

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CITY OF KANKAKEE,)

Petitioner,)

v.)

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

Respondents.)

PCB 03-03-125

APR 4 2003

STATE OF ILLINOIS
(Third-Party Pollution Control
Pollution Control Board
Facility Siting Appeal)

MERLIN KARLOCK,)

Petitioner,)

v.)

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

Respondents.)

PCB 03-133

(Third-Party Pollution Control
Facility Siting Appeal)

MICHAEL WATSON,)

Petitioner,)

v.)

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

Respondents.)

PCB 03-134

(Third-Party Pollution Control
Facility Siting Appeal)

KEITH RUNYON,)

Petitioner,)

v.)

COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
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Pollution Control Board

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on April 4, 2003, we filed with the Illinois Pollution Control Board, the attached **WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS TO PETITIONER CITY OF KANKAKEE'S INTERROGATORIES and WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS TO PETITIONER CITY OF KANKAKEE'S DOCUMENT REQUESTS** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By


One of Its Attorneys

Donald J. Moran
Lauren Blair
PEDERSEN & HOUP
Attorneys for Petitioner
161 N. Clark Street
Suite 3100
Chicago, IL 60601
Telephone: (312) 641-6888

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS TO PETITIONER CITY OF KANKAKEE'S INTERROGATORIES and WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS TO PETITIONER CITY OF KANKAKEE'S DOCUMENT REQUESTS** on the following parties by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, at 5:00 p.m. on this 4th day of April, 2003:

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Victoria L. Kennedy

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**WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS
TO PETITIONER CITY OF KANKAKEE'S INTERROGATORIES**

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt, objects to the interrogatories submitted by Petitioner City of Kankakee by stating as follows:

GENERAL OBJECTIONS

1. WMII objects to these interrogatories as improper, unreasonable and exceeding the permissible scope of discovery under the Illinois Pollution Control Board Procedural Rules. The interrogatories appear to seek information relating to alleged prejudgment of adjudicative facts or fundamental fairness. Before such requests may be made, however, Petitioner must allege specific instances or evidence of pre-filing collusion or prejudgment. Land and Lakes Co. v. Village of Romeoville, No. PCB 92-25, slip. op. at 4 (June 4, 1992); DiMaggio v. Solid Waste Agency of Northern Cook County, No. PCB 89-138, slip op. at 7 (October 27, 1989). Petitioner has made no allegations of any specific instances of misconduct which would justify its broad and wide-ranging interrogatories.

2. WMII objects to the interrogatories on the basis that they seek information relating to the process by which the Kankakee County Solid Waste Management Plan was enacted and amended. The Pollution Control Board lacks the authority to review this legislative process. Residents Against a Polluted Environment v. County of LaSalle, No. PCB 96-243, slip op. at 15-16 (Sept. 19, 1996) aff'd Residents Against Polluted Environment v. Illinois Pollution Control Board, 293 Ill.App.3d 219, 687 N.E.2d 552, 555 (3d Dist. 1997). Thus, any interrogatory that seeks such information is improper and beyond the scope of permissible discovery.

3. WMII objects to the interrogatories to the extent they request information relating to the Amended and Restated Host Community Agreement. Drafting and execution of the host agreement is a legislative function which is not an indication of prejudgment or bias. Residents Against a Polluted Environment v. County of LaSalle, No. PCB 96-243, slip op. at 15-16 (Sept. 19, 1996) aff'd Residents Against Polluted Environment v. Illinois Pollution Control Board, 293 Ill.App.3d 219, 687 N.E.2d 552, 555 (3d Dis. 1997). Information concerning the Host Agreement is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence for the issues in this appeal.

4. WMII objects to the interrogatories to the extent they seek disclosure of information protected by the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or protection.

OBJECTIONS TO SPECIFIC INTERROGATORIES

INTERROGATORY NO. 2: Please identify all persons related in any way to WMII who met, talked, or communicated with the County of Kankakee, County of Kankakee department heads, professional and technical staff, County employees, and its attorneys, including Edward D. Smith and his assistants in the office of the Kankakee County State's Attorney's Office, prior to the filing of the landfill Siting Application on August 16, 2002 relating to the planning, development and siting of the Facility, and for each such individual, please:

- (a) identify the individual by name and title and identify what type of communication took place (written, oral, telephone, e-mail, etc.);
- (b) the subject matter of each such communication;
- (c) describe and delineate the exact statements made during the course of each such communication;
- (d) identify date, time and duration of each such communication;
- (e) identify the location of each such communication; and
- (f) identify all persons present at such communication.

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OBJECTION: WMII incorporates its general objections as if fully set forth herein. WMII further objects to the phrase "all persons related in any way to WMII" as vague and overbroad. WMII further objects on the grounds that the time period for response in this interrogatory is unreasonable and unduly burdensome.

INTERROGATORY NO. 3: Please identify all persons related in any way to WMII who met, talked, or communicated with any members of the Kankakee County Board, County of Kankakee department heads, professional and technical staff, County employees, and its attorneys, including Edward D. Smith and his assistants in the office of the Kankakee County State's Attorney's Office, prior to the filing of the Landfill Siting Application on August 16, 2002 relating to the planning, development and siting of the Facility, and for each such individual, please:

- (a) identify the individual by name and title and identify what type of communication took place (written, oral, telephone, e-mail, etc.);
- (b) the subject matter of each such communication;
- (c) describe and delineate the exact statements made during the course of each such communication;
- (d) identify date, time and duration of each such communication;
- (e) identify the location of each such communication; and
- (f) identify all persons present at such communication.

OBJECTION: WMII incorporates its general objections as if fully set forth herein. WMII further objects to the phrase "all persons related in any way to WMII" as vague and overbroad. WMII further objects on the grounds that the time period for response in this interrogatory is unreasonable and unduly burdensome.

INTERROGATORY NO. 4: Identify all persons related in any way to WMII who met, talked, or otherwise communicated with the County of Kankakee and/or the Kankakee County Board, County of Kankakee department heads, professional and technical staff, County employees, and its attorneys including Edward D. Smith and his assistants in the office of the Kankakee County State's Attorney's Office, after the filing of the Landfill Siting Application on August 16, 2002 relating to the planning, development and siting of a solid waste management facility, and for each such individual, please

- (a) identify the individual by name and title and identify what type of communication took place (written, oral, telephone, e-mail, etc.);
- (b) identify the subject matter of each such communication;

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- (c) describe and delineate the exact statements made during the course of each such communication;
- (d) identify date, time and duration of each such communication;
- (e) identify the location of each such communication; and
- (f) identify all persons present at such communication.

OBJECTION: WMII incorporates its general objections as if fully set forth herein. WMII further objects to the phrase "all persons related in any way to WMII" as vague and overbroad. WMII further objects that this interrogatory is overbroad because it requests information or communications that was exchanged or that occurred at the siting hearings.

INTERROGATORY NO. 5: Identify any persons related in any way to WMII who communicated with each other regarding the, planning and siting of the facility.

- (a) identify the individual by name and title and identify what type of communication took place (written, oral, telephone, e-mail, etc.);
- (b) identify the subject matter of each such communication;
- (c) describe and delineate the exact statements made during the course of each such communication;
- (d) identify date, time and duration of each such communication;
- (e) identify the location of each such communication; and
- (f) identify all persons present at such communication.

OBJECTION: WMII incorporates its general objections as if fully set forth herein. WMII further objects to the phrase "all persons related in any way to WMII" as vague and overbroad.

WMII further objects to this interrogatory because the phrase "who communicated with each other" is vague and ambiguous. WMII further objects to this interrogatory as seeking irrelevant information and as a request not reasonably calculated to lead to the discovery of relevant evidence.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

One of Its Attorneys

Donald J. Moran
PEDERSEN & HOUP
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
(312) 641-6888
Attorney Registration No. 1953923

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**WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS
TO PETITIONER CITY OF KANKAKEE'S DOCUMENT REQUESTS**

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt, objects to the document requests submitted by Petitioner City of Kankakee by stating as follows:

GENERAL OBJECTIONS

1. WMII objects to these document requests as improper, unreasonable and exceeding the permissible scope of discovery under the Illinois Pollution Control Board Procedural Rules. The document requests appear to seek information relating to alleged prejudgment of adjudicative facts or fundamental fairness. Before such requests may be made, however, Petitioner must allege specific instances or evidence of pre-filing collusion or prejudgment. Land and Lakes Co. v. Village of Romeoville, No. PCB 92-25, slip. op. at 4 (June 4, 1992); DiMaggio v. Solid Waste Agency of Northern Cook County, No. PCB 89-138, slip op. at 7 (October 27, 1989). Petitioner has made no allegations of any specific instances of misconduct which would justify its broad and wide-ranging document requests.

2. WMII objects to the document requests on the basis that they seek information relating to the process by which the Kankakee County Solid Waste Management Plan was enacted and amended. The Pollution Control Board lacks the authority to review this legislative process. Residents Against a Polluted Environment v. County of LaSalle, No. PCB 96-243, slip op. at 15-16 (Sept. 19, 1996) affirmed; Residents Against Polluted Environment v. Illinois Pollution Control Board, 293 Ill.App.3d 219, 687 N.E.2d 552, 555 (3d Dist. 1997). Thus, any document request that seek such information is improper and beyond the scope of permissible discovery.

3. WMII objects to the document requests to the extent they request information relating to the Amended and Restated Host Community Agreement. Drafting and execution of the host agreement is a legislative function which is not indicator of prejudgment or bias.

Residents Against a Polluted Environment v. County of LaSalle, No. PCB 96-243, slip op. at 15-16 (Sept. 19, 1996) affirmed; Residents Against Polluted Environment v. Illinois Pollution Control Board, 293 Ill.App.3d 219, 687 N.E.2d 552, 555 (3d Dis. 1997).

4. WMII objects to the document requests to the extent they seek disclosure of information protected by the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or protection.

OBJECTIONS TO SPECIFIC DOCUMENT REQUESTS

DOCUMENT REQUEST 1: Identify and produce any and all documents, letters, communications or memoranda prepared by WMII that relate or refer to the planning, development or siting of the Facility. Please identify which of these documents, letters, communications or memoranda were provided to the County of Kankakee and when they were provided.

OBJECTION: WMII incorporates its general objections as if fully set forth herein. WMII further objects to the request for documents that in any way "relate or refer to the planning, development or siting of the Facility" as overbroad. The request may include a wide-range of internal business documents that are not relevant to the issues raised in this appeal, nor are reasonably calculated to lead to the discovery of any relevant evidence.

DOCUMENT REQUEST 2: Identify and produce any documents, letter, communications or memoranda prepared by WMII that relate or refer to the Solid Waste Management Plan of the County of Kankakee. Please identify which of these documents, letters,

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communications or memoranda were provided to the County of Kankakee and when they were provided.

OBJECTION: WMII incorporates its general objections relating to discovery of information referring to the Kankakee County Solid Waste Management Plan as if fully set forth herein.

DOCUMENT REQUEST 3: All reports, correspondence, and other documents received by WMII (including, but not limited to, its consultants, attorneys and experts) from the County of Kankakee (including, but not limited to, its consultants, attorneys and experts) regarding the planning, development, and siting of the Facility and when they were provided.

OBJECTION: WMII objects to this request to the extent it requests documents delivered or submitted by Kankakee County to any participants at or during its siting hearings.

DOCUMENT REQUEST 4: All notes, minutes, and other documents of all phone calls and meetings between WMII and the County of Kankakee, the Kankakee County Board, or their agents relating to the planning, development, and siting of the Facility.

OBJECTION: WMII objects to the phrase "notes, minutes, and other documents of all phone calls" as vague and ambiguous.

DOCUMENT REQUEST 5: Any and all records or documents referring or relating to billing by the firm of Hinshaw and Culbertson to any entity whatsoever relating or referring to the planning or siting of the Facility or to the drafting, construction or interpretation of the Solid Waste Management Plan of the County of Kankakee.

OBJECTION: WMII incorporates its general objections relating to discovery of information referring to the Kankakee County Solid Waste Management Plan as if fully set forth herein.

DOCUMENT REQUEST 6: All correspondence, contracts or other communication between each opinion witness or other witness and WMII, (including, but not limited to, its consultants, attorneys and experts) in connection with the subject matter of this action.

OBJECTION: WMII objects to this request on the grounds that it does not seek relevant information and is not reasonably calculated to lead to the discovery of admissible evidence. The request seeks information between WMII and the witnesses it presented at the siting hearing.

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Such information is not relevant to any issues that have been raised in this appeal. In addition, the Pollution Control Board is not authorized to evaluate the contractual relationship between a siting applicant and its witnesses.

DOCUMENT REQUEST 7: All demonstrative exhibits which WMII or its agenets may offer or use at hearing.

OBJECTION: WMII objects to Document Request 7 because it is unable, at this time, to identify which exhibits may be relevant or appropriate for the issues the City intends to address at the hearing.

DOCUMENT REQUEST 8: All exhibits which WMII, or its agents may offer into evidence or otherwise use at hearing including, but not limited to, documents, summaries, objects, charts, and other items.

OBJECTION: WMII objects to Document Request No. 8 because it is unable, at this time, to identify which exhibits may be relevant or appropriate for the issues the City intends to address at the hearing.

DOCUMENT REQUEST 9: All transcripts, statements, articles, writings or other documents or tangible items which WMII or its agents may use at hearing in direct or cross-examination of any witness.

OBJECTION: WMII objects to Document Request 9 because it is unable, at this time, to identify which documents may be relevant or appropriate for the issues the City intends to address at the hearing.

DOCUMENT REQUEST 10: All releases, covenants or other agreements, promises or understandings (including any document reflecting or referring to the same) with respect to the subject matter of this action, which is not contained in the Landfill Siting Application nor admitted into evidence at the Kankakee County Board hearing on the Application.

OBJECTION: WMII objects to the phrase "with respect to the subject matter of this action" as vague and ambiguous.

DOCUMENT REQUEST 11: Any and all documents or things set forth or referred to in Respondent's answers to interrogatories propounded by Petition or identified in response to said interrogatories, or which Respondent or Respondent's counsel consulted in preparation of said answers.

OBJECTION: WMII objects to this request on the grounds that the phrase "set forth or referred to in Respondent's answers to interrogatories" is vague and ambiguous. WMII further objects to the extent this request seeks documents protected by the attorney-client or work-product privilege.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

One of Its Attorneys

Donald J. Moran
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