0198-001

ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE,	)	
	)	PCB 03-125
Petitioner,	)	PCB 03-133
	)	PCB 03-134
v.	)	PCB 03-135
	)	(consolidated)
COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC.	)	(Pollution Control Facility Siting Appeals)
	)	
Respondents.	)	

NOTICE OF FILING

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 2nd day of May 2003, the following County's **Motion to Bar and for Sanctions**, was filed with the Illinois Pollution Control Board, attached and herewith served upon you.

COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By: Elizabeth D. Harvey
Elizabeth S. Harvey
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, state that I served a copy of the described document in the above-captioned matter via hand-delivery to the hearing officer and via facsimile/U.S. Mail to all persons listed on the service list on May 2, 2003.

Elizabeth S. Harvey

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

SERVICE LIST
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0198-001

ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE, Petitioner, v. COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC. Respondents.	)	PCB 03-125 PCB 03-133 PCB 03-134 PCB 03-135 (consolidated) (Pollution Control Facility Siting Appeals)

MOTION TO BAR AND FOR SANCTIONS

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby move the hearing officer or the Board to bar petitioner MICHAEL WATSON ("Watson"), and any other party, from calling County attorneys as witnesses at hearing. The County also seeks sanctions.

1. On May 2, 2003, Watson filed his list of witnesses. (See Exhibit A.) One of the persons identified on that list is County attorney Elizabeth Harvey.
2. The issue of depositions and testimony by attorneys has been ruled on more than once. The hearing officer has consistently prohibited petitioners from deposing attorneys, or calling them as witnesses. In fact, just yesterday, on May 1, 2003, the hearing officer granted the County's motion to bar petitioner Karlock from calling County attorneys at hearing. The written order states "Gorski, Helsten, Smith, Harvey and Moran will not be required to testify at the hearing in this proceeding." (May 1, 2003 hearing officer order at page 3.)
3. Additionally, on May 1, 2003, the Board upheld the hearing officer's decision prohibiting the attorney depositions. Thus, the Board has now spoken on the issue.

4. Despite these crystal clear decisions, Watson now seeks to call Ms. Harvey as a witness at hearing. In fact, Watson refers to the hearing officer's May 1 order, but seeks Ms. Harvey's testimony[1] despite the prior direction on this issue.
5. Watson's continued to attempts to call Ms. Harvey as a witness are harassing and violate the Board's and the hearing officer's rulings.
6. The County hereby incorporates by reference its prior arguments against attorney testimony, made in its motion to bar, as if fully set forth herein. (See Exhibit B.)
7. The County moves that the hearing officer bar Watson, and any other person, from calling Ms. Harvey as a witness at hearing.
8. Furthermore, the County seeks sanctions for Watson's flaunting of the repeated decisions on this issue. Watson's inclusion of Ms. Harvey on its witness list, despite Watson's recognition that the Board and the hearing officer have excluded testimony by Ms. Harvey, challenges the authority of both the Board and the hearing officer. Watson's actions are also vexatious and harassing to the County.
9. The County seeks sanctions including an order barring Watson from maintaining any claim related to alleged conversations between Ms. Harvey and Mr. Moran. Such a sanction is allowable under Section 101.800(b)(3) of the Board's procedural rules.

WHEREFORE, the County moves that the hearing officer bar Watson and all other persons from calling Ms. Harvey as a witness at hearing, asks the Board to impose sanctions pursuant to Section 101.800 of the Board's rules, and for such other relief as the hearing officer deems appropriate.

[1] Watson also continues to seek testimony from Mr. Moran.

Respectfully submitted,

COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By: _____
Elizabeth S. Harvey
One of Its Attorneys

Charles F. Helsten
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65488-POH

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON, Petitioner, vs. COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondent.	No. PCB 03-134 (Pollution Control Facility Siting Appeal) Consolidated With PCB 03-125, 03-133, 03-135)

LIST OF WITNESSES TO TESTIFY AT THE PUBLIC HEARING

Now Comes Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd. and as and for List of Witnesses to Testify at Trial, states as follows:

1. Petitioner Watson has subpoenaed the following two witnesses to testify at the public hearing on May 6, 2002, starting at 1:00 p.m.:

Saundra Listenbee

Mary Ann Powers

2. Petitioner Watson has been given leave to serve written questions on Effraim Gill. In lieu of testimony at public hearing, and to be determined after Petitioner has an opportunity to review the answers to such questions served on Mr. Gill, Petitioner requests the parties stipulate that the questions and Mr. Gill's answers be submitted as his testimony at the public hearing.

3. Petitioner Watson seeks to have the following people produced at the public hearing by Waste Management of Illinois, Inc. (WMII). (Please consider this a S.Ct. Rule 237 notice. If WMII contends that the named persons below are "witnesses" opposed to parties, and

Exhibit A

Illinois Pollution Control Board Rule 101.662(a) applies, it is requested that WMII (a) so inform counsel for Petitioner Watson immediately, and inform Petitioner whether WMII will object to produce the following people, (b) inform Petitioner Watson whether WMII will accept service of subpoenas through counsel Moran or, if WMII will not, without waiving Petitioner's objection to such a circumstance, that WMII then provide the business and home addresses of the following people for service purposes):

Lee Addlemann[1]

Dale Hoekstra

Donald Moran[2]

4. Petitioner Watson seeks to have the following people produced at the public hearing by the County Board and County of Kankakee (collectively County). (Please consider this a S.Ct. Rule 237 notice. If the County contends that the named persons below are "witnesses" opposed to parties, and Illinois Pollution Control Board Rule 101.662(a) applies, it is requested that County (a) so inform counsel for Petitioner Watson immediately, and inform counsel fo Petitioner Watson whether the County will object to produce the following people, (b) inform Petitioner Watson whether the County will accept service of subpoenas through counsel or, if

[1] On April 30, 2003, the Hearing Officer granted Waste Management of Illinois, Inc.'s (WMII) objections to producing Mr. Addleman for deposition. However, WMII failed to provide through affidavit or verified medical statement a medical reason why Mr. Addleman cannot be deposed or provide testimony. Further, WMII's counsels representations concerning Mr. Addleman's health condition had no obvious connection to Mr. Addleman's mental capacity. Without waiving Petitioner's objection to the April 30, 2003 and any subsequent rulings on this issue, Petitioner respectfully seeks, in the alternative to have Mr. Addleman appear to testify, the evidence deposition of Mr. Addleman. If the evidence deposition is to be denied (without waiving its objections), Petitioner seeks leave to submit written questions to Mr. Addlemann, to be answered and certified by Mr. Addlemann and which will be admissible as if it were his testimony at the public hearing.

[2] The Hearing Officer likewise ruled on April 30, 2003, with respect to the discovery deposition of Mr. Moran and on May 1, 2003, with respect to the Rule 237 notice of Mr. Moran. Petitioner reserves his objections to this ruling and reiterates his response to objections to the discovery deposition of this individual that since Mr. Moan and Ms. Harvey were the only two people identified as being involved in their conversations occurring, ex parte, during January 2003, and prior to the County's decision on January 31, 2003, they are the only source for information concerning the exact substance of that communication.

the County will not, without waiving Petitioner's objection to such a circumstance, that the County then provide the business and home addresses of the following people for service purposes):

Stan James (County Board Member)

Bruce Clark (County Clerk)

Karl Kruse (County Board Chairman)

Elmer Wilson (County Board Member)

Chris Richardson (County employee)

Juanita Baker (by deposition transcript, if so stipulated by the parties)

Mike VanMill (County employee)

Doug Graves (County Board Member)

Leo Whitten (County Board Member)

Effraim Gill (former County employee)

Sharkey Martin (by deposition transcript, if so stipulated by the parties)

Chris Berger (County consultant)

Pam Lee (County Board Member and Vice Chairperson)

George Washington, Jr. (County Board Member)

Wes Wiseman (County Board Member)

Elizabeth Harvey (Special Assistant State's Attorney)[3]

5. Additionally, Petitioner Watson may seek to present testimony of the following people (reserving his right to not call such people):

Daniel Hartweg: (without waiving attorney-client confidence or work-product

privilege) on the limited matter of his affidavit contained in the Record on Appeal. Unless there are no objections to producing his affidavit in lieu of his testimony at hearing.

6. Petitioner Watson requests the Parties to identify which, if any, of the above referenced individuals who have been deposed, a Party would object to a stipulation to submit the person's deposition testimony in lieu of testimony at the public hearing, as additional persons may be requested to testify at hearing through submittal of their discovery deposition, once that deposition transcript is received and reviewed by counsel for Petitioner.

7. Petitioner reserves his right to present additional witnesses in rebuttal.

Dated: May 2, 2003

PETITIONER MICHAEL WATSON

One of his attorneys

Jennifer J. Sackett Pohlenz
QUERREY & HARROW, LTD.
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(312) 540-7000
Attorney Registration No. 6225990
Attorneys for Petitioner Michael Watson

[3] *See*, note 2, above.

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ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE,	)	
	)	PCB 03-125
Petitioner,	)	PCB 03-133
	)	PCB 03-134
v.	)	PCB 03-135
	)	(consolidated)
COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC.	)	(Pollution Control Facility Siting Appeals)
	)	
Respondents.	)	

MOTION TO BAR

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby move the hearing officer to bar petitioner MERLIN KARLOCK ("Karlock"), and any other party, from calling County attorneys as witnesses at hearing.

1. On April 29, 2003, Mr. Karlock's attorney faxed a "notice to produce at time of hearing" to the County's attorneys. That notice requests that the County produce Brenda Gorski, Charles Helsten, Edward Smith, and Elizabeth Harvey, among other persons, at the Board hearing in this matter. (See Exhibit A.)
2. As has been previously discussed in this matter, Mr. Smith is the elected State's Attorney of Kankakee County, and Ms. Gorski is an Assistant State's Attorney for Kankakee County. Mr. Helsten represented the County staff during the local proceeding on WMII's siting application, and Ms. Harvey represented the County Board and the Regional Planning Commission during the local siting proceeding. Both Mr. Helsten and Ms. Harvey currently represent the County of Kankakee and the Kankakee County Board in this pending appeal.
3. Karlock seeks to call Ms. Gorski, Mr. Smith, Mr. Helsten, and Ms. Harvey as

Exhibit B

witnesses at the hearing. However, Karlock has articulated no basis for his request. Further, the notice to produce attorneys attempts to run an "end around" of the hearing officer's prohibition on the depositions of these attorneys.

4. The hearing officer has already upheld the County's objections to petitioners' request to depose the County's counsel, both orally during the April 24, 2003 status conference and in his written order of April 30, 2003. The Board has previously held that depositions of counsel are to be allowed only in very limited cases. *Citizens Against Regional Landfill (CARL) v. County Board of Whiteside County*, PCB 92-156 (February 25, 1993). The Board has noted that "unbridled depositions of attorneys constitutes an invitation to delay, disruption of the case, harassment and perhaps disqualification of the attorney to be deposed." *CARL*, slip op. at 8.
5. If the County's attorneys in this case cannot be deposed, it is clear that they cannot be called as witnesses at hearing. The reasons that the Board and the courts greatly restrict the depositions of attorneys (harassment, delay, disruption, privilege issues, and possible disqualification of the attorney) apply in even greater force where an opposing party seeks to call opposing counsel as an adverse witness at hearing. To allow petitioners to call the County's attorneys as adverse witnesses could create a media circus, endangers the attorney-client privilege, and invites motions to disqualify the County's attorneys, leaving the County in the position of contemplating whether to retain yet additional counsel.
6. Additionally, there has been no demonstration of what relevant information the petitioners could elicit from the County's attorneys. Given the presumption against allowing an opposing party to call opposing counsel as a witness, Karlock must articulate relevant information which can only be obtained from that particular attorney. Petitioners have been unable to do so in the context of deposing the County's attorneys, and they cannot do so in the context of calling

those attorneys as witnesses at hearing.

7. Petitioners seem to have lost sight of the relevant inquiry into the fundamental fairness of a local siting proceeding. The only issue is the alleged bias or conflict of interest of the decisionmakers, not of their advisors. *ESG Watts Incorporated v. Sangamon County Board*, PCB 98-2 (December 3, 1998)(also ruling that it is improper to seek the deposition of a state's attorney, even if that state's attorney had voiced an opinion on the application). The County's attorneys were not decisionmakers---they were, at most, advisors to the decisionmakers.
8. Two of the named attorneys were not even advisors to the decisionmakers on this application. Ms. Gorski did not appear on behalf of the County Board or the Regional Planning Commission (RPC) during the proceeding, and Mr. Helsten appeared on behalf of the County staff. Mr. Helsten has already submitted an affidavit to the Board stating that he had no substantive contact with the County Board or the RPC regarding the application, and that he did not provide legal representation to either entity. (See Exhibit B.) Thus, it is impossible to see how the testimony of Ms. Gorski and Mr. Helsten could possibly be relevant on the alleged bias of the decisionmakers.
9. In sum, allowing Karlock or any other person to call the County's attorneys as witnesses at hearing would violate the presumption that opposing parties cannot call opposing counsel as witnesses at hearing, and would delay and disrupt the proceeding by inviting a media circus. Further, allowing the calling of the County's attorneys could raise issues of the possible disqualification of the County's elected and chosen attorneys, and invade attorney-client privilege. Most importantly, neither Karlock or any other petitioner has identified any relevant information they cannot obtain through other means. Karlock and all other persons should be barred from calling the County's attorneys at hearing.

WHEREFORE, the County moves that the hearing officer bar Karlock and all other

persons from calling attorneys Gorski, Smith, Helsten, and Harvey, and for such other relief as the hearing officer deems appropriate.

Respectfully submitted,

COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

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