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STATE OF ILLINOIS
Pollution Control Board

PC#1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BYRON SANDBERG, Petitioner, vs. CITY OF KANKAKEE, ILLINOIS, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC., and KANKAKEE REGIONAL LANDFILL, L.L.C., Respondents.	Case No. PCB 04-33
WASTE MANAGEMENT OF ILLINOIS, INC., Petitioner, vs. THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC., and KANKAKEE REGIONAL LANDFILL, L.L.C., Respondents.	Case No. PCB 04-34
COUNTY OF KANKAKEE, ILLINOIS and EDWARD D. SMITH, KANKAKEE COUNTY STATE'S ATTORNEY, Petitioners, vs. CITY OF KANKAKEE, ILLINOIS, THE CITY OF KANKAKEE, ILLINOIS CITY COUNCIL, TOWN AND COUNTRY UTILITIES, INC., and KANKAKEE REGIONAL LANDFILL, L.L.C., Respondents.	Case No. PCB 04-35

NOTICE OF FILING

TO: All Counsel of Record (see attached Service List)

PLEASE TAKE NOTICE that on December 19, 2003, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, an original and nine copies of the City of Kankakee Ordinance No. 2003-11 as Public Comment in the above-reference matter, copies of which are attached hereto.

Dated: December 19, 2003

Respectfully Submitted,

On behalf of the COUNTY OF KANKAKEE, ILLINOIS, and EDWARD D. SMITH, KANKAKEE COUNTY STATE'S ATTORNEY,

By: Hinshaw & Culbertson

Richard S. Porter
One of Attorneys

HINSHAW AND CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

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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 of perjury under the laws of the United States of America, certifies that on December 19, 2003, a copy of the foregoing was served upon:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
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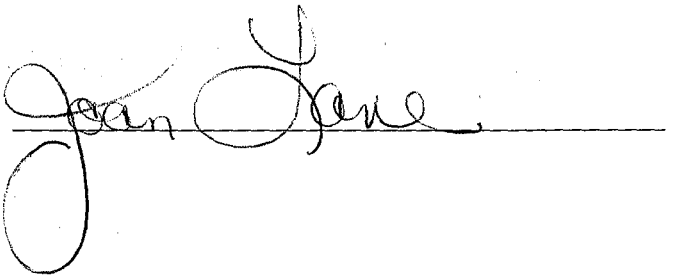
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, 11th Floor
Chicago, IL 60601
(312) 814-8917
(312) 814-3669 FAX

By depositing a copy thereof, enclosed in an envelope in the UPS Overnight Mail at Rockford, Illinois, before the hour of 5:00 P.M., addressed as above.



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STATE OF ILLINOIS
Pollution Control Board

CITY OF KANKAKEE, KANKAKEE COUNTY, ILLINOIS

ORDINANCE NO. 2003- 11
AMENDED
CITY OF KANKAKEE POLLUTION
CONTROL FACILITY SITING ORDINANCE

ADOPTED BY THE CITY COUNCIL OF THE CITY OF KANKAKEE
ON THIS 3rd DAY OF MARCH, 2003

Published in pamphlet form by authority this 3rd day of March 2003

CITY OF KANKAKEE POLLUTION CONTROL FACILITY SITING ORDINANCE

WHEREAS, the City of Kankakee has previously adopted Ordinance No. 2001-65 known as the Pollution Facility Siting Ordinance, and Ordinance No. 2002-24 which adopted Rules and Procedures for the Pollution Control Facility Siting, and;

WHEREAS, the City has reviewed the Ordinance and has determined that it is in the best interest to provide a procedure which is more efficient and more expeditious than that previously employed in a previous hearing for siting, and;

WHEREAS, it is deemed necessary and desirable for the City of Kankakee City Council to revise said procedures.

NOW, THEREFORE, it is ordained by the Mayor and the City Council as follows:

SECTION 1: DEFINITIONS

A. The "Act" is the Illinois Environmental Protection Act, as amended from time to time (415 ILCS 5/1 et seq.)

B. "Applicant" is any person, firm or partnership, association, corporation, company or organization of any kind proposing to obtain site location approval and IEPA permits for a new Pollution Control Facility within Kankakee's jurisdiction, and includes the fee owner of such site, the proposed operator, and any other party with an interest in the site, such as a lessee, contract purchaser or land trust beneficiary.

C. Rules and Procedures refer to the "Rules and Procedures - Pollution Control Facility Siting - City of Kankakee, IL," established by the Kankakee City Council pursuant to Section 8 of this Ordinance.

D. "Board" refers to the Illinois Pollution Control Board.

E. "City Council" refers to the Kankakee City Council.

F. A "Hazardous Waste Disposal Site" is a site at which hazardous waste is disposed. "Hazardous Waste" is waste as defined in the "Act."

G. "Hearing Officer" refers to a person appointed by the Kankakee City Council to conduct a Public Hearing and made Findings of Fact, Conclusions of Law and recommendations to the Kankakee City Council as provided by this Ordinance, or "Hearing Officer" may refer to the Mayor and City Council as the context requires if Section 3 applies.

H. "IEPA" refers to the Illinois Environmental Protection Agency.

I. "PCF" refers to a Pollution Control Facility as defined in the Act. "PCF" includes a new Pollution Control Facility as defined by the Act.

J. All other terms used in this Ordinance and defined in the Act shall have the same definitions and meanings as found in said Act (including, but not limited to those terms defined in Section 3, thereof (415 ILCS 5/3).

K. "Kankakee's Jurisdiction" refers to the jurisdiction granted to a municipality pursuant to 65 ILCS 5/11-15.2.1.

SECTION 2: CITY APPROVAL OF POLLUTION CONTROL FACILITY

No site location approval for the development or construction of a new PCF within Kankakee's jurisdiction may be granted by the City Council unless an application is filed for approval of such site and is submitted for consideration to said City Council.

SECTION 3: POLLUTION CONTROL FACILITY SITING HEARING OFFICER

A. The City Council may select by a majority vote a Hearing Officer to serve during any public hearing concerning an application for site location approval. The Hearing Officer shall serve at the pleasure of the City Council. Compensation for the services of the Hearing Officer shall be agreed upon between the Hearing Officer and the City Council before a hearing. The duties of the Hearing Officer shall be as provided for herein and in the Rules & Procedures. If no Hearing Officer is appointed by the City Council the Council itself shall hear the case for siting and the Mayor shall preside.

B. All meetings and hearings on the Siting Application shall be at the call of the Hearing Officer or City Council at such time as may be required.

SECTION 4: PROCEDURE FOR FILING AN APPLICATION FOR APPROVAL OF A POLLUTION CONTROL FACILITY

A. To request siting approval for a new PCF within Kankakee's jurisdiction, an applicant must file an application with the City Clerk, with a minimum of five (5) copies of the application and the substance of the applicant's proposal showing sufficient details describing the proposed facility to demonstrate compliance with the Act and Board regulations, including all site plans, engineering including calculations, exhibits and maps, and all documents, if any, submitted to the IEPA as of the date of filing the application. At a minimum, the application shall comply with Rules and Procedures. The form of said application may be obtained from the office of the Kankakee City Manager or from the Kankakee City Clerk.

B. In addition to the foregoing, the applicant shall deposit with the City Council at the time of filing the application for site approval of a new PCF a filing fee deposit of One Hundred Thousand Dollars ($100,000.00). If the applicant elects to file an amended application for site location approval for any PCF in accordance with this Ordinance, such filing shall be accompanied by payment of a supplemental fee of Twenty-Five Thousand Dollars ($25,000.00).

The applicable filing fee is intended to defray the reasonable and necessary costs of processing the application, including, but not limited to: costs of site inspection, clerical expenses, copying costs, space rental, hearing officer compensation, court reporter expenses, transcription costs, public notice expenses, staff review time, if any, City Attorney and City consultants (such as qualified professional engineers, planners, appraisers, environmental counsel, etc.) (Including tests, exhibits, and testimony, if any, provided by said consultants), and other relevant costs incident to the consideration of an application, the costs incident to preparing the record for appeal, and the cost of representing the City on appeal in case of an appeal of a City Council decision (the "City costs").

If there are funds remaining in the filing fee deposit after payment of the City costs, such amounts shall be refunded to the applicant upon the final resolution of the application process (including appeals to the Illinois Pollution Control Board, Appellate Court, Illinois Supreme Court, Federal Courts, and administrative review in the Courts, if any). Should the City incur any additional costs in excess of the applicable filing fee deposit, the applicant shall bear any and all such additional costs and shall promptly pay over such additional amounts to the City upon request or demand. The application must be accompanied by all site plans, exhibits, maps and documents required by this Ordinance and by the Rules and Procedures. The date that the applicant files a complete application in proper form, together with the applicable filing fee deposit, with the City Clerk shall be considered the official filing date for all time limit purposes. The application is not effective unless the application is in strict compliance with this Ordinance, the Rules and Procedures and with the Act. If upon review of the application within fourteen (14) days of its submittal it is determined by the City to be incomplete and not in strict conformance with the aforesaid, the application is deemed not filed and the filing fee (less City costs and expenses) shall be returned to the applicant. At any time prior to completion by the applicant and an opportunity for cross-questioning by the City Council, City representatives and any participants, the applicant may file not more than one amended application upon payment of additional fees pursuant to Section 39.2(k) of the Act and Section 4 (a) (ii) of this Ordinance. Provided, however, that the time limitation for final action set forth in Section 39.2(e) of the Act and Section 7(b) of this Ordinance shall be extended for an additional period of ninety (90) days.

In the event that a member of the City Council desires an individual copy of said application, the applicant shall pay for such copies as are requested by the individual members of the City Council.

C. In the event a Host Agreement has been entered into between the City and the applicant, fees and costs will be paid in accordance with the Host Agreement in lieu of (ii) above.

D. (1) Upon receipt of a proper and complete application, and payment of the applicable filing fee deposit, the City Clerk shall date stamp all the copies. The City Clerk shall establish a procedure to assure that copies may be made and obtained by filing a request pursuant to the Freedom of Information Act and payment of the actual costs of copying.

(2) The Mayor of the City of Kankakee may retain consultants on behalf of the City to develop a record sufficient to form the basis of an appeal of the City Council's decision. The consultants and the City agencies shall then commence a study of the application. The applicant shall cooperate fully with the consultants and technical staff of the City in their review of the application, including providing access to the site for study or testing, including but not limited to geophysical testing.

E. A copy of the application and all related documents or other materials on file with the City Council shall be made available for public inspection in the office of the City Clerk. Members of the public shall be allowed to obtain a copy of said application or any part thereof upon payment of the actual cost of reproduction as outlined in the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.)

F. It is the applicant's duty to comply with all notice requirements set forth in the Act. The Applicant shall:

(1) No later than fourteen (14) days prior to filing an application for site location approval with the City Clerk, cause written notice of such application to be served in either person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within two hundred fifty (250) feet in each direction of the lot line of the subject property, said owner being such persons or entities which appear from the authentic tax records of the County; provided that the number of all feet occupied by public roads, streets, alleys and other public ways shall be excluded in computing the two hundred fifty (250) feet requirement; provided further that in no event shall this requirement exceed four hundred (400) feet, including public streets, alleys and other public ways.

(2) The applicant shall serve such notice upon each member of the General Assembly from the legislative district in which the proposed facility is to be located, and this notice shall also be published in a newspaper of general circulation in Kankakee County.

(3) The applicant shall state in such notice the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the City Clerk, a description of the right of persons to comment on such request as hereafter provided, and any other information as may be required by the Rules and Procedures and the Act.

(4) The applicant shall include in the application proof of compliance with all prefiling notice requirements.

SECTION 5: PROCEDURE FOR FILING WRITTEN COMMENTS TO AN APPLICATION FOR SITE LOCATION APPROVAL FOR A PCF

A. Any person may file written comments with the City Clerk concerning the appropriateness of the proposed site for its intended purpose. The Hearing Officer or City Council shall consider any comments received or postmarked from the date of acceptance of the application through and until thirty (30) days after the date of the last public hearing in making his/her final determination. Said written comments shall be mailed or delivered to the Kankakee City Clerk, 385 East Oak Street, Kankakee, Illinois 60901. Said written comments shall clearly designate reference to the PCF application to which they refer to ensure their consideration. Upon receipt, the City Clerk shall date stamp the comments and refer them to the Hearing Officer or City Council.

B. The above-mentioned written comments shall become part of the record of the proceedings.

SECTION 6: HEARING ON APPLICATIONS

A. At least one public hearing shall be held by the Hearing Officer no sooner than ninety (90) days but no later than one hundred twenty (120) days from and after the receipt of the application for PCF site location approval.

B. The applicant shall cause to be published in a newspaper of general circulation in Kankakee a notice of such public hearing not later than fourteen (14) days prior to said hearing.

The applicant shall also serve written notice of such hearing by certified mail, return receipt requested, on all members of the Illinois General Assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the municipality in which the proposed site is to be located, and to the IEPA. The applicant shall file with the City Clerk copies of each notice with proof of service of such notice prior to the commencement of said public hearing.

C. The Hearing Officer shall notify the applicant in writing of the date and location of the public hearing at least twenty-one (21) days prior to such hearing.

D. Members or representatives of the governing authority of any municipality contiguous to the proposed site may appear at and participate in the public hearing.

E. The public hearing shall develop a record sufficient to form the basis of any appeal. During the course of the public hearing before the Hearing Officer, the Hearing Officer shall receive testimony from the applicant and witnesses whom the applicant may call in support of the application, any City witnesses, any objectors, and any other witnesses having relevant information, and shall recommend approval only if the proposed facility meets the following criteria (or such amended criteria as may be set forth from time to time in the Act).

1. That the facility is necessary to accommodate the waste needs of the area that it is intended to serve; and

2. That the facility is so designed, located, and proposed to be operated that the public health, safety and welfare will be protected; and

3. That the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property; and

4. (A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year flood plain, or that the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year flood plain, or if the facility is a facility described in the subsection (b) of Section 22.19a of the Illinois Environmental Protection Act (415 ILCS 5/22.19a), the site is flood-proofed.

5. That the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents; and

6. That traffic patterns to or from the facility are so designed to minimize the impact on existing traffic flows; and

7. That if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accident release; and

8. That if the County Board has adopted a Solid Waste Management Plan, consistent with the planning requirements of The Local Solid Waste Disposal Act (415 ILCS 10/1 et seq.) or The Solid Waste Planning and Recycling Act (415 ILCS 15/1 et seq.), the facility is consistent with that plan; and

9. That if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board of such areas have been met.

The Hearing Officer and the City Council may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation of the applicant) in the field of solid waste management when considering criteria (s) and (5). The applicant shall affirmatively present evidence fairly showing the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation of the applicant) in the field of solid waste management.

F. A transcript shall be kept of all proceedings before the Hearing Officer. The Hearing Officer shall preside at the public hearing and shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted subject to this Ordinance and the Rules and Procedures. However, the Hearing Officer shall make all rulings and decisions in accordance with fundamental fairness. No ruling of the Hearing Officer concerning admissibility of evidence or procedural issues at the public hearing shall be appealable to the City Council. Issues of jurisdiction shall be finally determined by the City Council.

G. The applicant for site location approval shall have the burden of proof and the burden of going forward with evidence. The testimonial evidence introduced by the applicant may not exceed the scope of the application except as necessary to explain or clarify the same.

H. All persons desiring to be participants in the hearing, including members of the public, must submit written notification of said intent to the City Clerk before the first day of the public hearing or register with the Hearing Officer on the first day of the hearing prior to the commencement of the hearing. Any person so appearing at such public hearing shall have the right to present testimony and witnesses. However, all witnesses must be disclosed in writing prior to the commencement of the hearing. Said disclosures shall include a summary of the content of the expected testimony of that witness, the witnesses

expertise, if any, the witness' address and telephone number and shall be filed with the City Clerk.

All persons who register shall have the right to be represented by an attorney at said public hearing. All persons represented by an attorney shall have the right to have said attorney cross examine the witnesses. Opportunity to cross-examine any witness may be reasonably limited in time and duration by the Hearing Officer to assure completion of the hearings in accordance with the deadlines of the Act or to avoid irrelevant, burdensome or repetitive questions. The Hearing Officer may *sua sponte* propound questions to any witness or the applicant in order to clarify the record established by the participants at the hearing or to bring out relevant information. The City shall be deemed a participant and a party to all proceedings and shall proceed last with its case and cross-examination. Any person not registering in accordance with this provision shall be prohibited from participating in the hearing by presenting evidence or cross examining witnesses. However, any person, whether registered or not, shall be allowed to make a written or oral public statement as provided herein.

I. The applicant and the City's Council shall be allowed to cross-examine witnesses by right, subject to such reasonable limitation as may be set by the Hearing Officer. Cross examination by the City shall not be limited to matters contained in the application. Parties represented by the attorneys may be allowed to cross-examine in the discretion of the Hearing Officer. Other persons shall be allowed to submit questions to the Hearing Officer, who shall exercise discretion in the manner in which such questions are to be posed to witnesses. Sufficient examination of witnesses is to be allowed so as to provide for fundamental fairness.

J. All witnesses shall testify under oath. Testimony may include the use of prepared statements and exhibits. If testimony is by prepared statement, copies of such prepared statements shall be made available at the hearings (or, prior to the first hearing date, at the office of the City Clerk) at least one day in advance of such testimony being given. All witnesses shall be subject to reasonable examination as follows: direct, cross-examination, redirect, and recross.

K. Public Comment. The Hearing Officer may exercise discretion to allow public comment at each hearing or may set one time for public comment.

L. The hearing Officer shall, in the Hearing Officer's discretion and to the extent reasonably practicable, permit the City, the Applicant and any party to file Proposed Findings of Fact and conclusions of Law. The Hearing Officer shall draft his or her own Proposed Findings of Fact and Conclusions of law and submit them, and copies of such other Proposed Findings of Fact and Conclusions of law as may have been filed, to the City Council.

M. The Proposed Findings of Fact of the Hearing Officer on the application shall be in writing, specifying the reason(s) for the same, in accordance with Section 6(e), above. The Hearing Officer shall submit his/her report to the City Council as soon as practicable, but in no event earlier than the end of the 30-day comment period.

N. The siting approval procedures and criteria provided for in the Act and in this Ordinance for new PCF's shall be the exclusive siting procedures and rules and approval procedures. Local zoning or other local land use requirements shall not be applicable to such siting decisions. However, to the extent provided by law, the applicant shall also comply with zoning and other requirements.

SECTION 7: DECISIONS

A. Once the Hearing Officer has made his/her recommendation and reduced it to writing, the written recommendation shall be submitted to the City Council for its decision as to the ultimate approval or disapproval of the proposed site location. A copy of the record of the public hearing shall also be made available to the City Council as soon as the transcript becomes available.

B. The City Council shall make a decision based on the record from the public hearing and review of the recommendation of the Hearing Officer. The decision of the City Council shall be by resolution in writing, specifying the reasons for the decision, such reasons to be in conformity with Section 39.2(a) of the Act. In granting site location approval, the City Council may impose such conditions as may be reasonable and necessary to accomplish the purposes of the Act to the extent that said conditions are not inconsistent with the Act and the regulations promulgated by the Illinois Pollution Control Board. Such decisions shall be available for public inspection at the office of the City Clerk and may be copied upon payment of the cost of reproduction. If there is no final action by the City Council within one hundred eighty (180) days after the filing of the application for site location approval, the applicant may deem the application approved.

C. An applicant may not file an application for site location approval which is substantially the same as a request which was disapproved, pursuant to a finding against the applicant under any criteria (1) through (9) of Section 6(e), above, and of Section 39.2(a) of the Act, within two (2) years.

SECTION 8: SEVERABILITY

The attached Rules and Procedures (Exhibit A) are hereby incorporated into this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or the Rules and Procedures is for any reason held invalid or unconstitutional by any court of competent

jurisdiction, such portions shall be deemed to be separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereto

SECTION 9: ORDINANCE REPEALED

All previous Ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed insofar as they conflict with this Ordinance.

SECTION 10: EFFECTIVE DATE

This Ordinance and the attached Rules and Procedures (Exhibit A) shall take effect immediately upon its passage and approval by the Kankakee City Council as provided by law.

PASSED AND APPROVED this 3rd **day of** March , 2003

Ayes 12
Nays 0
Abstain 0
Absent 2

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney