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TELE-FAX

MAY 23 2005

STATE OF ILLINOIS  
Pollution Control BoardTO: Bradley Halloran

DATE \_\_\_\_\_

COMPANY: IPCBFROM: KEITH RUNYONPC#24  
PCB04186

MESSAGE: Waste management in collection with the County Board Chairman and the County Attorney are trying to turn the siting process on its head. This Wednesday, the County Board is going to vote on the proposed settlement agreement in hopes of getting this landfill. This is a new proposal and it seems to me it ~~is~~ must require a new 172 hearing - but not before March 18th 2006.

MAY 04 2005



May 2, 2005

VIA FACSIMILE (815/490-4901)  
AND FIRST CLASS MAIL

**WASTE MANAGEMENT**

Midwest Group  
720 E. Butterfield Road  
Lombard, IL 60148  
(630) 572-8800  
(630) 916-6280 Fax

Mr. Charles F. Helsten  
Hinshaw & Culbertson  
100 Park Ave.  
Rockford, IL 61101

Re: Waste Management of Illinois v. Kankakee County Board, PCB 04-186

Dear Mr. Helsten:

The purpose of this letter is to make a settlement proposal to Kankakee County regarding the pending litigation before the Illinois Pollution Control Board ("PCB"). Waste Management believes that a settlement pursuant to the terms set forth below provides both parties with a myriad of benefits, while both parties avoid a worst case scenario. The proposed settlement is simple and straightforward and can be consummated within a very short period of time, assuming both parties are amenable.

1. Settlement of Pending Pollution Control Board Case (No. 04-186). Kankakee County and Waste Management are the only parties to the pending PCB case. Like any other contested legal matter, the parties to this case may settle their dispute pursuant to an appropriate Stipulation filed with the PCB. Here, Waste Management and the County would enter into a Stipulation in which the County agrees not to contest Waste Management's appeal and acknowledges that the underlying record contains evidence supporting Waste Management's contention that siting approval should have been granted. The Order issued by the PCB as a result of this Stipulation would be the same as the Order the PCB would issue if it found in Waste Management's favor in the pending appeal.

2. Amendment of Host Community Agreement. Simultaneously with Waste Management and the County entering into a Stipulation to settle the pending PCB case, Waste Management and the County would enter into a further Amendment to the Host Community Agreement, conditioned on Waste Management achieving final and non-appealable siting pursuant to the settlement described above. The Amendment would provide for the following, as well as any other conforming changes identified by either of us.

a. Siting Conditions. Waste Management would agree to all of the conditions set forth in the March 9, 2004 Kankakee County Regional Planning Commission report entitled "Recommendations Relating to the Application of WMII for Local Siting Approval of an Expansion of the Existing Kankakee Landfill." Among other things, this will insure that the expansion will be developed with a double composite liner system.

b. Reduction in Out-of-County Waste. The annual cumulative amount of out-of-county waste Waste Management would be able to accept in the expansion area would be reduced by one-third (a reduction of 328,967 tons per year).

c. Host Fee Payments. The one-time expansion fee would be reduced by one-third (to \$1,166,725) and the minimum guaranteed host fees would be similarly reduced by one-third. However, the per ton host fee paid to the County would not decrease.

d. Environmental Enhancement Fund. In addition to the existing per ton host fee, Waste Management will pay an additional ten cents per ton in order to fund a new Environmental Enhancement Fund to be managed by the County and used, in the County's discretion, to fund environmental projects, including clean up projects, throughout the County.

e. Support of New Technologies. In order to support the development of new technologies for the management of solid waste, Waste Management will make available to the County, or its designee, a five-acre parcel of property adjacent to the Kankakee Landfill or at another location acceptable to the County. This site can be used, at the County's discretion, as a location on which new waste management technologies can be tested and refined.

3. Benefits of Settlement. Obviously, both the County and Waste Management would avoid the uncertainties of continued litigation with respect to siting. If Waste Management prevails in the pending case, the result would be an expanded landfill that could accept more than 1M tons of waste per year. If it does not, the Kankakee Landfill will likely close permanently. The settlement would result in the County assuring disposal capacity for its residents and businesses for an extended period and would significantly reduce perceived traffic and other impacts identified by landfill opponents. Assuming the expanded Kankakee Landfill accepts 650,000 tons of waste annually, the County would receive payments exceeding \$2,500,000 per year.

4. Time is of the Essence. If there appears to be a desire on the part of the County to consider a settlement of this dispute pursuant to the terms set forth above, we should move forward quickly to finalize the required documentation so that the full County Board can consider the documented settlement at its May 10 meeting. In order to expedite the County's consideration of this proposal, I have provided a copy of this letter to Ed Smith, the County State's Attorney. I trust that either you or Mr. Smith will provide a copy to the County Board Chairperson, Karl Kruse, for distribution to Board members.

05/23/05 MON 11:04 FAX 815 933 1808

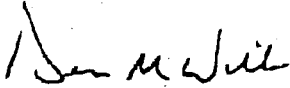
UNITED DISPOSAL

003

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I look forward to hearing from you.

Very truly yours,



Dennis M. Wilt

Vice President and General Counsel – Midwest Group

DMW/LK

cc: Lee Addleman  
Dale Hoekstra  
Don Moran  
Chris Rubak  
Ed Smith

c:\mydata\docs\dennis\2005\lrs\lrs\lrs0502

MAY-12-2005 18:01

HOFFMAN; MUELLER; CREEDON

P.01/06



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May 11, 2005

Mr. Merlin Karlock  
Municipal Trust and Savings Bank  
720 West Main Street  
P. O. Box 146  
Bourbonnais, IL 60914

RE: WASTE MANAGEMENT OF ILLINOIS, INC. v. KANKAKEE COUNTY BOARD  
Pollution Control Board No. 04-186

Dear Mr. Karlock:

At your request, I have reviewed Dennis Wilt's letter on behalf of Waste Management of Illinois to Charles Helsten, dated May 2, 2005, suggesting a possible settlement of the referenced Pollution Control Board appeal. That letter is nothing but a shameless attempt to avoid the jurisdiction of the Pollution Control Board, to undermine the responsibility of the Kankakee County Board to defend its previous majority decision denying the siting request, and to achieve an improper and illegal reconsideration and repeal of that previous decision.

Particularly, I would like to address some of the points raised in Mr. Wilt's letter. In his first paragraph, he suggests that a settlement provides a "myriad of benefits" while both parties "avoid a worst case scenario." The will of the Kankakee County Board, as expressed in its March 17, 2004, decision denying the siting application, which decision was duly and legally set forth in a Board resolution of the same date, was that there should not be an expansion of the Waste Management facility. Therefore, the "worst case scenario" from the County Board's perspective is that the facility will now be built in contravention of the Board's previously expressed majority decision. Since Mr. Wilt's settlement proposal contemplates that the facility will be constructed, it is in fact the County's worst case scenario.

This is not mitigated by the so-called benefit of Waste Management agreeing to all of the special conditions suggested in the Regional Planning Commission's report since Waste Management did not appeal from the special conditions that were attached to the County Board's previous finding that siting criterion ii was satisfied. The other so-called benefit promised in Waste Management's settlement proposal is that Waste

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3015 Ashbury, Naperville, IL 60564  
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MAY-12-2005 18:01

HOFFMAN; MUELLER; CREEDON

P.02/06

Mr. Merlin Karlock

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

May 11, 2005

Page No. 2

Management will reduce by one-third (1/3), the amount of out-of-County waste received. This "benefit" is, of course, accompanied by a commensurate reduction in host fees paid by Waste Management, including a one-third (1/3) reduction in the initial fee to be paid. However, because this reduction in intake volume will not reduce the overall size of the facility, the negative impact on property values and the character of the surrounding area, will not be reduced. The County Board previously found, on March 17, 2004, that there was no need for the facility, that the facility is not located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property and that the traffic patterns to/from the facility are not designed to minimize the impact on existing traffic flows. Nothing in Waste Management's settlement proposal addresses these deficiencies.

Mr. Wilt's letter erroneously states that, since Kankakee County and Waste Management are the only parties in the pending Pollution Control Board case, they can, like the parties in any other litigation, settle their dispute. This is a complete misstatement of the facts and the law. At the initial siting hearing, Kankakee County was not a party, but rather was the decision maker. Waste Management has appealed from Kankakee County's lawful decision. Settlement at this time is, therefore, not like two litigants in an ordinary lawsuit deciding to settle their dispute, but rather is like a litigant who has appealed a Trial Judge's decision, convincing that Trial Judge to change that decision while the appeal is pending. The law is well-settled that a Trial Judge loses jurisdiction of a case, once it has been appealed by an unhappy litigant to the next level. The fact that Kankakee County is now a "party" within the meaning of that term in the Pollution Control Board appeal does not change the County's previous status as the decision maker and reflects the public policy that the County now has an obligation to defend its decision on behalf of all of those who opposed the original siting application.

Frankly, I believe that in this context the County Board and Waste Management are legally and ethically prohibited from settling the matter at this time. Settling the case is, effectively an illegal backdoor repeal of the March 17, 2004, resolution denying the siting application. You will recall that there were previously serious doubts raised (including by the State's Attorney himself) regarding whether or not the County Board even had jurisdiction to reconsider its siting decision. Certainly, whatever jurisdiction it may have had to reconsider would have been irrevocably lost, once thirty days had elapsed and the matter had been appealed to the Pollution Control Board. In legal terms, the majority decision of March 17, 2004, is now, and has for a long time, been "final." Waste Management's proposal represents nothing more than a clumsy and thinly-veiled attempt to get around that finality, an attempt that will expand the existing litigation, exponentially.

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MAY-12-2005 18:02

HOFFMAN; MUELLER; CREEDON

P.03/06

Mr. Merlin Karlock

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

May 11, 2005

Page No. 3

Alternatively, in the unlikely event that anyone attempts to argue that the County Board's previous decision is not final and can still be, somehow, altered, then the previous prohibition on ex parte contact between Waste Management and the County Board would seem to remain in affect. Mr. Wilt's letter and the discussions which, undoubtedly, preceded it and may follow it, represent the worst and most prohibited kind of ex parte contacts.

While Waste Management refers to its contemplated action as a "settlement" what is really being asked is that the County Board abandon its previous decision and the public which has a right to rely on the finality of the same. In response to our previous Petition to Intervene in the Pollution Control Board appeal (intervention desired in significant part to guard against this type of collusion and chicanery) the Pollution Control Board has taken the position that §40.1 of the Environmental Protection Act does not allow objectors to intervene in an unsuccessful siting applicant's appeal. The reason expressed by the Pollution Control Board is that local decision maker, in defending its decision, will safeguard the interest of the public generally and of objectors at the local siting hearing, specifically. This is also the position taken by the County Board in objecting to our previous attempt at intervention. The Pollution Control Board's decision denying our previous Petition to Intervene is now on appeal in the Third District Appellate Court. Kankakee County's attorneys have consistently taken the position that they will, in fact, zealously defend the denial of siting. Similarly, the Pollution Control Board, in its Brief to the Appellate Court, has argued that the interests of the public generally and objectors specifically will be well-represented by Kankakee County.

Accordingly, I believe that the County's obligation to defend its siting decision rises to the level of a fiduciary obligation and that its refusal to do so would justify a lawsuit for breach of that fiduciary duty. Moreover, the fact of the County abandoning its previous decision and breaching its duty to the public would, of course, be made known to the Appellate Court and provide the very proof we needed that we should have previously been allowed to intervene. If the Appellate Court, or the Illinois Supreme Court on further appeal, finds that we should have been allowed to intervene, that will send the entire Pollution Control Board appeal back to square one and it will also represent a new precedent in Illinois that elected officials cannot be counted on or trusted to protect the interest of the public or even to act consistently with their own previous final decisions. Mr. Wilt, Mr. Helsten and I, as attorneys, will undoubtedly profit by all of this while the County Board remains, for years, in a legal limbo where the integrity of County Board Members is litigated and argued in multiple Courts.

Aside from the legal consequences, I am certain that there would be political consequences and fallout from the County Board acquiescing to Waste Management's

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P.04/06

Mr. Merlin Karlock

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

May 11, 2005

Page No. 4

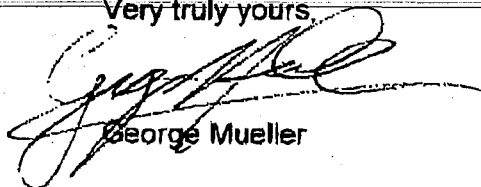
last desperate attempt to salvage their landfill expansion. The Pollution Control Board and the Courts will obviously not allow an action that completely shuts out the public, nor would the voters stand for such heavy-handed arrogance. If the County Board had originally granted siting approval, we, as well as other objectors, would have been allowed to appeal that approval to the Pollution Control Board and then, if necessary, to the Appellate Court. Waste Management's contemplated action is an attempt to gain siting approval, while preventing legitimate participants from being able to appeal. This action will fail at every level.

Lastly, I hope that the County Board would understand that they are at little risk if the current Pollution Control Board appeal is concluded. Waste Management's first attempt at siting approval, even though granted by the County Board, failed at both the Pollution Control Board and the Appellate Court. On its second attempt, Waste Management failed because new and additional evidence showed that they failed to meet three of the nine siting criteria. In that second hearing, there were serious questions raised about the qualifications and veracity of Waste Management's real estate expert. It is clear that the County Board found her testimony not to be compelling. I might add that based upon those concerns, neither Waste Management nor anyone else in the industry has used that so-called expert in any other subsequent siting case.

In its appeal to the Pollution Control Board, Waste Management argued that the County Board's "decision and its denial of criteria i, iii and vi as fundamentally unfair, unsupported by the record and against the manifest weight of the evidence." However, the recent Pollution Control Board Hearing, months of exhausting depositions and other discovery conducted by Waste Management, did not provide any evidence of unfairness.

In conclusion, I would hope that the County does the right thing here and rejects Waste Management's desperate overture. I am also confident, however, that if the wrong thing happens, neither the Pollution Control Board nor the Courts will allow the purpose and policy behind the statutes governing landfill siting to be evaded through ex parte contacts, collusion and breach of fiduciary duty.

Very truly yours,

  
George Mueller

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Telephone: (815) 433-4705



**HINSHAW**

&amp; CULBERTSON LLP

COPY

May 17, 2005.

Mr. Dennis Wilt  
Vice President and General Counsel  
Midwest Group  
Waste Management  
720 E. Butterfield Road  
Lombard, IL 60148

**ATTORNEYS AT LAW**

100 Park Avenue  
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www.hinshawlaw.com

Re: Waste Management of Illinois, Inc. v. County Board of Kankakee,  
Illinois (PCB 04-186)

Dear Mr. Wilt:

Thank you for your letter of May 2, 2005 addressed to me as attorney of record for the County. I have transmitted copies of your letter to Mr. Kruse, who in turn disseminated copies to members of the County Board in executive session at its meeting of May 10, 2005.

Under state statute and local rules, one-third of the Board members must request the Clerk in writing to hold a special meeting. Such a written request has been circulated and tendered to the Clerk, and the Clerk has now set a special meeting to consider this matter at the following time and date:

Special Meeting  
Wednesday, May 25, 2005 at the hour of 10:00 a.m.  
Kankakee County Board Room, 4<sup>th</sup> Floor  
Administration Building  
189 E. Court Street  
Kankakee, IL 60901

Mr. Smith, together with Chairman Kruse and Vice Chairman McLaren, have asked that I request you to be in personal attendance at this session of the Board so that you can answer any questions the Board members may have, as well as provide any requested first-hand elaboration on the contents of your letter.

Please also find enclosed a copy of a partially redacted letter which has been sent to various County Board members (who, in turn, delivered a copy of the letter to Mr. Smith). You should be prepared to answer the issues raised by this transmittal, as well as any other questions members of the County Board may ask concerning this document.

Mr. Dennis Wilt  
May 17, 2005  
Page 2

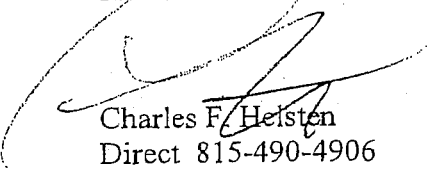
I am providing those parties which are involved in one fashion or another in this pending appeal with a copy of this letter and the enclosure noted above.

In addition, I am indicating to those parties that they should be present at the time and place of the special meeting of the County Board noted above to make any presentation that they may desire to make.

Please confirm your attendance at this meeting.

Sincerely,

HINSHAW & CULBERTSON LLP



Charles F. Helsten  
Direct 815-490-4906  
chelsten@hinshawlaw.com

CFH:jml

Enclosure

cc: Karl Kruse  
Ed Smith  
George Mueller  
Jennifer Sackett-Pohlenz  
Keith Runyon  
Don Moran

RE: WASTE MANAGEMENT OF ILLINOIS, INC. V. KANKAKEE COUNTY BOARD  
Pollution Control Board No. 04-188

At your request, I have reviewed Dennis Wilt's letter on behalf of Waste Management of Illinois to Charles Helsten, dated May 2, 2005, suggesting a possible settlement of the referenced Pollution Control Board appeal. That letter is nothing but a shameless attempt to avoid the jurisdiction of the Pollution Control Board, to undermine the responsibility of the Kankakee County Board to defend its previous majority decision denying the siting request, and to achieve an improper and illegal reconsideration and repeal of that previous decision.

Particularly, I would like to address some of the points raised in Mr. Wilt's letter. In his first paragraph, he suggests that a settlement provides a "myriad of benefits" while both parties "avoid a worst case scenario." The will of the Kankakee County Board, as expressed in its March 17, 2004, decision denying the siting application, which decision was duly and legally set forth in a Board resolution of the same date, was that there should not be an expansion of the Waste Management facility. Therefore, the "worst case scenario" from the County Board's perspective is that the facility will now be built in contravention of the Board's previously expressed majority decision. Since Mr. Wilt's settlement proposal contemplates that the facility will be constructed, it is in fact the County's worst case scenario.

This is not mitigated by the so-called benefit of Waste Management agreeing to all of the special conditions suggested in the Regional Planning Commission's report since Waste Management did not appeal from the special conditions that were attached to the County Board's previous finding that siting criterion II was satisfied. The other so-called benefit promised in Waste Management's settlement proposal is that Waste

Management will reduce by one-third (1/3), the amount of out-of-County waste received. This "benefit" is, of course, accompanied by a commensurate reduction in host fees paid by Waste Management, including a one-third (1/3) reduction in the initial fee to be paid. However, because this reduction in intake volume will not reduce the overall size of the facility, the negative impact on property values and the character of the surrounding area, will not be reduced. The County Board previously found, on March 17, 2004, that there was no need for the facility, that the facility is not located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property and that the traffic patterns to/from the facility are not designed to minimize the impact on existing traffic flows. Nothing in Waste Management's settlement proposal addresses these deficiencies.

Mr. Wilt's letter erroneously states that, since Kankakee County and Waste Management are the only parties in the pending Pollution Control Board case, they can, like the parties in any other litigation, settle their dispute. This is a complete misstatement of the facts and the law. At the initial siting hearing, Kankakee County was not a party, but rather was the decision maker. Waste Management has appealed from Kankakee County's lawful decision. Settlement at this time is, therefore, not like two litigants in an ordinary lawsuit deciding to settle their dispute, but rather is like a litigant who has appealed a Trial Judge's decision, convincing that Trial Judge to change that decision while the appeal is pending. The law is well-settled that a Trial Judge loses jurisdiction of a case, once it has been appealed by an unhappy litigant to the next level. The fact that Kankakee County is now a "party" within the meaning of that term in the Pollution Control Board appeal does not change the County's previous status as the decision maker and reflects the public policy that the County now has an obligation to defend its decision on behalf of all of those who opposed the original siting application.

Frankly, I believe that in this context the County Board and Waste Management are legally and ethically prohibited from settling the matter at this time. Settling the case is, effectively an illegal backdoor repeal of the March 17, 2004, resolution denying the siting application. You will recall that there were previously serious doubts raised (including by the State's Attorney himself) regarding whether or not the County Board even had jurisdiction to reconsider its siting decision. Certainly, whatever jurisdiction it may have had to reconsider would have been irrevocably lost, once thirty days had elapsed and the matter had been appealed to the Pollution Control Board. In legal terms, the majority decision of March 17, 2004, is now, and has for a long time, been "final." Waste Management's proposal represents nothing more than a clumsy and thinly-veiled attempt to get around that finality, an attempt that will expand the existing litigation, exponentially.

Alternatively, in the unlikely event that anyone attempts to argue that the County Board's previous decision is not final and can still be, somehow, altered, then the previous prohibition on ex parte contact between Waste Management and the County Board would seem to remain in affect. Mr. Wilt's letter and the discussions which, undoubtedly, preceded it and may follow it, represent the worst and most prohibited kind of ex parte contacts.

While Waste Management refers to its contemplated action as a "settlement" what is really being asked is that the County Board abandon its previous decision and the public which has a right to rely on the finality of the same. In response to our previous Petition to Intervene in the Pollution Control Board appeal (intervention desired in significant part to guard against this type of collusion and chicanery) the Pollution Control Board has taken the position that §40.1 of the Environmental Protection Act does not allow objectors to intervene in an unsuccessful siting applicant's appeal. The reason expressed by the Pollution Control Board is that local decision maker, in defending its decision, will safeguard the interest of the public generally and of objectors at the local siting hearing, specifically. This is also the position taken by the County Board in objecting to our previous attempt at intervention. The Pollution Control Board's decision denying our previous Petition to Intervene is now on appeal in the Third District Appellate Court. Kankakee County's attorneys have consistently taken the position that they will, in fact, zealously defend the denial of siting. Similarly, the Pollution Control Board, in its Brief to the Appellate Court, has argued that the interests of the public generally and objectors specifically will be well-represented by Kankakee County.

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Aside from the legal consequences, I am certain that there would be political consequences and fallout from the County Board acquiescing to Waste Management's

**ILLINOIS MARKET AREA**

1411 Opus Place, Suite 400  
Downers Grove, IL 60515  
(630) 724-8400  
(630) 241-1597 Fax

May 19, 2005

Dear Kankakee County Board Member,

We have been advised that attorney Chuck Helsten has provided you with Waste Management of Illinois, Inc.'s offer to settle the legal matter between Kankakee County and our Company that soon will be decided by the Illinois Pollution Control Board. The proposal is a very reasonable way to resolve this issue and in a manner that benefits both the County and Waste Management. Most important, it makes important concessions on the key concerns voiced by some Board members.

Under the proposal, the host agreement between Waste Management and the County would be revised, and the Company will:

- Agree to all 85 conditions requested by the Kankakee County Regional Planning Commission when it recommended that the County approve the landfill expansion early last year. Among them was the construction of a double composite liner to ensure groundwater protection.
- Reduce by 33 percent out-of-county waste accepted by the facility, limiting it to 667,000 tons a year.
- Lower by 33 percent, to approximately \$1,167,000, the one-time expansion fee to be paid the County and also lower by 33 percent the minimum guaranteed host fee. The per-ton host fee will remain unchanged.
- Add a 10-cents-per-ton fee to create an environmental alternate technology fund for the County to be used at its discretion.
- Provide five acres adjacent to the landfill for the development of environmental technologies.

Most important, such a settlement will provide the County with disposal capacity for its residents and industry for more than 30 years and significantly lessen perceived traffic concerns. Assuming the facility accepts approximately 650,000 tons of waste a year, the County would receive host fees exceeding \$2.5 million per year. This settlement will ensure that the County provides its residents with a safe, well-designed disposal facility on beneficial environmental and financial terms.

The settlement offer will end the costly legal challenges by both the County and Company that could continue even beyond a Pollution Control Board decision and remove the possibility of an unsatisfactory outcome for the County or Company. It also offers the County a legal mechanism for approval of the expansion that is consistent with the County's Solid Waste Management Plan. We feel strongly that this is a positive development for both parties in that it provides environmental and community benefits to the County and a satisfactory outcome for our Company.

Please find attached more detailed information and background on the Waste Management settlement proposal to the County. We plan to contact you in the next few days to respond to any questions you may have about it. We believe the proposal is a positive way for Kankakee County and Waste Management to resolve this matter, and we are looking forward to discussing it with you. If you have questions, please feel free to call Lee Addleman at (630) 816-9732 or Dale Hoekstra at (630) 334-7820.

Sincerely,  
Lee Addleman & Dale Hoekstra