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SEP 23 2003

ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE, )

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, INC. )

Respondents. )

PCB 03-125  
(Third-Party Pollution Control Facility  
Siting Appeal)

STATE OF ILLINOIS  
*Pollution Control Board*

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

PCB 03-134  
(Third-Party Pollution Control Facility  
Siting Appeal)

PCB 03-135  
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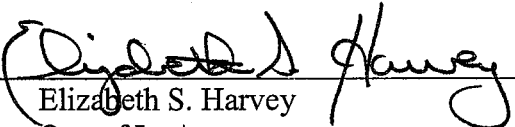
**NOTICE OF FILING**

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 23<sup>rd</sup> day of September 2003, the following was filed with the Illinois Pollution Control Board, attached and herewith served upon you:

**County of Kankakee's Response to  
Motion to Reconsider Filed by Petitioner Watson**

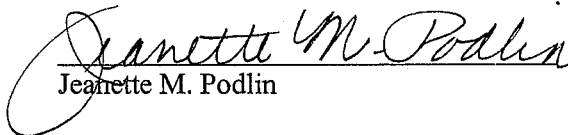
COUNTY OF KANKAKEE

By:   
Elizabeth S. Harvey  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, the undersigned, state that I served a copy of the described document on September 23, 2003, in the above-captioned matter via U.S. Mail to all parties on attached service list.

  
Jeanette M. Podlin

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

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ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE, )  
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Petitioner, )  
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PCB 03-125  
(Third-Party Pollution Control Facility  
Siting Appeal) **STATE OF ILLINOIS**  
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**RESPONSE TO MOTION TO RECONSIDER FILED BY PETITIONER WATSON**

NOW COMES, Respondent, COUNTY OF KANKAKEE, by and through its attorneys, HINSHAW & CULBERTSON and SWANSON, MARTIN & BELL, and in response to the Motion to Reconsider Filed by Petitioner Watson, states as follows:

**I. THE IPCB DECISION REQUIRING MR. WATSON TO PAY HIS SHARE OF THE COST IN PREPARING AND CERTIFYING THE RECORD WAS CORRECT**

In its August 7, 2003 order, the Board granted the County's motion to compel Watson to pay his share of the County's costs of preparing and certifying the record. The motion to compel was based on Section 39.2(n) of the Environmental Protection Act (Act) (415 ILCS 5/39.2(n)) and on Section 107.306 of the Board's procedural rules (35 Ill. Adm. Code 107.306), as well as on the Board's March 6, 2003 order directing Watson (and other petitioners) to pay the County's costs. The Board found that "the statute is clear and Watson is responsible for paying a share of the costs of preparing and certifying the record in this matter." *City of Kankakee v. County of Kankakee*, PCB 03-125 (cons.) (August 7, 2003, slip op. at 4).

Watson now asserts that this finding was in error, and asks that the Board reverse its determination. However, Watson has failed to identify the basis for his request for reconsideration. Section 101.904(b) of the Board's procedural rules clearly spells out the bases for reconsideration: 1) newly discovered evidence which existed, but could not have been discovered by due diligence; 2) fraud, misrepresentation or misconduct; and 3) void order, such as an order based upon jurisdictional defects. 35 Ill. Adm. Code 101.904(b). Watson does not allege that any of these three circumstances are present. Thus, the motion for reconsideration should be denied. *See Shaw v. Board of Trustees of the Village of Dolton*, PCB 97-68 (April 3, 1997), 1997 Ill. ENV LEXIS 171, \*3-\*5 (ruling, under a now-repealed version of the rule on

reconsideration, that reconsideration was denied for failure to present the Board with specific bases for reconsideration).

Watson complains that he was not “given the opportunity” to make arguments regarding his alleged status as a “citizen.” This claim rings false, based upon the record of this appeal. Watson knew, as early as the Board’s March 6, 2003 order, that the Board had directed him (and other petitioners) to pay their share of the County’s costs. The County, after unsuccessfully seeking payment by Watson, filed its motion to compel on July 30, 2003. On August 4, 2003, Watson filed a “Notice of Intent to File Response,” stating that he would file a response within the 14 day response period. That “Notice” recognized that the Board was scheduled to rule on the case on August 7, but gave no reason why Watson had not responded substantively to the motion. The Board noted Watson’s filing, but found that undue delay would result if the Board failed to rule on the motion on August 7. *City of Kankakee v. County of Kankakee*, PCB 03-125 (cons.) (August 7, 2003, slip op. at 4) (*citing* 35 Ill. Adm. Code 101.500(d)).

In any event, it is clear that Watson does not qualify for the “citizen” exemption to the requirement that petitioners pay a county’s costs of preparing and certifying the record in a siting appeal. While Watson raises a number of claims about his status, all of those claims are intended to shift the focus from the fact that Mr. Watson is the president of United Disposal, and thus is not entitled to the “citizen” exemption of the statute and rule. For example, Watson asserts that the County has not carried a burden of proving that Watson is not a “citizen.” However, Watson cites no authority for his claim that the County has such a burden. In fact, the Board had already directed Watson (and others) to pay costs, and thus had by implication made a finding that Watson was not entitled to the exemption. Additionally, where a party believes itself to be entitled to an exemption of some type, that party should prove that he qualifies for the

exemption.

Likewise, Watson asserts that no participant in this proceeding questioned Watson's "standing" as a beneficial property owner. Quite simply, the question of Watson's "standing" to participate in the siting hearing process and in the subsequent appeal is a separate consideration than whether Watson must pay his share of the County's costs. The County has not questioned Watson's standing to participate. Instead, the County merely seeks its statutory right to reimbursement of costs by a petitioner.

Watson argues, at some length, that he is participating in this proceeding as a citizen, not as the owner of a competing disposal facility. However, the legislative history of Section 39.2(n) is clear that a person owning or operating a nearby competing facility is not exempt as a "citizens group."<sup>1</sup> Watson is not just a shareholder in United Disposal--he is the president of the corporation. (See Exhibit A.<sup>2</sup>) This is not a case where a county seeks to recovery of costs from a person who simply holds stock in a solid waste management company. Instead, Watson is the president (and, based on Mrs. Keller's testimony (C1271, Tr. pp. 64-67), a hands-on participant in the daily operations) of the company. To find that Watson, the president of the company, is a "citizen" would contravene the purpose of the exemption, and of the clarifying language provided by Senator Karpziel. If Watson can qualify as a "citizen" because he asserts that he owns property near the proposed facility, any other competing disposal facility could qualify for the "citizen" exemption simply by purchasing a small piece of property in the vicinity of a

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<sup>1</sup> See pages 2-3 of the County's July 30, 2003 motion to compel. In the interests of brevity, the County incorporates the arguments regarding the legislative history made in its motion to compel, as if those arguments were fully set forth. This includes the argument that the legislative history of the statute is relevant because there is no definition of "citizen" or "citizens group" in the statute or the Board's regulations.

<sup>2</sup> Mr. Watson's status as president of United Disposal is a matter of public record, and thus the Board can take official notice of that status. 35 Ill.Adm.Code 101.630.

proposed facility. Such a result would be at odds with the language of the statute and the legislative purpose of the exemption.

In short, despite his red herring claims, Watson cannot escape the fact that he falls directly within the category of those who are not eligible for the “citizens” exemption. The Board has found that “Watson as a non-citizen petitioner must pay for the preparation of the County record.” *City of Kankakee v. County of Kankakee*, PCB 03-125 (cons.) (August 7, 2003, slip op. at 4). Watson has failed to demonstrate why the Board should reconsider that finding, and has failed to show that the Board’s decision was in error. Therefore, the Board should affirm its August 7, 2003 decision directing Watson to pay his share of the County’s record costs.

## **II. THE IPCB RULING THAT THE SECTION 39.2(b) NOTICE IS EFFECTIVE UPON MAILING, CERTIFIED RETURN RECEIPT REQUESTED, WAS CORRECT**

Respondent Watson has filed a Motion to Reconsider the IPCB decision that under 39.2(b) of the Act an Applicant can effect service by mailing the pre-filing notice to property owners’ certified mail return receipt requested. *City of Kankakee v. County of Kankakee*, PCB 03-125 (cons.) (August. 7 2003, pg 16).

“Motions of reconsideration are designed to bring to the Court’s attention newly discovered evidence that was unavailable at the time of the original hearing, change an existing law, or errors in the Court’s application of the law.” *Continental Casualty Co. v. Security Insurance Company of Hartford*, 279 Ill.App.3d 815, 216 Ill.Dec. 314, 317 (1st Dist. 1996). In this case, Respondent Watson has not cited any cases which were not discussed and analyzed by the PCB in its original decision, nor has it presented any evidence or a change in law that would warrant a reconsideration of the decision. Instead, the Respondent merely argues that the County of Kankakee, Waste Management of Illinois, Inc. and the Illinois Pollution Control Board, were wrong in their analyses of the applicable case law.



It is improper to simply recast and reiterate the same arguments that were made on the underlying motion as a motion for reconsideration. *Keller v. Roberts*, 276 Ill.App.3d 164, 658 N.E.2d 496 (2nd Dist. 1995). The effect of the Illinois Supreme Court decision in *People ex rel. Devine v. \$30,700 United States Currency*, 199 Ill.2d 142, 766 N.E.2d 1084 (2002) was completely briefed and argued by the parties before the IPCB rendered its decision. (See Brief and Argument of Respondents County of Kankakee and County Board of Kankakee, p 4-5; Petitioner Michael Watson's Reply Brief, p 3-5.) All of the arguments that are raised in the Motion to Reconsider filed by Petitioner Watson were already raised in his Reply Brief. Specifically, Petitioner Watson attempted to distinguish the *People ex rel. Devine v. \$30,700 U.S. Currency* case on the grounds that it involved the Drug Asset Forfeiture Procedure Act rather than the Illinois Environmental Protection Act, just as Watson argues in its Motion to Reconsider. Therefore, Petitioner Watson is merely wasting the resources of the IPCB and the parties by seeking reconsideration of an issue that has already been completely and adequately considered by the Illinois Pollution Control Board.

Adding insult to injury, Petitioner Watson **misquotes** the *Avdich* decision (upon which the *Ogle County* decision was based) as interpreting the inclusion of "return receipt requested" language. (See Watson Motion to Reconsider, pg 9). The statute at issue in *Avdich* actually required a "returned receipt from the addressee." Moreover, *Avdich* at no time addressed or even considered a notice statute which merely required notice by mail with a "return receipt requested." As such, it appears that Watson's entire argument is based upon this misreading of the *Avdich* decision. Watson also either intentionally, or conveniently, failed to recognize that the *People ex rel. Devine* decision contrasted the "return receipt requested" language of the statute at issue in *Devine* with the "returned receipt from addressee" requirement at issue in

*Avdich*. *People ex rel. Devine v. \$30,700 United States Currency*, 199 Ill.2d at 151-53, 766 N.E.2d 1090-91. The Supreme Court explicitly held the Forcible Entry and Detainer Statute at issue in *Avdich* actually supports the finding that notice was effective upon mailing, and the statute merely provides “return receipt requested” because in *Avdich* the legislature *expressly* conditioned service upon the return of the signed, certified or registered mail receipt by utilizing the language “with a returned receipt from the addressee.” The Second District therefore misapplied *Avdich* in the *Ogle County* decision, which addressed the “return receipt requested” language of Section 39.2(b). As such, the *People ex rel. Devine* case corrected and effectively overruled *Ogle County* by addressing the exact language in this case.

*Devine* dealt with a forfeiture statute which provided: “The [notice for service shall be given] by either personal service or mailing a copy of the notice by certified mail, return receipt requested to that address.” See *People ex rel. Devine*, 199 Ill.2d 142, 766 N.E.2d 1091. Likewise, the statute at issue in this case (415 ILCS 39.2(b)) also provides that notice of such request is to be served “return receipt requested”. The Supreme Court in *People ex rel. Devine* explicitly held that “the *Avdich* case is not authority for the proposition that all enactments which contain the return receipt requirement demand return of the receipt to perfect service. In fact, *Avdich*, like the enactments previously referred to, illustrates our legislature’s ability to *expressly* condition service upon receipt of the signed receipt.” *Id.* (Emphasis added). The Supreme Court held that merely requiring notice to be sent with a request for a return receipt rather than requiring that the receipt actually be returned, must be considered intentional by Congress because the legislature has made the requirement of a returned receipt from the addressee explicit in numerous other statutes. *Id.* at 1090-91 (citing 225 ILCS 115/18, *Veterinary Medicine and Surgery Practice Act*; 705 ILCS 25/10(a)(1), *Expedited Child Support Act*; 765 ILCS

1033/15(b), *Museum Disposition of Property Act*; 735 ILCS 5/9-211 *the Forcible Entry and Detainer Statute*). Therefore, the Illinois Supreme Court has established that the legislature will expressly require that the receipt be returned by the addressee before service is effective, if it so intended.

In, summary it is clear from the statute at issue in this case that service is effective upon mailing while requesting a return receipt. There is no requirement in Section 39.2(b) that the receipt be returned by the addressee as was at issue in *Avdich*, and, accordingly, the IPCB decision that *People ex rel. Devine* effectively overruled *Ogle County*, was both well-reasoned and correct. Accordingly, the decision that the Section 39.2(b) notices are effective upon mailing was correct and should be affirmed.

Respectfully Submitted,

COUNTY OF KANKAKEE

By: Charles F. Helsten (sp)  
One of Its Attorneys

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**BUSINESS SERVICES**

 JESSE WHITE  
 SECRETARY OF STATE

## Results from Corporation Search

<b>Entity Name</b>	UNITED DISPOSAL OF BRADLEY, INC.	<b>File Number</b>	53504736
<b>Entity Type</b>	Corporate Master	<b>Type Corporation</b>	Domestic BCA
<b>Incorporation Date</b>	06/25/1984	<b>State</b>	ILLINOIS
<b>Agent Name</b>	PAUL F MICHEL	<b>Agent Change Date</b>	02/13/1998
<b>Agent Street</b>	18 BRIARCLIFF PROFESSIONAL CTR	<b>President Name</b>	MICHAEL M WATSON 272 S QUINCY BRADLEY 60915
<b>Agent City</b>	BOURONNAIS	<b>Secretary Name</b>	MELVIN F WATSON SAME
<b>Agent Zip</b>	609140000	<b>Duration Date</b>	Perpetual
<b>Current Paid Year</b>	2003	<b>Current Paid Date</b>	05/16/2003
<b>Assumed Name</b>			

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 EXHIBIT

A