

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

MICHAEL WATSON,

Petitioner,

vs.

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

Respondent.

No. PCB 03-134

(Pollution Control Facility ~~STATE OF ILLINOIS~~
Pollution Control Board
Consolidated With PCB 03-125, 03-133, 03-
135, 03-144)

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APR 11 2003

NOTICE OF FILING

TO: See Attached Service List


PLEASE TAKE NOTICE that April 11, 2003, we filed, with the Illinois Pollution Control Board, via facsimile, the following documents:

- (1) Petitioner Michael Watson's Response to County Board of Kankakee's Objections to Watson's Interrogatories;
- (2) Michael Watson's Response Brief in Opposition to Waste Management of Illinois, Inc.'s Motion to Quash Subpoena Issued to Patricia Beaver-McGarr, Jeremy R. Walling & Integra Realty Resources;
- (3) Petitioner Michael Watson's Response to Waste Management of Illinois, Inc.'s Objections to Watson's Interrogatories;
- (4) Petitioner Michael Watson's Response to Waste Management of Illinois, Inc.'s Objections to Watson's Document Production Requests;
- (5) Petitioner Michael Watson's Response to the County's Motion to Quash Subpoena
- (6) Petitioner Michael Watson's Response to County Board of Kankakee's Objections to Watson's Document Production Requests;
- (7) Response Brief in Opposition to Waste Management of Illinois, Inc.'s Motion to Quash Subpoenas Issued to David Miller, Stephen Corcoran, and Metro Transportation Group, Inc.

PLEASE TAKE FURTHER NOTICE that the above-described documents will also be filed directly with the Illinois Pollution Control Board on April 14, 2003, copies of which are attached hereto and served upon you in the manner specified on the attached Service List.

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PETITIONER MICHAEL WATSON


One of his attorneys

Jennifer J. Sackett Pohlenz
David J. Flynn
Daniel J. Hartweg
QUERREY & HARROW, LTD.
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Chicago, Illinois 60604
(312) 540-7000
Attorney Registration No. 6225990
Attorneys for **Petitioner Michael Watson**

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PROOF OF SERVICE

Alesia Mansfield, under penalties of perjury, certifies that she served the foregoing Notice of Filing and documents set forth in said Notice, on the following parties and persons at their respective addresses/fax numbers, this 11th day of April, 2003, by or before the hour of 4:30 p.m. in the manners stated below

Via Facsimile & U. S. Mail

Donald Moran
Pedersen & Houpt
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Chicago, IL 60601-3242

Fax: (312) 261-1149

Attorney for Waste Management of Illinois, Inc.

Via Facsimile & U.S. Mail

Kenneth A. Leshen
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Kankakee, IL 60901
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Representing Petitioner in PCB 03-125

Via Facsimile & U.S. Mail

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George Mueller, P.C.
501 State Street
Ottawa, IL 61350
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Representing Petitioner in PCB 03-133

Via U.S. Mail

Leland Milk
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Interested Party

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Interested Party

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Petitioner in PCB 03-135

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Elizabeth S. Harvey, Esq.
Swanson, Martin & Bell
One IBM Plaza, Suite 2900
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Representing Kankakee County Board

Via Facsimile (312) 814-3669 on 4/11/03

Via Hand Delivery on 4/14/03

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 W. Randolph Street
Chicago, IL 60601
Hearing Officer


Alesia Mansfield

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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
Application)

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

**RESPONSE BRIEF IN OPPOSITION TO WASTE MANAGEMENT OF ILLINOIS,
INC.'S MOTION TO QUASH SUBPOENAS ISSUED TO DAVID MILLER, STEPHEN
CORCORAN, AND METRO TRANSPORTATION GROUP, INC.**

Now comes the Petitioner, MICHAEL WATSON, by and through his attorneys, QUERREY & HARROW, LTD., and in opposition to WASTE MANAGEMENT OF ILLINOIS, INC.'S Motion to Quash the subpoena issued to David Miller, Stephen Corcoran and Metro Transportation Group, Inc., alleges and states as follows:

1. Petitioner, MICHAEL WATSON, has filed an Amended Petition for Review of a Decision concerning siting of a new Pollution Control facility. One of the bases of the Petition is that the local siting review procedures, hearings, decisions and process were fundamentally unfair.

2. On April 4, 2003, the Petitioner served a *subpoena duces tecum* on David Miller, Stephen Corcoran and Metro Transportation Group, Inc. A copy of the *subpoena* is attached hereto and designated as Exhibit "A". The *subpoena* was timely filed and served.¹ 35 Ill. Adm. Code Section 101.616 *et seq.* promulgates the rules and

¹ Previously, it was ordered that any objections to discovery propounded by the Petitioner be served upon the Petitioner on or before twelve noon on April 10, 2003. Respondent's first attempt to serve its Motion was at 12:37 p.m. on April 10, 2003 and thus is untimely and should be stricken on that basis.

framework for discovery on matters pending before the Pollution Control Board. Section 101.616(a) sets forth the scope of discovery and provides "all relevant information and information calculated to lead to relevant information is discoverable". 35 Ill. Adm. Code Section 101.616(a). Furthermore, ultimate use and admissibility is irrelevant. Section 101.616(e) specifically provides "it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information". 35 Ill. Adm. Code Section 101.616(e).

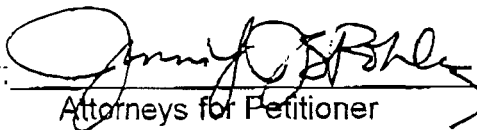
3. At the Public Hearings, WASTE MANAGEMENT OF ILLINOIS, INC., called Stephen Corcoran to testify concerning the statutory requirement of 415 ILCS 5/39.2(a)(vi) which requires the applicant to establish that traffic pattern to or from the facility are so designed as to minimize the impact on existing traffic flows. During cross-examination of Mr. Corcoran, it became evident that a substantial portion of the work on this issue was performed by Mr. Miller. (11/19, 1:38p.m. Tr. 38-43). Furthermore, the report was signed by Mr. Miller. (Id. at 41-42). Mr. Corcoran did not sign off on the report. (Id. at 42). The extent to which Mr. Corcoran performed any work concerning the aforementioned criteria is in dispute. It would be improper and fundamentally unfair to participants in a local siting public hearing for the applicant to call a witness to testify as to someone else's opinions so as to avoid presenting the expert it chose and the individual that performed the work and prepared the report. Thus, to determine the extent of Messrs. Corcoran and Miller's involvement in the preparation of the report, Petitioner has a right to review the subpoenaed documentation.

4. The documents sought by the subpoena served upon David Miller, Stephen Corcoran and Metro Transportation Group, Inc., merely seeks a copy of its file for its work in this matter. The file will allow the petitioner to ascertain whether and to what extent Mr. Corcoran performed any work on this matter, when he became involved in this matter and why he became involved in this matter. The file of Mr. Miller, Mr. Corcoran and Metro Transportation Group, Inc. is clearly relevant and at a minimum may produce information, which can lead to the discovery of relevant information.

5. The request is not overly broad, unduly burdensome nor does it impose a burden or expense upon Respondent's experts. The materials are not privileged. Furthermore, the file merely has to be brought to the front door so that it can be picked up, copied and returned.

WHEREFORE, the Petitioner, MICHAEL WATSON, prays that an Order be entered striking and/or denying WASTE MANAGEMENT OF ILLINOIS, INC.'S Motion To Quash.

Respectfully submitted,
QUERREY & HARROW, LTD.,

By: 
Attorneys for Petitioner

David Flynn
Jennifer J. Sackett Pohlenz
Querrey & Harrow, Ltd.,
175 W. Jackson Boulevard, Suite 1600
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Attorney Registration No. 6225990
Attorney Registration No. 6204228
Attorneys for Petitioner Michael Watson

Document #: 818636

Before the Illinois Pollution Control Board

<u>MICHAEL WATSON,</u>)	
_____)	
_____)	
_____)	
_____)	
Complainant/Petitioner,)	PCB <u>03-134</u>
v.)	(Consolidated with PCB 03-125,
)	03-133, 03-135, and 03-144)
<u>COUNTY BOARD OF KANKAKEE COUNTY,</u>)	
_____)	
<u>ILLINOIS, and WASTE MANAGEMENT</u>)	
_____)	
<u>OF ILLINOIS, INC.</u>)	
_____)	
Respondent.)	

~~SUBPOENA~~ SUBPOENA DUCES TECUM

TO: David Miller, Stephen Corcoran, and ~~AM~~ Metro Transportation Group, Inc.
1300 Greenbrook Blvd
Hanover Park, IL 60133

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e)
(2002)) and 35 Ill. Adm. Code 101.622, you are ordered to attend and give testimony at
the hearing/deposition in the above-captioned matter at _____

_____ .m. on _____ 20 _____, at _____

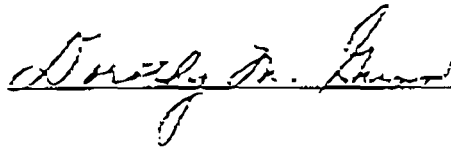
EXHIBIT
A

You are also ordered to bring with you documents relevant to the matter under consideration and designated herein: See, attached "Rider to Document Subpoena."
Documents subpoenaed herein are subpoenaed for production on or before April 18, 2003. Please call Jennifer J. Sackett Pohlenz at (312) 540-7540, to make arrangements for inspection and/or copying of documents.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill.

Adm. Code 101.622(g), 101.800, and 101.802.

ENTER:



Dorothy M. Gunn, Clerk
Pollution Control Board

Date: April 4, 2003

CERTIFICATE OF SERVICE

I, Alesia Mansfield, certify that on this 4th day of April 2003, I caused copies of the ~~SUBPOENA~~ SUBPOENA DUCES TECUM to be served upon the following:

See, attached Service List

by depositing same in United States First Class Mail, postage prepaid, unless otherwise stated on the attached Service List.

(Signature)

Rider to Document Subpoena

Any and all documents concerning or related to the work and review by David Miller, Stephen Corcoran, and/or Metro Transportation Group, Inc., 1300 Greenbrook Boulevard, Hanover Park, Illinois, 60133 (collectively referenced herein as "Consultant") in preparation of or for the report submitted or prepared by Consultant and included in Waste Management of Illinois, Inc.'s Site Location Application For Expansion of the Kankakee Landfill which was filed with Kankakee County on or about March 29, 2002 and August 16, 2002 ("Report"), including but not limited to any and all documents reviewed by Consultant in preparation of the Report, any and all documents created by Consultant in preparation of the Report, any and all documents provided to Consultant by anyone (including, but not limited to Waste Management of Illinois, Inc. or its employees, representatives, agents, and/or officers). Additionally, produce any and all drafts of the Report; any and all documents relied on in the preparation of the Report; and any and all documents reviewed, relied on, prepared, or received in preparation for, or which formed a basis of the testimony provided at the public hearing in the aforementioned Site Location Application for Expansion of the Kankakee Landfill filed on August 16, 2002.

"Documents" as used in this Rider and Subpoena for documents is defined pursuant to Illinois Supreme Court Rule 201(b)(1), and includes, but is not limited to, "papers, photographs, films, recordings, memoranda, books, records, accounts, communications and all retrievable information in computer storage," including but not limited to, correspondence, drafts, and e-mails.

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COUNTY BOARD OF KANKAKEE
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Respondent.

No. PCB 03-134

(Pollution Control Facility Siting
Application)

(Consolidated With PCB 03-125, 03-
133, 03-135, 03-144)

PETITIONER MICHAEL WATSON'S RESPONSE TO
COUNTY BOARD OF KANKAKEE'S
OBJECTIONS TO WATSON'S DOCUMENT PRODUCTION REQUESTS

NOW COMES, Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., and pursuant to the rules of Illinois Supreme Court and the Illinois Pollution Control Board (IPCB), provides the following Response to Respondent County Board of Kankakee's Objections To Petitioner Michael Watson's Document Production Requests:

Introduction

1. The County Board of Kankakee (County) objects to the definition of Relevant Time and Request Nos. 3 (misidentified as "5" in the County's objections), and Nos. 4-9. The objection to the timeframe is addressed separately from the remaining objections, below.

2. As respects the County's assertion that the timeframe of the production requests is overly broad, the timeframe defined in the Requests is from August 1, 2001 to February 28, 2003. This is less than two months prior to the adoption of Resolution 01-10-09-393 by the County and County Board, which Resolution purports to amend the Solid Waste Management Plan of the County to specifically reference the Facility and WMII as the operator. This specific

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reference, not the process the County went through in passing the Resolution, is evidence of prejudice and, as such, is an issue on which discovery is allowable. Further, there were two siting applications filed by WMII in this case, one on or about March 29, 2002, and the other on or about August 16, 2002. The first application was withdrawn by WMII due to a notice defect. Therefore a timeframe that encompasses the pre-March 29, 2002, is, under previous applications of the County of Kankakee, et al. v. The City of Kankakee, et al., PCB 03-31 (consolidated with 03-33, 03-35) (01/09/03), and in discovery rulings in the Waste Management of Illinois, Inc. v. County Board of Kane County, PCB 03-104, case, an acceptable timeframe which is not unduly burdensome or broad for discovery purposes. Thus, the County's objection to the timeframe should be overruled.

3. Additionally, to the extent the County asserts that an itemization of phone records or a phone bill is "attorney-client confidential" or "work-product privileged," that argument must fail, as an itemized bill provides no information (nor is it contended by the County to provide information) as to the substance of a telephone conversation, there are likely phone calls on such itemized bills other than those with attorneys, and, additionally, no work-product privilege can be asserted by Karl Kruse (County Board Chairman), George Washington, Jr. (County Board Member), Pam Lee (County Board Member), Mike Quigley (former County Board Member), as provided in Request Nos. 14, 15 and 16.

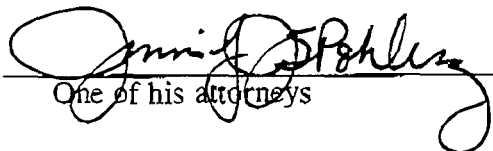
4. Finally, as respects the County's remaining objections overlap and repeat the objections made by WMII to Petitioner's Interrogatories and Document Production Requests, and, therefore, given the short timeframe Petitioner has to respond to these objections,

Petitioner repeats and incorporates its Responses to WMII's Objections to Petitioner's Interrogatories and Document Production Requests as and for its Response herein.

WHEREFORE, Petitioner Michael Watson respectfully requests the IPCB Hearing Officer to overrule the County's objections, and require the County to respond and produce documents responsive to the subject Document Production Requests.

Dated: April 11, 2003

PETITIONER MICHAEL WATSON

By: 
One of his attorneys

Jennifer J. Sackett Pohlenz
Querrey & Harrow, Ltd.
175 West Jackson Blvd., Suite 1600
Chicago, Illinois 60604
(312) 540-7000
Attorney Registration No. 6225990
Attorney for Petitioner Michael Watson

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON,

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**COUNTY BOARD OF KANKAKEE
COUNTY, ILLINOIS, and WASTE
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ILLINOIS, INC.,**

Respondent.

No. PCB 03-134

**(Pollution Control Facility Siting
Application)**

**(Consolidated With PCB 03-125, 03-
133, 03-135, 03-144)**

**PETITIONER MICHAEL WATSON'S RESPONSE TO THE
COUNTY'S MOTION TO QUASH SUBPOENA**

NOW COMES, Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., and pursuant to the rules of Illinois Supreme Court and the Illinois Pollution Control Board (IPCB), provides the following Response to the County's Motion to Quash the Subpoena Petitioner Watson served on it:

The Petitioner filed a Petition for Siting Review and, pursuant to Section 40.1(b) of the Illinois Environmental Protection Act (Act) and Sections 107.200-107.208 of the applicable Illinois Pollution Control Board Regulations. (415 ILCS 5/40.1(b) (2003) and 35 IAC 107.200-208). As specified in Section 40.1 of the Act, Petitioner filed his Petition naming the County Board of Kankakee as a Respondent. Technically, Section 40.1 does not require nor authorize filing of a Petition naming the County as a Respondent.

However, other parties who filed Petitions and whose Petitions were consolidated with Petitioner Watson's Petition filed naming the County as a Respondent.

To prevent the circumstance in which the County would argue that any written discovery Petitioner Watson served on the County (opposed to the County Board) was not

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properly served, as the County is not a Respondent to Petitioner Watson's Petition for Review, Petitioner Watson served the County with a subpoena simply seeking to have the County respond to Petitioner Watson's written discovery, to the extent it has information, documents, responses or answers in addition to those of the County Board. Although admittedly not artfully worded, the intent of the statement contained in the Rider to this subpoena stating "Please produce any and all documents responsive to the Interrogatories and Document Production Requests attached, which are or will not be produced by the Kankakee County Board in response to the attached discovery requests" was to avoid non-responsiveness based on a distinction between the County Board and the County.

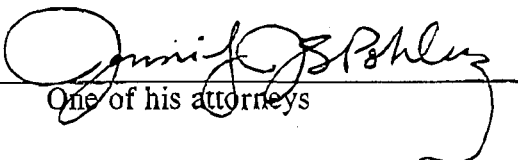
In response to receiving the Motion to Quash from the County, Petitioner Watson's counsel spoke with counsel Elizabeth Harvey for the County and County Board to discuss the above recitation and the following stipulation was reached, making the County's Motion and the Petitioner's Subpoena of the Count moot:

The County will answer and respond to all written discovery served by Petitioner Watson on the County Board, to which no objection has been made and/or to which objections which have been raised by the County Board are overruled. In other words, whatever the final discovery requests are following ruling on the objections, the County and County Board will respond and answer those requests even though directed only to the County Board.

WHEREFORE, Petitioner Michael Watson respectfully requests the IPCB Hearing Officer enter the above referenced stipulation and find the Motion and Subpoena, both, to be moot.

Dated: April 11, 2003

PETITIONER MICHAEL WATSON

By: 
One of his attorneys

Jennifer J. Sackett Pohlentz
Querrey & Harrow, Ltd.
175 West Jackson Blvd., Suite 1600
Chicago, Illinois 60604
(312) 540-7000
Attorney Registration No. 6225990
Attorney for Petitioner Michael Watson

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON,

Petitioner,

vs.

COUNTY BOARD OF KANKAKEE
COUNTY, ILLINOIS, and WASTE
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Respondent.

No. PCB 03-134

(Pollution Control Facility Siting
Application)

(Consolidated With PCB 03-125, 03-
133, 03-135, 03-144)

PETITIONER MICHAEL WATSON'S RESPONSE TO
WASTE MANAGEMENT OF ILLINOIS, INC.'S
OBJECTIONS TO WATSON'S DOCUMENT PRODUCTION REQUESTS

NOW COMES, Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., and pursuant to the rules of Illinois Supreme Court and the Illinois Pollution Control Board (IPCB), provides the following Response to Respondent Waste Management of Illinois, Inc.'s Objections To Petitioner Michael Watson's Document Production Requests:

Introduction

1. WMII objects to every Document Production Request propounded by Petitioner. WMII's objections consist of five (5) "General Objections" which are neither incorporated into nor directed to any specific document production request. Additionally, specific objections to each document production request are asserted by WMII. WMII's objections, in effect, intend to limit Petitioner from any document production in this matter, which is a position that is inconsistent with Supreme Court Rule 201(b)(1) and the objective of discovery as a mechanism which allows parties to better prepare for trial, seek the truth of a matter, eliminate surprise, and promote expeditious and final determination of controversies. IL S.Ct. Rule 201(b)(1);

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and D.C. v. S.A., et al., 178 Ill. 2d 551; 687 N.E.2d 1032, 1037 (S.Ct. 1997). Each of WMII's objections is addressed, separately, below, organized by the Document Production Request number to which the objection is made.

Response to General Objections

2. Although WMII lists five (5) "General Objections" to Petitioner's document production requests, it does not incorporate or specify to which of the requests the objections are directed. Therefore, since these general objections are not addressed to any specific document production request, they should be denied. Alternatively, and without waiving Petitioner's objection to WMII's General Objections being considered, if the Hearing Officer is going to consider these objections, a brief Response to each is made below:

- a. WMII's first General Objection alleges that the document production requests are "improper, overly broad, unreasonable, and "exceeding the permissible scope" of discovery. However, the basis for this objection appears to be that the document production requests seek documents related to prejudgment, bias and/or *ex parte* communication, and WMII alleges that Petitioner "has only made generalized and vague statements" of improper communications in its Petition. Petitioner has raised far more specific fundamental fairness issues in its Amended Petitioner than WMII did in the Waste Management of Illinois, Inc. v. County Board of Kane County, PCB 03-104, case, yet WMII was allowed to inquire into communications of Board Members pre-filing, during the pendency of the siting application, and post-siting decision in that case. *See*, PCB 03-104, March 12, 2003 Order. Similarly, in the County of Kankakee. et al. v. The City of Kankakee. et al., PCB 03-31 (consolidated with 03-33, 03-35), p. 4-5 (01/09/03), case the IPCB specifically allowed admission (opposed to discovery, which is a broader and more flexible standard) of evidence concerning the pre-filing contacts. *See*, County of Kankakee at p. 4 (discussion of pre-filing contacts). Petitioners should be allowed to inquire into information that may lead to admissible evidence concerning *ex parte* communications, prejudgment, or bias. This information is solely in the control of Respondents, WMII and the County and County Board, as any meetings or communications that were improper are not likely to be held out in the public for everyone to see. Additionally, although the IPCB "generally confines itself to the record developed by the municipality", it "will hear new evidence relevant to the fundamental fairness of the proceedings where such evidence necessarily lies outside of the record. County of Kankakee, p. 4-5. This standard in conjunction with the requirement that allowable discovery is

necessarily broader than admissible evidence, requires that WMII's objections be denied. (S.Ct. Rule 201(b)(1)).

- b. WMII alleges that Petitioner is not entitled to any information relating to the "process by which the Kankakee Solid Waste Management Plan was enacted and amended." However, the document production requests do not seek "process" information, such as how the County Board voted or whether they formed any committees. Rather, it seeks communications between WMII and the County and County Board concerning the adoption of specific resolutions amending the Solid Waste Management Plan. These requests are relevant discovery requests, as they inquire as to documentation evidencing communications between WMII and the County/County Board, which can lead to the discovery of admissible evidence concerning *ex parte* communications, as well as to the singular designation in the solid waste management plan of WMII's site and WMII as operator. The issue as to whether such singular designation is prejudgment of a particular site has not previously been decided by the IPCB. The cases WMII cites are distinguishable on this ground. Therefore, this General Objection should be overruled.
- c. Likewise, WMII's general objection numbers 3, 4 and 5 should be denied for the same reasons stated in Paragraphs 2.a. and 2.b., above, which responses are repeated and incorporated herein.
- d. Finally, WMII generally objects to the document production requests on the basis of "attorney-client privilege", "attorney work-product doctrine", or "any other applicable privilege or protection." As an initial matter, a party must raise a specific privilege as an objection and an objection based on "any other applicable privilege or protection" is not proper. As respects "attorney-client privilege" and "work-product doctrine," it is not Petitioner's intent to seek discovery or legitimately privileged information and Petitioner seeks answer to its document production requests subject to Illinois Supreme Court Rule 201(n).
- e. Therefore, WMII's general objections, if considered by the Hearing Officer, should be overruled and WMII should be required to respond to all of the document production requests, subject to Illinois Supreme Court Rule 201(n).

Response to Objection to Request Nos. 1-2

3. Requests 1-2 seek production of documents that WMII "intend[s] to or may utilize at any deposition in this matter" and which WMII "intend[s] to, or may, utilize at the hearing scheduled in this matter." WMII objects to the portion of the Request seeking production of documents which WMII "may" use, as overly broad, unduly burdensome and as being covered by

the “attorney-client privilege” and “attorney work-product doctrine.” WMII’s objection is not supported by citation to any authority prohibiting an inquiry, to avoid surprise and an argument over what a party “intended”, as to documents that “may” be utilized. Further, WMII’s objections as to privilege and work-product are not understandable, as if WMII would present a document as an exhibit at deposition and/or hearing, it could not assert any privilege concerning that document. Whether WMII plans on utilizing a non-privileged document is not privileged information, if so, no one would be required to disclose, pursuant to the S.Ct. Rules, any documents they were going to use at trial, which is neither the rule nor the law. Therefore, WMII’s objections should be overruled and WMII should be required to produce documents responsive to Request Nos. 1-2.

Response to WMII’s Objections to Request Nos. 3-18

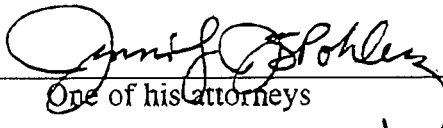
4. WMII makes the same type of objections to Request Nos. 3-18 as it raises in opposition to Petitioner’s Interrogatories. Given the short timeframe Petitioner has to Respond to all of the objections made and motions to quash presented to its discovery (less than 1 day and a half, given the after 12:00 pm filing by the objectors to discovery), and the fact that the objections are the same as what is raised by WMII to Petitioner’s Interrogatories, Petitioner repeats and incorporates its Response to WMII’s Objections to its Interrogatories as and for the remainder of its Response to these objections. In particular, WMII objects on various grounds, but primarily, breadth, burden, the allegation that Petitioner has not made specific enough allegations regarding fundamental fairness to justify its discovery, and that the requests seek information concerning statutory criteria rather than fundamental fairness (which they do not). All of these allegations are responded to in Petitioner’s Response to WMII’s Objections to Interrogatories and are contrary to the purpose and law as respects discovery. IL S.Ct. Rule 201(b)(1); D.C. v. S.A., et al., 178 Ill. 2d 551; 687

N.E.2d 1032, 1037 (S.Ct. 1997); County of Kankakee, et al. v. The City of Kankakee, et al., PCB 03-31 (consolidated with 03-33, 03-35) (01/09/03).

WHEREFORE, Petitioner Michael Watson respectfully requests the IPCB Hearing Officer to overrule WMII's objections, and require WMII to respond and produce documents responsive to the subject Document Production Requests.

Dated: April 11, 2003

PETITIONER MICHAEL WATSON

By: 
One of his attorneys

Jennifer J. Sackett Pohlenz
Querrey & Harrow, Ltd.
175 West Jackson Blvd., Suite 1600
Chicago, Illinois 60604
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Attorney Registration No. 6225990
Attorney for Petitioner Michael Watson

Document #: 818773

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
Application)

(Consolidated With PCB 03-125, 03-
133, 03-135, 03-144)

**PETITIONER MICHAEL WATSON'S RESPONSE TO
WASTE MANAGEMENT OF ILLINOIS, INC.'S
OBJECTIONS TO WATSON'S INTERROGATORIES**

NOW COMES, Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., and pursuant to the rules of Illinois Supreme Court and the Illinois Pollution Control Board (IPCB), provides the following Response to Respondent Waste Management of Illinois, Inc.'s Objections To Petitioner Michael Watson's Interrogatories:

Introduction

1. WMII objects to every Interrogatory from Petitioner, except for the first two and the fourth, standard Interrogatories which seek identification of the Persons who answered and provided information to aid in answering the Interrogatories and identification of the Persons WMII intends on calling as a witness at the public hearing. WMII's objections consist of six (6) "General Objections" which are incorporated only into one Interrogatory (Interrogatory No. 3) and separate objections to Interrogatory Nos. 5-24. Under WMII's theory of objections, the only Interrogatories Petitioner is apparently allowed to ask are who prepared the answers to and who helped prepare the answers to a document which only asks who WMII

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intends to call at hearing, with no other substantive questions. Clearly such an argument is against the grain of long standing law and Supreme Court Rule 201(b)(1), which authorizes broad discovery "regarding any matter relevant to the subject matter involved in the pending action." (IL S.Ct. Rule 201(b)(1)). Illinois Supreme Court Rule 201(b)(1) is consistent with the consistently stated objective of discovery: "The objectives of pretrial discovery are to enhance the truth-seeking process, to enable attorneys to better prepare for trial, to eliminate surprise and to promote an expeditious and final determination of controversies in accordance with the substantive rights of the parties." D.C. v. S.A., et al., 178 Ill. 2d 551; 687 N.E.2d 1032, 1037 (S.Ct. 1997). Further, these objections contradict the IPCB rules which specifically provide that "it is not a ground for objection that the testimony of a deponent or person interrogated will be admissible at hearing, if the information sought is reasonably calculated to lead to relevant information. (Section 101.616(e)). Each of WMII's objections is addressed, separately, below, organized by the Interrogatory number to which the objection is made.

Response to General Objections

2. Although WMII lists six (6) "General Objections" to Petitioner's Interrogatories, it only incorporates these general objections into its objections to Interrogatory No. 3. Therefore, since these general objections are not addressed to any other Interrogatory, they will not be addressed outside the context of Interrogatory No. 3, as an objection made without relation to a specific portion of the Interrogatories is nothing more than a generalized grievance with no legal significance. However, to the extent the IPCB Hearing Officer determines one or more of these objections is applicable to an Interrogatory, other than No. 3 and other than one

in which a specific portion of the general objection is repeated, Petitioner reserves his right to respond to such newly related objection.

Response to Objection to Interrogatory No. 3

3. Interrogatory No. 3 states: "Identify any Communications or other documents relied upon in answering these Interrogatories." WMII objects to this Interrogatory for the following reasons, each of which is addressed after the listed reason, below:

- a. WMII alleges Interrogatory No. 3 is "improper, overly broad, unreasonable, "exceeding the permissible scope", and "exceed[ing]the maximum number". Interrogatory No. 3 simply asks for identification of the basis for the answers to the Interrogatories, and therefore, similar to Interrogatories 1 and 2, to which WMII has no objection, is proper and has a very limited scope. In fact, the definition of the term "Communication" in Petitioner's Interrogatories is almost identical to the definition propounded by WMII in another matter pending before the IPCB. *See Exhibit A*, attached). As respects WMII's objection that Interrogatory No. 3 exceeds the allowable number of Interrogatories, WMII is simply wrong: 3 is nowhere near 30.
- b. WMII alleges Interrogatory No. 3 "seek[s] information relating to alleged prejudgment of adjudicative facts or fundamental unfairness. . ." concerning issues raised in Petitioner's IPCB Amended Petition and, in order to be able to engage in such discovery, Petitioner must present "evidence of pre-filing collusion or judgment." Without waiving Petitioner's response to the basis of WMII's objection (which is addressed later in this Response), this objection is misplaced with Interrogatory No. 3, as Interrogatory No. 3, is more in line with a procedural interrogatory, such as Nos. 1-2, and makes no specific reference to seeking "prejudgment" information.
- c. Likewise, WMII's general objection numbers 3 (SWMP), 4 (Host Agreement), and 5 (statutory criteria) are misplaced as objections to Interrogatory No. 3.
- d. Finally, WMII objects to Interrogatory No. 3 on the basis of "attorney-client privilege", "attorney work-product doctrine", or "any other applicable privilege or protection." As an initial matter, a party must raise a specific privilege as an objection and an objection based on "any other applicable privilege or protection" is not proper. As respects "attorney-client privilege" and "work-product doctrine," it is not Petitioner's intent to seek discovery or legitimately privileged information and Petitioner seeks an answer to Interrogatory No.3 subject to Illinois Supreme Court Rule 201(n).

- e. Therefore, WMII's objections to Interrogatory No. 3 should be overruled and WMII should be required to answer Interrogatory No. 3, subject to Illinois Supreme Court Rule 201(n).

Response to Objection to Interrogatory No. 5

4. Interrogatory No. 5 essentially seeks identification of Persons involved in the negotiation of the Host Agreement and information concerning their role in those negotiations. WMII's objections to both this and several other Interrogatories focus on two theories. **First**, that, since the host agreement is legislative, it is not reviewable by the IPCB and, thus, WMII alleges Petitioner cannot conduct discovery into the negotiations of that agreement. **Second**, that Section 40.1(b) prohibits the IPCB from reviewing anything outside the record before the Kankakee County Board. WMII misapplies the law to fit its objection.

5. Neither Interrogatory No. 5 nor Petitioner's Amended Petitioner seek to have the host agreement, itself, reviewed by the IPCB. The Interrogatory properly seeks identification of the Persons involved in the negotiation of the host agreement, and the role of those Persons, as that information may lead to admissible evidence concerning *ex parte* communications, prejudgment, or bias. This information is solely in the control of Respondents, WMII and the County and County Board, as any meetings or communications which were improper are not likely to be held out in the public for everyone to see. Additionally, although the IPCB "generally confines itself to the record developed by the municipality", it "will hear new evidence relevant to the fundamental fairness of the proceedings were such evidence necessarily lies outside of the record. County of Kankakee. et al. v. The City of Kankakee. et al., PCB 03-31 (consolidated with 03-33, 03-35), p. 4-5 (01/09/03). In the County of Kankakee appeal of a siting decision by the City of Kankakee, the IPCB specifically allowed admission (opposed to discovery, which is a broader and more flexible

standard) of evidence concerning the City's negotiations of a host agreement with the siting applicant. See, County of Kankakee at p. 4 (discussion of pre-filing contacts).

6. Given that information concerning host agreement negotiations was allowed to be admitted in the County of Kankakee case, the discovery of who negotiated the host agreement and the role(s) of those persons, whether or not ultimately admissible in this case, is relevant and legitimate discovery. Therefore, WMII's objections should be overruled and it should be required to answer Interrogatory No. 5.

Response to WMII Objections to Interrogatory No. 6

7. Interrogatory No. 6 seeks identification of the Persons who drafted the host agreement and what portions of the agreement those Persons drafted. WMII objects to Interrogatory No. 6 for the same two reasons it objects to Interrogatory No. 5. Petitioner incorporates his Response to WMII's objections to Interrogatory No. 5 as and for his Response to the objections to Interrogatory No. 6, and requests that WMII's objections be overruled and that WMII be required to answer Interrogatory NO. 6.

Response to WMII Objections to Interrogatory No. 7

8. Interrogatory No. 7 seeks the dates on which WMII or its affiliates, parents or their officers or employees submitted drafts or the final property value protection plan which is attached as an Exhibit to the Host Agreement. This is a simple interrogatory which helps place a time frame around the host agreement property value protection plan negotiations. This is relevant to Petitioner in its review of *ex parte*, prejudice, and bias, in order to put into perspective the relationship communications between the County and WMII had on an exhibit to the host agreement which is of significance to fundamental fairness issues raised in more than one way and in more ways than simply *ex parte* communications.

9. For example, Petitioner states in its Amended Petition that the property value protection agreement was not included in the application purchased by Petitioner and held by every one of the public participants and even the Hearing Officer. If, the date on which the subject exhibit was submitted to the County is, in fact, after the date of the "filing" of the subject siting application, then that information legitimately supports the fundamental fairness issue raised by Petitioner concerning this Exhibit. Therefore, Interrogatory No. 7 is relevant and specifically calculated to lead to admissible discovery, WMII's objections should be overruled, and WMII should be directed to answer Interrogatory No. 7.

Response to WMII Objections to Interrogatory No. 8

10. Along the same lines as Interrogatories No. 5 and 6, Interrogatory No. 8 seeks additional information concerning communications which took place concerning the Host Agreement. Interrogatory 5 seeks Persons who negotiated, 6 seeks Persons who drafted, and 7 seeks Persons who Communicated concerning the agreement. Therefore, for the same reasons the objections to Interrogatory Nos. 5-6 should be overruled, so to should the objections to Interrogatory No. 8 be overruled. Additionally, outside the timeframe of the host agreement negotiations, Interrogatory No. 8 seeks communications about the host agreement, for example, if any such communications occurred during the pendency of the siting application. This is to avoid a situation in which, although the host agreement is a part of the siting application, the respondent to an interrogatory seeking disclosure of communications between the applicant and the County Board during the pendency of a siting application, can avoid answering such an interrogatory as such a communication may have involved the substance of the host agreement or any proposed amendment thereto, rather than, *per se*, the siting application. Such communications are *ex parte* and Petitioner has a right to inquire as to their occurrence and substance. See, County of Kankakee.

et al., v. The City of Kankakee, et al., PCB 03-31 (consolidated with 03-33, 03-35) (01/09/03).

Therefore, for this additional reason, WMII's objections to Interrogatory No. 8 should be overruled and WMII should be required to answer this Interrogatory.

Response to WMII Objections to Interrogatory No. 9

11. Interrogatory No. 9 seeks identification of communications between WMII and certain, identified persons or groups of persons, during a defined time frame. WMII objects to this Interrogatory as being overly broad, unduly burdensome, as seeking information concerning prejudice or bias when it contends no specific acts of prejudice or bias have been alleged by Petitioner, to the extent this Interrogatory seeks information concerning specific statutory criteria, and as being in excess of the 30 interrogatory limit. The type of discovery sought in this Interrogatory is permissible pursuant to County of Kankakee, et al., v. The City of Kankakee, et al., PCB 03-31 (consolidated with 03-33, 03-35) (01/09/03), and the general and well-established law requiring a larger standard governing the breadth of discovery than the standard used for admissibility. See, IL S.Ct. Rule 201(b)(1) and D.C. v. S.A., et al., 178 Ill. 2d 551; 687 N.E.2d 1032 (S.Ct. 1997). Additionally, the Interrogatory seeks *ex parte* communications or information that will lead to discoverable or admissible evidence concerning *ex parte* communications, in addition to bias and prejudice, which WMII fails to address in its objection. Therefore, WMII's objections with respect to breadth and burden, and its objection alleging a requirement that specific acts be at issue, should be overruled.

12. Further, the fact that no specific fundamental unfairness was alleged was at issue in another discovery dispute concerning interrogatories in the case Waste Management of Illinois, Inc. v. County Board of Kane County, PCB 03-104, and, even though the Petitioner did not

allege, in that case, any specific acts of prejudgment, bias or *ex parte* communications, it was allowed to seek discovery on a similar topic. *See, Waste Management of Illinois, Inc. v. County Board of Kane County*, PCB 03-104, Order dated March 12, 2003. Petitioner's Amended Petition, in this case, specifically outlines and identifies fundamental fairness issues on appeal, to which this Interrogatory is relevant.

13. Finally, as respects WMII's objection that Interrogatory 9 exceeds the allowable, 30 interrogatories, WMII's objection must fail. Interrogatories with subparts that relate to and further specify the main interrogatory are not counted as separate interrogatories. For example, in the Illinois Supreme Court approved form interrogatories, many of these interrogatories have subparts, which if counted as individual interrogatories would exceed the 30 allowable interrogatories. *See*, form Motor Vehicle Interrogatories to Defendants, Nos. 7 and 9; form Matrimonial Interrogatories, Nos. 4, 6-10, 12-20. WMII makes no objection or argument that the subparts of the individual Interrogatories which it contends exceed the 30 allowable number are unrelated to the main Interrogatory. Therefore, WMII's objection on this ground must also be overruled and WMII should be directed to answer the Interrogatories to which this objection is made, including but not limited to Interrogatory No. 9.

Response to WMII Objections to Interrogatory Nos. 10 -12

14. WMII makes the same objections to Interrogatory Nos. 10-12 as previously addressed in this Response. Since WMII's objections are the same as those objections addressed previously in this Response, Petitioner relies on and incorporates its Responses to those objections, above, as and for its Responses to WMII's objections to these Interrogatories. Therefore, the objections by WMII should be overruled, and WMII should be required to answer Interrogatory Nos. 10-12.

Response to WMII Objections to Interrogatory No. 13

15. WMII makes the same objections to Interrogatory No. 13 as previously addressed in this Response. Additionally, however, WMII objects to Interrogatory No. 13 alleging that the phrase “concerning or relating to the development of a landfill expansion, at within or adjacent to the site that was the subject of the Siting Application” is vague and ambiguous, without stating, specifically, what portion of that phrase WMII does not understand. The phrase is plain and concise, formulated with readily understandable words. It is relevant as any discussions concerning a landfill expansion at or adjacent to the site which was the subject of the Siting Application, is, arguably, and depending on the timeframe of such communication, an *ex parte* communication, even though the “Siting Application” *per se*, may not have specifically been discussed. Therefore, this objection from WMII should be overruled.

16. Additionally, as respects the remainder of WMII’s objections to this Interrogatory, since they are the same as those objections addressed previously in this Response, Petitioner relies on and incorporates its Responses to those objections, above, as and for its Responses to WMII’s objections to these Interrogatories.

Response to WMII Objections to Interrogatory Nos. 14-17

17. WMII makes the same objections to Interrogatory No. 14-17 as previously addressed in this Response. Since WMII’s objections are the same as those objections addressed previously in this Response, Petitioner relies on and incorporates its Responses to those objections, above, as and for its Responses to WMII’s objections to these Interrogatories. Therefore, the objections by WMII should be overruled, and WMII should be required to answer Interrogatory Nos. 14-17.

Response to WMII Objections to Interrogatory No. 18

18. WMII objects to Interrogatory No. 18, which seeks identification of those documents which were physically filed on "August 16, 2003" with the County, on the basis that the typographical error which occurred in the date "August 16, 2003" makes the Interrogatory vague and on its repeated basis that Interrogatory No. 18, exceeds the number of interrogatories allowed to be served. Clearly WMII understands that the August 16th date was intended to reference "August 16, 2002" rather than 2003, not only because it is logical, but also because, if it didn't see that date error as an error, it would not have stated in its objections that the Interrogatory "identifies a filing date." Petitioner herein amends its Interrogatory No. 18 to state August 16, 2002, rather than August 16, 2003, and asks that WMII objection be overruled. Further, with respect to WMII's quantity of interrogatories objection, Petitioner repeats and incorporates the relevant portion of its Response to objections to Interrogatory No. 9 (Paragraph 13), as and for its Response to this objection to Interrogatory No. 18.

Response to WMII Objections to Interrogatory No. 19

19. Interrogatory No. 19 seeks identification of WMII's defenses to the fundamental fairness issues identified in Petitioner's Amended Petition. WMII objects to such disclosure on the basis that "legal defense strategies" are not subject to disclosure and that the Interrogatory seeks "attorney-client privilege" and "work-product doctrine" information. WMII also objects to this Interrogatory as it alleges it exceeds the 30 allowable number of interrogatories. WMII's objections must fail, as the Interrogatory does not seek "strategies" of counsel, it seeks identification of defenses. This is a common place interrogatory and is substantiated by Illinois Supreme Court approved, form interrogatories, which similarly, seek information concerning the defense of a case. For example, in the form Medical Malpractice Interrogatories, numbers 6 and 7, a plaintiff seeks

identification of all medical publications, journals, rules, regulations, and other materials, which a defendant intends to use in defense of a complaint. Similarly, Illinois Supreme Court Rule 201(b)(1) requires "full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense. . .". Finally, WMII cites no case law, rule or law in support of its objection. Therefore, WMII's objections to this Interrogatory should be overruled, and WMII should be directed to answer.

20. Alternatively, if the Hearing Officer believes the wording of Interrogatory No. 19 can be construed (although not the intent of the drafter) to seek "legal defense strategies," Petitioner requests leave to amend, *instanter*, the Interrogatory to read: "Identify and describe each and every fact supporting WMII's defense of the fundamental fairness issues itemized in Petitioner Watson's Amended Petition for Review of Siting."

21. WMII additionally objects to this Interrogatory as exceeding the allowable number of interrogatories. Petitioner repeats and incorporates the relevant portion of its Response to objections to Interrogatory No. 9 (Paragraph 13), as and for its Response to this objection to Interrogatory No. 19. Therefore, WMII's objections should be overruled and WMII should be required to answer Interrogatory No. 19.

Response to WMII Objections to Interrogatory Nos. 20-23

22. WMII objects to Interrogatory Nos. 20-23 on the sole ground that they allegedly exceed the allowable number of interrogatories. Petitioner repeats and incorporates the relevant portion of its Response to objections to Interrogatory No. 9 (Paragraph 13), as and for its Response to this objection to Interrogatory Nos. 20-23. Therefore, WMII's objections should be overruled and WMII should be required to answer Interrogatory Nos. 20-23.

Response to WMII Objections to Interrogatory No. 24

23. Interrogatory No. 24 seeks identification of every Person who signed a report or any portion of the Siting Application. WMII objects alleging that the Interrogatory seeks information related to the statutory criteria and that it exceeds the allowable number of interrogatories.

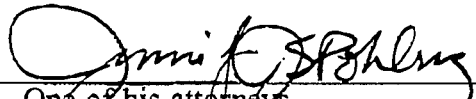
24. Seeking identification of the individuals who signed portions of the application is not seeking information concerning the criteria. It is relevant to Petitioner's disclosed fundamental fairness issue identified in Paragraph 10.E. of Petitioner's Amended Petition for Review (the opening sentence of that subparagraph states: "The public hearings were not fair, due to unavailability of WMII's witnesses who had substantial input in the preparation of the siting application and its Criteria-specific reports."). Therefore, WMII's objection should be overruled. Alternatively, to the extent leave is needed at this time, Petitioner should be granted leave to propound requests to admit to WMII on this subject matter.

25. Finally, as respects WMII's objection on the ground that Interrogatory No. 24 exceed the allowable, 30, number of interrogatories, Petitioner repeats and incorporates the relevant portion of its Response to objections to Interrogatory No. 9 (Paragraph 13), as and for its Response to this objection to Interrogatory Nos. 20-23. Therefore, WMII's objections should be overruled and WMII should be required to answer Interrogatory No. 24.

WHEREFORE, Petitioner Michael Watson respectfully requests the IPCB Hearing Officer to overrule WMII's objections, and require WMII to answer the subject Interrogatories.

Dated: April 11, 2003

PETITIONER MICHAEL WATSON

By: 
One of his attorneys

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Document #: 818623

Transfer Facility. That Application was filed February 13, 2002. Until that Application was withdrawn in May, 2002, due to an alleged lack of notice, the request was pending before the Kane County Board, to which all governing, procedural and fundamental fairness rules applied. County Board members were required to abide by those rules, including the limitations on prejudgment and ex parte communications.

3. The February 14 Application was in all material respects the same as the Site Location Application filed June 14, 2002. The same procedural rules applied to both. Actions of Kane County Board members governed by these rules occurring from January 2002 to June 13, 2002, would very likely affect the fairness of the siting proceedings on the same Application occurring from June 14, 2002 to December 10, 2002. At a minimum, such actions may in some way reasonably relate to the fairness of the proceedings. Thus, interrogatories that seek facts covering the January 2002 - January 2003 time frame are properly requesting relevant facts or facts that may lead to the discovery of relevant information. 35 Ill. Adm. Code §101.616(a).

Objection to Definition H.

4. Respondent objects to the time period for answering the interrogatories as overbroad and burdensome. In addition, Respondent argues that any time frame prior to June 14, 2002, is burdensome because any such pre-filing discussions would not be ex parte.

5. As stated above, the siting process for the Woodland Transfer Facility commenced in January, 2002. Discussions or communications relating to facts or information relevant to the Site Location Application would likely have occurred at any time after formal commencement of the siting process in January 2002. In any event, the interrogatories seeking

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communications during the January 2002 - January 2003 time frame are reasonably calculated to lead to the discovery of information relevant to fundamental fairness, including prejudgment, ex parte communication and evidence dehors the record. 35 Ill. Adm. Code §101.616(a).

Communications prior to June 14, 2002, may relate directly to these fundamental fairness issues. Moreover, communications after December 10, 2002, may refer or relate to prior contacts or information that concern fundamental fairness. This is particularly true where, as here, a number of County Board members were sworn in the same day they voted on the Site Location Application - December 10, 2002.

6. Respondent further contends that the time frame is overly broad for these County Board members who were citizens until they were sworn in on December 10.

7. The requirements of fundamental fairness apply to every County Board member who votes on the siting request. The rule that the County render on adjudicative decision, without prejudgment or inappropriate ex parte contacts, applies to all County Board members who vote as decisionmakers, regardless of when they take office. County Board members who literally appear at the last moment to vote on a siting request are not excused from the strictures of fundamental fairness.

Objection to Interrogatory No. 2.

8. Respondent objects to Interrogatory No. 2 because it requests attorney-client communications.

9. Ms. Sackett-Pohlentz represented the County and County Staff during these proceedings. She did not represent the decisionmaker, the Kane County Board. Her

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representation of County Staff began no later than February 13, 2002, and continued through her preparation of the "County Review Team's Summary of the Siting Proceedings" and the December 10 vote of the Kane County Board. In fact, the Kane County Rules of Procedure for New Regional Pollution Control Facility Site Approval Applications prohibited any communication between Ms. Sackett Pohlenz and the Hearing Officer and the Director of the County Department of Environmental Management, both of whom advised the Kane County Board. See Kane County Ordinance No. 01-281, Sections 11-104, 11-105(d)(11)(f)(5). Thus, the communications requested would not involve privileged attorney-client communication.

10. Respondent further objects to Interrogatory No. 2 because it requests communications between County Board members.

11. Discussions or communications between or among County Board members may be particularly relevant to issues of prejudgment, inappropriate ex parte contacts with non-County Board persons and facts dehors the record. This is especially true here where five County Board members voted on the siting request the same day they were sworn in as County Board members. Requiring answers to this interrogatory will not "chill" appropriate discussions among County Board members regarding the siting request. The interrogatory is important, however, to discovery communications that may implicate fundamental fairness, such as discussions with constituents and information obtained or conveyed outside the record.

12. Respondent repeats its earlier objection that County Board members sworn in December 10 are not bound by the rules prohibiting ex parte communications, and hence should not have to answer in a time frame that precedes their swearing in. Thus, Respondent contends

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that the appropriate time frame for these County Board members is one day - December 10 - the day they were sworn in and voted on the siting request.

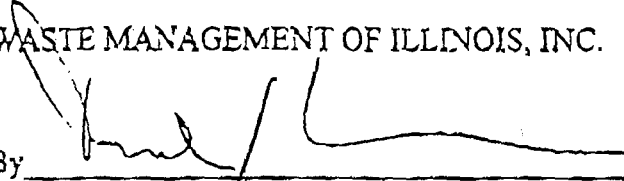
13. For the reasons set forth in paragraphs 5 and 7 above, Respondent's objection is without merit. Decisionmakers, regardless of when they take office, are required to comply with the principles of fundamental fairness. By voting on a siting request, a County Board member is obligated to adjudicate in a fundamental fair manner, which includes no prejudgment or inappropriate ex parte contacts. The interrogatory is designed to obtain facts or information relevant to these fundamental fairness issues.

14. Interrogatories that seek relevant information or are reasonably calculated to lead to the discovery of such information are proper. Information that refers or relates to prejudgment of the siting request, ex parte communications, and evidence outside the siting record is relevant, and thus discoverable, in this appeal. Such relevant information includes pre-filing communications. County of Kankakee v. City of Kankakee, No. PCB 03-31, slip op. at 5 (January 9, 2003). Respondent's objections should be rejected and Respondent should be required to answer the interrogatories by March 10, 2003.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By


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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
Application)

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

**MICHAEL WATSON'S RESPONSE BRIEF IN OPPOSITION TO WASTE
MANAGEMENT OF ILLINOIS, INC.'S MOTION TO QUASH SUBPOENA ISSUED TO
PATRICIA BEAVER-McGARR, JEREMY R. WALLING & INTEGRA REALTY
RESOURCES**

Now comes the Petitioner, MICHAEL WATSON, by and through his attorneys, QUERREY & HARROW, LTD., and in response to WASTE MANAGEMENT OF ILLINOIS, INC.'S Motion to Quash the *subpoena* issued to Patricia Beaver-McGarr, Jeremy R. Walling and Integra Realty Resources, alleges and states as follows:

1. MICHAEL WATSON has filed an Amended Petition For Review of The Decision by the County Board of Kankakee concerning siting of a new Pollution Control facility. One of the bases of the Petition is that the local siting review procedures, hearings, decisions and process were fundamentally unfair.

2. The Petitioner caused a *subpoena* to be issued and served upon Patricia Beaver-McGarr, Jeremy R. Walling and Integra Realty Resources in a timely manner.¹

3. Patricia Beaver-McGarr was called by the Applicant/Respondent to testify concerning 415 ILCS 39.2(iii) requiring Applicant to establish that the proposed facility

has been located to minimize the affect on the value of the surrounding property. During cross-examination, it was established that Ms. Beaver-McGarr has used various CVs wherein the information concerning her credentials varies. It was brought into question as to whether she ever obtained a degree from Daley College. There was cross-examination on this issue. During cross-examination, Respondent/Applicant's attorney represented that Ms. Beaver-McGarr did in fact obtain a degree and that it would produce the degree or in the alternative produce her for further examination. (11/20, 9:00a.m., Tr. 15-16). Respondent/Applicant's attorney did not produce the degree as represented and promised nor did it produce Ms. Beaver-McGarr for further cross-examination as represented and promised.

4. The Petitioner and all participants involved in the hearings are entitled to full and complete cross-examination on all relevant matters especially as to an expert's purported credentials. It is clear, uncontradicted and uncontroverted that the Petitioner and all other participants were not afforded an opportunity to fully and completely cross-examine Ms. Beaver-McGarr. If the Petitioner was allowed to perfect its impeachment and establish that Ms. Beaver-McGarr had perjured herself, additional cross-examination would have been conducted into additional areas including but not limited to what extent the report and purported underlying basis was in fact her work product. As a result, the hearing was fundamentally unfair.

5. The framework and rules governing discovery on matters pending before the Pollution Control Board are contained in 35 Ill. Adm. Code Section 101.616 *et seq.* Section 101.616(a) sets forth the scope of discovery and provides in pertinent part, "all

¹ Pursuant to order, the Respondent was required to serve all objections to discovery by fax on or before noon on April 10, 2003. Respondent did not attempt to serve the Motion to Quash until approximately

relevant information and information calculated to lead to relevant information is discoverable". 35 Ill. Adm. Code Section 101.616(a). Furthermore, ultimate use and admissibility is irrelevant. Section 101.616(e) specifically provides "it is not a ground for objection of the testimony of a deponent or person interrogated will be admissible at hearing, if the information sought is reasonably calculated to lead to relevant information". 35 Ill. Adm. Code Section 101.616(e).


6. In essence, the *subpoena* served upon Patricia Beaver-McGarr, Jeremy R. Walling, and Integra Realty Resources seeks production of the Integra "job file". Each of the three were subpoenaed to avoid any issues as to who has custody of said file. The file may contain relevant information including but not limited to Ms. Beaver-McGarr's credentials or lack thereof and whether the report and bases of the report were the product of Ms. Beaver-McGarr, Integra or was obtained from some other source.

7. It is clear that the Petitioner and other participants in the Public Hearing did not have full and fair opportunity to cross-examine Ms. Beaver-McGarr. The Applicant/Respondent wants the Petitioner to explain how the contents of that file will aid in establishing the fundamental fairness argument without the Petitioner having an opportunity to review the file. Ultimately, the contents of the file may not be of any benefit and/or inadmissible however, that is not the test. The test is whether the file contains relevant information or information which may lead to the discovery of relevant information. The Respondent has failed to assert any privilege as to the contents of the file as a privilege does not exist. The request is not burdensome as the file need only to be turned over to a copy service for reproduction at Petitioner's expense.

12:37 p.m. on April 10, 2003 and therefore, is untimely and should be stricken.

WHEREFORE, the Petitioner, MICHAEL WATSON, prays that Respondent's Motion to Quash be denied or for such other relief deemed appropriate. In the alternative, Petitioner suggests, if deemed necessary, the subpoena be limited to any and all correspondence and communications between deponent Patricia Beaver-McGarr and WMII.

Respectfully submitted,
QUERREY & HARROW, LTD.,

By: 
Attorneys for Petitioner

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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
Application)

(Consolidated With PCB 03-125, 03-
133, 03-135, 03-144)

PETITIONER MICHAEL WATSON'S RESPONSE TO
COUNTY BOARD OF KANKAKEE'S
OBJECTIONS TO WATSON'S INTEROGATORIES

NOW COMES, Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., and pursuant to the rules of Illinois Supreme Court and the Illinois Pollution Control Board (IPCB), provides the following Response to Respondent County Board of Kankakee's Objections To Petitioner Michael Watson's Interrogatories:

Introduction

1. The County Board of Kankakee (County) objects to the definition of Relevant Time and Interrogatory Nos. 5-14 and 24-25. The objection to the timeframe is addressed separately from the remaining objections, below.

2. As respects the County's assertion that the timeframe of the Interrogatories is overly broad, the timeframe defined in the Interrogatories is from August 1, 2001 to February 28, 2003. This is less than two months prior to the adoption of Resolution 01-10-09-393 by the County and County Board, which Resolution purports to amend the Solid Waste Management Plan of the County to specifically reference the Facility and WMII as the operator. This specific

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reference, not the process the County went through in passing the Resolution, is evidence of prejudgment and, as such, is an issue on which discovery is allowable. Further, there were two siting applications filed by WMII in this case, one on or about March 29, 2002, and the other on or about August 16, 2002. The first application was withdrawn by WMII due to a notice defect. Therefore, a timeframe that encompasses the pre-March 29, 2002 siting application, is, under previous applications of the County of Kankakee, et al. v. The City of Kankakee, et al., PCB 03-31 (consolidated with 03-33, 03-35) (01/09/03), and in discovery rulings in the Waste Management of Illinois, Inc. v. County Board of Kane County, PCB 03-104, case, an acceptable timeframe which is not unduly burdensome or broad for discovery purposes. Thus, the County's objection to the timeframe should be overruled.

3. Additionally, to the extent the County asserts that communications between its two outside law firms, Swanson, Martin & Bell and Hinshaw & Culbertson, are confidential or privileged communications, such objection must be overruled as respects the timeframe during which either of the two Siting Applications filed by WMII before the County were pending (specifically, between the initial filing date on or around March 29, 2002 and the date the initial application was withdrawn by WMII, on July 22, 2002, and then, again, during the pendency of the second siting application, between its filing date on or around August 16, 2002 and the decision date of the County on January 31, 2003), as these firms represented different "clients" during this period of time and were barred by the rules of *ex parte* from communications during the pendency of the proceedings. Swanson, Martin & Bell represented the County Board and the County Regional Development & Planning Commission, and Hinshaw & Culbertson stated its representation to be of the County staff (Tr. 11/18/03, 1st

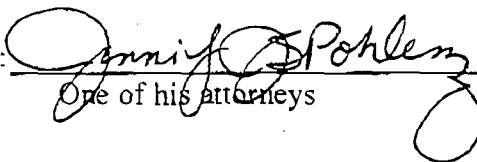
session, p. 15-16). Therefore, to the extent such objection is raised with respect to the timeframes during which a siting application was on file, it must be overruled, as during those periods of time the two law firms represented technically different entities and were subject to *ex parte* communication restrictions.

4. Finally, as respects the County's remaining objections, they overlap and repeat the objections made by WMII to Petitioner's Interrogatories and Document Production Requests, and, therefore, given the short timeframe Petitioner has to respond to these objections, Petitioner repeats and incorporates its Responses to WMII's Objections to Petitioner's Interrogatories and Document Production Requests as and for its Response herein.

WHEREFORE, Petitioner Michael Watson respectfully requests the IPCB Hearing Officer to overrule the County's objections, and require the County to answer the subject Interrogatories.

Dated: April 11, 2003

PETITIONER MICHAEL WATSON

By: 
One of his attorneys

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