

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 24 2003

STATE OF ILLINOIS

Pollution Control Board

MICHAEL WATSON,

Petitioner,

No. PCB 03-134

vs.

(Pollution Control Facility Siting Appeal)

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

Consolidated With PCB 03-125, 03-133,  
03-135, 03-144)

Respondent.

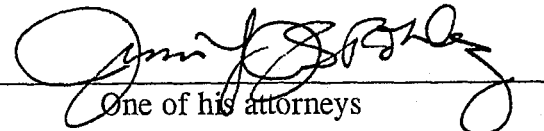
**NOTICE OF FILING**

TO: See Attached Service List

PLEASE TAKE NOTICE that on April 23, 2003, we filed, with the Illinois Pollution Control Board, via facsimile, the following: (1) Petitioner Michael Watson's Response to County Board of Kankakee's Objections to Watson's Request for Depositions; and (2) Petitioner Michael Watson's Response To Waste Management Of Illinois, Inc.'s Objections To Watson's Request For Depositions.

PLEASE TAKE FURTHER NOTICE that the above-described document will also be filed directly with the Illinois Pollution Control Board on April 24, 2003, copies of which are attached hereto and served upon you in the manner specified on the attached Service List.

PETITIONER MICHAEL WATSON

  
One of his attorneys

Jennifer J. Sackett Pohlenz  
QUERREY & HARROW, LTD.  
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Attorney Registration No. 6225990  
Attorneys for Petitioner Michael Watson

**PROOF OF SERVICE**

Alesia Mansfield, under penalties of perjury, certifies that she served the foregoing Notice of Filing and document(s) set forth in said Notice, on the following parties and persons at their respective addresses/fax numbers, this 23rd day of April, 2003, by or before the hour of 4:30 p.m. in the manners stated below:

**Via Facsimile & U. S. Mail**

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Bradley P. Halloran  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
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Hearing Officer

  
Alesia Mansfield

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

(Consolidated With PCB 03-125, 03-  
133, 03-135)

Respondent.

**PETITIONER MICHAEL WATSON'S RESPONSE TO  
WASTE MANAGEMENT OF ILLINOS, INC.'S  
OBJECTIONS TO WATSON'S REQUEST FOR DEPOSITIONS**

NOW COMES, Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., and pursuant to the Illinois Pollution Control Board (IPCB) Hearing Officer's Order dated April 17, 2003, provides the following Response to Respondent Waste Management of Illinois, Inc.'s Objections To Petitioner City of Kankakee's Request for Depositions, which Request was incorporated into Mr. Watson's Requests:

1. As an initial matter, Petitioner Watson did file a deposition list. However, since it did not receive Waste Management of Illinois, Inc.'s discovery responses until April 22, 2003, it was not able to file them on that date, pursuant to the Hearing Officer's April 17, 2003, Order. Additionally, it would be disingenuous for WMII to object to the April 23, 2003 filing of Petitioner Watson's deponent list, given WMII's own apparent tardiness in the delivery of the documents to counsel for Petitioner Watson and the fact that the list disclosed by Petitioner Watson is duplicative of the WMII deponents already disclosed by Petitioner City of Kankakee. Therefore, WMII has hardly been prejudiced, as it timely had the disclosure, be it

from another party.

2. As respects the substance of WMII's objections, WMII apparently has no objection to the depositions of Messrs. Hoekstra and Rubak, and, in fact offers them as the alternative to depositions of Messrs. Wilt and Moran. While the depositions of Messrs. Hoekstra and Rubak can be scheduled prior to those of Messrs. Wilt and Moran, it does not clearly avoid the need for the depositions of the two attorneys. Additionally, WMII's essential rationale behind this objection, that the evidence is obtainable from other sources, does not hold true, from WMII's own interrogatory answers.

3. For example, in WMII's written discovery responses, it discloses that Mr. Moran was the only person from WMII who contacted (during the pendency of the siting application and prior to the County Board's decision on that application) Elizabeth Harvey, the attorney for the County Board (this contact is *ex parte* on its face). (WMII Answers to Watson Interrogatory No. 15). Clearly, the parties have a right to inquire into these *ex parte* communications occurring between Mr. Moran and Ms. Harvey, particularly since the specifics concerning its content and details have not been disclosed and no other, non-attorney, has been disclosed as taking place in that communication. This information would not be privileged as it is a communication between attorneys representing different clients; there is no other way, unfortunately, to obtain it, since only the attorneys, as disclosed, were involved; and the information is crucial to the preparation of the case, in particular information concerning that portion of Petitioner Watson's Petition raising "improper *ex parte* communications during the pendency of the WMII's siting application" as a fundamental fairness issue, as it 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).

4. Additionally, WMII's general objection to the scope of discovery must fail. Supreme Court Rule 201(b)(1), which authorizes broad discovery "regarding any matter relevant to the subject matter involved in the pending action" is applicable to this matter. (IL S.Ct. Rule 201(b)(1)). Illinois Supreme Court Rule 201(b)(1) is consistent with the objective of discovery: "The objectives of pretrial discovery are to enhance the truth-seeking process, to enable attorneys to better prepare for trial, to eliminate surprise and to promote an expeditious and final determination of controversies in accordance with the substantive rights of the parties." D.C. v. S.A., et al., 178 Ill. 2d 551; 687 N.E.2d 1032, 1037 (S.Ct. 1997).

5. Finally, WMII objects to producing Mr. Addleman for his deposition based on health reasons. Respectfully and not to diminish the stated health condition of Mr. Addleman in any manner, pursuant to Illinois Supreme Court Rules, it is not an excuse to being deposed merely by having an attorney state that you underwent surgery in February 2003. WMII provides no authenticated medical basis or reason why Mr. Addleman's deposition cannot go forward. Therefore, this objection must be overruled.

Dated: April 23, 2003

PETITIONER MICHAEL WATSON

By: \_\_\_\_\_

  
One of his attorneys

Jennifer J. Sackett Pohlenz  
**Querrey & Harrow, Ltd.**  
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(312) 540-7000 Attorney Registration No. 622599

~~CONFIDENTIAL~~  
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MICHAEL WATSON,

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vs.

COUNTY BOARD OF KANKAKEE  
COUNTY, ILLINOIS, and WASTE  
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**PETITIONER MICHAEL WATSON'S RESPONSE TO  
COUNTY BOARD OF KANKAKEE'S  
OBJECTIONS TO WATSON'S REQUEST FOR DEPOSITIONS**

NOW COMES, Petitioner Michael Watson, by and through his attorneys at Querrey & Harrow, Ltd., and pursuant to the Illinois Pollution Control Board (IPCB) Hearing Officer's Order dated April 17, 2003, provides the following Response to Respondent County Board of Kankakee's Objections To Petitioner City of Kankakee's Request for Depositions, which Request was incorporated into Mr. Watson's Requests:

1. As respects the County's and County Board's objections to the depositions of State's Attorneys, Petitioner Watson respectfully reserves the right to join in the City of Kankakee's response, after having seen that response.

2. The County objects to the "remaining depositions" on Exhibit A, presumably only with the intent to object to those persons within the County's employment or control, which, unfortunately, are not identified by the County or Count Board in their objections. However, the basis for the objection is the allegation that "there is no good faith basis for taking the depositions" and in support, the County cites a Fourth District Appellate case, Yuretich v. Sole, 259 Ill.App.3d 311, 631 N.E.2d 767 (4<sup>th</sup> Dist. 1993), which the County neglected to state held

the trial court was in error in not allowing discovery prior to dismissing alleged counts as insufficient.

3. In Yuretich, plaintiff alleged willful and wanton conduct on the part of defendant emergency medical services personnel. Id. at 312. Although there was a reasonable explanation for the conduct of the personnel in this case, the court stated the trial court was to take the allegations of the plaintiff as true for the motion to dismiss and plaintiff's negligence should not change the requirements for pleading. Id. at 314-316. The court next discussed the trial court's refusal to allow discovery prior to ruling on the motion to dismiss. A trial court should not refuse a discovery request that reasonably appears might assist the party requesting the discovery, "[e]specially where the facts are exclusively within the knowledge of the opponent." Id. at 317. Accordingly the court held discovery should have been allowed and the dismissal was reversed and the case remanded. Id. The very action for which the trial court was reversed is, oddly, exactly what the County seeks to have the IPCB Hearing Officer rule: to bar legitimate discovery that reasonably may assist the party requesting it in preparation for this matter. This is particularly troubling as the County has exclusive knowledge of much of the information requested.

4. Additionally, it is believed that all of the non-State's Attorneys listed in the City of Kankakee's deposition list were intimately involved in pre-filing (and possibly post-filing) discussions with Waste Management of Illinois, Inc., except for Chris Richardsen and Juanita Baker, who, as assistants to Karl Kruse will be in a position to testify whether Waste Management of Illinois, Inc. representatives met with Mr. Kruse or called Mr. Kruse, during the pendency of the Siting Applications to the extent the meetings occurred in Mr. Kruse's office or to the extent they answered the phone for Mr. Kruse. If such meetings occurred, this is

extremely improper and, by seeking the depositions of the assistants, information is being sought concerning these potential contacts, without inquiring into the mind of the decision-maker. Furthermore, it is unclear whether the County and County Board have any standing to raise objections on behalf of some of these "remaining" people, as it is unclear whether counsel for the County/County Board are presenting all of these people.

5. Supreme Court Rule 201(b)(1), which authorizes broad discovery "regarding any matter relevant to the subject matter involved in the pending action" is applicable to this matter. (IL S.Ct. Rule 201(b)(1)). Illinois Supreme Court Rule 201(b)(1) is consistent with the objective of discovery: "The objectives of pretrial discovery are to enhance the truth-seeking process, to enable attorneys to better prepare for trial, to eliminate surprise and to promote an expeditious and final determination of controversies in accordance with the substantive rights of the parties." D.C. v. S.A., et al., 178 Ill. 2d 551; 687 N.E.2d 1032, 1037 (S.Ct. 1997). Further, these objections contradict the IPCB rules, which specifically provide that "it is not a ground for objection that the testimony of a deponent or person interrogated will be admissible at hearing, if the information sought is reasonably calculated to lead to relevant information. (Section 101.616(e)). Particularly in light of incomplete answers and responses to written discovery where the County and County Board disclosed the fact that a communication occurred, (such as a letter from WMII to the County Board that was sent the day of the siting decision (January 31, 2003), pre-decision and post-filing contacts, and negotiations between WMII and the County concerning the host agreement), but failed to disclose the nature, summary, substance, timeframe and participants in that communication (and failed in its entirety to produce the January 31, 2003 letter from WMII), the parties have a right to inquire into those areas through depositions.

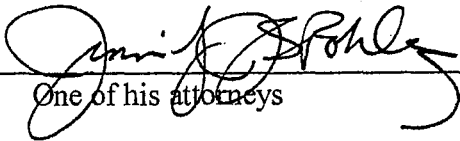


Should the answers to Interrogatories have been more complete, this may not have been necessary.

WHEREFORE, Petitioner Michael Watson respectfully requests the IPCB Hearing Officer to overrule the County's objections, and require the County to (1) identify, specifically by name, those people on whose behalf it is asserting the objections and (2) produce those people for their deposition.

Dated: April 23, 2003

PETITIONER MICHAEL WATSON

By:   
One of his attorneys

Jennifer J. Sackett Pohlenz  
**Querrey & Harrow, Ltd.**  
175 West Jackson Blvd., Suite 1600  
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