

SEP 08 2003

65448-POH

STATE OF ILLINOIS
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD *Pollution Control Board*

MICHAEL WATSON,

Petitioner,

v.

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

Respondent.

No. PCB 03-134

(Pollution Control Facility Siting Appeal)

Consolidated With PCB 03-125, 03-133,
03-135)

NOTICE OF FILING

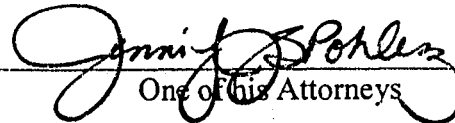
TO: See Attached Service List

PLEASE TAKE NOTICE that on September 8, 2003, we filed with the Illinois Pollution Control Board, the attached **Petitioner Michael Watson's Motion to Reconsider Portions of the Illinois Pollution Control Board's Ruling of August 7, 2003**, a copy of which is attached hereto and served upon you.

Dated: September 8, 2003

Respectfully Submitted,
PETITIONER MICHAEL WATSON

By:


One of his Attorneys

Jennifer J. Sackett Pohlenz
QUERREY & HARROW, LTD.
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Chicago, Illinois 60604
(312) 540-7000
Attorneys for Michael Watson
Illinois Attorney No. 6225990

PROOF OF SERVICE

I, Julia Crews, a non-attorney, on oath state that I served the foregoing **Notice of Filing, along with copies of document(s) set forth in this Notice**, on the following parties and persons at their respective addresses and/or fax numbers, as stated below, this 8th day of September 2003, by or before the hour of 4:30 p.m. in the manners stated below:

Via U.S. Mail

Donald Moran
Pedersen & Houpt
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Suite 3100
Chicago, IL 60601-3242
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Attorney for Waste Management of Illinois, Inc.

Via U. S. Mail

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Representing Petitioner in PCB 03-133

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Interested Party

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Charles Helston
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Representing Kankakee County Board

Via Hand Delivery (Original and 9 copies (10 total))

Illinois Pollution Control Board
Clerk's Office
James R. Thompson Center, Ste. 11-500
100 W. Randolph Street
Chicago, IL 60601

Via U.S. Mail

Kenneth A. Leshen
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Suite 550
Kankakee, IL 60901
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Representing Petitioner in PCB 03-125

Via U.S. Mail

Keith Runyon
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Petitioner in PCB 03-135

Via U.S. Mail

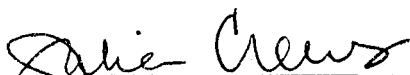
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Representing Petitioner in PCB 03-125

Via U.S. Mail

Elizabeth S. Harvey, Esq.
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Chicago, IL 60611
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Representing Kankakee County Board

Via Hand Delivery

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 W. Randolph Street
Chicago, IL 60601
Hearing Officer



Julia Crews

SEP 08 2003

65448-POH

STATE OF ILLINOIS
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD *Pollution Control Board*

MICHAEL WATSON,

Petitioner,

v.

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

Respondent.

No. PCB 03-134

(Pollution Control Facility Siting
Appeal)

Consolidated With PCB 03-125, 03-
133, 03-135)

PETITIONER MICHAEL WATSON'S MOTION TO RECONSIDER
PORTIONS OF THE ILLINOIS POLLUTION CONTROL BOARD'S RULING
OF AUGUST 7, 2003

This motion to reconsider, submitted by Petitioner Michael Watson ("Watson") by and through his attorneys at Querrey & Harrow, Ltd., addresses two of the issues addressed in the Illinois Pollution Control Board's (IPCB) Opinion and Order of August 7, 2003. Specifically, this motion addresses: (1) The IPCB's decision compelling Watson to pay a share of the costs of preparing and certifying the record in the instant matter on the basis that Watson is a "non-citizen" petitioner; and (2) The IPCB's decision that under Section 39.2(b) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/29.2(b) (2002)), an applicant can effect service by mailing the prefiling notice to property owners certified mail return receipt requested, and the service is proper upon mailing, and that Mr. Keller was therefore properly served with notice.

1. Michael Watson is a citizen rather than a "non-citizen" petitioner

Watson is a "citizen" rather than a "non-citizen" petitioner for purposes of taxing the costs of certification of the record in the instant action. The IPCB's finding that Watson is a "non-citizen" petitioner is in error. No evidence was introduced to suggest that Watson was

anything other than a local landowner and "citizen," even though he had a business interest in the outcome of the petition. Due to the late filing date of the Motion to Compel by the Kankakee County Board and Kankakee County (hereinafter collectively referenced as "Kankakee County"), Watson was not given the opportunity to respond to the motion to compel his payment of costs. If he had been given that opportunity, he would have made the following points.

First, there is no true "evidence" in the record supporting the contention that Watson participated in the instant action as anything but a local landowner. Kankakee County's motion to compel costs cited only two items of alleged "evidence" in support of that attempt. Initially, Kankakee County cited pages 64-67 of the public hearing of December 5, 2002 at 6 p.m. (See **Exhibit 1**). Those pages contain the cross-examination of Ms. Keller. She testified that her husband occasionally drives a garbage truck that picks up garbage for United Disposal, a company in which Watson has an interest. Watson's interest in United Disposal, without more, does not make him a "non-citizen." Also, the County cited pages 19-20 of the public hearing of December 6, 2002, a portion of Watson's counsel's closing argument. (See **Exhibit 2**). During that argument, Watson's counsel commented that Watson owned United Disposal. The County sought to characterize that comment as evidence. That attempt was truly disingenuous based on: (1) the law's clear recognition that comments by counsel during closing argument are not evidence; and (2) the County's own stated adherence to that point of law. The County actually stated that:

"[T]he statements made by attorneys during opening and closing arguments, and during examination, are not evidence, and cannot

be used to prove a particular position.” (Kankakee County Response Bf. 58).

Having taken that position, the County should not be able to contradict itself as a matter of convenience to suit its own purposes. Instead, it must be held to its own statements and the generally acknowledged law that statements made during closing argument are not evidence. Shorn by its own hand of that “evidence,” the County can point to – and the record contains – nothing to support the finding that Watson was a “non-citizen.” The County had the burden of proof in that regard, and failed to sustain that burden.

Second, there is undisputed evidence in the record that *no party* contested Watson’s standing in the instant action as a beneficial property owner. Not even Waste Management of Illinois, Inc. questioned Watson’s standing in this regard.

Third, Section 39.2(n) of the Act and Section 107.306 of the IPCB Rules clearly exempt “citizens” and “citizens’ groups” from paying the costs of preparing the record and all case law regarding citizen petitioners follows this plain reading of this Section. Neither the Act nor the IPCB Rules, by their plain language, distinguishes or removes Watson from the category of a “citizen” just because or if he had an interest in a waste management company. Watson has appeared only in his individual capacity, and his interest, if any, in United Disposal of Bradley, Inc. (otherwise referenced as United Disposal) is irrelevant. The plain language of the Act and the IPCB Rule does not take that interest into account. The statutory language is clear and unambiguous, and the County did not sustain its burden of supplying evidence that Watson falls within the scope of the Act with regard to the payment of costs. Thus, any resort to legislative history is irrelevant and unnecessary.

Fourth, even if the legislative history is considered, it does not prevent a *landowner* and *citizen*, irrespective of that individual's business interests, from personally appealing and being exempt from costs of certifying the record under Section 39.2(n) and Section 107.306 of the IPCB Rules. The legislative history upon which the County relied contained a statement from Senator Karpiel that a "citizen" or "citizen's group" did not include "persons owning or operating a competing landfill facility." (See Exhibit 3). Watson does not fall within the exception to a "citizen" or "citizen's group" because not only does he not own any competing landfill facility, moreover, there is no evidence in the record that either Watson or the corporation in which he has an interest, United Disposal of Bradley, Inc., "owns or operates a competing landfill facility" as referenced in the legislative history. In fact, according to Waste Management of Illinois, Inc.'s testimony, there is no operating or permitted landfill in Kankakee other than Waste Management of Illinois, Inc.'s own landfill (an expansion of which is a subject of this proceeding). No evidence was presented concerning any nearby competing landfill bearing any name similar to "United Disposal" or "United Disposal of Bradley, Inc." or otherwise connection to Watson in any way. Thus, Kankakee County did not sustain its burden of proof on the issue of Watson's ownership of any "competing landfill", as it alleges, sufficient to remove him from the category of "citizen" or "citizen's group." Kankakee County presented no such evidence, and the IPCB's decision was made in error, as it has no basis in the evidentiary record. Thus, the legislative history is unavailing, and does not support the incorrect imposition of costs upon Watson.

Finally, it is neither logical nor consistent with Section 39.2(n) to impose costs upon an individual landowner such as Watson. This is particularly so where he is a beneficial owner of land adjacent to the proposed expansion on at least two sides, he is required to carry an extra financial burden on appeal that other citizens of the County are not, and he is also a shareholder in a corporation which is in the solid waste management business. Under this logic, Kankakee County would also seek to exclude from Section 39.2(n) every citizen who owns shares of or has a financial interest in Allied Waste, Inc. United Disposal of Bradley, Inc. is an Illinois corporation, in good standing, and is a separate and distinct legal entity from Watson. (See Exhibit 4). There is not only no evidentiary basis in the record concerning Watson having an interest in a "competing landfill" as argued by Kankakee County, there is absolutely no evidentiary basis to treat or tie Watson as a shareholder of a corporation and the actual corporation as if they were the same legal entity, which they are clearly not. This cannot possibly be Kankakee County's intent, or the intent of the legislature or the IPCB relative to Section 39.2(n) of the Act or Section 107.306 of the IPCB Rules, as such result is simply ludicrous and would result in any shareholder in any corporation participating in the waste management business (regardless of whether that corporation had an interest in a landfill) to be deemed a "non-citizen."

Watson appeared in his individual capacity at the hearings and throughout the petition proceedings. Accordingly, he is clearly Watson a "citizen" and should be treated as such. This is so whether he is employed by, an officer or shareholder of, or a merely a supporter of a corporation that conducts itself in the solid waste management field. He position in that

regard should have no bearing on his role as an individual citizen and landowner. For those reasons, the Board should reverse that portion of its decision taxing costs against Watson.

2. Notice Solely Upon Mailing With Return Receipt Requested, Without Actual Receipt of Notice by a Property Owner, Is Not Sufficient to Perfect Service of Notice Under Section 39.2(b) of the Act. Thus, Mr. Keller Never Received Proper Notice

The notice provision of Section 29.2(b), by its clear language as construed by Illinois courts of review, requires actual receipt of notice via certified mail by a property owner rather than mere mailing of notice via certified mail with return receipt requested. The IPCB ruled that *People ex rel. Devine v. \$30,700 U.S. Currency*, (2002), 199 Ill.2d 142, 776 N.E.2d 1084 controls this issue, and that an applicant can effect service by mailing the prefiling notice to property owners via certified mail with return receipt requested, and that service is proper upon mailing. That ruling was wrong, and misconstrued the existing law as to the requirement for serving proper notice under statutory language such as that contained in Section 39.2(b). Under such language, actual receipt of the notice via certified mail is required to correctly serve a property owner. Mailing alone is not sufficient.

The IPCB ruled that *People ex rel. Devine* effectively overruled *Ogle County Board v. Pollution Control Board*, 272 Ill.App.3d 184, 649 N.E.2d 545 (2d Dist. 1995), which held that, under statutory language similar to that in Section 39.2(b), actual receipt of notice via certified mail was required to perfect service on a property owner. The Board's ruling was wrong because: *People ex. Rel. Devine* involved statutory language that was clearly different from the statutory language of Section 39.2(b) of the Act that was at issue in *Ogle County*.

Thus, the Board should vacate that portion of its ruling finding that mailing of notice via certified mail is sufficient to perfect service in property owners.

A. Statutory Language in *People ex. rel. Devine*

The statute at issue in *People ex. rel. Devine* was the Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 *et seq* (West 2000)).

The notice provision of that statute outlines the method of notice required to apprise individuals of pending forfeiture proceedings. The method of service depends upon the State's knowledge of the identity and location of the claimant at the time of service. Section 4, entitled "Notice to Owner or Interest Holder," provides that:

"if the owner's or interest holder's name and current address are known, then [notice or service shall be given] by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address." 725 ILCS 150/4(A)(1) (West 2000).

The statute requires notice by publication in the event the address or name of the owner or interest holder is unknown. 725 ILCS 150/4(A)(3) (West 2000). Owners or interest holders are obligated to advise the seizing agency of address changes that occur prior to the mailing of notice. 725 ILCS 150/4(A)(1) (West 2000) ("if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify ... of the change in address"). Individuals claiming an interest in the property subject to forfeiture may file a claim to the property within "45 days after the effective date of notice." 725 ILCS 160/6(C)(1) (West 2000). Further, the statute provides when notice is effective:

“Notice served under the Act is effective upon personal service, the last date of publication, *or the mailing of written notice, whichever is earlier.*” 725 ILCS 150/4(B) (West 2000)(emphasis added).

Further, under the Drug Asset Forfeiture Procedure Act, if parties fail to appear at the forfeiture proceedings, “property may be subject to forfeiture even if no one appears to claim it.”

Significantly, the statute at issue in *s People ex. rel. Devine* (Drug Asset Forfeiture Procedure Act) specifically stated that service was effective upon the *mailing* of written notice.

B. Statutory Language in Ogle County Board

The statute as issue in *Ogle County Board* was the same one at issue in the instant action, Section 39.2(b) of the Act.

The pertinent part of Section 39.2(b) of the Act provides that:

No later than 14 days prior to a request for location approval the applicant shall cause written notice of such request to be served either in 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 250 feet in each direction of the lot line of the subject property...

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.” 415 ILCS 5/39.2(b) (West Supp. 1993).

The court in *Ogle County* ruled that that language required *actual receipt* of notice by a property owner in order to perfect proper service.

Significantly, Section 39.2(b) does not contain a provision – as did the statute in *People ex. rel. Devine* – that states that service is effective upon the mailing of written notice.

The opinion in *Ogle County* was based on the Supreme Court's opinion in *Avdich v. Kleinert*, (1977), 69 Ill.2d 1, 370 N.E.2d 504. In *Avdich*, the Supreme Court interpreted the inclusion of "return receipt requested" language in the notice provision of a statute to indicate that the legislature intended that service of a notice was not to be considered complete until it was received by the addressee. *Ogle County Board*, 272 Ill.App.3d at 195-96 (citing *Avdich*, 69 Ill.2d at 9.

The statutory language at issue in *Avdich* provided:

"Any demand made or notice served ... by sending a copy of said notice to the tenant by certified or registered mail, with a returned receipt from the addressee."

Avdich, 69 Ill.2d at 5. The Supreme Court in *Avdich* ruled that this language required actual receipt by the addressee in order to perfect service of the notice. *Avdich*, 69 Ill.2d at 8-9.

C. Difference in Statutory Language

The IPCB's decision that Section 39.2(b) only requires mailing as opposed to actual receipt of notice, and that *People ex. rel. Devine* effectively overruled *Ogle County Board* is wrong – for one reason. The statutory language at issue in *People ex. rel. Devine* included a specific provision that said that notice was effectively served upon mailing. Neither Section 39.2(b) nor the statute at issue in *Avdich* had such a provision. In that regard, the IPCB erroneously disregarded the principles of statutory construction in construing a statute

according to its plain meaning and, apparently, and incorrectly, read the additional provision allowing service by mailing alone in *People ex. rel. Devine* into Section 39.2(b), even though Section 39.2(b) does not contain such language. Nothing in *People ex. rel. Devine* can be construed as overruling *Ogle County Board*, which controls this issue in this action.

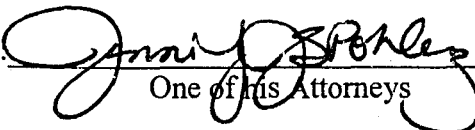
The IPCB's ruling was a clear mistake in the application of this law, and should be reversed.

WHEREFORE, Michael Watson, by and through its attorneys, respectfully requests that the Illinois Pollution Control Board enter an order: (1) vacating those portions of its August 7, 2003 ruling (a) taxing the costs of certifying the record against Watson and (b) holding that Section 39.2(b) of the Environmental Protection Act requires only mailing of notice to a property owner in order to perfect service; and (2) holding that (a) Watson is not required to pay the costs of certifying the record and (b) holding that Section 39.2(b) of the Illinois Environmental Protection Act requires actual receipt of notice by a property owner in order to perfect service. Watson requests any additional relief that the Board deems appropriate.

Dated: September 8, 2003

Respectfully Submitted,
PETITIONER MICHAEL WATSON

By:


One of his Attorneys

Jennifer J. Sackett Pohlenz
QUERREY & HARROW, LTD.
175 W. Jackson, Suite 1600
Chicago, Illinois 60604
(312) 540-7000
Attorneys for Michael Watson
Illinois Attorney No. 6225990

Document #: 854487

Exhibit 1

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

COPY

IN THE MATTER OF:)
)
APPLICATION BY WASTE MANAGEMENT,)
ILLINOIS, INC., A DELAWARE)
CORPORATION, FOR APPROVAL OF THE)
SITE LOCATION FOR AN EXPANSION)
OF THE KANKAKEE LANDFILL.)

Ryan Jones
Bonnie Kell
Ad. Keller

V O L U M E XXVIII

REPORT OF PROCEEDINGS had during the public hearing before Mr. John McCarthy, Hearing Officer, at the Quality Inn, 800 North Kinzie Avenue, Bradley, Illinois, on the 5th day of December, A.D., 2002 at 6:00 p.m.

1 KANKAKEE COUNTY REGIONAL PLANNING COMMISSIONERS

Mr. Mel Blanchette
2 Ms. Loretto Cowhig
Mr. James Tripp
3 Mr. Curt Saindon
Mr. John Meyer, Jr.
4 Mr. Barry Jaffe
Mr. George Washington, Jr.
5 Mr. Michael Spilsbury
Mr. Dennis Peters
6

7 KANKAKEE COUNTY BOARD MEMBERS

Mr. Leo Whitten
8 Mr. Leonard Martin
Mr. Barry Baron
9 Ms. Ann Bernard
Ms. Linda Faber
10 Ms. Karen Hertzberger
Mr. Ralph Marcotte
11 Mr. Edwin Meents
Mr. Jim Vickery
12

13 APPEARANCES:

14 MR. DONALD MORAN,
Appeared on behalf of Waste Management,
Applicant;
15
16 MR. RICHARD S. PORTER,
Appeared on behalf of the Kankakee County staff;
17
18 MS. ELIZABETH S. HARVEY,
Appeared on behalf of the Kankakee County
Regional Planning Commission and the Kankakee
County Board;
19
20 MR. L. PATRICK POWER,
Appeared on behalf of the City of Kankakee;
21
22

1 APPEARANCES CONTINUED:

2 MR. GEORGE MUELLER,
3 Appeared on behalf of Mr. Merlin Karlock;

4 MR. DAVID FLYNN,
5 Appeared on behalf of Mr. Michael Watson;

6 MS. JENNIFER J. SACKETT POHLENZ,
7 Appeared on behalf of Mr. Michael Watson;

8 MR. KENNETH BLEYER,
9 Appeared on behalf of Mr. Richard Murray;

10 MR. LEE MILK, Individually;

11 MS. PATRICIA O'DELL, Individually;

12 MR. KEITH RUNYON, Individually.

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1 MR. MCCARTHY: Overruled.

2 BY MR. MORAN:

3 Q. I'm sorry. I didn't hear your answer.

4 A. Yes, he does.

5 Q. What is the nature of your husband's
6 business relationship with Mr. Watson?

7 A. They're friends. Sometimes --

8 Q. And we will be getting to that in a minute,
9 but I want to ask you about you said there was a
10 business relationship between your husband and
11 Mr. Watson.

12 A. Yes.

13 Q. You said your husband is in the stone
14 cutting business?

15 A. Yes.

16 Q. Do you know what the business relationship
17 is between your husband and Mr. Watson?

18 A. He picks up garbage for him every now and
19 then.

20 Q. So your husband drives a vehicle that picks
21 up garbage for Mr. Watson; is that correct?

22 A. Yeah.

1 Q. How often does he do this?

2 A. Not very often.

3 Q. Over the past how many years has he been
4 picking up garbage for Mr. Watson?

5 A. I really don't know.

6 Q. Has it occurred over the last three years?

7 A. No. He just -- couple months here.

8 Q. Just over the last couple of months?

9 A. Yes.

10 Q. Now, these chores that your husband
11 performs for Mr. Watson, is this taking garbage to
12 Mr. Watson's transfer station?

13 A. Yes, it is.

14 Q. And that's United Disposal; is that
15 correct?

16 A. Yes.

17 MR. FLYNN: Objection, relevancy.

18 MR. MORAN: We're probing the obvious
19 relationship between both Mr. and Mrs. Keller with
20 Mr. Watson and the reason or basis for this witness
21 to identify or claim she never received notice.

22 MR. FLYNN: What Mr. Watson's business is has

1 absolutely nothing to do with the testimony of this
2 witness. If he wants to probe for a relationship
3 between the two, he can ask him. He's asked him.
4 He's answered that.

5 MR. MCCARTHY: I'm going to overrule the
6 objection and allow this line of questioning. I
7 think it's relevant.

8 BY MR. MORAN:

9 Q. Ms. Keller, do you remember my question?

10 A. No.

11 Q. Your husband drives a vehicle that brings
12 waste to Mr. Watson's transfer facility; is that
13 correct?

14 A. Yes.

15 Q. And that transfer facility is the United
16 Disposal facility in Bradley; is that correct?

17 A. Yes.

18 Q. And is your husband paid for the work he
19 performs for Mr. Watson in this regard?

20 A. No.

21 Q. Your husband is doing it for free?

22 A. Yes.

1 Q. He's been doing it for free for a few
2 months?

3 A. Yes.

4 Q. And he does it for free because he's a
5 friend of Mr. Watson; is that correct?

6 A. Yes.

7 Q. Where is your husband -- where does he do
8 stone cutting?

9 A. Pickett Cut Stone on Grinnell Road.

10 Q. I'm sorry?

11 A. Pickett Cut Stone on Grinnell Road.

12 Q. He's been doing this for how long?

13 A. Seven years.

14 Q. How long have you been married to your
15 husband?

16 A. 13 years.

17 Q. You said you've lived at the address at 765
18 East 6000 Road for about two years?

19 A. Yes.

20 Q. Do you have any children?

21 A. Yes, I do.

22 Q. How old are your children?

Exhibit 2

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

Chambers

IN THE MATTER OF:)
)
APPLICATION BY WASTE MANAGEMENT,)
ILLINOIS, INC., A DELAWARE)
CORPORATION, FOR APPROVAL OF THE)
SITE LOCATION FOR AN EXPANSION)
OF THE KANKAKEE LANDFILL.)

V O L U M E XXIX

REPORT OF PROCEEDINGS had during the public hearing before Mr. John McCarthy, Hearing Officer, at the Quality Inn, 800 North Kinzie Avenue, Bradley, Illinois, on the 6th day of December, A.D., 2002 at 8:30 a.m.

1 KANKAKEE COUNTY REGIONAL PLANNING COMMISSIONERS

2 Mr. Mel Blanchette
3 Mr. Ralph Paarlberg
4 Mr. James Tripp
5 Mr. Curt Saindon
6 Mr. John Meyer, Jr.
7 Mr. George Washington, Jr.
8 Mr. Michael Spilsbury
9 Mr. Dennis Peters

10 KANKAKEE COUNTY BOARD MEMBERS

11 Mr. Leo Whitten
12 Ms. Ann Bernard
13 Mr. Ralph Marcotte
14 Mr. Edwin Meents
15 Mr. Jim Vickery
16 Mr. Duane Bertrand
17 Ms. Frances Jackson
18 Mr. Karl Kruse
19 Ms. Pamela Lee
20 Mr. George Hoffman

21 APPEARANCES:

22 MR. DONALD MORAN,
 Appeared on behalf of Waste Management,
 Applicant;

 MS. ELIZABETH S. HARVEY,
 Appeared on behalf of the Kankakee County
 Regional Planning Commission and the Kankakee
 County Board;

 MR. L. PATRICK POWER,
 Appeared on behalf of the City of Kankakee;

 MR. DAVID FLYNN,
 Appeared on behalf of Mr. Michael Watson;

 MR. KENNETH BLEYER,
 Appeared on behalf of Mr. Richard Murray;

1 APPEARANCES CONTINUED:

2 MR. LEE MILK, Individually;

3 MS. PATRICIA O'DELL, Individually;

4 MR. KEITH RUNYON, Individually.

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1 The reason gasification and that technology
2 hasn't taken over yet is because of the consolidation
3 in the waste industry. There's only one or two or
4 three major players. Every little guy is being
5 squeezed out. The major players make money by
6 putting garbage into the ground. They don't make
7 money by gasification and other technologies. But
8 eventually, that technology is going to come, and the
9 landfills are going to close, and that landfill is
10 going to close after it's scarred a ripe area of
11 development and without paying any money for it.

12 This landfill is not about need. It's
13 about greed. You have to understand how the garbage
14 industry works. They make money hauling, they make
15 money dumping, and they make money letting other
16 people dump on their landfill.

17 My client, Mike Watson, owns United
18 Disposal. He doesn't dump at the existing facility.
19 He takes his garbage to Livingston because it's
20 cheaper for him to unload a packer, load it up onto a
21 transfer trailer and drive it down to Livingston.
22 That's because Waste Management owns the current

1 facility. They want his hauling contracts. They get
2 his hauling contracts by driving up his costs and he
3 can't compete.

4 Now, if you also look in the Host Community
5 Agreement, there is a clause in there that guarantees
6 a minimum or a maximum charge to the County of
7 Kankakee for dumping County of Kankakee waste in the
8 expanded facility. But if you look at it closely, it
9 only applies if Waste Management has the hauling
10 contract. So it may look good on the one end; you're
11 getting a set price for dumping. But that has
12 nothing to do with the hauling. If they don't get
13 you on the one end, they'll get you on the other end.

14 That brings us to Criterion No. 3. As I
15 said, there's two components. The first one is to
16 minimize incompatibility, and the second one is to
17 minimize impact on property values. With regards to
18 the first part, Mr. Lannert was the witness.
19 Mr. Lannert wasn't hired by Waste Management to find
20 a place in Kankakee County where incompatibility
21 would be minimized. He was hired to give an opinion
22 that this proposed expansion would minimize

Exhibit 3

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would read into the record the meaning of "citizens groups." It means a group of individual citizens that have joined together to participate in a regional pollution control facility siting hearing. This group may be a voluntary association that is formed on an ad hoc basis that may or may not have a name or bylaws. It also can be a group that has incorporated. It cannot be a husband and wife or a family. It does not include the -- local Chamber of Commerce, labor organizations, or township board of trustees. It also does not include persons owning or operating a nearby competing landfill facility, or units of local governments acting alone. It has to be a true citizens group, such as the Citizens Against the Bartlett Bale Fill in my district.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Keats.

SENATOR KEATS:

I have no conflict on the bill. But I would mention kiddingly, all the -- the second amendment means now is just the taxpayers will pay for it. So instead of the group involved -- they won't pay for it -- now you'll pay for it. Whatever's fair.

PRESIDENT ROCK:

Further discussion? Is there any further discussion? If not, the question is, shall House Bill 98 pass. Those in favor vote Aye. Opposed vote Nay. The voting's open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 Ayes, no Nays, 1 voting Present. House Bill 98, having received the required constitutional majority, is declared passed. 113. Is that going to be on the -- on the Recall List, I'm told. It is? 158. Senator O'Daniel. 166. Senator Holmberg. On the Order of House Bills 3rd Reading is House Bill 166. Read the bill, please.

SECRETARY HAWKER:

House Bill 166.

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basically one word from "may" to "shall" for the reimbursement of local governments that have furnished emergency disaster services directly related to or required by the emergency disaster for the entire expense eligible under the public assistance program. This only would take effect if the Governor, in fact, declares a disaster by proclamation. I don't know of any opposition, and would move for its adoption.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? The question is, shall House Bill 89 pass. Those in favor will vote Aye. The opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 56, the Nays are none, none voting Present. House Bill 89, having received the required constitutional majority, is declared passed. 90 is on the Recall List for tomorrow. 98. Senator Karpiel. On the Order of House Bills 3rd Reading is House Bill 98, Madam Secretary.

SECRETARY HAWKER:

House Bill 98.

(Secretary reads title of bill)

3rd Reading of the bill.

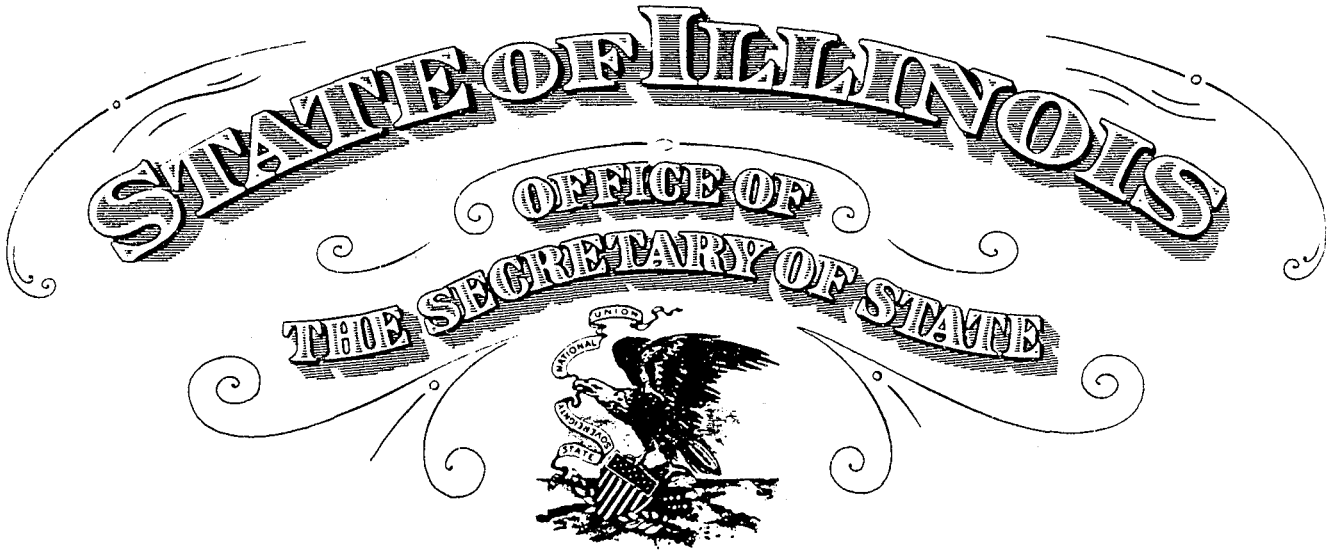
PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Karpiel.

SENATOR KARPIEL:

Thank you, Mr. President. Excuse me. House Bill 98 provides that the plaintiff in a review proceeding of a landfill siting decision of the county board or municipality must pay for preparing and certifying the record. We did put on an amendment which exempts citizens groups from -- that have participated in the siting proceeding and is located -- to be affected by the proposed facility, they're exempted from this Act. And if you will bear with me, I have told the Pollution Control Board that I

Exhibit 4

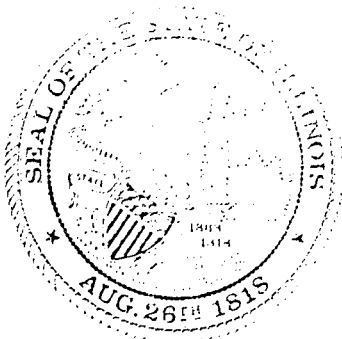


To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that

UNITED DISPOSAL OF BRADLEY, INC., A DOMESTIC CORPORATION, INCORPORATED UNDER THE LAWS OF THIS STATE JUNE 25, 1984, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE BUSINESS CORPORATION ACT OF THIS STATE RELATING TO THE FILING OF ANNUAL REPORTS AND PAYMENT OF FRANCHISE TAXES, AND AS OF THIS DATE, IS IN GOOD STANDING AS A DOMESTIC CORPORATION IN THE STATE OF ILLINOIS*****

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 5TH day of SEPTEMBER 2003 A.D.



Jesse White

SECRETARY OF STATE