See Motion to Dismiss-Notice-Mehrer, filed by Objector, Karlock). No attempt was made to secure service on

the heirs of Mr. Mehrer, although Mr. Mehrer's wife resided in the area. "Posted service" is not authorized by Section 39.2 (b) of the Environmental Protection Act. Therefore proper notice pursuant to statute was not given to Richard J. Mehrer.

C. NOTICE TO ROBERT KELLER and BRENDA KELLER.

Robert Keller and Brenda Keller are shown on the Kankakee County Assessor's records as the owners of the premises commonly known as 755 East 6000 Road, Chebanse, Illinois. (See Motion to Declare WMII's Notice Insufficient to Provide the Kankakee County Board with Jurisdiction in the Matter, filed by Objector, Michael Watson). The record is clear that these individuals were entitled to service of process and notice in accordance with the Section 39.2(b) of the Act. It is also clear from the record, based upon the testimony of both Robert and Brenda Keller that they were neither served by registered nor certified mail nor personally and did not receive pre-filing notice from the Petitioner in this cause.

D. APPLICANT FAILED TO COMPLY WITH THE REQUIREMENTS OF THE KANKAKEE COUNTY HOST AGREEMENT.

The pending application includes a host agreement with Kankakee County. Said agreement states in pertinent part as follows:

> "Waste Management shall file a siting application 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. In the event that Waste Management does not file a 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 be null and void."

The application in question giving rise to these proceedings was filed on August 16, 2002. This is clearly after the June 1, 2002, deadline imposed by the above referred to agreement. (See Motion in Limine to Dismiss Part B filed by Objector, Richard Murray, through his attorney, Kenneth A. Bleyer).

Since the application contained a host agreement which is expired and is therefore void and further, since there is no evidence that the agreement has been extended, the County Board is without jurisdiction to hear the Petition.

E. ALL DOCUMENTS REQUIRED BY SECTION 39.2(C) WERE NOT FILED BY PETITIONER (SEE PARAGRAPH II A. BELOW)

F. NEITHER KANKAKEE COUNTY NOR APPLICANT FOLLOWED THE LOCAL SITING ORDINANCE REQURESTS (SEE PARAGARPH II B. BELOW)

Based upon the foregoing, the County Board was and is without jurisdiction to hear this Petition.

II. THE PROCEEDINGS WERE FUNDAMENTALLY UNFAIR

LAW:

The proceedings before a Municipal Body under 415 ILCS 5/39.2 must comport with the standard of fundamental fairness. Southwest Energy Corporation vs. The Illinois Pollution Control Board, 275 Ill. App. 3d 84; Land and Lakes Co. vs. Illinois Pollution Control Board, 319 Ill. App.3d 41.

FACTS AND ARGUMENT:

A. NECESSARY SUPPORTIVE DOCUMENTS WERE NOT MADE AVAILABLE TO THE CITY OF KANKAKEE OR THE GENERAL PUBLIC.

Motions to Dismiss were filed at the initial petition for hearing conducted in this matter on November 8, 2002 based on the unavailability to the public of certain portions of WMII's application. At that time, the Objectors argued that certain portions of the application filed by the Petitioners were unavailable, namely all documents submitted to the Environmental Protection Agency pertaining to the proposed facility and specifically required to be filed by Section 39.2(c). Objector Karlock filed a Motion to Dismiss alleging that these documents (including previous operating records of Petitioner) had not been filed by the Applicant. This Motion was supported by an Affidavit of Attorney George Mueller who indicated that the Chief Deputy County Clerk was unable to locate these documents for inspection and reviewing. Only the first day of hearing, (11/8/02) did Elizabeth Harvey, Attorney for the County Board, indicate

that the documents had been located and were now available for inspection at the County Clerk's office.

In addition, neither the Kankakee County Clerk nor the Kankakee County State's Attorney's office, in response to a Freedom of Information Act Request filed by Objector Karlock's Attorney, was able to produce any letter of transmittal or other notice of filing by WMII showing and specifically itemizing what in fact was included with the Application re-filed on August 16, 2002. (See Assistant State's Attorney Brenda Gorski's Response to Freedom of Information Act Request attached to Objector Karlock's Motion to Dismiss heard on 11/08/02 at the Siting Hearing).

In his deposition of April 29, 2003, Jeffrey Bruce Clark, the Clerk of Kankakee County, testified that at the time of the filing of WMII's siting application in March of 2002 the County Clerk's office received three ring binders and some maps. (Hearing Officer's Exhibit No. 8, pg. 22). Mr. Clark further testified that at the time of the filing of WMII's August application, the County Clerk's office received additional cardboard boxes containing documents and that these boxes bore no identifying marks or writing. (Hearing Officer's Exhibit No. 8, pgs. 25-26). Mr. Clark designated four deputy clerks, including his chief deputy clerk, Esther Fox, as the sole clerks authorized to receive documents from WMII relating to its siting application. (Hearing Officer's Exhibit No. 8 , pgs. 28-29). If some of the documents received were on microfiche, the County Clerk's office apparently did not have the ability to provide to the public the ability to read the microfiche. (Hearing Officer's Exhibit No. 8, pg.. 30).

Robert Norris, an expert consultant retained by objector Merlin Karlock, confirmed the unavailability and disarray of the records and his inability to access a microfiche reader or printer at the County Clerk's office. (Hearing II, Volume 2,, pgs. 21 through 27). The testimonies of Janet Andrzejewski (Hearing II Volume 2, pgs., 48-53) and Darrel Bruck, (Hearing II, Volume 2, pgs. 12 through 13) support the conclusion to be drawn from the testimony of Robert Morris that the full siting application was unavailable to the public.

Assuming, arguendo, that the documents required by 39.2(c) were in fact filed with the Application, the issue remains that the documents were not available for inspection or review by the public prior to the first day of the hearing. Therefore, not only is this a jurisdictional argument but an argument that goes to the fundamental fairness of the way the hearing has been conducted and not allowing the public access to all of the records necessary to prepare its objections. (Residents Against Polluted Environment and the Edmund B. Thornton Foundation

vs. County of LaSalle and Landcomp Corporation, PCB 96-243, American Bottoms Conservancy vs. Village of Fairmont City, PCB 00-200.)

The unavailability of these documents affected the ability of the Objectors to adequately prepare in this case. Much of the substantive testimony at the siting hearing concerned the hydro-geologic characterization and monitoring of the existing facility as well as groundwater contamination originating in the existing facility. The record is fairly summarized by stating that the question of whether or not monitoring well exceedances at the existing facility constitute groundwater contamination resulting from leachate migration has been hotly debated between WMII and the Environmental Protection Agency. Having the entire record of that debate available would therefore have been completely essential for a full and fair hearing on the issue.

Objector Karlock's expert geologist, Charles Norris, who had some of these documents made available to him by other sources, complained during his testimony that the possibility of a complete review on his part was impaired due to the fact that the quarterly monitoring records for the existing facility were on microfiche which he could not access. (Hearing I, Volume 23, pg. 18). Even after the siting hearings had begun and the County had announced that the Waste Management documents previously filed with the Agency were now finally available for inspection in the County Clerk's office, the County Clerk's office did not have available to the public a microfiche reader so that the public could access the entirety of said documents. Although some of these documents were ultimately available to Objector Karlock's geologist, this information was not available to the City of Kankakee or other Objectors in this matter.

B. PETITIONER'S APPLICATION WAS INCOMPLETE AND NEITHER COUNTY NOR APPLICANT FOLLOWED THE LOCAL SITING ORDINANCE REQUIRMENTS.

The fact that the siting Application was not complete or ever certified as such, and that the Application failed to contain material information required in the County's regional Pollution Control Facility Hearing Site Ordinance, also makes this proceeding fundamentally unfair.

The County Siting Ordinance is reproduced at the beginning of Volume 1 of Waste Management's Application, but Subsection E entitled, "Date of Filing" has been omitted from the text reproduced in the Application. Subsection E of the Ordinance states in pertinent part,

> "No application for site approval shall be deemed to have been filed or accepted for filing unless all of the requirements of this Ordinance

applicable thereto shall have been given and no receipt or other indication of filing shall be given, until such time as it has been determined that the application complies with the requirements of this Resolution. Within a reasonable period of time after delivery of an application, the applicant shall be advised: (a) either that it is a complete application, and that it has been accepted for filing, designating the date of filing; or (b) that the application is not complete specifying wherein it is deficient."

Christopher Rubak, the Waste Management representative responsible for making sure that WMII's application fully complied with the County's filing requirements, testified that he never received any certification of completeness or notice of incompleteness from any County representative in connection with the Application. (Hearing I, Volume 18, pg. 110). He further testified that to his knowledge the Siting Ordinance had not been waived by WMII for any reason or purpose. (Hearing I, Volume 18, pg. 108). Furthermore, Subsection H (2)(c) and Subsection H(2)(d) of the County Siting Ordinance requires substantial detail with regard to closed facilities owned or operated by the applicant. These details were reviewed by Mr. Rubak during his testimony, and he acknowledged that the information required was not included with the Application and stated that Waste Management simply chose not to include this information because it would be too voluminous. (Hearing I, Volume 18, pgs. 100- 101).

WMII's knowing and intentional deletion of required materials from its siting application prejudices the City of Kankakee and other Objectors, and therefore renders the proceedings fundamentally unfair. Since the Applicant's previous operating record was a filing requirement pursuant to Kankakee County's Siting Ordinance, a complete record of the Applicant's activities at other closed facilities was required for a fundamentally fair hearing procedure and also to vest the County Board with jurisdiction to hear this matter. In Southwest Corp. vs. Illinois Pollution Control Bd., supra, the Court stated: "Although the statutory Criteria must be satisfied before local siting approval can be granted, Section 39.2 of the Act does not state these are the only factors which may be considered". This Court further stated that other "legislative type considerations" may be considered.

C. APPLICANT'S PRESENTED PERJURED TESTIMONY IN SUPPORT OF CRITERION 3. (SEE PARAGRAPH III B. BELOW, ARGUMENT RE: CRITERION 3)

D. APPLICANT'S EX PARTE POST-FILING CONTACTS WITH THE COUNTY AND THE COUNTY'S PREJUDGMENT OF THE SITING APPLICATION FUNDAMENTALLY UNFAIR

The County of Kankakee determined at the time of its entry into a host agreement with WMII that it would approve WMII's siting application. The County's Solid Waste Management Plan as well as the terms of its host agreement designates WMII as the sole permitted operator of a solid waste disposal facility in Kankakee County. (See, Watson's Group Exhibit 7). In fact, according to Leonard "Shakey" Martin, a 30 year member and a past chairman of the Board, the approval by the Kankakee County Board of "WMII's application for siting approval was a "foregone conclusion".

Mr. Martin repeatedly testified in his deposition taken on April 29, 2003 that the County had determined in the latter part of 2001 that WMII was to be its sole waste provider and that it was a foregone conclusion that WMII's landfill would be sited. (See, Hearing Officer Exhibit No. 16, pgs. 10-12, 15). Mr. Martin further testified that he believed that Charles Helston, the attorney for the staff of Kankakee County, had informed members of the County Board at meetings and discussions that he had contact with WMII during the period subsequent to the filing of the application for siting dated August 16, 2002 and before the decision date of January 31, 2003. (See, Hearing Officer Exhibit No.16, pgs. 23-24).

The testimony of Kankakee County Board Vice-Chairman Pamela Lee in her deposition of April 30, 2003, corroborates the stated belief of Leonard Martin that the siting decision was a foregone conclusion. Ms. Lee testified that County Chairman Karl Kruse designated an "informal group" early in 2001 to negotiate a host agreement with WMII. This group, consisting of four members of the County Board and Planning Department employees Efraim Gill and Mike Van Mill, met repeatedly in 2001 with Dale

Hoekstra, a WMII vice president and Lee Addleman, a WMII employee at a series of secret meetings. (See, Hearing Officer Exhibit No. 7, pgs. 11-13, 18-19 &23-24). This group of four members of the County Board was formalized into a committee in November, 2001. (See, Hearing Officer Exhibit No. 11, pg. 16). At the same time as the County and WMII entered into a host agreement with WMII for the existing and new landfill, WMII paid $500,000 to the County. (See, Hearing Officer Exhibit No. 11, pg. 18). At the same time as WMII negotiated the host agreement with the County, Dale Hoekstra made it clear to the County that WMII's entry into a host agreement with the County and the resultant payment of $500,000 to the County was inextricably intertwined with the County's continuing designation of WMII as the sole permitted provider in the County's Solid Waste Management Plan. (See, Hearing Officer Exhibits Nos. 17&18 and Watson Group Exhibit 7). In fact, WMII found this condition to be so significant that it offered to provide counsel and pay legal fees to defend the Solid Waste Management Plan in the event the same was challenged in court. (See Hearing Officer Exhibits Nos. 17&18 and Hearing Officer Exhibit 7, pg. 20).

Hearing Officer Bradley Halloran sustained the objections of the County and WMII to discovery or proof relating to the Solid Waste Management Plan. However, it is respectfully submitted that the terms of the host agreement and the Solid Waste management Plan, coupled with WMII's and the County's cooperative opposition to the to the siting of a Town and County facility in the City of Kankakee establish the fundamental unfairness of the instant proceedings.

III. APPLICANT WMII FAILED TO DEMONSTRATE COMPLIANCE WITH ALL OF THE CRITERIA REQUIRED BY 415 ILCS 5/39.2

LAW:

Section 5/39.2 requires that any Applicant must demonstrate compliance with the nine listed Criteria before a County Board can grant siting approval. If a County Board grants siting approval, an Objector must establish that the Board's decision is against the manifest weight of the evidence. Wabash & Lawrence Counties Taxpayers & Water Drinks Association vs. Pollution Control Bd., 198 Ill. App. 3d 388.

The City of Kankakee contends that the decision of Kankakee County Board is against the manifest weight of the evidence and the following Criteria under 39.2(a), to wit:

FACTS AND ARGUMENT:

A. The Board finding of compliance with Criterion 2 that the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected is against the manifest weight of the evidence.

A fair summary of the evidence is that the Applicant, with respect to the horizontal expansion, proposes a conventional Subtitle D municipal waste landfill with a composite liner that meets but does not exceed the minimum specifications of the State of Illinois. In support of the argument that this minimal conventional design is sufficient to protect the public health, safety and welfare, Applicant offers two explanations. Applicant has identified certain fine gained glacial till materials which according to the Applicant offer an effective natural barrier between the proposed facility and the major regional aquifer over which the facility is proposed to be built. Secondly, Applicant relies on an inward hydraulic gradient to conclude that no contaminants would leave the facility even if the minimal composite liner system is breached. Applicant's engineer, Andrew Nickodem, conceded that a three foot recompacted clay and 60 ml. polyethylene liner represent the minimum specifications for a composite liner in a municipal waste landfill in Illinois. (Hearing I, Volume 22, pgs. 10-12).

1. In Situ Materials Do Not Provide an Effective Barrier Between the Waste and the Regional Aquifer.

The Applicant's argument is flawed in a number of regards and has been, through cross-examination and the testimony of other experts, disproven in its entirety. First of all, with respect to the fine grained glacial till materials which are to provide an effective natural barrier between the landfill and the major regional aquifer, the Applicant has underestimated the permeability of these materials, based upon its own data, by a factor of up to 10,000. The fine grained materials relied upon by the Applicant are generally described as the Wedron Till. First of all, these materials are not homogeneous, as the soil borings consistently demonstrate that the layers or deposits of these materials are irregular, the same being interspersed with many discontinuities and, most importantly, with a substantial amount of sand identified in the borings. This sand can obviously act as a preferred pathway for contaminant migration, thereby rendering the permeability of the till material, itself, irrelevant.

Secondly, the Applicant's own tests show the Wedron Till to be quite permeable. The only field permeability tests conducted on the Wedron Till were slug tests, and these showed permeabilities generally in the range of 10 to the minus 4 and 10 to the minus 5, figures consistent with what one would expect from an unconsolidated discontinuous and heterogeneous glacial till. (Hearing I, Volume 20, pg. 70). In characterizing the Wedron Till for purpose of assessing its ability to act as a barrier between the waste and the aquifer, Applicant disregarded the slug tests and chose to use instead the matrix permeabilities taken from laboratory tests of very small intact samples of pure Wedron Till. This approach, as described by Karlock's expert geologist Charles Norris, is unsound because of scale of measurement problems. When one is attempting to measure real permeability in the field where secondary permeability pathways such as fractures and sand bodies contribute to the total permeability of a particular zone, it is not appropriate to use the matrix permeability measurements derived in the laboratory on small intact samples. (Hearing I, Volume 23, pgs. 50-57).

In response, the Applicant has argued that slug tests measure horizontal permeability while laboratory tests measure vertical permeability, and the differences in the results can be explained on this basis. Geologist Norris, however, pointed out that the Applicant's own tests in the laboratory in connection with permit modification applications previously filed for the existing facility showed that the appropriate difference between vertical and horizontal permeability is a factor somewhere between 10 and thirty, and not the factor of 3000 which is

contained in the siting Application. Accordingly, if we use the Applicant's own data, the permeability of the Wedron Till has been underestimated by a factor of 100 to 300.

Thirdly, the Applicant seriously overstates the thickness of the protective till barrier between the waste and the aquifer. Joan Underwood, the Applicant's resident hydro-geologist, testified that there was an average of 16 feet of fine grained impermeable material underneath the proposed excavation. Addressing this issue in terms of the average thickness of the protective till barrier is dangerous and misleading since the facility can only perform as well as its weakest component. Therefore averages are completely irrelevant in terms of assessing safety.

Andrew Nickodem, the designer of the proposed facility, testified that he believed there was a minimum of eight feet of "in situ" clay underneath the proposed facility. (Hearing I, Volume 12, Page 54). Geologist Joan Underwood acknowledged that Nickodem's assumption of a minimum clay barrier of eight feet was not true. (Hearing I ,Volume 20, pg. 65). In fact, Joan Underwood on cross-examination conceded that in a number of locations the bedrock aquifer was only two to three feet from the bottom of the proposed excavation. At location B 132, the bedrock aquifer was two to three feet from the excavation bottom, at location B 120 there was a maximum of three and one-half feet of clay beneath the proposed liner, and at location B 141 there was a maximum of three feet of clay above the bedrock aquifer. (Hearing I, Volume 20, pgs. 85, 95, 99). The accuracy of the measurement of even this minimal amount of clay barrier is called into question by virtue of the fact that sampling recoveries tended to be very poor at the bedrock/till interface across the entire site. Ms. Underwood conceded that poor recoveries can happen due to the materials being loose and discontinuous (Volume 20, Page 90). Moreover, at a number of soil boring locations, WMII's geologic interpretation for a zone of material immediately above the bedrock aquifer is clay even though no material whatsoever was actually recovered from that zone. Boring locations B123 and B127 would be just two examples of this dangerously non-conservative interpretation by the Applicant's geologic team. (Volume 21, Page 60).

Fourth, other data at the site demonstrates conclusively the excellent hydraulic communication between the surficial water table and the silurian dolomite aquifer. At the southern portion of the site, the vertical gradients between the surficial water table and the dolomite aquifer are minimal, and such minimal vertical gradients were conceded by Ms. Underwood as being consistent with good flow or good hydraulic connection between the two units. (Hearing I, Volume 20, pgs. 78-79). In addition, Underwood conceded that seasonally

changing water levels in the deep wells would be consistent with those wells being recharged from the ground surface. (Hearing I, Volume 20, pg. 44). Charles Norris pointed out that the Application lacked time series water level data in the new borings and wells, and this would easily have allowed a determination of whether or not deep wells showed the seasonal variation which evidences their hydraulic connection to surficial units. (Hearing I, Volume 23, pg. 18). Fortunately, this data was available for the existing facility as it has been submitted periodically to the EPA in connection with permit modifications. Karlock's Exhibits 7.8, 7.9 and 7.10, utilizing data from the existing facility deep monitoring wells proved that not only is there seasonal water level variation in these wells, but the variation is equal in amplitude to the seasonal variation in the corresponding shallow wells, thereby confirming the direct hydraulic communication between the shallow and deeper water zones. (Hearing I, Volume 23, pg. 81).

Fifth, the fact the regional bedrock aquifer underneath the existing facility has been contaminated and impacted by the existing facility is conclusive proof that the glacial tills under the site do not act as an effective barrier to contaminant migration. Charles Norris' review of the monitoring well data from the existing site demonstrated that groundwater has been impacted due to releases from that site (Hearing I, Volume 23, pg. 70). While the Applicant has denied that these impacts are the result of releases of leachate, they have acknowledged that fugitive gas from the existing site may have caused the problem. (Hearing I, Volume 23, pg. 76). As Norris pointed out, the existence of contaminated fugitive gas in the bedrock aquifer deep underneath the existing facility is bad in and of itself in that proves the gas has been driven downward by pressure through preferred migration pathways. (Hearing I, Volume 23, pg. 78).

The Applicant's response to multiple contaminant exceedances in monitoring wells at the existing facility is disturbingly non-conservative. These responses as detailed in the Application and as repeated by the Applicant's witnesses, most notably in-house hydro-geologist Terry Johnson, include everything from changing testing laboratories to decommissioning wells. Additionally, the Applicant began to use a concept known as "intrawell comparison", whereby contaminant levels in one well are not compared to another but rather are compared to the previous history in that well. Charles Norris demonstrated graphically in Karlock Exhibit 7-27 how the concept of intrawell comparison can be used to increase the AGQS (groundwater quality standards) in a given well over a period of time, sometimes by as much as a factor of 100. (Hearing I, Volume 23, pgs. 94-95).

Applicant's geologist Joan Underwood admitted that she did not do a water balance, which would have been an excellent quality control check on her assumptions regarding travel times and volumes through the Wedron Till. Charles Norris did perform a mass water balance using the data derived from the Applicant's own testing and found that conservatively the Applicant's estimate of water moving through the groundwater flow system at the proposed site was off by a factor of 52. This means that either 52 times as much water was moving through the system as the Applicant indicated or that the water was moving 52 times more rapidly than the Applicant indicated. (Hearing I, Volume 23, pgs. 66-69). Norris concluded that the totality of the evidence was that the Applicant had severely underestimated the volume and the speed of groundwater movement at the proposed site. (Hearing I, Volume 23, pg. 59).

2. The Groundwater Impact Assessment is Based on Incorrect Input Parameters and is Thus of No Value.

The Applicant relies on the results of a groundwater impact assessment to support its conclusions about the integrity of the Wedron Till and the ability of that Till to provide meaningful separation between the proposed facility and the aquifer. A groundwater impact assessment is nothing more than a computer model calculating the speed and volume of groundwater and potential contaminant flow based upon various input parameters provided by the modeler. Although Ms. Underwood acknowledged that she had performed a worst case analysis assessment, the assessment reported in the Application was the "average" case. As previously indicated, the public health, safety, and welfare will only be protected to the extent that the weakest or worst component of the landfill system can perform. Therefore, an average case assessment is essentially worthless.

That notwithstanding, the parameters used by Ms. Underwood in the groundwater impact assessment indicate a total disregard for the actual site specific data available to the Applicant. Ms. Underwood acknowledged that the assessment modeled the thickness of the fine grained glacial till materials at 16 feet. (Hearing I, Volume 20, pg. 63). This is more than five times the thickness of approximately three feet encountered at least three different locations. For the permeability of this glacial till material, Ms. Underwood used laboratory matrix permeability figures which are about 3000 times lower than the field scale observations recorded in the slug tests. In some cases, the slug tests show permeabilities 10,000 times greater than the laboratory matrix permeability tests. (Hearing I, Volume 21, pg. 30-31). The Applicant's assumptions

regarding the Wedron Till actually suggest that this heterogeneous discontinuous frequently sandy glacial material would be many times less permeable than the carefully constructed recompacted clay liner proposed by the Applicant. If one believes the groundwater impact assessments permeability parameters for the Wedron Till, construction of a recompacted clay liner is, at best, superfluous and, at worst, a dangerous over excavation of tighter and less permeable materials than any engineer could construct.

Although the model, itself, calls for separate parameters to be input for the permeability of the recompacted clay and the 60 ml. polyethylene in the Applicant's composite liner, Ms. Underwood chose to use a figure averaging both of these components together with the result that the three feet of recompacted clay is modeled as being 4500 times less permeable than what the Applicant's engineer indicated could be achieved. (Hearing I, Volume 21, pg. 32). Applicant's engineer, Andrew Nickodem, acknowledged that an engineered clay liner at the site could be recompacted to achieve one times ten to the minus seven permeability, but not permeability in the ten to the minus nine range. (Hearing I, Volume 22, pg. 86). However, averaging the very low permeability of the plastic component of the composite liner in with the recompacted clay portion is extremely misleading in that the permeability figure for the 60 ml. plastic does not even represent travel time through the plastic, but rather an estimation of the total flux based upon the assumed number of pinhole defects in that plastic. The true permeability of the plastic portion of the liner is either zero or one depending on whether we are at a point where there is a defect or not. At a point where there is a defect, leachate would travel through the plastic liner more or less instantaneously and now it becomes critical at that point to know the true permeability of the recompacted clay. Through a trick of mathematics, Ms. Underwood has therefore underestimated travel times through the recompacted liner by a factor of 4500.

3. The Inward Hydraulic Gradient is Not Sufficiently Established Or Understood.

Ms. Underwood modeled only for diffusion as the mechanism for transport of leachate and not for advective flow (Hearing I, Volume 21, pg. 33). Based upon the inward gradient, the Applicant therefore assumes that there is no possibility of leachate flow from the facility. This is based on the dubious assumption that the inward gradient can be proven, and the even more dubious assumption that the inward gradient can be perpetually maintained.

The evidence suggests that the purported inward hydraulic gradient at this site is not well understood, and that the Applicant's various experts have not communicated with each other regarding the same.

Andrew Nickodem was the designer of the landfill. He acknowledges that the landfill would have an inward hydraulic gradient, which geologic feature he believed to be beneficial. To ascertain the inward gradient, Nickodem used the water levels in the silurium dolomite aquifer as depicted on the potentiometric surface map of the dolomite well heads in Drawing 17 in the Application. Based upon this, the base grades for the top of the liner were significantly lowered in the two southernmost cells (Hearing I, Volume 12, pg. 40). Nickodem further used the dolomite water levels to compute the potential for hydrostatic uplift pressure during and after construction. (Hearing I, Volume 12, pgs. 41-43). Since the proposed landfill is to be built in the till rather than in the dolomite aquifer, Mr. Nickodem's use of the aquifer water levels to compute hydrostatic uplift and other engineering requirements is counter-intuitive.

In fact, Mr. Nickoderm's understanding of the inward gradient was contradicted by Joan Underwood who testified that the inward gradient is based upon the water levels in the water table. (Hearing I, Volume 20, pg. 13). Ms. Underwood never did prepare, nor does the Application contain, potentiometric surface maps for the water table or the Wedron Till, even though comparing and contrasting those potentiometric surfaces to that in the dolomite aquifer would enhance understanding of the hydraulic inter-relationship between the respective units. (Hearing I, Volume 12, pgs. 14-16). Ms. Underwood actually conceded that if one used the water levels in the dolomite wells to establish the inward gradient, there would be no inward gradient at liner contours above the 626 elevation in the northeast portion of the proposed site. (Hearing I, Volume 20, pg. 66).

The fact that the landfill designer does not understand how the inward gradient is achieved is especially troubling because that gradient, once achieved, needs to be maintained. Mr. Nickodem's error is not surprising since presumably he relied on his mistaken belief that there was a minimum of eight feet of low permeability clay underneath the entire proposed site in determining not to design a composite liner that exceeded State minimum specifications. Mr. Nickodem also did not have a clear understanding of the State requirement that there be no more than one foot of leachate on the liner. He did not know whether this requirement applied to the highest or lowest portion of the liner, and this is significant in light of the fact that the liner in each cell typically has a drop in elevation from its high point at the east end of the cell to the

sump at the west end of the cell of approximately 14 feet. (Hearing I, Volume 12, pg. 38). Ms. Underwood, at least, understood that the State requirement prohibits more than one foot of leachate being maintained at any point on the liner. (Hearing I, Volume 21, pg. 45). This point is relevant for more than demonstrating the lack of communication between Applicant's engineer and geologist because the Applicant's geologist acknowledged that as little as six feet of leachate at the southeast portion of the site would reverse the inward hydraulic gradient in that area. (Hearing I, Volume 21, pg. 35).

Of course, none of the witnesses for Waste Management could pinpoint the time when the leachate pumps would be shut off or the amount of leachate that would be produced after closure, when the engineered portions of the final cover would begin to fail, the rate at which precipitation would infiltrate and become leachate after the onset of failure in the final cover, and when the inward gradient would inevitably and irrevocably be lost. Mr. Nickodem did not even know whether the design of the final cover exceeded State minimum specifications. (Hearing I, Volume 12, pg. 55). He did, however, anticipate that settlement of the waste would range from between 10 to 30 percent. (Hearing I, Volume 13, pgs. 16-17). There was no testimony presented, nor is there data in the Application, that the final engineered cover can withstand the flexion, stretching, and other deformation which must accompany significant settlement in the waste mass.

4. The Groundwater Monitoring Program is Based Upon an Incomplete and Flawed Understanding of Groundwater Flow at the Site.

The only groundwater flow map presented in the Application is Drawing 17 which presents the potentiometric surface of the silurian dolomite aquifer. This map depicts a groundwater high in the general center of the site at Boring B115 with flow from this point to the north, east and south. This map also incorporates the existing facility and shows the groundwater flow thereunder. Ms. Underwood in developing this flow map failed to include groundwater data from pre-existing dolomite monitoring wells G1OD, G12D, and G26D. (Hearing I, Volume 20, pg. 19). Her explanation for these omissions is that these wells were deemed by her to not be "representative." (Hearing I, Volume 20, pgs. 20-23). However, these wells were deemed sufficiently representative to be part of the monitoring program at the original site, and to be included in all groundwater flow maps tendered to the IEPA in the past in connection with significant permit modification applications. (Karlock Exhibit #3). On the other

hand, because it apparently suited her, Ms. Underwood included water levels from two existing facility monitoring wells, (28D and 29D), which were taken seven years prior to the readings from the newly developed wells. (Hearing I, Volume 20, pg. 30). This is particularly troubling both because there is no scientific basis for mixing water data from different time periods, and because it has allowed Ms. Underwood to hypothesize for monitoring purposes a grossly oversimplified groundwater flow system.

In connection with previous permit modifications, Ms. Underwood's peers at Rust Engineering (now Earthtech) have argued to the IEPA that the groundwater in the aquifer under the existing site was subject to strong localized, channelized flow. (Karlock Exhibit #4). Ms. Underwood dismissed and disagreed with this conclusion. (Hearing I, Volume 21, pg. 39). It is somewhat ironic and disingenuous that WMII's previous, but now discredited and repudiated, description of the complexity of the groundwater flow at the existing facility was significantly relied upon as justification for the use of intrawell analysis for the establishment of groundwater quality standards.

Mr. Norris demonstrated that using all of the available monitoring data from the existing facility confirms the strongly localized groundwater flow at the existing facility, (Hearing I, Volume 23, pg. 45). He also pointed out that the existence of such other channelized flow under the much larger expansion is unknown, but certainly should be suspected. The evidence raises a strong possibility of a solution channel in the dolomite at elevation 575 (approximately 25 feet below the top of bedrock). Ms. Underwood acknowledged that residual shale was present at elevation 576 in Boring B103, and that there was spontaneous borehole widening at elevations 577 and 575 in Borings B150 and B152 respectively (Hearing I, Volume 20, pgs. 49, 52-53). Mr. Norris also reviewed this data and explained that it most likely represented a solution channel in the dolomite which needed to be confirmed or ruled out for purposes of establishing correct monitoring well locations. (Hearing I, Volume 23, pgs. 37-41).

The questions raised by the water levels in Boring B115 were never satisfactorily answered. This piezometer is at the approximate middle of the new site and with dolomite water levels of 632 feet, represents the groundwater high in the silurium dolomite. Ms. Underwood was questioned about this at length and acknowledged that B115 was in fact the point of the groundwater high, but gave no adequate explanation as to where the flow came from to create this high (Hearing I, Volume 20, pgs. 56-61). Ms. Underwood acknowledged that there was some recharge from the surface. However, given the amount of low permeability till above the

dolomite in the area of B115 recharge from the surface should be insignificant and certainly should not be sufficient to dominate the groundwater flow patterns which on Applicant's Drawing 17 emanate in three directions from the B115 location. Ms. Underwood speculated that the bulk of the recharge had to come from the west, but she was unable to identify any dolomite heads either on site or off site to the west with elevations above 632 feet.

Of course, if one accepts the Applicant's slug test data as being representative of groundwater flow in the Wedron Till in conjunction with the soil borings, the picture becomes one of a highly irregular discontinuous and permeable till where surface water is in easy hydraulic communication with the aquifer. In this scenario, recharge at B115 from surficial water is entirely plausible and consistent. However, the question then becomes what the effect on the inward gradient will be from building a landfill directly above an area where the groundwater is apparently recharged. The logical conclusion is that cutting off the recharge will reduce groundwater levels in all flow directions thereby further imperiling the inward gradient.

The monitoring plan proposed by the Applicant's geologist has a 1500 foot gap between groundwater monitoring wells at the northeastern and east central portion of the proposed site. (Hearing I, Volume 21, pg. 42). Given the sudden and unexpected discontinuities in sand bodies encountered at the site and the possibility of solution channels, this is an irresponsibly large interval, particularly since general flow from the groundwater high in the middle of the site is toward this gap in the monitoring wells. Moreover, the monitoring program does not account for the downward gradient observed in all four locations where both shallow and deep wells were installed in the aquifer. This can only give rise to the possibility of contaminants traveling downward in the aquifer below the monitoring horizon. (Hearing I, Volume 23, pg. 97).

B. The Board finding of compliance with Criterion 3, that the facility is so located so as to minimize its incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property, is against the manifest weight of the evidence.

1. Minimize incompatibility with character of surrounding area.

At the original hearings (11/08/02 through 12/06.02), the Petitioner called two expert witnesses on this issue. J. Christopher Lannert testified as a land use planner and landscape architect employed by the Lannert Group from Geneva, Illinois. (Hearing I, Volume 3, pgs. 54-55). After extensive direct examination by counsel for the Petitioners, Mr. Lannert was asked

the following questions, "Mr. Lannert, based upon experience, you reviewed this application, do you have an opinion as to whether the proposed expansion is compatible with the character of the surrounding area?" (Hearing I, Volume 3, pgs. 71-72). In response, Mr. Lannert stated, "my opinion is that it is compatible with the character of the surrounding area." Mr. Lannert further goes on to amplify the reasons why in his opinion the facility is "compatible" with the character of the surrounding area. On several occasions during the proceedings this opinion was reiterated.

The opinion given by Mr. Lannert does not address Criterion 3 at all. Criterion 3 clearly requires an opinion as to whether or not the facility is located so as to "minimize" the incompatibility with the character of the area. This would call for testimony indicating that the proposed facility has so reduced the incompatibility as to be at a minimum. Mr. Lannert's conclusion that the proposed expansion "is compatible" fails to indicate what Criterion 3 calls for, therefore his opinion is not relevant to Criterion 3.

2. Minimize effect on value of surrounding property.

Petitioner called Patricia McGarr as an expert on that portion of Criterion 3 relating to the minimization of the effect of the facility on the values of surrounding property. Her testimony should have been stricken and totally discounted by the County Board during the siting hearings for two reasons: (a) Her opinions were not based upon facts that would warrant her conclusions; (b) She perjured herself as to her credentials as an expert.

a.) Ms. McGarr's analysis of the estimated effect of the proposed facility on the value of farmland and residential land does not support her conclusion. Her analysis was based only on values going back to 1998 and through 2001. She stated, "Sales information is not available for the pubic to review prior to 1998 without giving a specific pin number or specific date of sale."(Hearing I, Volume 6, pgs. 12-13) Her analysis of farmland fails to take into account any farm sales within the last three years. (Hearing I, Volume 8, pg. 111). Her analysis of residential values is unsupported by facts because of the arbitrary way in which she determined the control area and the target area of her study. She used no scientific basis in determining those two areas and this seriously jeopardizes the accuracy of her conclusion. (Hearing I, Volumes 6, 7 and 8).

Ms. McGarr and the Petitioner whom she represented recognized the weakness of this analysis and tried to bolster this by referring to another study to a completely different area of the State. She testified about her study of the Settlers Hill Landfill located in Kane County.

That site is separated from this site by many miles and there is nothing in the testimony of Ms. McGarr, which would make it of any value to the Kankakee County area.

When quizzed by Attorney Flynn about the availability of the records, Patricia McGarr was asked, "Q. You indicated that the County Assessor's Office in terms of residential sales in the County of Kankakee went back for two years?

A. No. It went back to 1998.

Q. I'm sorry. 1998. The MLS, does it go back further than 1998?

A. It goes back two years, and then you can go into archives, and you might be able to find some information in their archives.

Q. Did you attempt to go into the archives to determine what information concerning sales existed prior to 1998?

A. No. Since the – I principally relied on the County Records, and since it went back four years, I stayed within that four-year range.

Q. With regards to the records you got from the County Assessor's Office, did you actually get the transfer documents or did you get a computer printout of the sales?

A. I got a copy of the transfer document.

Q. Is it your testimony here today that the transfer documents for residential sales in the County of Kankakee prior to 1998 do not exist?

A. No, sir. I'm saying that they're not available for the public to review without asking for a specific pin number or date of sale.

Q. Did you have maps which would help you identify what pin numbers were in a particular location?

A. Well, I was looking at a square mile, so there was a lot of pin numbers. And to have to fill out a Freedom of Information Request for each pin in every block, I could have been looking at hundreds and hundreds, and than to go back every year, principally, I like to go back ten years, the people that worked in the Assessment Office when I was talking to them didn't think that was a realistic thing for me to do." (Siting Hearings, Transcript Volume VI, pages 45 – 47)

It is clear from the foregoing, that Patricia McGarr realized that more extensive work was necessary and more resources were available. However, she simply chose not to use the resources or do the work.

b) Ms. McGarr's opinions are so lacking in factual support that they are of virtually no value. An opinion of an expert which has not been adequately supported does not go to the qualification of the expert who testified but rather to the weight and sufficiency to be given the evidence by trier of fact. (National Bank of Monticello vs. Doss, 141 Ill. App. 3d 1055, 1072). Illinois Courts have further held that, ". . . the weight to be assigned to an expert opinion is for the jury to determine in light of the expert's credentials and factual basis of his opinion." (Snelson vs. Kamm, 203 WL 1359496 (Ill.): Wiegman, 308 Ill. App. 3d 799; Treadwell vs. Downey, 209 Ill. App. 3d 999.) In the case of Patricia McGarr, the factual basis of her opinion was seriously eroded and in addition, as argued below, her credentials as an expert have been comprised.

The County Board made no reference to the creditability of Ms. McGarr's testimony. It leads one to inescapably conclude that this very important issue was never at any time considered by the finder of fact.

Based upon the foregoing, Patricia McGarr's opinions should have been stricken and totally discounted.

c) Throughout the siting hearings, Patricia McGarr insisted that she had a degree from Richard J. Daley Community College. She also agreed to provide proof of that representation. (Hearing I, Volume 6, pgs. 36-37). Her counsel, Don Moran, also made promises that he would provide this proof throughout the siting hearings. (Hearing I, Volume 7, pg. 15). At no time was any proof forthcoming. To the contrary, it was shown by affidavit during the siting hearing, as well as, by testimony from the Keeper of the Records of Richard J. Daley Community College that Patricia McGarr's testimony with regard to that issue had been false. Marianne Powers, the Supervisor of Admissions and Markets and the Keeper of the Records at Richard J. Daley Community College, testified at the Fundamental Fairness hearing that indeed Patricia McGarr never graduated and never had sufficient credits to graduate. She further testified that Patricia McGarr knew this before she testified at the siting hearings as a supposed expert in the field of Real Estate Appraisal. (Hearing II, Volume 2, pgs. 60-95). Ms. McGarr's reliance on that degree in her Curriculum Vitae and her insistence that she received that degree and was willing to provide it in spite of the obvious fact that she never received one, destroys her creditability as a witness. It most certainly undermines her proffered credentials, but more importantly, it shows her willingness to falsify in order to sell her opinion. The record

clearly shows that she was a hired agent of the Petitioners. This coupled with her misrepresentation as to her degree should serve as a basis to bar all of her testimony.

During the siting hearings on November 20, 2002, the hearing directed Mr. Moran to provide Attorney Flynn with a certified copy of Ms. McGarr's diploma. Moran said he would, but never did. Attorney Flynn then said, "If that is not produced, I would like an opportunity to cross-examine this witness further". The hearing officer replied, "fine". (Hearing I, Volume 7, pg. 16).

The Illinois Appellate Court in Herington vs. Smith, 138 Ill. App. 3d 28, held has follows, "The Court, however, has inherent power and responsibility to safeguard the integrity of the judicial process. Where perjured testimony so permeates that process as to constitute a fraud upon the court, false testimony by a material witness may alone be sufficient to warrant a new trial." In this case, the City of Kankakee and the other Objectors are entitled to a full disclosure of the Petitioner's expert's credentials. They were never forthcoming and in fact the Petitioner did everything he could to sidestep the obvious fact that Patricia McGarr's credentials had been falsified. The result is twofold: (1) Her testimony is inherently incredible and should be stricken and the finding of the County Board as to Criterion 3 should be found to be against the manifest weight of the evidence; and (2) That the perjured testimony relied upon by the Petitioner completely destroys the fundamental fairness for all Objectors.

C. That the Board's finding of compliance with Criterion 5 that the plan of operation for the facility is designed the minimize the dangers to the surrounding area from fire, spills, or other operational accidents, is against the manifest weight of the evidence.

The evidence referred to above which indicates that the proposed operation of the facility does not include a monitoring system to protect against radiation hazards and other shortcomings in Petitioner's plan does not support a finding called for in Criterion 5.

In addition, Objector from the City of Kankakee incorporates its arguments set forth in paragraph III A. above.

D. The Board findings of compliance with Criterion 6 that the traffic patterns to or from the facility are so designed as to minimize the impact of the existing traffic flow, is against the manifest weight of the evidence.

Petitioner called Steven Corcoran as its expert traffic flow design. Mr. Corcoran is a traffic engineer, employed by Metro Transportation Group, Inc.

Mr. Corcoran's conclusions are based upon a minimal amount of data which brings into question the accuracy of his conclusion. Mr. Corcoran specifically testified, "Our intersection counts at 6000 we had people there during the course of one day during the morning period and the evening period. So that's one day for several hours during that one day.

We placed another person doing a 12-hour count at the entrance to the existing landfill. So that was 12 hours in the course of one day.

And what we actually do there is we don't have one person sit there for 12 hours. They - - we break them up into shifts.

And then we have our - - usually our traffic count supervisor or his assistants would go out and set up the tube count. And so they'd make three total trips during the course of that week: one to set it up, at least one to check on it in the middle of the week, to see - - I'm sorry - - if a tube got torn up, and then at least one other trip.

So two or three days they made spot visits to set up the equipment or check on it or pick it up." (Hearing I, Volume 5, pgs. 96-98).

It is clear that the amount of data relied upon by Mr. Corcoran in reaching his conclusions was not sufficient to carry Petitioner's burden of proof on Criterion 6 and is therefore against the manifest weight of the evidence.

E. The Board finding of compliance with Criterion 8 that the proposed facility is consistent with the waste management plan adopted by the Kankakee County Board, is against the manifest weight of the evidence.

City of Kankakee readopts and restates its argument set forth in paragraphs I. F and II. B (Supra)

Not only do these arguments go to the issues of jurisdiction and Fundamental Fairness, but also clearly establish that the proposed facility is not consistent with the County's waste management plan. Therefore, the Board's finding that it is so consistent is against the manifest weight of the evidence.

Conclusion.

Based upon the foregoing arguments, the finding of the Kankakee County Board approving the siting of a Landfill facility at the location proposed in the Petition referred to

therein is against the manifest weight of the evidence and the finding of said Board should be reversed.

Respectfully submitted,

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