

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 20, 2005

WASTE MANAGEMENT OF ILLINOIS, INC.,)

A Delaware corporation,)

Petitioner,)

Docket Number: PCB 04-186

(Pollution Control Facility

v.)

Sitting Appeal)

COUNTY BOARD OF KANKAKEE,)

Respondent.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 20th day of May, 2005, I filed, electronically, with the Illinois Pollution Control Board, the attached document titled **MICHAEL WATSON'S AMICUS CURIAE BRIEF** which is hereby served upon you.

AMICUS CURIAE MICHAEL WATSON

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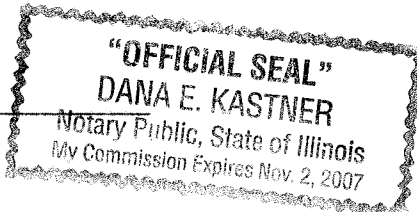
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I, Catina Beals, a non-attorney, on oath state that I caused to be served this Notice of Filing and relevant document on the attorney listed, on the Service List attached, by depositing into the U.S. Mail Depository located at 175 West Jackson Boulevard, Chicago, Illinois, this 20th day of May, 2005.

Catina Beals

SUBSCRIBED AND SWORN to before me this 20th day of May, 2005.

Dana E. Kastner
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Please note: as of May 20th, 2005, Watson has
yet to receive a copy of WMII's brief from it,
and, having not received it, downloaded the
brief from the IPCB website.

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MICHAEL WATSON'S AMICUS CURIAE BRIEF

Now comes MICHAEL WATSON (Watson), by and through his attorneys, QUERREY & HARROW, LTD., and submits the following document as and for his *amicus curiae* brief in this matter. Mr. Watson submits this brief notwithstanding and without waiving his objections to the denial of his intervener motion and denial of the Illinois Pollution Control Board of his rights of participation and due process.

I. INTRODUCTION

Waste Management of Illinois, Inc.'s (WMII) contends that the County Board of Kankakee's (County Board) vote on the September 26, 2003, landfill expansion application was against the manifest weight of the evidence and fundamentally unfair. WMII's arguments are almost as imaginative as its convolution of the facts and are entirely unsupported by either facts in the record or law.

Tellingly, WMII's brief is cluttered with allegations containing absolutely no citation to the record (and when a search is done, for which no supporting reference can be found). For example, WMII contends that a person named Bruce Harrison applied "direct political pressure" and threatened, among other things, County Board members. (WMII Opening Bf. at 22). However, every County Board member called by WMII as a witness and questioned, without variation, testified that s/he never felt threatened by Harrison, if, in fact, Harrison even contacted

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him/her. (04/06 PCB Hearing Tr. 79, 254, 269-270, 296-297; 04/97 PCB Hearing Tr. 56, 102, 197-199, 248, 308; Olthoff 4/14 Depo. Tr. 30-31). Likewise, there is absolutely not a shred of evidence to support WMII's, again imaginative, contention that County Board members changed their position based on political pressure and public opposition, particularly when all who were questioned regarding public opposition to WMII's September 26, 2003, landfill expansion application paid little attention to it, ignoring picketing and signage, not opening letters believed to have been received concerning the application, and routinely cutting off the few and brief in-person or telephone contacts that were attempted concerning the application. (E.g., 04/06 PCB Hearing Tr. 54, 76, 212-213, 221, 23, 239-240, 243, 260-261, 269-270, 279, 274-275, 285-286, 310-311; 04/07 PCB Hearing Tr. 9-10, 12-13, 13-14, 54-55, 66-67, 69, 90, 94-95, 127-129, 157-158, 194, 214-216, 279, 303). All such allegations in WMII's brief without supporting citation should be stricken.

In fact, the record fully supports the County Board's denial of the application and provides evidence in direct contradiction of WMII's allegations of fundamental unfairness, as described in more detail below.

II. STATEMENT OF FACTS

A. *Criterion 1: The evidence fails to show that the facility is necessary to accommodate the waste needs of the area it is intended to serve*

This Criterion is often referred to as the "need" criterion. Under this Criterion, the Applicant is to designate a geographic area called the service area, and determine based on disposal capacity and waste generation figures, whether there is a "need" for additional disposal capacity in the geographic area designated. The evidence presented by the Applicant with respect to this Criterion relates not only to the development of a facility in a particular location,

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but also to the size (tonnage), types of waste requested to be received, and timeframe of operation. While there is no requirement that the Applicant show an “absolute need” for a proposed facility, the Applicant must show that the need is “expedient,” showing some level of urgency.

Ms. Sheryl Smith testified on behalf of the Applicant with respect to this first criterion. Evidence was presented through her direct examination, on behalf of WMII, and through participants and the County Planning & Development Commission and County Board cross-examination of her. Although Ms. Smith was of the opinion that the proposed expansion met Criterion 1, she testified in the 2003 public hearing that there was sufficient disposal capacity in the service area until 2011, included in her report in the 2003 application that capacity is sufficient until 2011 or 2012, and testified at the 2004 public hearing that, on a straight line basis, capacity is sufficient until 2015 (11/20 6pm Tr. p. 33; 1/13 1:40 pm Tr. 76). She based her opinion of “need” on a 27-year future estimate of waste generation and disposal capacity in the service area. (11/20 6pm Tr. 13). However, during the 2004 hearing, she testified that she made a mistake in her 2003 application and that, rather than sufficient capacity until 2011 or 2012, it was her opinion that it was sufficient until 2009 or 2010. (1/13 1:40 pm Tr. 72).

Ms. Smith’s testimony not only failed to meet the Applicant’s burden of proof with respect to Criterion 1, it was also contradictory and showed bias: the following evidence contradicts, calls in to question, and shows the bias in her opinions, all of which the County

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Board was free to utilize in determining her credibility and making a decision as to whether WMII's evidence met their burden of proof. For example:¹

- Ms. Smith worked on a number of projects for WMII and earned a large amount of money from the Applicant on an annual basis. Ms. Smith testified that she has earned \$70,000.00 from WMII in 2001 and between \$50,000.00 and \$70,000.00 from WMII in 2002. (11/20 6pm Tr. p. 26-27).² Additionally, Ms. Smith testified that, on this project alone, in a little over a year she received \$10,000 for merely updating the information from her previous report. (1/13 1:40 pm Tr. 49-52).
- Ms. Smith has testified a dozen times on behalf and only on behalf of applicants, each time finding a need for the proposed facility. (11/20 6pm Tr. p. 25).
- Additionally, as respects Ms. Smith's credibility on this subject, she testified in opposition to an assertion of need for a landfill proposal in LaPorte, Indiana (11/20 6pm Tr. p. 28), however, she is asserting a need for disposal capacity for a service area in this proceeding, which includes Porter County which is directly adjacent and to the East of LaPorte.
- Although an Applicant is allowed to define its service area in preparing a siting application, it may be striking to some that not only did Ms. Smith not choose the service area, she had absolutely no input in what would be defined as the service area. (11/20 6pm Tr. p.12, 99). In other words, Ms. Smith simply worked with the area given without expressing an opinion with respect to the appropriateness from either an operational or economical standpoint of the service area.
- Ms. Smith testified that need is relative and has an economic variable. (11/20 6pm Tr. p. 71). However, economics is not an appropriate consideration when determining need.
- The service area chosen by the Applicant consists of the following counties: Cook, DuPage, Kane, Kankakee, Kendall, Grundy and Will Counties in Illinois and Lake, Newton, Jasper and Porter Counties in Indiana. (11/20 6pm Tr. pp. 11-12). Ms. Smith calculated the population and waste generation rates in the service area to arrive at an annual and total 27-year waste generation figure, based on the geographic boundaries provided by the Applicant and data provided by the Counties within the service area.

¹ The following list of evidence under this and subsequent Criterion addressed in this document is not exclusive, and by providing this list in his *amicus* brief, Mr. Watson is not waiving his ability to raise additional or other issues on appeal should he become a party to an appeal at some point in time regarding this or other issues.

² It is important to point out, from an accuracy standpoint, that Ms. Smith also testified that she wasn't certain what she made in 2001 from WMII work, however, she didn't qualify her testimony when asked that question the first time and when she responded \$70,000.00. (11/20 6pm Tr. p. 26-27).

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(11/20 6pm Tr. p. 12-13). Her total net waste generation figure, adjusted for recycling, for the 27-year period beginning in 2005, is 105 million tons. However, Ms. Smith understated actual recycling taking place in the service area, and thus, overstated the waste generation in the service area. (11/20 6pm Tr. p. 48-52).

- Ms. Smith applies recycling rates inconsistently. For the portions of the service area that are estimated to generate the larger volumes of waste during her 27-year review period, she uses the lowest number possible and does not increase it over time, such as with the waste generation from the City of Chicago. For other portions of the service area, however, Ms. Smith increases the recycling rate, for example with suburban Cook County. This inconsistency, Ms. Smith's agreement that the long holding trend has been for increased recycling (11/20 6pm Tr. p. 37), and her agreement that the trend in more than 50% of the Counties she included in her analysis is for recycling to increase (Id.), is evidence that that the calculations and estimates contained in her report are slanted in favor of the Applicant and are not accurate. If the **actual** recycling rates are applied to Ms. Smith's waste generation numbers, even without any increases in recycling over 27-years, the result is very different and the waste generation estimates are much less than what Ms. Smith estimated. For example, although Ms. Smith used a 40% recycling rate for the City of Chicago (identified as "Cook (City)" waste in Table 2 of her report), she agreed that in 2000 and 2001 the City had a recycling rate of 48% and 45%, respectively. If the same was done for Kankakee County, another County for which she decided to utilize a smaller recycling percentage than what is being achieved, (11/20 6pm Tr. p. 50-51), it reduces her waste generation figures for Kankakee County significantly.
- Ms. Smith fails to provide sufficient data or calculations to support the numbers in her report and testimony. For example, she admitted to making a mistake in her calculations, but provided no explanation or supporting documentation or calculations for the numbers about which she testified. (1/13 1:40 pm Tr. 72).
- Ms. Smith determined the total disposal capacity based on an untested and inconsistent "waste receipt" and "waste capture" factors that she created. Ms. Smith determined the currently available (permitted) by considering 29 existing landfills that accept waste from the service area and then reducing the capacity available at those facilities, per year, from the reported capacity date to 2005, and additionally reducing the available capacity by applying a "waste receipt factor." This "waste receipt factor" represents a reduction in the capacity of a landfill to reflect that portion of the capacity which Ms. Smith believes is "reasonably available" to the service area. (1/13 1:40 pm Tr. 59). There is no reference, study or statistical support provided by Ms. Smith for her reduction of capacity in this manner and it results in a reduction of **one half** of the available capacity as of January 1, 2003. Additionally, Ms. Smith's application and choice of percentages to be applied to such a waste receipt factor, like her "waste capture" figure, is just a number she decided to apply to the estimates she developed. (*See*, 11/20 6pm Tr. 138).

- Ms. Smith proves that her “waste receipt factor” is arbitrary and unreliable, when her 2002 report is compared with her 2003 report. Countryside Landfill is one example of Ms. Smith changing her opinion as to the percent capacity of landfills available to the service area based on her own idea of how much waste that landfill might take from the service area. In March 2002, she states that 50% of the capacity of this landfill is available to the service area. However, in her September 2003 report, she reduced that percentage to 35% with no explanation. These percentages are based almost exclusively on her unsupported opinion as to what the landfill will receive from the service area rather than what is actually available. (See, 01/13 1:40pm Tr. p. 64, 65).
- “Service Area” is a term that Ms. Smith presents as a factual permitted restriction of an area within which a landfill may accept waste, but this is untrue. (See, 01/13 1:40pm Tr. p. 66). Ms. Smith testified that in Illinois a landfill permit applicant designates a service area that it intends to serve as part of its siting agreement, but in reality the landfill can accept waste from anywhere. (01/13 1:40pm Tr. p. 64). A landfill is free to accept waste from any town, county, state, or country regardless of the service area that has designated or the areas from which it accepted waste in the past.
- Ms. Smith ignored geography and distance between waste generation areas and landfills when she formed her opinion on what percentage of waste from the service area would be delivered to landfills outside of the service area. (01/13 1:40pm Tr. p. 61).
- Ms. Smith testified that she did not include several landfills near or in the service area which are either in the siting process or a permitting process. (01/13 1:40pm Tr. p. 58).
- According to Ms. Smith, the service area will generate an average of 3.9 millions tons of waste on an annual basis. (01/13 1:40pm Tr. p. 73). And dividing her estimate of existing landfill capacity available to the service area by the average annual generation means that the service area has more than 14 years of disposal capacity available to it. (01/13 1:40pm Tr. p. 74). This means that if no additional capacity is permitted and all of her “waste receipt factors” are applied, the service area will have adequate landfill capacity until the beginning of 2019. However, Ms. Smith testified that the service area will run out of landfill capacity in 2009, which contradicts her own numbers and her own previous conclusions. (01/13 1:40pm Tr. p. 74).
- Ms. Smith testified that in her September 2003 report, the amount of waste that she estimates will be generated within the 27 year period is 31 millions tons less than her estimate from the report in 2002. (01/13 1:40pm Tr. p. 64). The reduced waste

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generation number results in an estimated capacity shortfall of 10 million tons less than Ms. Smith's previous estimate in March 2002. (01/13 1:40pm Tr. p. 71).

- Ms. Smith did not consider the potential expansion of the CID landfill in Chicago, Illinois, although she is aware that it may happen. (01/13 1:40pm Tr. p. 87). Because the City for Chicago does not have to go through siting for a landfill, the additional capacity could exist almost immediately after the expiration of the moratorium. (01/13 1:40pm Tr. p. 87).
- Ms. Smith did not include all available capacity available to the service area in her report. If she did consider all of the available capacity, it would be clear that the service area has sufficient disposal capacity until the year 2037 and the potential available landfill capacity until the year 2043.

B. Criterion 3: The evidence fails to show that the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property

Criterion 3 places the burden on the petitioner/applicant to establish two components, character of the surrounding area and value of the surrounding property. The Applicant must show it has or will minimize incompatibility or effect of the facility on these two items. Mr. Lannert is the only witness presented by WMII on the first element and, although his testimony contained several deficiencies, WMII's overwhelming failure with respect to its burden of proof on Criterion 3 was the second factor, as its witness, Patricia Beaver-McGarr, committed perjury and her testimony had to be disregarded by the County Board.

The following items are some, but not all of the deficiencies in Mr. Lannert's analysis:

- Mr. Lannert fails to evaluate and discuss that the facility will be nothing more than a "pipe farm." The proposed facility intends to re-circulate the leachate, which will require vertical leachate re-circulation wells. The design has the pipes protruding four feet above the final cover. (11/22 1:30pm tr. 64-65). There will be 25 of these wells protruding four feet over the cover of the landfill. (11/22 1:30pm tr. p. 77). There will be 88 gas wells, which will protrude 5 to 6 feet above the final cover. (11/22 1:30pm tr. p. 67-68). In essence, there will be 113 pipes protruding 4 to 6 feet above the final cover. The wells can be designed and installed so they are flush with the ground, however, that is not what has been proposed by WMII (11/22 1:30pm tr. p. 66, 68). Mr. Lannert opines that the proposed facility is compatible with the character of the surrounding area as it may be

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used for a golf course or recreational space at some point in the future. However, another witness for WMII provided testimony that with 25 leachate re-circulation wells and 88 gas wells protruding from the cover over the site, a golf course cannot be built, and furthermore, he is unaware of any facility in the State of Illinois with these types of protruding wells that has actually been used as open space or with a recreational theme. (11/22 1:30pm Tr. 79-80).

- The facility will accept eight to fourteen times the amount of trash presently accepted. It is undisputed that there will be a significant increase in traffic and that the increase in traffic will be concentrated on Route 45/52. Mr. Lannert does not consider how the increased traffic with the associated noise and pollution will affect the character of that area. (11/18 6:00 p.m. Tr. 108-109). Mr. Lannert does not consider the impact of increased litter and odors from the expanded operation on the character of the surrounding area. The proposed expansion during its life and act of operation will have such a substantial negative impact on the character of the surrounding area that Mr. Lannert instead focuses on undulating hills when the facility is closed.
- Mr. Lannert concedes that I-57, a major transportation route on the west side of the proposed facility, and the Iroquois River, on the east side of the proposed facility, are catalysts for growth and development. (11/18 6:00 p.m. Tr. 103-105). Some growth and development began to occur as the existing facility approached closure but prior to the announced expansion. To the north of the proposed facility, a hotel/convention center is under construction as well as an aquatic center. (1/13/04 Volume IV Tr. 11). The proposed expansion is being placed directly in the path of growth.
- The proposed facility comes within 120 feet of the east property line, including the footprint which is 150 feet from the East property line, and the storm water drain system which is another 30 feet closer to the East than the footprint. Despite being in violation of legal set back requirements on the East property line (from an existing potable well and residence), and thus, the presumption of impact, Lannert maintains his opinion that there is no impact. One of the witnesses for the Applicant, Mr. Nickodem testified that transfer stations have less of an impact than landfills yet transfer stations require a 1000 foot set back from the property line.
- Mr. Lannert's landscaping plan does not call for any landscaping on the East side of the proposed facility.
- There is no storm water detention pond on the East side of the proposed site.
- The Kankakee Comprehensive Plan requires that the Local plan as well as the County plan be considered when considering land use for areas within 1.5 miles of a municipal boundary. Watson Exhibit No. 1 is the "County Regional Planning Department Map dated 2002". The map depicts a portion of the facility as falling within the 1.5 mile

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planning boundary. Mr. Lannert did not consider the City of Kankakee Comprehensive Plan.³

In order to meet its burden that the facility is located to minimize the affect on the value of surrounding property, the petitioner relies exclusively on the written report and testimony of Ms. Patricia Beaver-McGarr. The following are some, but not all the deficiencies in Ms. Beaver-McGarr's testimony:

- Beaver-McGarr lacks any credibility. Ms. Beaver-McGarr submitted three curriculum vitae and testified that she had a degree from Daley College, however, the record unequivocally establishes that Beaver-McGarr lied and, in fact, did not have a degree from Daley College when she made those representations, all under oath. Furthermore, the testimony of Ms. Powers and Beaver-McGarr clearly establishes that this is not a case of mistake rather, a case wherein Ms. Beaver-McGarr knew she did not earn a degree, knew she did not have a degree, lied about having a degree and is attempting to avoid that lie in the January 2004 WMII hearings with some creative story-telling. Not only did Ms. Beaver-McGarr not earn or obtain a degree, she made an inquiry as to whether or not she had a degree sometime in the Spring 2002 and at that time, was clearly advised that she did not have a degree.⁴ It became impossible for Ms. Beaver-McGarr to concede this issue without acknowledging that she lied.⁵ The curriculum vitae certified and contained in the application marked as petitioner's Exhibit 1 indicated that the Associates Degree was obtained from Richard J. Daley College in 1981. During the course of her testimony, Beaver-McGarr testified petitioner's Exhibit 6 was a true and accurate copy of her curriculum vitae. Said document provided that Ms. Beaver-McGarr obtained an Associates Degree from Richard J. Daley College in 1980. Also, during the hearing,

³ Mr. Lannert attempts to attack the accuracy of the map. However, that is a map prepared at the direction of the County of Kankakee. Assuming that the planning boundary on the map is in fact inaccurate as insinuated/claimed by Mr. Lannert, the proposed facility is in such close proximity to the planning boundary that the City of Kankakee Comprehensive Plan should have at least been considered.

⁴ The Pollution Control Board hearing was conducted in May 2003. When Ms. Powers testified, she indicated her first conversation concerning a degree or lack thereof was about a year before that time which would be the Spring 2002 (Watson Exhibit A, page 61, 88 and 92). Sometime later there were additional conversations concerning the degree which would coincide with the point in time in which Ms. Beaver-McGarr testified during the November 2002 hearings. It is quite clear that before she testified in November 2002, she was advised of the fact that she did not have a degree.

⁵ At the initial hearing, Ms. Beaver-McGarr testified that she physically received a degree/diploma (Hearing transcript 11/19/02, Volume 6, pages 35-40). During the November 2002 hearing, she was asked if she would be able to produce the diploma and indicated that she could but would have to dig for it because she had moved within the last year (Id. at page 38). During the hearing of January 2004, the explanation became more elaborate, and she testified that she gave her diploma to her mother in 1980, her mother died in approximately 1990, her mother's house was sold right away and the boxes were moved and that since November 2002 she searched the boxes and could not find it. (Hearing transcript, 1/12/04, Volume 2, pages 49-50, 55-56).

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Watson Exhibit 7 was presented to Ms. Beaver-McGarr, another version of her curriculum vitae which was offered during testimony in June 2002 at a different site which represents that Ms. Beaver-McGarr obtained an Associates Degree from DePaul University in 1981. Marianne Powers is the supervisor of admissions and market office for Richard J. Daley College and has held that title for approximately ten years⁶ (Watson Exhibit A, page 61). Ms. Powers was clear and unequivocal that 60 hours were required for an Associates Degree and that Ms. Beaver-McGarr had only acquired 57 (Watson Exhibit A, pages 63-64). Ms. Powers testified that Ms. Beaver-McGarr never received a degree from Daley College and that she was not entitled to a degree from Daley College. (Watson Exhibit A, pages 64-65).

- Although the testimony is uncontroverted that she never earned or received a degree from Daley Center, Ms. Beaver-McGarr claims that she was physically given a diploma, however, to this very day, she has been unable to produce it. Yet, there is no record of Beaver-McGarr even applying to receive a diploma from Daley College, a required application that is maintained whether or not a degree is issued (Watson Exhibit A, pages 64 and 80).
- During and after the hearing in November 2002, numerous efforts were taken to determine if Ms. Beaver-McGarr had graduated as claimed.⁷ The applicant did everything it could to delay, obstruct and circumvent the process. The applicant knew the graduation and degree did not exist.
- Beaver-McGarr's selection of target and control areas is flawed. The control area was selected to include properties which would not have been affected. The entire premise behind a target versus control area analysis is to identify one area where if there is going to be an impact that is where it will be located and to find a control area where there would not be any impact. If there is an impact in the control area, then it is difficult to compare it to the target area. (1/12/04, V 2, Tr 124). She concedes that selection of a one mile target area and one mile control area is not based upon any scientific principal and/or study rather, it is merely her personal opinions. (1/12/04, V 2, Tr. 125). Also, the target area is much larger than one square mile around the existing facility on the south side of the facility, even though Beaver-McGarr concluded any negative impact would be contained within one mile. Therefore, the area greater than one mile would encompass an area which is not affected. According to Ms. Beaver-McGarr's own logic, whatever negative impact is within the target area has automatically been diluted by the selection of the boundaries of the target area. Further, a significant portion of the target area extends east of the Iroquois River, despite Beaver-McGarr's concession that waterways act as a

⁶ Marianne Powers was called as a witness as part of the Pollution Control Board proceedings concerning the application filed in August 2002. The portion of the transcript from said hearing wherein Marianne Powers testified was marked as Watson Exhibit A during the hearing concerning the September 2003 application.

⁷ Additionally, during the 2002/3 public hearing it is now clear that not only did Ms. Beaver-McGarr know she did not have a degree, but so did WMII's counsel. (See, Local Public Hearing Record, Watson's Written Comment Exhibit H).

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buffer. (1/12/04, V 2, Tr. 120). If the Iroquois River buffers any negative impact from the existing facility and is not affected, by including it in the target area, it further dilutes the negative impact of the existing facility. Finally, she also concedes that an Interstate can buffer things from one side to another. (1/12/04, V 2, Tr 120). Interstate 57 is located on the west side of the facility and a portion of the control area east of Interstate 57 is within one mile of the defined target zone. However, Beaver-McGarr assumes, without basis, that at exactly one mile on the west side of the facility, the negative impact will stop as opposed to continuing to the natural buffer, Interstate 57. If that portion of the control area is affected and there is nothing to indicate that it would not be similarly affected, then comparing the control area to the target area is meaningless in the manner done by Beaver-McGarr.

- The Poletti study submitted by WMII in its application directly contradicts Ms. Beaver-McGarr's methodology, as it uses the corridor between Interstate 57 and the Iroquois River as the target area.
- A report included in the local record, attached to Watson's written comment, prepared by Dr. Richard Reedy of Pennsylvania State University concluded that a landfill has an impact which reaches the furthest and generally reaches two miles.
- Beaver-McGarr's report was evaluated and criticized by Peter Hopkins, another real estate expert. One criticism is the use of averaging sale prices, which is likewise contradicted by the Poletti report.
- Beaver-McGarr included inappropriate transactions, such as the Buescher property which she included in the target area for the farm study, which should not have been considered as it was not a farm transaction it is more than one mile from the existing facility, which was her arbitrary boundary for the target area. Also, she excluded transactions for no apparent reason. *See*, Exhibit I to Watson's local hearing written comment and Hopkin's report.
- In defense of property value impact, WMII has touted a property value guaranty. However, the property value guarantee **only applies to single-family residential** homes and not to farmland and is even being applied by WMII to farmland on which there is a single family residential home. According to its own analysis, farmland is 96% of the property in both the target and control areas. Its price protection is only offered to a fraction of the properties.
- Residents spoke at the hearings concerning impact on their property values. Clifford Schroeder purchased his property in 2000 and was not aware at that time of a landfill expansion. (12/2 1pm p. 104). Had he known that the existing facility would be expanded, he would not have purchased the home. The home was on the market for approximately one year prior to his purchase. (12/2 1pm pp. 105-106). Pat Buescher

owns the property at 600 East 7500 South Road and he purchased said property in 1999. (12/3 6pm p. 6). When he purchased his property, he was aware of the existing facility and noted that the facility was a mile and a half from his home. (12/3 6pm p. 7). The proposed facility/expansion will put the landfill across the street from his front lawn. (12/3 6pm p. 7). Had he known of the proposed expansion, he never would have purchased the property. (12/3 6pm pp. 7-8). Carol Milk testified that she and her husband reside at and own 6903 South 45/52, Chebanse, Illinois which is next to the existing facility but some distance away. (12/3 6pm p. 9). Ms. Milk testified that had she been aware of the proposed expansion it is unlikely that she had her husband would have purchased the property. (12/3 6pm p. 9). Already, Mrs. Milk has experienced an impact on the value of her home. They are having difficulties in obtaining realtors that would be interested in listing the property and a recent appraisal obtained in conjunction with a home equity loan application was \$100,000.00 less than an appraisal performed approximately one year earlier. (12/3 6pm p. 11).

C. *Criterion 6: The evidence fails to show that the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows*

The record fully supports the County Board's determination on Criterion 6. Some, but not all the deficiencies in WMII's evidence follow:

- Although most of the waste will be coming in by way of transfer trailers which are 60 to 85 foot long tractor trailers and on the inbound trip, will have approximately 80,000 pounds of garbage Cororan fails to evaluate the characteristics of Route 45/52 on which these trucks will be traveling, being one lane in each direction, not having a shoulder on either side shoulder (violating the State of Illinois design manual for highway construction and the AASHTO geometrical design manual), and being lined with residences. Mr. Corcoran only evaluated the traffic from a road "capacity" perspective and failed to consider the other potential impacts on existing traffic flows.
- Although he testified in both WMII hearings about school buses, and he knew after the first hearing it was an issue of concern, he never bothered to call the School District and locate the stops for the buses or their routes. Mr. Coulter, another traffic expert, testified concerning the impact of traffic. One of his concerns, given the configuration of the traffic patterns and the specific traffic route presented here was the blending of the additional truck traffic with the existence of school buses.
- Although Corcoran conceded that various modifications were required along Route 45/52 at or near the entrance of the proposed expansion in order to minimize the impact on existing traffic flows, he only included deficient concept drawings in the application and, although WMII claims to have additional drawings in satisfaction of IDOT, neither

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WMII nor Corcoran produced them. As the record was incomplete, this issue could not be assessed by the County Board.

- Corcoran's report was prepared in the first quarter of 2002 and nothing was done to update it, even in terms of updating traffic counts and taking into account other changes that have occurred over the last two years, such as on Route 45/52 the construction of a hotel convention center, prior to its submittal in September 2003.
- The traffic counts contained in Corcoran's report are not representative and not accurate of actual or typical traffic on Rte. 45/52, as they were taken during February and, thus, do not include tourist, farming, fair ground or other similar traffic which does not occur in the winter, and do not identify whether the vehicles counted were cars or trucks or other types of vehicles. (11/19 1:38pm Tr. p. 26, 43). Mr. Corcoran relied on counts that stated traffic on Rt. 45/52 to be between 252 to 435, "going north or southbound" and not identifying the type of vehicle. (11/19 1:38pm Tr. p. 24, 26). The existing landfill is generating 200 vehicle trips per day according to Mr. Corcoran, and the proposed expansion will generate 600 vehicle trips per day, more than three times the traffic, not taking into consideration type of vehicle, currently experience at and near the site. (11/19 1:38pm Tr. p. 25-26). Corcoran admits that the size of the vehicles on the roadway system in addition to volume, is important in doing a traffic analysis, and an increase traffic flow of trucks may be equivalent of three to four times that number of cars. (*Id.* at p. 46-47). On the day that Metro did its traffic count, no transfer trailers entered or exited the site. (*Id.* at p. 47). The difference between a 30-40 foot long truck and a 60-65 foot truck would require additional analysis in a traffic study, such as the gap studies as "the larger truck obviously has different acceleration characteristics when it's pulling into traffic." (*Id.* at p. 48). However, the size of the vehicles, the addition of at least 320, 60-65 foot transfer trailers to the traffic flow and Rt. 45/52 was not considered.
- Corcoran never analyzed whether there are any secondary peak travel times on the roadway system and, as discussed above, the traffic count data on which Mr. Corcoran based his opinions, is faulty and not representative of typical or average traffic conditions on Rt. 45/52. (11/19 1:38pm Tr. 44-45).
- Corcoran performed the traffic analysis on the assumption that the proposed expansion would be accepting no more than a maximum of 4,000tpd. (11/19 1:39pm Tr. p. 49). The amended and restated Host Community Agreement between the applicant and the County of Kankakee allows for up to 7,000 tons of out of County waste to be accepted on any given day. (Amended and restated Host Community Agreement contained at the end of volume I in the Application, p. 7-8).
- Mr. Coulter offered testimony that the applicant had not complied with Criterion 6. Mr. Coulter is a registered professional engineer in the State of Illinois, has a Bachelor's Degree in Civil Engineering and a Master's Degree in Urban Planning and Transportation

from the University of Iowa. (1/15/04, Volume X, page 5). It is his opinion that the applicant has not met its burden under Criterion 6. (1/15/04, Volume X, page 8). One main criticism was the applicant's failure to consider the actual existing traffic patterns. The traffic counts and patterns studied were from 2002 and since that time additional developments and volume have occurred. (1/15/04, Volume X, pages 10-11). A major criticism is the applicant's failure to account for the school bus traffic especially in light of the fact that US 45/52 is one lane in each direction with a minimal shoulder and a speed limit of 55 miles per hour.

D. Fundamental Fairness Claims Raised by WMII

The following County Board members testified about the *ex parte* contacts that WMII claims were fundamentally unfair:

- County Board Member Hertzberger had one meeting with Bruce Harrison, for a couple of minutes, in which he told her to “vote no” and she never spoke with him about the substance of the application (4/6/05 Tr. 51-52, 54). She saw signs before the vote, but doesn't recall what they said. (*Id* at 54). Harrison isn't the first person to come to her office unannounced to discuss County business and others have done the same for matters other than WMII's expansion. (*Id* at 77-79). She was not intimidated by Harrison. (*Id.* at 79).
- County Board Member Gibbs testified that he had a less than 45 second call with someone who identified himself as Harrison and when Gibbs realized the call was about WMII's expansion, he ended it (*Id* at 212-213, 221). He received letters, but didn't read them and brought them to the County Clerk. (*Id* at 214).
- County Board Member Romein received 20-25 letters and brought them to the County Clerk (*Id* at 23) and believes that Harrison called him at home in a conversation that lasted less than 2 minutes, because Romein wouldn't speak with him (*Id* at 239-240). Romein had two encounters with Harrison *after* the March 17th vote to deny the application, neither of which was lengthy or substantive. (*Id* at 243-245). He never felt threatened about the letters or his encounters with Harrison. (*Id* at 254-255).
- County Board Member Wilson received “maybe” six phone calls prior to the March 17th vote, but doesn't recall from whom; met Harrison at a restaurant where he refused to speak with Harrison about the landfill; and met Harrison again outside the County Board and told Harrison he could not speak about the landfill. (*Id* at 260-261, 264-265, 266). Wilson ended his conversations with Harrison as soon as polite to do so and never felt threatened or intimidated by Harrison or any petitions he saw. (*Id* at 269-270).

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- County Board Member Bob Scholl received one phone call from a trucking company that was *in support* of WMII's landfill prior to the March 17th vote; received letters which he glanced at and brought to the County Clerk; encountered Harrison at one of the public hearings in which Harrison expressed his opposition due to "clutter" at the site; and, heard from Mark Benoit (apparently a constituent) twice, but didn't speak with him about the landfill. (*Id* 274-275, 276, 278, 279, 282-283, 285-286). He was neither threatened nor intimidated by the letters or encounter with Harrison. (*Id.* at 269-297).
- County Board Member Edwin Meents received letters, did not open them, and brought them to the County Clerk; went to breakfast with Harrison, but cut him off and said that he wouldn't speak about the landfill; and encountered Ron Thompson after Mr. Thompson gave his public comment at the hearings and again in church, at which times Thompson asked Meents what he thought of the public comment and what date the Board was voting, respectively. (*Id* at 304, 308, 310-311, 312-313, 314, 319-321).
- County Board Member Ann Bernard encountered Harrison once when he attempted to contact her but she made it clear to him that she was basing her decision on the record. (*Id* at 335).
- County Board Member Martin received phone calls both for and against the WMII expansion and received less than 20 letters which he threw out. (4/7/05 Tr. 12-14).
- County Board Member Marcotte received no phone calls and read about 55 letters all of which were filed with the County Clerk. (*Id* at 53-55).
- County Board Member Stauffenberg received no phone calls and received 7-8 letters which he threw away without reading based on the return address. (*Id* at 66-67). He talked through a window in his car to Harrison in a parking lot and agreed to meet, but then when he realized by speaking with another Board Member that Harrison wanted to discuss the landfill he canceled the appointment. (*Id* at 69).
- County Board Member LaGesse received one phone call from Harrison asking to meet, and initially agreed, but then called Harrison and canceled the call. (*Id* at 84, 90). He also encountered Harrison wherein Harrison tried to hand him a petition, but LaGesse handed it back. (*Id* at 92). He received 10-20 letters, unopened except for one from the wife of a second cousin, and threw them out. (*Id* at 95, 98-99). He had a one-sided conversation in which apparently a constituent, Flageole, informed him of Flageole's opposition to the expansion. (*Id* at 98-99). He was not intimidated by the contacts. (*Id* at 102).
- County Board Member Faber received one call from a constituent, Benoit, and 15-20 letters which she threw out unopened except for the first 1-2 which she opened before disposing. (*Id* at 127-129).

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- County Board Member James received 4 phone calls against and 2 in favor of WMII's expansion, none of which contained details and was approached without substantive discussion by Harrison and James. (*Id* at 154-159).
- County Board Member Vickery didn't receive any phone calls, but his received a message from his wife that a person named "Bruce" called whom he assumed to be the County Clerk, Bruce Clark. (*Id* 191-192). Only contact with Harrison was Harrison saying "hello" in the County Board room on a date that Vickery cannot recall. (*Id* at 193). He received about 25 letters, which he did not open except for the first 1 or 2 and then turned all of them over to the Clerk after the March 17th vote. (*Id* 194) The letters and phone message did not intimidate him. (*Id* 197-199).
- County Board Member Barber was told she received a voice mail message concerning the landfill by her husband, but doesn't know specifically the contents or whether it was pro or con towards WMII. (*Id* at 212-214). She also received letters which she recycled unopened except for the first couple, and had a Harrison encounter which she ignored and ended quickly, and none of this intimidated her. (*Id* at 214-216, 218-221, 227).
- County Board Member McLaren received 15-25 letters which were not opened (except for one opened by a family member and the specific contents of which were not disclosed to McLaren) and brought to the Clerk's Office; had a 15 minute encounter with Harrison during which time McLaren was bartending and not paying full attention and which ended when McLaren told Harrison to leave; and had another encounter with Harrison when Harrison attempted to hand petitions to McLaren. (*Id* at 234-235, 236-238, 240). None of this intimidated McLaren. (*Id* 248).
- County Board Member Jackson received letters and phone calls on both of WMII's applications for a landfill expansion that went to hearing, but cannot distinguish between them in terms of quantity, providing a total estimate of 50. (*Id* at 266-267) Jackson received 4-5 letters from constituents saying that they would be watching the landfill vote, but that did not phase her, as she pointed out her constituents watch how she votes all the time, anyway. (*Id* at 270). The letters she received she did not read in detail. (*Id* at 279).
- County Board Member Washington didn't answer any phone calls or hold any conversations with anyone about the landfill and the letters he received went unopened and returned to the County Clerk. (*Id* at 303). He had contact with Harrison who walked out of the County Building with him one day, the date of which he is uncertain, and talked about trucks; however, once Washington figured out what Harrison was saying he ended the conversation. (*Id* 306-307). Washington did not feel threatened by Harrison. (*Id* at 308).

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- County Board Member Olthoff received 20-30 letters that he opened, saw related to the expansion, put in a stack, and brought to the County Clerk. (4/14 Olthoff Depo Tr 7-8). Harrison came to Olthoff's church to request to be able to speak on the landfill expansion, but Olthoff, in his capacity as a church moderator spoke with Harrison and denied his speaking request. (*Id* at 9-14). Olthoff was neither threatened by the letters nor his meeting with Harrison. (*It* at 30-31).
- County Board Member Bertrand received phone calls, as did other Board members, on both of WMII's applications that went through public hearing, but the calls, again like the other Board Members, had no influence on him. (4/14 Bertrand Depo Tr. 4, 6). Bertrand also received a phone call from a constituent named Flageole who wanted to know how Bertrand would vote, which Bertrand would not reveal, and then who told Bertrand he'd run against him and beat him in the next election. (*Id* at 6-7). Bertrand did not take Flageole's statements seriously, as Flageole did not even live in his district (thus, could not run against him). (*Id* at 6-7). Bertrand also met with Harrison when Harrison met with Ed Meents and had an encounter with Thompson in which Thompson expressed opposition to the landfill. (*Id* at 15-16, 18-20). Bertrand voted to approve the landfill expansion. (*Id* at 6)

III. STANDARD OF REVIEW

There are two standards of review to be considered in this appeal. The first, is the standard applied to actual fundamental fairness issues raised on appeal, namely, *de novo*. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 48, 743 N.E.2d 188, 193-194 (3rd Dist. 2000). This standard is truly not applicable to this matter, as WMII has failed to raise a legitimate fundamental fairness issue, as further discussed below.

The second standard of review to be considered by the Illinois Pollution Control Board is whether the Kankakee County Board's decision denying WMII's proposed transfer station was against the manifest weight of the evidence. *McLean County Disposal, Inc. v. County of McClean*, 207 Ill.App.3d 477, 480-481, 566 N.E.2d 26, 28-29 (4th Dist. 1991). Under a manifest weight of the evidence review, the decision of the Kankakee County Board should be affirmed, unless the findings and conclusions of the Kankakee County Board are found to be contrary to the manifest weight of the evidence. *Central Illinois Public Service Co. v. Department of*

Revenue, 158 Ill. App. 3d 763, 767, 511 N.E.2d 222, 110 Ill. Dec. 387 (4th Dist. 1987). A decision is contrary to the manifest weight of the evidence only when, after viewing the evidence in the light most favorable to the Kankakee County Board, the Illinois Pollution Control Board determines that no rational trier of fact could have agreed with the Kankakee County Board's decision. *American Federation of State, County & Municipal Employees v. Illinois Educational Labor Relations Board*, 197 Ill. App. 3d 521, 525, 554 N.E.2d 476, 143 Ill. Dec. 541 (4th Dist. 1990).

In bringing this appeal, WMII, as the Petitioner, has the burden of proof. (415 ILCS 5/40.1(a)).

IV. ARGUMENT

WMII's contentions with respect to manifest weight and fundamental fairness are not supported by the record and must fail. The County Board's denial of WMII's application was properly based on the evidence with no undue influence or fundamental unfairness to WMII and should be affirmed.

A. *The County Board's Decision on Criterion 1 Should be Upheld and Is Supported by the Evidence*

Whether there is sufficient capacity in a given service area to dispose of waste generated in that area is the general methodology used by Ms. Smith to determine whether there is a "need." However, while proof of need is not required to be an immediate necessity, a 27-year future estimate on need with actual claimed need not occurring for ten years after any decision by the County Board is not only speculative, but fails to prove a "need" exists consistent and as required by Criterion 1. The total available capacity, considering only the 29 landfills chosen by Ms. Smith as of January 1, 2003, was 134,474,183 tons. Using the "waste receipt factors", *in*

arguendo, that Ms. Smith chose to apply to each landfill outside the service area, as of January 1, 2003, the capacity “available” (as determined by Ms. Smith) to the service area is 68,476,956 tons. Yet, Smith did not include all the available capacity in or outside and available to the service area in her capacity calculation. If just *some* of this capacity is included, it brings the total available capacity to 170,370,923 tons. (See Criterion 1 discussion in Watson’s written comment). If this additional available capacity is considered in conjunction with the reduction of waste generation taken from just two examples of Smith’s underestimating recycling (City of Chicago and Kankakee County), the calculations fall short of showing a need for a 30,000,000 ton landfill as proposed by WMII and, in fact, there is a capacity overage.

Considering only the examples presented above, and not recalculating waste generation for each County in the service area, the County Board could have found Smith’s conclusion of need not supported a preponderance of the evidence. This is shown by the record in a number of ways. Further, even if additional available capacity from other sites as outlined in the charts contained in Watson’s written comment, excluding the City of Kankakee Landfill, there is sufficient capacity for the service area until sometime after 2039, and that the “shortfall” experienced after 2039 is less than half the tonnage being sought by the Applicant. Therefore, the Applicant has failed to prove that the 30,000,000-ton expansion it proposes is necessary to accommodate the waste needs of the proposed service area and the County’s Board’s decision is fully supported by the evidence.

B. The County Board’s Decision on Criterion 3 Should be Upheld and Is Supported by the Evidence

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WMII's contention is that no one testified in opposition to Criterion 3, thus, WMII "wins." However, that argument fails to recognize that testimony adverse to WMII's position was obtained during cross-examination (as was with Criterion 1 testimony), and evidence was submitted both through written and oral comment that contradicted WMII's witnesses statements. A partial summary of both these types of contrary evidence is contained in the statement of facts. Moreover, one of WMII's witnesses, without who's testimony WMII is missing half of Criteria 3, perjured herself by represented she had a college degree when she did not. This perjury, alone, is sufficient to find that the County Board's decision is not against the manifest weight of the evidence. In fact, it is *against* the manifest weight that anyone can find Beaver-McGarr credible and the use of perjured testimony is fundamentally unfair and it cannot be relied on by a trier of fact. *Eychaner v. Gross, et al.*, 202 Ill.2d 208, 779 N.E.2d 1115, 1130 (S.Ct. 2002) and *People of the State of Illinois v. Moore*, 199 Ill.App.3d 747, 557 N.E.2d 537 (1st Dist. 1990). Therefore, the Illinois Pollution Control Board should affirm the County Board's decision.

C. The County Board's Decision on Criterion 6 Should be Upheld and Is Supported by the Evidence

WMII's sole argument for manifest weight as respects Criterion 6 is that Coulter's testimony concerning school bus operations, future traffic, and an alleged IDOT submittal that was never submitted by WMII as part of the record is insufficient to defeat WMII's prima facie case. However, WMII's contentions make a short list of what is a long series of deficiencies in its Criterion 6 evidence. For example, WMII failed to take into evaluate the characteristics of Route 45/52, one of the main routes of travel for the transfer trailers and, although WMII admitted the access to the proposed expansion had problems and alleged it provided

documentation that showed those problems could be corrected, it never submitted that documentation as part of the record before the County Board. The problems with this type of failure should not be a surprise to WMII, as, similarly, it was denied siting on Criterion 6 (among other Criteria) before other local governments based on its failure to provide the roadway characteristics of its main route of travel and failure to provide documentation critical to the local government's determination. *See, e.g., Waste Management of Illinois, Inc. v. County Board of Kane*, 03-104 (June 19, 2003). Thus, the Illinois Pollution Control Board should affirm the Kankakee County Board's decision.

D. The Record Does Not Support WMII's Active Imagination and there Is No Evidence of Conspiracy, Perjury (except that of WMII's own "expert"), intimidation or ex parte communication to Support WMII's Claims of Unfairness

WMII has an active imagination, creating conspiracies, making claims of perjury, and claiming intimidation that never occurred. With this active imagination, it also has a liberal interpretation of what the record states. For example, WMII contents, as part of its fundamental unfairness claim, that Robert Keller, Bruce Harrison and Michael Watson formed a "conspiracy" against it. However, nowhere in the record is there evidence that these three persons worked *together* in opposition of the landfill and, moreover, even if they knew each other and conferred, there is absolutely nothing criminal about their actions. WMII has not even alleged a crime. Thus, given that even the most basic definition of conspiracy involves joint actions to commit an unlawful act, this is nothing more than vicious hyperbole. *See, Black's Law Dictionary*, 6th Ed. (1991).

Additionally, WMII's claim that the three men "continually" communicated about the opposition to the landfill is outright false. Although Keller stated that "now" he speaks with

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Watson three to four times a week (and he is a neighbor to a property Watson owns) (4/6/05 Tr. 102), there is no evidence in the record to indicate whether “then” the two men communicated that frequently and how much of that even involved the landfill. Further, Keller testified that he did *not* have regular conversations with Harrison, irrespective of the content:

Q: And you’ve had that [sic] those conversations or communications with Mr. Harrison on the average of three to four time [sic] a week?

A: Now, no.

Q: Beginning in January of 2004 going through the end of 2004?

A: No.

(4/6/05 Tr. 118-119).

Further, nowhere in this “conspiracy” is there evidence of Watson’s communication with Harrison concerning WMII’s proposed expansion. In fact, there is absolutely no supporting testimony to the various key allegations in WMII’s imaginative theories alleging conspiracy and Harrison heavy-handedness, such as, Harrison making anti-landfill signs, the three men encouraging others to send thank you notes *after* the County Board’s vote (*is that a crime?*), and Harrison and Keller working for United Disposal of Bradley, Inc.⁸

Finally, as reviewed in the Statement of Facts section above, many of the contacts of which WMII complains were not even *ex parte* (*i.e.*, the letters to the Board Members which were also submitted to the Clerk prior to the vote, and were, thus, in the record and to which WMII could have, but apparently chose not to, respond), and those that were technically *ex parte* contacts were citizens *attempting* to speak with their representatives, were non-substantive about

⁸ In fact, the only testimony in the record coming close to referencing these items is hearsay and speculation. For example, Hertzberger testified that he “heard rumors” that Harrison worked for United Disposal of Bradley, Inc., but that he has no proof of that relationship (4/6/05 Tr. 56); Runyon testified that he had no proof as to whether Harrison had anything to do with anti-landfill signs (*Id* at 177-178 and that he doesn’t know if Harrison performs work for United Disposal of Bradley, Inc. (*Id* at 184); Ann Bernard stated that she thinks Harrison may have been putting up signs, but had nothing on which to base that (*Id* at 347); and Martin said he “assumed” Harrison was working for Watson in Watson’s election campaign for County Board (4/7/04 Tr, 26-27) .

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the expansion proposal, and were essentially ignored by the County Board Members. These type of contacts, in the past, have never been found to be fundamentally unfair by the Illinois Pollution Control Board and courts. Thus, WMII's fundamental unfairness claims should be denied.

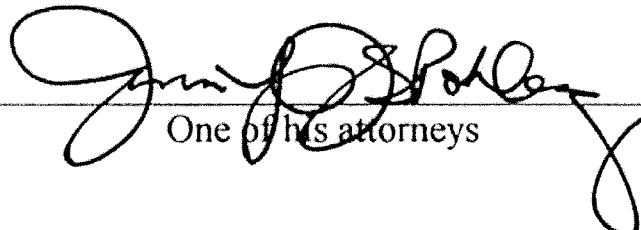
V. CONCLUSION

WHEREFORE, MICHAEL WATSON respectfully prays that the Illinois Pollution Control Board denies WMII's appeal and affirms the County Board's vote to deny the WMII landfill expansion application filed on or about September 26, 2003.

Dated: May 20, 2005

Respectfully Submitted,

MICHAEL WATSON

By:  _____
One of his attorneys

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EXHIBIT A

A Technical Review

Of

Criterion 3
of
Waste Management of Illinois, Inc.
Application for Expansion
of the
Kankakee Landfill

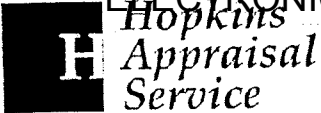
At The Request Of

Mr. David J. Flynn
Attorney at Law
Querrey & Harrow, Ltd.
175 West Jackson Boulevard – Suite 1600
Chicago, Illinois 60604

As Of

January 2004





1515 Indian Trail
Riverwoods, IL 60015
847-405-0696 voice
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phopkins@foxvalley.net

February 10, 2004

Mr. David J. Flynn
Attorney at Law
Querrey & Harrow, Ltd.
175 West Jackson Boulevard – Suite 1600
Chicago, Illinois 60604

**RE: Review of Criterion 3
Waste Management of Illinois, Inc.
Kankakee Landfill Expansion**

Dear Mr. Flynn:

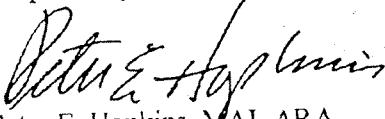
As you requested, I have reviewed Waste Management of Illinois, Inc.'s Criterion 3 documentation and have prepared a report in which I have documented my findings. The company proposes to increase capacity at its existing landfill facility south of the city of Kankakee, Illinois. It is therefore responsible to satisfy the following criterion.

Illinois 415 ILCS 5/39.2(a)(iii), known as Criterion 3, states, "The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding area."

The purpose of the assignment is to determine whether the above referenced Criterion has been met and, if not, where it is lacking. It is not to appraise or determine value of the property on which the subject landfill expansion would be present, if approved by Kankakee County.

My report is attached herein. In my opinion, the application filed by Waste Management of Illinois, Inc. is flawed and fails to meet Criterion 3 for the reasons discussed in the report.

Respectfully submitted,


Peter E. Hopkins, MAI, ARA
Hopkins Appraisal Service



Technical Review

This is a technical review, defined as work performed by an appraiser for the purpose of developing an opinion as to whether the analyses, opinions and conclusions in the work under review are appropriate and reasonable, and developing the reasons for any disagreement. Uniform Standards of Professional Appraisal Practice, 2003 Edition

Clients and Intended Users:

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Jennifer J. Sackett Pohlenz
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Intended users include the client's assigns.

Review Appraiser

Peter E. Hopkins, MAI, ARA
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Intended Use

The review is intended for use involving Waste Management of Illinois, Inc.'s (Waste Management) September 2003 application to the County Board of Kankakee County, Illinois, requesting approval of site location for the expansion of the Kankakee Landfill.

Review Criterion 3 of the Waste Management application for an expansion of the Kankakee Landfill.

Illinois 415 ILCS 5/39.2(a)(iii), known as Criterion 3, states, "The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding area."

Waste Management, wishing to expand its existing garbage facilities, submitted three Reports which are included in the Criterion 3 portion of its application, and are as follows:

1. "Land Use and Planning Analysis for the Proposed Expansion of the Kankakee Landfill," prepared for Waste Management of Illinois, Inc. by the Lannert Group, Inc., Geneva, Illinois, signed by J. Christopher Lannert on September 23, 2003.
2. "Real Estate Impact Study for Kankakee Landfill Expansion, Kankakee County, Illinois," prepared for Waste Management of Illinois, Inc. by Integra Realty Resources – Chicago, signed by Patricia L. Beaver - McGarr and Jeremy R. Walling as Illinois state certified appraisers on September 25, 2003.
3. "A Real Estate Study of the Proposed Kankakee Regional Landfill, Kankakee, Illinois," prepared for Kankakee Regional Landfill, LLC by Poletti and Associates, Inc. and signed by Peter J. Poletti, Jr. as an Illinois state certified appraiser in March 2003. This report was contained as an appendix to the application by the applicant. It was not attached by Mr. Beaver-McGarr or Integra and not relied upon by her. It was prepared in conjunction with siting for a different facility and its relevance to this application is questionable.

The purpose of the assignment does not include development of an appraisal for the property which is the subject of the proposed landfill expansion, as such an appraisal is not relevant to the Criterion 3 analysis.

Subject of the Review Assignment

Waste Management of Illinois, Inc. proposes to expand its existing landfill located south of the City of Kankakee in unincorporated Otto Township, Kankakee County.

Prior to the expansion the site reportedly consists of 179 acres, depositing approximately 500 tons per day of garbage. It has been in use since the 1970s and was slated for closure within a few years. After the expansion, the site will be approximately 664 acres, accepting approximately 4,000 to 7,000 tons per day, with a projected life expectancy of 27 years.

In accordance with Criterion 3, the Integra report attempts to illustrate a lack of affect on the property values surrounding the proposed expansion. Its premise is to average sale prices of surrounding properties within a defined "target area" and compare them to averaged sale prices of properties within a defined "control area."

January 2004

Review Process

In preparing this review, the reviewing appraiser

- met with Querrey & Harrow attorney and Querrey & Harrow client, a beneficial adjacent property owner Michael Watson;
- studied the three aforementioned reports, as well as additional material;
- studied previous testimony, from the 2002 hearing, concerning Criterion 3;
- studied testimony from 2004 hearing concerning Criterion 3;
- toured the exterior existing Waste Management landfill facility and entered the yard;
- toured area surrounding the existing facility;
- consulted Kankakee County records verifying submitted data;
- toured the Settler's Hill area in Geneva.

When the Integra Report is referenced herein, it includes my review of the testimony of Ms. Beaver McGarr in support or supplement to the written report contained in Waste Management's application.

In completing this review, opinions are developed regarding the following:

- The completeness of the material under review.
- The apparent adequacy and relevance of the data and propriety of any adjustments to the data.
- Appropriateness of the appraisal methods and techniques used.
- Whether the analyses, opinions and conclusions are appropriate and reasonable.
- The inadequacy of the proposed property value protection plan.

ANALYSIS AND OPINIONS OF THE REVIEWER

Completeness of the material under review

The Integra report, "Real Estate Impact Study for Kankakee Landfill Expansion, Kankakee County, Illinois," is a consulting assignment. Its focus is the potential impact that the Waste Management landfill expansion will have on the value of surrounding properties.

The study states that the appraisers studied 472 agricultural sales over a period of 13 years, and 225 single family home sales over the five years. Additionally, it cites a separate study concerning Settler's Hill Recycling and Disposal Facility in the City of Geneva, located in Kane County, Illinois.

Appropriateness of the appraisal methods and techniques used

The Integra report utilizes inappropriate methods and techniques. The methodology presented on page 5 of the Integra Criterion 3 report is flawed because it relies on averaging sale prices in target and control areas. Averaging prices of properties with varied highest and best uses cannot lead to reliable conclusions.

Appraisal practice requires specific comparison of sales prices to determine differences in value attributable to defined factors. For example, to learn the effect of location, one must compare two or more properties which are similar in every way except location. Then, any difference in value can be reliably attributed to the difference in location.

The example used in beginning appraisal classes considers two hats exactly alike, except one of them is decorated with a feather. If the hat with the feather sells for a higher price, the difference can be directly attributable to the feather.

In this manner, it is meaningful to compare properties which are similar in every way except for a single factor to estimate the value contribution (or deduction) attributable to that factor. As the report concludes that proximity to a landfill does not affect sale prices, one would expect some direct sales comparison to prove that concept. But nowhere in the report do we see any proof of that concept, except these meaningless averages. In other words, where is there an example of a single property adjacent to a landfill that sold for the same price as a similar property well removed from a landfill? Not one specific example exists within the report.

As stated on page 723 of the Eleventh Edition of the Appraisal of Real Estate, published by the Appraisal Institute, "When the mean is used to describe a population, it can be distorted by extreme variants...The average, or mean, price...might not accurately represent the population of houses that have been sold at prices outside the indicated range."

The Integra report simply does not have the sheer volume of sales figures necessary to develop meaningful statistics concerning the mean values of properties within its target or control areas. By using averages under these circumstances, the report is misleading and draws faulty conclusions.

Neighborhood Description

The neighborhood surrounding the Waste Management proposed landfill expansion ("subject neighborhood") lies south of the city of Kankakee, north of the Iroquois County line, east of US Interstate 57 and west of the Iroquois River. It is in unincorporated Otto Township in Kankakee County.

It is readily accessible, with two connecting arterial highways accessible to US Interstate 57 within five miles. US Route 45/52 runs through the neighborhood in a north/south direction, accessing US Interstate 57 just south of Kankakee. Five miles south, Chebanse Road, a/k/a 8000 South Road, borders Iroquois County and also accesses I-57. US Route 45/52 and Chebanse Road intersect on the Iroquois County line.

The Iroquois River runs northerly through the neighborhood, and joins the Kankakee River southeast of Kankakee. The subject neighborhood lies to the west of the river. It is a different neighborhood east of the river, with different market forces, different traffic patterns, and different values from the subject area west of the river. The east side of the river is not generally accessible from the west side, with the exception of one bridge, located well to the south, about one quarter mile from Iroquois County.

The north portion of this neighborhood is the outskirts of Kankakee. It contains the Greater Kankakee Valley Airport. Industrial development exists closer to I-57 along US Route 45/52. Further south, residential property lies along both sides of the road, including several mobile home parks. Extensive stretches of agricultural land dominate the scenery further south. Rural residences on small tracts are placed sporadically in this area. The Iroquois River has attracted some residential development, particularly close to Kankakee, as well as bounding Iroquois County in the southern reaches of the neighborhood.

The real residential growth in the region lies to the north of Kankakee, closer to Chicago. However, two recent trends indicate the area is becoming transitional in nature. Municipal sewer and water was recently extended into the subject neighborhood. Previous development required private wells and septic systems. Additionally, larger agricultural parcels are being divided into smaller residential parcels.

Also within this neighborhood, easily accessible from US Route 45/52, is the subject Waste Management landfill. It reportedly is 179 acres, accepting 500 tons of garbage per day, and was slated for closure approximately within two years. However, upon expansion it will be 664 acres, accepting 4,000 to 7,000 tons of garbage per day, and will operate for some 27 years.

In conclusion, the subject neighborhood is diverse transitional land, with varied uses including industrial, agricultural and residential. The introduction of public sewer and water utilities promises to open the area to further development. Two points of access to US Interstate 57 make it very accessible. The Iroquois River offers recreational and residential development potential.

But the natural neighborhood boundaries are the Iroquois River to the east, US Interstate 57 to the west and north, and Iroquois County to the south. The neighborhood does not extend east of the Iroquois River, nor west of US Interstate 57, as suggested by the Integra report.

Target and Control Areas

The existing site is 179 acres, located at the southeast corner of IL Route 45/52 and 6000 South Road.

The proposed expansion, at 664 acres, roughly measures three quarters of a mile east/west by nearly one and one half miles north/south. It is bounded on the west by IL Route 45/52 and on the north by 6000 South Road. An exception along the west border contains several residential dwellings. The east border fronts private holdings varying from vacant agricultural land to residential dwellings. The south border is about 500 feet north of 6500 South Road and fronts private holdings with several residential dwellings.

The Target Area prescribed by the study lies within one mile of the proposed expansion. The study's Control Area lies beyond one mile, but within two miles. The report states that sales further than one mile from the site are too far to be affected adversely by the landfill.

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The Target Area consists of nine square miles of land in Otto Township south of the city of Kankakee. It is square and measures three miles by three miles. Several different market forces drive realty values within these bounds. US Route 45/52 delivers approximately 3,950 vehicles per day past the present landfill, according to the Illinois Department of Transportation. About 20 percent of this Target Area lies east of the Iroquois River, and is generally inaccessible to the subject neighborhood. The south border of the Target Area marks the north border of neighboring Iroquois County. In recent years, limited residential development has occurred sporadically throughout. Residential dwellings generally tend to be former farmhouses or newer structures on relatively large lots.

The Control Area is a one-mile-wide strip of land surrounding the Target Area on three sides. It consists of 11 square miles shaped like a square horseshoe surrounding the Target Area. It does not extend into Iroquois County. Several different market forces drive realty values within these bounds. Its northern reaches are located one mile from the US Route 45/52 and US Interstate 57 junction, encouraging industrial and commercial development. US Route 45/52 delivers 5800 vehicles per day through this area, according to the Illinois Department of Transportation. Its north boundary fronts the Greater Kankakee Valley Airport. Residential subdivisions are located immediately to its north, and within its southeast corner, along the Iroquois River. Large agricultural tracts are common throughout, but recent trends have seen many larger parcels divided into smaller parcels with the highest and best use of rural residential construction. In recent years, limited residential development has occurred sporadically throughout. About 35 percent of the Control Area lies east of the Iroquois River. Residential dwellings tend to be smaller homes on relatively small lots located in subdivisions adjacent to the Iroquois River or to the west of US Interstate 57.

In conclusion, the Target Area includes a much larger area than is currently affected by the existing landfill. It includes sales which are more than one mile from the existing landfill. Yet, the Integra report even acknowledges this flaw itself. It states that sales more than one mile from the landfill are too far to be affected. Accordingly, sales are included in the Target Area that should not realize an impact from the landfill. By definition, they are not appropriate considerations for the Target Area of the study. Additionally, most of the sales in the Target Area studied were negotiated prior to the announcement of the expansion. These deals were struck when common, public knowledge held that the landfill was soon to be closed. Several Target Area sales are located nearly two miles away from the existing site.

So in other words, the report averages two groups of sales which are each beyond the landfill impact and announces no difference between them. It is comparing similar groups! Of course there is no difference!

Further, the Target and Control areas each contain rather diverse realty patterns and are divided by natural neighborhood boundaries. They are artificial boundaries, linked together by proximity but not by use or underlying values. Residential construction type varies between the two areas, as well as lot size. Additionally, it is very easily argued that each area, due to proximity, is similarly affected or not affected by the existence of the subject landfill. Accordingly, all of the sales considered in the averaging process sold under similar influence of the landfill.

Finally, the Poletti and Associates report, a report prepared for a different landfill proposed in Kankakee County (not the subject expansion), included in the Waste Management Criterion 3 uses for its target area a broader area from US Interstate 57 to the Iroquois River, from Iroquois County to Otto Road, one mile north of the subject landfill. This is more realistic in its approach, but its use of averaging also throws its results into question. Additionally, the Poletti study states that the agricultural properties transferred in

the neighborhood are too few to perform an analysis.' But the Integra study makes agricultural sales a significant portion of its analysis.

The Integra Report utilizes inappropriate appraisal methods and techniques

Averaging

Imagine one of your feet frozen in a block of ice. Now imagine your other foot immersed simultaneously in a pot of boiling water. On the average, would you agree you are comfortable?

The use of averaging is an unsuitable appraisal technique. Particularly where limited data are available, to average sale prices of real estate cannot result in meaningful conclusions. There are too many subtle (and not-so-subtle) differences between properties for a reliable estimate of value to be based on average sale prices. Averaging simply cannot be relied upon for accurate valuation of real estate. To rely on averages is misleading and presents unbalanced conclusions. No reputable appraisal school in the country will teach averaging as a valuation tool.

Even the Poletti report, which Waste Management submitted in its application even though it does not specifically concern its proposed expansion, concurs, stating, on page 28, that homes sold in the Target Area vary significantly, concluding that, "...comparing an overall average sale price within the target area to an average sale price within control would not be meaningful."

The Integra report improperly draws its conclusions totally from average sale prices of single family residences and vacant land.

Page 6 of the Integra report disclaims its own conclusion by pointing out the two highest residential sales in the study as "above average," located within the Target Area. But these data are then included in the final analysis! Then when this skewed reasoning results in Target Area averages exceeding Control Area averages, the difference is attributed to lot sizes. When the resulting average sale price of homes within the Target Area is higher than the Control Area, the appraiser on page 8 erroneously adjusts the average sale price for differences in lot sizes and concludes all averages are similar throughout the county.

The Integra report does not deal with specific properties, but only averages. At no point does the reader learn whether specific sales were at market levels, or below, or above. Rather than deal with averages, a proper analysis would deal with specific properties. The entire procedure is based on only 13 sales from the Target Area and 12 sales from the Control Area. These small numbers are statistically irrelevant. At no point does the Integra report discuss individual variations of location, style, size, construction, age or condition of the residences – the reader just gets these averages and their meaningless conclusions presented as fact. No market evidence is presented for a conclusion to be drawn that specific properties sold for specific, measurable dollar amounts above or below the market for similar properties selling without the landfill influence.

A more believable approach would have been to separately appraise each of the sales within the target area. There are only 13 of them, but individual analysis and matched pairings could have indicated whether their sales prices suffered from external obsolescence caused by proximity to the landfill.

Further, in the Settler's Hill analysis, Integra also relies upon averages to show nearly identical property values close to the landfill and further away. Again, this heavy use of averaging renders the conclusion meaningless. Again, the reader is left with no specific data on specific properties concluding their sales were at market, or above or below.

Assuming that Settler's Hill in Kane County has a minimal impact does not in any way mean the proposed expansion will not have significant impact on the value of surrounding property in Kankakee County.

Take, for example, the Wyss to Buescher sale of 10.105 acres for \$4,750 per acre in October 1999. Integra reports this sale at 10 acres for \$4,800 per acre on page 22. It sold directly across the road from the proposed site, about one and one half miles south of the existing site. It sold prior to the announcement concerning the expansion of the existing landfill, back when the existing landfill was slated for closure. So by definition, it is out of the affected one mile radius, and it was negotiated under different market conditions, back when the landfill was about to be closed. Yet this sale is used as a "Target" sale, contributing to an average indicating no difference from the "Control Area." Further, Mr. Buescher has stated publicly for the record that he regrets his purchase, and would not have made it had he been aware of the landfill expansion plans.

The Integra Report did not review the materials necessary to make a determination with respect to Criterion 3

The Integra farmland analysis averages sale properties with different highest and best use. It fails to properly consider the nature of farmland sales in making its comparisons. Comparison of smaller farmland parcels and larger parcels is not fair, because larger parcels normally tend to sell for less per acre than smaller parcels. Additionally, some of the sales are residential, some are agricultural, and some are industrial. It is not comparing like properties. It is like comparing apples and oranges.

For example, please refer to Page 22, Table 3, and the \$26,500 sale for 19 acres at \$1,395 per acre. This sale is actually located in the South Kankakee Industrial Park one half mile south of US Interstate 57, to the west of US Route 45/52. The legal description refers to a site roughly 600 feet east/west by 1,050 feet north/south located at the west cul-de-sac end of the dead end road to this industrial subdivision. This is located one half mile outside the bounds of the carefully defined "Control Area." Incidentally, the site is approximately 14.7 acres instead of the 19 acres incorrectly reported by Integra. It is documented as follows:

Seller:	Issert, et. al.
Buyer:	Urban
Date:	February 1999
Document:	Warranty Deed #99-02338
Size:	14.7 acres
Price:	\$26,500
\$/Acre:	\$1,800
Legal Desc.:	Part of the NW1/4-SW1/4, Section 19, T29N, R13W, Otto Township
Location:	2.5 miles from existing landfill.

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Additionally, despite there being a lack of adequate data with which to average sale prices, at least two sales which should be included in the Integra farmland averages were neglected. Courthouse tract searches yielded these two:

Seller: Crawley
Buyer: Richard
Date: May 1995
Document: Warranty Deed #95-07092
Size: 66.42 acres
Price: \$187,000
\$/Acre: \$2,815
Legal Desc.: Part of N1/2-SW1/4, Section 9, T29N, R13W, Otto Township
Location: ¼ mile from proposed landfill expansion; 1.4 miles from existing landfill.

Seller: FOA Trust #2683
Buyer: Mociuk
Date: February 1994
Document: Trustee Deeds #94-02842 & #94-02843
Size: 202.26 acres
Price: \$505,650
\$/Acre: \$2,500
Legal Desc.: Part of Section 12, T29N, R13W, Otto Township
Location: 1.5 miles from proposed landfill expansion; 1.7 miles from existing landfill.

In conclusion, the analysis is meaningless when properties of different highest and best use are compared. Averaging the sale prices renders the analysis meaningless, particularly when sale data is minimal, as it is with the subject study. And it is especially meaningless when some sales are excluded. Inclusion or exclusion of even one sale can drastically alter the results. Thus, the analysis is flawed and unreliable.

The following analysis attempts to correct these mistakes and present the data in its proper form.

	Table 2 & 3 Integra Report Page 22		Removal and Exclusion of Transactions
Target Area	33.75 average acres; price per acre \$2,365		37.14 average acres; price per acre \$2,013
Control Area	55.80 average acres; price per acre \$2,189		74.89 average acres per sale; price per acre \$2,363

The column on the left directly reflects Tables 2 and 3 of the Farm Impact Study on page 22 of the Integra report. The Integra analysis indicates the average sale in the target area is 33.75 acres at an average price per acre of \$2,365 per acre. It shows the sales in the control area averaging 55.80 acres at a price of \$2,189 per acre. This illustrates data directly from the Integra report.

The column on the right makes three changes which are warranted to the Integra farmland analysis, as follows:

- It includes the two farmland transactions apparently inadvertently neglected by Integra. These include the Crawley to Richard sale of 66.42 acres at \$2,815 per acre in May 1995, and the FOA Trust #2683 to Mociuk sale of 202.26 acres at \$2,500 per acre in February 1994.
- It corrects the \$26,500 Issert to Urban sale of 14.7 acres at \$1,800 per acre in February 1999. The Integra report erroneously reported that sale to contain 19 acres at \$1,395 per acre.
- It removes the Wyss to Buescher sale of 10.105 acres at \$4,750 per acre (reported by Integra at \$4,800 on page 22). First, this sale was for only 10 acres and Kankakee County defines a farm as 20 acres or more, so this does not qualify as a farm transaction. Second, it is located more than one mile from the existing facility and should not be included in the target area. Third, the record is abundantly clear that the purpose of the purchase was for construction of a business and residence – not agriculture.

As the column on the right illustrates, the average size of the transaction in the target area was actually 37.14 acres at an average price per acre of \$2,013. It shows that in the control area, the average transaction was 74.89 acres for a price of \$2,363 per acre. This corrected analysis illustrates that the target area has suffered an approximately 15% decrease in value as compared to the control area.

However, it is important to note that the entire farm study for the existing facility between both the target and control areas involves the study of only 14 transactions over a period of 13 years. Statistically, averages of so few transactions over a so long a period of time are absolutely meaningless. The Poletti study acknowledges this point and does not even attempt to study the impact of the existing facility on the value of surrounding agricultural properties.

Integra's inclusion of the Settler's Hill study in its report is an inappropriate comparison. The report relies heavily upon the Settler's Hill analysis which compares average residential sale prices from four neighborhoods and concludes no difference in value between any of them.

The problem is the target area's proximity to the landfill. It lies well to the north of the landfill, separated by Chicago and Northwestern Railroad tracks. As it states on page 12, "The existing landfill can be seen from a few homes in the southern portion of the Target Area, especially from upper floors." Many of the dwellings in the area are low-lying split level homes and ranches. A few are of traditional two story construction. In other words, to most of the residences in the target neighborhoods, the landfill is invisible. Subjectively, it is the same as not even being there. To no surprise, average prices of homes in a similar neighborhood where the landfill is similarly invisible are presented as similar to the target neighborhood.

Again, we are left with no proof from direct sales comparison or matched pairs analysis whether or not properties under the direct influence of the landfill have sold at similar, or at reduced prices due to the proximity. Again there is not one specific example given. Again, we have to rely on averages which include properties within the target area that are entirely unaffected by the landfill.

A better example in this study would have been a comparison between the industrial properties immediately across the street from the landfill, on the south side of Fabyan Parkway in Batavia, to similar industrial properties further removed from the landfill. These industrial properties are faced with blowing trash, increased truck traffic, and other side effects of neighboring a landfill. What is the affect here, if any? After reading the report, we still don't know.

The report also uses the example of the Fox Run of Geneva subdivision located west of the Settler's Hill landfill. This subdivision offers high-end residences on large lots located generally upwind from the landfill, separated from the landfill by a wooded green space. It advertises a location within walking distance to the METRA commuter train to Chicago.

However, consider the following differences between Geneva and southern Kankakee County:

- Settler's Hill landfill is reportedly scheduled to be closed within a few years. A buyer can consider that by the time the property is resold, much of the external obsolescence presented by the landfill will be moot;
- Prevailing winds come from the west. The subdivision is generally upwind of the landfill, which is separated by woods and is barely visible much of the year;
- The Geneva/St. Charles/Batavia area is relatively mature and developed. Sub-dividable land within walking distance to the METRA train is extremely rare; and
- The housing economy has been extremely robust in recent years and is able to support ventures that would be considered too risky under less brisk economic circumstances. Perhaps this is one reason this property has not been developed until recently.

In conclusion, Geneva and Kankakee are two separate and dissimilar markets. They are not readily compared and to do so can be construed to be misleading. The neighborhood analysis is flawed by the inclusion of properties unaffected by the landfill in target area averages. Finally, due to the lack of suitable specific-property, matched pairs or direct sales comparison analysis, the reader is still left with the question unanswered of whether proximity to a landfill will actually cause a reduction in overall value.

Agreement to Guarantee Property Value

Waste Management offers a few select property owners within the target area a limited guarantee for property values. This guarantee is further described in Exhibit A-2.

- 1) It is limited to residential properties within 1,500 feet (0.28 mile) of the proposed landfill expansion, but the Integra study implies that properties up to one mile could be affected by the landfill. Further, the offer is limited to residential property owners. Accordingly, it does not apply to significant amounts of property consisting of agricultural, transitional and industrial land. It applies only to a small percentage of the affected property surrounding the landfill expansion.
- 2) It requires the homeowner to conduct an extensive marketing period of 270 days (nine months) before proceeding with negotiations with Waste Management. This seems excessive, since people may be forced to move prior to the end of this lengthy marketing time.
- 3) Not only does it require an expensive, lengthy, narrative appraisal at the homeowner's expense. It also requires perversion of normal appraisal technique. It eliminates many of the normal considerations in defining highest and best use. Specifically, item (c.) on page 2: "The use and Zoning Classification of the Property on the effective date of the Agreement shall be the sole factors used by the appraiser in determining the highest and best use of the property."

Altering the highest and best use consideration effectively limits the value of the property in Waste Management's favor. According to the Dictionary Real Estate Appraisal, Third Edition, issued by the Appraisal Institute, the four criteria that the highest and best use must meet are as follows:

1. Legal permissibility;
2. Physical possibility;
3. Financial feasibility;
4. Maximum profitability.

Under proper appraisal technique, each of these tests is applied to the property first, *as vacant*, and second, *as improved*. Accordingly, in total, there are normally eight tests to estimate a property's highest and best use.

The first test is legal permissibility. Normally, this includes the property's current zoning, *or any possible or probable consideration of re-zoning of the property*. But Waste Management's rules leave out the possibility of rezoning, which alters typical consideration of highest and best use in normal appraisal technique.

The second test is physical possibility. Waste Management's rules call for consideration of the property *only as currently improved* – not as potentially improved. In other words, as the area develops and uses change, the value of the surrounding properties can only be valued for their residential purposes, eliminating consideration of them for redevelopment to commercial, industrial, or other higher-end purposes.

The final two tests, financial feasibility and maximum profitability, come into play when properties undergo transition from one use to the next. Changes in use occur when the site value as vacant begins to exceed the total value as improved, plus demolition costs. The subject area is transitional, located relatively close to Kankakee with ready access to I-57, and it is exhibiting signs of change at the present time.

Accordingly, the perverted appraisal techniques called for by Waste Management will tend to limit the asking prices of the properties during their marketing periods and will not support the actual highest and best uses of those properties.

4) It requires the property owners to wait until 270 days after final approval and the issuance of all permits to operate the landfill expansion. While Waste Management says it wants to avoid “panic selling” it ignores the needs of owners who need to move prior to the final approvals. Should this approval process extend for any significant length of time, this portion of the agreement could prove to be an unnecessary hardship for property owners.

In conclusion, the property value guarantee offered by Waste Management offers too few property owners a complicated, costly alternative that unfairly favors Waste Management financially.

Conclusion

In conclusion, the Criterion 3 analysis submitted by Waste Management in its application for a landfill expansion, is flawed at its most basic level, inaccurate, and, therefore, fails, even with testimony, to meet Criterion 3. It is internally inconsistent. It is inconsistent with various statements in the Poletti study, also presented by Waste Management in Criterion 3, and, in fact, directly conflicts statements made in that report.

The study utilizes an inappropriate methodology, namely averaging, for the subject study, given the low number of sales and diversity of properties included in those sales. It includes and considers inaccurate data. The technique of averaging sales in a target area and comparing them to average sale prices in a control area is basically flawed. The properties within the respective areas have different highest and best uses. The average includes industrial, residential and agricultural properties, all with different factors of value. The result is a skewed, misleading number. This technique is unreliable. A more reliable technique would have been to compare like properties under the obvious influence of the landfill to similar properties without that influence.

Additionally, the existing landfill is 179 acres receiving 500 tons of garbage per day, and is due to be closed soon. It is simply not similar to the proposed expanded landfill, at 644 acres receiving 4,000 tons to 7,000 tons per day, for the next 27 years. These situations are not similar. Drawing comparisons between them reflect flawed logic.

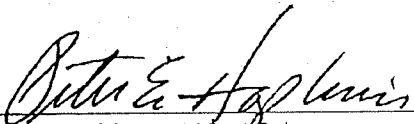
Further, Integra failed to consider data necessary for completing an adequate Criterion 3 study. Not only did Integra utilize inaccurate data in its study, such as the incorrect acreage in at least one of the farmland sales, but it also failed to include necessary data. Accordingly, the timing of the study is flawed. For example, most of the sales closed prior to public knowledge being available concerning the landfill expansion. The analysis does not fairly represent the changing market conditions reflected by the expansion. Since so few sales were utilized in the Integra report, analyzing whether they sold for market value, or more, or less, would be significantly more meaningful. But that analysis is lacking. Also, Integra's farmland sales comparison is lacking, not only in the two sales which Integra failed to include in its study, but also by Integra's failure to consider the nature of farmland sales and the relationship between sale price and farm acreage.

The Integra Report is additionally flawed and unreliable, as the target and control areas forming the basis of the report are not appropriately defined. The target area is very similar to the control area. Many sales in the Integra report are located beyond the defined one-mile influence of the existing landfill, but nonetheless are represented as located within the target area because they are within one mile of the proposed expansion. If they are located beyond the influence of the existing landfill, and are negotiated while public knowledge understands the existing landfill is due to close soon, they simply cannot reflect market opinion toward the landfill expansion.

Certification

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analyses, opinions and conclusions in this review are my personal, impartial and unbiased professional analyses, opinions, and conclusions, and are limited only by any assumptions and limiting conditions stated in this review report.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- I have made a personal inspection of the subject property of the work under review.
- No one provided significant appraisal, appraisal review, or appraisal consulting assistance to the person signing this certification.
- As of the date of this report, I, Peter E. Hopkins, MAI, ARA, have completed the requirements of the continuing education of the American Society of Farm Managers and Rural Appraisers and the Appraisal Institute.



Peter E. Hopkins, MAI, ARA

Illinois Certified General Real Estate Appraiser No. 153-000472

Wisconsin Certified General Appraiser No. 132



Peter E. Hopkins, MAI, ARA

Professional Qualifications

Appraisal Institute

MAI Member #11684
Continuing education current

American Society of Farm Managers and Rural Appraisers

Accredited Rural Appraiser (ARA) #798
Continuing education current

International Right of Way Association

Member #201

State Certifications

Illinois State Certified General Real Estate Appraiser #153-000472
Wisconsin Certified General Appraiser #132
Continuing education current

Professional Experience

Hopkins Appraisal Service

Since 1993, providing valuation services throughout Illinois and Wisconsin on a wide variety of real estate including commercial, industrial, single family residential, eminent domain, vacant land, and agribusiness. Includes courthouse testimony.

Education

University of Wisconsin - River Falls

Bachelor of Science in Agriculture, Journalism Major

Appraisal Institute

All classes requisite an MAI designation. Various seminars, including Appraisal Review and Highest and Best Use.

American Society of Farm Managers and Rural Appraisers

All classes requisite an ARA designation. Various seminars, including federal Yellow Book, Conservation Easements, and Eminent Domain.

International Right of Way Association

Appraisal Training for Eminent Domain, Wisconsin DOT
Partial Takings 401

Farm Credit Services

Federal Land Bank, Appraisal I and II
Housing Inspection for Appraisers

Wisconsin School of Real Estate

Real estate law

**Peter E. Hopkins, MAI, ARA****Clients Served**

AmCore Bank, Sterling, IL
Associated Bank, Chicago, IL
Bank of Sugar Grove, Sugar Grove, IL
Bank One, Chicago, IL
Chicago Water Reclamation District, Chicago, IL
Citizens First National Bank, Princeton, IL
Crawford, Murphy & Tilly Civil Engineers, Springfield, IL
Deutsch, Levy & Engel, Chartered, Chicago, IL
Douglas County Highway Department, Superior, WI
Equitable Agribusiness, Inc., Des Moines, Iowa
Farm Credit Services, Wisconsin and Illinois
Farm Mortgage and Appraisal Co., Inc., Cameron, WI
Farmers Home Administration, Illinois, Wisconsin and Colorado
Farmers National Bank, Geneseo, IL
First Midwest Bank/Illinois, Morris, IL
First of America Bank, Champaign, IL
Firstar Bank Rice Lake, N.A., Cumberland, WI
Greater North Bank, Antioch, IL
Illinois Department of Transportation, Schaumburg, IL
International Paper Company, Montvale, NJ
Jeuck Real Estate, LLC, Prospect Heights, IL
Kane County Bank & Trust Company, Elburn, IL
Lake County Forest Preserve District, Deerfield, IL
Lakeland Community Bank, Round Lake Heights, IL
Land Acquisition Bureau, State of Illinois Attorney General
Land Acquisitions, Inc., Arlington Heights, IL
LaSalle Bank, Chicago, IL
Louis Dreyfus Corporation, Lockport, IL
M & I Bank, Neillsville, WI
Mid-Continent Coal and Coke Company, Homewood, IL
National City Bank, Libertyville, IL
Norwest Business Credit, Inc., Milwaukee, WI
Old Second National Bank of Aurora, IL
Omega Financial Services, Chicago, IL
Sandwich State Bank, Sandwich, IL
Seiben Hybrids, Geneseo, IL
Strategic Capital Bank, Champaign, IL
Titus Properties, Libertyville, IL
US Department of Housing and Urban Development, Chicago, IL
Village of Grayslake, IL
YMCA Camp Duncan, Ingleside, IL