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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAR 28 2003

CITY OF KANKAKEE,)

Petitioner,)

v.)

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

Respondents.)

MERLIN KARLOCK,)

Petitioner,)

v.)

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

Respondents.)

MICHAEL WATSON,)

Petitioner,)

v.)

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

Respondents.)

KEITH RUNYON,)

Petitioner,)

v.)

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

Respondents.)

STATE OF ILLINOIS
PCB 03-03-12 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)

WASTE MANAGEMENT OF ILLINOIS, INC.)
)
Petitioner/Respondent,)
)
vs.)
)
KANKAKEE COUNTY BOARD,)
)
Respondent.)

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STATE OF ILLINOIS
PCB 03-144 *Pollution Control Board*
(Pollution Control
Facility Siting Appeal)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on March 28, 2003, we filed with the Illinois Pollution Control Board, the attached **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** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

Lauren Blair
One of Its Attorneys

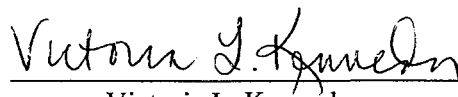
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MAR 28 2003

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **WASTE MANAGEMENT OF ILLINOIS, INC.'s MOTION TO SEVER ITS APPEAL OF TWO SITTING CONDITIONS FROM THE FOUR APPEALS CHALLENGING THE KANKAKEE COUNTY SITING APPROVAL** on the following parties by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, at 5:00 p.m. on this 28 day of March, 2003:

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Victoria L. Kennedy

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB 03-03-125
(Third-Party Pollution Control
Facility Siting Appeal)

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

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

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

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

KEITH RUNYON,)
)
Petitioner,)
v.)
)
COUNTY OF KANKAKEE, COUNTY)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)

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

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STATE OF ILLINOIS
Pollution Control Board

Respondents.)

WASTE MANAGEMENT OF ILLINOIS, INC.)
)
Petitioner/Respondent,)
)
vs.)
)
KANKAKEE COUNTY BOARD,)
)
Respondent.)

PCB 03-144
(Pollution Control
Facility Siting Appeal)

**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**

Petitioner/Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt, moves the Pollution Control Board ("Board") to sever WMII's appeal (PCB 03-144) from the third-party appeals filed by the City of Kankakee (the "City") (PCB 03-125), Merlin Karlock ("Karlock") (PCB 03-133), Michael Watson ("Watson") (PCB 03-134) and Keith Runyon ("Runyon") (PCB 03-135). In support thereof, WMII states as follows:

1. On February 25, 2003, the City filed a third-party petition asking the Board to review the County of Kankakee's (the "County") January 31, 2003 decision granting local siting approval ("Site Location Approval") of WMII's August 16, 2002 application to expand the Kankakee Landfill. On March 3, 2003, Karlock, Watson and Runyon all filed separate third-party petitions likewise seeking a review of the Site Location Approval.
2. The City appeals on the grounds that the County's decision was against the manifest weight of the evidence on four of the criteria in Section 39.2 of the Act, and the

County's proceedings were fundamentally unfair. Karlock appeals on the grounds that the County lacked jurisdiction, the County's decision was against the manifest weight of the evidence on four of the statutory criteria, and the proceedings were fundamentally unfair.

Watson appeals on the grounds that the County lacked jurisdiction, the County's decision was against the manifest weight of the evidence on seven of the statutory criteria, and the proceedings were fundamentally unfair. Runyon appeals on the ground that the County's decision was against the manifest weight of the evidence on one of the statutory criteria.

3. On March 6, 2003, the Board consolidated all four of the third-party petitions, *sua sponte*.

4. On March 7, 2003, WMII filed its Petition for Review of Site Location Approval Conditions. WMII's appeal contests and objects to Special Conditions 2(h) and 2(x), which the County issued as part of the Site Location Approval, on the grounds that they (i) are neither reasonable nor necessary to accomplish the purposes of Section 39.2 of the Act; and (ii) are not supported by the record and have not been demonstrated to be either technically appropriate or operationally reasonable.

5. On March 20, 2003, the Board, *sua sponte*, consolidated WMII's appeal with the third-party appeals for the purpose of hearing. WMII asks the Board to sever its appeal in light of the standards for consolidation articulated in Section 101.406 of the Board's Procedural Rules (the "Rules").

6. Section 101.406 of the Rules provides that consolidation is proper only: "if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party." 35 Ill. Adm. Code Section

101.406 (2002).

7. In this case, the consolidation of WMII's appeal with the third-party appeals of the City, Karlock, Watson and Runyon will not serve the interests of a convenient and expeditious determination of claims. The challenges that WMII raises in its appeal -- *i.e.*, that Special Conditions 2(h) and 2(x) are not reasonable or necessary to accomplish the purposes of Section 39.2 of the Act, and are not supported by the record -- are completely separate and distinct from the challenges to the siting approval raised by the third-party petitions. WMII is not challenging the siting approval. Its arguments are specific to the County's Special Conditions 2(h) and 2(x). WMII will be relying on facts in the record that are unique to its arguments and unrelated to the facts relied upon by the third-party petitioners in their challenge to the siting approval. Thus, consolidating WMII's appeal with the third-party appeals will unnecessarily complicate these proceedings by combining unrelated issues and divergent arguments based on different facts.

8. Moreover, consolidation of these matters for the purpose of the hearing materially prejudices WMII, who will be required to initiate and complete discovery and go to hearing under the scheduling deadlines established in the third-party appeals, which were filed as early as 10 days before WMII filed its appeal. WMII would also be unduly burdened by the post-hearing briefing schedule, in that it would be required to prepare and file its opening brief to the County simultaneously with the third-party petitioners' opening briefs to WMII and the County, followed by the preparation and filing of four response briefs to the third-party petitioners' opening briefs, followed by the preparation and filing of its reply brief to the County's response to WMII's opening brief.

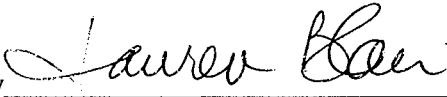
9. Based upon the standards set forth in Section 101.406 of the Rules, the

consolidation of WMII's appeal with the third-party appeals for hearing purposes is not proper. As the Board ruled in *Sierra Club v. Will County Board*, Nos. PCB 99-136, PCB 99-139, PCB 99-140 slip op. at 4 (April 15, 1999), the proper procedure under these circumstances is to consolidate the third-party appeals challenging the siting approval, decline to consolidate the WMII appeal of the siting conditions, and "direct the Clerk of the Board and the assigned hearing officer to handle these cases in a coordinated fashion to the extent practicable, including for purposes of record maintenance and hearing."

WHEREFORE, WASTE MANAGEMENT OF ILLINOIS, INC. respectfully requests that the Board enter an order severing PCB 03-144 from PCB 03-125, 03-133, 03-134 and 03-135, and providing such other and further relief as the Board deems appropriate.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By 
One of Its Attorneys

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