

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

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NOV 12 2003

BYRON SANDBERG,

Petitioner,

No. PCB 04-33

(Third-Party Pollution Control
Facility Siting Appeal)

THE CITY OF KANKAKEE, ILLINOIS CITY
COUNCIL, TOWN AND COUNTRY UTILITIES,
INC. and KANKAKEE REGIONAL LANDFILL,
L.L.C.

Respondents.

WASTE MANAGEMENT OF ILLINOIS, INC.,

Petitioner,

No. PCB 04-34

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COUNTY OF KANKAKEE, ILLINOIS and
EDWARD D. SMITH, KANKAKEE COUNTY
STATE'S ATTORNEY,

Petitioner,

No. PCB 04-35

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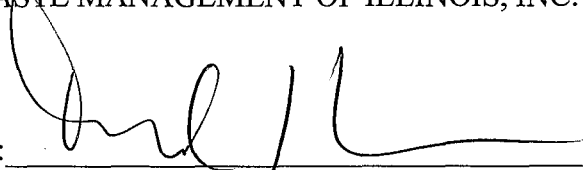
NOTICE OF FILING

0-0-7

TO: See Attached Service List

PLEASE TAKE NOTICE that on November 12, 2003, we filed with Mr. Bradley Halloran, the attached **MOTION TO COMPEL TOWN & COUNTRY AND KANKAKEE REGIONAL LANDFILL, L.L.C. TO ANSWER REQUESTS FOR ADMISSION OF FACT AND INTERROGATORY** in the above entitled matter.

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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Respondents.

MOTION TO COMPEL TOWN & COUNTRY UTILITIES, INC.
AND KANKAKEE REGIONAL LANDFILL, L.L.C.
TO ANSWER REQUESTS FOR ADMISSION OF FACT AND INTERROGATORY

Petitioner, WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt, pursuant to Sections 101.616(b) and 101.618(h) of the Pollution Control Board's Procedural Rules, moves for an order overruling the objection of Respondents Town & Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C. ("T&C") to certain requests for admission of fact and one interrogatory and compelling T&C to answer them. In support of this motion, WMII states as follows:

1. On October 16, 2003, WMII served Request for Admission ("Request") on T&C. The Request contained 37 requests to admit facts relating to the service of pre-filing notice (nos. 1-15) and the contents of the 2002 and 2003 siting application (nos. 16-36). Sufficiency of pre-filing notice and the filing of substantially the same application as one disapproved within the preceding two years are jurisdictional issues properly considered by the Pollution Control Board in a Section 40.1(b) appeal. 415 ILCS 5/39.2(b),(m) (2002). A true and correct photocopy of the Request is attached as Exhibit A.

2. On November 6, 2003, T&C filed its Response to the Request ("T&C Response"). In its Response, T&C objected to 22 requests to admit on the grounds that they called for a legal conclusion. In addition, T&C objected to 18 requests (nos. 19-36) because they are alleged to address issues on which the record is closed, and no further discovery is permitted. A true and correct photocopy of the T&C Response is attached as Exhibit B.

3. None of the requests to admit calls for a legal conclusion. Section 101.618 allows a request for admission of the truth of any "specific statements of fact." Each of the requests involves a specific statement of fact, not a legal conclusion. Statements of fact include the contents of a document, a party's understanding of the meaning of a document, and a party's conduct pursuant to a document. P.R.S. International, Inc. v. Shred Pax Corp., 184 Ill.2d 224,

236-37, 703 N.E.2d 71 (1998); Booth Oil Site Administrative Group v. Safety-Kleen Corporation, 194 F.R.D. 76, 80 (W.D.N.Y. 2000). Statements of fact involve whether an action was taken, a statement made, an event occurred or a consequence resulted. Hubeny v. Chairse, 305 Ill.App.3d 1038, 713 N.E.2d 222, 226 (2d Dist. 1999). Such requests to admit statements of fact are proper. Robertson v. Sky Chefs, Inc., 2003 Ill.App. LEXIS 1270, at 2, 4-5 (1st Dist. October 17, 2003).

4. Moreover, a request to admit may seek admission of an "ultimate" fact or a fact that necessarily leads to a legal conclusion. P.R.S. International, 184 Ill.2d at 236; Hubeny, 713 N.E.2d at 226. Even if the admission of facts (*e.g.* party's failure to observe red traffic light resulted in collision that caused compensable injury) requires a legal conclusion (*e.g.*, party was negligent and liable for injury), a request for that admission does not call for a legal conclusion and is proper. Hubeny, 713 N.E.2d at 226. So long as the fact finding must take some analytical step, no matter how small, from the contents of the admission to reach the legal conclusion, the request for admission is proper. Hubeny, 713 N.E.2d at 226.

5. T&C's objection to Request Nos. 19 through 36 that the record is closed and no further discovery is permitted is also meritless. Requests for admission are not discovery. P.R.S. International, 184 Ill.2d at 237. The purpose of requests to admit are not to discover facts, but to establish facts so as to narrow the issues for trial. P.R.S. International, 184 Ill.2d at 237. Proper use of requests to admit will save substantial time and cost for the parties and the Board. Szczeblewski v. Gossett, ___ Ill.App.3d ___, 795 N.E.2d 368, 372 (5th Dist. 2003). The Request seeks to establish facts relating to pre-filing notice and to the filing of a second application for the purpose of narrowing factual issues and obviating the necessity of formal proof at hearing.

Specific Objections

6. T&C objects that it is unable to respond to Request No. 2 because it calls for a legal conclusion. T&C then asserts that the records "speak for themselves." Both claims are groundless. The contents of the Assessor's records are clearly questions of fact. Safety-Kleen Corporation, 194 F.R.D. at 80. An assertion that a document "speaks for itself" is not a proper response to a request to admit. Safety-Kleen Corporation, 194 F.R.D. at 80.

7. T&C objects to Request No. 3 because it calls for a legal conclusion, and further states that the record of the County Treasurer "speak for themselves". For the reasons set forth in paragraph 6 above, these assertions should be overruled and T&C should be required to answer.

8. T&C objects to Request No. 4 because the word "individually" renders the request one that seeks a legal conclusion. The word "individually" refers to whether the notice was served on Ms. Skates personally, as opposed to collectively or in a representative capacity, and thus relates to the method of service and the capacity in which she received notice. These are facts, not legal conclusions. Further, T&C's answer is not responsive, and it should be compelled to provide an answer that properly responds to the Request.

9. T&C objects that Request No. 5 is vague and calls for a legal conclusion. Request No. 5 requests that T&C admit the fact that Judith Skates was served pre-filing notice on behalf of her brothers and sister. No legal conclusion is involved. The answer provided by T&C is not responsive. T&C should be required to provide a responsive answer.

10. T&C objects to Request Nos. 19 through 36 as calling for legal conclusions. The objection is without merit. Request Nos. 19 through 36 request that T&C admit the contents of two documents: the siting applications filed by T&C with the City of Kankakee in 2002 and 2003. The contents of those applications, including T&C's understanding of the applications, are

questions of fact which are proper subjects for a request to admit. P.R.S. International, 184 Ill.2d at 236-37; Safety-Kleen Corporation, 194 F.R.D. at 80. The fact that the admission of certain of these Requests may result in reaching the conclusion that the 2003 siting application is substantially the same as the 2002 siting application does not render any individual Request improper as seeking a legal conclusion. None of the Requests ask T&C to admit that the 2003 siting application is substantially the same as the 2002 siting application that was disapproved by the Pollution Control Board. Even if such a request to admit were presented, T&C acknowledges that such an issue is a question of fact. (T&C Response, ¶¶ 19-36.) In any event, Request Nos. 19 through 36 merely seek admission regarding the contents of the written applications. The contents of these documents, and T&C's understanding of them, are questions of fact properly presented in a request to admit. Robertson, at 2-5; Szczeblewski, 795 N.E.2d at 371; Safety-Kleen Corporation, 194 F.R.D. at 80.

11. T&C further objects to Request Nos. 19 through 36 because they are alleged to address issues on which the record is closed, and "in which there can therefore be no additional discovery or evidence presented." (T&C Response, ¶¶ 19-36.) The objection is groundless. Jurisdictional issues involving Sections 39.2(b) and 39.2(m) of the Illinois Environmental Protection Act are properly considered by the Pollution Control Board in this appeal. 415 ILCS 5/40.1 (2002). Hence, the record is not closed on these jurisdictional issues. In addition, the purpose of requests to admit is not to discover facts but to establish them, so that issues may be narrowed and the necessity of formal proof at hearing minimized. P.R.S. International, 184 Ill.2d at 237; Szczeblewski, 795 N.E.2d at 372. The Request is proper as a means to establish facts and obviate the need for extensive formal proof at hearing.

12. On October 16, 2003, WMII served interrogatories on T&C. A true and correct

photocopy of Petitioner's Interrogatories are attached as Exhibit C. Interrogatory No. 5 asks that T&C provide information explaining or supporting any denials of the requests to admit.

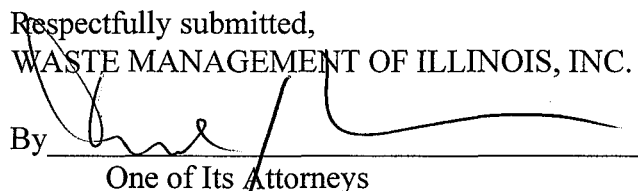
13. T&C objected to Interrogatory No. 5 by stating as follows: "Respondents object to this Interrogatory as vague, over broad, burdensome, calling for legal conclusions, and relating to matters on which the record is already complete and on which, therefore, there cannot be additional discovery." T&C's objection is substantially the same as its objection to the requests to admit. A true and correct photocopy of T&C's Answers to Interrogatories Tendered by Petitioner, Waste Management of Illinois, Inc. are attached as Exhibit D.

14. Interrogatory No. 5 is neither vague nor over broad. It simply requests T&C to fairly address the substance of the requested admission by providing information explaining or supporting its denial. As discussed above, the jurisdictional issues are relevant in this appeal and the requests seek the admission of facts, not legal conclusions. Accordingly, T&C should be compelled to answer Interrogatory No. 5.

WHEREFORE, WMII requests that an order be entered:

- (A) requiring T&C to answer Request Nos. 2 through 5 and 19 through 36;
- (B) requiring T&C to answer Interrogatory No. 5 for each request to admit it denies; and
- (C) awarding such other and further relief as deemed necessary and just.

Dated: November 7, 2003.

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

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **MOTION TO COMPEL TOWN & COUNTRY AND KANKAKEE REGIONAL LANDFILL, L.L.C. TO ANSWER REQUESTS FOR ADMISSION OF FACT AND INTERROGATORY** on the following parties as set out below:

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11th Floor
Chicago, Illinois 60601
via hand delivery

Mr. George Mueller
Attorney at Law
501 State Street
Ottawa, IL 61350
via facsimile transmission - (815) 963-9989

Mr. Byron Sandberg
109 Raub Ave
Donovan IL 60931
*via electronic transmission-
byronsandberg@starband.net*

Mr. Kenneth Leshen
Assistant City Attorney
One Dearborn Square
Suite 550
Kankakee, IL 60901
via facsimile transmission - (815) 933-3397

L. Patrick Power, Esq.
956 North Fifth Avenue
Kankakee, IL 60901
via facsimile transmission - (815) 937-0056

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
via hand delivery

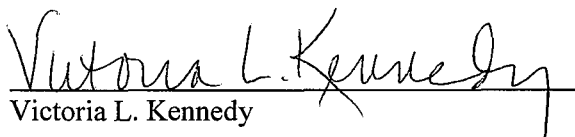
Mr. Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389
via facsimile transmission - (815) 963-9989

Edward Smith
Kankakee County State's Attorney
Kankakee County Administration Building
189 East Court Street
Kankakee, Illinois 60901
via facsimile transmission - (815) 937-3932

Christopher Bohlen
Barmann, Kramer and Bohlen, P.C.
300 East Court Street, Suite 502
P.O. Box 1787
Kankakee, IL 60901
via facsimile transmission - 815/939-0994

Ms. Claire Manning
Posegate & Denes, P.C.
111 N. Sixth Street
Springfield, IL 62705
via facsimile transmission - (217) 522-6184

by electronic transmission to Mr. Byron Sandberg at the e-mail address noted above, by hand delivery to Mr. Bradley Halloran and Ms. Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, by facsimile transmission to the parties with facsimile numbers indicated above, and by depositing a copy thereof enclosed in an envelope in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601 on this 12th day of November, 2003.


Victoria L. Kennedy

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REQUEST FOR ADMISSION

376166.1

EXHIBIT

A

Pursuant to Section 101.618 of the Pollution Control Board Procedural Rules, Petitioner, WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII") requests that Respondent, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C. ("T & C"), admit the following facts in writing and under oath within twenty-eight (28) days of service. Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney.

REQUESTS TO ADMIT

1. The real property identified as parcel no. 13-16-23-400-001 in the records of the Kankakee County Supervisor of Assessments is located within 250 feet of the lot line of the proposed Kankakee Regional Landfill.

Answer:

2. As of February 2003, the records of the Kankakee County Supervisor of Assessments listed Gary L. Bradshaw, James R. Bradshaw, Jay D. Bradshaw, Ted A. Bradshaw, Denise Fogel and Judith A. Skates as the owners of parcel no. 13-16-23-400-001.

Answer:

3. As of February 2003, the records of the Kankakee County Treasurer listed Gary L. Bradshaw, James R. Bradshaw, Jay D. Bradshaw, Ted A. Bradshaw, Denise Fogel and Judith A. Skates as the owners of parcel no. 13-16-23-400-001.

Answer:

4. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was served on Judith Skates individually by certified mail, return receipt requested, at 203 S. Locust, Onarga, Illinois, 60955.

Answer:

5. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was served on Judith Skates on behalf of Gary L. Bradshaw, James R. Bradshaw, Jay D. Bradshaw, Ted A. Bradshaw and Denise Fogel by certified mail, return receipt requested, at 203 S. Locust, Onarga, Illinois, 60955.

Answer:

6. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not served in person on Gary L. Bradshaw.

Answer:

7. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not served in person on James R. Bradshaw.

Answer:

8. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not served in person on Jay D. Bradshaw.

Answer:

9. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not served in person on Ted A. Bradshaw.

Answer:

10. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not served in person on Denise Fogel.

Answer:

11. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not sent by registered or certified mail and addressed to Gary L. Bradshaw personally.

Answer:

12. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not sent by registered or certified mail and addressed to James R. Bradshaw personally.

Answer:

13. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not sent by registered or certified mail and addressed to Jay D. Bradshaw personally.

Answer:

14. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not sent by registered or certified mail and addressed to Ted A. Bradshaw personally.

Answer:

15. Notice of the Application for Local Siting Approval filed March 7, 2003 for the proposed Kankakee Regional Landfill was not sent by registered or certified mail and addressed to Denise Fogel personally.

Answer:

16. On March 13, 2002, T & C filed an application with the City of Kankakee pursuant to Section 39.2 of the Illinois Environmental Protection Act ("Act") requesting location approval for the Kankakee Regional Landfill ("2002 Application").

Answer:

17. The Kankakee Regional Landfill is a proposed 400-acre sanitary landfill located in Otto Township in the City of Kankakee, Illinois.

Answer:

18. On March 7, 2003, T & C filed a second application with the City of Kankakee pursuant to Section 39.2 of the Act requesting location approval for the Kankakee Regional Landfill ("2003 Application").

Answer:

19. The 2003 Application requests location approval for the same 400-acre landfill for which T & C requested location approval in the 2002 Application.

Answer:

20. The information and analysis presented by T & C to demonstrate compliance with criterion one (415 ILCS 5/39.2(a)(i)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion one in the 2002 Application.

Answer:

21. The information and analysis presented by T & C to demonstrate compliance with criterion two (415 ILCS 5/39.2(a)(ii)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion two in the 2002 Application.

Answer:

22. The location, size and legal description of the Kankakee Regional Landfill presented in the 2003 Application was the same as presented in the 2002 Application.

Answer:

23. The design of the Kankakee Regional Landfill in the 2003 Application was substantially the same as presented in the 2002 Application.

Answer:

24. As proposed in the 2002 Application, the Kankakee Regional Landfill had a capacity of 50.9 million airspace cubic yards, a waste footprint of 236.3 acres and would receive an average of 3500 tons of waste per day.

Answer:

25. As proposed in the 2003 Application, the Kankakee Regional Landfill had a capacity of 50.9 million airspace cubic yards, a waste footprint of 236.3 acres and would receive an average of 3500 tons of waste per day.

Answer:

26. As proposed in the 2002 Application, the design of the Kankakee Regional Landfill consisted of a composite liner, leachate collection system, inward hydraulic gradient, landfill gas management and groundwater monitoring.

Answer:

27. As proposed in the 2003 Application, the design of the Kankakee Regional Landfill consisted of a composite liner, leachate collection system, inward hydraulic gradient, landfill gas management and groundwater monitoring.

Answer:

28. Both the 2002 Application and 2003 Application proposed that the liner system be keyed into the Silurian dolomite bedrock.

Answer:

29. The proposed operation of the Kankakee Regional Landfill presented in the 2003 Application is the same as presented in the 2002 Application.

Answer:

30. The information and analysis presented by T & C to demonstrate compliance with criterion three (415 ILCS 5/39.2(a)(iii)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion three in the 2002 Application.

Answer:

31. The information and analysis presented by T & C to demonstrate compliance with criterion four (415 ILCS 5/39.2(a)(iv)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion four in the 2002 Application.

Answer:

32. The information and analysis presented by T & C to demonstrate compliance with criterion five (415 ILCS 5/39.2(a)(v)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion five in the 2002 Application.

Answer:

33. The information and analysis presented by T & C to demonstrate compliance with criterion six (415 ILCS 5/39.2(a)(vi)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion six in the 2002 Application.

Answer:

34. The information and analysis presented by T & C to demonstrate compliance with criterion seven (415 ILCS 5/39.2(a)(vii)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion seven in the 2002 Application.

Answer:

35. The information and analysis presented by T & C to demonstrate compliance with criterion eight (415 ILCS 5/39.2(a)(viii)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion eight in the 2002 Application.

Answer:

36. The information and analysis presented by T & C to demonstrate compliance with criterion nine (415 ILCS 5/39.2(a)(iv)) in the 2003 Application was substantially the same as the information and analysis presented by T & C to demonstrate compliance with criterion nine in the 2002 Application.

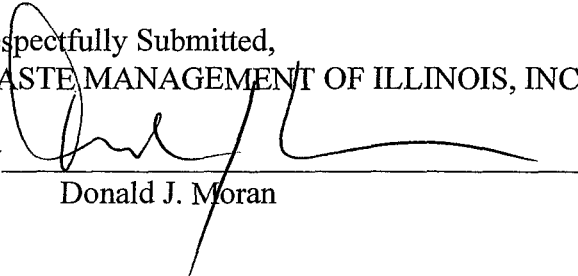
Answer:

37. Prior to August 18, 2003, T & C received a copy of the final report of Mr. Ralph Yarborough of Geo-Technical Associates, Inc. concerning the proposed Kankakee Regional Landfill.

Answer:

Respectfully Submitted,
WASTE MANAGEMENT OF ILLINOIS, INC.

By


Donald J. Moran

Donald J. Moran
PEDERSEN & HOUP, P.C.
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
Telephone: (312) 641-6888

AFFIDAVIT OF SERVICE

The undersigned, a non-attorney, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, on oath certifies that a copy of the foregoing was served upon the following parties by facsimile at the number indicated below and by depositing a copy thereof, enclosed in an envelope in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, at 5:00 p.m. on this 16th day of October, 2003.

Mr. George Mueller
Attorney at Law
501 State Street
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(815) 433-4913

Christopher Bohlen
Barmann, Kramer and Bohlen, P.C.
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P.O. Box 1787
Kankakee, IL 60901
(815) 939-0994

Bradley Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-3669

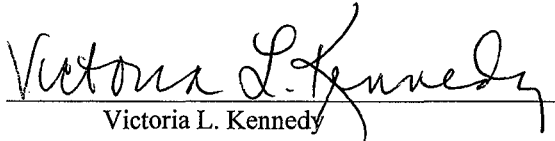
Claire A. Manning
Posegate & Denes, P.C.
111 N. Sixth Street
Springfield, IL 62705
(217) 522-6184

City of Kankakee Clerk
Anjanita Dumas
385 E. Oak Street
Kankakee, IL 60901
(815) 933-0482

Mr. Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389
(815) 963-9989

Edward Smith
Kankakee County State's Attorney
Kankakee County Administration Building
189 East Court Street
Kankakee, Illinois 60901
(815) 937-3932

and to Mr. Byron Sandberg, 109 Raub Aveue, Donovan IL 60931 by electronic transmission on October 16, 2003 at byronsandberg@starband.net.


Victoria L. Kennedy

1. Respondents admit the Request.

2. Respondents can neither admit nor deny this Request as it calls for a legal conclusion.

Without waiving such objection, Respondents state that the records of the Kankakee County Supervisor of Assessments speak for themselves.

3. Respondents object to this Request as calling for a legal conclusion. Without waiving such objection, Respondents state that the records of the Kankakee County Treasurer speak for themselves.

4. Respondents object to this request as the term "individually" has a legal meaning and this request therefore calls for a legal conclusion. Without waiving said objection, Respondents state that Judith Skates was served in accordance with all legal requirements for service..

5. Respondents object to this Request as being vague and calling for a legal conclusion. Without waiving such objection, Respondents state that the individuals identified in this Request were all served pursuant to certified mailing no.: 70022410000628156428.

6. Respondents admit this Request.

7. Respondents admit this Request.

8. Respondents admit this Request.

9. Respondents admit this Request.

10. Respondents admit this Request.

11. Respondents deny this Request.

12. Respondents deny this Request.

13. Respondents deny this Request.

14. Respondents deny this Request.

15. Respondents deny this Request.

16. Respondents admit this Request.

17. Respondents admit this Request.

18. Respondents admit this Request.

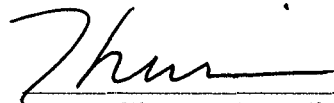
19-36. Respondents object to all of these Requests as calling for legal conclusions.

Moreover, Respondents object to these Requests as addressing issues on which the record is closed, and in which there can therefore be no additional discovery or evidence presented. The determination of whether the 2003 Application is substantially the same as the 2002 Application, to the extent that such determination is required, is a question of fact to be determined by the City Council. Accordingly, the PCB's review of said determination is confined to the record of evidence developed before the City Council, and it is improper by way of discovery to request a party to comment or opine on said record of evidence.

37. Respondent denies this Request.

Kankakee Regional Landfill, LLC and
Town & Country Utilities, Inc.,
Respondents.

BY:

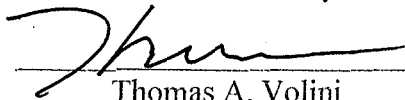


Thomas A. Volini

GEORGE MUELLER, P.C.
Attorney at Law
501 State St.
Ottawa, IL 61350
Phone: (815) 433-4705

STATE OF ILLINOIS)
) SS.
COUNTY OF LaSalle)

The undersigned, Thomas A. Volini, having read the foregoing Response by Town & Country Utilities, Inc. to the Petitioner, Waste Management of Illinois, Inc.'s Request For Admission, state that the same are true and correct to the best of his information, knowledge, and belief.



Thomas A. Volini

Subscribed and Sworn to Before Me This 6th Day of
November, 2003.



Notary Public



GEORGE MUELLER, P.C.
Attorney at Law
501 State St.
Ottawa, IL 61350
Phone: (815) 433-4705

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BYRON SANDBERG,

Petitioner,

No. PCB 04-33

(Third-Party Pollution Control
Facility Siting Appeal)

THE CITY OF KANKAKEE, ILLINOIS CITY
COUNCIL, TOWN AND COUNTRY UTILITIES,
INC. and KANKAKEE REGIONAL LANDFILL,
L.L.C.

Respondents.

WASTE MANAGEMENT OF ILLINOIS, INC.,

Petitioner,

No. PCB 04-34

(Third-Party Pollution Control
Facility Siting Appeal)

THE CITY OF KANKAKEE, ILLINOIS CITY
COUNCIL, TOWN AND COUNTRY UTILITIES,
INC. and KANKAKEE REGIONAL LANDFILL,
L.L.C.

Respondents.

COUNTY OF KANKAKEE, ILLINOIS and
EDWARD D. SMITH, KANKAKEE COUNTY
STATE'S ATTORNEY,

Petitioner,

No. PCB 04-35

(Third-Party Pollution Control
Facility Siting Appeal)
(Consolidated)

THE CITY OF KANKAKEE, ILLINOIS CITY
COUNCIL, TOWN AND COUNTRY UTILITIES,
INC. and KANKAKEE REGIONAL LANDFILL,
L.L.C.

Respondents.

PETITIONER'S INTERROGATORIES

EXHIBIT

C

Petitioner, Waste Management of Illinois, Inc. ("WMII"), pursuant to the Rules of the Illinois Pollution Control Board, submits the following Interrogatories to the Respondent, TOWN AND COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, L.L.C.

DEFINITIONS

A. "T & C" refers to Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C. and their respective agents, directors, officers, employees, attorneys, representatives and all persons or entities who have acted or purported to act on their respective behalves.

B. "City" refers to City of Kankakee, Illinois and the City of Kankakee City Council, its mayor, departments, elected officials, attorneys, agents, employees and all persons or entities who have acted or purported to act on its behalf.

C. "City Council member" refers to any member of the City of Kankakee City Council, who voted.

D. "Communication" means transmission or exchange of information, facts, opinions, questions, requests, suggestions, results or conclusions between two or more persons or entities, orally or in writing, by any means, including but not limited to meetings, discussions, correspondence, e-mails, facsimile machine, conversations, phone calls, letters, documents or memoranda.

E. The "2002 Siting Application" means T & C's request for site location approval of the Kankakee Regional Landfill located in Otto Township, City of Kankakee, Illinois, filed March 13, 2002.

F. The "2003 Siting Application" means T & C's request for site location approval of the Kankakee Regional Landfill located in Otto Township, City of Kankakee, Illinois, filed March 7, 2003.

G. "Facility" shall refer to the proposed Kankakee Regional Landfill located in Otto Township, City of Kankakee, Illinois which is the subject of the 2002 and 2003 Siting Applications.

H. "Identify," when referring to a communication, means (1) to state the nature of the communication (*e.g.*, telephone call, letter, meeting), (2) to state the date and time on which the communication occurred, (3) to state each person who participated in the communication, (4) to state each person who did not participate in the communication, but was present during (or otherwise heard) any part of the communication, and (5) to summarize the statements made by each participant in or during the communication.

I. "Refer" or "Relate" with reference to a subject shall mean the following:

- a. Containing, comprising, constituting, stating, setting forth, or recording, contradicting, referring to, relating to or in any way pertaining to, in whole or in part, that subject;
- b. Describing, discussing, reflecting, interpreting, identifying, concerning, contradicting, referring to, relating to, or in any way pertaining to, in whole or in part, that subject.

J. The relevant time period for answering the interrogatories is from January 1, 2003 to the present.

INSTRUCTIONS

Continuing Responses. These interrogatories shall be deemed to be continuing in nature and if, after serving your responses, additional information becomes known or available to you, that is responsive to these interrogatories, then you are required to reasonably supplement or amend your responses.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who provided information regarding or assisted in answering these interrogatories.

ANSWER:

INTERROGATORY NO. 2: Identify all communications of T & C that refer or relate to the 2002 Siting Application or the Facility with the following persons:

- (a) Donald Green.
- (b) Christopher Bohlen.
- (c) Ralph Yarborough.
- (e) Robert Boyd.
- (f) Any City Council member.

ANSWER:

INTERROGATORY NO. 3: Identify all communications of T & C that refer or relate to the 2003 Siting Application or the Facility with the following persons:

(a) Ralph Yarborough.

(b) Robert Boyd.

ANSWER:

INTERROGATORY NO. 4: Please identify all communications between the City and T & C that refer or relate to the 2003 Siting Application.

ANSWER:

INTERROGATORY NO. 5: If you deny any of the requests to admit (nos. 1 through 37) previously served upon you on October 16, 2003, indicate what you are denying, the factual basis therefor, the source of your information and identify all documents that support your denial.

ANSWER:

INTERROGATORY NO. 6: Please identify each witness you expect to present to testify at hearing, and state the subject of each witness' testimony and identify any document any

witness will utilize in his or her testimony.

ANSWER:

INTERROGATORY NO. 7: Please identify each document used or relied upon in preparation of the answers to these interrogatories.

ANSWER:

Dated: October 17, 2003.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

Donald J. Moran
One of Its Attorneys

PEDERSEN & HOUP
161 North Clark Street
Suite 3100
Chicago, IL 60601
(312) 641-6888

AFFIDAVIT OF SERVICE

The undersigned, a non-attorney, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, on oath certifies that a copy of the foregoing was served upon:

Mr. George Mueller
Attorney at Law
501 State Street
Ottawa, IL 61350

Christopher Bohlen
Barmann, Kramer and Bohlen, P.C.
300 East Court Street, Suite 502
P.O. Box 1787
Kankakee, IL 60901

Mr. Byron Sandberg
109 Raub Ave
Donovan IL 60931

Bradley Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

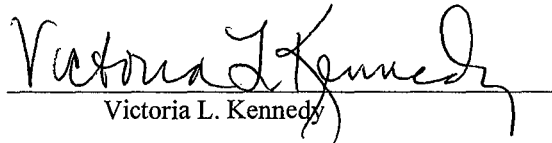
City of Kankakee Clerk
Anjanita Dumas
385 E. Oak Street
Kankakee, IL 60901

Mr. Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

Edward Smith
Kankakee County State's Attorney
Kankakee County Administration Building
189 East Court Street
Kankakee, Illinois 60901

Claire A. Manning
Posegate & Denes, P.C.
111 N. Sixth Street
Springfield, IL 62705

by overnight delivery to the addresses listed above on or before 5:00 p.m. on this 16th day of October, 2003.


Victoria L. Kennedy

THE ILLINOIS POLLUTION CONTROL BOARD

BYRON SANDBERG,)
Petitioner,)
vs.)
THE CITY OF KANKAKEE, ILLINOIS)
CITY COUNCIL, TOWN & COUNTRY)
UTILITIES, INC., and KANKAKEE)
REGIONAL LANDFILL, L.L.C.)
Respondents.)

**PCB 04-33
(Third Party Pollution Control Facility
Siting Appeal)**

WASTE MANAGEMENT OF ILLINOIS))
INC.,)
Petitioner,)
vs.)
THE CITY OF KANKAKEE, ILLINOIS)
CITY COUNCIL, TOWN & COUNTRY)
UTILITIES, INC., and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)
Respondents.)

**PCB 04-34
(Third Party Pollution Control Facility
Siting Appeal)**

**COUNTY OF KANKAKEE, ILLINOIS,)
and EDWARD D. SMITH, KANKAKEE)
COUNTY STATE'S ATTORNEY,)
Petitioners,)
vs.)
THE CITY OF KANKAKEE, ILLINOIS)
CITY COUNCIL, TOWN & COUNTRY)
UTILITIES, INC., and KANKAKEE)
REGIONAL LANDFILL, L.L.C.,)
Respondents.)**

**PCB 04-35
(Third Party Pollution Control Facility
Siting Appeal)
(Consolidated)**

RESPONDENT, TOWN & COUNTRY UTILITIES, INC.'S
ANSWERS TO INTERROGATORIES TENDERED BY PETITIONER,
WASTE MANAGEMENT OF ILLINOIS, INC.

Now come Respondents, Kankakee Regional Landfill, LLC and Town & Country Utilities, Inc., by and through one of their attorneys, George Mueller, P.C., for their Answers to Interrogatories propounded by Petitioner, Waste Management of Illinois, Inc., state as follows:

EXHIBIT

D

1. Identify all persons who provided information regarding or assisted in answering these interrogatories.

Answer:

Thomas A. Volini

George Mueller

2. Identify all communications of T & C that refer or relate to the 2002 Siting Application or the Facility with the following persons:

- (a) Donald Green;
- (b) Christopher Bohlen;
- (c) Ralph Yarborough;
- (d) Robert Boyd
- (e) Any City Council member.

Answer:

Respondent objects to this Interrogatory as communications relating to the 2002 Siting Application are not relevant to the proceedings herein. Without waiving such objection, Respondents state that they are unaware of any such communications beyond those set forth in the record of proceedings in PCB Case No.: 03-31 with the exception of a meeting of the Kankakee City Council attended by Thomas Volini on February 3, 2003..

3. Identify all communication of T & C that refer or relate to the 2003 Siting Application or the Facility with the following persons:

- (a) Ralph Yarborough;

(b) Robert Boyd.

Answer:

(a) None

(b) None

4. Please identify all communications between the City and T & C that refer or relate to the 2003 Siting Application.

Answer:

Respondents object to this Interrogatory as it contains no time parameters and pre-filing communications between the City and Respondents are not probative of any issue herein. Without waiving such objection, Respondents state that Thomas A. Volini had numerous casual and informal communications with various City officials after August 19, 2002 and before March 7, 2003. The details of these communications cannot be recalled, but they did not refer to or relate to the 2003 Siting Application with the exception of Mr. Volini advising City officials of Respondents' intent to file the 2003 Application. Mr Volini also met with the City Council on February 3, 2003, at which time he advised the council of his intent to file a new application for siting approval.

5. If you deny any of the requests to admit (nos. 1 through 37) previously served upon you on October 16, 2003, indicate what you are denying, the factual basis therefor, the source of your information and identify all documents that support your denial.

Answer:

Respondents object to this Interrogatory as vague, over broad, burdensome, calling for

legal conclusions, and relating to matters on which the record is already complete and on which, therefore, there cannot be additional discovery.

6. Please identify each witness you expect to present to testify at hearing, and state the subject of each witness' testimony and identify any document any witness will utilize in his or her testimony.

Answer:

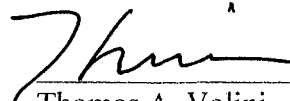
Thomas A. Volini is expected to testify regarding service of Pre-filing Notices. Respondents reserve the right to supplement this Answer as investigation continues.

7. Please identify each document used or relied upon in preparation of the answers to these interrogatories.

Answer:

The record of proceedings in PCB Case 03-31; the record developed for the City Council on the pending Application; and the tax records of Kankakee County, Illinois.

Respectfully Submitted,
Kankakee Regional Landfill, LLC and
Town & Country Utilities, Inc.,
Respondents,


Thomas A. Volini

GEORGE MUELLER, P.C.
Attorney at Law
501 State Street
Ottawa, IL 61350
Phone: (815) 433-4705