

JUL 15 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.,)

Petitioner,)

vs.)

COUNTY BOARD OF KANKAKEE COUNTY,)
ILLINOIS,)

Respondent.)

NO. PCB 04-186

(Pollution Control Facility
Siting Appeal)

**MERLIN KARLOCK'S REPLY TO KANKAKEE COUNTY'S RESPONSE
TO MICHAEL WATSON'S MOTION TO INTERVENE
OR, IN THE ALTERNATIVE, TO FILE AN *AMICUS* BRIEF**

Now comes Merlin Karlock, (Karlock), by his attorney, George Mueller, P.C., and for his Reply to the Response of Kankakee County to Michael Watson's Motion To Intervene Or, In The Alternative, To File An *Amicus* Brief, states as follows:

1. Michael Watson (Watson) previously filed herein a Motion For Leave To Intervene Or, In The Alternative, For Leave To File An *Amicus* Brief. Karlock subsequently filed his own Motion For Leave To Intervene which, while making its own arguments, also adopted in their entirety the legal arguments and authorities made and cited by Watson. While Kankakee County has filed a Response in the nature of an objection to Watson's Motion, Karlock is unaware of any response by the County filed as of this point in time and directed at his Petition.

2. That a central point in Karlock's Petition To Intervene is his concern that Kankakee County would not zealously defend its denial of WMI's application for siting and his fear that Kankakee County's attorneys, Hinshaw & Culbertson, by reason of bias, interest, and inconsistent positions taken in the past and currently in this and related cases, would not or could not effectively advocate in defense of Kankakee County's denial of siting.

3. That the Response filed by Kankakee County to Watson's Motion To Intervene proves unequivocally that the concerns and fears of Karlock, as set forth in Paragraph 2 above, are justified. Kankakee County's Response to Watson's Motion is an objection to that Motion, not only an objection to Watson's intervention, but also an objection to Watson's filing an *Amicus* Brief. While it is, in and of itself, curious and unusual that a party would oppose the participation, either as an intervener or as an *amicus* of an entity which supports the decision of that party, the specific arguments and allegations contained in Kankakee County's Response to Watson's Motion conclusively prove the very point argued in Karlock's original Petition.

A. For example, in Paragraph 24 of its Response, the attorneys for Kankakee County argue that Watson's rights as an adjacent property owner would not be affected in the event of reversal of the County Board's denial of siting since Watson would be protected by WMI's Property Value Protection Plan. Aside from the obvious fact that WMI's Property Value Protection Plan is not applicable to agricultural property owners such as Watson (and Karlock), this statement by the County Board's attorneys is completely inconsistent with the finding of the Kankakee County Board. On March 18, 2004, when the Kankakee County Board denied WMI's siting application, the Board voted 18 to 10 that siting Criterion iii (Whether 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) had not been satisfied. In other words, the County's instant pleading alleging that WMI's Property Value Protection Plan will protect the property values of adjacent property owners in the event that the PCB reverses the

siting denial is completely inconsistent with the County's finding that the facility was not so located as to minimize the effect on the value of the surrounding property.

- B. In Paragraph 32 of its Response to Watson's Motion, the County opposes Watson's filing of an *Amicus* Brief because Watson may advance new arguments to the Board in favor of affirming the County's decision. It is axiomatic that a party would generally welcome additional arguments not raised by that party, but which support that party's position.
- C. Most shockingly in Paragraph 39 of its Response, Kankakee County, through its attorneys, Hinshaw & Culbertson, argues that Watson should not be allowed to file an *Amicus* Brief because he "will not simply be advising this Board regarding the law, but he will be advocating a point of view and urging this Board to find in favor of the County Board and against WMI." The rationale behind the County Board's attorneys taking this position in their Response is simply incomprehensible. The authors of this statement cannot possibly be representing the public interest or the decision of the County Board when they oppose an *Amicus* Brief because they fear the Brief will argue points of law adverse to WMI and in favor of the County Board's previous decision.

4. This case presents such unique circumstances, as illustrated in the Petitions of Watson and Karlock and now in the Response to Watson's Petition filed by the County, that it is clear that Watson and Karlock should not only be allowed to intervene as participants in this matter, but that they should, in fact, take the lead in defending the majority decision of the elected

representatives of the people of Kankakee County. One wonders whether those representatives who voted to deny WMI's application for siting even have knowledge of the pleading filed on their behalf and in their name objecting to intervention and the filing of an *Amicus* Brief by a person who supports the decision of those representatives.

WHEREFORE, Merlin Karlock prays that his Petition To Intervene previously filed by granted.

Respectfully Submitted,
Merlin Karlock,

BY: George Mueller
His Attorney

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