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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD.  
CITY OF KANKAKEE ,

JUL 2 2003

Petitioner

Vs.

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

Respondents

MERLIN KARLOCK,

Petitioner

Vs.

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

Respondents

MICHAEL WATSON

Petitioner

Vs.

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

Respondents

KEITH RUNYON

Petitioner

Vs.

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

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

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

PCB 03-134  
(Third Party Pollution Control  
Facility)

PCB 03-135  
Third Party Pollution Control Facility  
Siting Appeal

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**Petitioner Keith Runyon's Final Brief and Response to Briefs of Waste Management and County of Kankakee Before the Illinois Pollution Control Board.**

Both the County and the Applicant have opted to answer obvious non-compliance with the County's Solid Waste Management Plan by either the arguing outside the record, by resorting to selective relativism or by attempting to shift the burden of proof to the petitioner. The burden clearly rests with the Applicant and the County which they chose not to accept in their Rush For Riches. Compliance would have delayed anticipated revenues.

The four conditions of the County's Solid Waste Management Plan were pillar conditions in the original plan and have remained in tact through five subsequent amendments to the plan: (*Runyon Br. at 4-5*)

1)A site should not be located above or near a groundwater recharge zone or a heavily utilized water supply aquifer. (*Pg 330 County Solid Waste Management Plan*)(*Runyon Br. at4*)

2)Public involvement is crucial throughout the landfill selection process and should solicited from the initial stages of the process. Through solid waste advisory committees, public hearings, etc., local criteria should be developed to identify a site that reflects the concerns of the public. (*Pg. 334 County Solid Waste Management Plnn*)(*Runyon Br.at4*)

3)Prior to granting of a siting approval pursuran to Section 39.2 of the Illinois Environmental Act, a host-benefit fee shall be established with the Applicant. (*Pg. 344 County Solid Waste Management Plan(- Runyon at 4 )*)

4)The owner or operator of a proposed new landfill or landfill expansion in the County shall be required to establish a Property Value Guarantee Program for all households within a site specific distance from the proposed landfill site. Such Property Value

Guarantee Program to be prepared by an independent entity satisfactory to the County. (Pg. 345, *County Solid Waste Management Plan*)-(Runyon Br. .at 5)

**1)Petitioner Runyon’s response to Waste Management Response Brief.**

7. Criterion 8: The Expansion Is Consistent With The Kankakee County Solid Waste Management Plan. (*Moran pg. 69 Response Brief*)

Mr. Moran has brought arguments and case citations which are not a part of the original record. His references to *Lakes v. Randolph County PCB 99-59*, slip op at 31-32 and *City of Geneva v. Waste Management of Illinois, Inc. PCB 94-58*, slip op, and the arguments they purport to support, are not a part of the record and are inadmissible.

**a) *Moran Br. at pg 69*) “Their arguments are based on a misreading of the County Plan and therefore without merit”.**

“The first contention is that the County Plan prohibits a siting above a heavily utilized water supply aquifer. (*Karloek Br. At 36,; Runyon Br. 5-9*) The County Plan contains no such prohibition. The language of the Plan states that “(a) site should not be located above or near a groundwater recharge zone or a heavily utilized water supply aquifer.” (*Offer of proof, Watson IPCB Hearing exhibit 7, p. 300.*)”

The foregoing argument and the offer of proof were not a part of the hearing record. The Offer of Proof was presented during the Appeal Hearing and is inadmissible.

Moran goes on to say that “ This Board has held that the use of “should” in the County plan does not establish a mandate or requirement”( *Moran, response brief pg. 70*)

This argument was not presented during the hearing, is not on the record and inadmissible.

Mr. Moran argues that “should” is not mandatory and yet this provision of the plan has remained through five amendments to the County Solid Waste Management Plan.

The fact that the County has chosen not to remove this provision from its plan indicates the intent of the County of this provision to make the provision prohibitive.

The Applicant failed to produce a single witness from the County to indicate that this provision of the plan is meant to be only a recommendation and not absolute.

If the argument is that "should" cannot be construed to be a prohibitive term, it then follows that the term "preferred" as used to describe a waste processing facility, as proposed by the Applicant for the county, can only be deemed to be "recommended" and not mandated. In this case Ms. Smith's analysis of the Application's compliance with the Solid Waste Plan is open to serious question since there is nothing mandating a landfill as the means for processing garbage. It therefore follows that Ms. Smith cannot assume that Applicants proposed landfill complies with the Solid Waste Plan because the word "preferred" is not absolute.

**a)Mr. Moran further argues that prohibiting a landfill over an heavily utilized water supply aquifer means that no landfill would be sited in the County.** (*Moran Br. at 70*) This may very well be true that is not what the Solid Waste Management Plan Condition says. He produced no witness or testimony during the hearing to dispute the intent of this pillar condition. Failure to produce witnesses or testimony to refute the validity of this plan condition clearly indicates the Applicant's unwillingness or inability to assume its burden of proof on this issue.

The burden is on the Applicant to meet the conditions of the plan. However, it was pointed out during the testimony that the proposed landfill is planned at a site among the two worst sites for a landfill in the County as defined by the Illinois Geological Survey. Never denied by the applicant. (*Runyon Tr. At 6.*) This site specific analysis says only that this and the City's proposed site are the two worst sites that could be chosen in the County. It does not rule out other sites in the County.

Witness Norris also told the hearing that the proposed facility is located right above the aquifer which provides the water supply for the Kankakee Metropolitan Area. (*Runyon Tr. At 7*) Never denied by the Applicant.

**b)Mr. Moran argues that the Applicant complied with the Solid Waste Management Plan's requirement for an independently prepared property value guarantee program because the County entered into a Host Fee Agreement which purportedly contained a Property Value Guarantee Program. (Moran , Response Brief pg 70)**

A review of the record reveals that there was no such property value program attached to the Host Fee Agreement. That program was submitted later, By Waste Management to the County Chairman and was never accepted or passed by the Board as a whole. The Property Value Program was written by Waste Management-a fact never denied by the Applicant. (*Runyon Br. at 21*) Therefore the Applicant failed to meet this condition of the County Solid Waste Management Plan.

The Applicant never denied that an independently prepared program is required by the Solid Waste Management Plan. (*Moran Response Brief, pg 70*) Yet the language of this condition is unmistakable in its intent: "The owner or operator of a proposed new landfill or landfill expansion in the County SHALL BE REQUIRED to establish a Property Value Guarantee Program for all households within a site specific distance from the proposed landfill site. Such Property Value Guarantee Program to be prepared by an independent entity satisfactory to the County. (*Runyon Br. at 20*). The word "shall" makes this provision mandatory. Applicant failed to comply with this provision of the Solid Waste Management Plan.

Applicant never denied nor took issue with this argument during the Hearing, therefore this is new argumentation outside the record.

**c)Mr. Moran argues that there was a valid Host Agreement in effect on August 16, 2002. His argument is groundless.** As clearly outlined in petitioner's preliminary brief, the Host Fee Agreement was withdrawn when the original application was withdrawn on July 22, 2002. The previously signed Host Agreement terminated on that date and neither a new agreement was signed and approved , nor did the County proffer an written extension of the previous agreement as required in the expired agreement. (*Runyon Br. at 16*) In the interim no agreement was on file after the original application was withdrawn as required by the Host Agreement which states " "If Waste Management

does not it siting application and absent the County's consent in writing to an extension of the filing deadline for good cause shown, this agreement shall become null and void. " for good cause the expanded facility on or before June 1, 2002 unless the County consents in writing to an extension of this period for good cause. No such extension was granted. (*Runyon Br. at 17*)

No extension was ever filed and neither the Applicant nor the County denied this during the hearing.

Mr. Moran's claim that the County Solid waste plan does not require a Host Agreement to be in place prior to a siting hearing, is utterly groundless and an exercise in semantic obfuscation. "The County Plan states that prior to "The Host Community Agreement should be signed prior to submitting a siting application pursuant to 39.2 of the Illinois Environmental Protection Act. Further: prior to granting a siting approval pursuant to 39.2 of the Illinois Environmental Act, a host -benefit fee **agreement SHALL be established with the APPLICANT.** (*Pg 334 County Solid Waste Management Plan, Runyon Br. at 4*) -(*Runyon Br. at 15*)

The word "shall" destroys Mr. Moran's argument that: "This application does not require the applicant to enter into a host agreement with the County" (*Moran Br. at 71*) This argument is outside the record and therefore inadmissible but it is also not valid. This condition of the Solid Waste Plan is unequivocal in its intent. The Plan requires as shown that the word **SHALL** dictates that a Host Benefit agreement be established prior to the siting hearing.

the Applicant has failed to accept and to deliver its burden of proof that his application complies with the Plan on this clearly defined condition. Furthermore the argument brought forward in his brief goes beyond the scope of the record.

**d)Mr. Moran denies the contention that the applicant failed to comply with the Solid Waste Plan Provision requiring public involvement in the site selection from the beginning of the process.** Again he argues "should" versus the content of the

provision. His argument here fails to deal with the real issue. This provision in its plain language is definitive about the initiation and progression of the site selection process.

The provision is venerable having remained in tact through five modifications of the Solid Waste Management Plan. (*Runyon Br. at 4*) Applicant never refuted this during the hearing therefore this is argumentation outside the hearing and is inadmissible.

Nonetheless, a review of this condition of the Plan reveals that the argument used by Mr. Moran is obfuscation by omission. Mr. Moran chose to focus on the word "should", whereas the more vital and controlling word of this condition of the Plan is "Crucial".

The wording of this condition is: 'Public involvement is **CRUCIAL** throughout the landfill site selection process and should be solicited from the initial stages of the process.' (*Runyon Br. at 4*) The New College dictionary defines Crucial as: **involving a final and supreme decision : decisive: critical.**

This word "Crucial" controls the intent of this condition of the plan and removes any doubt about the mandatory nature of this Plan Condition. The Applicant failed to comply with this crucial condition of the Solid Waste Management Plan.

**e) Conclusion:**

**Applicant has failed to show compliance with the Solid waste plan in it's response brief even though Applicant went beyond the scope of the record in it's response. Applicant presented virtually no evidence during the Hearing to evince compliance with the four aforementioned pillars of the Solid Waste Management Plan.**

**It was the Rush to Riches on the part of both the Applicant and the County that drove both parties to ignore the requirements of the County's Solid Waste Management Plan. This same Rush to Riches caused the Applicant and the County to cooperatively and secretly work to systematically lock the Public out of the site selection process. Both parties knew that adherence to the process would slow the process of approval.**

**For these reasons Petitioner Prays that the Pollution Control Board overturns the Siting awarded by the County of Kankakee to Waste Management of Illinois for a new Pollution Control Facility located in Otto Township in the County of Kankakee.**



**Petitioner further prays that the IPCB will order the Applicant and the County to comply fully with the conditions of the County's very effective and comprehensive Solid Waste Management Plan.**

**2)PETIONER RUNYON'S RESPONSE TO COUNTY OF KANKAKEE'S RESPONSE TO PETIONERS PRELIMINARY BRIEF.**

**Response to brief from Attorney's Helsten, Porter, and Harvey representing the County of Kankakee.**

**Attorney's for the County contend that the Ms. Smith, the witness for the applicant demonstrated compliance with the Solid Waste Management Plan by opining that "landfilling is the preferred disposal option; that the plan identifies the existing landfill as the preferred landfill. (*Helsten et al Br. at 57*)**

**This petitioner never took issue with this contention. Therefore this argument is moot from petitioners perspective.**

**That Ms. Smith has had 20 years of reviewing solid waste management plans only proves that she has a certain level of comprehension. It also indicates that she is astute enough to pick the battles she believes she can win. Witness Smith's selectivity in responding to only three plan conditions, is evidence that her reading of the Plan and the Application made her very aware of the Application's deficiencies in terms of Application Compliance with all the conditions of the Solid Waste Management Plan,**

**a)Ms. Smith addressed only one of the four conditions of the Plan which this petitioner contends were not met by the Applicant Hearing. That Condition being the requirement for a Host Agreement Prior to a siting hearing. (*Runyon Br. At 3*)**

( *Hesten et al at 58*) Argue that “Petitioner used the incorrect standard of review, asserting that the “preponderance of the evidence” demonstrates that the expansion is not consistent with the plan. The proper standard of review of the siting criteria is “manifests weight” not ‘ “preponderance of the evidence””.

Petitioner regrets the incorrectly selected “standard of review” Petitioner’s legal training is conspicuous by its apparent absence.

What I intended to say is that the bulk of the cross examination, testimony and cites by the attorney’s in the hearing far outweighed any evidence offered by the Applicant in terms of plan compliance. And further that the Applicant failed to establish it’s burden of proof on the compliance issues..

( *Helsten et al Br. at 58 –59*) Argue that “Further, the bulk of the information cited by Runyon in support of his claims are cites of statements of attorneys and objectors during opening and closing remarks, and during cross examination, are not evidence, and cannot be used to prove a particular position. The limitation is applicable to statements made by non-attorney objectors, such as Mr. Runyon, in the context of opening and closing statements, and examining witnesses. The IPCB should not consider any such non-evidentiary statements , cited by Mr. Runyon, as support for his arguments”.

This argument is irrelevant. Helsten et al, are fully aware that the Hearing officer denied Runyon access to any materials which are outside the record, during interrogatories, on the basis that compliance issues may be argued only from material on the record. (*Hearing Officer Halloran’s Order, April 17, 2003 at 3*)

In denying Runyon’s interrogatories, The Hearing office said:” Waste Management’s objections to Runyon’s interrogatories nos. 2, 3, 4, 5, 6, 7, 8 and 9 are sustained where the interrogatories appear to seek information outside of the record and therefore not relevant to Runyon’s petition for review. To the extent that some of the requests involve information in the record, Runyon has access to that information.” Further Helston and Porter filed a motion to deny Runyon access to all materials not in the original record, to the IPCB to (*Helsten & Porter Interrogatory Denial Request of April 07, 2003 at 2-5*). Their Motion Was Sustained.

The objection raises the flag on all respondent attorneys who are attempting to now bring in evidence and argumentation not in the original record. They failed to argue the points during the Hearing that they are not trying to argue in their briefs. To this extent, all such arguments and evidence is inadmissible by respondent attorneys. Furthermore the cites of Attorneys and objector are about all that is in the record because Applicant and County attorneys largely failed to defend against the charges of opposing attorneys and objectors.

**b)Argument that the Applicant had a valid Host Agreement is Place prior to the siting application is not an argument brought forth by the County during the Hearing. The argument is not now admissible. (*Helsten et al Br. at 60.* )**

This argument was dealt with in previous response to Waste Management at 4-5 *in this brief*) However it is very important to note that the County was uncertain it has a Valid host Fee Agreement by stipulating as a condition of siting that: "The landfill operator must comply with all obligations and responsibilities of the December 2001 Host Agreement between the County and Waste Management." Confidence that the County has valid Host Agreement would have rendered this action redundant. (*Helsten et al at 60*)

**c)Argument advanced to support the claim that the applicant provided a Property Guarantee program was not presented during the hearings by these attorney's and therefore their post hearing argument is not admissible.**

**Nonetheless the inadmissible argument does not deny petitioner's claim that the Property Value Guarantee Program fails to meet the Plan requirement for an independently prepared Program. (*Runyon Br. at 3*)** The inadmissible straw argument used by Helsen et al, fails to deal with the issue that the Program must be established by an independent party acceptable to the County. Instead Helsten et al argue that " Further the County Board again imposed a condition on siting, which requires that the landfill operator must employ independent appraisers acceptable to the County as part of the property value guarantee program".

This inadmissible argument only substantiates the Applicants non-compliance with this Condition of the Solid Waste Plan. The fact that Waste Management provided it's in house program instead of an independently prepared plan, was never challenged nor denied by Helsten et al during the Hearing. (*Runyon Br. at 20-21*)

Further, the argument advanced that independent appraisers be used as "part" of the property value program does not satisfy the requirement for an independently prepared program.

Conclusion: Helsten et al argue an inadmissible off the record argument in an attempt to show plan compliance and were still unable to the refute the contention that the Applicant has failed to comply with this requirement of the solid waste plan.

**d) Helsten et al, failed to deny that the proposed facility is to be located above or near a heavily used water supply aquifer.** (*Helsten et al Br. at 61*) This argument was never carried forward by Helsten et al, during the hearing although they had ample opportunity to do so. Runyon's response to this argument has already be advanced in petitioners Answer to Waste Management's Argument on this same Plan condition. (*See Runyon at 3-4 his Brief*). But in summary, the Solid Waste Management Plan has been amended five times. This requirement has remained in tact through all the amendments which makes a clear case for the prohibitive nature of this condition. (*Runyon Br. at 4*)

**e) Helsten et al, Failed to demonstrate that Crucial public involvement throughout the landfill site selection process was met by the Applicant or County, as required by the Solid Waste Management Plan.** (*Helsten et al Br at 61*)

Helsten et al never entered testimony or argumentation during the hearing to dispute this issue of Applicant non-compliance.

Nonetheless this pillar condition of the Plan is controlled by the word "**Crucial**". The wording of this condition is 'Public involvement is **CRUCIAL** throughout the landfill site selection process and should be solicited from the initial stages of the process.' (*Runyon Br. at 4*) The New College dictionary defines Crucial as: involving a final and supreme decision; decisive: critical.

This word control and clearly defines the intent of this condition of the plan and removes any doubt about the strict requirement set forth in this Plan condition. The response to Helsten et al is the same the response given to Waste Management (*This Br. at 6*)

**Helson et al advanced arguments outside the original record. Said arguments are inadmissible.**

**Conclusion Helsten et al. Failed to uphold their burden of proof that the applicant is in compliance with the four pillar provisions of Solid Waste Management Plan requiring no siting near or above a heavily utilized water supply aquifer, Public involvement from the beginning of the Process including site selection, A valid Host Fee Agreement, and an independently prepared Property Value Guarantee Program.**

**It was the Rush to Riches on the part of both the Applicant and the County that drove both parties to ignore the requirements of the County's Solid Waste Management Plan. This same Rush to Riches caused the Applicant and the County to cooperatively and secretly work to systematically lock the Public out of the initial site selection process. Both parties knew that adherence to the process would slow the process of approval.**

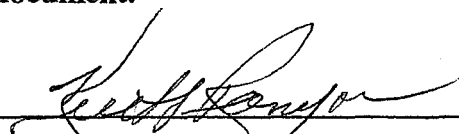
**For these reasons, Petitioner Prays that the Pollution Control Board overturns the Siting awarded by the County of Kankakee to Waste Management of Illinois for a new Pollution Control Facility located in Otto Township in the County of Kankakee.**

**Petitioner further prays that the IPCB will order the Applicant and the County to comply fully with the conditions of the County's very effective and comprehensive Solid Waste Management Plan should the Applicant of record or any Applicant, file for approval of a new or expanded Pollution Control Facility.**

**The Foregoing Was Respectfully Submitted to the Clerk of the Illinois Pollution Control Board in the volume of one original and nine copies via Priority Mail on**

**June 30, 2003. Each of the parties on the attached Affidavit of Service were also sent a copy of the foregoing on the same date via regular mail or had personal delivery service of this document.**

**Respectfully Submitted**

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

**Keith L Runyon**

**Keith L Runyon**

**Resident of Kankakee County**

**Petitioner, Representing Himself**

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AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty perjury under the laws of the United States of America, certifies that on June 30<sup>th</sup> 2003 was served a copy of the foregoing Brief via US Mail.

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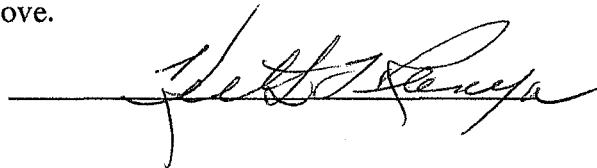
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By depositing a copy thereof, enclosed in an envelope in the United States Mail at  
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A handwritten signature in black ink, appearing to read "Keith Runyon", is written over a horizontal line.

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