



RESPONSE OF CITY OF KANKAKEE  
TO WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTIONS  
TO PETITIONER CITY OF KANKAKEE'S DISCOVERY REQUESTS

NOW COMES the CITY OF KANKAKEE (hereinafter the "City"), by and through its Assistant City Attorneys, L. PATRICK POWER and KENNETH A. LESHEN, and filing this response to the discovery objections filed by WASTE MANAGEMENT OF ILLINOIS, INC. (hereinafter "WMII"), states as follows:

1. The linchpin of WMII's discovery objections is its assertion that the City should not be allowed to inquire into the formation of the County Solid Waste Management Plan or any prefiling contacts between the County of Kankakee (hereinafter "County") and WMII.

2. WMII should be ordered to fully comply with the City's discovery because the formation and substance of the County solid waste plan and host agreement create a suspicion of bias in favor of WMII during the siting process; and therefore, go directly to the issue of fundamental fairness. In fact, the designation of WMII as the sole operator of any new landfill by the very language of the solid waste plan and inferentially, the exclusion of any other applicant, smacks not only of bias but of collusion, financial wrongdoing, and abuse of power involving the County and WMII.

3. WMII cites *Residents Against A Polluted Environment v. The Illinois Pollution Control Board*, 293 Ill.App.3d 219 for the proposition that the County's relationship and involvement with WMII in the amendment of the solid waste plan does not create a suspicion of bias by the County in its consideration of WMII's siting application. *Residents*, supra, specifically found that other than the mere reference to LandComp's (the

applicant) involvement with the amendment of the plan, the appellants did not offer any specific allegation establishing how LandComp's involvement with the amendment of a solid waste plan created bias during the siting process. In the instant case, the Illinois Pollution Control Board (hereinafter the "Board") has the following specific allegations to consider:

a.) On March 12, 2002, by Resolution, the Kankakee County Board amended its Solid Waste Management Plan, which stated in pertinent part as follows, to-wit:

"The first two paragraphs of Section VI: Available Landfill Capacity in Kankakee County of the Kankakee County Solid Waste Management Plan are hereby deleted and replaced with the following:

Kankakee County has a single landfill owned and operated by Waste Management of Illinois, Incorporated. This landfill has provided sufficient capacity to dispose of waste generated in Kankakee County and its owner has advised the County that it plans to apply for local siting approval to expand the facility to provide additional disposal capacity for the County. Operation of the landfill has been conducted pursuant to a Landfill Agreement signed by the County and Waste Management in 1974, and subsequently amended from time to time. In the event siting approval for any expansion is obtained, the landfill would provide a minimum of twenty (20) years of long term disposal capacity through expansion of the existing landfill.

An expansion of the existing landfill, if approved, would then satisfy the County's waste disposal needs for at least an additional 20 years, and in accord with the Kankakee County Solid Waste Management Plan (as amended), as well as relevant provisions of the Local Solid Waste Disposal Act and the Solid Waste Planning and Recycling Act, no new facilities would be necessary."

This amendment is part of the record in the siting hearing.

Consequently, as is apparent in the record, the County knew that its favored and designated applicant, WMII, intended to file a siting application at the time it amended its solid waste plan. WMII repeatedly colluded with the County regarding the solid waste plan and its own designation as the sole operator of any new landfill immediately prior to its application. This inherent and stated bias percolated through the siting process and hearing.

b.) The County's March 12, 2002 amendment to its solid waste plan preceded by a scant 24 hours the application of Town and Country Utilities, Inc., to the City of Kankakee for siting of a solid waste disposal facility. The timeline is instructive:

i.) December 17, 2001: Correspondence from Dale Hoekstra of Waste Management to Charles Helsten regarding proposed amendment of solid waste management plan.

ii.) January 14, 2002: Correspondence from Dale Hoekstra of Waste Management of Illinois, Inc., to Solid Waste Director, Efraim Gil, responding to a report of a citizen's group by the name of "Outrage" regarding capacity of the Kankakee landfill.

iii.) March 4, 2002: Notes of Mike VanMill concerning telephone call with Charles Helsten.

iv.) March 11, 2002: Documents from files of Mike VanMill concerning proposed solid waste plan amendments.

v.) March 12, 2002: Resolution amending Kankakee County Solid Waste Management Plan. See log of documents provided by Hinshaw & Culbertson attached hereto and incorporated herein as Exhibit A.

vi.) March 13, 2002: Application of Town and Country to City of Kankakee for siting non-contiguous facility (strongly opposed by Waste Management and County of Kankakee).

This flurry of activity did not occur by happenstance. Rather, it is emblematic of the deeply flawed and biased activity of the County that permeated the siting process.

4. WMII further seeks to thwart the City's discovery requests by cloaking itself in a general catchall objection seeking to protect its documents and information by asserting the attorney-client privilege as it may apply. In the event that the privilege may apply, it is incumbent upon WMII to specifically assert that privilege in response to an identified document or communication that may be disclosed in response to an interrogatory. No such specific assertion has been raised.

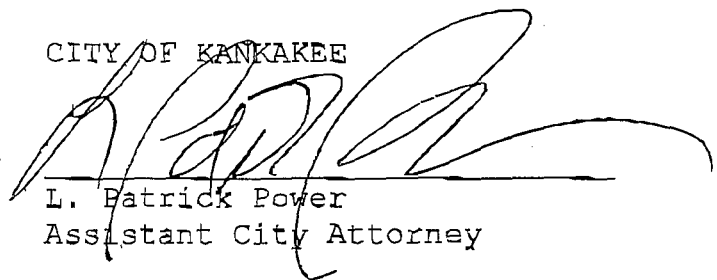
5. WMII asserts in a boilerplate and repetitive objection asserted in response to both the document requests and to the interrogatories that they are burdensome and over-broad. The burden on WMII pales in comparison to the injury that may be inflicted on the citizenry of Kankakee County if the flawed and biased process of the County is not subjected to the appropriate scrutiny.

WHEREFORE, the City prays that an order be entered denying the objections of WMII to the discovery propounded by the City and for such other and further relief as the Board deems just, necessary and proper.

Respectfully submitted,

CITY OF KANKAKEE

BY:



A handwritten signature in black ink, appearing to read 'L. Patrick Power', is written over a horizontal line. The signature is stylized and cursive.

L. Patrick Power  
Assistant City Attorney

L. Patrick Power  
Assistant City Attorney  
City of Kankakee  
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EXHIBIT A

# HINSHAW & CULBERTSON

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 APPLETON, WISCONSIN  
 MILWAUKEE, WISCONSIN

FILE NO. 813053

WRITER'S DIRECT DIAL  
 815-490-4920

April 10, 2003

Kenneth A. Leshen  
 One Dearborn Square, Suite 550  
 Kankakee, IL 60901

Re: City of Kankakee v. County of Kankakee

Dear Mr. Leshen:

Pursuant to our communications I have agreed to provide you with a log of the various documents for which we are asserting privileges and objections. The purpose behind this log is to allow the parties to understand that the County of Kankakee is in possession of no documents between August 16, 2002 and January 31, 2003, which are not part of the public record. The only exception to this statement is internal memoranda between members of County staff that were involved in drafting the proposed recommendation. These memoranda were in no way reviewed by the decision makers and, therefore, are irrelevant, inadmissible, and not likely to lead to admissible evidence. Please also be advised that though a document may appear under a specific heading below, which reflects a primary privilege or objection to producing said document, that document may also be protected from discovery or production on additional bases. For example, many of the documents for which there is an obvious attorney-client privilege are also protected because they were drafted prior to April 16, 2002.

### ATTORNEY CLIENT PRIVILEGED

November 2, 2001	Correspondence from State's Attorney Edward Smith to Assistant State's Attorney Brenda Gorski concerning search for special assistant state's attorney concerning solid waste issues.
November 9, 2001	Correspondence from Attorney Edward Smith to Chairman of the County Board, Douglas Graves, concerning host agreement.
November 19, 2001	Correspondence from Attorney Helsten to Efraim Gil and Brenda Gorski regarding special assistant state's attorney position.

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March 4, 2002	Notes of Mike Van Mill concerning telephone call with Charles Helsten.
April 8, 2002	Correspondence from State's Attorney Edward Smith to Efraim Gil concerning procedures for consultant retention.
April 16, 2002	Correspondence from Assistant State's Attorney Brenda L. Gorski to Efraim Gil regarding consultant expert retention.
April 15, 2002	Correspondence from Efraim Gil to Attorney Edward Smith regarding consulting expert retention.
April 23, 2002	Correspondence from Charles Helsten to Brenda Gorski concerning expert witness retention.
December 12, 2002	Correspondence from Edward Smith to Bruce Clark regarding administrative rules relating to the record to be prepared for landfill siting process.
December 17, 2002	Correspondence from Attorney Elizabeth Harvey to Kankakee County Board and Regional Planning Commission members regarding procedure to be followed from close of hearing on December 6, 2002 until rendering decision.

#### DOCUMENTS CONCERNING NEGOTIATION OF HOST AGREEMENT

March 8, 2001 to January 16, 2002	File of documents in possession of Mike Van Mill concerning negotiation of host agreement.
October 23, 2001 to December 10, 2001	Documents from files of County Board member Pam Lee concerning host fee negotiations and agreements.

#### SOLID WASTE MANAGEMENT PLAN AMENDMENTS

2001 through March 11, 2002	Documents from files of Mike Van Mill concerning proposed solid waste plan amendments.
April 12, 2001 to March 1, 2002	Documents of Pam Lee concerning solid waste management plan amendments and host agreement negotiations.



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**DOCUMENTS PRE-DATING AUGUST 16, 2002**

October 30, 1997 through November 2001	Various documents, notes and records of Mike Van Mill, member of County staff.
October 2001	Lists of actual or possible attendees of landfill site bus tour.
Undated	Materials from Waste Management of Illinois concerning Settlers Hills Recycling Disposal Facility.
Undated	Document from Waste Management of Illinois concerning comprehensive Solid Waste Proposal.
November 13, 2001 through December 11, 2001	Public resolution appointing special committee to negotiate host fee agreement and minutes of meetings regarding same.
December 17, 2001	Correspondence from Dale Hoekstra of Waste Management to Charles Helsten regarding proposed amendment of solid waste management plan.
January 14, 2002	Correspondence from Dale Hoekstra of Waste Management of Illinois, Inc. to Solid Waste Director, Efraim Gil responding to a report of a citizen's group by the name of "Outrage" regarding capacity of the Kankakee landfill.
January 28, 2002	Correspondence from Dennis Wilt of Waste Management to Charles F. Helsten concerning proposed changes of the Kankakee County Solid Waste Management Plan.
April 11, 2002	Correspondences from Lee Addleman of Waste Management of Illinois to various land owners regarding the agreement to guarantee property value copied to Efraim Gil of Kankakee County.

**DOCUMENTS CONCERNING CONSULTING EXPERTS OF STAFF AND INTERNAL STAFF COMMUNICATIONS NOT SHARED WITH DECISION MAKER**

April 3, 2002	Internal memorandum between Mike Van Mill and Mike Lamme regarding consulting experts
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April 23, 2002	Correspondence from Assistant State's Attorney Brenda Gorski concerning consulting expert retention.
October 30, 2001	Correspondence to Brenda Gorski regarding consulting expert retention.
January 6, 2003	Draft of summary report of proposed expansion of the Kankakee Recycling and Disposal Facility.
January 7, 2003	Correspondence between Chris Burger and Mike Van Mill regarding recommendations.
January 2003	E-mails between County staff and attorneys concerning amendments for recommendation report.

#### DOCUMENTS POST DATING DECISION

January 31, 2003 (issued after decision was rendered)	Memorandum from Waste Management of Illinois to Kankakee County Board.
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Sincerely

HINSHAW & CULBERTSON

By:

  
 Richard S. Porter

RSP:dmh

cc: All Parties

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that a copy of the foregoing was served upon the following parties by facsimile to those parties with facsimile numbers listed below and by depositing same to all parties in the U. S. Mail at Kankakee, Illinois, before 5:00 p.m., on the 11<sup>th</sup> day of April, 2003:

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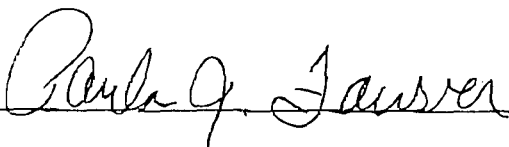
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**RECEIVED**  
CLERK'S OFFICE

APR 11 2003

STATE OF ILLINOIS  
Pollution Control Board  
Facsimile  
(815) 933-3397

FACSIMILE TRANSMITTAL COVER LETTER

DATE: April 11, 2003

FROM: Kenneth A. Leshen

RE: City of Kankakee vs. County of Kankakee, et al.  
Illinois Pollution Control Board  
PCB 03-125, et al.

THERE WILL BE (13) PAGES INCLUDING THIS PAGE

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