

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

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

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

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

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

RESPONSE TO COUNTY BOARD'S MOTION TO STRIKE
THE BRIEF OF PETITIONER KARLOCK

Now comes Merlin Karlock, by his attorney, George Mueller, P.C., and for his Response to the County Board's Motion To Strike his Brief states as follows:

1. Petitioner Merlin Karlock filed his Brief as required on June 2, 2003 and served copies of the same by regular mail on other counsel on the same date. This is not disputed by the County Board in their Motion and, in fact, is the basis of their request that the Brief be stricken.

2. The County Board relies on oral statements of the Hearing Officer at the hearing of May 6, 2003 in support of its Motion. With all due respect, those oral statements do not rise to the level of an Order. The Hearing Officer's written Order received in the Clerk of the Pollution Control Board's Office on May 20, 2003 states, "A briefing schedule was discussed and agreed to at the hearing. The petitioners opening post-hearing briefs are due to be filed on or before June 2, 2003. The respondents post-hearing briefs are due to be filed on or before June 23, 2003. Petitioners reply brief shall be filed on or before July 3, 2002. Mail box rule does not apply to briefing schedule. Public comment is due to be filed on or before May 23, 2003." This Order makes no provision for when briefs are to be received by opposing counsel.

3. The record of the Pollution Control Board hearing on May 6, 2003 further reflects that the attorney for Petitioner Karlock was not present at the time the Hearing Officer made his oral pronouncement. (PCB Hearing Transcript May 6, 2003 at 127).

4. The attorney for Petitioner Karlock relied in good faith upon the written Order of the Hearing Officer and was unaware of the oral pronouncements of the Hearing Officer regardless of whether those pronouncements arose to the level of an enforceable Order. Moreover, the County does not claim any prejudice by reason of receiving the Brief one day after it was filed. In fact, a reading of the County's Brief indicates that they have comprehensively and with great skill addressed the arguments raised by Petitioner Karlock.

5. In light of the County's Motion, it is somewhat ironic that the County likewise failed to serve Petitioner Karlock in a timely fashion with its Brief in chief. The County's Brief was faxed to Petitioner Karlock's attorney from the office of Swanson, Martin and Bell, phone number (312) 321-0990, at 3:46 p.m. on June 23, 2003. However, said fax was not complete as only the first 45 pages of the County's Brief were faxed. The County's total Brief is 64 pages in length. Subsequently, at 4:48 p.m. on June 23rd, after the office of Petitioner Karlock's attorney

was closed for the day, the County faxed all but 1 of the remaining pages of its Brief. As of this date, Petitioner Karlock has still never received page 46 of the County's Brief. In support of this argument, attached hereto is a copy of page 66 of 66 of the County's original fax transmittal, that being page 45 of their Brief, and a copy of page 1 of 18 of the County's after hour transmittal, that being page 47 of its Brief.

For the foregoing reasons, Petitioner Karlock prays that the Motion of the County to strike his Brief be denied.

Respectfully Submitted,
Merlin Karlock, Petitioner

BY: George Mueller
His Attorney

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additional feature of protection, beyond the engineered aspects of Mr. Nickodem's design. C1258 at 61. This is not somehow a failure of the design, but an added benefit.

Watson further misleads the IPCB regarding Mr. Nickodem's testimony regarding a potable well which may be located on the property to the east of the proposed expansion. Watson states that Mr. Nickodem failed to investigate whether there was a well on the eastern property, when in fact Mr. Nickodem testified that he reviewed all available public records regarding wells in the area, and that no well was shown on the eastern property. Although he was aware that there might be "something" on the eastern property, there was no documentation to show that any well there was certified. C1257 at 27-28. Additionally, Watson fails to inform the IPCB that the County Board added a specific condition to its approval on criterion two, which requires WMII to perform a field verification to locate all potable wells within 1,000 feet of the proposed expansion. C2349, Condition 2(c). Thus, to any degree that there might be a lack of information on nearby wells, the County Board has already required, as a condition of siting, that WMII investigate further.

Watson again misquotes Mr. Nickodem's testimony in Watson's arguments regarding plans if levels of landfill gas reach five percent of the lower explosive limit. Watson implies that Mr. Nickodem believed that this only need be addressed if raised by the IEPA. However, Mr. Nickodem's testimony was much more extensive, and included an explanation that such occurrences need to be addressed on a case-by-case basis, because the appropriate steps to be taken depend upon the specific situation. C1257 at 56-60. Likewise, Watson glosses over Mr. Nickodem's testimony regarding a schedule for the installation of gas collection wells. Mr. Nickodem testified that gas systems for individual cells will be installed when the waste

manifest weight of the evidence, despite the County Board's condition regarding leachate.⁸ To the contrary, the County Board's condition adds another layer of protection regarding leachate. Watson's bare assertion, without explanation or support, that issues regarding leachate render the County Board's decision against the manifest weight of the evidence does not make it so.

Next, Watson attacks WMII's proposal that leachate be recirculated in the proposed expansion. However, Watson fails to inform the IPCB that the County Board imposed a condition on siting approval disallowing the recirculation of leachate. C2350, Condition 2(m). The condition prohibits the recirculation of leachate, under any circumstances for a period of at least four years after receipt of an operating permit. After this four year period, leachate may be recirculated only upon the express approval of the County Board. Thus, issues relating to the proposed (but prohibited) recirculation of leachate do not show that the County Board's decision is against the manifest weight of the evidence.

Another misleading argument made by Watson is the claim that there is insufficient information on how WMII will manage excess soil. Watson states that there will be six million cubic yards of excess soil created by construction of the facility, and questions what will be done with the excess soil. Watson fails to note, however, that Mr. Nickodem testified as to uses of the excess soil (liner construction, berm construction, daily and intermediate cover). C1257 at 48. Of course, not all of that excess soil will be created at once: the construction of the landfill is done in stages, so that the "excess" soil is created over a number of years. During that time, much of the soil is used at the facility.

In short, none of the issues raised by Watson demonstrate that the County Board's decision is against the manifest weight of the evidence. In fact, a review of the information cited

⁸ The County Board requires WMII to install an automatic monitoring system to ensure that the leachate level does not exceed one foot of head on the liner. C2351, Condition 2(u).