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AUG 06 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.,)
A Delaware corporation,)
)
Petitioner,)
)
v.)
)
COUNTY BOARD OF KANKAKEE)
)
Respondent.)
_____)

Docket Number: **PCB 04-186**
(Pollution Control Facility
Siting Appeal)

**MICHAEL WATSON'S MOTION SUBMITTED TO THE HEARING OFFICER
TO LIMIT THE SCOPE AND DURATION OF SUBPOENAED DEPOSITION**

Now comes MICHAEL WATSON ("Watson"), by and through his attorneys, QUERREY & HARROW, LTD., and moves the Hearing Officer assigned to this matter by the Illinois Pollution Control Board (Board) to limit the scope and duration of the subpoenaed deposition served upon Watson requiring his appearance on August 10, 2004 pursuant to 35 Illinois Administration Code 101.616(d). In support of this motion, Watson states as follows:

1. Watson was a participant in the underlying local County proceeding now on review in this case, as well as the prior proceeding on Waste Management of Illinois, Inc.'s (WMII) proposed expansion of Kankakee County RDF, Case No. 03-125, 133, 134, 135 (consolidated) (hereinafter referenced as "WMII I" or "Case No. 03-125, 133, 134, 135").

2. In Case No. PCB 03-125, 133, 134, 135 (consolidated), WMII's local siting approval for a landfill expansion was vacated by the Board on the basis WMII had failed to satisfy the pre-filing notice requirements set forth in 415 ILCS § 5/39.2(b) as respects a homeowner and citizen named Brenda Keller.

3. WMII I was filed by WMII at the local level on August 16, 2002, and the decision was made by the County Board on January 31, 2003. During the local County hearing on WMII I, Watson brought a motion asserting WMII's failure of to properly notify Brenda and Robert Keller. During the Board's review of Case No. PCB 03-125, 133, 134, 135 (consolidated), although WMII certainly had the opportunity to, it served no subpoena for the deposition of either of the Kellers, nor did it subpoena Watson or any of the other citizens who may be subject to WMII's current subpoenas in this case.

4. After the IPCB reversed the local siting approval in WMII I (PCB 03-125, 133, 134, 135), WMII again filed a siting application seeking to expand Kankakee County RDF on September 26, 2003, which was denied by the Kankakee County Board on March 17, 2004. WMII now seeks review the County Board's denial of its siting request in this appeal, PCB 04-186 (WMII II). WMII alleges in WMII II that the decision to deny its request on Criteria 1, 3 and 6 was against the manifest weight of the evidence and fundamentally unfair. (WMII's Petition to Contest Site Hearing Denial, ¶7, April 22, 2004).

5. WMII now seeks the depositions of numerous citizens including the Kellers and Watson. The *Subpoena Duces Tecum* issued to Watson on July 7, 2004 orders Watson to appear for a deposition and bring and testify concerning:

- a. "All documents, including but not limited to letters, articles, memoranda and telephone bills, relating to any communications between August 1, 2003 and May 30, 2004, that you had with any member of the Kankakee County Board regarding the proposed expansion of the Kankakee Landfill."
- b. "Any and all documents, including but not limited to letters, articles, memoranda and telephone bills, relating to any communications between August 1, 2003 and May 30, 2004, that you had with any of the following persons regarding the proposed expansion of the Kankakee Landfill: Mayor Donald Green, Bruce Harrison, Ronald Thompsen and Keith Runyon."

6. Pursuant to 35 Illinois Administration Code 101.616(a), all *relevant information* and information calculated to lead to the discovery of relevant information is discoverable. However, the hearing officer may, on the motion of any witness, issue protective orders that deny, limit, *condition or regulate discovery to prevent unreasonable expense, or harassment*, or to expedite resolution of the proceeding. 35 IAC § 101.616(d).

7. This is not the first time that a Board Hearing Officer has been petitioned to issue an order to limit discovery in the PCB's review of WMII's expansion attempts, albeit in different cases. In WMII I, the County Board of Kankakee filed a motion to quash the subpoena for deposition served by Watson on Efraim Gil (a former employee or contract employee of the County). During the hearing on that objection, the County Board claimed that they represented Mr. Gil, but at a subsequent hearing denied that claim. (See Hearing Trans. May 5, 2003, 1 p.m., pp. 134-137, Case No. PCB 03-125, 133, 134, 135 (consolidated)). Regardless, the Board Hearing Officer granted the County Board of Kankakee's motion and allowed Watson to serve only written questions to Mr. Gill, despite there being absolutely no verified evidence presented from any medical professional that Mr. Gill was physically or mentally unable to sit for his deposition as would be required for such a request if pending in Circuit Court.¹ (See Hearing Officer Order, May 1, 2003, attached hereto as **Exhibit A**), (See also 735 ILCS § 5/2-606, requiring a party to present an affidavit to support this contention) (note that although a letter was presented by an asserted medical professional on Mr. Gill's behalf stating that he could

¹ By reference to these orders in WMII I, Watson is not waiving any argument he has contrary to those orders in WMII I, however, given that those orders are currently precedent, they are properly cited herein having not been overturned.

answer written questions, this letter was not an affidavit as would be required by the Civil Practice Act).

8. Further, when Watson sought leave to submit supplemental written questions to Mr. Gill that motion was denied, without any objection from or representation by Mr. Gill at that motion.

²In addition, in WMII I, the PCB Hearing Officer set a precedent for the duration of depositions to be one hour in response to motions by the County of Kankakee and WMII stating the reason for such limitation is that there was “no good faith basis” for taking the depositions and that the purpose of the deposing the listed witnesses was merely a “fishing expedition” and should not be permitted. A true and correct copy of that Order is attached as **Exhibit B**. In issuing the one hour limitation order, the Board Hearing Officer explained that the one hour limitation was “due in part to the time constraints.” Further, in that order, and significantly, the Board Hearing Officer State that, “allowing Watson and the City one hour to uncover possible fundamental fairness issues strikes a balance between their right to discovery and Waste Management’s statutory right to an expeditious decision.”

9. Finally, in WMII I, the Board Hearing Officer also granted WMII’s motion to bar the deposition, as well as bar the subpoena to testify at hearing, of Lee Addleman, a WMII employee, from whom Watson, among others, sought discovery to inquire as to his *ex parte* communications. WMII’s motions to bar or quash subpoenas related to Mr. Addleman were

² Despite statements to the contrary when they brought their motion to quash Watson’s subpoena of Mr. Gill, at the hearing on May 6, 2003, counsel for the County Board of Kankakee stated firmly that they did not appear for Mr. Gil, explaining: “I don’t want the record to reflect that I have any kind of appearance for Mr. Gil and I just need that to be clear.” (See Hearing Trans. May 6, 2003, 9:15 a.m., p. 8, Case No. PCB 03-125, 133, 134, 135 (consolidated)).

granted despite there being absolutely no medical or other affidavit supporting the alleged inability of Mr. Addleman to testify. Upon further motion to allow written questions from Mr. Addleman, as was done with Mr. Gill, that motion was likewise denied by the Board Hearing Officer. *See* 735 ILCS § 5/2-606.

Watson's Deposition Should Be Limited to One Hour

10. A Board Hearing Officer previously limited depositions to a one hour timeframe in WMII I, based on allegations of the County of Kankakee and WMII that the depositions were merely a 'fishing expedition,' a recognized form of litigation abuse. The County cited Yuretich for support, which held, "it is no justification that a fishing expedition might result in worthwhile information; the possibility of success must be sufficient to justify the inconvenience or expense to the opponent." Yuretich v. Sole, 259 Ill. App, 3d 311(4th Dist. 1993).

11. Additionally, the County argued that the depositions remaining in WMII I should be quashed because there is "no good faith basis" for taking the depositions. The County distinguished a recent IPCB action involving the Town & Country, Inc. application to site a landfill where the County of Kankakee conducted discovery of the hearing officer and the Mayor of the City regarding prefiling contacts with decision makers. The County successfully argued that in that case, there was evidence of a specific and direct communication that the applicant had in front of the decision makers two weeks before the application was filed.

12. Likewise, at least in WMII I, the Board Hearing Officer has placed limitations, in fact completely barring testimony, due to unverified statements of medical inconvenience, without any showing of physical or mental inability.

13. As such, certainly other forms of inconvenience serve as like justification for a similar time limitation on a deposition, particularly where there is no evidence of *ex parte* communications occurring between the witness, here Watson, and the County Board *and* where case law is clear that, as long as an applicant, such as WMII, has been given a fair opportunity to be heard and present evidence during the siting proceedings, the decision will not be overturned because of *ex parte* communications between citizens and the decision makers. Land and Lakes Co. v. Village of Romeoville, PCB 92-25, June 4, 1992, p. 15, *citing* Fairview Area Citizen's Task Force, 555 N.E.2d 1178, 1183 (3rd Dist. 1990).

14. WMII is not entitled to have required Watson to be deposed for any longer than is necessary for him to provide testimony limited to discovery on the issues relevant to this appeal. The deposition should be further limited because WMII has presented absolutely no evidence that Watson engaged in any *ex parte* contact with the County Board concerning the landfill expansion, and, further, communication with the named individuals in WMII's subpoena duces *tecum* is not *ex parte*, as none of those individuals are members of the County Board. This deposition is clearly nothing more than a fishing expedition and intended to do no more than inconvenience and harass Watson.

15. Thus, the Hearing Officer should, as was done in WMII I, at the very least, order the duration of Watson's deposition to be limited to one hour.

Watson's Deposition Should Be Limited to the Scope of the Subpoena

16. The subpoena seeking Watson's testimony is specific that it seeks information and documents related to *ex parte* communications, if any, occurred. However, subsequent to the issuance of the subpoena, in correspondence concerning the scheduling of that deposition, WMII

has indicated that it does not intend to abide by the subpoena it issued in terms of the scope of the deposition. Attached as **Exhibits C and D** are true and correct copies of correspondence between counsel for Watson and WMII, respectively, related to deposition scope and scheduling.

17. Mr. Watson is currently a defendant to a lawsuit seeking an accounting, which Kankakee County has initiated against him personally, subsequent to his participation in the aforementioned landfill hearings, even though Mr. Watson is not a party to the contract under which an accounting is sought. See County of Kankakee v. United Disposal, Inc., Michael Watson, et.al., 04-MR 427. Further, the corporation of which Mr. Watson is a shareholder and officer, United Disposal of Bradley, Inc. has been pursued in various manners by Kankakee County, since Mr. Watson's participation in the WMII landfill hearings. It is believed by Mr. Watson that WMII has been a part of this pursuit of him, personally, and the corporation of which he is a shareholder and officer. In fact, Lee Addleman, the employee of WMII whose deposition Mr. Watson was barred from taking in any form (including written) in WMII I, has made statements to the press and it is believed the County showing that he, at the very least, instigated the accounting action referenced above. A true and correct copy of one article with such statements is attached as **Exhibit E**.

18. WMII has a right to discovery in *this case*, but neither WMII nor the County individually or through WMII should be allowed by this Board's Hearing Officer to abuse the discovery process herein, to either harass Mr. Watson or attempt to "fish" for information in their other causes of action they have brought or are intending to bring against Watson. Further, neither WMII or the County should be allowed to act out any personal vendettas they may have against Mr. Watson, as a result of Mr. Watson expressing his personal views as an adjacent landowner to

the property that WMII sought to place a landfill expansion, and participating in the public hearings, by labeling it "discovery" in this proceeding. The purpose of discovery is "to illuminate the actual issues in the case rather than to harass and obstruct the opposing litigant".

Delvecchio v. General Motors Corp., 255 Ill. App. 3d 189, 202 (5th Dist., 1993), *quoting* People ex rel. General Motors Corp. v. Bua, 37 Ill. 2d 180, (1967).

19. Further, although the right to discovery of evidence is basic and fundamental, that right is limited to disclosure regarding matters *relevant to the subject matter of the pending action*. Pemberton v. Tieman, 117 Ill. App. 3d 502, 504 (1st Dist., 1983).

20. Therefore, WMII and anyone else who is allowed to question Mr. Watson at his deposition should be limited to *ex parte* communications, if any, as the *only* subject matter, as (a) that is the only matter addressed in the subpoena under which Mr. Watson is sought to be deposed and (b) that matter is the only issue WMII has raised in *this case* related to fundamental fairness.

21. Thus, Watson asks that his deposition be limited to *exactly what was sought by WMII* in its subpoena and nothing beyond that scope without a showing that it is relevant discovery in this matter.

22. Finally, if the Hearing Officer assigned to this matter will allow or require a hearing on this Motion, the movant respectfully requests that the hearing be held on Monday, August 9, 2004 at any time during that day.

WHEREFORE, MICHAEL WATSON respectfully prays that the Illinois Pollution Control Board grant this Motion and limit the scope and duration of subpoenaed deposition served upon Watson as referenced herein.

Dated: August 5, 2004

Respectfully Submitted,

MICHAEL WATSON

By: _____
One of his attorneys

Jennifer J. Sackett Pohlenz
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Document #: 947405 v1

MAY - 1 2003

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
May 1, 2003

CITY OF KANKAKEE,

Petitioner,

v.

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

Respondents.

PCB 03-125

(Third-Party Pollution Control Facility
Siting Appeal)

64853

MERLIN KARLOCK,

Petitioner,

v.

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

Respondents.

PCB 03-133

(Third-Party Pollution Control Facility
Siting Appeal)

MICHAEL WATSON,

Petitioner,

v.

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

Respondents.

PCB 03-134

(Third-Party Pollution Control Facility
Siting Appeal)

EXHIBIT

A

50498

| | | |
|-------------------------------|---|---|
| KEITH RUNYON, |) | |
| |) | |
| Petitioner, |) | |
| |) | PCB 03-135 |
| v. |) | (Third-Party Pollution Control Facility |
| |) | Siting Appeal) |
| COUNTY OF KANKAKEE, COUNTY |) | (Consolidated) |
| BOARD OF KANKAKEE, and WASTE |) | |
| MANAGEMENT OF ILLINOIS, INC., |) | |
| |) | |
| Respondents. |) | |

HEARING OFFICER ORDER

On May 1, 2003, a telephonic pre-hearing conference was held. Petitioner Keith Runyon did not appear. Discussions and arguments were entertained on a myriad of issues and motions pending as summarized below. Rulings were made on the motions as set forth below.

On April 24, 2003, the City of Kankakee (City) served by facsimile a motion to compel invoice production. On April 29, 2003, the County Board of Kankakee (County Board) filed its response. The motion to compel involved certain invoices that related to the City's document requests. The City, however, represented at the pre-hearing conference that its motion to compel is moot because it has now received the requested invoices. The hearing officer found the motion moot as well and did not rule.

On April 29, 2003, Merlin Karlock served by facsimile a notice to produce at time of hearing naming six people. One of the named is Esther Fox. On April 30, 2003, the County Board filed a motion to quash the notice to produce Fox. At the pre-hearing conference, it was agreed by Karlock and the County Board that an evidence deposition would suffice in lieu of her appearance at the hearing. The evidence deposition is scheduled to take place on May 1, 2003, at 6:00 p.m. The hearing officer found the notice and the motion moot and the hearing officer did not rule.

Named in Karlock's notice to produce at time of hearing are Brenda Gorski, Bruce Clark, Charles Helsten, Edward Smith, Elizabeth Harvey and Donald Moran. On May 1, 2003, the County Board filed a motion to bar Gorski, Smith, Helsten and Harvey from appearing as witnesses at the hearing. Also on May 1, 2003, Waste Management of Illinois, Inc., (Waste Management) filed a motion to quash Karlock's notice to produce Moran.

As set forth in the hearing officer order of April 30, 2003, Donald Moran is the attorney of record for respondent Waste Management. Elizabeth Harvey is an attorney of record for respondents' County of Kankakee (County) and County Board. Charles Helsten is an attorney of record for the County. Edward Smith is the State's Attorney for the County of Kankakee. Brenda Gorski is a County of Kankakee Assistant State's Attorney. Smith, and by extension, Gorski, are duly elected officers representing Kankakee County.

The Board has held that requiring the deposition of opposing counsel is limited to situations where it is shown that: (1) no other means exists to obtain the information than to depose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information sought is crucial to the preparation of the case. Citizens Against Regional Landfill v. The County Board of Whiteside County and Waste Management of Illinois, Inc., PCB 92-156 slip. op. at 8, (February 25, 1993). Furthermore, "unbridled depositions of attorneys constitutes an invitation to delay, disruption of the case, harassment and perhaps disqualification of the attorney to be deposed." Id. These holdings logically apply to opposing parties requesting that the attorneys appear at the hearing to testify.

Here, Karlock does not argue that, absent their testimony, the information sought is crucial or even relevant to his case. The hearing officer hereby adopts and incorporates the reasoning on this issue in his order of April 30, 2003, and grants the County Board's motion to bar and Waste Management's motion to quash. Gorski, Helsten, Smith, Harvey and Moran will not be required to testify at the hearing in this proceeding.

The hearing officer further finds that Karlock failed to follow Section 101.622 (a) and 101.302 (d) the Board's procedural rules. Section 101.622 (a) states that the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. It appears that Karlock merely issued his own notice. Section 101.302 (d) requires that filing by facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Karlock failed to receive prior approval to file by facsimile.

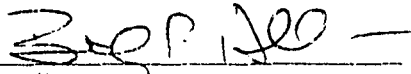
On April 30, 2003, Michael Watson (Watson) filed a subpoena for testimony at public hearing for Sandra Listenbee and Mary Ann Powers. On May 1, 2003, Waste Management filed its response. Also on May 1, 2003, Watson filed his reply to Waste Management's response. In Watson's reply, he states that "counsel for City Colleges of Chicago (of which Daley College is one) has contacted counsel for Petitioner Watson, accepted service on behalf of [Sandra Listenbee and Mary Ann Powers] and is fully cooperating with the request that was made." Based on Watson's representation that Listenbee and Powers are represented by counsel, Waste Management's motion to quash is denied for lack of Waste Management's standing to make the motion.

On April 30, 2003, the County Board filed a motion to quash subpoena for deposition served by Watson on Efraim Gil. Watson orally argued its response at the pre-hearing conference. On May 1, 2003, the County filed a letter from Gil's doctor Dr. David Edelberg indicating that Gil is under his care and due to Gil's mild stroke and a list of other maladies, it is impossible for Gil to participate in any court proceedings. However, the doctor states, that Gil is medically capable of responding to questions in written form.

At the pre-hearing conference, Watson first argued that the County has no standing to represent Gil because he is no longer an employee of the County Board. However, due to the fact that the information sought from Gil arises from when he was employed by the County Board, the hearing officer finds that the County has such standing. Based on the representations made by, Dr. Edelberg, the hearing officer finds that it is unreasonable to require Gil to attend the hearings and testify if called upon. However, as indicated by Dr. Edelberg, Gil is capable of responding to written questions. The County Board's motion is granted in part and denied in part. Gil is not required to attend the hearing, however, Watson may obtain the deposition of Gil on written questions.

Finally, and on May 1, 2003, the City served the hearing officer via facsimile with a motion for sanctions against the County for failure to comply with discovery. It appears that the County had failed to produce the requested audio and/or video tapes of the various committee meetings. Watson voiced his objection as well regarding the failure to produce the tapes at the pre-hearing conference. The County represented that it has now produced the requested tapes to the City. Further, it will make a second copy of the tapes and forward them to Watson by the end of the day. No further discussion was held regarding the City's motion for sanctions.

IT IS SO ORDERED.



Bradley P. Halloran
Hearing officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order was faxed and mailed, first class, to each of the following on May 1, 2003:

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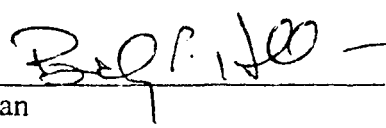
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Patricia O'Dell
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Bourbonnais, IL 60914

Kenneth A. Leshen
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Suite 550
Kankakee, IL 60901

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on May 1, 2003:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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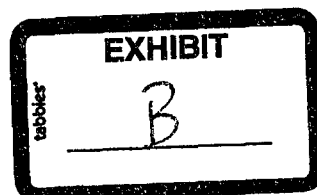
STATE OF ILLINOIS
Pollution Control Board

304
ILLINOIS POLLUTION CONTROL BOARD
April 30, 2003

CITY OF KANKAKEE,)
)
Petitioner,)
)
v.) PCB 03-125
) (Third-Party Pollution Control Facility
) Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

MERLIN KARLOCK,)
)
Petitioner,)
) PCB 03-133
v.) (Third-Party Pollution Control Facility
) Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

MICHAEL WATSON,)
)
Petitioner,)
) PCB 03-134
v.) (Third-Party Pollution Control Facility
) Siting Appeal)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)



| | | |
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| KEITH RUNYON, |) | |
| |) | |
| Petitioner, |) | |
| |) | PCB 03-135 |
| v. |) | (Third-Party Pollution Control Facility |
| |) | Siting Appeal) |
| COUNTY OF KANKAKEE, COUNTY |) | (Consolidated) |
| BOARD OF KANKAKEE, and WASTE |) | |
| MANAGEMENT OF ILLINOIS, INC., |) | |
| |) | |
| Respondents. |) | |

HEARING OFFICER ORDER

As an initial matter, on April 17, 2003, the Board severed PCB 03-144 from the consolidated third party appeals. This is reflected in the caption of this order.

On April 22, 2003, petitioner City of Kankakee (City) filed its list of potential deponents. On April 23, 2003, respondent Michael Watson filed his list of potential deponents, naming Bruce Clark in addition to the deponents named in the City's list. Respondents Waste Management Of Illinois, Inc., (Waste Management) and County of Kankakee (County) filed their respective objections to the petitioners' lists of deponents on April 23, 2003. Watson and the City filed their responses on April 23 and 24, 2003, respectively. On April 24, 2003, a telephonic conference was held where the hearing officer made rulings as set forth below.

The City's list is comprised of 22 deponents, to wit: Donald Moran, Karl Kruse, Elizabeth Harvey, Mike Quigley, Elmer Wilson, Chris Richardsen, Juanita Baker, Dennis Wily, Chuck Helston, Mike VanMill, Doug Graves, Leo Whitten, Dale Hoekstra, Edward Smith, Effraim Gill, Brenda Gorski, Shakey Martin, Chris Rubak, Chris Berger, Pam Lee, George Washington, Jr. and Wes Wiseman. On April 24, 2003, a telephonic conference was held where the hearing officer made rulings as set forth below.

Potential Attorney Deponents

Donald Moran is the attorney of record for respondent Waste Management. Dennis Wilt is Waste Management's general counsel. Elizabeth Harvey is an attorney of record for respondents' County and County Board of Kankakee (County Board). Chuck Helston is an attorney of record for the County. Edward Smith is the State's Attorney for the County of Kankakee. Brenda Gorski is a County of Kankakee Assistant State's Attorney. Smith, and by extension, Gorski, are duly elected officers representing Kankakee County.

The Board has held that requiring the deposition of opposing counsel is limited to situations where it is shown that: (1) no other means exists to obtain the information than to depose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the

information sought is crucial to the preparation of the case. Citizens Against Regional Landfill v. The County Board of Whiteside County and Waste Management of Illinois, Inc., PCB 92-156 slip. op. at 8, (February 25, 1993). Furthermore, "unbridled depositions of attorneys constitutes an invitation to delay, disruption of the case, harassment and perhaps disqualification of the attorney to be deposed." Id.

Here, Watson and the City appear to argue that, absent receipt of the discovery sought, they cannot claim that the information sought is crucial or even relevant to their case. But there appear to be other means of obtaining the sought after information, at least with respect to Moran and Wilt. The City in its response appears to represent that it seeks to elicit information regarding the County's Solid Waste Plan in an attempt to uncover fundamental fairness issues. As noted in the hearing officer order of April 17, 2003, procedures employed regarding the County's Solid Waste Plan is beyond the purview of the Board. The County's and Waste Management's objections to the depositions of Moran, Harvey, Wilt, Helston, Smith and Gorski are sustained. These persons will not be deposed.

Potential Other Deponents

As to the remaining named deponents, the County's and Waste Management's objections were granted in part and denied in part. Named deponents Kruse, Quigley, Wilson, Richardsen, Baker, VanMill, Graves, Whitten, Hoekstra, Gill, Martin, Rubak, Berger, Lee, Washington, Wiseman and Clark's deposition were allowed to go forward. However, the hearing officer directed that the depositions will be no longer than one hour each. This limitation was imposed due in part to the time constraints where the hearing in this matter commences May 5, 2003, and the Board's decision deadlines of August 7, 2003. Allowing Watson and the City one hour to uncover possible fundamental fairness issues strikes a balance between their right to discovery and Waste Management's statutory right to an expeditious decision.

Waste Management, in its objections filed April 23, 2003, alleges that the City named Lee Addleman on its list of deponents. It represents that Addleman underwent a liver transplant on February 17, 2003, and that his condition prohibits him from participating in this matter. The list of deponents that was served on the hearing officer makes no mention of Addleman. Therefore, the City has waived this discovery. In any event, and based on the representations of Waste Management, the City is barred from deposing Addleman.

The parties or their legal representatives are directed to participate in a telephonic pre-hearing conference with the hearing officer on May 1, 2003, at 10:30 a.m. To participate, dial (888) 622-5357 and then enter participant code of 535916.

IT IS SO ORDERED.

Brad P. Halloran
Bradley P. Halloran
Hearing officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order was faxed and mailed, first class, to each of the following on April 30, 2003:

Richard S. Porter
Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

George Mueller, P.C.
Attorney at Law
501 State Street
Ottawa, IL 61350-3578

Elizabeth S. Harvey
Swanson, Martin & Bell
One IBM Plaza
Suite 2900
Chicago, IL 60611

Karl Krause, Chairman
Bruce Clark, Kankakee County
Clerk
Kankakee County Board
189 Court Street
Kankakee, IL 60901

Edward Smith
Kankakee County State's Attorney
450 East Court Street
Kankakee, IL 60901

L. Patrick Power
956 North Fifth Avenue
Kankakee, IL 60901

Leland Milak
6903 S. Route 45-52
Chebanse, IL 60922

Keith Runyon
1165 Plum Creek Drive
Bourbonnais, IL 60914

Donald J. Moran
Pedersen & Houpt
161 N. Clark Street, Suite 3100
Chicago, IL 60601-3224

Jennifer J. Sackett Pohlenz
175 W. Jackson Blvd.
Suite 1600
Chicago, IL 60604

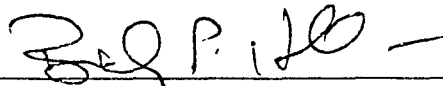
Kenneth A. Bleyer
923 W. Gordon Terrace, #3
Chicago, IL 60613-2013

Patricia O'Dell
1242 Arrowhead Drive
Bourbonnais, IL 60914

Kenneth A. Leshen
One Dearborn Square
Suite 550
Kankakee, IL 60901

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on April 30, 2003:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

Querrey & Harrow

Querrey & Harrow, Ltd.
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Jennifer J. Sackett Pohlenz
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July 21, 2004

Other Offices:
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Joliet, IL
Waukegan, IL
Wheaton, IL
Merrillville, IN
New York, NY
Representative
U.K. Office:
London

Via Facsimile Only

Donald Moran
Pedersen & Houpt
161 North Clark Street, Suite 3100
Chicago, IL 60601-3242
Fax: (312) 261-1149

Re: WMII v. Kankakee County Board, 04-186
Our File #: 65448

Dear Mr. Moran:

I am writing in response to your phone message of yesterday. I am not available on July 22 or 23rd for the deposition of Mr. Watson in this matter. However, I propose that you reschedule his deposition to take place on August 10 at 11:00 a.m.

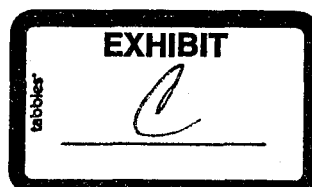
The scope of Mr. Watson's deposition will be limited to the topic raised by your subpoena of him, namely questioning as to whether he's had any *ex parte* communications. Additionally, I ask that we limit the deposition time to one hour. It is my recollection that this was the previous time limitation imposed by the Hearing Officer in 03-134, *et al.*

Please provide me with your response to the proposed date, time, scope and length of this deposition.

Sincerely,



Jennifer J. Sackett Pohlenz



MODE = MEMORY TRANSMISSION

START=JUL-21 10:05

END=JUL-21 10:06

FILE NO. = 219

| STN NO. | COM | ABBR NO. | STATION NAME/TEL.NO. | PAGES | DURATION |
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Whitton, IL

Representative
U.K. Office:
London

FAX TRANSMISSION SHEET

DATE: July 21, 2004

TO: Donald Moran

FAX NUMBER: (312) 261-1149

FROM: Jennifer J. Sackett Pohlenz

USER NO.: 9328

CMR NO.: 65448

NUMBER OF PAGES BEING SENT (INCLUDING COVER SHEET): 2

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RETURN TO: POH

SENT BY: Karen Gryczan

COMMENTS/MULTIPLE SEND:

Please see correspondence dated July 21, 2004 enclosed.

The information contained in this facsimile communication is attorney privileged and confidential information intended only for the use of the individual or entity to whom or to which it is addressed. If the recipient of this transmission is not the intended recipient, the recipient is hereby notified that any dissemination, distribution, or reproduction of this communication is strictly prohibited. If you have received this communication in error, please notify **QUERREY & HARROW, LTD.** at the above telephone number and return the communication to **QUERREY & HARROW, LTD.** at the above address via the U.S. Postal Service. Thank you.

PEDERSEN & HOUP

July 28, 2004

Donald J. Moran
Attorney at Law
312.261.2149
Fax 312.261.1149
dmoran@pedersenhaupt.com

Via Facsimile - (312) 540-0578

Jennifer J. Sackett Pohlenz
Querrey & Harrow
175 W. Jackson Boulevard, Suite 1600
Chicago, IL 60604

***Re: Waste Management of Illinois v. Kankakee County Board
No. PCB 04-186***

Dear Ms. Pohlenz:

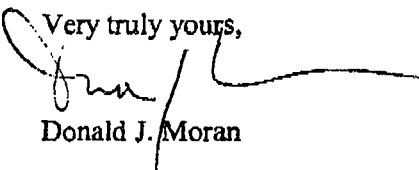
I have received your letter dated July 21, 2004 concerning the deposition of Mr. Watson.

I agree to reschedule Mr. Watson's deposition to August 10 at 11:00 a.m. The scope of Mr. Watson's deposition will include any matters related to or concerning the fundamental fairness of the siting proceedings before the Kankakee County Board in the above appeal. These will include, but not be limited to, any ex parte communications in which he participated or had knowledge.

I do not agree to limit the deposition to one hour. There is no applicable rule or reason to so limit the deposition. It is my hope that the deposition might be concluded in one hour, but this will depend on the responses and testimony of Mr. Watson. The only limitation to Mr. Watson's deposition is the three-hour limitation provided in Supreme Court Rule 206(d) and Section 101.622(f) of the Pollution Control Board Procedural Rules.

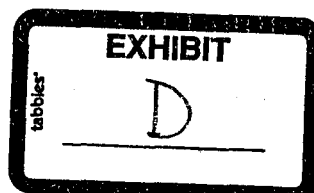
Please confirm your agreement with the terms of this letter and your client's attendance on August 10 at 11:00 a.m. in the Kankakee County Administration Building.

Very truly yours,


Donald J. Moran

DJM:vlk

DJM 393856 v1 July 28, 2004



County dumps recycling trailer, disputes lawsuit

by Kenneth Griggs
Herald reporter

Part one in a series
The recent ousting of United Disposal as carrier of recyclables for Kankakee County is rife with allegations, pending litigation and bad blood with a back-story full of the same mixture.

In February of 2004, the county dissolved its contract with Bradley carrier United Disposal and signed a six-month agreement with A and J Disposal to pick up recyclables.

The dissolving of the contract did not turn very many heads. But behind the scenes, the action, according to some, was made for selfish and ulterior motives—to others, the action was a legitimate move, since it was claimed that United Disposal was not working in accordance with the permit authorized by the Illinois Environmental Protection Agency (IEPA).

Even before the contract was dissolved, however, United Disposal and the Kankakee County Health Department, who acts as liaison for the IEPA, had been in meetings for over a year and a half. And herein lies a story that is just beginning to take shape.

Because of pending litigation against United Disposal, which is a transfer center, attorneys at the county have remained somewhat reticent. United owner Mike Watson has been as candid as possible, since he too is part of pending litigation. Kankakee County Health Department director of environmental health John Bevis provided documentation of on-

Waste Management (WM), the multi-billion dollar company which also, according to some, plays a major role in the story, opted to remain anonymous.

In plain words, this is a complex story, often with players hoping to manipulate the facts, figures and opinions in their favor. There is enough garbage, pardon the pun, to fill two landfills.

It should also be noted that billions of dollars are at stake here. This fact, for most, is likely obvious. Money stands as an important part of any story fraught with life-altering allegations and it is no different here.

United Disposal

The traditional view is that there are two sides to every story. For Watson, whose family has owned United Disposal for 23 years, this customary view holds true here.

Watson maintains that the Kankakee County Health Department and WM have eerily similar stories and eerily similar agendas.

United, according to Watson, had been picking up garbage, reporting to the county and IEPA, when asked, and performing their duties without any hitch for eight years prior to the "hassles" which arose in January of 2003.

United's permit, issued by the IEPA in 1995 stipulates, among many other rules, that the transfer station would not accept any "waste generated outside the municipal boundaries of the village of Bradley." An anonymous county board member, whose anonymity is illegal according to Watson, claimed that United was not

being picked up in Bourbonnais, Manteno and other locations finds its way to the transfer center. If these allegations were true, United would be in violation of their permit.

Documents dated from January 28, 2003 from the Kankakee County Health Department claim that "at the time of inspection apparent violations were observed and the facility appeared not to be in compliance with their permit."

Inspection documents reiterate this allegation for the following nine months. The documents would further claim that trucks which Bevis and county sanitarian Tom Webster followed, brought in outside garbage to the transfer center. These documents also allege that when Bevis asked for records that show how much waste had been processed at United, his request was denied.

Watson agreed that he had not supplied receipts to Bevis upon being asked. He steadfastly maintains, however, that such receipts are not required by the IEPA or anyone else.

In the five-page 1995 permit there is no section which states directly that tonnage receipts are required.

"The IEPA needs analysis for a transfer center—and I will repeat this over and over—is that reporting is purely voluntary, period," Watson said. Watson points to the Nonhazardous Solid Waste Management and Landfill Capacity in Illinois 2001 annual report which states "reporting is voluntary."

Bevis refutes this statement, however, stating that though being picked up in Bourbonnais, Manteno and other locations finds its way to the transfer center. If these allegations were true, United would be in violation of their permit.



Watson refused this statement, however, stating that though being picked up in Bourbonnais, Manteno and other locations finds its way to the transfer center. If these allegations were true, United would be in violation of their permit.

County Health Department, who had been in meetings over a year and a half. And herein lies a story that is just beginning to take shape.

Because of pending litigation against United Disposal, which is a transfer center, attorneys at the county have remained somewhat reticent. United owner Mike Watson has been as candid as possible since he too is part of pending litigation. Kankakee County Health Department director of environmental health, Brian Bevis provided documentation of ongoing investigations of United Disposal and was as open as possible. A spokesperson for

United, according to reports, had been picking up garbage, reporting to the county and EPA, when asked and performing their duties without any hitch for eight years prior to the "bassles" which arose in January of 2003.

United's permit, issued by the EPA in 1995 stipulates, among many other rules, that the transfer station would not accept any waste generated outside the municipal boundaries of the village of Bradley. An anonymous security board member, whose anonymity is illegal according to Watson, claimed that United was not following their permit. It is alleged that garbage



Photo provided to The Herald/Country Market

This photo, taken sometime last year, shows Rt. 45 and its center-line covered in mud. The photographer claims that Waste Management haulers tracked mud onto the highway, which, if true, would be a violation of their permit and Illinois state law. It is just one part of the finger-pointing in which Waste Management, United Disposal of Bradley and the Kankakee Health Department have taken part over the last several months.

by the EPA or anyone else. In the 1995 permit there is no section which states directly that tonnage receipts are required.

"The EPA needs analysis for a transfer center—and I will repeat this over and over—is that reporting is purely voluntary, period," Watson said. Watson points to the Nonhazardous Solid Waste Management and Landfill Capacity in Illinois 2001 annual report which states "reporting is voluntary."

Bevis refutes this statement, however, stating that though the EPA's rules for documentation are ambiguous, they are nonetheless on the books. If an inspector, in this case Bevis, requests documentation for any activities on the permitted property, this documentation must be presented.

Bevis said if Watson gave reports of tonnage for the last year, it would likely prove that the transfer center is taking in more garbage than just Bradley garbage.

Bevis stated if, hypothetically, it is found Bradley produces 50 tons of garbage in a day and the transfer center is dealing with 100 tons of garbage in a day, then a discrepancy appears.

In order for that garbage to be picked up legally by United in Mianteno or Bourbonnais, it must be taken directly from that home or business to a landfill, according to the WM spokesperson. Such an action would then require a dump ticket for a six-wheel truck. No proof of such tickets has been produced, according to Bevis. "One should be highly suspicious of activities at United Dis-

communications with Watson have deteriorated."

Why the animosity?

Throughout the inspection reports, which are dated from January 2003 to late September 2003, there is mention of Watson using foul and abusive language when dealing with the inspectors.

Watson does not deny the claims that he was not fully cooperative, but calls most of the county health department's actions "entrapment," adding that such behavior was justified.

From the beginning of the landfill siting process, Watson has adamantly opposed the WM land-fill. By doing so, Watson claims, he has created many enemies—enemies who have created "unsubstantiated reports" in order to remove him from the picture.

"This is a business of big companies," Watson said. "These claims [against me] are nothing but sabotage."

During interviews, Watson has attempted to create an image as a small, family-owned business being molested by the corporate giants, namely WM. With \$16 billion in assets, there is no doubt that WM is a giant. One, Watson said, which

to Watson's objections.

Watson claims it is not coincidental that the focus on his business came up these important second siting hearings began in 2003. The inspections, as was mentioned earlier, were prompted by an anonymous county board member. Watson claims that WM needed the land-fill for the Chicago garbage market and hoped to silence Watson and his objections by intimidation. WM called such allegations "ridiculous and unfounded."

One source, who wanted to remain anonymous, has his own allegations against WM. The source provided a picture to The Country Market (see photo above), which, they claimed, proves WM is not following their permit. The photo shows Rte. 45 and the center-line covered in mud after WM trucks had pulled onto the highway, a violation of Illinois state law. WM did not provide photographic evidence but instead points to numerical facts which they say prove United was not fulfilling its contract. For more on the dissolution of United's contract with the county, read next week's Country Market.



April 6, 04

page 2

United Disposal ousted by county, allegations pile up

by Kenneth Griggs
Herald reporter
The second in a two
part series

In February 2004, the Kankakee County board opted out of their contract with United Disposal to have curbside pick-up of recyclables.

Doing away with this contract, according to the county, was based on substantial evidence that United was not fulfilling their end of the bargain—most importantly, absent monthly documents proving the tonnage of recycled materials.

County board member Leonard "Shakey" Martin was one of the few board members who voted against relieving United of their services.

Martin claimed that United owner Mike Watson "was doing the reports like he'd always done when asked."

Yet, the county planning department cited that none of the "monthly reports, records over the course of four years, proof of liability insurance and identification of all recycling centers used for the term of the contract" were provided when asked for.

This letter, directed to United Disposal, was dated October 2003. At this same time, communications between the Kankakee County Health Department and United were rapidly deteriorating.

Comingling

As cited in last week's article, Watson did not deny his lack of cooperation with director of environmental health John Bevis. Bevis had begun monthly inspections of United

questions and requests.

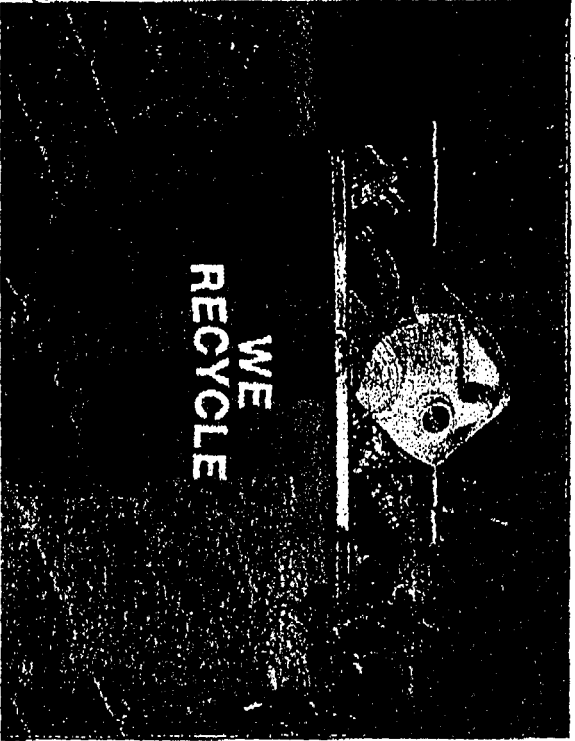
Watson said he does not have to tell anyone who he sends his recyclables to. In information obtained through a freedom of information request, the only recycling center documented was Diversified Recycling in East Hazelcrest.

Watson did respond to the October 2003 planning department letter but did not do so until January of 2004. The letter was written on his behalf by attorney Jennifer Pohlenz of Querrey and Harrow, Ltd., Chicago.

It stated, "It is unclear why the county is now seeking to apparently enforce a written contract against United Disposal, which is currently expired and which the county, during the term of the written

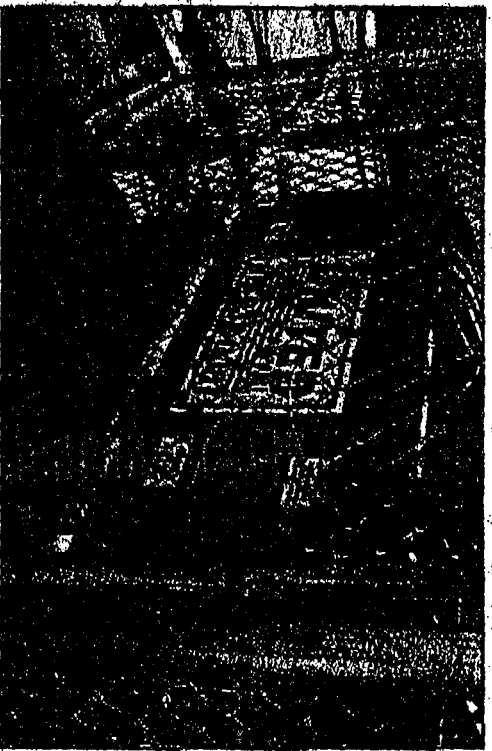
board meeting when the contract was dissolved, it was not mentioned the planning department was seeking monthly reports, records of tonnage, proof of liability insurance or a list of recycling centers. The planning department did discuss the aforementioned criteria, but no mention was made of these details at the regular board meeting.

Watson said about a year and a half into the contract, United began recycling the paper at the facility. Initially, when then county solid waste coordinator Efrain Gil asked United to collect recyclables, none of the recycling was to be done at the United facility. When costs started to be incurred, Watson said, he wanted compensation. He maintains



agreement, paid United Disposal in full satisfaction of the services provided. Can you provide an explanation?"

that he made very little profit by collecting recyclables. In fact, he did the service after the county and Gil personally



Herald/County Market photo by Kenneth Griggs

This United Disposal dumpster is one of many in Kankakee County. The county board recently dissolved its contract with United Disposal for curbside pick-up of recyclables. Finger-pointing and bad blood have surrounded the break-up.

When documentation quit arriving in 2001, the county probably should have confronted Watson then. But, at the same time, when the county asked for documentation, Watson probably should have supplied it to avoid further consequences. It seems as though both parties failed in their responsibilities.

Numbers and more allegations

The last percentage for diversion, or recyclables, in the county, was slated at 45 percent in 2001. A Waste Management (WM) spokesperson, who remained anonymous, said that such a number proves the wrong-doing of United Disposal. The county, it is projected, generates 1,000 tons of garbage in a day. WM figures prove about 450 tons is brought to the current landfill. With

solved. "Independent voices are often come down hard upon," Watson said. "I am fully capable of enduring the storm." Karl Kruse stated that problems with United surfaced and the county board took action on these problems immediately. "These problems with United started before Mr. Watson ever entered the race for the county board seat," Kruse, who voted in favor of the WM landfill, stated. In conversations with several individuals the way WM uses their power was called into question. Stopping short of serious allegations, the individuals wondered aloud how the \$16 billion corporation always seems to get what they want. Watson did not comment on

ters used for the term of the contract" were provided when asked for.

This letter, directed to United Disposal, was dated October 2003. At this same time, communications between the Kankakee County Health Department and United were rapidly deteriorating.

Comingling

As cited in last week's article, Watson did not deny his lack of cooperation with director of environmental health John Bevis. Bevis had begun monthly inspections of United in January of 2003, prompted by an anonymous county board member's tip that United was not complying with their permit.

The county board member in a letter to Bevis and the health department, stated United was not following the guidelines of their permit. It alleged, also, United had been "comingling" recyclables with other waste.

In the first inspection report dated Jan. 28, 2003, Bevis stated, after following a truck in Bradley, that a garbage truck picked up "what appeared to be green designated recycle bags, which were comingling with the residential waste."

Later in the same report, Bevis stated, "I asked what or who hauls the recyclables and he [Watson] was evasive in his answers, only stating that they were hauled away."

Almost all of the inspection reports which follow for the next nine months, sometimes occurring twice a month, echo the same sentiments. Often, the reports claim Watson used foul language and refused to cooperate with inspectors.

WE RECYCLE

agreement, paid United Disposal in full satisfaction of the services provided. Can you provide an explanation?

Despite Pohlenz's argument that "for each month, for which you apparently now seek duplicative documentation, United Disposal previously supplied information that was satisfactory to the county, as evidenced by the county's payment to United Disposal," the county did away with United's services. The contract, which started in September of 1999, paid United \$2,500 a month for the service.

The Feb. 4, 2004 recommendation from the planning department reads, "Knowing that the potential existed that the current facility [United Disposal] would no longer allow recyclables to be brought there for free—the planning department quickly acted to seek out an alternative solution."

This alternative was to hire A and J Disposal to six-month contract for \$2,500 a month to pick up curbside recyclables. Watson points out A and J is receiving the same amount of money for their work, but are servicing Bourbonnais and Kankakee, not all three communities as United had done.

During the regular county

that he made ~~very little profit~~ by collecting ~~recyclables~~. In fact, he did the service after the county and Gil personally asked him and, as he put it, "stepped up to the plate for the community."

Documents to prove the tonnage of paper, plastics and all recyclables collected are recorded from Sept. 20, 1999 until Sept. 30, 2001, on average about 117 tons a month. After Sept. 30, however, United provided no documentation for tonnage. Term number four of the original contract states, "United shall keep accurate records as to the weight of each type of recyclable material received each month and an accounting of transportation expenses, and shall submit these records to Kankakee County on a monthly basis, on or about the first of each month."

Why then in Sept. 2001 reports were no longer being filed is somewhat of a mystery.

Watson said he and Gil worked out a system by which tonnage was reported at the conclusion of each year. When Gil left in early 2003, communication slowed, according to Watson, and the tonnage and the receipts remain missing. Gil was unavailable for comment.

both parties issued in unclear responsibilities.

Numbers and more allegations

The last percentage for diversion of recyclables, in the county, was stated at 45 percent in 2001. A Waste Management (WM) spokesperson, who remained anonymous, said that ~~such a number proves the~~ wrong doing of United Disposal. The county, it is projected, generates 1,000 tons of garbage in a day. WM figures prove about 450 tons is brought to the current landfill. With the diversion rate at 45 percent, that would mean about 100 tons of garbage would be left between the other two haulers in the county, Apollo and United. An Apollo spokesperson stated that on average, they deal with 80 to 100 tons of garbage a day. United, again has stated, has not provided daily tonnage documentation and refused to talk about these numbers. However, simple math shows, that somewhere the numbers are not adding up.

WM points to these figures as proof that United is comingling the recyclables with other waste material.

"The diversion percentage can't be anywhere near 45 percent," the WM spokesperson said.

A democrat, Watson has entered the race for a seat on the county board in district 11, a seat currently held by county chairperson Karl Kruse. Watson said he finds it ironic that he has been hassled ever since entering the race. About the time Watson entered the primary, in which he ran unopposed, the contract was dis-

puted.

"These problems with United started before Mr. Watson ever entered the race for the county board seat," Kruse, who voted in favor of the WM landfill, stated.

In conversations with several individuals, the way WM uses their power was called into question. Stopping short of serious allegations, the individuals wondered about how the \$16 billion corporation always seems to get what they want.

Watson did not comment on WM, but did say he hoped to see the county "come up with a solid waste plan that people take part in developing."

Bevis said he finds it suspect that Watson was so adamantly against the WM landfill, but not against the city's landfill. Bevis said there are selfish reasons Watson would be opposed to one and in favor of another. "I am against Chicago garbage," Watson said. "And that should clear up why I'm for one and didn't step out on the other."

But, if Town and Country built their landfill in the city of Kankakee they would accept garbage primarily from Iroquois and Kankakee counties with an option for six additional counties.

Allegations from both sides continued until press time with each player jockeying for position. Based on factual information, it is difficult to place blame or point a finger at either side. With competition and money to remain at the forefront of this battle, there is no doubt the truth will however somewhere between two distinctly different points-of-view.

Appendix 13, 14 page 2