

BEFORE THE 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
Application)

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STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

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PLEASE TAKE NOTICE that on May 1, 2003, we filed with the Illinois Pollution Control Board, an original and 9 copies of the attached **Response to WMIP's Motion to Quash Subpoenas to Persons at Richard J. Daley College**, copies of which are attached hereto and served upon you.

QUERREY & HARROW, LTD.


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PROOF OF SERVICE

Judith M. Teeghman, under penalties of perjury, certifies that she served Notice of Filing and Response to WMII's Motion to Quash Subpoenas to Persons at Richard J. Daley College, on the following parties and persons at their respective addresses/fax numbers, this 1st day of May, 2003, by or before the hour of 4:30 p.m. in the manners stated below:

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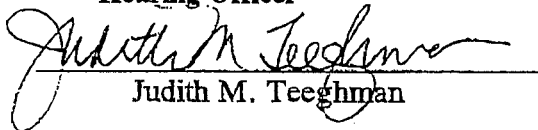
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Hearing Officer


Judith M. Teeghman

BEFORE THE 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, 03-144)**RESPONSE TO WMII'S MOTION TO QUASH SUBPOENAS TO
PERSONS AT RICHARD J. DALEY COLLEGE**

Now Comes Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd. and as and for his Response to Waste Management of Illinois, Inc.'s (WMII) Motion to Quash the subpoenas to Registrar Sandra Listenbee & Mary Ann Powers of Richard J. Daley College states as follows:

1. Petitioner Watson served two subpoenas for testimony at trial. The first to Sandra Listenbee and the second to Mary Ann Powers. Both individuals are employees at Daley College.
2. WMII seeks to quash these subpoenas alleging, essentially, that Petitioner Watson has not raised a fundamental fairness issue, and is, instead asking the Illinois Pollution Control Board to reweigh the credibility of Ms. Beaver-McGarr who was one of WMII's purported expert witnesses on Criterion 3. WMII not only has no standing to raise such a motion to quash; it has waived its argument; and it's motivation is simply to exclude or bar the testimony and prevent a truly fundamentally unfair issue to be raised by Petitioner Watson to the Illinois

Pollution Control Board. Therefore, WMII's Motion to Quash should be denied.

3. **WMII has no standing** and has asserted no basis for standing to challenge the subpoena. In United States v. Miller 425 U.S. 435, 48 L. Ed. 2d 71, 96 S. Ct. 1619 (1976), the Illinois Supreme Court held that a defendant lacked standing to challenge a subpoena, when that defendant possessed no private interest in the materials subject to the subpoena. In WMII's Motion to Quash it provides no basis for standing, delineates no private interest or right to protect the documents or the testimony which will be elicited at hearing from disclosure, and presents no representation that it is counsel for the persons subject to the subpoena. In fact, WMII's counsel represented at hearing today that he does not represent the persons subject to the subpoena. Moreover, the persons subject to the subpoena are not challenging it. Counsel for City Colleges of Chicago (of which Daley College is one) has contacted counsel for Petitioner Watson, accepted service on behalf of the two employees identified in the subpoena, and is fully cooperating with the request that was made.

4. **WMII waived** its objections to subpoenaing of the individuals identified. If this Hearing Officer determines that WMII has standing to move to quash the subject subpoenas, then the Hearing Officer should find that WMII waived its objections to the subpoenas, when it failed to object to the subpoena *duces tecum* issued to Daley Colleges (and which was filed and served on March 31, 2003).

5. Finally, a **Motion to Quash a subpoena is not appropriately used to object to or seek to bar admissible evidence**. WMII argues that the subpoenas should be quashed, since they don't concern a fundamental fairness issue and WMII alleges "Petitioner fails to demonstrate how said alleged failures prejudiced him or other participants in the public hearing." (Motion ¶2). First, it is not procedurally proper to bar testimony, or find it

inadmissible, in response to a motion to quash, opposed to a motion to bar. However, notwithstanding and without waiving that objection to WMII's Motion, the testimony of these individuals is directly relevant to Petitioner Watson's Amended Petition for Review, Paragraph 10(F).

6. WMII attempts to downplay the significance of what occurred at hearing. Ms. Beaver-McGarr swore, under oath, among other things, that she obtained a degree from Daley Colleges. Petitioner Watson stopped cross-examination on this issue, and on the issue of her qualifications stemming from the degree-issue, based on WMII's representation that it would produce Ms. Beaver-McGarr's diploma and it would produce her for continued cross-examination on that diploma or failure to produce one. WMII never produced a diploma for Ms. Beaver-McGarr. WMII refused to put Ms. Beaver-McGarr back on the stand to allow Petitioner Watson to finish cross-examination, which was deferred until WMII produced the diploma. No subpoena powers are provided for in the local-level siting process, therefore, Petitioner Watson was not able to obtain Ms. Beaver-McGarr's Daley College records below. However, it did subpoena them in this proceeding and found out that Ms. Beaver-McGarr never obtained a degree from Daley College. In other words, she lied, under oath.

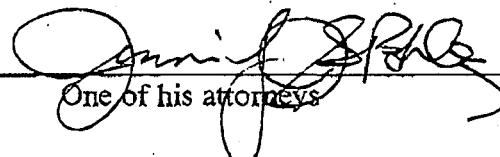
7. Why is this fundamentally unfair? Because, the use of perjured testimony is fundamentally unfair and it cannot be relied upon by a trier of fact. People of the State of Illinois v. Moore, 199 Ill. App. 3d 747, 557 N.E.2d 537 (1st Dist. 1990). Therefore, Petitioner Watson should be allowed to present evidence that Ms. Beaver-McGarr perjured herself, her testimony should have been barred, and, as a result of it not being so barred, the decision of the County Board was fundamentally unfair as it relied on the testimony. Further, Petitioner Watson should be allowed to present such evidence, as the proceeding itself was

unfair, since Watson relied on and deferred its cross-examination based on WMII's representations that it would produce the diploma and produce Ms. Beaver-McGarr for further questioning on the diploma, both of which representations, WMII later retracted. Therefore, Petitioner Watson should be allowed the opportunity to present evidence of this unfairness and the prejudice it has caused.¹

WHEREFORE, Petitioner Watson respectfully requests the Hearing Officer deny WMII's Motion to Quash, for the reasons stated above.

Dated: May 1, 2003

PETITIONER MICHAEL WATSON


One of his attorneys

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Attorneys for Petitioner Michael Watson

¹ WMII appear to content that Watson has to present evidence or prejudice prior to hearing in this matter. Watson objects to any such implication, as nowhere is that required by the rules of the IPCB and WMII's implications and statements to that effect (including, but not limited to Paragraph 2) should be stricken.

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