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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 04 2005

STATE OF ILLINOIS  
Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS, INC.)

Petitioner,

vs.

COUNTY BOARD OF KANKAKEE  
COUNTY, ILLINOIS,

Respondent.

Case No. PCB 04-186

**NOTICE OF FILING**


TO: See attached Affidavit of Service

PLEASE TAKE NOTICE THAT on April 1, 2005, I filed with the Illinois Pollution Control Board, an original and five copies of the enclosed Motion in Limine, a copy of which is also served upon counsel.

Respectfully Submitted,

COUNTY BOARD OF KANKAKEE COUNTY,  
ILLINOIS, Respondent

By: Hinshaw & Culbertson LLP

  
Heather K. Lloyd  
One of its Attorneys

HINSHAW & CULBERTSON LLP  
100 Park Avenue  
P.O. Box 1389  
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**MOTION IN LIMINE**

NOW COME Defendants, COUNTY OF KANKAKEE and COUNTY BOARD OF KANKAKEE, by and through their attorneys, HINSHAW & CULBERTSON LLP, and before trial, moves this Court in limine to exclude from the trial of this matter, the following information:

Any and all arguments, statements, questions, testimony, or evidence of any kind from Plaintiffs, Plaintiffs' counsel, or Plaintiffs' lay and expert witnesses that make reference to, directly or indirectly, by stating, comparing, inferring, or referring to any fact, allegation, or conclusion regarding any statements, whether oral or written, made by Ms. Ann Bernard, County Board Member, during her State Representative election campaign regarding her opposition to several proposed landfills in Kankakee County, as such testimony or evidence is not relevant to this case and will not assist the trier of fact.

**I. INTRODUCTION**

Ms. Ann Bernard was elected to the Kankakee County Board in 1996. Her current term will expire in 2006. In November, 2003 Ms. Bernard ran for a Illinois State Representative position. During her campaign, Ms. Bernard never specifically mentioned WASTE MANAGEMENT OF ILLINOIS, INC. or its proposed landfill expansion in Kankakee County. Rather, Ms. Bernard simply indicated in her General Assembly Questionnaire and her campaign

materials that she was generally opposed to proposed landfills being sited in Kankakee County, and merely indicated in materials published after the County Board's vote on Waste Management's second siting application that she had voted against the landfill. Respondent has reason to believe that Petitioner will attempt to introduce Ms. Bernard's statements as evidence that Ms. Bernard was biased. However, as a matter of law, any statement, oral or written, regarding Ms. Bernard's opposition to proposed landfills in Kankakee County during her election campaign for State Representative should be disregarded by this court as inadmissible evidence, as such statements made in the context of a campaign for public officer are not relevant to the issues particularly involved in this case.

## II. ARGUMENT

Ms. Bernard's public statements, both written and oral, made during her election campaign for State Representative opposing landfilling in Kankakee County were not in contravention of the Illinois Environmental Protection Act (Act). In fact, Section 39.2(d) of the Act expressly allows such statements and, in pertinent part, provides as follows: "The fact that a member of the county board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue." 415 ILCS 5/39.2(d) (emphasis added). Therefore, Section 39.2(d) clearly provides that Ms. Bernard was free to make public statements concerning her opinion on landfills and/or proposed landfills in general and/or those landfills proposed in Kankakee County. Because Section 39.2(d) specifically allows county board members to express their opinions related to landfill site review proceedings and landfills generally, any such statements made by Ms. Bernard are not relevant and should not, therefore, be admitted into evidence or considered at the Board hearing.

Pursuant to this Board's procedural rules, evidence may be admitted at a Board hearing only if it is "material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged." 35 Ill. Adm. Code §101.626(a). In this case, Ms. Bernard's statements concerning the proposed landfill are not relevant because, as set forth in Section 39.2(d), such statements are not improper. Illinois courts define "relevant evidence" as that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *Wojcik v. City of Chicago*, 299 Ill. App.3d 964, 971, 702 N.E.2<sup>nd</sup> 303, 309 (1<sup>st</sup> Dist. 1998) (emphasis added). Pursuant to Section 39.2(d), any statements made by Ms. Bernard are of no consequence to this action because, as a matter of law under this provision, such statements could not be used as a basis to disqualify Ms. Bernard from voting on the application.

Additionally, this Board should refuse to admit or consider the statements made by Ms. Bernard in her political campaign because Ms. Bernard had an absolute right to make those statements. *See* U.S. Const., Amend. I; *see also* 5 U.S.C. § 7323(c) (expressly allowing even employees of the federal government to express opinions on political subjects). In fact, Ms. Bernard arguably had a duty, obligation and responsibility, as a candidate for public office, to express her opinion on all pertinent political subjects. In fact, she was specifically asked her opinion about such matters in the General Assembly Questionnaire. As such, this Board should find that Ms. Bernard, as a candidate for political office, was privileged to express her political opinion without fear of formal interrogation.

Furthermore, the statements made by Ms. Bernard cannot be used to establish that the proceeding was fundamentally unfair because the fact that Ms. Bernard made statements regarding her legislative position on the proposed landfill will not overcome the presumption that, as an administrative official, Ms. Bernard was objective in judging the siting application.

*See Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill.App.3d 1023, 530 N.E.2d 682 (2d Dist. 1988); *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139 (June 19, 1997). As such, those statements are not relevant and should not be considered by this Board.

#### CONCLUSION

Because public statements made by Ms. Bernard regarding her position on proposed landfills in Kankakee County were not in contravention of Section 39.2 and, in fact, are expressly protected under Section 39.2(d), and further do not establish that the siting proceeding was unfair, they are not relevant and should be barred.

WHEREFORE Respondent, COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, by and through its attorneys, HINSHAW & CULBERTSON LLP, respectfully requests this honorable Court to instruct Plaintiffs, Plaintiffs' counsel, and Plaintiffs' lay and expert witnesses not to mention, refer to, interrogate, argue, or make any statement regarding the information cited above. It is further requested that the Court instruct Plaintiffs and Plaintiffs' counsel to instruct each and every witness appearing for Plaintiffs to strictly follow this Order.

Dated: 4/1/05

COUNTY BOARD OF KANKAKEE  
COUNTY, ILLINOIS,  
Respondent,

By HINSHAW & CULBERTSON LLP

  
\_\_\_\_\_  
Charles F. Heiten  
One of Its Attorneys

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**AFFIDAVIT OF SERVICE**

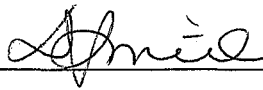
The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on April 1, 2005, a copy of the foregoing was served upon:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601-3218

Donald J. Moran  
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Mr. Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
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Chicago, IL 60601  
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By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.



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