

COPY

ILLINOIS POLLUTION CONTROL BOARD

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APR 3 2003

CITY OF KANKAKEE,

Petitioner,

vs.

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

Respondents.

MERLIN KARLOCK,

Petitioner,

vs.

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

Respondents.

MICHAEL WATSON,

Petitioner,

vs.

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

Respondents.

KEITH RUNYON,

Petitioner,

vs.

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

Respondents.

WASTE MANAGEMENT OF ILLINOIS, INC.,

Petitioner,

vs.

COUNTY OF KANKAKEE,

Respondent.

PCB 03-125 *State of Illinois
Pollution Control Board*
(Third-Party Pollution Control
Facility Siting Appeal)

PCB 03-133
(Third-Party Pollution Control
Facility Siting Appeal)

PCB 03-134
(Third-Party Pollution Control
Facility Siting Appeal)

PCB 03-135
(Third-Party Pollution Control
Facility Siting Appeal)

PCB 03-144
(Pollution Control Facility
Siting Appeal)

CITY OF KANKAKEE'S RESPONSE TO
WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO SEVER ITS
APPEAL OF TWO SITING CONDITIONS FROM THE FOUR APPEALS
CHALLENGING THE KANKAKEE COUNTY SITING APPROVAL

NOW COMES the City of Kankakee, a Municipal Corporation, (hereinafter the "City") by and through its attorneys, L. Patrick Power and Kenneth A. Leshen, Assistant City Attorneys, and filing its response to Waste Management of Illinois, Inc.'s (hereinafter "WMII") Motion to Sever, states as follows:

1. On March 20, 2003, the Board, following the dictates of Section 101.406 of the Board's Procedural Rules (hereinafter the "Rules"), consolidated all pending appeals in this cause, finding that consolidation was in the interest of convenient, expeditious and complete (emphasis added) determination of claims, and that consolidation would not cause material prejudice to any party.

2. WMII asserts in its Motion the conclusory statements that the special conditions imposed by the County in order to protect the health and safety of its citizenry are matters distinct and separate from all other appeals filed in this case. To the contrary, the imposition of these special conditions directly dovetails with the arguments raised by the City in its appeal. For example, the City argues that WMII has mischaracterized the permeability, thickness and regularity of the materials relied upon to protect the public safety, that the inward hydraulic gradient is not sufficiently established or understood, and that WMII failed to do a piezometric study of the clay beneath the liner in the proposed plan. The City's appeal places these issues in the context of the fundamental unfairness of the hearings conducted by the County of Kankakee. Therefore, the facts which will necessarily be relied upon by

WMII in presenting its appeal will be the same as the facts to be considered by the Illinois Pollution Control Board (hereinafter the "Board") in its consideration of the each of the other appeals.

3. WMII seeks to establish prejudice to itself by relying on its own delay in filing its appeal, arguing that it will be required to go to hearing under the scheduling deadlines established in the consolidated case. WMII chose to file its appeal at the tail end of its deadline. WMII chose to insist that the hearing move forward at a rapid pace, while at the same time waiving the decision deadline. WMII participated in the conference call during which the deadlines were established. It is disingenuous in the extreme for WMII to have controlled the deadlines and now to claim prejudice as a result of its own actions.

4. WMII's Motion to Sever focuses on the perceived hardship to itself and fails to focus at all on the extra and duplicative work that severance would require. The Board would be forced to review two sets of transcripts and to make two separate decisions on matters that are inextricably intertwined. Attorneys for the four third-party appellants would be required to attend two hearings, file two sets of discovery requests, and file two sets of briefs, all at drastically increased cost and time to the appellants. The increase in effort by WMII is minimal, if any; the increase in effort and expense to the four appellants and to the Board would be drastic.

5. WMII's reliance on its cited cases is inapposite. In each of the cited cases, the Board had considered consolidation of the applicant's appeal with the appeals filed by the third-party appellants and had declined to do so. In the instant case, the Board, after consideration of the appropriate factors, exercised its discretion and consolidated the


applicant's appeal with the appeals of the third-party appellants. WMII without any assertion that the Board abused its discretion, is now asking the Board to reverse its decision. As outlined hereinabove, WMII has a markedly insufficient basis to request such a reversal.

WHEREFORE, the City respectfully requests that this Court enter its order upholding its previous decision consolidating all pending appeals related to this cause, denying the severance motion of WMII, and ordering such other and further relief as this Court deems just, necessary and proper.

Respectfully submitted,

CITY OF KANKAKEE

BY:



Kenneth A. Leshen
One of Its Attorneys

PREPARED BY:

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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, 2003, a copy of the foregoing document was served upon:

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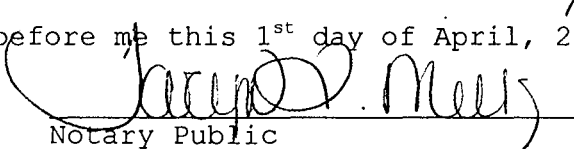
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by depositing a copy thereof, enclosed in an envelope in the United States Mail at Kankakee, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.

SUBSCRIBED AND SWORN TO before me this 1st day of April, 2003.


Notary Public



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