

0198-001

ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 13 2003

CITY OF KANKAKEE,)
)
 Petitioner,)
)
 v.)
)
 COUNTY OF KANKAKEE, COUNTY)
 BOARD OF KANKAKEE, and WASTE)
 MANAGEMENT OF ILLINOIS, INC.)
)
 Respondents.)

PCB 03-125
PCB 03-133
PCB 03-134
PCB 03-135
(consolidated)
(Pollution Control Facility Siting Appeals)

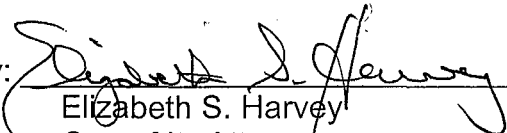
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 13th day of May 2003, the following County's **Response to City's Motion for Sanctions** was filed with the Illinois Pollution Control Board, attached and herewith served upon you.

COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By: 
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CERTIFICATE OF SERVICE

I, the undersigned, state that I served a copy of the described document in the above-captioned matter via hand-delivery to the hearing officer and U.S. Mail to all persons listed on the service list on May 13, 2003.



Jeanette M. Podlin

- Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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STATE OF ILLINOIS
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RESPONSE TO CITY'S MOTION FOR SANCTIONS

Respondent COUNTY BOARD OF KANKAKEE ("County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby responds to petitioner the CITY OF KANKAKEE's ("City") motion for sanctions.

1. The City served its motion for sanctions, via facsimile, on the County on or about May 1, 2003.¹ The City seeks sanctions for the County's alleged failure or delay to product audio tapes of certain County Board and committee meetings. However, the City's motion fails, both procedurally and substantively.
2. First, it is unclear whether the City (as opposed to petitioner Watson) had actually sought those audio tapes in its discovery requests to the County. However, the County's counsel had already agreed, prior to the filing of the motion, to produce those tapes to the City as a courtesy. In fact, those tapes were produced to the City's attorney on the very morning on which the motion for sanctions was faxed to the parties. Thus, the tapes had been produced to the City before the County was aware of the motion for sanctions, thus mootng the motion for sanctions.
3. Second, the City failed to follow accepted procedure by moving to compel the

¹ The hearing officer has allowed the County to and including May 13, 2003, to file its response to the City's motion for sanctions.

production of the tapes prior to seeking sanctions for the alleged "failure" to produce the tapes. Despite the City's unsupported allegations that the County had been directed to produce the tapes, those tapes had never been at issue before the Board or the hearing officer. The City did not file a motion to compel, and there was no prior directive to produce the tapes.

4. Third, the City's claim that its ability to depose some County Board members was compromised by the lack of the audio tapes fails. The County had already agreed, and agreed again during the May 1, 2003 status conference with the hearing officer, to produce County Board members for further deposition after the tapes were produced to the City. In fact, at least one of the County Board members (Mr. Kruse) had not been deposed prior to the production of the tapes, and was deposed the day after the tapes were produced. Despite the County's willingness to allow further deposition of County Board members on the potential issues raised by the tapes, the City did not seek a single additional deposition based on those tapes. In fact, at hearing the City stipulated to the deposition testimony of all deposed County Board members as their hearing testimony, thus passing up another opportunity to question the County Board members as to any issue raised by the tapes. In short, the City cannot have suffered any prejudice from any delay in producing the tapes, as the City did not take advantage of its ability to question County Board members after the production of the tape. To any extent that the City somehow claims prejudice, that claim is waived by the City's failure to seek further deposition or hearing testimony.
5. Finally, the City's only requested sanction---that the start of the hearing be delayed if necessary---is also moot. The Board hearings in this case took place on May 5 and 6, 2003. The City had received all tapes on May 1, 2003, deposed Mr. Kruse on May 2, 2003, and did not seek further deposition of any County Board member. The City also chose not to call any County Board member as a

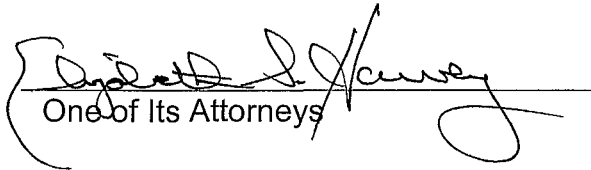
witness at hearing. Most importantly, the City did not reiterate its request to delay the hearing at any time after the filing of its motion for sanctions. The hearing had now occurred, without objection by the City. Thus, the City's only requested sanction is now moot.

6. In sum, the County moves the Board to deny the City's motion for sanctions, as both procedurally improper and as substantively unfounded.

Respectfully submitted,

COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By:


One of Its Attorneys

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