

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD 3 2003

MICHAEL WATSON,

Petitioner,

v.

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

Respondents.

RECEIVED
CLERK'S OFFICE

STATE OF ILLINOIS
Pollution Control Board

No. PCB 03-134

(Pollution Control Facility Siting
Application)

**PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW
POLLUTION CONTROL FACILITY, PURSUANT TO SECTIONS 39.2 AND 40.1
OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT**

Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., respectfully requests a review of the decision of the County Board of Kankakee County, Illinois (Kankakee) approving the Site Location Application for the Kankakee County Landfill Expansion (Application) filed by Waste Management of Illinois, Inc. (WMII). In further support of this Petition, Petitioner states as follows:

1. This Petition is filed pursuant to Section 40.1(b) of the Illinois Environmental Protection Act (Act) and Sections 107.200-107.208 of the applicable Illinois Pollution Control Board Regulations. (415 ILCS 5/40.1(b) (2003) and 35 IAC 107.200-208).

2. Pursuant to Section 107.208(a), a copy of Kankakee's written decision is attached to this Petition as **Exhibit A**. Although not required by Section 107.208(a), the attached copy is certified by the Kankakee County Clerk as being true and correct.

3. The subject new pollution control facility is the expansion of the Kankakee County Landfill which was proposed by WMII and approved, subject to conditions, by Kankakee.

4. Pursuant to Section 107.208(b), the following Paragraphs, 5-7, provide a statement as to how Mr. Watson, the filing party, is a proper Petitioner under Section 107.200 of the Pollution Control Board Regulations, because, among other things, he has an ownership interest of land adjacent to and surrounding the landfill expansion, and due to his participation and attendance at the local site location review public hearings.

5. Mr. Watson is a resident of Kankakee County and a beneficiary of trusts which own property located adjacent to and surrounding the subject landfill expansion.

6. On October 28, 2002, Mr. Watson filed a notice with Kankakee (copies to the local siting hearing officer and WMII, among others) to participate in the public hearing scheduled to be held before Kankakee and its hearing committee. Additionally, Mr. Watson, personally or through his attorneys, attended all of the public hearings in the subject local siting review.

7. Further, Mr. Watson, individually and through his attorneys, timely filed written comments concerning or relating to subject landfill expansion.

8. Pursuant to Section 107.208(c), the following Paragraphs 9-11, set forth the grounds for this appeal.

9. As an initial matter, Kankakee did not have proper jurisdiction to conduct the local public hearings or make a decision on WMII's siting request for the landfill expansion. Pre-filing notice to Brenda and Robert Keller, owners of property within 250 feet of the proposed facility, was insufficient under the requirements of Section 39.2(b) of the Act. (415 ILCS 5/39.2(b) (2003)). Illinois Courts have consistently held that Section 39.2(b) pre-filing notice requirements are a jurisdictional prerequisite to the local new pollution control facility site location process. *See, Ogle County Bd. ex rel. County of Ogle v. Pollution Control Bd.*, 272

Ill. App. 3d 184, 208 Ill. Dec. 489, 649 N.E.2d 545 (1995), *appeal denied*, 163 Ill. 2d 563, 212 Ill. Dec. 424, 657 N.E.2d 625 (1995); Kane County Defenders, Inc. v. Pollution Control Bd., 139 Ill. App. 3d 588, 93 Ill. Dec. 918, 487 N.E.2d 743 (2nd Dist. 1985). Although not a prerequisite to raising a jurisdictional issue on appeal, Mr. Watson, through his attorneys, filed a motion during the course of the local public hearings, to dismiss WMII's siting application as WMII failed to properly and timely notify Brenda and Robert Keller of the siting application, prior to its filing with the Kankakee County Clerk's Office and Kankakee.

10. Additionally, the local siting review procedures, hearings, decision, and process, individually and collectively, were fundamentally unfair. The areas of fundamental fairness, that are sought to be addressed in this appeal, include, but are not limited to, the following. Mr. Watson specifically reserves his rights to add to the following list of fundamental fairness subjects, during or following discovery and the public hearing in the appeal before this Board.

- a. The Illinois Environmental Protection Agency Records or existing site records allegedly filed by WMII with the Kankakee County Clerk were not available to members of the public at the Kankakee County Clerk's Office to review and, in fact, members of the public were affirmatively told by the Clerk's Office that no such records were filed.
- b. Exhibits A1 and A2 to the to the Host Community Benefit Agreement were not included in the "official copies" of WMII's siting application maintained at Adcraft Printers by or on behalf of Kankakee or the Kankakee County Clerk's Office, and numerous participants, even the hearing officer for the local public hearings, did not have those Exhibits. Numerous participants, including Mr.

Watson, were disadvantaged due to the missing Exhibits, and in particular, were prejudiced in their ability to review these Exhibits, a purported property value protection plan, and prepare for the public hearings in a manner so as to address questions or issues concerning these Exhibits. Additionally, there is a question concerning the availability of these Exhibits at the Kankakee County Clerk's Office.

- c. On information and belief, improper *ex parte* communications during the pendency of the WMII's siting application created unfair proceedings, inherently prejudicial to other participants. See, Southwest Energy Corporation v. IPCB, et al., 275 Ill. App. 3d 84, 355 N.E.2d 304 (4th Dist. 1995).
- d. On information and belief, other fundamental fairness issues exist concerning the communication, conduct and decision-making process of Kankakee, the committee that made recommendations to and advised Kankakee, and WMII, however, discovery is needed to review these issues on appeal.
- e. The public hearings were not fair, due to unavailability of WMII witnesses who had substantial input in the preparation of the siting application and its Criteria-specific reports. For example, WMII refused to present Mr. Miller from Metro for cross-examination even though Mr. Miller signed the Criterion 6 report in WMII's siting application, and WMII's Criterion 6 witness, Mr. Corcoran, testified that Mr. Miller had substantial input in the preparation of the report and analysis of traffic impact.

- f. The public hearings were not fair, due to WMII's failure or refusal to present documentation concerning the alleged qualifications of Ms. Patricia Beaver-McGarr, WMII's sole witness concerning that portion of Criterion 3 related to property values, and WMII's failure or refusal to present this witness for further cross-examination. As a result, participants and Kankakee were denied access to information needed to fully examine this witness and her alleged qualifications.
- g. The local siting review was fundamentally unfair due to WMII's failure to follow, and Kankakee's failure to specifically waive in a properly noticed public meeting, local requirements for substance and content of a siting application.
- h. Finally, Mr. Watson reserves his right to add specific fundamental fairness issues or delete from the above list, during discovery, hearing, and briefing during the continued siting process before the Illinois Pollution Control Board.

11. Finally, Criteria 1, 2, 3, 5, 6, 7, and 8 were not met by WMII, and Kankakee's approval of WMII's siting application on those Criteria is not supported by the record and against the manifest weight of the evidence.

WHEREFORE, Petitioner Michael Watson respectfully requests the Board enter an order (a) finding that no jurisdiction existed on WMII's siting application and, therefore, the County Board of Kanakee County's decision is not valid and void; (b) alternatively and notwithstanding or waiving the jurisdictional issues, setting for hearing this contest of the County Board siting approval decision, (c) alternatively and notwithstanding or waiving the jurisdictional issues, reversing the County Board of Kankakee County's approval and denying

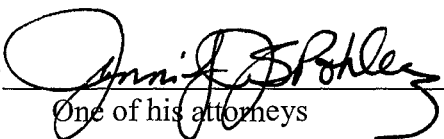
WMII's siting application; (d) alternatively and notwithstanding or waiving the jurisdictional issues or item (c), above, remanding this matter for further local public hearings to address the fundamentally unfair local proceeding; and (e) providing such other and further relief as the Illinois Pollution Control Board deems appropriate.

Dated: March 2, 2003

Respectfully submitted,

MICHAEL WATSON

By: _____


One of his attorneys

Jennifer J. Sackett Pohlenz
Querrey & Harrow, LTD.
175 W. Jackson Blvd., Suite 1600
Chicago, Illinois 60604
Phone: (312) 540-7000
Fax: (312) 540-0578

STATE OF ILLINOIS, }
County of Kankakee, } ss.

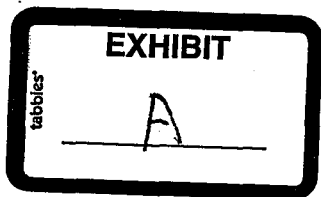
I, Bruce Clark, County Clerk of said County, and custodian of the Records and Files
of said office do hereby certify that the annexed is a true and correct copy of ...DECISION REGARDING
... THE APPLICATION OF WASTE MANAGEMENT OF ILLINOIS, INC. FOR LOCAL SITING APPROVAL ...
... OF AN EXPANSION OF THE EXISTING KANKAKEE LANDFILL ...

as appears from the Files and Records now in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my official seal, at

Kankakee, in said County, this ..25TH.. day of ...FEBRUARY.....,

A.D. 2003..



...Bruce Clark...
Clerk.
By ...Jodi Kemp-Neale...
Deputy.

KANKAKEE COUNTY BOARD

Decision Regarding the Application of Waste Management of Illinois, Inc. For Local Siting Approval of an Expansion of the Existing Kankakee Landfill

Whereas, on August 16, 2002, Waste Management of Illinois, Inc. (WMII) filed an application for local siting approval for an expansion of its existing Kankakee Landfill; and

Whereas public hearings have been held on the application, before Hearing Officer John McCarthy, and public comments filed or postmarked by January 6, 2003 have been received; and

Whereas the Kankakee County Regional Planning Commission (KCRPC) has, pursuant to the Kankakee County Siting Ordinance for Pollution Control Facilities (Siting Ordinance), considered the application and the siting record, and has made findings and recommendations to the Kankakee County Board (Board); and

Whereas the Board has considered the record of the siting proceeding, including, but not limited to, the testimony, exhibits, and comment given at the public hearings, the application, and the public comments; and

Whereas, the Board has also received and considered the recommendations of the KCRPC; and

Whereas the Board has met, in a session open to the public, to discuss and consider WMII's application;

Whereas, pursuant to state statute (415 ILCS 5/39.2) and the Siting Ordinance, the Board is to determine compliance or noncompliance with the statutory criteria of Section 39.2 of the Environmental Protection Act;

IT IS HEREBY DETERMINED:

Jurisdiction

The Board finds that all jurisdictional requirements have been satisfied. Thus, the Board has jurisdiction to consider WMII's application.

Fundamental Fairness

The Board finds that the proceedings have been conducted in a fundamentally fair manner.

Statutory Criteria

Section 39.2(a) of the Illinois Environmental Protection Act requires that an applicant for local siting approval demonstrate compliance with nine criteria.

1. Whether the facility is necessary to accommodate the waste needs of the area it is intended to serve. The Board finds that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve.
2. Whether the facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. The Board finds that the proposed facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. However, that finding is based upon the imposition of the following special conditions:
 - a. There shall be no vertical expansion of the existing facility.
 - b. The lateral expansion must be considered a separate unit from the existing landfill, as defined in 35 Ill.Adm.Code 810.103, and separate groundwater monitoring networks shall be maintained for the expansion and for the existing landfill.
 - c. A field verification must be performed to locate all private wells, currently used as a source of potable water, located within 1,000 feet of all boundaries of the property.
 - d. Downgradient monitoring well spacing in the uppermost aquifer (regardless of gradient) must be provided, where adjacent potable water supply wells are located in the Dolomite.
 - e. The sand deposits along the south and east side of the property must be monitored as potential contaminant migration pathways.
 - f. The distance from the waste footprint to the east property boundary shall not be less than 150 feet.
 - g. An independent engineer shall be on-site to observe the sand drainage layer and the initial lift of waste placed in any new cell. The engineer shall report directly to the County, and shall have the authority to stop placement of sand or waste during this initial operation if he or she observes any condition that would or could damage the bottom liner.
 - h. The active face must be kept at a minimum to reduce litter, vector, and odor impacts. The active face shall be a maximum of 180 feet by 120 feet, excepting the area allowed for random inspections, unless an alternative minimum size is specifically approved by the County Board.
 - i. Trucks holding waste shall not be parked or stored overnight at the facility, or staged on Route 45/52, or on the right-of-way outside of the landfill facility.
 - j. Fencing is required to prevent unauthorized access. An eight-foot high wooden or other view-obstructing, County acceptable fence shall be constructed on the east side of the property to help block the view of the site. A fence that fully encloses the operation shall be constructed to

prevent access to the site before landfill operations begin on the expansion. As cells are developed, the fence shall be extended to encompass the waste footprint.

- k. Litter control is an important consideration. The landfill operator shall pick up litter on a daily basis along Route 45/52 between the landfill and the I-57 interchange, as well as at least one-quarter mile south of the landfill along Route 45/52. If allowed by adjacent property owners, the landfill operator shall remove any litter attributable to the landfill on those adjacent properties on a weekly basis. Perimeter picking on site shall be performed daily to remove litter from trees, fencing, and berms.
- l. Video recordings of all traffic entering the site shall be retained for a period of at least six months. The County shall have the right to review the recordings within two days of requesting to review a tape.
- m. Leachate shall not be recirculated for a period of at least four years after the receipt of the operating permit. Following this period, the landfill operator may, if it chooses, petition the County Board to recirculate leachate. The County Board shall review the operational record of the site and obtain advice from an independent technical expert to determine if the operator has demonstrated that leachate recirculation is a safe and appropriate method to handle the leachate at this facility. Reasonable expenses of the technical expert shall be reimbursed by the landfill operator. Leachate may not be recirculated without the express approval of the County Board.
- n. The minimum number of random load inspections shall be three per week as specified in state regulations. For any amount of tonnage received above an average of 500 tons per day, the number of inspections shall be increased on the following basis:

For each 500 ton per day average increase, the number of random weekly inspections shall be increased by two. For example, if up to 1000 tons per day average is accepted the previous week, the week shall have five inspections (three inspections for the first 500 tons, and two for the next 500). If the weekly rate is 2000 tons per day, the inspection rate is three plus two plus two plus two, to equal nine random inspections.

After five years of operation, the landfill operator may request a review and reconsideration of this random inspection requirement by the County Board. The County landfill inspector shall have the right to inspect and to be present at any random load inspection.

- o. The landfill operator shall install a radiation detector at the scale house. The landfill operator shall record any alarm, and notify the County of each occurrence, the level of radiation detected, and the manner of response.
- p. The maximum height of the landfill, and the lateral extent of the landfill, shall not exceed the height and lateral extent shown on the plans provided in the application.

- q. The landfill operator shall build the berms on the west side of the property at least 1,000 feet in advance of any cell construction, measured from the southernmost coordinate of the cell. For example, if the cell's southernmost coordinate is S 3500, then the berm shall extend to S 4500 or further south. The only exception to this condition is during the construction of Phase I.
 - r. The gas line that is to be relocated shall be fully sealed from any potential migration from the landfill. If the pipeline is within 200 feet of the waste footprint, the trench where the pipeline is removed shall be sealed with a low permeability material. The construction shall be certified by an independent professional engineer.
 - s. Proof of each equipment operator's training shall be provided to the County prior to that operator's work at the site.
 - t. The landfill operator shall not request the use of sewage sludge as a component of final cover in its IEPA permit application without first obtaining County Board approval of such use.
 - u. An automatic monitoring system shall be installed to monitor the level of leachate from each leachate sump area. The system shall record the head in the sump such that at no time will the leachate level be allowed to rise above the level that corresponds to one foot of head on the liner. The landfill operator shall maintain the records from the automatic monitoring system, and make those records accessible to the County.
 - v. The Kankakee County Planning Director shall be informed, prior to construction, of the stormwater control planned for each phase of landfill development. The operator shall provide the Planning Director with a copy of all correspondence to or from the Illinois Environmental Protection Agency related to stormwater detention and runoff control operations.
 - w. The landfill operator shall implement the complaint procedure outlined in the application, including a hot line phone number, to address complaints.
 - x. The landfill operator shall install and maintain a double composite liner.
 - y. The landfill operator shall locate any farm drainage tiles on the property, and work with the County and appropriate drainage districts regarding possible removal or relocation of those tiles.
3. Whether the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The Board finds that the proposed facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. However, that finding is based upon the imposition of the following special conditions:
- a. The landfill operator shall build the berms on the west side of the property at least 1000 feet in advance of any cell construction, measured from the southernmost coordinate of the cell. For example, if the cell's southernmost coordinate is S 3500, then the berm shall extend to S 4500 or further south. The only exception to this condition is during the

- construction of Phase I.
 - b. The area on the west side of the landfill that has no proposed berming shall have trees planted on the exterior slope of the access road to provide a visual barrier.
 - c. Any vegetation planted on the west side of the landfill as a visual barrier shall be at least ten feet tall, and at a density adequate to provide a visual barrier.
 - d. The distance from the waste footprint to the east property boundary shall not be less than 150 feet.
 - e. A visual barrier independent of the landfill cap shall be placed at least ten feet in height above grade at or near the east property line to include vegetation, undulating berms, and fencing.
4. Whether the facility is located outside the boundary of the 100 year floodplain, or the site is floodproofed. The Board finds that the proposed facility is located outside the boundary of the 100 year floodplain.
5. Whether the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. The Board finds that the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. However, that finding is based upon the imposition of the following special condition:
- a. The landfill operator shall install a radiation detector at the scale house. The landfill operator shall record any alarm, and notify the County of each occurrence, the level of radiation detected, and the manner of response.
6. Whether the traffic patterns to or from the facility are designed to minimize the impact on existing traffic flows. The Board finds that the traffic patterns to or from the facility are designed to minimize the impact on existing traffic flows. However, that finding is based upon the imposition of the following special conditions:
- a. All construction plans for the facility entrance shall be provided to the County Highway Engineer prior to construction. The landfill operator shall demonstrate to the County that sight distance of at least 1,015 feet of visibility can be achieved by the final entrance design. All improvements higher than three and a half feet above the elevation of the nearest pavement edge shall be set back at least 50 feet from Route 45/52.
 - b. The traffic site improvements identified in the application must be completed prior to operation of the expansion.
 - c. The onsite traffic route for the customer convenience area (public drop-off) should be separate from the onsite traffic route designed for the commercial landfill operation.
 - d. The landfill operator shall comply with all use and weight restrictions

imposed on area roads by the County Highway Engineer and/or the Otto Township Road Commissioner.

- e. The County Highway Engineer shall be informed of the planned turning radius of the first onsite curve, and his approval of that turning radius must be obtained prior to construction.
- f. Advance warning signs would be beneficial on Route 45/52, in both directions, in advance of the proposed entrance. For example, a "side-road ahead" symbol sign, or a "Trucks Entering Roadway" sign could be posted. The landfill operator shall provide its opinion about signage to IDOT and to the County Highway Engineer prior to the operator's request for a construction permit.
- g. The landfill operator shall notify IDOT of all concerns noted in these conditions when applying for an Intersection Design Study (IDS), and those concerns shall be addressed in the operator's efforts to secure a construction permit. The landfill operator shall provide a copy of its permit application to the County Planning Director.
- h. Trucks shall not be staged outside the gates prior to the opening of the facility.
- i. The landfill operator shall develop recommended truck routes to and from the facility, using Interstate 57 and Route 45/52, and shall distribute those recommended routes to trucks and contractors using the facility.

7. If the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release. The Board finds that the facility will not be treating, storing, or disposing of hazardous waste. Therefore, the Board finds that this criterion is not applicable.

8. If the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan. The Board finds that the facility is consistent with the Kankakee County Solid Waste Management Plan. However, that finding is based upon the imposition of the following special conditions:

- a. The landfill operator must comply with all obligations and responsibilities of the December 21, 2001 Host Agreement between the County and Waste Management of Illinois, Inc.
- b. The landfill operator must employ independent appraisers acceptable to the County as part of the Property Value Guarantee Program.
- c. The Property Value Guarantee Program must be amended to provide that the Program continues for ten years after the included Property Owners are notified that waste is no longer being disposed of at the facility.

9. If the facility will be located in a regulated recharge area, any applicable

requirements specific by the Board for such areas have been met. The Board finds that the facility will not be located in a regulated recharge area. Therefore, the Board finds that this criterion is not applicable.

Conclusion

The Board finds that all conditions recommended in this resolution are reasonable and necessary to accomplish the purposes of Section 39.2 of the Environmental Protection Act. (415 ILCS 5/39.2.) Because the Board has found that all applicable statutory criteria have been met, local siting approval for the proposed expansion is granted, subject to the above-stated conditions.

This Decision made and entered on January 31, 2003.



KARL A. KRUSE, CHAIRMAN

ATTEST:



BRUCE CLARK, COUNTY CLERK