

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 13 2005

STATE OF ILLINOIS
Pollution Control Board

WASTE MANAGEMENT OF
ILLINOIS, INC.,

Petitioner,

v.

COUNTY BOARD OF KANKAKEE
COUNTY, ILLINOIS,

Respondent.

PCB 04-186

(Pollution Control Facility Siting Appeal)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on May 13, 2005, we filed with the Illinois Pollution Control Board, **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION FOR LEAVE TO FILE OPENING BRIEF IN EXCESS OF PAGE LIMIT *INSTANTER*** (copy attached), in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

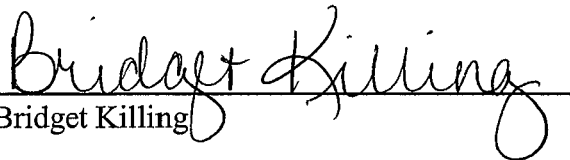
One of Its Attorneys

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PROOF OF SERVICE

Bridget Killing, a non-attorney, on oath states that he served the foregoing **WASTE MANAGEMENT OF ILLINOIS, INC.'s MOTION FOR LEAVE TO FILE OPENING BRIEF IN EXCESS OF PAGE LIMIT *INSTANTER*** on the following parties via facsimile on this 13th day of May, 2005.

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Bridget Killing

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OPENING BRIEF IN EXCESS OF PAGE LIMIT *INSTANTER***

Petitioner, WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt, moves the Illinois Pollution Control Board ("IPCB") for leave, pursuant to Section 101.302(k) of the Board's Procedural Rules, to file, *instanter*, its Opening Brief in excess of 50 pages. In support of this motion, WMII states as follows:

1. Pursuant to Section 40.1(a) of the Illinois Environmental Protection Act ("Act"), WMII appeals the March 17, 2004 decision of the County Board of Kankakee County, Illinois ("County Board") denying WMII's second Site Location Application for Expansion of the Kankakee Landfill filed on September 26, 2003 ("2003 Application"). 415 ILCS 5/40.1(a)(2002). The County Board denied local siting approval of the 2003 Application on the grounds that Criteria (i), (iii) and (vi) of Section 39.2(a) of the Act were not met. 415 ILCS 5/39.2 (2002).

2. WMII contends in this appeal that the County Board's denial of Criteria (i), (iii) and (vi) is against the manifest weight of the evidence because those same criteria were overwhelmingly approved in connection with WMII's prior Site Location Application filed on

August 16, 2002 ("2002 Application" or "First Application"). There is no evidence in the record that would support a reversal of the County Board's prior approval of Criteria (i), (iii) and (vi) in the 2002 Application, and the denial of these criteria in the 2003 Application, particularly given that the County Board members who reversed their votes acknowledged that 2003 Application was essentially the same as the 2002 Application. Thus, the reversal can only be explained by the improper *ex parte* advocacy efforts of Mr. Bruce Harrison and other landfill opponents which sought to persuade County Board members, through threats and harassment, to change their prior approval and vote to deny the 2003 Application. Because such considerations are improper and do not provide a legitimate or sufficient basis to decide a site location application in accordance with the Act, WMII seeks a ruling that the County Board's denial of Criteria (i), (iii) and (vi) is against the manifest weight of the evidence, and a reversal of the decision denying local siting approval.

3. As indicated in the preceding paragraph, the factual and legal issues presented in this appeal are extensive and complex. In order to adequately present those issues, WMII must describe in sufficient detail the siting proceedings for the proposed expansion and the substantial ex parte communications that influenced the March 17, 2004 Decision.

4. WMII has presented the relevant facts and legal arguments as concisely as possible in its Opening Brief by summarizing the salient facts in the body of the Opening Brief (which is under 50 pages), and attaching a detailed summary of the improper *ex parte* contacts as Appendices. However, the Opening Brief and attached Appendices exceed 50 pages.

5. WMII seeks leave to exceed the 50-page limit because it is unable to adequately present the factual and legal issues in this appeal in 50 pages or less.

6. The County Board has been granted additional time to prepare its Response Brief. Hence, the County Board will not be prejudiced by the granting of this motion.

7. The amicus curiae have already been granted leave to file briefs in excess of the prescribed page limit.

WHEREFORE, Petitioner, WASTE MANAGEMENT OF ILLINOIS, INC., respectfully requests that the IPCB grant it leave to file its Opening Brief in excess of 50 pages *instantly*, and providing such other and further relief as the IPCB deems appropriate.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

One of Its Attorneys

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Pollution Control Board

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PLEASE TAKE NOTICE that on May 13, 2005, we filed with the Illinois Pollution Control Board, the attached **BRIEF IN SUPPORT OF PETITIONER WASTE MANAGEMENT OF ILLINOIS, INC.'S APPEAL** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

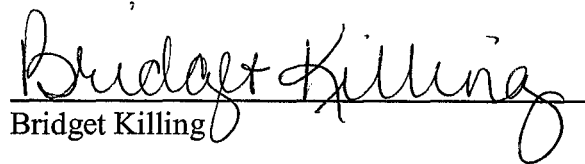
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Edward Smith Kankakee County State's Attorney Kankakee County Administration Building 189 East Court Street Kankakee, Illinois 60901 (815) 937-2930 (815) 937-3932 (fax)	Richard S. Porter Charles F. Helsten Heather K. Lloyd Hinshaw & Culbertson 100 Park Avenue, P.O. Box 1389 Rockford, Illinois 61105-1389 (815) 490-4920 (815) 490-4901 (fax)
--	--


Bridget Killing

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STATE OF ILLINOIS
Pollution Control Board

PCB 04-186
(Pollution Control Facility Siting Appeal)

**BRIEF IN SUPPORT OF PETITIONER
WASTE MANAGEMENT OF ILLINOIS, INC.'S APPEAL**

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)	
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**BRIEF IN SUPPORT OF PETITIONER
WASTE MANAGEMENT OF ILLINOIS, INC.'S APPEAL**

Petitioner, WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by and through its attorneys, Pedersen & Houpt, hereby submits this brief in support of its appeal of the decision of Respondent, County Board of Kankakee County, Illinois ("County Board"), denying WMII's 2003 Site Location Application for Expansion of the existing Kankakee Recycling and Disposal Facility ("Kankakee Landfill").

I. INTRODUCTION

Pursuant to Section 40.1(a) of the Illinois Environmental Protection Act ("Act") 415 ILCS 5/40.1(a), WMII appeals the County Board's decision denying WMII's second Site Location Application for Expansion of the Kankakee Landfill filed on September 26, 2003 ("2003 Application" or "Second Application"). 415 ILCS 5/40.1(a) (2002). On March 17, 2004, the County Board denied local siting approval of the 2003 Application on the grounds that Criteria (i), (iii) and (vi) of Section 39.2(a) of the Act were not met ("March 17 Decision"). 415 ILCS 5/39.2 (2002). However, the 2003 Application was essentially the same as WMII's prior

Site Location Application, which was filed on August 16, 2002 ("2002 Application" or "First Application"), and overwhelmingly approved by the County Board on January 31, 2003.

The County Board's denial of Criteria (i), (iii) and (vi) here is against the manifest weight of the evidence. There is no evidence in this record that would support a reversal of the County Board's prior approval of Criteria (i), (iii) and (vi), and denial of these criteria in the 2003 Application. The reversal is explained by the only substantive fact that differs from the County Board's consideration of the 2002 Application: the planned and targeted *ex parte* advocacy efforts by Mr. Bruce Harrison and other landfill opponents to present and argue their case to County Board members outside of the siting process. Their efforts included not only providing information opposing Criteria (i), (iii) and (vi), but also harassing and threatening individual County Board members.

While it may be understandable that County Board members might change their decision based on political pressure and public opposition, such considerations are improper and do not provide a legitimate or sufficient basis to decide a site location application. Thus, the County Board's denial of Criteria (i), (iii) and (vi) was fundamentally unfair and against the manifest weight of the evidence, and must be reversed by the Illinois Pollution Control Board ("IPCB").

A. History of Site Location Application Filings

The efforts to obtain local siting approval for the expansion of the Kankakee Landfill ("Expansion"), is a long and complex story involving conspiracy, deceit, perjury and political intimidation. The full story cannot be succinctly told. WMII will make its best effort to present the relevant facts here as clearly and concisely as possible.

1. Size and Capacity of the Expansion

The Expansion will be constructed on a 664-acre site located in unincorporated Kankakee County. It includes a 302-acre waste disposal area, with a disposal capacity of approximately 30 million tons. (2002 App. at Crit. 2, p. 1-1, 3-1; Crit. 1, p. 1.)¹ The Expansion will receive 500 tons per day ("tpd") of solid waste from Kankakee County and 3,500 tpd of out-of-county waste. (11/20/02 Tr. Vol. 9 at 88.) In accordance with the Amended and Restated Host Community Agreement ("Host Agreement"), the Expansion may not accept more than 987,000 tons of out-of-county waste in any year. (11/20/02 Tr. Vol. 9 at 88-90; 2002 App. at Additional Information, Tab C, Host Agreement, p. 7.) This amount will proportionately decrease as the amount of Kankakee County waste increases to ensure disposal of the latter. (2002 App. at Additional Information, Tab C, Host Agreement, p. 7.) There is no daily or annual limit on the disposal of waste generated in Kankakee County. The Expansion will provide disposal capacity for 27 years. (2002 App. at Executive Summary, p. ES-1.)

2. 2002 Application

WMII initially filed its Site Location Application with the County Board pursuant to Section 39.2 of the Act on March 29, 2002, requesting local siting approval for the Expansion. 415 ILCS 5/39.2 (2002). This initial application was never considered by the County Board due to the first motion to dismiss filed by Objector Michael Watson ("Objector Watson") two

¹ References to materials contained in the 2002 Application and the 2003 Application will be cited herein as "(2002 App. at ___)", and "(2003 App. at ___)". References to the transcripts of the public hearings conducted from November 18 through December 6, 2002 on the 2002 Application will be cited as "(___/___/02 Tr. Vol. ___ at ___)". References to the transcripts of the public hearings conducted from January 12 to January 21, 2004 on the 2003 Application will be cited as "(1/___/04 Tr. Vol. ___ at ___)". References to the 2002 or 2003 public hearing exhibits will be cited as "(___ Ex. ___, 2002.)" and "(___ Ex. ___, 2003.)". References to the transcripts of the IPCB's review hearing will be cited as "(IPCB 4/___/05 Tr. at ___)". References to the IPCB review hearing exhibits will be cited as "(IPCB ___ Ex. No. ___)". References to the evidence deposition transcripts of the IPCB's review hearing will be cited as "(last name ___/___/05 Tr. at ___)".

business days prior to the start of the public hearing, which claimed lack of notice on certain property owners. Consequently, WMII resubmitted the 2002 Application, which became the first application considered by the County Board. The 2002 Application contained "the previously filed Site Location Application dated March 29, 2002" with additional notice materials. (2002 App. at Cover Letter.)

In accordance with Kankakee County Resolution No. 00-09-12-156, entitled "Kankakee County, Illinois Siting Ordinance for Pollution Control Facilities" ("Ordinance"), the County Board Chairman referred the matter to the Solid Waste Sub-Committee of the Kankakee County Regional Planning Commission ("RPC"). The RPC conducted the public hearings on the 2002 Application. Two members of the County Board were members of the RPC, including the RPC Chairman, Mr. George Washington, Jr.

Public hearings were conducted on the 2002 Application for 11 days between November 18 through December 6, 2002. For a second time, Objector Watson filed a motion to dismiss alleging lack of notice on certain property owners, this time waiting until the end of the public hearing on December 4, 2002. The Hearing Officer denied the motion.

After careful consideration, the RPC issued its report titled "Recommendations Relating to the Application of Waste Management of Illinois, Inc. for Local Siting Approval of an Expansion of the Existing Kankakee Landfill" ("RPC 2003 Approval") to the County Board on January 22, 2003. In its Approval, the RPC found that: (i) all jurisdictional requirements had been met; (ii) the proceedings were conducted in a fundamentally fair manner; and (iii) all applicable statutory criteria were met. (2003 RPC Approval, p. 1-7.) The RPC recommended that the County Board grant local siting approval for the 2002 Application, subject to certain recommended conditions. (2003 RPC Approval, p. 7.)

The County Board accepted the RPC's recommendation and granted site location approval for the Expansion on January 31, 2003, in a seven-page written decision entitled "Kankakee County Board Decision Regarding the Application of Waste Management of Illinois, Inc. For Local Siting Approval of An Expansion of the Existing Kankakee Landfill" ("2003 Decision"). In its Decision, the County Board unanimously rejected Objector Watson's claim of alleged notice deficiency, and found by overwhelming votes that each of the nine siting criteria were met.²

Appeals of the County Board approval were filed by three objectors, including Objector Watson. The IPCB vacated the approval on the technical ground of insufficient service of pre-filing notice on one out of a total of 76 property owners, Mrs. Brenda Keller.³

3. 2003 Application

As a result of the IPCB's decision, WMII filed the 2003 Application requesting local siting approval for the same expansion as the 2002 Application. The 2003 Application was essentially the same as the 2002 Application. (2003 App. at Cover Letter; 1/12/04 Tr. Vol. 1 at 73.) As with the 2002 Application, the County Board referred the 2003 Application to the RPC.

² The County Board voted as follows: Jurisdiction (20 aye-0 nay); Fundamental Fairness (20 aye-0 nay); Criterion (i) (22 aye-0 nay); Criterion (ii) (18 aye-3 nay); Criterion (iii) (21 aye-0 nay); Criterion (iv) (22 aye-0 nay); Criterion (v) (21 aye-0 nay); Criterion (vi) (19 aye-0 nay); Criterion (vii) (22 aye-0 nay); Criterion (viii) (18 aye-1 nay); and Criterion (ix) (20 aye-0 nay). (IPCB WMII Ex. No. 7.)

³ The story of the Kellers, Objector Watson and pre-filing notice is a dubious tale of deceit and denial. Mrs. Keller and her husband, Robert Keller, are personal friends of Objector Watson. Mr. Keller performs work for Objector Watson's company, United Disposal, without compensation. It was Objector Watson who approached the Kellers and asked them to sign affidavits claiming that neither of them had received pre-filing notice of the 2002 Application. City of Kankakee v. County of Kankakee, et al., Nos. PCB 03-125, 03-133, 03-134 and 03-135 (cons.), slip op. at 17 (August 7, 2003), affirmed Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, et al., 2005 Ill.App.LEXIS 277, (3rd Dist. 2005); Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, et al., No. 100166, Petition for Leave to Appeal to the Illinois Supreme Court filed February 25, 2005. Mr. Keller later admitted that pre-filing notice was made to him and his wife at their residence. (Waskosky 3/30/05 Tr. at 28:1-24; 29-34.)

Once again, the RPC conducted the public hearings on the 2003 Application, and two County Board members served on the RPC, including RPC Chairman Mr. Washington.

The public hearings on the 2003 Application were conducted from January 12 through January 21, 2004. WMII presented the testimony of the same eight expert witnesses who testified on the 2002 Application. Two witnesses testified at the public hearings in opposition to the 2003 Application. All of the testimony and documentary evidence for the 2002 Application was admitted and is part of the record for the 2003 Application. (1/12/04 Tr. Vol. 2 at 11-15.)

Five motions to dismiss were filed after the public hearings commenced. In a third attempt to thwart the siting process for the Expansion, a motion to dismiss was filed alleging insufficient notice regarding a property whose beneficiary was Objector Watson. Although Objector Watson was represented by counsel at the public hearing, it was Objector Merlin Karlock ("Objector Karlock") who presented this motion, which alleged that WMII failed to serve pre-filing notice on First American Trust No. 2704 ("Trust"). Objector Watson was the beneficiary of the Trust. (1/12/04 Tr. Vol. 1 at 30.) Evidence of service on the Trust via certified mail (returned unclaimed) was presented (1/12/04 Tr. Vol. 1 at 31-32), and the motion was denied by the Hearing Officer.

Objector Watson and Mr. Keller participated in the public hearings and continued their opposition to the Expansion. (IPCB 4/6/05 Tr. at 109:20-24; 110:1-3.) They were joined by Mr. Bruce Harrison. Objector Watson, Mr. Keller and Mr. Harrison are long-time friends and are staunchly opposed to the Expansion. (IPCB 4/6/05 Tr. at 109:20-24; 110:1-3; 114:5-9; 114:10-13.) Like Mr. Keller, Mr. Harrison worked for Objector Watson and his company, United Disposal, without compensation. (IPCB Tr. 4/6/05 Tr. at 56:17-24; 57:1-11; 98-99.) The three men communicate on a continuing basis. (IPCB 4/6/05 Tr. at 102:2-8; 118:18-24; 119:1-8.)

Mr. Harrison participated in the public hearings, claiming to be a concerned citizen, but repeatedly refused to provide his address or residence. (1/16/04 Tr. Vol. 10 at 86; 1/21/04 Tr. Vol. 13 at 250.) He was in fact residing in a trailer on Mr. Keller's property. (IPCB 4/6/05 Tr. at 111:2-19.) He later moved his trailer to Objector Watson's property and resided there. (IPCB 4/6/05 Tr. at 121:19-24; 122:1-19.) During the public hearings on the 2003 Application, Mr. Harrison continuously cross examined witnesses (1/14/04 Tr. Vol. 6 at 87-93; 1/14/04 Tr. Vol. 8 at 56-58; 66-68; 1/15/04 Tr. Vol. 9 at 91-94, 105-106, 114-117; 1/16/04 Tr. Vol. 10 at 57-59; 1/16/04 Tr. Vol. 11 at 66-72) and offered public comment. (1/16/04 Tr. Vol. 10 at 86-91; 1/21/04 Tr. Vol. 13 at 250-251.) He frequently did so after conferring with Objector Watson, his lawyer or Mr. Keller. (1/15/04 Tr. Vol. 9 at 91:7-14; 94:10-15, 114:3-7; 1/16/04 Tr. Vol. 10, p. 87, 92; 1/16/04 Tr. Vol. 11, p. 86.)

After lengthy and studied deliberation, on March 9, 2004, the RPC issued a 49-page report titled "Recommendations Relating to the Application of Waste Management of Illinois, Inc. for Local Siting Approval of an Expansion of the Existing Kankakee Landfill" ("RPC 2004 Approval"). In its Approval, the RPC again found that: (i) all jurisdictional requirements had been met; (ii) the proceedings were conducted in a fundamentally fair manner; and (iii) all applicable statutory criteria were met. The RPC again recommended that the County Board grant local siting approval for the 2003 Application, subject to recommended conditions. (2004 RPC Approval, p. 13.)

On March 17, 2004, the County Board accepted certain recommendations of the RPC and voted to approve Criteria (ii), (iv), (v), (vii), (viii) and (ix). However, the County Board reversed its nearly unanimous decision approving the 2002 Application and voted to deny Criteria (i), (iii)

and (vi).⁴ A written decision denying approval of the 2003 Application was prepared and filed with the County Clerk on March 25, 2004.⁵

WMII filed with the IPCB a Petition for Hearing to Contest Site Location Denial on April 22, 2004, contesting the March 17 Decision and the County Board's denial of Criteria (i), (iii) and (vi) as unsupported by the record and against the manifest weight of the evidence.

II. STATEMENT OF FACTS

A. Summary of Evidence in the Record Demonstrating that Criteria (i), (iii) and (vi) Were Established

1. Criterion (i): The Expansion is Necessary to Accommodate the Waste Needs of the Area that it is Intended to Serve

Ms. Sheryl Smith testified on Criterion (i). (1/13/04 Tr. Vol. 4 at 48.) She prepared a written report that was included in both the 2002 and 2003 Applications. The report included in the 2003 Application was the same report included in the 2002 Application, except that it included data that updated the annual Illinois Environmental Protection Agency ("IEPA") information on waste receipts and disposal capacity contained in the 2002 Application. This information further supported her opinion. (1/12/04 Tr. Vol. 1 at 73; 1/13/04 Tr. Vol. 4 at 48, 51.) The service area for the Expansion is the same in both Applications and include Kankakee, Cook, DuPage, Kane, Kendall, Grundy and Will Counties in Illinois, and Jasper, Lake, Newton and Porter Counties in Indiana. (2002 App. at p. 4; 11/20/02 Tr. Vol. 9 at 12; 1/13/04 Tr. Vol. 4 at 54.) The capacity of the Expansion is 30 million tons. (1/13/04 Tr. Vol. 4 at 90.)

⁴ The County Board voted to deny Criteria (i), (iii) and (vi) as follows: Criterion (i) (12 aye-16 nay); Criterion (iii) (10 aye-18 nay); and Criterion (vi) (12 aye-16 nay). (IPCB WMII Ex. No. 8.) For the 2002 Application, there was not a single "no" vote on any of these three criteria. (IPCB WMII Ex. No. 7.)

⁵ WMII submitted, and the County Board agreed to consider, a motion to renew consideration of the 2003 Application. At the April 13, 2004 County Board meeting, the County Board deadlocked on the motion in a 13-13 vote. (IPCB WMII Ex. No. 9.)

Ms. Smith described her methodology in evaluating need. She collected information on population for each county in the service area over the proposed 27-year operating life of the Expansion and obtained waste generation rates and recycling goals from the solid waste plans for each county in the service area. Ms. Smith relied on recycling goals included in each of the county solid waste plans because the recycling rate data reported to the IEPA is generally based upon municipal waste only, not taking into consideration other waste streams that may be recycled. She pointed out that if actual recycling rate data is not available from commercial generators, the counties make an estimate based on population and submit that estimate to IEPA. (11/20/02 Tr. Vol. 9 at 10-13, 54-55.)

Ms. Smith estimated the net amount of waste requiring disposal from the service area over the proposed 27-year operating life. (1/13/04 Tr. Vol. 4 at 50-51.) This amount ranged from 105 to 188 million tons, depending upon the percentage of recycling that each county is able to achieve. (2003 App. at Crit. 1, p. 30; 11/20/02 Tr. Vol. 9 at 23; 1/13/04 Tr. Vol. 4 at 50, 54-55.)

Next, Ms. Smith identified the available disposal capacity. (11/20/02 Tr. Vol. 9 at 10-11; 1/13/04 Tr. Vol. 4 at 51.) She collected information on waste disposal facilities in the states of Illinois, Indiana, Wisconsin and Michigan to identify which facilities were currently permitted, the volume of waste received each year, remaining disposal capacity and service area. (11/20/02 Tr. Vol. 9 at 14.) Based on her evaluation, she estimated the amount of available disposal capacity to be 56 million tons. (2003 App. at Crit. 1, p. 30; 1/13/04 Tr. Vol. 4 at 74-75.) If no new facilities are permitted, this available disposal capacity will run out in 2009. (1/13/04 Tr. Vol. 4 at 74.)

She testified that the amount of available disposal capacity (56 million tons) was less than the net amount of waste requiring disposal (105 to 188 million tons), resulting in a capacity shortfall of 49 million to 132 million tons. Based on the data presented and Ms. Smith's evaluation, the Expansion is necessary to accommodate the waste needs of the service area it is intended to serve. (1/13/04 Tr. Vol. 4 at 51.) Ms. Smith was the only witness to present facts, prepare a report, and evaluate the data regarding Criterion (i). No one else testified or presented data that contradicted Ms. Smith's conclusion that the Expansion is necessary to meet the needs of the service area.

2. Criterion (iii): The Expansion Is Located so as to Minimize Incompatibility with the Character of the Surrounding Area and to Minimize the Effect on the Value of the Surrounding Property

(a) Compatibility

Mr. J. Christopher Lannert testified regarding compatibility, the first part of Criterion (iii). The report prepared by The Lannert Group contained in the 2002 Application is the exact same report contained in the 2003 Application. (1/13/04 Tr. Vol. 4 at 10.) The Lannert Group evaluated the location of the Expansion relative to adjacent land uses within 1 ½ miles of the Expansion by performing a number of activities, including review of an aerial photograph of the surrounding area, field survey of the surrounding area, review of Kankakee County and City of Kankakee comprehensive land use plans, zoning maps and ordinances, and review of the Expansion from key vantage points near the site. (11/18/02 Tr. Vol. 3 at 59; 2002 App. at Crit. 3a, p. 4.) Specifically, the Lannert Group reviewed the County of Kankakee Zoning Ordinance and Map, the County of Kankakee Comprehensive Plan and Map, and other related documents. (2002 App. at Crit. 3a, p. 4.) The Lannert Group also conducted field surveys, including visits to municipalities within the study area and numerous follow-up field investigations of the area

surrounding the Expansion and its environs in January and March, 2002. (2002 App. at Crit. 3a, p. 4.)

Mr. Lannert testified that the predominant land uses within the 1 ½ mile study area surrounding the Expansion include agricultural fields and/or open space and scattered homesites. The agricultural fields and/or open space within the study area account for approximately 94 percent of the land use. (11/18/02 Tr. Vol. 3 at 60.) The remaining 6 percent of the surrounding area is of an industrial, residential or commercial use. (2002 App. at Crit. 3a, p. 7.)

Residential development accounts for approximately 3.8 percent of the study area. (2002 App. at Crit. 3a, p. 7.) Residential uses adjacent to the Kankakee Landfill have coexisted since its inception. (2002 App. at Crit. 3a, p. 7.)

All of the immediately adjacent land uses and physical improvements serve as appropriate land use buffers or transitions to surrounding land uses. Most of the land within the study area is undeveloped. (2002 App. at Crit. 3a, p. 6.) The Expansion area is presently zoned A1 (agricultural). Sanitary landfills are permitted as a special use within the County zoning district of I1 (light industrial). (2002 App. at Crit. 3a, p. 10.)

Mr. Lannert testified that a landscape screening plan had been prepared for the Expansion. The landscape screening plan incorporates existing in-place vegetation next to existing homes, and proposes additional screening berms that will be developed around the Expansion. The screening berms will vary in height, between approximately 16 and 18 feet. They will include ornamental and deciduous trees, planted along the top, to further minimize any impact of the Expansion on adjacent properties. (11/18/02 Tr. Vol. 3 at 69-70.)

Mr. Lannert concluded that the Expansion is compatible with the character of the surrounding area. (11/18/02 Tr. Vol. 3 at 72; 1/13/04 Tr. Vol. 4 at 21.) Mr. Lannert was the

only witness to present data, prepare a report and testify regarding the first part of Criterion (iii).

No data, facts or opinion were presented to rebut or refute his conclusion.

(b) Property Value

Ms. Patricia McGarr testified on the second part of Criterion (iii), which relates to whether the Expansion is located so as to minimize any effect on the value of surrounding property.

She testified that she received an associate's degree from Richard J. Daley College. (11/19/02 Tr. Vol. 6 at 6-7; Pet. Ex. 6, 2002.) While she was not able to produce a copy of her diploma, the unrefuted evidence established that she took the required courses, with a cumulative grade point average of 3.75 on a 4.0 scale, to have earned the degree. (Pet. Ex. 26, 2002.) The degree was not required to obtain her real estate appraiser license or the MAI designation. (1/12/04 Tr. Vol. 2 at 43-44.) Nevertheless, Richard J. Daley College awarded her a degree in January, 2004. (1/12/04 Tr. Vol. 2 at 100-103.)

Ms. McGarr performed a comparable property value analysis for properties surrounding the Kankakee Landfill and the Expansion. She explained that if an impact existed as a result of an existing landfill, that impact would be reflected by a comparison of the range of sale prices, annual rates of appreciation, and other indicators to properties located outside the landfill's potential area of influence. (11/19/02 Tr. Vol. 6 at 10-11.) She stated that a comparable property analysis is accomplished by comparing a target area and a control area. The target area would be the residential and agricultural area that is located closest to the Kankakee Landfill. The control area would be the residential and agricultural areas located outside any area of influence of the Kankakee Landfill. (11/19/02 Tr. Vol. 6 at 11.)

Ms. McGarr selected target and control areas which are located in the same general area in the County, and which have the same tax rates, same school districts and similar amenities. The only general difference between the two is the proximity to the Kankakee Landfill. (11/19/02 Tr. Vol. 6 at 51.) She testified that she collected data for her study from Township Assessment Offices and reviewed information from the Multiple Listing Service ("MLS") of Northern Illinois. (11/19/02 Tr. Vol. 6 at 11.) With this data she determined and compared annual rates of appreciation, average sale prices and average holding times. (2003 App. at Crit. 3b.)

Ms. McGarr considered two farmland sales and three residential sales that occurred after November 2002. The additional sales data further supported her opinion. (1/12/04 Tr. Vol. 2 at 33, 35-36.)

Ms. McGarr performed three separate studies as part of her evaluation, including a residential study for the Kankakee Landfill, an agricultural (or farmland) study for the Kankakee Landfill, and a residential study for the Settler's Hill Landfill located in Kane County. (11/19/02 Tr. Vol. 6 at 12, 16 and 19.)

The results of her first study showed that there were 13 sales in the Target Area during the 4-year period. (2003 App. at Crit. 3b, p. 4, 6.) The homes had an average sale price of \$117,265, and an average lot size of 3.62 acres. There were 12 homes sold in the Control Area during the 4-year period. The homes had an average lot size of 0.77 acres, and an average sale price of \$93,573. (2003 App. at Crit. 3b, p. 6.) She testified that there were two sales that occurred in the Target Area that were very proximate to the Kankakee Landfill and sold for higher than the average price in the area: one built in 1997 and sold in 2000 for \$223,000 on six

acres of land, and one built in 1993 and sold in 2000 for \$260,000 on two acres of land.

(11/19/02 Tr. Vol. 6 at 13-14.)

To compare the Target and Control Area site sizes for her first study, Ms. McGarr adjusted the sale price for the variation in lot sizes, which resulted in a negative adjustment of \$24,064, and then an adjusted average sale price of \$95,890. (2003 App. at Crit. 3b, p. 8.) She also testified that she looked at the entire Kankakee market from the MLS since January 2000, which showed 200 single-family home sales, ranging in sale price from \$11,000 to \$252,500, with an average sale price of \$79,942. (2003 App. at Crit. 3b, p. 8.) Ms. McGarr testified that the data from the first residential study of the Kankakee Landfill indicated that the average sale price in the Target Area was higher than in the Control Area and the general Kankakee area. It also reflected that the Kankakee Landfill had not kept new residential development from occurring. (11/19/02 Tr. Vol. 6 at 16.)

In Ms. McGarr's second study, she testified that she evaluated the effect of the Kankakee Landfill on surrounding farmland property values. (11/19/02 Tr. Vol. 6 at 16.) During the first 5-year period, the average sale price for farmland in the Target Area was \$1,931 per acre, with an average acreage of 40 acres per sale. The average sale price in the Control Area was \$2,018 per acre, with an average acreage of 93 acres per sale. In the second 5-year period, Ms. McGarr stated that the average price for farmland in the Target Area increased to \$3,089 per acre, with an average of 23 acres per sale. In the Control Area, the average sale price was \$2,359 per acre, with an average of 18 acres per sale. (2003 App. at Crit. 3b, p. 9.) The data indicated that farmland properties surrounding the Kankakee Landfill experienced a greater increase in average property value than property in the Control Area. (11/19/02 Tr. Vol. 6 at 18; 2003 App. at Crit. 3b, p. 9.)

Ms. McGarr also testified about her study of the Settler's Hill Landfill in Kane County, Illinois. She selected Settler's Hill because it: (i) has been operated by WMII for 20 years; (ii) was located directly adjacent to an existing landfill; (iii) was located, at its inception, in a rural area of Kane County; and (iv) was located near the Fox River, where recreational facilities existed. Ms. McGarr testified that Settler's Hill was similar in size (approximately 300 acres) and daily volumes to that of the Expansion. (11/19/02 Tr. Vol. 6 at 19-20.)

In total, Ms. McGarr evaluated 922 sales in her residential study of the impact on property values of the existing Settler's Hill Landfill over the 20-year development period of the facility. She testified "the data doesn't reflect any negative or measurable discernible impact on property values as a result of proximity to the landfill. And ...there's no measurable impact in annual rates of appreciation." (11/19/02 Tr. Vol. 6 at 22.)

Ms. McGarr testified that her evaluation of sales in the three studies indicated that the existing landfills had no negative impact on property values. (11/19/02 Tr. Vol. 6 at 24.)

Ms. McGarr was the only witness to present data, prepare a report and testify regarding the second part of Criterion (iii). No data, facts or opinion were presented to rebut her conclusion that the Expansion was located so as to minimize the effect on the value of surrounding property.

3. Criterion (vi): The Traffic Patterns to or from the Expansion are Designed to Minimize Impact on Existing Traffic Flows

(a) Mr. Stephen Corcoran

Mr. Stephen Corcoran testified regarding Criterion (vi) and the written report that sets out the analysis and conclusions of the traffic study. (11/19/02 Tr. Vol. 5 at 21.)

Mr. Corcoran's analysis of the traffic impact first consisted of an evaluation of existing roadways and actual field conditions. This included performing a number of traffic counts along

the surrounding roadways. (11/19/02 Tr. Vol. 5 at 21.) An inventory of existing roadways was performed to determine number of lanes, traffic controls, speed limits and jurisdiction. (11/19/02 Tr. Vol. 5 at 21-22.) As part of the second phase of his analysis, Mr. Corcoran determined projected traffic from the Expansion, including number of vehicles and anticipated directional distribution. (11/19/02 Tr. Vol. 5 at 22.) Mr. Corcoran combined the projected traffic from the Expansion with existing roadway traffic and conditions to evaluate how the roadway system would operate. (11/19/02 Tr. Vol. 5 at 22.) As part of the last phase of the study of existing traffic flows and projected Expansion traffic, a gap study was performed, sight distance was evaluated, access drive (entrance) geometrics were reviewed, on-site stacking conditions were considered, and recommended improvements to the design of the Expansion access drive were identified. (11/19/02 Tr. Vol. 5 at 30-34; 1/14/04 Tr. Vol. 7 at 50-65.)

The Expansion will be served via a single access drive off of U.S. Route 45/52, which is under the jurisdiction of the Illinois Department of Transportation ("IDOT"). The Kankakee Landfill has separate inbound and outbound lanes. As part of the Expansion, the existing access drives will be replaced by any upgraded, single access drive that will be located at the approximate crest of a hill. (11/19/02 Tr. Vol. 5 at 29-30, 33; 2002 App. at Crit. 6, p. 3.)

In the vicinity of the Expansion, the speed limit on U.S. Route 45/52 is 55 miles per hour (mph). U.S. Route 45/52 is a two-lane north-south highway, providing regional access from the Interstate 57 interchange located approximately 3.2 miles to the north, and carrying an approximate existing two-way volume of 5,200 vehicles per day. (2002 App. at Crit. 6, p. 3, 5; 11/19/02 Tr. Vol. 5 at 24.) Existing traffic traveling along U.S. Route 45/52 during the morning (7:00-8:00 a.m.) and evening (4:30-5:30 p.m.) peak hours was 368 vehicles and 435 vehicles, respectively. Along 6000 South Road at its intersection with U.S. Route 45/52, it was

determined that there were approximately 5 to 15 vehicles traveling during the morning and evening peak hours. (11/19/02 Tr. Vol. 5 at 24.)

Mr. Corcoran testified that the capacity of U.S. Route 45/52 is approximately 1,200 vehicles per hour in both the northbound and southbound directions. Based on this information and the existing traffic count data, Mr. Corcoran testified that U.S. Route 45/52 is operating at approximately 37 percent of its capacity. (11/19/02 Tr. Vol. 5 at 25.)

Mr. Corcoran testified that the Expansion will have an estimated total of 600 trips per day, or 300 vehicles into and 300 vehicles out of the site.⁶ Approximately 95-100 percent of the Expansion traffic will be traveling to and from the north on U.S. Route 45/52, utilizing the Interstate 57 ("I-57") interchange. (11/19/02 Tr. Vol. 5 at 26.) With the addition of Expansion generated traffic, it is estimated that the capacity on U.S. Route 45/52 will be operating at 41 percent of its capacity. (11/19/02 Tr. Vol. 5 at 28.)

Peak traffic from the Expansion is expected to occur between 12:00 noon and 1:00 p.m. The Expansion peak hours do not coincide with the street peak hours on U.S. Route 45/52, which occur from 7:00 - 8:00 a.m. and 4:30 - 5:30 p.m. (11/19/02 Tr. Vol. 5 at 27-28.) This is significant because it minimizes any impact from the Expansion during street peak hours. (11/19/02 Tr. Vol. 5 at 28.)

School buses use U.S. Route 45/52 between I-57 and 6000 South Road during the morning peak hour (7:00-8:00 a.m.) and mid-afternoon period (3:00-3:45 p.m.) for U.S. Route 45/52. (1/16/04 Tr. Vol. 10 at 12.) They do not coincide with the Expansion peak hour, 12:00

⁶ The projected number of trips to be generated by the Expansion does not include any traffic already generated by the Kankakee Landfill. As such, the analysis evaluates the traffic impact as if the Expansion were an entirely new operation, without taking into account the fact that Expansion generated traffic actually reflects an incremental increase over existing facility traffic. In this manner, the analysis is conservative, in that it overstates any impact by assuming that all Expansion traffic is new traffic. (2002 App. at Crit. 6, p. 7.)

noon-1:00 p.m. (11/19/02 Tr. Vol. 5 at 28.) School buses using U.S. Route 45/52 counted in January 2002 were considered in Mr. Corcoran's review, and he determined that there were no potential conflicts between the bus schedules and the anticipated traffic patterns from the Expansion. (11/19/02 Tr. Vol. 5 at 27, 102-103; 1/14/04 Tr. Vol. 7 at 23-25, 44-46.) The school bus count data was included in the 2003 Application. (2003 App. at Crit. 6.)

In accordance with Ordinance requirements defined in Section 4(2)-Design Standards, Mr. Corcoran testified that there were more than adequate gaps to serve the Expansion traffic. (11/19/02 Tr. Vol. 5 at 30; 1/14/04 Tr. Vol. 7 at 57-60.) Mr. Corcoran testified that the minimum gap required was based first on the IDOT minimum requirement of 11.5 seconds, and then that number was adjusted for a semi-trailer pulling out onto a roadway and accelerating to 80 percent of the posted speed, resulting in a gap requirement of 15.5 seconds. The 15.5 seconds is greater than the minimum required by IDOT. (1/14/04 Tr. Vol. 7 at 57.)

In addition, the upgraded Expansion access drive will include a separate southbound left turn lane and a separate northbound right turn lane, to accommodate slowing vehicles. Wider radii will be provided at the entrance. The plan of operations provides for sufficient and safe vehicular movement in and around the site. (11/19/02 Tr. Vol. 5 at 33-34; 1/14/04 Tr. Vol. 7 at 50-55.) Even though the existing entrance configuration operates at a Level of Service of A or B ("LOS A" or "LOS B") with Expansion generated traffic considered, the upgraded Expansion access drive configuration will function almost exclusively at a LOS A during the street peak hours. One movement will operate at a LOS B. The minimum LOS accepted by IDOT is LOS D. (2002 App. at Crit. 6, p. 13.)

A sight distance analysis was performed at the Expansion access drive. (11/19/02 Tr. Vol. 5 at 22.) The site distance evaluation was based on the guidelines published by the

American Association of State Highway and Transportation Officials ("AASHTO") for stopping site distance criteria, based upon a maximum posted speed limit of 55 mph and a higher travel speed of 60 mph. According to the AASHTO guidelines, the stopping sight distance required along U.S. Route 45/52 for speeds of 60 mph is 570 feet. The actual field conditions were measured and it was determined that the available site distance from the Expansion access drive exceeds 570 feet in both directions. (2002 App. at Crit. 6 at 14.)

Based upon existing traffic volumes, Expansion peak hour traffic occurring during street non-peak hours, ample capacity on U.S. Route 45/52, adequate traffic gaps to accommodate turning vehicles and sight distance that exceeds regulatory standards, Mr. Corcoran concluded that the traffic patterns to and from the Expansion have been designed to minimize impact on existing traffic flows. (11/19/02 Tr. Vol. 5 at 34.)

(b) Mr. Brent Coulter

Objector Watson presented one witness, Mr. Brent Coulter, to testify concerning Criterion (vi). Mr. Coulter is a self-employed traffic engineer. (1/16/04 Tr. Vol. 10 at 5.) Mr. Coulter opined that the Expansion does not "minimize traffic impact on the surrounding area." (1/16/04 Tr. Vol. 10 at 7-8.)

Mr. Coulter gave three reasons for his opinion. The first was the impact of the Expansion on school bus operations on U.S. Route 45/52. The second was the actual design of the intersection improvements at the Expansion access drive. The third was "a sort of general comment or concern with the criterion itself which restricts our evaluation only to impact on existing traffic flow and the interpretation of what is existing." (1/16/04 Tr. Vol. 10 at 10.)

Mr. Coulter expressed a concern about the possibility that an inattentive driver may run his vehicle into the back of a slow or stopped school bus along U.S. Route 45/52. (1/16/04 Tr.

Vol. 10 at 12-13, 30-31.) He explained that "my concern is not specifically pointing a finger at truck drivers in general and saying that they're all inattentive, but that certainly is a reality of anybody driving a vehicle on a highway..." (1/16/04 Tr. Vol. 10 at 30-31.)

Mr. Coulter also expressed "criticisms and concerns" with the design of the improvements at the Expansion access drive. (1/16/04 Tr. Vol. 10 at 14.) He agreed that the "schematic" provided in the Criterion (vi) report was a "conceptual as opposed to a specific construction design with appropriate details," and he concurred with WMII's recommendation for adding northbound and southbound turn lanes at the entrance to the Expansion, which include turn lane storage and tapers, acceleration and deceleration lanes. (1/16/04 Tr. Vol. 10 at 14, 33.) His "criticisms and concerns" are with design dimensions. (1/16/04 Tr. Vol. 10 at 14-21.)

However, Mr. Coulter was not aware that an intersection design study had been provided to IDOT and approved, detailing each of the construction details of the proposed intersection, including dimensions. (1/16/04 Tr. Vol. 10 at 33-34, 36-37; 1/14/04 Tr. Vol. 7 at 61.) He admitted that IDOT's approval is often not acceptable to him. (1/16/04 Tr. Vol. 10 at 37.)

Mr. Coulter's other concern about the access drive and Expansion entrance design related to the selection of the sight distance standard to be applied. (1/16/04 Tr. Vol. 10 at 17.) Mr. Coulter states that the Criterion (vi) analysis utilized a minimum stopping sight distance of 570 feet, which he concurs is correct based on the design speed of the road, but opines that the minimum site distance required is inadequate for the conditions. Mr. Coulter failed to recognize that the sight distance analysis concluded that according to "AASHTO standards, the stopping sight distance along US 45/52 for speeds of 60 mph is to be 570 feet. Field observations and measurements conclude that the sight distance exceeds 570 feet in either direction of the proposed Subject Site access drive." (2002 App. at Crit. 6, p. 14) (emphasis supplied.)

In fact, Mr. Coulter acknowledged that, while standing at the location of the Expansion access drive and looking northbound on U.S. Route 45/52, he could almost see to I-57, over three miles away. (1/16/04 Tr. Vol. 10 at 36.) (2002 App. at Crit. 6, p. 3.) Mr. Coulter did not verify the exact site distance looking southbound on U.S. Route 45/52 from the Expansion access road, but did not deny that it was at least 1,100 feet. (1/16/04 Tr. Vol. 10 at 36.)

Finally, Mr. Coulter believed that WMII should look ahead and consider future traffic which was expected to be generated in the area. (1/16/04 Tr. Vol. 10 at 21-22.) He did not agree to the specific wording of Criterion (vi), which limits the evaluation to existing traffic flows. (1/16/04 Tr. Vol. 10 at 22.) He believes in "a more liberal interpretation" of the statute, and believes WMII should have considered future traffic in its analysis, upwards of 5-20 years, and that its report was insufficient for failing to do so. (1/16/04 Tr. Vol. 10 at 22-23, 38-41.)

B. Mr. Harrison's Improper *Ex Parte* Communications with County Board Members

In an unprecedented lobbying effort to influence and determine the local siting decision, Mr. Harrison⁷ conducted a calculated and aggressive campaign intended to pressure and persuade County Board members to vote against the 2003 Application. He was determined not to go "back to work" until his mission was "resolved." (4/7/05 Tr. at 221:16-18.) As discussed herein, Mr. Harrison engaged in a variety of improper tactics to sway the decision of County Board members prior to the March 17 Decision, including harassment and false claims that the State's Attorney, Edward Smith, authorized his *ex parte* contacts. Mr. Harrison applied direct political pressure by threatening to prevent the re-election of County Board members who

⁷ Although the record before the IPCB demonstrates that Mr. Harrison was the most aggressive opponent of the Expansion to engage in improper *ex parte* communications with County Board members, this brief includes significant improper *ex parte* contacts by persons other than Mr. Harrison. See Summary of *Ex Parte* Communications to County Board Members by Persons Other Than Bruce Harrison, attached as Appendix B.

refused to vote against the Expansion. In addition to harassment, false statements and threats, Mr. Harrison provided County Board members with information, both orally and in writing, in support of his opposition to the Expansion. The negative information that Mr. Harrison discussed with and disseminated to County Board members directly related to the statutory criteria that were denied. In fact, the petitions he circulated for signature and presented to County Board members were expressly to oppose out-of-county garbage and the landfill. (PCB 4/6/05 Tr. at 182:17-24; 183:1-8.)

Neither Mr. Harrison, nor anyone else, had engaged in such tactics in connection with the 2002 Application.⁸ Not surprisingly, while the 2002 Application obtained overwhelming County Board approval, the 2003 Application was denied. Most of the County Board members who voted to approve the 2002 Application were contacted by Mr. Harrison in connection with the 2003 Application, and many reversed their vote on the criteria that Mr. Harrison and other opponents focused on in their campaign to defeat the 2003 Application.

1. The Harrison-Watson-Keller Connection

Mr. Harrison has a significant relationship with Objector Watson and Mr. Keller. Mr. Harrison is not only friends with Objector Watson and Mr. Keller (PCB 4/6/05 Tr. at 114:2-9), he lived on both of their respective properties. (PCB 4/6/05 Tr. at 110:7-24; 111-112:1; 121:14-24; 122:1-24; 123:1-2.) Mr. Harrison, like Mr. Keller, worked for United Disposal without compensation. (PCB 4/6/05 Tr. at 56:17-24; 57:1-11; 97:10-24; 98-104:1-19; 109:20-24; 113:8-24; 114:1.) Mr. Harrison also worked in support of Objector Watson's candidacy for County Board member in November 2004. (PCB 4/7/05 Tr. at 26:21-24; 27:1-10.) Mr. Harrison, Mr.

⁸ See, e.g. (PCB 4/6/05 Tr. at 44:1-22; 63:16-17; 65:7-11; 79:6-12; 225:13-20; 250:4-7); (PCB 4/7/05 Tr. at 48:4-13; 80:19-24; 81:1-3; 100:19-24; 120:5-15; 230:13-24; 231:1-11.)

Keller and Objector Watson are in continuous communication with each other.⁹ (IPCB 4/6/05 Tr. at 102:6-8; 118:18-24; 119:1-8.)

Mr. Harrison, Mr. Keller and Objector Watson actively and jointly worked to oppose the 2003 Application, discussing their opposition with each other. (IPCB 4/6/05 Tr. at 109:20-22; 114:10-13.) Mr. Keller and Objector Watson discussed notice. (IPCB 4/6/05 Tr. at 109:6-14.) Mr. Keller let Mr. Harrison use his telephone to contact County Board members. (Waskosky 3/30/05 Tr. at 23.)

As part of their campaign, a list of County Board members was obtained. (IPCB 4/6/05 Tr. at 132:21-24; 133:1-21.) Mr. Harrison initiated contact with at least 18 of the members on the list. Mr. Harrison also distributed the "No dump. No Chicago garbage" signs that were located throughout the community prior to the March 17 Decision, and that were used by the picketers outside of the County building on the day of the vote. Mr. Keller placed this sign in his yard. (IPCB 4/6/05 Tr. at 144:17-24; 145:1-22; 179:6-24; 180:1-6.) All three of them appeared at the County Board meeting on March 17, 2004. (IPCB 4/6/05 Tr. at 142:1-17; 144:3-5; 144:10-16.) They also appeared together at the County Board meeting the day on which the Motion to Renew Consideration was voted on. (IPCB 4/6/05 Tr. at 149:9-23.)

After the March 17 Decision, Mr. Keller sent thank you notes to County Board members who voted to deny the 2003 Application. Objector Watson and Mr. Harrison encouraged neighbors to also send thank you notes to County Board members who voted to deny the 2003 Application. (IPCB 4/6/05 Tr. at 147:20-24.)

⁹ See, *infra*, Note 12.

Mr. Harrison's interests were aligned with Objector Watson and Mr. Keller to defeat the 2003 Application. As evidenced below, Mr. Harrison worked aggressively to further those interests and persuade County Board members to oppose the Expansion.

2. Harrison's *Ex Parte* Contacts with County Board Members

Mr. Harrison initiated contact with at least 18 County Board members to discuss and advocate his opposition to the Expansion.¹⁰ His methods were deceitful and heavy-handed. They included (a) physically appearing without notice at the County Board member's place of work, home or vehicle and demanding their personal attention, (b) ignoring County Board member concerns that they should not talk to him by lying about the State's Attorney having approved such communications, (c) persisting in his efforts to talk to and confront County Board members despite being told that the discussion should end, and (d) making express and implied threats directed to County Board members who did not vote against the Expansion. While these contacts were not solicited by County Board members, they contained enough information and arguments on the merits of the 2003 Application to have influenced or prejudiced the County Board members on a pending adjudicative matter.

In his zeal to get votes, Mr. Harrison displayed no regard for personal safety or privacy. For example, Mr. Harrison approached County Board member Jamie Romein in a United Disposal vehicle driven by Objector Watson, coming up to him unannounced during his lunch break at a construction site. Mr. Harrison began discussing the Expansion. On a separate attempt, Mr. Romein was followed by Mr. Harrison in a vehicle driven by Objector Watson. At a stoplight, Mr. Harrison came up to

¹⁰ See Summary of *Ex Parte* Communications by Bruce Harrison with Kankakee County Board members, Appendix A.

Mr. Romein's vehicle and asked to get in. Under these unexpected and intimidating circumstances, and fearing an accident, Mr. Romein let Mr. Harrison into his vehicle. Mr. Harrison began discussing the Expansion and threatening that he had the power to run someone against Romein in the election. (IPCB 4/6/05 Tr. at 241:3-15; 242:3-16; 243:4-7; 245; 246; 247.)

In another instance, Mr. Harrison called County Board Lisa Latham Waskosky around 9:00 a.m. and awakened her. She works at night and sleeps during the day. (Waskosky 3/30/05 Tr. at 15:14-19; 19:11.) Knowing that Ms. Waskosky would be sleeping, Mr. Harrison appeared at her home two days later, unannounced, and without identifying himself, told her husband that he was there to talk to Ms. Waskosky "on official County business." (Waskosky 3/30/05 Tr. at 20:1-19.) After being awakened by her husband and going to the door, Mr. Harrison then announced himself and stated "here's the documents I promised you." (Waskosky 3/30/05 Tr. at 21:6-12.)

Mr. Harrison communicated with the following County Board members who voted to approve the 2002 Application: Ruth Barber, Karen Hertzberger, Mike LaGesse, Ed Meents, William Olthoff, Jamie Romein, Ralph Marcotte and Lisa Latham Waskosky. Mr. Harrison's principal contentions were that the County should not accept out-of-county waste, and that the Expansion was unsafe. (IPCB 4/6/05 Tr. at 181:20-24; 183:3-8; 317:6-11.) (Bertrand 4/14/05 Tr. at 15:4-24.) These arguments went to the very essence of Criteria (i), (ii), (iii) and (vi): the Expansion was not needed because the County should not be the "dumping ground" for Chicago waste, the Expansion was not safe and would depress property values, and the additional truck traffic from Chicago would create congestion and cause safety hazards.¹¹

¹¹ These arguments were also the subject of *ex parte* communications between other Expansion opponents and various County Board members. See Summary of *Ex Parte* Communications to County Board Members by Persons Other Than Bruce Harrison, Appendix B.

These eight County Board members considered the 2002 Application and the 2003 Application to be substantially the same. (IPCB 4/6/05 Tr. at 308:11-13; 309:5-10), (IPCB 4/7/05 Tr. at 49:17-18; 50:4; 81:13-16), (Waskosky 3/30/05 Tr. at 7:6-10; 8:1-11.) Without the actions of Mr. Harrison, they had voted to approve the 2002 Application. After being contacted by Mr. Harrison, they voted to deny the 2003 Application. They did so by rejecting the very criteria that Mr. Harrison had argued against: Criteria (i), (ii), (iii) or (vi), or a combination thereof. (IPCB 4/6/05 Tr. at 41:16-24; 42:1-5; 45:23-24; 46:1-24; 47:1-10; 225:21-24; 226:19-24; 227:1-24; 309:11-19), (IPCB 4/7/05 Tr. at 48:17-23; 51:1-11; 80:11-14; 83:6-23; 120:16-24; 122:11-13; 123:16-24; 124:1-4; 209:17-24; 212:2-14), (Waskosky 3/30/05 Tr. at 6:8-20; 8:16-24; 9:1-4.)

Mr. Harrison also contacted four County Board members who did not vote on the 2002 Application, namely, Kelly McLaren, Robert Scholl, Larry Gibbs and James Stauffenberg. He expressed his opposition to the Expansion and presented signed petitions of constituents who were allegedly opposed to the 2003 Application. Each of these County Board members voted to deny the 2003 Application, basing their denial on a rejection of Criteria (i), (iii) or (vi), or a combination thereof. (IPCB 4/6/05 Tr. at 208:7-12; 210:15-24; 211:1-11; 273:13-24; 274:1-9), (IPCB 4/7/06 Tr. at 62:5-17; 64:8-24; 65:1-2; 230:8-12; 233:22-24; 234:1)

Mr. Harrison's advocacy was not limited to persuading County Board members to vote against the Expansion based on his beliefs and arguments. In the more egregious contacts, Mr. Harrison made direct threats to several County Board members that if they did not vote against the 2003 Application, they would face severe opposition to re-election.¹²

¹² The evidence of these communications and threats were provided by the County Board members themselves. Mr. Harrison "disappeared" during the pendency of this appeal, and evaded service of deposition and hearing subpoenas so that he could avoid having to testify about his improper actions. During his disappearance, however, he monitored this appeal and continued his communications with Objector Watson, Mr. Keller and Mr. Runyon. (IPCB 4/6/05 Tr. at 119:6-24; 120-121:1-9; 124:11-24;

C. Ex Parte Letters and Telephone Calls to County Board Members

In addition to the efforts of Mr. Harrison, other opponents of the Expansion inundated County Board members with letters and telephone calls opposing the 2003 Application. As with in-person communications, the letters urged the County Board members to vote against the Expansion because there was no need to accept out-of-county waste, it was unsafe, it would negatively affect property values, and the increase in truck traffic would be dangerous.¹³ Almost all of the letters contained explicit threats against the re-election of any County Board member that voted in favor of the 2003 Application. These *ex parte* communications were directly related to Criteria (i), (iii) and (vi), the three rejected criteria on which the County Board based its 2003 Decision.

D. County Board Members Refused to Explain the Reasons for Their Denial

County Board members who approved the 2002 Application denied, without explanation, the 2003 Application. There was no competent or relevant evidence presented in this record that supports their denial. As a result, WMII sought to discover the reasons or basis for the change. The County resisted this request on the ground that it invaded the mental processes of the decisionmaker. However, such inquiry is appropriate where, as here, there were no factual findings explaining the decision. Citizens to Preserve Overton Park, Inc. v. Volpe, 41 U.S. 402, 420, 92 S.Ct. 814 (1971).

125-131:1-19; 192:16-24; 193-194:1-9.) The detailed description of Mr. Harrison's communications with County Board members is set forth in the attached Summary of *Ex Parte* Communications by Bruce Harrison With Kankakee County Board Members. See Appendix A.

¹³ Summary of *Ex Parte* Communications to County Board Members by Persons Other Than by Bruce Harrison attached as Appendix B.

The IPCB Hearing Officer denied WMII's Motion to Compel (Hearing Officer Order, slip op. at 4-5 (April 5, 2005)), and precluded WMII from inquiring into the basis for the denial at the IPCB hearing, even through an offer of proof.¹⁴ (IPCB 4/5/05 Tr. 19-20:1-23.) The Hearing Officer's rulings were erroneous. See City of Rockford v. Winnebago County, No. PCB 87-92, slip op. at 9 (November 19, 1987) citing Citizens to Preserve Overton Park, Inc. v. Volpe, 41 U.S. 402, 91 S.Ct. 814 (1971); 35 Ill. Adm. Code §101.616 (a), (b). They prevented a determination of whether the March 17 Decision was properly and validly made, and thus whether the proceedings were fundamentally fair. Sokaogan Chippewa Community v. Babbitt, 961 F.Supp. 1276, 1279-81 (W.D. Wis. 1997). By virtue of the County's objection to providing the basis for the March 17 Decision, and in the absence of any competent evidence supporting that Decision, one may only reasonably conclude that the County's reversal of the 2003 Decision was determined by the *ex parte* advocacy of Mr. Harrison and other objectors. Indeed, the 2003 Decision was not supported by any credible evidence in the record.

III. ARGUMENT

A. THE COUNTY BOARD'S DENIAL OF THE 2003 APPLICATION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE

The County Board denied the 2003 Application by determining that compliance with Criterion (i) (need), Criterion (iii) (incompatibility and effect on property value) and Criterion (vi) (traffic) had not been shown. These findings were made 14 months after the County Board determined that WMII had proved compliance with each of the statutory criteria for the same facility at the same location. There was no evidence presented in the 2003 Application record that would support a reversal of the County Board's findings on Criteria (i), (iii) and (vi). The

¹⁴ WMII was allowed to put into the record the questions it sought to ask County Board members. (IPCB 4/6/05 Tr. 65:18-20; 66:6-8; 71:4-24; 72-73:1-8.)

only facts that explain the County Board's reversal relate to the improper advocacy and political pressure directed by Mr. Harrison and other objectors to members of the County Board, which actions did not occur in the 2002 Application. As such facts are not a proper basis for deciding a local siting request, the County Board's findings that Criteria (i), (iii) and (vi) were not met are against the manifest weight of the evidence.

In reviewing a local siting decision, this Board determines whether that decision is against the manifest weight of the evidence. Land and Lakes Co. v. Pollution Control Board, 319 Ill.App.3d 41, 48, 743 N.E.2d 188, 193 (3d Dist. 2000). A decision is against the manifest weight of the evidence if an opposite conclusion is apparent or the decision maker's findings "appear to be unreasonable, arbitrary, or not based upon the evidence." Webb v. Mount Sinai Hospital, 347 Ill.App.3d 817, 807 N.E.2d 1026, 1034 (1st Dist. 2004) (citing Freese v. Buoy, 217 Ill.App.3d 234, 244, 576 N.E.2d 1176 (1991)). The findings of the County Board must rest upon competent evidence and be supported by substantial proof. Gumma v. White, 345 Ill.App.3d 610, 803 N.E.2d 130, 135 (1st Dist. 2003). While it may not reweigh the evidence, this Board must accept uncontradicted facts as true "notwithstanding the existence of contrary unsupported allegations." Webb, 347 Ill.App.3d at 826, 807 N.E.2d at 1034 (citing Flannery v. Lin, 176 Ill.App.3d 652, 658, 531 N.E.2d 403 (1988)). This Board's sole function is to determine whether the County Board's decision is just and reasonable based on the evidence presented. Gumma, 345 Ill.App.3d at 615, 803 N.E.2d at 135.

If there is competent evidence that fairly supports the County Board's action, the decision is not against the manifest weight of the evidence. Gumma, 345 Ill.App.3d at 615, 803 N.E.2d at 135. However, the mere existence of some evidence that conflicts with applicant's proof is not sufficient to support the County Board's denial. See A.R.F. Landfill v. Lake County, No. PCB

87-51, slip op. at 21-24 (October 1, 1987) (County Board's denial of Criterion (iii) was against the manifest weight of the evidence despite testimony in the record asserting that proposed expansion would negatively impact property value.) The evidence necessary to support a county board decision must be probative, credible and relevant to the criteria at issue.

Where, as here, there is no competent or relevant evidence that fairly supports the County Board's denial of Criteria (i), (iii) and (vi), the County Board's denial is against the manifest weight of the evidence and must be reversed. See Gumma, 345 Ill.App.3d at 614-615, 618-619, 803 N.E.2d at 134-35, 137-38 (evidence presented to support suspension of plaintiff's driver's license held insufficient, and reversal of administrator agency's suspension order as against manifest weight of the evidence affirmed).

WMII presented prima facie proof for each of the statutory criterion. The RPC and the County Board found the proof sufficient and that compliance with all of the criteria was established. (2003 Recommendation for Approval, p. 7; 2003 Decision, p. 7) WMII presented the same prima facie proof in the 2003 Application. This proof was neither rebutted nor contradicted by any competent or substantial evidence. The RPC found the proof sufficient and that compliance with the statutory criterion was established. However, the County Board determined that Criteria (i), (iii) and (vi) were not met.

These findings denying Criteria (i), (iii) and (vi) are against the manifest weight of the evidence. See Industrial Fuels & Resources/Illinois, Inc. v. Pollution Control Board, 227 Ill.App.3d 533, 549, 592 N.E.2d 148, 157-159 (1st Dist. 1992) (siting denial reversed where no evidence substantiating risk or contradicting applicant's prima facie showing was presented). The County Board's decision ignored WMII's prima facie proof, was contrary to the findings of the RPC, and was against the manifest weight of the evidence.

1. Criterion (i) Was Established

Need is established where it is shown that a proposed facility is reasonably required by the waste needs of the service area identified by the applicant, taking into account the area's waste production and waste disposal capability. File v. D&L Landfill, 219 Ill.App.3d 897, 597 N.E.2d 1228 (5th Dist. 1991). Objections to the size of the service area or opposition to the receipt of out-of-county waste are not proper reasons to deny the need criteria. See Metropolitan Waste Systems v. Pollution Control Board, 201 Ill.App.3d 51, 558 N.E.2d 785, 787 (2d Dist. 1990) (applicant determines service area).

Ms. Smith was the only witness to testify regarding Criterion (i). No conflicting or contrary data was presented. Her methodology was not challenged, much less impeached. Her opinion was neither contradicted nor disproved. Thus, her conclusion that the service area has a disposal capacity shortfall ranging from 49 million to 132 million tons was un rebutted.

The County Board's denial of Criterion (i) was based on no competent evidence. It appears to have been based on the expressed opposition to the receipt of out-of-county waste. This is not a relevant or proper basis to determine that a facility is not needed. The County Board's decision was contrary to the un rebutted expert testimony establishing need. A result opposite the County Board's decision is plain and indisputable, and that decision should be reversed. Rochelle Waste Disposal v. City Council of the City of Rochelle, No. PCB 03-218, slip op. at 25 (April 15, 2004).

2. Criterion (iii) Was Established

Criterion (iii) is met when the applicant demonstrates that it has done or will do what is reasonably feasible to minimize incompatibility or effect on surrounding property values. File, 579 N.E.2d at 1236. Criterion (iii) does not require that the effects of the Expansion on the

character and value of surrounding property be eliminated, only that those effects be minimized.

Clean Quality Resources, Inc. v. Marion County Board, No. PCB 91-72, slip op. at 13 (August 26, 1991) (citing Clutts v. Beasley, 185 Ill.App.3d 543, 541 N.E.2d 844 (5th Dist. 1989)).

Criterion (iii) calls for a proposal to minimize effects – but it does not allow for rejection simply because there might be some reduction in value. Watts Trucking Service, Inc. v. City of Rock Island, No. PCB 83-167, slip op. at 7 (March 8, 1984). The proposal called for by Criterion (iii) is satisfied by a plan to install screening berms, utilize setbacks and provide landscaping at the site. A.R.F. Landfill, Inc. v. Lake County, No. PCB 87-51, slip op. at 24 (October 1, 1987); Waste Management of Illinois, Inc. v. McHenry County Board, No. PCB 86-109, slip op. at 23 (December 5, 1986).

Mr. Lannert conducted a comprehensive study of the surrounding area. Agricultural fields and open space comprise 94% of that area. (11/18/02 Tr. Vol. 3 at 60.) Scattered homesites are situated on properties comprising less than 4% of that area. (2002 App. at Crit. 3a, p. 7.) A landfill may reasonably be located in such an area. McHenry County Board, slip op. at 23.

In addition, WMII has proposed an exterior landscape screening plan. (2002 App. at Crit. 3a, p. 19-20, Sheets 11-12.) The plan proposes the (1) installation of earth screening berms on the Expansion's western boundary to provide optimum benefit for the scattered residences along U.S. Route 45/52; (2) preservation of existing trees and vegetation to enhance screening and the visual transition of the landform into existing landscape; (3) installation of plant material on earth berms to enhance screening; and (4) landscaping of the Expansion entrance with ornamental shrubs, native plant materials and other plantings to emulate natural ecosystems and provide screening and buffer. (2002 App. at Crit. 3a, p. 19-20, Sheets 11-12.) A similar plan has

been determined to satisfy Criterion (iii), despite the introduction of conflicting and contrary testimony. McHenry County Board, slip op. at 22-23.

In her study of the Kankakee Landfill, Ms. McGarr evaluated 225 single family home sales and 472 agricultural sales. (2003 App. at Crit. 3b, p. 4.) She determined that the Kankakee Landfill has not had a negative impact on the value of surrounding property. (2003 App. at Crit. 3b, p. 8-11.) She also determined that the Kankakee Landfill has not deterred new residential development in the immediate vicinity. (2003 App. at Crit. 3b, p. 8.) Moreover, her study of the Settler's Hill Landfill in Kane County found no detrimental influence on surrounding property values. (2003 App. at Crit. 3b, p. 16-17.)

Ms. McGarr's testimony was not rebutted. In addition, it established more than Criterion (iii) requires. While Criterion (iii) requires only that effect on property value be minimized, Ms. McGarr demonstrated that the Expansion will have no measurable negative effect. (2003 App. at Crit. 3b, p. 8, 11, 16-17.) Where, as here, a showing of no adverse effect has been made, the criteria has been satisfied and any finding to the contrary is against the manifest weight of the evidence. See Clean Quality Resources, slip op. at 14 (where applicant's expert testified that property values would remain unchanged and facility would be landscaped, County Board's denial of Criterion (iii) was against manifest weight of the evidence, notwithstanding testimony that surrounding property value would substantially decrease); A.R.F. Landfill, slip op. at 21-24 (where applicant's expert stated that proposed expansion would have minimal (0-5%) effect on values of surrounding properties, and that landscaping plan would be implemented, county board's denial of Criterion (iii) was against the manifest weight of the evidence, notwithstanding testimony that facility would have negative impact on surrounding property value).

There is no evidence in this record to support the County Board's denial of Criterion (iii). Specifically, there was no evidence presented that a landfill could not reasonably or properly be located in this area. A.R.F. Landfill, slip op. at 24. In fact, WMII presented a comprehensive study of the area and potential impact on property values which established that there would be no detrimental influence. A.R.F. Landfill, slip op. at 24. Moreover, WMII has proposed an extensive landscaping plan to minimize any effect. McHenry County Board, slip op. at 23.

This record demonstrates that WMII has done or will do what is reasonably feasible to minimize any incompatibility or effect on surrounding property value. File, 579 N.E.2d at 1236. The County Board's finding to the contrary is wholly unsupported in this record and against the manifest weight of the evidence. A.R.F. Landfill, slip op at 24; McHenry County Board, slip op. at 23.

3. Criterion (vi) Was Established

Criteria (vi) is satisfied where traffic patterns to or from the Expansion have been proposed so as to minimize impact on existing traffic flows. CDT Landfill Corporation v. City of Joliet, No. PCB 98-60, slip op. at 19 (March 5, 1998). Hence, if the traffic patterns or vehicle routing proposed are shown to minimize impact on existing traffic flows when compared to other available routes, the criterion is met.

The issue is not whether there will be negative impact, increased traffic volumes, traffic noise, dust or driver negligence. Fairview Area Citizens 555 N.E.2d at 1187. The issue is not whether there will be future traffic flows or development that might be affected by the Expansion. Waste Hauling, Inc. v. Macon County Board, No. PCB 91-223, slip op. at 16-17 (May 7, 1992). The issue is not whether the evidence establishing Criterion (vi) was unopposed or uncontradicted. See Waste Hauling, slip op. at 16-17 (County's denial of Criterion (vi)

reversed despite opposing testimony presented by township road district); A.R.F. Landfill, slip op. at 21-24 (County's denial of Criterion (iii) reversed notwithstanding testimony that proposed facility would negatively impact property value). The issue is whether the traffic patterns proposed minimized impact on existing traffic movements.

The written report submitted by Metro Transportation and the testimony of Mr. Corcoran established that the traffic patterns designed for the Expansion will minimize impact on existing traffic flows. (2002 App. at Crit. 6; 11/19/02 Tr. Vol. 5 at 16-148; 1/14/04 Tr. Vol. 7 at 9-89.) Indeed, the RPC so found. (2004 Recommendation for Approval, p. 5-6)

The County Board's denial of Criterion (iii) was based on no relevant or sufficient evidence. It appears to have been based on a concern about an increased volume of traffic due to out-of-county waste. Such concerns are not proper considerations in deciding whether Criterion (vi) was met. Metropolitan Waste Systems, 558 N.E.2d at 787; Fairview Area Citizens, 555 N.E.2d at 1187; Waste Hauling, slip op. at 16-17.

Similarly, the testimony of Mr. Coulter is also insufficient to support the County Board's denial. Mr. Coulter's principal concerns did not properly address the standards relevant to an evaluation of Criterion (vi). He stated his concern about the impact of the Expansion on school bus operations, pointing out that inattentive truck drivers might run their vehicles into the back end of a school bus. (1/16/04 Tr. Vol. 10 at 12-13, 30-31.) Concerns about driver negligence are not relevant to Criterion (vi). Fairview Area Citizens, 555 N.E.2d at 1187.

Mr. Coulter also took issue with Criterion (vi) itself. (1/16/04 Tr. Vol. 10 at 22-23.) He believed that WMII should have considered future traffic (5-20 years) in its analysis and found WMII's written traffic evaluation insufficient for failing to do so. (1/16/04 Tr. Vol. 10 at 22-23.)

However, the Criterion (vi) does not refer to future traffic; it requires that the minimization of impact relate to existing, not future, traffic flows. 415 ILCS 5/39.2(a)(vi) (2002).

Mr. Coulter's third concern was with the proposed improvements to the access of the Expansion. However, his testimony on the facility access was neither accurate nor reliable. In providing his opinion on this issue, he considered a schematic design, not the actual intersection design prepared and submitted by Metro Transportation to the Illinois Department of Transportation. (1/16/04 Tr. Vol. 10 at 33-34.) The intersection design study included specific construction details including median width, length of deceleration lanes and shoulder dimensions. (1/16/04 Tr. Vol. 10 at 33-34.) Mr. Coulter stated that he was not aware that IDOT approved the design study, and added that it would not affect his concerns, because he often disagrees with IDOT. (1/16/04 Tr. Vol. 10 at 37.)

Mr. Coulter was also unaware of the actual sight distances from the Expansion access drive. While stating that this distance should be at least 1100 feet, he was unable or unwilling to confirm that these sight distances exceed 1100 feet in both directions on U.S. Route 45/52 at the Expansion access. (1/16/04 Tr. Vol. 10 at 35-36.)

The County Board's denial of Criterion (vi) is not supported by any relevant or credible evidence. A result opposite the County Board's decision is plain, and compelled by the prima facie showing of WMII. (2003 Recommendation for Approval, p. 9) The County Board's denial of Criterion (vi) is against the manifest weight of the evidence, and should be reversed. See CDT Landfill, slip op. at 19-20; Waste Hauling, slip op. at 16-17; Watts Trucking, slip op. at 7-8; Waste Management of Illinois, Inc. v. Village of Bensenville, No. PCB 89-28, slip op. at 14 (August 10, 1989) (village denial of Criterion (vi) reversed as against manifest weight of the

evidence where there was no evidence in record to contradict showing that impact on existing traffic was negligible).

B. THE COUNTY BOARD'S DENIAL WAS BASED ON *EX PARTE* COMMUNICATIONS AND OTHER CONSIDERATIONS OUTSIDE THE RECORD

The County Board denied the 2003 Application because the decision-making process was tainted by the improper *ex parte* communications between Mr. Harrison and County Board members. Mr. Harrison, together with other Expansion opponents, initiated *ex parte* communications in which they urged County Board members to deny the 2003 Application because (a) the County did not need a landfill for Chicago waste, (b) the Expansion would contaminate the environment and depress property values, and (c) the additional truck traffic bringing Chicago waste would create congestion and increase the risk of accidents. These communications, which were not made during the 2002 Application, resulted in the denial of Criteria (i), (iii) and (vi) of the 2003 Application.

Reversal of a local siting decision is required where fundamental unfairness has tainted the outcome. E&E Hauling, Inc. v. Pollution Control Board, 116 Ill.App.3d 586, 598, 606, 451 N.E.2d 555, 566, 571 (2d Dist. 1983), aff'd 107 Ill. 2d 33, 41 N.E.2d 664 (1985). Fundamental unfairness occurs if a disinterested observer might conclude that the local decisionmaker had in some measure made a decision based on matters outside the record (see Concerned Adjoining Owners v. Pollution Control Board, et al., 288 Ill.App.3d 565, 573, 680 N.E.2d 810, 816 (3d Dist. 1997)), or where *ex parte* contacts have influenced a decision. Fairview Area Citizens Task Force v. Illinois Pollution Control Board, 198 Ill.App.3d 541, 555 N.E.2d 1178 (3d Dist. 1990).

The standard is an objective one, and asks whether a disinterested observer might conclude that unfairness or the appearance of impropriety has tainted the decision-making

process. E&E Hauling, 116 Ill.App.3d at 598; Concerned Adjoining Owners, 288 Ill.App.3d at 573; see Rochelle Waste Disposal, slip op. at 25 (where comments do not create appearance of impropriety, there was no prejudgment). The appearance of impropriety may be inherently unfair because it is "fraught with possibilities for actual prejudice." Southwest Energy Corporation v. Illinois Pollution Control Board, 275 Ill.App.3d 84, 96, 655 N.E.2d 304 (4th Dist. 1995). The integrity and fairness of the siting process requires that both the fact and the appearance of improper influence be proscribed, as the actual or potential prejudice caused by each taints the decisionmaking process. See id.

The *ex parte* advocacy actions of Mr. Harrison were intended to persuade, threaten and cajole County Board members to vote against the 2003 Application. They were improper attempts to secure the vote of a decisionmaker on a pending adjudicative matter by wielding threat and bombast in face-to-face unannounced meetings. The advocacy included lies, misrepresentation, misinformation and threats. The advocacy occurred outside the hearing process. The sole purpose of the advocacy was to obtain a "no" vote by any available means. And it worked.

Eight County Board members who voted to approve the 2002 Application voted to deny the same application filed one year later. The site location request was for the same facility at the same location. The information submitted to establish the nine criteria was the same; the evidence presented in support of the nine criteria was the same. The only significant difference between the two applications was the aggressive and threatening *ex parte* advocacy of Mr. Harrison.

This advocacy was also directed to four County Board members who did not vote on the 2002 Application. These communications appear to have been particularly effective. County

Board members Gibbs, McLaren, Scholl and Stauffenberg voted against the 2003 Application by rejecting the criteria argued by Mr. Harrison: Criteria (i), (ii), (iii) and (vi).

The prejudice to WMII from this *ex parte* advocacy was actual and undeniable. The vote on Criterion (i) changed from 22-0 in favor to 16-12 against; the vote on Criterion (iii) changed from 21-0 in favor to 18-10 against; and the vote on Criterion (vi) changed from 19-0 in favor to 16-12 against. (IPCB WMII Ex. Nos. 7 and 8.)

By any objective standard, the actions of Mr. Harrison were improper and prejudicial. At a minimum, they created an appearance of impropriety which subverted the siting process. But in addition, his actions had a direct, though perhaps unacknowledged, effect on the 2003 Decision. County Board members who had no competent evidence in the record on which to reverse their approval of the 2002 Application did so anyway. The only reason that appears in this record is the *ex parte* advocacy of Mr. Harrison.

These communications, and the *ex parte* contacts initiated by other objectors, both created the appearance of impropriety, and caused actual prejudice. As such, they tainted the siting process, and made the proceedings fundamentally unfair. Southwest Energy, 275 Ill.App.3d at 96; Rochelle Waste Disposal, slip op. at 25; Concerned Citizens of Williamson County v. Bill Kibler Development Corp., No. PCB 94-262, slip op. at 14 (January 19, 1995); City of Rockford v. Winnebago County Board, No. PCB 87-92, slip op. at 29-31 (November 19, 1987).

IV. CONCLUSION

The County Board decision reversing its prior determination that Criteria (i), (iii) and (vi) were met is not supported by any relevant or reliable evidence in the record. The County Board's reversal was the result of improper *ex parte* advocacy, not evidence. Accordingly, the County Board's denial of Criteria (i), (iii) and (vi) was against the manifest weight of the evidence, and should be reversed. In the alternative, this Board should reverse the County Board decision because the proceedings were fundamentally unfair, and remand this matter to the County Board for proper consideration and decision.

Respectfully Submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

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APPENDIX A

SUMMARY OF *EX PARTE* COMMUNICATIONS BY BRUCE HARRISON WITH KANKAKEE COUNTY BOARD MEMBERS

A. County Board Members Who Changed Their Decision from Approval of the 2002 Application to Disapproval of the 2003 Application

Ruth Barber

Ms. Ruth Barber was elected to the County Board in November 2002. (PCB 4/7/05 Tr. at 207:9-13.) Ms. Barber voted to approve the 2002 Application. (PCB 4/7/05 Tr. at 209:17-24.)

Mr. Harrison made an unsolicited appearance at Ms. Barber's office to discuss the Expansion. (PCB 4/7/05 Tr. at 218:6-7, 19-24; 219:1-14.) He claimed to have formerly worked at the same place as Ms. Barber. (4/7/05 Tr. at 220:16-19.) According to Ms. Barber, she listened to him ramble on about the Expansion for about 10 minutes. (PCB 4/7/05 Tr. at 219-221:1-4; 222:14-23.) Although Ms. Barber tried to get him to leave, Mr. Harrison said "that he wasn't going back to work until this was resolved," referring to his opposition to the Expansion. (PCB 4/7/05 Tr. at 221:16-18.) Ms. Barber thought that statement was "pretty powerful." (PCB 4/7/05 Tr. at 221:24.)

Ms. Barber voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (PCB 4/7/05 Tr. at 212:2-14.)

Karen Hertzberger

Ms. Hertzberger was elected to the County Board in November 2002, attended the 2002 public hearings, was sworn in as a County Board member in December 2002, and voted to approve all nine of the statutory criteria for the 2002 Application. (PCB 4/6/05 Tr. at 40:7-16; 41:14-24; 42:1-5.)

Mr. Harrison contacted Ms. Hertzberger for the first time prior to the March 17 Decision. (IPCB 4/6/05 Tr. at 48:14-24.) He appeared uninvited at her office and proceeded to talk about the 2003 Application. (IPCB 4/6/05 Tr. at 49:1-11; 50:6-22.) He told her that he had spoken to other County Board members. (IPCB 4/6/05 Tr. at 52:14-20.) Although Ms. Hertzberger told him several times that she could not talk with him, she listened to enough of what he said to conclude that he was opposed to the Expansion and wanted her to vote "no." (IPCB 4/6/05 Tr. at 51:4-22; 52:9-13.)

Mr. Harrison continued his attempts to communicate with Ms. Hertzberger by contacting her three or four more times. He walked uninvited into her office up to two more times and telephoned her at her office and at home. (IPCB 4/6/05 Tr. at 53:4-24; 54:1-4.) Ms. Hertzberger said that Mr. Harrison's appearance and re-appearance was highly unusual and made her uncomfortable. (IPCB 4/6/05 Tr. at 75:15-17; 76:10-14.)

Subsequent to her encounters with Mr. Harrison, but prior to the March 17 Decision, Ms. Hertzberger heard Mr. Harrison publicly threaten to oppose the re-election of County Board Chairman Karl Kruse. (IPCB 4/6/05 Tr. at 56:5-13.)

Ms. Hertzberger voted to deny Criteria (i), (ii), (iii), (v), and (vi) of the 2003 Application. (IPCB 4/6/05 Tr. at 46:5-24; 47:1-10.)

Michael LaGesse

Mr. LaGesse has served as a County Board member since 1990 and voted to approve the 2002 Application. (IPCB 4/7/05 Tr. at 79:3-7; 80:13-14.)

Prior to March 17, 2004, Mr. LaGesse received a telephone call at work from Mr. Harrison. (IPCB 4/7/05 Tr. at 83:24; 84:1-11.) During that call, Mr. Harrison falsely represented that State's Attorney Edward Smith told him that County Board members were

authorized to discuss his opposition to the Expansion. (PCB 4/7/05 Tr. at 84:1-24; 85:1; 89:11-24; 90:1-3.) At that time, Mr. LaGesse understood from the conversation that Mr. Harrison opposed the Expansion. (PCB 4/7/05 Tr. at 85:9-18.) Although Mr. Harrison's representations were false, Mr. LaGesse believed them at the time. (PCB 4/7/05 Tr. at 85:19-24; 86:1.) It was not until Mr. LaGesse spoke with County Board member Lisa Latham Waskosky that he learned that Mr. Harrison was lying. (PCB 4/7/05 Tr. at 87:9-24; 88:1-13.) Ms. Waskosky told Mr. LaGesse that he should not meet with Mr. Harrison to discuss the Expansion. (PCB 4/7/05 Tr. at 87:9-24; 88:1-13.) Mr. LaGesse telephoned State's Attorney Mr. Smith at home and confirmed that Mr. Harrison had lied about speaking with Mr. Smith and obtaining the latter's agreement that it was permissible for County Board members to speak with Expansion opponents. (PCB 4/7/05 Tr. at 89:11-24; 90:1-3.)

Ms. Waskosky gave Mr. LaGesse a telephone number where Mr. Harrison could be reached so that he could cancel the meeting. (PCB 4/7/05 Tr. at 108:4-21.) The telephone number was the number that Ms. Waskosky read from her caller ID, indicating it to be Mr. Keller's home telephone number. (PCB 4/7/05 Tr. at 108:4-21.) Mr. LaGesse called the number, and in fact, Mr. Harrison was there. Mr. LaGesse canceled the meeting. (PCB 4/7/05 Tr. at 90:4-11; 108:10-24; 109:1-5.) Despite being told that Mr. LaGesse knew he had been lied to, Mr. Harrison persisted in attempting to convince him that it was okay to meet to discuss the Expansion. (PCB 4/7/05 Tr. at 90:24; 91:1-3.)

Mr. Harrison eventually went uninvited to Mr. LaGesse's office. (PCB 4/7/05 Tr. at 91:14-23.) He stated that he was in Bradley circulating a petition and handed Mr. LaGesse the petition. (PCB 4/7/05 Tr. at 92:9-20.) Mr. LaGesse was upset by Mr. Harrison's presence, but

looked at the petition and saw that it had signatures opposed to the Expansion. (IPCB 4/7/05 Tr. at 92:1-20.)

Mr. LaGessee voted to deny Criteria (iii) and (vi) of the 2003 Application. (IPCB 4/7/05 Tr. at 83:6-23.)

Edwin Meents

Mr. Meents served as a County Board member for 12 years ending in November 2002. (IPCB 4/6/05 Tr. at 301:14-21.) Mr. Meents voted to approve the 2002 Application. (IPCB 4/6/05 Tr. at 309:11-13.)

Mr. Meents received a telephone call at home from Mr. Harrison prior to the March 17 Decision, inviting him to meet for breakfast to discuss the Expansion. (IPCB 4/6/05 Tr. at 312:8-20.) Mr. Meents accepted Mr. Harrison's invitation, but said that they were not going to talk about the Expansion. (IPCB 4/6/05 Tr. at 313:2-7.) Mr. Meents asked County Board member Duane Bertrand to go with him. (IPCB 4/6/05 Tr. at 314:14-15.) At the breakfast, Mr. Harrison discussed the Expansion for 45 minutes. (IPCB 4/6/05 Tr. at 315:4-7.) He told them that it was unsafe. (IPCB 4/6/05 Tr. at 317:6-11.) Despite being told by Mr. Meents and Mr. Bertrand that they were not going to talk about the landfill, Mr. Harrison persisted in trying to discuss the subject at least seven or eight times during the 45-minute meal, while Mr. Meents and Mr. Bertrand listened. (IPCB 4/6/05 Tr. at 314:17-24; 315:6-7; 317:19-22.)

Mr. Meents voted to deny Criteria (i), (iii) and (v) of the 2003 Application. (IPCB 4/6/05 Tr. at 309:14-19.)

William Olthoff

Mr. Olthoff was elected as a County Board member in 2002 and voted to approve the 2002 Application. (Olthoff 4/14/05 Tr. at 3:18-24; IPCB Pet. Ex. No. 7.)

Prior to the March 17 Decision, Mr. Harrison came to Mr. Olthoff's church, Calvary Bible Church in Bradley, and requested permission to speak to the congregation about opposing the Expansion. (Olthoff 4/14/05 Tr. at 9:7-24; 10:1-16.) Mr. Harrison was not a member of the Calvary Bible Church. (Olthoff 4/14/05 Tr. at 9:23-24.)

Mr. Olthoff met with Mr. Harrison at the church to discuss his request to speak to the congregation. (4/14/05 Tr. at 12:1-24; 13:1-5.) Mr. Harrison attempted to persuade Mr. Olthoff that the Expansion was a spiritual matter, and wanted to speak against the Expansion. (Olthoff 4/14/05 Tr. at 13:6-18; 15:13-15.) He told Mr. Olthoff that it was necessary to oppose the Expansion because of its potential threat or harm to the environment. (Olthoff 4/14/05 Tr. at 15:16-20.) He also explained that one of the reasons he opposed the Expansion is because he did not believe it should be taking out-of-county waste. (Olthoff 4/14/05 Tr. at 16:12-18; 17:2-5.) Mr. Olthoff told Mr. Harrison that he did not feel that it was the appropriate venue, but Mr. Harrison tried to persuade him by making the opposition to the Expansion a spiritual issue. (Olthoff 4/14/05 Tr. at 14:12-18.) Mr. Harrison claimed that he had spoken at other churches about his opposition to the Expansion. (Olthoff 4/14/05 Tr. at 20:7-14.) It was clear from the conversation that Mr. Harrison was opposed to the Expansion, and that Mr. Olthoff listened to Mr. Harrison speak about his reasons to oppose the Expansion.

Mr. Olthoff voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (Olthoff 4/14/05 Tr. at 7:7-15.)

Jamie Romein

Mr. Romein was elected to the County Board in November 2002 and voted to approve the 2002 Application. (IPCB 4/6/05 Tr. at 224:11-18; 225:21-24; 226:1-6.)

Mr. Harrison called Mr. Romein at home to talk to him about "no dump, no Chicago garbage" prior to the March 17 Decision. Mr. Romein listened to enough of Mr. Harrison's comments to conclude that he was opposed to the Expansion. (IPCB 4/6/05 Tr. at 239:2-20; 240:20-23.)

Mr. Romein voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (IPCB 4/6/05 Tr. at 227:3-22.)

Mr. Harrison was persistent in his attempt to influence Mr. Romein. After the March 17 Decision, but before the April 13 vote on the Motion to Renew Consideration of the 2003 Application, Mr. Harrison and Objector Watson approached Mr. Romein in a United Disposal truck while he was sitting in his truck at a construction site eating his lunch. (IPCB 4/6/05 Tr. at 241:3-15; 242:3-16.) Mr. Harrison began discussing the April 13 vote on the Motion to Renew Consideration. (IPCB 4/6/05 Tr. at 243:4-7.) Mr. Romein responded that he was going to vote the way that he wanted to vote. (IPCB 4/6/05 Tr. at 243:8-12.)

On a separate occasion, also prior to the April 13 vote on the Motion to Renew Consideration, Mr. Harrison again followed Mr. Romein in a private vehicle driven by Objector Watson. While at a stoplight, Mr. Harrison got out of Objector Watson's vehicle, walked up to Mr. Romein's vehicle and asked if he could get in. (IPCB 4/6/05 Tr. at 245:19-24; 245-246.) Mr. Romein felt compelled to let Mr. Harrison into his vehicle, fearing an accident. (IPCB 4/6/05 Tr. at 245:19-24.) Once inside, Mr. Harrison again began discussing the April 13 vote on the Motion to Renew Consideration for the 2003 Application. (IPCB 4/6/05 Tr. at 246:4-7.) He told Mr. Romein that "*he has the power*" to run someone against Romein in the election. (IPCB 4/6/05 Tr. at 246:7-9.) (emphasis added.)

Lisa Latham Waskosky

Ms. Waskosky was elected to the County Board in November 2002, and voted to approve the 2003 Application on January 31, 2003. (Waskosky 3/30/05 Tr. at 4:22-24; 5:1-3; 6:8-20.)

Ms. Waskosky's first contact with Mr. Harrison was by telephone when he called her at her home on February 14, 2004. (Waskosky 3/30/05 Tr. at 15:8-19.) He told her that he wanted to give her a legal opinion explaining that the bar against *ex parte* communications was illegal, and therefore, she could speak to him about the Expansion. (Waskosky 3/30/05 Tr. at 16-17.) Even though Ms. Waskosky told him that she would not discuss the Expansion, he continued to urge her to discuss the issue and to provide him with information on how the County Board was going to vote on the 2003 Application. (Waskosky 3/30/05 Tr. at 17:22-24; 18:1-15.)

On February 16, 2004, Mr. Harrison showed up unannounced and uninvited at Ms. Waskosky's home, claiming that he needed to speak with her about County business. (Waskosky 3/30/05 Tr. at 19:16-24; 20:1-24.) When she appeared at the door, he introduced himself, said "here's the documents I promised you," and handed her a stack of documents. (Waskosky 3/30/05 Tr. at 21:6-12.)

Mr. Harrison contacted Ms. Waskosky again just before the March 17 Decision when he telephoned her at home. (Waskosky 3/30/05 Tr. at 22:16-24.) Ms. Waskosky's Caller Identification System ("caller ID") identified the call as Robert Keller's name and telephone number. (3/30/05 Tr. at 23:1-12.) Mr. Harrison tried to persuade her to meet with him indicating to her that he had already met with several County Board members, including Ann Bernard and Karen Hertzberger, and that he had a lunch appointment with Michael LaGessee. (Waskosky 3/30/05 Tr. at 23:13-23; 24:4-6.)

Ms. Waskosky voted to deny Criteria (iii) and (vi) of the 2003 Application. (Waskosky 3/30/05 Tr. at 8:12-24; 9:1-4.)

B. County Board Members Who Did Not Vote on the 2002 Application and Voted to Disapprove the 2003 Application

Larry Gibbs

Mr. Gibbs was elected to the County Board in November 2002. (IPCB 4/6/05 Tr. at 207:5-16.) He did not vote on the 2002 Application. (IPCB 4/6/05 Tr. at 208:10-12.)

Mr. Harrison telephoned Mr. Gibbs at home prior to the March 17 Decision to discuss his opposition to the Expansion. (IPCB 4/6/05 Tr. at 212:4-23; 213:1-4.) Mr. Gibbs did not receive telephone calls from Mr. Harrison or anyone else prior to the vote on the 2002 Application. (IPCB 4/6/05 Tr. at 213:20-23.)

Mr. Gibbs voted to deny the 2003 Application by rejecting Criteria (i), (iii) and (v). (4/6/05 Tr. at 211:1-11.)

Kelly McLaren

Mr. McLaren has been a County Board member since 2000. (IPCB 4/7/05 Tr. at 229:14-16.) He did not attend the January 31, 2003 vote on the 2002 Application. (4/7/05 Tr. at 230:8-12.)

Prior to the March 17 Decision, Mr. Harrison went unannounced to Mr. McLaren's pub to discuss his objections to the Expansion. (IPCB 4/7/05 Tr. at 235:7-24; 236:1-23.) Mr. Harrison made a threatening comment to Mr. McLaren about his re-election status and attempted to bribe him by stating that he (Harrison) could work it so that Mr. McLaren would not have an opponent when running for re-election. (IPCB 4/7/05 Tr. at 237:16-24; 238:1-11.) Mr. McLaren was very

upset and offended by Mr. Harrison's remarks and told him to leave. (IPCB 4/7/05 Tr. at 239:1-9; 246:9-16.)

Undeterred, Mr. Harrison returned to Mr. McLaren's pub, this time bringing a petition from Mr. McLaren's constituents who opposed the Expansion. (IPCB 4/7/05 Tr. at 239:13-24; 240:1-21.) Mr. McLaren looked at the petition and confirmed that the signatures appeared to be from people in his district. (IPCB 4/7/05 Tr. at 250:19-21; 252:8-19.) Mr. McLaren felt that Mr. Harrison brought the petition to show him how the people in his district felt about the Expansion. (IPCB 4/7/05 Tr. at 240:24; 241:1-3.)

Mr. McLaren voted to deny Criterion (vi) of the 2003 Application. (IPCB 4/7/05 Tr. at 233:23-24; 234:1.)

Bob Scholl

Mr. Scholl was appointed to the County Board in October 2003. (IPCB 4/6/05 Tr. at 272:23-24; 273:1-5.)

Mr. Harrison is a former student of Mr. Scholl. (IPCB 4/6/05 Tr. at 275:13.) Mr. Harrison came up to Mr. Scholl on the first day of the public hearing, before it began, and made comments expressing his opposition to the Expansion. (IPCB 4/6/05 Tr. at 275:9-23; 276:1.) Mr. Scholl listened as Mr. Harrison expressed his opposition to the Expansion, and also explained that he was opposed to the Expansion because of the clutter at the current landfill site. (IPCB 4/6/05 Tr. at 275:17-20; 276:7-10.)

Mr. Scholl voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (4/6/05 Tr. at 274:1-9.)

Jim Stauffenberg

Mr. Stauffenberg was appointed to the County Board in 1992, and was elected to continue to serve as a County Board member in November 2004. (PCB 4/7/05 Tr. at 60:20-24; 61:1, 4-13.) He did not vote on the 2002 Application. (PCB 4/7/05 Tr. at 62:8-13.)

As he did with so many other County Board members, Mr. Harrison strategically positioned himself to approach Mr. Stauffenberg. (PCB 4/7/05 Tr. at 68:14-24; 69:1-13.) He pulled into Mr. Stauffenberg's parking lot as Mr. Stauffenberg was attempting to pull out. (PCB 4/7/05 Tr. at 69:1-13; 70:7-13.) Mr. Stauffenberg agreed to meet Mr. Harrison for a lunch appointment to discuss "County business." (PCB 4/7/05 Tr. at 69:1-13.) Mr. Stauffenberg subsequently canceled the meeting after discussing it with County Board member Pam Lee, who told Mr. Stauffenberg that he should not be talking with Mr. Harrison about the Expansion. (PCB 4/7/05 Tr. at 69:10-13.)

Mr. Stauffenberg voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (4/7/05 Tr. at 64:15-23.)

C. Other County Board Members Who Were Contacted by Bruce Harrison

Duane Bertrand

Mr. Bertrand has been a County Board member since 1993. (Bertrand 4/14/05 Tr. at 3:17-23.) He voted to approve the 2002 Application. (Bertrand 4/14/05 Tr. at 5:16-20.)

Mr. Harrison met with Mr. Bertrand before the March 17 Decision at a restaurant, along with County Board member Ed Meents. (Bertrand 4/14/05 Tr. at 13:21-24; 14:1-24.) For approximately 30 to 40 minutes, Mr. Bertrand, along with Mr. Meents, listened to Mr. Harrison talk about the dangers of landfills, reasons why the Expansion should not be approved and his opposition to out-of-county garbage. (Bertrand 4/14/05 Tr. at 15-17.) Mr. Harrison described

himself as an expert in landfills. (Bertrand 4/14/05 Tr. at 21:14-17.) He talked about the geology and hydrology of the Expansion. (Bertrand 4/14/05 Tr. at 27:20-24; 28:1-5.) Mr. Bertrand felt that Mr. Harrison was trying to persuade him and Mr. Meents to vote against the 2003 Application. (Bertrand 4/14/05 Tr. at 20:12-15.)

Mr. Bertrand's next encounter with Mr. Harrison was on March 17, 2004, when he noticed that Mr. Harrison was one of the picketers protesting in front of the County Building. (Bertrand 4/14/05 Tr. at 18:7-18.) Mr. Harrison introduced Mr. Bertrand to the picketers as he entered the County building and announced that he had voted to approve the 2002 Application. (Bertrand 4/14/05 Tr. at 18:7-18.) Mr. Bertrand voted to approve the 2003 Application. (Bertrand 4/14/05 Tr. at 6:1-3.)

Stanley James

Mr. James was elected to the County Board in 2000. (IPCB 4/7/05 Tr. at 147:21-24; 148:1-3.) He voted to disapprove the 2002 Application by rejecting Criterion (ii). (IPCB 4/7/05 Tr. at 149:13-19.)

Mr. James had a discussion with Mr. Harrison about the Expansion prior to the March 17 Decision. (IPCB 4/7/05 Tr. at 166:7-24; 167:1-21; 169:6-9.) Mr. Harrison went uninvited to Mr. James' office during the public hearings on the 2003 Application. (IPCB 4/7/05 Tr. at 166:7-24.) Mr. Harrison said that he wanted to discuss the Expansion and wanted to know Mr. James' position on the Expansion. (IPCB 4/7/05 Tr. at 167:1-21.) Mr. James knew that Mr. Harrison was opposed to the Expansion. (IPCB 4/7/05 Tr. at 167:6-21; 169:6-10.) While they were talking, Mr. Harrison was memorializing parts of their conversation in a notebook. (IPCB 4/7/05 Tr. at 169:11-24.) Mr. James observed Mr. Harrison writing down "Stan James is a good guy." (IPCB 4/7/05 Tr. at 169:13-19; 170:1-6.)

Mr. James voted to deny the 2003 Application by rejecting Criteria (i), (ii), (iii), (v) and (vi). (IPCB 4/7/05 Tr. at 153:15-19.)

George Washington Jr.

Mr. Washington has served as a County Board member for 18 years. (IPCB 4/7/05 Tr. at 297:24; 298:1-4.) He was Chairman of the RPC during the public hearings on both the 2002 and 2003 Applications. (IPCB 4/7/05 Tr. at 298:9-24.) Consistent with the findings of the RPC, Mr. Washington voted to approve the 2002 and 2003 Applications. (IPCB 4/7/05 Tr. at 301:2-4; 304:3-6.)

Prior to the March 17 Decision, Mr. Harrison approached Mr. Washington and made it clear that he and others would actively work to oppose the re-election of any County Board member who voted to approve the 2003 Application. (IPCB 4/7/05 Tr. at 306-307:6-24; 308:1-5.)

The Reverend Elmer Wilson

Reverend Wilson has been a County Board member since 1995. (IPCB 4/6/05 Tr. at 258:23-24; 259:1-3.) He voted to approve the 2002 Application. (IPCB 4/6/05 Tr. at 259:17-22.)

Prior to the March 17 Decision, Mr. Harrison contacted Reverend Wilson at least three times to discuss his opposition to the Expansion. The first time, Mr. Harrison arranged a meeting with Reverend Wilson under the false pretenses of needing spiritual guidance. (IPCB 4/6/05 Tr. at 263:18-24; 264:1-14.) When they met, Mr. Harrison discussed the Expansion and stated that he wanted to know Reverend Wilson's position. (IPCB 4/6/05 Tr. at 264:12-16.) Mr. Harrison continued to talk about the support he had obtained of other people who opposed the Expansion and getting Reverend Wilson's support to vote against the 2003 Application. (IPCB

4/6/05 Tr. at 264:16-24; 265:1-24.) Mr. Harrison bought breakfast for Reverend Wilson. (IPCB 4/6/05 Tr. at 266:4-5.)

On another occasion, Mr. Harrison approached Reverend Wilson in the hallway after a County Board meeting to discuss the Expansion, but Reverend Wilson said that he could not talk about it. Nevertheless, Mr. Harrison followed Reverend Wilson around trying to communicate with him about why he should vote against the 2003 Application. (IPCB 4/6/05 Tr. at 266:10-22; 267:22-24; 268:1-4.)

Finally, on March 17, 2004, Mr. Harrison met Reverend Wilson before he went into the meeting to vote on the 2003 Application. (IPCB 4/6/05 Tr. at 266:22-24; 267:1-8.) Mr. Harrison approached Reverend Wilson with a group of people and said "this is Reverend Wilson, he's a fair man." (IPCB 4/6/05 Tr. at 267:1-2.) Mr. Harrison then handed him various materials about a half inch thick, which included petitions allegedly containing signatures of people who were opposed to the 2003 Application. (IPCB 4/6/05 Tr. at 267:2-21.) Reverend Wilson voted to approve the 2003 Application. (IPCB 4/6/05 Tr. at 260:8-10.)

Ann Bernard

Ms. Bernard has been a County Board member since 1996. (IPCB 4/6/05 Tr. at 327:6-11.) She voted to disapprove the 2002 Application by rejecting Criteria (iii) and (viii). (IPCB 4/6/05 Tr. at 327:12-24.)

Mr. Harrison contacted Ms. Bernard on at least one occasion prior to the March 17 Decision. (IPCB 4/6/05 Tr. at 335:7-13; 336:3-4.) During that communication, he discussed his opposition to the Expansion. It was clear to Ms. Bernard that he was an opponent to the Expansion. (IPCB 4/6/05 Tr. at 335:7-24; 336:3-4.)

Mr. Harrison provided Ms. Bernard with a yard sign stating "no dump, no Chicago garbage." (4/06/05 Tr. at 347:12-19.) Ms. Bernard said Mr. Harrison was placing the signs. (4/05/05 Tr. at 347:8-11.) She had the sign posted outside of her office. (4/06/05 Tr. 347:17-19; 349:7-19.) Prior to Mr. Harrison providing the yard sign, Ms. Bernard had already authorized the placement of the words "No outside garbage. No Chicago garbage," on the elevated stand sign (marquee sign) located at her office. (4/06/05 Tr. at 348:17-24; 349:1-6.)

She voted to disapprove the 2003 Application by rejecting Criteria (i), (ii), (iii), (v), (vi), (viii) and (ix). (IPCB 4/6/05 Tr. at 328:16-22.)

APPENDIX B

SUMMARY OF *EX PARTE* COMMUNICATIONS TO COUNTY BOARD MEMBERS BY PERSONS OTHER THAN BRUCE HARRISON

A. County Board Members Who Changed Their Decision from Approval of the 2002 Application to Disapproval of the 2003 Application

Ruth Barber

Ms. Barber received no telephone calls or letters concerning the 2002 Application. (PCB 4/7/05 Tr. at 209:6-15.) She did receive a call and between 30 to 40 letters in connection with the 2003 Application. (PCB 4/7/05 Tr. at 212:23-24; 213:1-5; 214:16-23.) One letter was from Paul Gray, one of her former employees. (PCB 4/7/05 Tr. at 223:17-21; 224:1-6.) Ms. Barber read enough of the first few letters to know that they were opposed to the Expansion. (PCB 4/7/05 Tr. at 215:1-10.) Rather than submit those letters to the County Clerk, she threw all of them away. (PCB 4/7/05 Tr. at 215:5-10; 216:19-22.)

Reversing her vote to approve the 2002 Application, Ms. Barber voted to deny Criteria (i), (iii) and (vi). (PCB 4/7/05 Tr. at 212:2-14.)

Linda Faber

Ms. Faber held the position of County Board member from 2000 to November 2004. (PCB 4/7/05 Tr. at 118:21-24; 119:1-8.) On January 31, 2003, Ms. Faber voted to approve the 2002 Application. (PCB 4/7/05 Tr. at 120:24.)

Ms. Faber did not receive any telephone calls, letters or written material in connection with the 2002 Application. (PCB 4/7/05 Tr. at 120:5-15.) By contrast, prior to the March 17 Decision, she received approximately 15-20 letters from Expansion opponents. (PCB 4/7/05 Tr. at 128:14-24.) She read enough of several of the letters to know that they were opposed to the Expansion, and then threw the letters away, "as instructed." However, she was not instructed to

throw the letters away, but to turn them into the County Clerk. (IPCB 4/7/05 Tr. at 129:2-4; 129:5-19; 140:18-24.) Even though she brought them to the County Building and was going to file them with the County Clerk, she was instructed not to do so because similar letters were already on file. Ms. Faber never confirmed that the unopened letters she received were in fact, on file and in the public record. She carried them with her in a purse before she actually threw them away at her office. (IPCB 4/7/05 Tr. at 142:20-24; 143:1-24; 144:1-13.)

Ms. Faber also received a telephone call at her home from Mr. Mark Benoit, a family friend. (IPCB 4/7/05 Tr. at 126:16-24; 127:1-9.) During the telephone call, Mr. Benoit made statements in opposition to the Expansion. (IPCB 4/7/05 Tr. at 127:13-24.) He told Ms. Faber that he lived near the Expansion and that the Expansion would not only negatively affect his quality of life, but also his dreams. (IPCB 4/7/05 Tr. at 127:19-23.)

Ms. Faber saw the picketers protesting the 2003 Application carrying signs that said "No dump." (IPCB 4/7/05 Tr. at 122:19-24; 123:1-8.) There were no picketers protesting when she voted on the 2002 Application. (IPCB 4/7/05 Tr. at 120:5-7.)

Reversing her vote to approve the 2002 Application, Ms. Faber voted to deny Criteria (i), (iii), (v), (vi) and (viii) of the 2003 Application. (IPCB 4/7/05 Tr. at 123:13-24.)

Karen Hertzberger

Ms. Hertzberger testified that she received "many letters" concerning the 2003 Application, none of which were provided to the County Clerk to be made a part of the record. She still has them at her home. (IPCB 4/6/05 Tr. at 58:1-7; 60:10-18.) She also received letters after the March 17 Decision, but before the April 13 vote on the Motion to Renew Consideration for the 2003 Application, at least one of which thanked her for her vote opposing the Expansion.

(IPCB 4/6/05 Tr. at 62:6-8, 20-24; 63:1-5.) These letters were also never made part of the public record. (IPCB 4/6/05 Tr. at 62:17-18.)

Ms. Hertzberger also saw picketers outside of the building on the day of the Decision. (IPCB 4/6/05 Tr. at 54:9-13; 55:9-18.) Mr. Harrison was probably among the picketers. (IPCB 4/6/05 Tr. at 54:9-13; 55:9-18.) There were no picketers outside the County Board building on January 31, 2003, relating to the 2002 Application. (IPCB 4/6/05 Tr. at 63:16-18.)

She also observed signs that read "No dump. No Chicago garbage" located all throughout the community prior to the March 17 Decision. (IPCB 4/6/05 Tr. at 54:23-24; 55:1-8.)

Reversing her vote to approve the 2002 Application, Ms. Hertzberger voted to deny Criteria (i), (ii), (iii), (v) and (vi). (IPCB 4/6/05 Tr. at 46:2-24; 47:1-10.)

Frances Jackson

Ms. Jackson has been a County Board member since 1996. (IPCB 4/7/05 Tr. at 258:3-8.) Ms. Jackson voted to approve the 2002 Application. (IPCB 4/7/05 Tr. at 260:19-24.)

Ms. Jackson received telephone calls opposed to the Expansion prior to the March 17 Decision. (IPCB 4/7/05 Tr. at 269:15-24.) The callers discussed the perceived dangers of the Expansion to their health and property values. They also expressed their concerns about taking out-of-town garbage. (IPCB 4/7/05 Tr. at 271-277.) Ms. Jackson told the callers that she agreed with their concerns. (IPCB 4/7/05 Tr. at 271-277:16-24.) A few of the callers told Ms. Jackson that they would be watching the election to see how County Board members voted on the 2003 Application (IPCB 4/7/05 Tr. at 270:4-15.) Some of them also threatened Ms. Jackson that they would take steps to get those County Board members who did not vote to oppose the Expansion out of office. (IPCB 4/7/05 Tr. at 270:22-24; 271:1-8.)

Ms. Jackson received a lot of letters at her home concerning the Expansion. (IPCB 4/7/05 Tr. at 278:15-24.) She read all of them and determined that each one expressed opposition to the Expansion. (IPCB 4/7/05 Tr. at 279:1-13.) She did not give any of the letters to the County Clerk, but kept them. (IPCB 4/7/05 Tr. at 277:14-20.)

Reversing her vote to approve the 2002 Application, Ms. Jackson voted to deny Criteria (i), (ii), (iii), (v) and (vi) for the 2003 Application. (IPCB Pet. Ex. No. 8.)

Michael LaGesse

Mr. LaGesse did not receive any telephone calls, letters or written materials in connection with the 2002 Application. (IPCB 4/7/05 Tr. at 80:22-24; 81:1-3.) However, prior to the March 17 Decision, he received 10-20 letters opposing the Expansion. (IPCB 4/7/05 Tr. at 94:9-21.) Among those letters was one from Karen Mallaney, who is an Expansion opponent and one of his relatives. He read the entire letter from Ms. Mallaney. (IPCB 4/7/05 Tr. at 95:1-18.) Mr. LaGesse threw his letters away. (IPCB 4/7/05 Tr. at 94:22-23.)

Mr. LaGesse was approached by Mr. Doug Flageole. Mr. Flageole is a member of the Knights of Columbus, the organization that employs Mr. LaGesse. (IPCB 4/7/05 Tr. at 78:23-24; 79:1-2; 95:19-24; 96:1-3.) Mr. LaGesse was well-aware of Mr. Flageole's opposition to the Expansion. (IPCB 4/7/05 Tr. at 96:1-8.) They had discussed Mr. Flageole's opposition to the Expansion near the end of February, at the Knights of Columbus. (IPCB 4/7/05 Tr. at 98:20-24; 99:1-17.) Mr. Flageole explained that he was opposed to the Expansion because the drinking water from his well was contaminated, and as a result, his family drank bottled water. (IPCB 4/7/05 Tr. at 99:22-24; 100:1-18.) Mr. LaGesse visited the site of the Expansion before the March 17 Decision because Mr. LaGesse wanted to see how close Mr. Flageole lives to it. (IPCB 4/7/05 Tr. at 98:9-19.)

Mr. LaGessee did not see any picketers on the day of the vote for the 2002 Application. (IPCB 4/7/05 Tr. at 80:19-21.) However, on March 17, 2004, Mr. LaGessee saw picketers at the County building and heard them say "No dump." (IPCB 4/7/05 Tr. at 82:3-15.) He also saw the "No dump. No Chicago garbage" signs in the community. (IPCB 4/7/05 Tr. at 82:16-24.)

Reversing his vote to approve the 2002 Application, Mr. LaGessee voted to deny Criteria (iii) and (vi) of the 2003 Application. (IPCB 4/7/05 Tr. at 83:6-23.)

Ralph Marcotte

Mr. Marcotte has been a County Board member for seven years. (IPCB 4/7/05 Tr. at 46:24; 47:1-5.) On January 31, 2003, Mr. Marcotte voted to approve the 2002 Application. (IPCB 4/7/05 Tr. at 48:17-19.)

Prior to his vote on the 2002 Application, Mr. Marcotte did not receive any telephone calls, letters or written materials concerning the Expansion. (IPCB 4/7/05 Tr. at 48:4-13.) However, in connection with the 2003 Application, he received approximately 55 letters opposing the Expansion. Mr. Marcotte read every one of the letters he received. (IPCB 4/7/05 Tr. at 54:4-16, 22-24.) Mr. Marcotte had never before received so many letters on any County Board issue. (IPCB 4/7/05 Tr. at 54:17-21.) That notwithstanding, Mr. Marcotte threw away the letters rather than submitting the letters to the County Clerk. He stated that all 55 letters were in the public record. (IPCB 4/7/05 Tr. at 54:14-16; 57:18.) However, Mr. Marcotte never made any attempt to determine whether the same letters he received and threw away were made a part of the record. (IPCB 4/7/05 Tr. at 57:19-24; 58:1-2.)

According to Mr. Marcotte, there were no protesters picketing in front of the County Board building on the day the members voted on the 2002 Application. (IPCB 4/7/05 Tr. at

48:14-16.) He did, however, see picketers on March 17, 2004, carrying signs that said "No Chicago dump." (IPCB 4/7/05 Tr. at 50:13-22.)

Reversing his vote to approve the 2002 Application, Mr. Marcotte voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (IPCB 4/7/05 Tr. at 51:1-11.)

William Olthoff

Mr. Olthoff received between 20 to 30 letters at his home in connection with the 2003 Application. (Olthoff 4/14/05 Tr. at 7:20-23; 8:1-24.) Mr. Olthoff reviewed the letters and determined that some of the letters contained written materials that stated "Dump the dump or we'll dump you." Mr. Olthoff explained that the statement meant that Expansion opponents would engage in efforts to defeat the re-election of County Board members who voted to approve the 2003 Application, or even resort to physical violence. (Olthoff 4/14/05 Tr. at 27:2-24; 28:13-24; 29:1-5.)

Reversing his vote to approve the 2002 Application, Mr. Olthoff voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (Olthoff 4/14/05 Tr. at 7:11-15.)

Jamie Romein

Prior to the vote on the 2002 Application, Mr. Romein did not receive any telephone calls, letters or written materials from anyone. (IPCB 4/6/05 Tr. at 225:13-20.) No one approached him at his place of business to talk about the 2002 Application. (IPCB 4/6/05 Tr. at 250:4-7.) In contrast, prior to the vote on the 2003 Application, he received between 20 and 25 letters that were mailed to his home. Mr. Romein read all of the letters, concluding that they were in opposition to the Expansion. The letters threatened to oppose his re-election if he voted in favor of the Expansion. (IPCB 4/6/05 Tr. at 229:20-24; 230:1-9; 256:1-24; 257:1-8.) One of the letters stated:

As an elected official, if you do not speak out against this landfill expansion then I will have no choice but to work as hard as I can to make sure you do not get re-elected. The citizens of this county will replace every one of you who vote for this landfill expansion. We pray of you to listen and vote no dump expansion.

(IPCB 4/6/05 Tr. at 238:4-21.) Another letter read:

I was lied to and I feel betrayed by the people who we elected to look out for our health, safety and welfare of our community and I swear I will effortlessly try to oust any Board member who thinks they can shove this down our throats. Pay attention to the people and hear what we are saying. No dump and no Chicago garbage.

(IPCB 4/6/05 Tr. at 256:1-10.)

Reversing his vote to approve the 2002 Application, Mr. Romein voted to deny Criteria (i), (iii) and (vi). (IPCB 4/7/05 Tr. at 227:1-24.) He received more than ten thank you notes and ten letters of congratulations after the March 17 Decision. (IPCB 4/6/05 Tr. at 231:14-17; 233:15-16; 249:8-15.)

Culver James Vickery

Mr. Vickery did not recall receiving any telephone calls, letters or written material prior to the vote on the 2002 Application. (IPCB 4/7/05 Tr. at 187:12-19.) But in connection with the 2003 Application, he received 25 letters against the Expansion. (IPCB 4/7/05 Tr. at 193:12-24; 194:1-8.) Mr. Vickery opened at least two of the letters and noted that the opening line indicated that the sender was opposed to the Expansion. He kept a file at home for all of the letters he received. (IPCB 4/7/05 Tr. at 193:21-24; 194:1-7.) He had never received that many letters on any other County Board issue. (IPCB 4/7/05 Tr. at 194:22-24; 195:1-2.) He did not give these letters to the County Clerk until after the March 17 Decision. (IPCB 4/7/05 Tr. at 194:9-21.)

He also received a telephone call from Mr. Harrison, but did not return the call. (IPCB 4/7/05 Tr. at 192:3-24.)

In connection with the 2002 Application, Mr. Vickery does not recall seeing any picketers. However, on the day of the vote on the 2003 Application, Mr. Vickery recalls that the sidewalk was full of picketers with "No dump. No Chicago garbage" signs. (IPCB 4/7/05 Tr. at 190:4-16.) Reversing his vote to approve the 2002 Application, Mr. Vickery voted to deny Criterion (i) of the 2003 Application. (IPCB 4/7/05 Tr. at 191:3-10.)

Lisa Latham Waskosky

Ms. Waskosky testified that she received over 30 letters at her home regarding the 2003 Application. (Waskosky 3/30/05 Tr. at 35:1-10.) She read the first ones and determined that they were from the same senders in Bradley and Bourbonnais. (Waskosky 3/30/05 Tr. at 35:1-10.) Ms. Waskosky read enough of the letters to determine that they were related to the Expansion. (Waskosky 3/30/05 Tr. at 35:11-20.) Ms. Waskosky put the letters in an envelope and gave them to the County Clerk. (Waskosky 3/30/05 Tr. at 35:1-20.)

Reversing her vote to approve the 2002 Application, Ms. Waskosky voted to deny Criteria (iii) and (vi) of the 2003 Application. (Waskosky 3/30/05 Tr. at 8:14-24; 9:1-4.)

B. County Board Members Who Did Not Vote on the 2002 Application and Voted to Disapprove the 2003 Application

Kelly McLaren

Mr. McLaren received between 15 and 25 letters concerning the Expansion prior to the March 17 Decision on the 2003 Application. (IPCB 4/7/05 Tr. at 234:6-24.) He does not recall having received any letters prior to the vote on the 2002 Application. (IPCB 4/7/05 Tr. at 230:13-24; 231:1-11.)

On his way to vote on March 17, 2004, Mr. McLaren observed picketers in the hallway outside the County Board room carrying signs. (IPCB 4/7/05 Tr. at 232:22-24; 233:1-4.) He

also testified that had seen protest signs throughout the area prior to the March 17 Decision, which read "No dump. No Chicago garbage." (PCB 4/7/05 Tr. at 233:12-21.)

Mr. McLaren voted to deny Criteria (vi) of the 2003 Application. (PCB Pet. Ex. No. 8.)

Bob Scholl

Mr. Scholl received "quite a few" letters prior to the March 17 Decision. (PCB 4/6/05 Tr. at 279:1-11, 19-23.) Mr. Scholl claims to have not read the letters, but "glanced" at all of them long enough to determine that they were in opposition to the Expansion. (PCB 4/6/05 Tr. at 279:9-23.) He also received "quite a few" thank you notes after he voted to deny Criteria (i), (iii) and (vi) for the 2003 Application. (PCB 4/6/05 Tr. at 273:13-24; 274:1-8; 280:3-13.)

Since January 2004, Mr. Scholl stated that signs were displayed throughout the community and in and around the area of the existing landfill that read "No dump. No Chicago garbage," among other anti-Expansion slogans. (PCB 4/6/05 Tr. at 276:14-24; 277:1, 10-14.) He assumed that the signs meant "no out of county garbage." (PCB 4/6/05 Tr. at 278:20-24.)

Mr. Scholl was contacted by Mr. Mark Benoit. Mr. Benoit stopped by Mr. Scholl's house to discuss the Expansion a few days before the March 17 Decision. (PCB 4/6/05 Tr. at 282:10-24; 283:1-3.) Mr. Scholl told him that they could not discuss that issue and Mr. Benoit left. (PCB 4/6/05 Tr. at 283:15-23.)

Mr. Scholl observed picketing outside of, and inside in the hallways of, the County Building the day of the March 17 Decision. (PCB 4/6/05 Tr. at 281:2-8.) The picketers were carrying signs opposing the Expansion. Mr. Scholl talked to some of the picketers. (PCB 4/6/05 Tr. at 281:5-24.) Mr. Harrison was among the picketers that Mr. Scholl waved to. (PCB 4/6/05 Tr. at 281:23-24; 282:1.)

Sometime between the March 17 Decision and the April 13 vote on the Motion to Renew Consideration, Mr. Benoit paid another visit to Mr. Scholl and brought him various literature pertaining to landfills and problems with capping landfills. (PCB 4/6/05 Tr. at 285:23-24; 286:1-2; 287:21-24; 288:1-4.) The materials pointed out flaws in the concepts of landfill design. (PCB 4/6/05 Tr. at 288:12-16.) Mr. Scholl knew that the materials discussed flaws in landfill design, because he looked over the materials. During the second visit by Mr. Benoit, they sat around and had a general discussion about the materials. (PCB 4/6/05 Tr. at 288:7-9; 293:11-21.) These materials were not submitted to the County Clerk or otherwise communicated to anyone at the County or made part of the record. (PCB 4/6/05 Tr. at 290:4-9; 294:19-24.)

Mr. Scholl voted to deny Criteria (i), (ii) and (iii). (PCB Pet. Ex. No. 8.)

Jim Stauffenberg

While Mr. Stauffenberg did not received any telephone calls, letters or written materials in connection with the 2002 Application, he did receive approximately eight letters relating to the 2003 Application. (PCB 4/7/05 Tr. at 62:18-24; 63:1; 66:21-24; 67:1-3.) He threw away the letters. (PCB 4/7/05 Tr. at 67:11-13; 68:1-10.) Mr. Stauffenberg assumed the letters were in opposition to the Expansion, because each had a return address from the area around the Kankakee Landfill. (PCB 4/7/05 Tr. at 67:14-19.)

Mr. Stauffenberg voted to deny Criteria (i), (iii) and (vi). (PCB Pet. Ex. No. 8.)

Larry Gibbs

Mr. Gibbs received close to 50 letters sent to his home opposing the Expansion prior to the March 17 Decision. He read one letter enough to know that it was in regards to the Expansion. (PCB 4/6/05 Tr. at 213:24; 214:1-24.) He received no letters prior to the vote on the 2002 Application. (PCB 4/6/05 Tr. at 215:1-11.)

Mr. Gibbs also had discussions with at least three residents who were opposed to the Expansion because they did not want waste from Chicago. (PCB 4/6/05 Tr. at 215:16-20; 216:16-24; 217:1-2.)

Mr. Gibbs voted to deny Criteria (i), (iii) and (v). (PCB 4/6/05 Tr. at 211:1-11.)

C. Other County Board Members Who Had *Ex Parte* Communications

Duane Bertrand

Mr. Bertrand received written materials that stated "Dump the dump or we'll dump you." (Bertrand 4/14/05 Tr. at 10:24; 11:1-8.) He understood that to mean that opponents of the Expansion would work to defeat the re-election of County Board members who voted to approve the 2003 Application. (Bertrand 4/14/05 Tr. 11:20-24; 12:1-4.)

Mr. Bertrand had a couple of meetings with Otto Township Supervisor Ronald Thompson. (Bertrand 4/14/05 Tr. at 19:7-13; 20:7-15.) During those meetings, Supervisor Thompson told Mr. Bertrand that he was opposed to the Expansion and actually tried to get Mr. Bertrand to change his vote. (Bertrand 4/14/05 Tr. at 19:2-13; 20:7-15.)

Mr. Bertrand also had a confrontational discussion with Mr. Doug Flageole, another Expansion opponent. After Mr. Bertrand refused to tell Mr. Flageole how he was going to vote on the 2003 Application, Mr. Flageole threatened to run against and beat him in the next election. (Bertrand 4/14/05 Tr. at 6:16-24; 7:1-6, 10-12.)

Stanley James

Mr. James did not recall receiving any telephone calls, letters or written materials in connection with the 2002 Application. (PCB 4/7/05 Tr. at 149:4-12.) He did, however, receive about a half dozen telephone calls prior to the vote on the 2003 Application, the majority of which opposed the Expansion. (PCB 4/7/05 Tr. at 153:20-24; 154:1-3, 21-24; 155:1-3; 157:12-

14.) Mr. James told the callers that he heard them and that he would take what they said into consideration. (IPCB 4/7/05 Tr. at 156:15-18; 158:14-17.)

In addition to the telephone calls, Mr. James received letters prior to the March 17 Decision. (IPCB 4/7/05 Tr. at 158:18-21.) He read all of the letters and all of them were opposed to the Expansion. (IPCB 4/7/05 Tr. at 159:11-17.) After he read them, he threw them away. (IPCB 4/7/05 Tr. at 160:7-8.)

Mr. James also had in-person conversations with various people concerning their opposition to the Expansion prior to the March 17 Decision. (IPCB 4/7/05 Tr. at 161:6-24; 162:9-24; 163:1-18; 165:2-8.) These people included members of his constituency, as well as Mr. Ron Thompson, the Supervisor of Otto Township, and Objector Runyon. (IPCB 4/7/05 Tr. at 161:6-24; 162:9-24; 163:1-18; 165:2-8; 171:17-24; 172:1-4, 8-11.) Mr. James listened to Supervisor Thompson state that he was not in favor of the Expansion. (IPCB 4/7/05 Tr. at 161:20-23.) During his discussion with Objector Runyon, Mr. James listened to him express his opinions about why he was opposed to the Expansion. (IPCB 4/7/05 Tr. at 172:8-24; 173:1.) Of the people with whom Mr. James spoke in-person, some of them directly told Mr. James to vote against the 2003 Application. (IPCB 4/7/05 Tr. at 182:11-24.)

Unlike for the 2002 Application, there were picketers protesting the 2003 Application. (IPCB 4/7/05 Tr. at 152:3-5.) Mr. James voted to deny Criteria (i), (ii), (iii), (v) and (vi).

Leonard "Shakey" Martin

Mr. Leonard Martin, also known as Shakey Martin, has been a County Board member for 32 years. (IPCB 4/7/05 Tr. at 8:3-7.)

Mr. Martin received and read quite a few letters prior to the March 17 Decision and determined that they were in opposition to the Expansion. (IPCB 4/7/05 Tr. at 13:24; 14:1-14.)

Mr. Martin did not file any of the letters with the County Clerk, and instead threw them away. (PCB 4/7/05 Tr. at 14:23-24; 15:1-3.) Of particular note was a letter that Mr. Martin received from the Momence Transfer Station prior to the March 17 Decision that addressed the need for the Expansion. (PCB 4/7/05 Tr. at 15:10-14; 16:14-16.) That letter stated that Kankakee County did not have to worry about a place for their waste because the Momence Transfer Station could take care of it. (PCB 4/7/05 Tr. at 15:10-14.) Mr. Martin may have read this letter at a County Board meeting, or may have discussed this information with other County Board members. (PCB 4/7/05 Tr. at 15:13-24; 16:1-16.)

Prior to the March 17 Decision, Mr. Martin received telephone calls at his home opposing the Expansion. (PCB 4/7/05 Tr. at 12:4-10, 19-22.) Some of the callers told Mr. Martin that they supported his opposition to the 2002 Application. (PCB 4/7/05 Tr. at 13:12-23.)

Mr. Martin saw the picketers carrying the "No Chicago garbage" signs outside of the County Board building on March 17, 2004. (PCB 4/7/05 Tr. at 17:5-21.) Mr. Martin saw similar signs placed around various locations throughout the community prior to the March 17 Decision. (PCB 4/7/05 Tr. at 17:22-24; 18:1-6.) Mr. Martin took those signs to mean that a number of people in town were opposed to the Expansion. (PCB 4/7/05 Tr. at 17:13-17.)

Mr. Martin voted to deny Criteria (i), (iii) and (vi) of the 2003 Application. (PCB 4/7/05 Tr. at 12:2-3) (PCB Pet. Ex. No. 8.)