

**RECEIVED**  
CLERK'S OFFICE**AUG - 2 2004**STATE OF ILLINOIS  
Pollution Control Board

## BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC., )

Plaintiff, )

v. )

PCB 04-186

COUNTY BOARD OF KANKAKEE COUNTY, )

Defendant. )

**MOTION TO QUASH SUBPOENA**

NOW COME Robert Keller and Brenda Keller, by and through their Attorneys, LaBeau, Dietchweiler & Associates, P.C., and move for an Order quashing the Subpoenas served on each party by WASTE MANAGEMENT OF ILLINOIS, INC. requiring the parties appearance on August 2, 2004, pursuant to 35 Illinois Administration Code 101.616(d), and in support thereof states as follows:

1. That Robert Keller was previously subpoenaed to testify by WASTE MANAGEMENT OF ILLINOIS, INC. in this case. Upon appearing at the date, place and time as set forth in the Subpoena, Mr. Keller was informed by an attorney present that no depositions were scheduled on that date and to return on June 23, 2004, which direction Mr. Keller complied with. Upon appearing on June 23, 2004, Mr. Keller was informed by Kankakee County staff members that no depositions were scheduled on June 23, 2004, see copy of Subpoena attached hereto.
2. Mr. Keller took time off from his job at Pickett Stone Company to appear on both days. He should not be required to appear a third time.
3. On or about July 20, 2004, at approximately 8:00 p.m., Donald Moran, Attorney for WASTE MANAGEMENT, appeared at the Keller residence at

765 E. 6000 S. Road, Chebanse, Illinois, uninvited and accompanied by a woman. Mr. Moran advised Mr. and Mrs. Keller that unless they signed an Affidavit or other document he brought with him that Mr. Moran would present proof of perjury of the Kellers that he allegedly held in his hand. Mr. Moran stated that if they signed the Affidavit, or other document, that WASTE MANAGEMENT would not pursue their alleged perjury. Mr. Keller, with Mrs. Keller present, refused to sign any document as demanded by Mr. Moran and Mr. Moran then left the premises.


4. Mr. and Mrs. Keller testified in the first WASTE MANAGEMENT OF ILLINOIS siting hearing regarding their non-receipt of pre-filing notice. The PCB reversed the local siting approval in that case based on WASTE MANAGEMENT OF ILLINOIS' failure to serve pre-filing notice on Brenda Keller (PCB 03-125).
5. After the PCB reversed the local siting approval in PCB 03-125, WASTE MANAGEMENT OF ILLINOIS re-filed the siting application and did serve all required notices on Robert and Brenda Keller. WASTE MANAGEMENT OF ILLINOIS now appeals from a denial of siting on the refiled application by the Kankakee County Board. Notice and jurisdiction are not issues in this appeal.
6. Therefore, the purpose of subpoenaing Mr. and Mrs. Keller is clearly to harass and intimidate them. Questions related to whether they were served with notice on the earlier application and questions relating to their relationship, if any, with Michael Watson are clearly irrelevant. Discovery is limited in this case and before Petitioner can make a discovery request he must allege specific instances of fundamental unfairness relating to the request. Petitioner may not engage in a fishing expedition. See e.g.

Land and Lakes Co. v. Village of Romeoville, PCB 92-25 and DiMaggio v.

Solid Waster Agency of Northern Cook County, PCB 89-138.

WHEREFORE, Robert Keller and Brenda Keller move the Pollution Control Board for an Order quashing their Subpoenas for Deposition scheduled for August 2, 2004.

Respectfully submitted,

By:   
One of the Attorneys for Robert and  
Brenda Keller

ROBERT B. LABEAU, ESQ.  
LaBeau, Dietchweiler & Associates, P.C.  
701 S. Harrison Avenue  
Kankakee, IL 60901  
(815) 933-6637

## BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC., )

Plaintiff, )

v. )

COUNTY BOARD OF KANKAKEE COUNTY, )

Defendant. )

PCB 04-186


AFFIDAVIT

I, ROBERT KELLER, being first duly sworn, do hereby state the following to be true and accurate to the best of my knowledge:

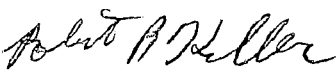
1. That Brenda Keller, my wife, and myself reside at 765 E. 3000 S. Road, Chebanse, Illinois, and have continuously resided there for several years.
2. Our residence lies within 250 feet of the proposed Waste Management landfill.
3. That I received a Supboena Duces Tecum to appear on June 22, 2004, and give testimony. The 22<sup>nd</sup> was crossed out and 23<sup>rd</sup> written in. I, therefore, appeared on June 22, 2004, at the required time and place and was told by an attorney present to return June 23, 2004.
4. That I appeared on June 23, 2004, at the required time and place and was told by Kankakee County staff that no depositions were scheduled that day.
5. That I took time off from my job at Pickett Stone Company for both appearances.

6. That on or about July 20, 2004, at approximately 8:00 p.m., Attorney Donald Moran appeared at my residence uninvited to speak to Mrs. Keller and myself, accompanied by a woman.
7. That Mr. Moran told both of us that he had proof of our perjury with him (apparently among papers he held) and a document for our signatures. He advised us that if we signed the documents he had with him that the perjury matter would be dropped. But, if we refused to sign, his client, WASTE MANAGEMENT, would pursue the perjury issue.
8. That Mr. Moran did not offer to nor provide us with the documents allegedly containing the proof of perjury, nor the document which he requested we sign.
9. That we refused to sign any documents by reason of the fact that our testimony when given was truthful. Mr. Moran then left our residence
10. Mrs. Keller and myself acknowledged receipt of Notice in the subsequently case WASTE MANAGEMENT OF ILLINOIS refiled, for which we have now been subpoenaed.

Further Affiant sayeth not.

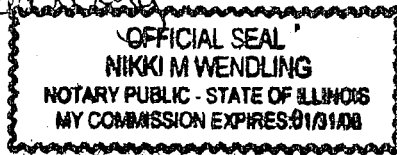
  
\_\_\_\_\_  
ROBERT KELLER

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
\_\_\_\_\_  
ROBERT KELLER

Subscribed and Sworn to  
before me this 30<sup>th</sup> day  
of July, 2004

Nikki M Wendling  
Notary Public



Prepared By:  
ROBERT B. LABEAU, ESQ.  
LaBeau, Dietchweiler & Associates, P.C.  
701 S. Harrison Avenue  
Kankakee, IL 60901  
(815) 933-6637

## Before the Illinois Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS, )  
 INC., )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Complainant/Petitioner, )

PCB 04-186 )

v. )

COUNTY BOARD OF KANKAKEE )  
 COUNTY, )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Respondent. )

SUBPOENA DUCES TECUM

TO: Robert Keller  
 765 E6000 S Road  
 Chebanse, IL 60922

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e)  
 (2002)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give  
 testimony at the hearing/deposition in the above-captioned matter at \_\_\_\_\_

1:00 p.m. on June 22 2004, at

Kankakee County Administration Building, 189 East Court Street,  
 Kankakee, Illinois,

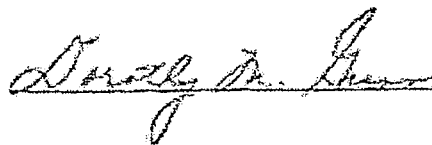
You are also ordered to bring with you documents relevant to the matter under

consideration and designated herein, (1) Any and all documents, including but not limited to letters, articles, memoranda and telephone bills, relating to any communications between August 1, 2003 and May 30, 2004, that you had with any member of the Kankakee County Board regarding the proposed expansion of the Kankakee Landfill, (2) Any and all documents, including but not limited to letters, articles, memoranda and telephone bills, relating to any communications between August 1, 2003 and May 30, 2004 that you had with any of the following persons regarding the proposed expansion of the Kankakee Landfill: Mayor Donald Green, Michael Watson, Bruce Harrison, Ronald Thompson and Keith Runyon.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill.

Adm. Code 101.622(g) and 101802.

ENTER:



Dorothy M. Gunn, Clerk  
Pollution Control Board

Date: February 13, 2003

I served this subpoena duces tecum by handing a copy to \_\_\_\_\_

\_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public



## Before the Illinois Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS, )  
 INC., )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Complainant/Petitioner, )

PCB 04-186

v. )

COUNTY BOARD OF KANKAKEE )  
 COUNTY, )  
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 \_\_\_\_\_ )

Respondent. )

SUBPOENA DUCES TECUM

TO: Robert Keller  
 765 E6000 S Road  
 Chebanse, IL 60922

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(2002)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give

testimony at the hearing/deposition in the above-captioned matter at \_\_\_\_\_

1:00 p.m. on August 2<sup>nd</sup> 2004, at

Kankakee County Administration Building, 189 East Court Street,  
Kankakee, Illinois,

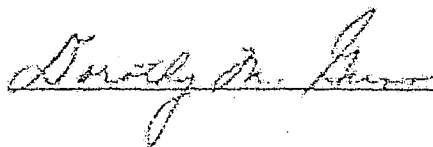
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Failure to comply with this subpoena will subject you to sanctions under 35 Ill.

Adm. Code 101.622(g) and 101802.

ENTER:



Dorothy M. Gunn, Clerk  
Pollution Control Board

July 12, 2004  
Date: ~~February 18, 2003~~

I served this subpoena duces tecum by handing a copy to \_\_\_\_\_

\_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PCB 04-186
	)	
COUNTY BOARD OF KANKAKEE COUNTY,	)	
	)	
Defendant.	)	

AFFIDAVIT

I, BRENDA KELLER, being first duly sworn, do hereby state the following to be true and accurate to the best of my knowledge:

1. That I am married to Robert Keller and we reside at 765 E. 3000 S. Road, Chebanse, Illinois. Our residence lies within 250 feet of the proposed Waste Management landfill.
2. That on or about July 20, 2004, at approximately 8:00 p.m., Attorney Donald Moran appeared at my residence uninvited to speak to Mr. Keller and myself, accompanied by a woman.
3. That Mr. Moran told both of us that he had proof of our perjury with him (apparently among papers he held) and a document for our signatures. He advised us that if we signed the documents he had with him that the perjury matter would be dropped. But, if we refused to sign, his client, WASTE MANAGEMENT, would pursue the perjury issue.
4. That Mr. Moran did not offer to nor provide us with the documents allegedly containing the proof of perjury, nor the document which he requested we sign.

5. That we refused to sign any documents by reason of the fact that our testimony when given was truthful. Mr. Moran then left our residence
6. Mr. Keller and myself acknowledged receipt of Notice in the subsequently case WASTE MANAGEMENT OF ILLINOIS refiled, for which we have now been subpoenaed.

Further Affiant sayeth not.

Brenda Keller  
BRENDA KELLER

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Brenda Keller  
BRENDA KELLER

Subscribed and Sworn to  
before me this 30th day  
of July, 2004

Nikki M Wendling  
Notary Public



Prepared By:  
ROBERT B. LABEAU, ESQ.  
LaBeau, Dietchweiler & Associates, P.C.  
701 S. Harrison Avenue  
Kankakee, IL 60901  
(815) 933-6637

## Before the Illinois Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS,	)	
INC.,	)	
_____	)	
_____	)	
Complainant/Petitioner,	)	PCB <u>04-186</u>
	)	
V.	)	
	)	
COUNTY BOARD OF KANKAKEE	)	
COUNTY,	)	
_____	)	
_____	)	
Respondent.	)	

SUBPOENA DUCES TECUM

TO: Brenda Keller  
765 E6000 S Road  
Chebanse, IL 60922

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e)  
(2002)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give  
testimony at the hearing/deposition in the above-captioned matter at \_\_\_\_\_

2:30 p.m. on August 2<sup>nd</sup> 2004, at

Kankakee County Administration Building, 189 East Court Street,  
Kankakee, Illinois,

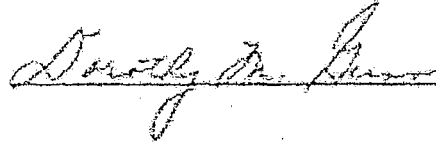
You are also ordered to bring with you documents relevant to the matter under

consideration and designated herein, (1) Any and all documents, including but not limited to letters, articles, memoranda and telephone bills, relating to any communications between August 1, 2003 and May 30, 2004, that you had with any member of the Kankakee County Board regarding the proposed expansion of the Kankakee Landfill; (2) Any and all documents, including but not limited to letters, articles, memoranda and telephone bills, relating to any communications between August 1, 2003 and May 30, 2004 that you had with any of the following persons regarding the proposed expansion of the Kankakee Landfill: Mayor Donald Green, Michael Watson, Bruce Harrison, Ronald Thompsen and Keith Runyon.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill.

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ENTER:



Dorothy M. Gunn, Clerk  
Pollution Control Board

July 12, 2004  
Date: ~~February 13, 2003~~

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\_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

LABEAU, DIETCHWEILER & ASSOCIATES, P.C.  
Attorneys and Counsellors at Law  
Glenlloyd Office and Conference Center  
701 S. Harrison Avenue  
Kankakee, IL 60901

Telephone (815) 933-6637  
Fax (815) 933-9940

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**AUG 02 2004**

**STATE OF ILLINOIS**  
**Pollution Control Board**

TELECOPY COVER SHEET

TO: NAME: Bradley P. Halloran  
COMPANY: Illinois Pollution Control Board  
ADDRESS: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_  
TELECOPIER: (312) 814-3669  
FROM: NAME: Robert B. LaBeau  
DATE: August 2, 2004  
NO. OF PAGES: 15 (INCLUDING COVER SHEET)  
CASE NAME: Waste Management v. County Board of Kankakee  
BRIEF DESCRIPTION OF  
DOCUMENT TELECOPIES: Motion to Quash Subpoena and Affidavits  
COMMENTS:

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