

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 01 2003

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)

STATE OF ILLINOIS
Pollution Control Board

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.,

Respondents.

PCB 03-135

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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on May 1, 2003, we filed with the Illinois Pollution Control Board, the attached **Waste Management of Illinois, Inc.'S Motion to Quash Petitioner Merlin Karlock's Notice to Produce At Time of Hearing**, in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By

A handwritten signature in black ink, appearing to be 'Lauren Blair', written over a horizontal line.

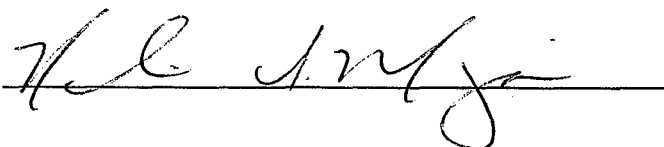
Lauren Blair
One of Its Attorneys

Donald J. Moran
Lauren Blair
PEDERSEN & HOUP
Attorneys for Petitioner
161 N. Clark Street
Suite 3100
Chicago, IL 60601
Telephone: (312) 641-6888

PROOF OF SERVICE

Nadia I. Mirza, a non-attorney, on oath states that she served the foregoing, **Waste Management of Illinois, Inc.'S Motion to Quash Petitioner Merlin Karlock's Notice to Produce at Time of Hearing** on addressees listed below on or before 1:00 p.m. on the 1st day of May, 2003, by facsimile at the facsimile numbers listed below on or before 1:00 p.m. on the 1st day of May, 2003:

Ms. Dorothy M. Gunn, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 (312) 814-3669 (fax)	George Mueller, Esq. 501 State Street Ottawa, IL 61350 (815) 433-4705 (815) 433-4913 (fax)
Charles F. Helsten, Esq. Richard S. Porter, Esq. Hinshaw & Culbertson 100 Park Avenue P.O. Box 1389 Rockford, IL 61105-1389 (815) 490-4900 (815) 963-9989 (fax)	Elizabeth Harvey, Esq. Swanson, Martin & Bell One IBM Plaza Suite 2900 330 North Wabash Chicago, IL 60611 (312) 321-9100 (312) 321-0990 (fax)
Kenneth A. Leshen, Esq. One Dearborn Square, Suite 550 Kankakee, IL 60901 (815) 933-3385 (815) 933-3397 (fax)	L. Patrick Power, Esq. 956 North Fifth Avenue Kankakee, IL 60901 (815) 937-6937 (815) 937-0056 (fax)
Jennifer J. Sackett Pohlenz, Esq. 175 W. Jackson Boulevard, Suite 600 Chicago, IL 60604 (312) 540-7540 (312) 540-0578 (fax)	Keith Runyon 1165 Plum Creek Drive, Unit D Bourbonnais, IL 60914 (815) 937-9838 (815) 937-9164 (fax)
Bradley Halloran, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11th Floor Chicago, Illinois 60601 (312) 814-8917 (312) 814-3669 (fax)	Kenneth A. Bleyer 923 W. Gordon Terrace #3 Chicago, IL 60613 (815) 937-9838 (815) 937-9164 (fax) Patricia O'Dell 1242 Arrowhead Drive Bourbonnais, IL 60914



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**WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO QUASH
PETITIONER MERLIN KARLOCK'S NOTICE TO PRODUCE**

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt, in support of its Motion to Quash Petitioner Merlin Karlock's Notice to Produce at Time of Hearing states as follows:

1. On April 29, 2003, Petitioner faxed a Notice to Produce at Time of Hearing, requesting WMII to produce Donald J. Moran, WMII's attorney of record in this matter, to appear as a witness at the May 5, 2003 hearing.

2. Petitioner's Notice to Produce should be quashed in accordance with the precedent set by Illinois Pollution Control Board ("Board"), as well as in light of the Hearing Officer's April 24, 2003 ruling in this case barring petitioners from deposing Mr. Moran.

3. The Board has repeatedly stated that it "is extremely reluctant to require an attorney of record to testify, without a showing that only that attorney can provide necessary information." Citizens Against Regional Landfill (C.A.R.L.) v. The County Board of Whiteside County, No. PCB 92-156, slip op. at p.15-18 (February 25, 1993); see also Gallatin National Co. v. The Fulton County Board, No. PCB 91-256 (June 15, 1992).

4. In C.A.R.L., the Board, quoting "Jones Commentaries on Evidence", stated:

The dual relations of attorney and witness in and for a cause on trial is not compatible with the conception of an attorney as an officer of the court and inclines to disrupt the normal balance of judicial machinery. It is tolerated at all only because occasionally proper in the interest of justice and because, rather than formulate a rule of absolute exclusion as has been done in some instances as to testimony by attorneys on disputed and material issues of fact, the great majority of the courts prefer to leave the question to the sound discretion of members of the bar with a threat of scathing reprimand in case of abuse.

C.A.R.L., No. PCB 92-156, slip op., p. 19. The Board further indicated that it is suspicious of attempts to compel attorneys to act as witnesses because of the ethical dilemma it creates for the attorney in light of the possibility of disqualification. Id. at 19-20.

5. In this case, not only has Petitioner failed to provide an explanation as to why he seeks to have Mr. Moran testify at the hearing, he has also failed to make a showing, as required under C.A.R.L., that only Mr. Moran can provide necessary information. For this reason, the Notice to Produce at Time of Hearing should be quashed.

6. In addition to the foregoing, Petitioner's Notice to Produce is simply a transparent attempt to effect an end-run around the Hearing Officer's ruling on April 24, 2003 barring Mr. Moran's deposition.

WHEREFORE, WMII requests that the Hearing Officer quash Petitioner Merlin Karlock's Notice to Produce at Time of Hearing, and provide such further and other relief as he deems appropriate.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

One of Its Attorneys

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