

JUN 20 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
*Pollution Control Board*

MICHAEL WATSON,

Petitioner,

vs.

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

Respondent.

No. PCB 03-134

(Pollution Control Facility Siting Appeal)

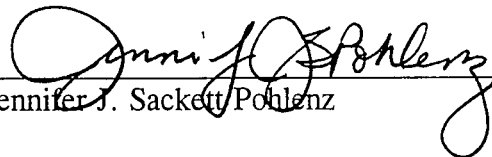
Consolidated With PCB 03-125, 03-133,  
03-135)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on June 20, 2003, we filed with the Illinois Pollution Control Board, the attached **Motion to Strike "Public Comments" No. 3 and No. 4 Submitted by Joan Lane and Mike Van Mill**, a copy of which is attached hereto and served upon you.

QUERREY & HARROW, LTD.

  
\_\_\_\_\_  
Jennifer J. Sackett Pohlenz

Jennifer J. Sackett Pohlenz  
**QUERREY & HARROW, LTD.**  
175 West Jackson Boulevard  
Suite 1600  
Chicago, Illinois 60604  
(312) 540-7000  
Attorney Registration No. 6225990  
**Attorneys for Petitioner Michael Watson**  
Document #: 826989

**PROOF OF SERVICE**

Alesia Mansfield, a non-attorney, on oath states that she served the foregoing **Notice of Filing**, along with copies of document(s) set forth in this Notice, on the following parties and persons at their respective addresses/fax numbers, this 20<sup>th</sup> day of June, 2003, by or before the hour of 4:30 p.m. in the manners stated below:

**Via Facsimile**

Donald Moran  
Pedersen & Houpt  
161 North Clark Street  
Suite 3100  
Chicago, IL 60601-3242  
Fax: (312) 261-1149  
Attorney for Waste Management of Illinois, Inc.

**Via U. S. Mail**

Patricia O'Dell  
1242 Arrowhead Drive  
Bourbonnais, IL 60914  
Interested Party

**Via Facsimile**

Kenneth A. Leshen  
One Dearborn Square  
Suite 550  
Kankakee, IL 60901  
Fax: (815) 933-3397  
Representing Petitioner in PCB 03-125

**Via Facsimile**

Keith Runyon  
1165 Plum Creek Drive  
Bourbonnais, IL 60914  
Fax: (815) 937-9164  
Petitioner in PCB 03-135

**Via Facsimile**

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Representing Petitioner in PCB 03-133

**Via Facsimile**

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Kankakee, IL 60901  
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Representing Petitioner in PCB 03-125

**Via U. S. Mail**

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Chebanse, IL 60922-5153  
Interested Party

**Via Facsimile**

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Representing Kankakee County Board

**Via Facsimile**

Charles Helston  
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P.O. Box 1389  
Rockford, Illinois 61105-1389  
Fax: (815) 490-4901  
Representing Kankakee County Board

**Via Hand Delivery**

Bradley P. Halloran  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 W. Randolph Street  
Chicago, IL 60601  
Hearing Officer

  
Alesia Mansfield

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JUN 20 2003

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Respondents.

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Consolidated With PCB 03-125, 03-133,  
03-135)

**PETITIONER MICHAEL WATSON'S MOTION TO STRIKE "PUBLIC COMMENTS"  
NO. 3 AND NO. 4 SUBMITTED BY JOAN LANE AND MIKE VAN MILL**

NOW COMES the Petitioner, Michael Watson, and pursuant to 35 IAC 101.628(c)(2), moves the Illinois Pollution Control Board (IPCB) to strike the Respondent, County of Kankakee's Affidavits of Joan Lane and Mike Van Mill, submitted as Public Comments No. 3 and 4, respectively (attached as **Exhibit A** hereto). The IPCB should strike the submitted Affidavits, as they contain evidence not present in the record, and the IPCB is limited in its review to the record on appeal. In further support, Petitioner states as follows:

The Illinois Environmental Protection Act "requires that hearings conducted by the Board on landfill siting decisions are to be based 'exclusively on the record before the county board or governing body of the municipality.'" Am. Bottom Conservancy, et al. v. Village of Fairmont City, et al., PCB No. 01-159, 2001 Ill. ENV LEXIS 489 (IPCB October 18, 2001) (*quoting* 415 ILCS 5/40.1(b) (2000)). "All public comments that are submitted after a hearing must present arguments or comments based on evidence contained in the record." Id. (*citing* 35 Ill. Adm. Code 101.628(c)(2)).

In the instant case, the record is comprised of two components: (1) the record formulated in the original proceeding before the Kankakee County Board; and (2) the record formulated in the fundamental fairness hearing conducted on May 5-6, 2003 before the IPCB. Respondent, County of Kankakee, through the affidavits of Joan Lane and Mike Van Mill, is attempting to present new evidence not present in the record on appeal. According to American Bottom Conservancy, public comments submitted after hearing, which contain new evidence not in the record, must be stricken. Striking the affidavits is proper according to Illinois law, and works no hardship on the Respondent, as, presumably, Kankakee County could have sought testimony from both Joan Lane (staff of one of the County's outside attorney's lawfirm) and Mike Van Mill (County employee) at the fundamental fairness hearing to the information contained in their affidavits, subject to cross examination. Respondent's attempt to admit this new "evidence" through affidavit, without having Mr. Van Mill or Ms. Lane subject to cross-examination, pursuant to American Bottom Conservancy, is improper and, thus, the affidavits should be stricken.

WHEREFORE, Petitioner Michael Watson respectfully requests the Illinois Pollution Control Board to strike the "written comment" affidavits of Joan Lane and Mike Van Mill, submitted as "Public Comments" No. 3 and 4, respectively.

Dated: June 20, 2003

Respectfully Submitted,

PETITIONER MICHAEL WATSON

By:   
One of his attorneys

Jennifer J. Sackett Pohlenz  
**QUERREY & HARROW, LTD.**  
175 W. Jackson, Suite 1600  
Chicago, Illinois 60604  
(312) 540-7000  
Attorneys for Michael Watson  
Illinois Attorney No. 6225990  
Document #: 835394

ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE, )  
)  
Petitioner, ) PCB 03-125  
) (Third-Party Pollution Control Facility  
vs. ) Siting Appeal)  
)

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

MERLIN KARLOCK, )  
)  
Petitioner, ) PCB 03-133  
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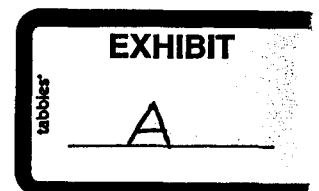
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KEITH RUNYON, )  
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Petitioner, ) PCB 03-135  
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COUNTY OF KANKAKEE, COUNTY )  
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)  
Respondents. )



## AFFIDAVIT

I, JOAN LANE, the undersigned being first duly sworn on oath depose and state as follows:

1. I am an employee of Hinshaw & Culbertson and the Administrative Assistant for Charles F. Helsten who is a Special Assistant State's Attorney for the County of Kankakee for environmental and solid waste matters.

2. Mr. Helsten and Hinshaw & Culbertson were hired by the State's Attorney for the County of Kankakee in late 2001.

3. At the time that Hinshaw & Culbertson and Mr. Helsten were hired by the Kankakee County State's Attorney, a file was opened, Matter Number 809319, at which time the matter was referred to as the "Kankakee County Landfill".

4. I was responsible for opening the file for Mr. Helsten, and at that time I inadvertently listed the Kankakee County Landfill as the both the "matter" and the "client".

5. The landfill itself was not the client.

6. Since the date that Hinshaw was first retained by the Kankakee County State's Attorney several other files have been opened for Hinshaw's representation of the State's Attorney, Kankakee County or Kankakee County staff, including Matter Numbers, 813053, 813333, and 815142.

7. I used the "file intake sheet" for Matter Number 809319 as a template for the file intake sheets for Matter Numbers 813053, 813333, 815142 and any other file opened on behalf of the Kankakee County State's Attorney, Kankakee County or Kankakee County staff.

8. Because I used the file intake sheet for 809139 as a template for the subsequent files, the same typographical error referencing that the client was "Kankakee County Landfill" was made in each of these subsequent files.

9. All of the bills concerning the application to expand the landfill operated by Waste Management in Kankakee County have been paid by Kankakee County.

10. The reference to "Kankakee County Landfill" as the client on the file intake sheet was merely an inadvertent typographical error.

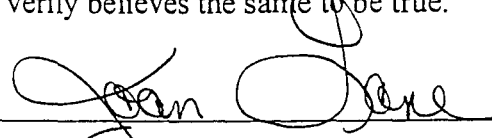
11. The result of the client being identified as Kankakee County Landfill on the file intake sheets was that the invoices sent to Kankakee County State's Attorney Edward Smith erroneously indicated "Represent: Kankakee County Landfill".

12. In January 2003, I had the error corrected on all of the files.

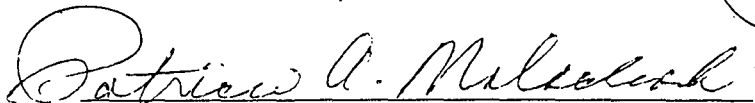
13. At no time has Hinshaw & Culbertson represented the Kankakee County landfill or its operator, Waste Management of Illinois, Inc., in regard to any siting application, host agreement negotiation, or otherwise, in Kankakee County.

FURTHER AFFIANT SAYETH NOT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

  
\_\_\_\_\_

SUBSCRIBED and SWORN to  
before me this 21st day of May, 2003.

  
\_\_\_\_\_  
Notary Public





ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE, )  
)  
Petitioner, ) PCB 03-125  
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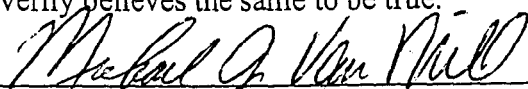
**AFFIDAVIT**

I, MIKE VAN MILL, the undersigned being first duly sworn on oath depose and state as follows:

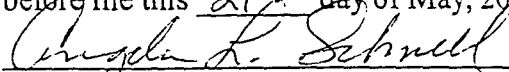
1. I am the Kankakee County Planning Director.
2. I am familiar with the attorneys that have been hired by the County of Kankakee to assist in the legal aspects of the County's environmental and solid waste management issues.
3. In 2001 Attorney Charles Helsten and the law firm of Hinshaw & Culbertson were hired by the State's Attorney for County of Kankakee.
4. At various times Hinshaw & Culbertson has represented the County of Kankakee, County staff, and/or the Kankakee County State's Attorney.
5. At no time did the State's Attorney, Kankakee County, or Kankakee County staff retain Hinshaw & Culbertson or Mr. Helsten to represent Waste Management of Illinois, the operator of the Kankakee County Landfill.
6. The County of Kankakee has paid all of Hinshaw & Culbertson's invoices which are in any way associated with the negotiation of a host agreement with Waste Management of Illinois.
7. The County of Kankakee has paid all of Hinshaw & Culbertson's invoices concerning the application of Waste Management of Illinois to site a landfill expansion in Kankakee County.

**FURTHER AFFIANT SAYETH NOT.**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
\_\_\_\_\_  
MIKE VAN MILL

SUBSCRIBED and SWORN to  
before me this 26 day of May, 2003.

  
\_\_\_\_\_  
Notary Public

