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ILLINOIS POLLUTION CONTROL BOARD

JUL 30 2003

CITY OF KANKAKEE,)
)
 Petitioner,)
)
 v.)
)
 COUNTY OF KANKAKEE, COUNTY)
 BOARD OF KANKAKEE, and WASTE)
 MANAGEMENT OF ILLINOIS, INC.)
)
 Respondents.)

PCB 03-125
 PCB 03-133
 PCB 03-134
 PCB 03-135
 (consolidated)
 (Pollution Control Facility Siting Appeals)

STATE OF ILLINOIS
Pollution Control Board

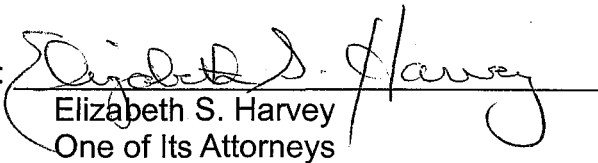
NOTICE OF FILING

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 30th day of July 2003, the following was filed with the Illinois Pollution Control Board, attached and herewith served upon you:

**County of Kankakee and County Board of Kankakee
Motion to Compel Payment of Record Costs**

COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By: 
 Elizabeth S. Harvey
 One of Its Attorneys

Elizabeth S. Harvey
 SWANSON, MARTIN & BELL
 One IBM Plaza, Suite 3300
 330 North Wabash Avenue
 Chicago, Illinois 60611
 Telephone: (312) 321-9100
 Firm I.D. No. 29558

SERVICE LIST
KANKAKEE COUNTY/WMII LANDFILL SITING

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Charles F. Helsten
Richard Porter
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105

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

Donald Moran
Pedersen & Houpt
161 North Clark Street
Suite 3100
Chicago, IL 60601-3242

George Mueller
George Mueller, P.C.
501 State Street
Ottawa, IL 61350

L. Patrick Power
956 North Fifth Avenue
Kankakee, IL 60901

Jennifer J. Sackett Pohlenz
Querry & Harrow, Ltd.
175 West Jackson Boulevard
Suite 1600
Chicago, IL 60604
(*via hand delivery*)

Keith Runyon
1165 Plum Creek Drive
Unit D
Bourbonnais, IL 60914

Kenneth A. Bleyer
Attorney at Law
923 West Gordon Terrace, #3
Chicago, IL 60613-2013

Leland Milk
6903 S. Route 45-52
Chebanse, IL 60922-5153

Patricia O'Dell
1242 Arrowhead Drive
Bourbonnais, IL 60914

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ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
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BOARD OF KANKAKEE, and WASTE)	
MANAGEMENT OF ILLINOIS, INC.)	
)	
Respondents.)	

MOTION TO COMPEL PAYMENT OF RECORD COSTS

Respondents COUNTY OF KANKAKEE and COUNTY BOARD OF KANKAKEE (collectively, "County"), by its attorneys Hinshaw & Culbertson and Swanson, Martin & Bell, hereby move the Board to compel payment of the County's costs incurred in preparing the record on appeal. The County seeks an order compelling petitioners CITY OF KANKAKEE ("City") and MICHAEL WATSON ("Watson") to pay their share of the County's costs.

1. On March 6, 2003, the Board issued its order accepting this case. The Board specifically ordered petitioners to pay the County's cost of preparing and certifying the record, pursuant to Section 39.2(n) of the Environmental Protection Act (415 ILCS 5/39.2(n)) and Section 107.306 of the Board's procedural rules (35 Ill. Adm. Code 107.306).

2. The County prepared and certified the record, incurring copying costs of \$4206.19. (See Exhibit A.) Pursuant to Section 39.2(n), Section 107.306, and the Board's March 6, 2003 order, the County then demanded payment from petitioners.

3. The County demanded payment from petitioners Waste Management of Illinois, Inc. (WMII), Watson, and the City. The County did not demand payment from petitioners Karlock and Runyon, because they are "citizens." The Board's rule clearly

exempts "citizens" from the payment of record costs. 35 Ill. Adm. Code 107.306.

4. To date, only WMII has paid its one-third share (\$1402.07) of the County's copying costs. Despite the County's demand, it has not received payment from either Watson or the City.

5. The County anticipates that Watson will claim that he is "citizen," and thus is exempt from payment. However, Watson owns and operates United Disposal of Bradley, a waste hauling and transfer station company which serves an area of Kankakee County. (See, e.g., C1271, Tr. pp. 64-67.) Watson's attorneys noted that Watson owns United Disposal. (C1272, Tr. pp. 19-20.) The legislative history of Section 39.2(n) makes clear that owners and operators of competing disposal companies are not exempt as "citizens groups." Senator Karpiel, the sponsor of the citizens group exemption, specifically stated that "citizens group" means:

a group of individual citizens that have joined together to participate in a regional pollution control facility siting hearing...It also does not include persons owning or operating a nearby competing landfill facility, or units of local government acting alone.

State of Illinois 86th General Assembly Regular Session Senate Transcript, 52nd legislative day, June 22, 1989 (emphasis added), *quoted in Shaw v. Village of Dolton*, PCB 97-68 (November 21, 1996) and *Zeman v. Village of Summit*, PCB 92-174 (December 17, 1992).

The legislative history of Section 39.2(n) is relevant, because there is no definition of "citizens group" in the statute, or in the Board's regulations. Thus, it is appropriate to look to the legislative history. The legislative history is especially appropriate on this issue, as Senator Karpiel stated that the purpose of her comments was to respond to a request from the Board that the meaning of "citizens group" be given.¹

¹ Senator Karpiel stated "I have told the Pollution Control Board that I would read into the record the meaning of 'citizens groups'." State of Illinois 86th General Assembly Regular Session Senate Transcript, 52nd legislative day, June 22, 1989, *quoted in Shaw v. Village of Dolton*, PCB 97-68 (November 21, 1996) and *Zeman v. Village of Summit*, PCB 92-174 (December 17, 1992).

6. Mr. Watson, as the owner and operator of United Disposal, is the owner of a competing disposal facility. Although Senator Karpziel's statement referenced specifically "landfill facilities," it is clear that the legislative intent is to prohibit a competitor in the waste industry from using the "citizens group" exemption for the payment of record costs. It would be illogical to prohibit the owner of a "landfill" from using the citizen group exemption, while allowing the owner of a transfer station or hauling service to use that same exemption.

7. As the owner and operator of a competing disposal facility, Mr. Watson is not a "citizens group." Therefore, Mr. Watson does not qualify for an exemption from the requirement that he pay his share of the County's costs.

8. Likewise, the City is not a "citizens group," and must pay its share of the County's costs. Senator Karpziel's statement specifically states that a unit of local government is not a citizens group. (See paragraph 5, above.) The City is a unit of local government, and thus cannot qualify as a citizens group.

9. The County anticipates that the City may allege that it refuses to pay the County's costs based on the City's claim that the County has failed to pay the City's record costs in an unrelated landfill siting appeal.² Whether the County owes the City for costs in unrelated appeal is not relevant to the issue here: whether the City is exempt from the Section 39.2(n) requirement that all those who are not citizens groups must pay the County's record costs. It is clear, based on the legislative history, that a unit of local government is not a citizens group. Therefore, regardless of disputes between the City and the County in other cases (which have not been brought to the

² Whether the County does or does not owe the City for record costs in an unrelated appeal is not at issue here. Thus, the County neither admits nor denies that it may be responsible for a portion of the City's record costs.

Board), the City owes its share of the County's record costs.

10. This issue is quite simple: the statute and the Board's regulations require petitioners to pay the County's record costs. The Board specifically ordered, in its March 6, 2003 order, that these petitioners pay the County's costs. Watson and the City have failed to comply with the statute, the regulation, and the Board's order. Neither Watson nor the City qualify as a "citizens group," which would be exempt from payment. Therefore, Watson and the City owe the County their share of the County's copying costs.

11. If Watson and the City fail to pay their share of the County's copying costs, the County asks that the petitions for review filed by Watson and the City be dismissed, pursuant to the provisions of Section 39.2(n) and Section 3-109 of the Code of Civil Procedure (735 ILCS 5/3-109).

WHEREFORE, the County moves this Board to compel Watson and the City to pay their share of the County's copying costs; that the payment be made to the County within 14 days of the Board's decision on this motion; that the failure of Watson and/or the City to pay their share of the costs be grounds for dismissal of their respective petitions for review; and for such other relief as the Board deems appropriate.

Respectfully submitted,

COUNTY OF KANKAKEE and
COUNTY BOARD OF KANKAKEE

By: 

Elizabeth S. Harvey
One of Its Attorneys

Charles F. Helsten
Richard Porter
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815/490-4900

Elizabeth S. Harvey
Swanson, Martin & Bell
One IBM Plaza, Suite 3300
330 North Wabash Avenue
Chicago, IL 60611
312/321-9100



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