

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 1 2003

STATE OF ILLINOIS
Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS,
INC.,

Petitioner,

vs.

COUNTY BOARD OF KANKAKEE
COUNTY, ILLINOIS

Respondent.

Case No. PCB 03-144

NOTICE OF FILING

TO: All Counsel of Record

PLEASE TAKE NOTICE that on July 30, 2003, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, an original and nine copies of the Response of County Board of Kankakee County, copies of which are attached hereto.

Dated: July 30, 2003

Respectfully Submitted,

On behalf of the

By: Hinshaw & Culbertson



Charles F. Helsten
One of Attorneys

HINSHAW AND CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

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vs.

COUNTY BOARD OF KANKAKEE
COUNTY, ILLINOIS

Respondent.

Case No. PCB 03-144

RESPONSE OF COUNTY BOARD OF KANKAKEE COUNTY

NOW COMES the County Board of Kankakee County, Respondent in the above matter, and in response to Petitioner Waste Management of Illinois (WMI) Motion to Dismiss Appeal of Siting Conditions, states as follows:

1. That the Respondent admits the allegations set forth in paragraph 1 of Petitioner's Motion to Dismiss.
2. That the Respondent admits the allegations set forth in paragraph 2 of the Petitioner's Motion to Dismiss.
3. That the Respondent admits the allegations set forth in paragraph 3 of the Petitioner's Motion to Dismiss.
4. That the Respondent admits the allegations set forth in paragraph 4 of the Petitioner's Motion to Dismiss. The Respondent further affirmatively attaches hereto as Exhibit A and incorporates by this reference a fully executed copy of the Resolution of the Kankakee County Board approving the Agreement Regarding Conditions.

5. That the Respondent admits the allegations set forth in paragraph 5 of the Petitioner's Motion to Dismiss.

6. That the Respondent admits the allegations set forth in paragraph 6 of the Petitioner's Motion to Dismiss.

7. That the Respondent admits the allegations set forth in paragraph 7 of the Petitioner's Motion to Dismiss.

8. That the Respondent admits the allegations set forth in paragraph 8 of the Petitioner's Motion to Dismiss.

9. That the Respondent admits the allegations set forth in paragraph 9 of the Petitioner's Motion to Dismiss.

WHEREFORE, the Respondent respectfully request that this Board dismiss Appeal No.

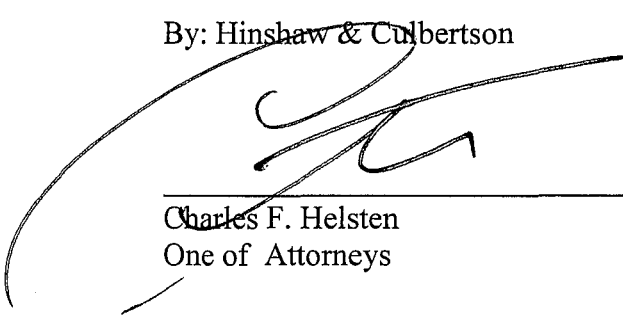
PCB 03-144, and provide such other relief as may be appropriate.

Dated: July 30, 2003

Respectfully Submitted,

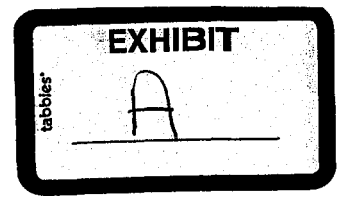
On behalf of the

By: Hinshaw & Culbertson



Charles F. Helsten
One of Attorneys

HINSHAW AND CULBERTSON
100 Park Avenue
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Rockford, IL 61105-1389
815-490-4900



*Resolution of the County Board
of
Kankakee County, Illinois*

**RE: SPECIAL CONDITIONS OF WASTE MANAGEMENT OF ILLINOIS, INC.
LANDFILL EXPANSION SITING**

Whereas, the Legislature of the State of Illinois has enacted the *Illinois Environmental Protection Act*, § 415 ILCS 5/39.2(e) which provides, in pertinent part and substance, as follows:

"In granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board", and

Whereas, the County and Waste Management of Illinois, Inc., ("Waste Management") prior to the County's having made a final local siting decision, had heretofore entered into a certain written host agreement, as provided under 415 ILCS 5/39.2; and

Whereas, the County Board of the County of Kankakee has heretofore approved Waste Management's application for local siting of an expansion to its existing pollution control facility, and at the time of said approval imposed certain conditions, over and above the conditions and terms negotiated in the original host agreement; and

Whereas, by resolution No: 2003-03-11-743 adopted on the 11th day of March, 2003 the County Board of Kankakee County formed a sub-committee of the Planning-Zoning-Agriculture Committee, known as the Implementation Committee, for the purposes of implementing the siting conditions placed upon Waste Management; and

Whereas, differences in interpretation of the aforesaid statute, and in the imposition of said conditions, relating to the legitimacy and authority of the County to impose said conditions, have resulted in certain litigation arising which now remain pending between Waste Management and the County of Kankakee; and

Whereas, that sub-committee, in seeking to implement the special conditions, resolve said differences, end said litigation, and yet insist on the protection of its citizens, has negotiated a proposed amendment to the Host Agreement, which it recommends be approved, so as to provide for the special conditions becoming part of the siting approval, amend the Host Agreement, and put an end to the litigation between the County Board and Waste Management; and

Whereas, the County Board finds that these differences have been negotiated in good faith, and an agreement reached, which will be in the best interests and protection of the public; and

Whereas, said Agreement has been reduced to written expression, is attached hereto and incorporated herein, satisfies all conditions imposed by both the Regional Plan Commission and the County Board, follows the recommendations of the negotiating "Implementation" Committee, and will put to rest all pending litigation between the County and Waste Management.

Whereas, the Implementation has recommended adoption of the Agreement attached hereto as Exhibit A.

Now, therefore, be it resolved that the attached Amendment to Host Agreement, Exhibit A, be and is hereby approved and adopted by the County Board of Kankakee County; and further, that the County Board Chairman be and is hereby directed and authorized to execute said Agreement upon passage of this Resolution, so that the Host Agreement may be amended, the conditions of siting be approved and ratified, the right of the parties be articulated and preserved, and all pending litigation between Waste Management and the County put to rest.

ADOPTED and PASSED this 23th day of July, 2003.


Karl A. Kruse, County Board Chairman

Attest:


Bruce Clark, County Clerk

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
..... adopted and passed by the Kankakee County Board, this 23rd day of
..... July, 2003 concerning the resolution for Special Conditions of Waste
..... Management of Illinois, Inc. Landfill Expansion Siting
.....
.....
.....
.....

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 ...23rd. day of..... July.....,
A.D. ~~19~~ 2003

..... Bruce Clark
Clerk.
By Pamela Johnson
Deputy.

EXHIBIT

A

AGREEMENT REGARDING CONDITIONS

This Agreement Regarding Conditions is entered into this 23rd day of July 2003, by and between Waste Management of Illinois, Inc., a Delaware corporation authorized to do business in Illinois and having an office at 720 East Butterfield Road, Lombard, Illinois 60148 ("Waste Management") and the County of Kankakee (the "County").

Recitals

A. Waste Management owns and operates the Kankakee Landfill ("Landfill") located on property commonly known as 180 E. 6000 South Road, Chebanse, Illinois 60922.

B. Waste Management and the County are parties to an Amended and Restated Host Community Agreement dated December 21, 2001 ("Host Agreement") pursuant to which certain benefits and protections are provided to the County if the Landfill is expanded.

C. Waste Management filed an application for local siting approval of an expansion of the Landfill on or about August 16, 2002.

D. The County granted local siting approval for the expansion of the Landfill on January 31, 2003, subject to certain conditions which it deemed necessary to include as part of such siting approval.

E. One of the conditions imposed by the County is that Waste Management "shall install and maintain a double composite liner."

F. Waste Management has filed an appeal of the double composite liner condition with the Pollution Control Board (PCB 03-144).

G. Waste Management contends that the regulations promulgated by the Pollution Control Board which pertain to landfill units such as that proposed by Waste Management in its application and pertinent provisions of the Illinois Environmental Protection Act do not specifically require that the expansion of the Kankakee Landfill be designed or constructed with a double composite liner. The County asserts that the imposition of the condition relating to installation and maintaining of a double composite liner is allowed by the provisions of Section 39.2(e) of the Act.

H. Patrick Engineering, the environmental engineering firm retained by the County in connection with the Landfill expansion, has confirmed that the additional design and construction costs associated with a double composite liner will be approximately \$11,286,018 (see Attachment A) and that this will add approximately 38 cents in costs for each ton of waste expected to be disposed of in the expansion of the Landfill.

I. Another condition imposed by the County is that 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."

J. Waste Management asserts that this condition could hamper the safe and efficient operation of the Landfill, and has filed an appeal of the active face condition with the Pollution Control Board (PCB 03-144).

K. Both parties desire to amicably resolve these matters in a manner consistent with Section 39.2 of the Illinois Environmental Protection Act.

NOW, THEREFORE, in consideration of the covenants set forth in this Agreement, the County and Waste Management agree as follows:

1. The County agrees to pay forty percent (40%) of the costs of installation of the double composite liner required by Criterion 2 Special Condition X through a reduction in the per ton host fees to be paid pursuant to Paragraph 4 of the Host Agreement of 15¢ per ton.
2. The County confirms that Condition 2.p. does not preclude Waste Management from adjusting the final contours for the expansion, provided that (1) the maximum height of the landfill and the lateral extent of the landfill do not exceed the maximum height and lateral extent shown on the plans provided in the siting application and (2) the waste airspace volume does not exceed the design volume of 50,692,594 cubic yards contained in the application.
3. The County also confirms that the double composite liner design submitted by Waste Management to the Kankakee Planning Department on or about February 20, 2003 fully complies with Criterion 2, Special Condition X of the siting approval.
4. Waste Management agrees to withdraw its appeal of the double composite liner condition, and to waive any rights it may have to claim that the double composite liner condition is a "Change of Law" which could modify the price protection afforded Kankakee municipalities pursuant to Paragraph 18 of the Host Agreement. Waste Management also agrees to waive any rights it may have to claim that the double composite liner condition is a "Force Majeure" as defined in Paragraph 28 of the Host Agreement.
5. Without further approval from the County, Waste Management may operate up to three active working faces, which when combined may not exceed a width of 750 feet, except during the placement of the first lift or last lift in any area. In the event Waste Management requests a variance from the above due to inclement weather or for any other reason, the County Health Department is authorized to consider Waste Management's request and to grant a variance in the event the request does not adversely impact the safety, health and welfare of the County. In the event the County Health Department denies Waste Management's request, Waste Management may petition the County Board to consider its request.
6. Waste Management agrees to withdraw its appeal of the active face condition.

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IN WITNESS WHEREOF, the County and Waste Management have executed this Agreement as of the 23rd day of July 2003.

KANKAKEE COUNTY

WASTE MANAGEMENT
OF ILLINOIS, INC.

By: 
Its County Board Chairperson

By: _____
Its Vice President

ATTEST:

ATTEST:


Clerk of Kankakee County

Assistant Secretary

IN WITNESS WHEREOF, the County and Waste Management have executed this Agreement as of the _____ day of July 2003.

KANKAKEE COUNTY

By: _____
Its County Board Chairperson

ATTEST:

Clerk of Kankakee County

WASTE MANAGEMENT
OF ILLINOIS, INC.

By: _____
Its Vice President

ATTEST:

A. M. J. J.

Assistant Secretary

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 on July 30, 2003, a copy of the foregoing was served upon:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601-3218

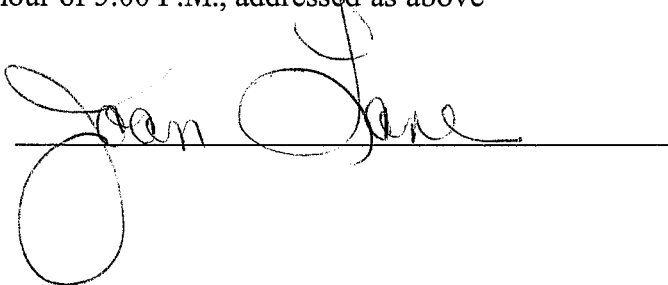
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Elizabeth Harvey, Esq.
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Chicago, IL 60611
(312) 321-9100
(312) 321-0990 FAX

Mr. Brad Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, 11th Floor
Chicago, IL 60601
(312) 814-8917
(312) 814-3669 FAX

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford,, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above

Firm No. 695
HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61101
(815) 490-4900

A handwritten signature in dark ink, appearing to read "Joan Lane", is written over a horizontal line. The signature is fluid and cursive, with the first name "Joan" and last name "Lane" clearly distinguishable.