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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**MAR 30 2005**

WASTE MANAGEMENT OF ILLINOIS, INC.)

Petitioner,

vs.

COUNTY BOARD OF KANKAKEE  
COUNTY, ILLINOIS,

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

Case No. PCB 04-186

**NOTICE OF FILING**

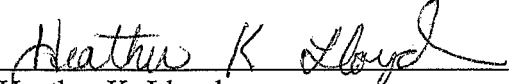
TO: See attached Affidavit of Service

PLEASE TAKE NOTICE THAT on March 29, 2005, I filed with the Illinois Pollution Control Board, an original and nine copies of the Response to Petitioner's Motion to Compel (copies previously served upon the parties).

Respectfully Submitted,

COUNTY BOARD OF KANKAKEE COUNTY,  
ILLINOIS, Respondent

By: Hinshaw & Culbertson LLP

  
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**RESPONSE TO PETITIONER'S MOTION TO COMPEL**

NOW COMES Respondent, COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, by and through its Attorneys, HINSHAW & CULBERTSON LLP, and for its Response to Petitioner's Motion to Compel, states as follows:

I. PETITIONER'S MOTION TO COMPEL SHOULD BE DENIED BECAUSE IT IS UNTIMELY.

Petitioner began deposing members of the Kankakee County Board on June 22, 2004 and concluded deposing the Kankakee County Board members on November 12, 2004. During those depositions, Kankakee County Board members were questioned about their reasons for disapproving Waste Management's application for expansion filed on September 26, 2003. On the advice of counsel, the Kankakee County Board members refused to answer those questions. Therefore, as of November 12, 2004, Petitioner knew that the Kankakee County Board members refused to answer questions regarding the reasons and/or bases of their decision to deny approval to Waste Management's Application for expansion filed on September 26, 2003. Despite this knowledge, Petitioner waited over four months, until March 15, 2005, to file its Motion to Compel, requesting that this Board permit discovery as to why certain members of the County Board to answer questions regarding their reasons for rejecting Waste Management's application.

Petitioner's untimely motion will have a detrimental effect on this proceeding because Petitioner filed its Motion to Compel only three weeks prior to the Illinois Pollution Control Board hearing, currently scheduled for April 6, 2005. Assuming *arguendo* that this Board decides to grant Petitioner's Motion to Compel, the Board hearing will undoubtedly have to be rescheduled because the depositions of fifteen individuals cannot be taken over the course of a few days. If, on the other hand, Petitioner had timely filed its Motion to Compel months ago, immediately after Petitioner became aware that the County Board members were refusing to answer certain questions, there would have been ample time to schedule the depositions of the Kankakee County Board members over the course of several months so as not to disturb the scheduled Board hearing if this Board found that the questioning requested by Petitioner should be allowed. Furthermore, if this Board grants Petitioner's untimely Motion and allows questioning of the County Board members at the Board hearing, the County Board members will have inadequate time to prepare for such questioning. It would place an onerous burden on the County Board members to require them, with little to no notice, to recreate in their minds the deliberative process that they underwent over one year ago. It is undoubtedly because of this burden that courts and this Board have refused requests to delve into the mental processes of decisionmakers, like the Kankakee County Board.

Because Petitioner waited an unreasonable amount of time before filing its Motion to Compel and because Petitioner's unreasonable delay will affect the scheduled Board hearing, this Board should deny Petitioner's Motion as untimely.

## II. THE MENTAL PROCESS DOCTRINE PROHIBITS INQUIRY INTO THE REASONS FOR THE COUNTY BOARD'S DENIAL OF WASTE MANAGEMENT'S SITING APPLICATION.

Petitioner requests that this Board require Kankakee County Board members to explain the reasoning behind their decisions to deny Waste Management's siting application filed with

the Kankakee County Board on September 26, 2003. However, Petitioner's request is directly contrary to well-settled precedent from this Board, establishing that it is generally impermissible to inquire into the mental processes of decisionmakers. See *West Suburban Recycling and Energy Center, L.P. v. Illinois Environmental Protection Agency*, PCB 95-119, 125 (Oct. 17, 1996); *Village of LaGrange v. McCook Cogeneration Station, L.L.C.*, PCB 96-41 (Dec. 7, 1995); *Land and Lakes Co. v. Village of Romeoville*, PCB 92-25 (June 4, 1992); *DiMaggio v. Solid Waste Agency of Northern Cook County*, PCB 89-138 (Oct. 27, 1989); *City of Rockford v. Winnebago County Board*, PCB 87-92 (Nov. 19, 1987); *A.R.F. Landfill, Inc. v. Lake County*, PCB 87-51 (Oct. 1, 1987); *Ash v. Iroquois County Board*, PCB 87-29 (July 16, 1987); *Town of St. Charles v. Kane County Board*, PCB 83-228, 229, 230 (May 19, 1984). In fact, this Board in *A.R.F.* explained that "a party's probing of the mind of an adjudicator on the adjudicator's deliberation process is improper." 1987 WL 56293, slip op. at \*2.

As explained by this Board in *DiMaggio*, the mental process doctrine has its roots in the United States Supreme Court case of *United States v. Morgan*, 313 U.S. 409 (1941). In *Morgan*, the Supreme Court ruled that the Secretary of Agriculture could not be questioned regarding the bases for his decision regarding minimum rates to be charged by market agencies at the Kansas City Stockyards. *Morgan*, 313 U.S. at 422. In so holding, the Supreme Court in *Morgan* explained:

The proceeding before the Secretary 'has a quality resembling that of a judicial proceeding'. Such an examination of a judge would be destructive of judicial responsibility. We have explicitly held in this very litigation that 'it was not the function of the court to probe the mental processes of the Secretary'. Just as a judge cannot be subjected to such a scrutiny, so the integrity of the administrative process must be equally protected. It will bear repeating that although the administrative process has had a different development and pursues somewhat different ways from those of courts, they are to be deemed collaborative instrumentalities of justice and the appropriate independence of each should be respected by the other.

313 U.S. at 422 (internal citations omitted).

Based on the United States Supreme Court's holding in *Morgan*, this Board has recognized that the mental processes of decision makers acting in an adjudicatory role, like the County Board in this case, shall not be examined regarding the bases for their decisions. In fact, this Board in *Ash* stated: "[O]ne cannot invade the mind of the decision-maker. Just as a judge cannot be subjected to such scrutiny, so the integrity of the administrative process is equally respected." *Ash v. Iroquois County Board*, 1987 WL 56144, slip op. at \*8, citing *United States v. Morgan*, 313 U.S. 409 (1941); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971); *San Luis Obispo Mothers for Peace v. United States Nuclear Regulatory Commission*, 789 F.2d 26, 44 (D.C. Cir. 1986); *Time, Inc. v. United States Postal Service*, 667 F.2d 329, 335 (2d Cir. 1981); *United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1217 (D.C. Cir. 1980).

The decision to grant or deny siting approval is an adjudicative function. See *Southwest Energy Corp. v. Illinois Pollution Control Board*, 275 Ill.App.3d 84, 91, 655 N.E.2d 304, 309 (4th Dist. 1995); *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board*, 123 Ill.App.3d 1075, 1080, 463 N.E.2d 969, 973 (2d Dist. 1984); *DiMaggio*, 1989 WL 137358, slip op. at \*6. As such, county board members "don the hat" of a judge to decide whether to grant or deny a siting application. Like judges, the mental processes of county board members should be protected from disclosure in order to uphold the sanctity and impartiality of the landfill siting decision-making process. As a result, Petitioner's request to compel the depositions of Kankakee County Board members in order to invade their mental processes should be denied.

III. THERE IS NO VALID REASON NOT TO APPLY THE MENTAL PROCESS DOCTRINE IN THIS CASE.

Petitioner asserts several purported reasons for ignoring the well-settled proscription from invading a decisionmaker's deliberative process and mental impressions. Specifically, Petitioner alleges that 1) the Kankakee County Board did not make administrative findings; 2) the County Board's reversal of its previous decision implies bad faith or improper behavior sufficient to overcome the doctrine, and 3) the doctrine does not protect post-decision communications. As set forth fully below, each of Petitioner's arguments must fail based on precedent from this Board, as well as persuasive authority from federal courts, including the United States Supreme Court. As such, the mental process doctrine is clearly applicable in this case, and Petitioner's Motion to Compel should be denied.

A. THE KANKAKEE COUNTY BOARD MADE FORMAL AND CONCLUSIVE ADMINISTRATIVE FINDINGS THAT WASTE MANAGEMENT'S APPLICATION DID NOT MEET THE STATUTORY CRITERIA.

Petitioner's first argument is that the mental process doctrine should not apply because the Kankakee County Board did not make formal administrative findings. However, Petitioner's assertion is clearly untrue. In fact, in denying Waste Management's application for expansion, the Kankakee County Board made explicit written findings, containing the vote of the County Board as to each of the nine statutory criteria that the Board was required to consider pursuant to Section 39.2 of the Illinois Environmental Protection Act. See "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," attached hereto as Exhibit A. These findings by the Kankakee County Board are final administrative findings that are sufficient under Section 39.2 to provide for meaningful judicial review. See *E&E Hauling, Inc. v. Illinois Pollution control Board*, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983)

(explaining that “the County Board need only indicate which of the criteria, in its view, have or have not been met, and this will be sufficient if the record supports these conclusion so that an adequate review of the county Board’s decision may be made”). Because the County Board made final administrative findings that the application for expansion did not fulfill the statutory criteria, it would be unlawful for Waste Management to be allowed to conduct discovery and admit evidence concerning the deliberative process or mental impressions of the Kankakee County Board.

Despite the fact that Illinois case law specifically provides that “nothing in [Section 39.2] would require . . . a thorough going exposition of the County Board’s mental processes[.]” Petitioner would have this Board require that county boards, in fact, provide specific reasons for finding whether each criteria was or was not met . *E & E Hauling*, 116 Ill.App.3d at 616, 451 N.E.2d at 578. Such a requirement, however, is directly contrary to precedent from Illinois courts and this Board, expressly holding that a county board must only indicate which statutory criteria have or have not been met, as the Kankakee County Board did in this case. *See E & E Hauling*, 116 Ill.App.3d at 616, 451 N.E.2d at 578-79; *Waste Management of Illinois, Inc. v. McHenry County Board*, PCB 86-109 (Dec. 5, 1986); *Waste Management of Illinois, Inc. v. McHenry County Board*, PCB 88-39 (Aug. 4, 1988). Because the decision of the Kankakee County Board is in strict compliance with Section 39.2, it is clearly a formal administrative finding, as contemplated by this Board in *City of Rockford v. Winnebago County*, PCB 87-92 (Nov. 19, 1987).

It is absolutely clear that the decision of the Kankakee County Board on Waste Management’s second siting application is a “contemporaneous formal finding” based on this Board’s decision in *Land and Lakes Co. v. Village of Romeoville*, PCB 92-25 (June 4, 1992). In

*Land and Lakes*, the court noted “the wealth of case law establishing that before an inquiry can be made into the decisionmaker’s mental process when a contemporaneous formal finding exists, there must be a strong showing of bad faith or improper behavior.” 1992 WL 142725, slip op. at \*3. Based on that case law, this Board held that “an applicant cannot elicit testimony from the decisionmaker which probes the mental processes behind a decision where, as here, a formal written decision exists.” *Id.* at \*5. The written decision in *Land and Lakes* merely provided that “the facility is not necessary to accommodate the waste needs of the intended service area and that no conditions are attached to the denial of criterion 1.” *Id.* at \*1. This Board found that such a decision was a final and formal administrative decision, refusing to allow inquiry into the basis for that decision. *Id.* at \*3 Because this Board concluded that the decision in *Land and Lakes* was a “formal written decision”, so must this Board concluded that the decision of the Kankakee County Board is a “formal written decision” because, like the decision in *Land and Lakes*, the Kankakee County Board’s written decision identifies which criteria have and have not been met.

The cases cited by Petitioner in support of its assertion that there should be inquiry into the mental processes of the County Board members because there were no final administrative findings by the Kankakee County Board not only do not support Petitioner’s assertion but are directly contrary to it. For example, the court in *Abbott Laboratories v. Harris*, 481 F.Supp. 74 (N.D.Ill. 1979), allowed an exception to the mental process doctrine only because the administrative agency had not entered an order upon which the plaintiff could seek judicial review after six years of deliberation. *Id.* at 78. Because there was not a final decision after such a period of time, the plaintiff was allowed to pursue discovery of the decisionmakers. *Id.* In this case, on the other hand, the Kankakee County Board entered a final decision denying Petitioner’s



application for expansion. *See* Exhibit A. Because a final decision was made, Petitioner cannot now delve into the minds of the decisionmakers, no matter how much it dislikes that decision.

Furthermore, *Abbott* as well as the additional cases cited by Petitioner do not support Petitioner's attempt to inquire into the thought processes of the County Board because, as explained by the courts in each of those cases, the proper remedy for an administrative agency's failure to provide an adequate statement of its decision is a remand to the administrative agency. *See Abbott*, 481 F.Supp. at 78; *Community for Creative Non-Violence v. Lujan*, 908 F.2d 992, 998 (D.C. Cir. 1990); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). In this case, there has been no finding that the Kankakee County Board's decision was somehow insufficient, as the decision clearly complies with the Act. Nevertheless, as set forth in the cases cited by Petitioner itself, even if the County Board's decision were somehow unclear or incomplete, the proper remedy would be a remand to the County Board to clarify its decision, not inquiry into the thought processes of the County Board members. *See Land and Lakes v. Village of Romeoville*, PCB 92-25 (June 4, 1992) (requiring Village Board to clarify its decision on criterion one where Village Board's decision was unclear as to whether that criterion was met).

The formal written decision of the Kankakee County Board denying siting approval to Waste Management because of Waste Management's failure to fulfill criterion one, three and six is a final administrative finding. As such, this Board should reject Petitioner's attempt to invade the thought processes of the County Board members in reaching their conclusion.

B. THERE IS NO INFERENCE OF IMPROPRIETY BASED ON THE COUNTY BOARD'S DENIAL OF WASTE MANAGEMENT'S SECOND REQUEST FOR SITING APPROVAL.

Petitioner suggests that there can be an inference of bad faith or improper behavior of the Kankakee County Board for two main reasons. First and foremost, Petitioner suggests that there

is an appearance of impropriety because the County Board voted to approve Waste Management's previous application approximately one year before the County Board voted to deny Waste Management's subsequent application. Second, Petitioner suggests that the County Board's decision was impliedly improper because the County Board rejected the "lengthy and considered staff recommendations" in choosing to deny the application. However, as set forth below, the County Board's change in opinion and its disagreement with the Regional Planning Commission's recommendations are insufficient to infer bad faith or improper behavior on the part of the County Board. Therefore, Petitioner's Motion to Compel should be denied.

As explained several times by this Board, there must be a strong showing of bad faith or improper behavior to justify inquiry into a decisionmaker's mental processes. *See West Suburban Recycling and Energy Center, L.P. v. Illinois Environmental Protection Agency*, PCB 95-119, 125 (Oct. 17, 1996); *Village of LaGrange v. McCook Cogeneration Station*, PCB 96-41 (Dec. 7, 1995); *City of Rockford v. Winnebago County Board*, PCB 87-92 (Nov. 19, 1987). "[W]ithout adequate facts warranting an inference that fundamental unfairness may have occurred in the hearing process, the Board will not necessarily invade the proper realm of the [decisionmakers]. *Village of LaGrange*, 1995 WL 747729, slip op. at \*11 (Dec. 7, 1995). As explained by Board Member Forcade in his concurring opinion in *A.R.F. Landfill*, "the county board proceeding is entitled to a strong presumption of propriety that must be overcome before there can be a 'fishing expedition' into the personal lives and mental processes of the county board members." 1987 WL 56293, slip op. at \*27.

The fact that some county board members voted in favor of Waste Management's request for expansion in 2003 but voted against an entirely new application for expansion over a year later in 2004 does not imply the strong showing of bad faith or improper behavior required to

overcome the mental process doctrine. Rather, the evidence clearly establishes that not only were the applications filed by Waste Management on August 16, 2002 and September 26, 2003 different, but so were the siting hearings regarding those applications, the evidence admitted, the public comments and the testimony provided at the hearings. As a result, there can be no implication of bad faith or improper behavior by the Kankakee County Board simply because it voted to deny Waste Management's application in 2004. Additionally, there can be no implication of bad faith simply because the Kankakee County Board chose not to follow the recommendations of the Regional Planning Commission and grant siting approval to Waste Management because as the local siting authority, it was the duty of the County Board, not the Regional Planning Commission, to decide whether the application would be approved or not.

**1. The Second Application and Accompanying Siting Hearings were Not the Same as the First Application and Siting Hearings.**

Although Petitioner makes much of the fact that several County Board Members testified that Waste Management's application was substantially the same as its previous application, the evidence clearly shows that there were major differences between the two applications. In fact, Waste Management itself acknowledged that its 2003 Application contained new information regarding criteria one, three and eight. See correspondence from Don Moran, dated September 26, 2003, attached hereto as Exhibit B. It was two of these three very criteria, one and three, that the County Board found were not satisfied with respect to Waste Management's second application. Because Waste Management's second application contained new information regarding those criteria, it was reasonable for the County Board to conclude that those criteria were not met with respect to the second application even though it found those criteria were satisfied by Waste Management's first application.

Even assuming *arguendo* that the two applications were completely identical, that does not establish wrongdoing or improper conduct by the County Board because the County Board's decision to grant or deny siting approval is not based solely on a siting application, but is based on additional information presented during the siting hearing as well as public comments presented during and after the hearing. In this case, there were major differences between the public hearings held on the two siting applications, which is significant because while the application begins the siting process, the public hearing is the most critical stage of the siting process. See *Land and Lakes Co. v. Illinois Pollution Control Board*, 245 Ill.App.3d 631, 642, 616 N.E.2d 349, 356 (3d Dist. 1993); *McLean County Disposal, Inc. v. County of McLean*, 207 Ill.App.3d 477, 480, 566 N.E.2d 26, 28 (4th Dist. 1991); *Kane County Defenders, Inc. v. Pollution Control Board*, 139 Ill.App.3d 588, 593, 487 N.E.2d 743, 746 (2d Dist. 1985).

In this case, there is no question that the evidence and testimony presented at the public hearing was not the same with respect to both applications. In fact, at the 2003 hearing, new and additional testimony was provided by an objector's witness, Brent Coulter, who testified regarding criterion six. There was also substantially more evidence concerning criterion three, compatibility with the surrounding area, during the siting hearing on the second application. The fact that new and additional evidence was provided on these criteria justifies the Kankakee County Board's conclusion that criterion three and six were not met by Waste Management in 2004 even though the County Board concluded that those criteria were met over one year earlier based on the evidence presented during the previous siting hearing.

Furthermore, there were drastically different circumstances at the time the County Board voted on the first and second applications, specifically regarding the need for the facility, justifying the County Board's vote on January 31, 2003 to approve the application and its vote

on March 17, 2004 to deny the application. When the County Board voted on January 31, 2003 to approve the expansion, there were no other landfills approved in Kankakee County because although the City of Kankakee had previously approved a landfill to be located in the City of Kankakee, this Board reversed that approval on January 9, 2003. *See County of Kankakee v. City of Kankakee*, PCB 03-31, 33, 35 (Jan. 9, 2003). However, when the County Board voted to disapprove Waste Management's expansion on March 17, 2004, a landfill had been approved by the City of Kankakee, only two miles from the proposed expansion, and that approval was upheld by this Board on March 18, 2004. *See Sandberg v. City of Kankakee*, PCB 04-33, 34, 35 (March 18, 2004). Based on the City of Kankakee's approval of a landfill in close vicinity to the proposed expansion, it was more than reasonable for the Kankakee County Board to find that there was no longer a need for the proposed expansion and that criterion one, therefore, had not been satisfied.

## **2. Changed Votes Do Not Establish Impropriety.**

Even assuming *arguendo* that the evidence presented in Waste Management's 2003 application and siting hearings was substantially the same as the evidence presented in the 2002 application and accompanying siting hearings, this still does not establish any impropriety by the County Board. *See Moore v. Wayne County Board*, PCB 86-197 (June 2, 1988); *Land and Lakes v. Village of Romeoville*, PCB 92-25 (June 4, 1992); *DiMaggio v. Solid Waste Agency of Northern Cook County*, PCB 89-138 (Oct. 27, 1989). In *Moore*, the Wayne County Board took a vote on a siting application that resulted in a 7-7 tie. 1988 WL 160275, slip op. at \*2. Three weeks later, the County Board voted again and this time voted to approve the facility by a vote of 10-4. *Id.* In refusing to find that the County Board's decision was fundamentally unfair simply

because several board members had changed their votes, this Board explained that the mere changing of one's vote is not evidence of an improper decision. *Id.* at \*4.

Just as there was no impropriety simply because several members of the county board changed their votes in *Moore*, the same is true in this case. In fact, in this case there is even less reason to believe that the County Board's decision denying approval to Waste Management was improper because there was a new and different application filed and new siting hearing held before the Kankakee County Board, on which the County Board based its second decision. In *Moore*, on the other hand, the county board's second vote was not based on any new or additional evidence at all, but was based on the same application and siting hearing on which the county board had been unable to reach a decision three weeks earlier. Based on the precedent set forth in *Moore*, this Board should not find that there is an implication of improper conduct or behavior simply because some county board members voted in favor of Waste Management's first siting application and against its second siting application.

This Board in *Land and Lakes* again determined that it was improper to invade the mind of decisionmaker even when evidence establishes that the decisionmaker changed his or her vote. See 1992 WL 142725, slip op. at \*7. In *Land and Lakes*, the petitioner alleged fundamental unfairness resulted when a trustee changed her vote from one proceeding to the next. *Id.* However, this Board ruled that "[p]ursuant to the Board's ruling above regarding impermissible invasion into the mind of the decisionmaker and lack of relevancy, the Board rejects Land and Lakes' contention that Pakula's vote establishes that the second proceeding was fundamentally unfair." *Id.* This Board further ruled that "the principle that one cannot invade the decisionmaker's mental processes as well, as the Board's determination that any inquiry into the Village's first vote is irrelevant, prevents any inquiry into allegations of a 'changed vote.'" *Id.*

Therefore, based on this Board's decision in *Land and Lakes*, it is clearly improper to delve into the mental processes of Board members, as Petitioner suggests here, simply on the basis of a "changed vote."

This Board again refused to find improper conduct and delve into the mental processes of board members who changed their votes in *DiMaggio*. In *DiMaggio*, the petitioners argued that there was a strong inference of *ex parte* contacts where the city council initially voted to deny site location approval and then, two weeks later and without further meetings, unanimously approved the siting application. 1989 WL 137358 at \*4. This Board refused to find fundamental unfairness and refused to "unnecessarily invade the proper realm of the city councilmen and search beyond the record" simply because city council members changed their votes *Id.* at \*5. This Board explained "that in reasonable deference to the city council, their depositions should not be required, absent some greater showing of a factual basis for alleged *ex parte* contacts." *Id.* at \*6. Just as this Board found in *DiMaggio*, the fact that a local siting authority changes its vote on a siting application is insufficient to justify probing the mental processes of county board members.

Furthermore, the fact that some County Board members changed their opinions regarding the proposed expansion does not establish impropriety, but is actually a sign of good decisionmaking. In fact, in a case cited by Petitioner itself, the court explained:

One set of possible justifications for the mental processes privilege flows from the nature of the testimony which might be sought in the absence of the privilege. Presumably, a decisionmaker who approaches a problem thoughtfully will find that his position changes as his thinking matures. Perhaps the change will be stark; perhaps it will be merely a matter of emphasis. In any event, a healthy decisionmaking process should encourage such change where it is appropriate.

*United States v. Hooker Chemicals & Plastics Corp.*, 123 F.R.D. 3, 38 (W.D.N.Y. 1988). In direct contrast to Petitioner's assertion that the County Board's decision to deny the expansion in

2004 raises the inference of improper conduct, the County Board's new decision may actually be the sign of a good decisionmaker who has clearly examined and considered all of the options.

Based on the foregoing, it is clear that the County Board's decision to deny siting approval in 2004 is insufficient to establish a strong showing of impropriety required to overcome the mental processes doctrine. Moreover, even if Petitioner had met its burden of establishing impropriety, Petitioner's request to delve into the mental processes of only certain Kankakee County Board members, specifically those who voted against the expansion, is clearly improper. Out of the 28 Kankakee County Board members, Petitioner has requested permission to question only 13 members regarding their decision to deny Petitioner's second application for expansion. As such, Petitioner is requiring only certain County Board members to justify their decisions on the application for expansion, while those County Board members who voted in favor of the application for expansion are not required to divulge the reasons for their decisions. This is a completely one-sided and unfair process to single out only certain County Board members whose votes Petitioner does not like. However, the fact that Petitioner is disappointed with the votes cast by certain County Board members does not justify delving into the thought processes of those County Board members, particularly when other Board members, whose votes Petitioner apparently likes, are not subject to the same invasive interrogation. Because it is improper to invade the deliberative process and mental impressions of a decisionmaker and even more improper to do so only for certain decisionmakers who vote a certain way, Petitioner's Motion to Compel should be denied.

**3. The County Board's Decision Not to Follow the Regional Planning Commission's Recommendations Does Not Establish Impropriety.**

In addition to the alleged "changed vote," Petitioner alleges that an inference of improper conduct arises from the County Board's refusal to accept the recommendations of the Regional



Planning Commission. In support of this position, Petitioner cites one case from the federal district court of Wisconsin, *Sokaogon Chippewa Community v. Babbitt*, 961 F.Supp. 1276 (W.D.Wis. 1997). However, that case is not controlling on this Board and is not in accordance with the United States Supreme Court's holding in *Morgan*. In fact, the court in *Sokaogon* did not even cite to nor rely on the Supreme Court's holding in *Morgan*, as this Board has repeatedly done in determining whether to inquire into the mental processes of decisionmakers. See *DiMaggio v. Solid Waste Agency of Northern Cook County*, PCB 89-138 (Oct. 27, 1989); *McLean County Disposal Co. v. County of McLean*, PCB 87-133 (May 25, 1989); *A.R.F. Landfill, Inc. v. Lake County*, PCB 87-51 (Oct. 1, 1987); *Ash v. Iroquois County Board*, 87-29 (July 16, 1987).

Furthermore, the facts presented in *Sokaogon* establish that that the court did not inquire into the agency's decision simply because the agency disagreed with a staff report; rather, in *Sokaogon*, there was direct evidence of improper political pressure, including contacts between the agency decisionmakers and congressional or presidential officials. *Id.* at 1281-84. In this case, County Board members were specifically questioned about their contact with the Mayor and other governmental officials, and despite such questioning, there was no evidence of political pressure over the decisionmakers like there was in *Sokaogon*. Consequently, Petitioner in this case has not established the "strong showing" necessary to overcome the mental processes doctrine that the court found was present in *Sokaogon*.

Moreover, the United States Supreme Court's decision in *Morgan* specifically contradicts Petitioner's assertion that the County Board's decision not to following the Regional Planning Commission's recommendations justifies inquiry of the County Board members. In *Morgan*, the evidence showed that, like the County Board, the Secretary chose not to follow the

recommendations of one of his staff members. 313 U.S. at 422. Nevertheless, the United States Supreme Court found that no inquiry into the bases of the Secretary's decision was warranted.

*Id.* Specifically, the Court explained:

Much was made of [the Secretary's] disregard of a memorandum from one of his officials, who on reading the proposed order, urged considerations favorable to the market agencies. But the short of the business is that the Secretary should never have been subjected to this examination.

*Id.* As the United States Supreme Court specifically found in *Morgan*, the fact that a decisionmaker chooses to disregard the recommendation of another does not establish strong evidence of improper conduct sufficient to allow inquiry into the minds of the decisionmakers.

Furthermore, Petitioner's contention that the Kankakee County Regional Planning Commission's recommendation should have been controlling on the County Board is directly contrary to the Illinois Environmental Protection Act. The Act specifically provides: "The county board of the county or the governing body of the municipality . . . shall approve or disapprove the request for local siting approval for each pollution control facility which is subject to such review." 415 ILCS 5/39.2(a). Therefore, pursuant to the Act, the Kankakee County Board, not the Kankakee County Regional Planning Commission, was obligated to decide whether the proposed facility met the statutory criteria. The fact that the Kankakee County Board sought and received the Regional Planning Commission's recommendation did not bind the County Board to the Commission's recommendation, as Petitioner would contend. It was the province of the County Board and the County Board alone to determine whether the proposed expansion should be approved or disapproved pursuant to the Act; therefore, the Regional Planning Commission's recommendations are irrelevant.

Finally, a review of the County Board's decision compared to the Regional Planning Commission's recommendations establishes that it was entirely proper for the County Board to

deny Waste Management's application. In ruling on Waste Management's application, the Kankakee County Board found that three of the nine criteria set forth in Section 39.2 were not met, specifically criteria one, three and six. See Exhibit A. While the Regional Planning Commission, in its recommendations found that all of these criteria were met, the Commission felt it necessary to impose special conditions on each of those criteria. In fact, the Commission found that one special condition should be imposed to satisfy criterion one, six special conditions should be imposed to satisfy criterion three, and fourteen special conditions should be imposed to satisfy criterion six. See Kankakee County Regional Planning Commission's "Recommendations Relating to the Application of Waste Management of Illinois, Inc. For Local Siting Approval of an Expansion of the Existing Kankakee Landfill," attached hereto as Exhibit C. Because the Regional Planning Commission found that those criteria were met only subject to numerous conditions, it was absolutely reasonable and not inherently improper for the County Board to find that even with those special conditions imposed, criteria one, three and six were not satisfied.

Based on the foregoing, it is clear that a decisionmaker's choice not to follow the recommendations of others is *per se* improper. Therefore, Petitioner has failed to establish a strong showing of improper conduct necessary to overcome the mental process doctrine.

C. THE MENTAL PROCESS DOCTRINE EXTENDS TO POST-DECISION COMMUNICATIONS AND CANNOT BE WAIVED.

Petitioner cites to one case in support of its position that the mental processes doctrine ends after the decision is made. See *United States v. Hooker Chemicals & Plastics Corp.*, 123 F.R.D. 3 (W.D.N.Y. 1988). However, that case is clearly distinguishable and should not be relied upon to invade the mind of a decisionmaker because the court in that case was determining the scope of the mental process doctrine in a context where judicial review of an administrative

decision was not at issue. *Id.* at 27. It was only in that context that the court found it appropriate to depart from the Supreme Court's ruling in *Morgan* and allow inquiry into a decisionmaker's post-decisional views. *Id.* However, in this case, unlike *Hooker*, there is review of the County Board's decision to grant or deny siting approval, first through the Illinois Pollution Control Board pursuant to Section 40.1 of the Act, and, thereafter, through the appellate court pursuant to Section 41 of the Act. See 415 ILCS 40.1; 415 ILCS 41. Because there is both administrative and judicial review of the County Board's decision, this Board should follow the precedent set forth in *Morgan* and disregard the decision of the Western District of New York in *Hooker*, as that case is inapplicable.

As explained by the Court in *Hooker*, the mental process doctrine first identified in *Morgan* is justified on two grounds:

First, in those cases where an administrative decisionmaker does act like a judge or jury (that is, where he or she acts, in a presumably neutral way, to decide a controversy or to promulgate a rule), it is not 'in role' for that official to become a witness in the reviewing court. To become a witness is to move from the model of neutral decisionmaker. Second, and more important, it would be highly inefficient for reviewing courts to retrace the mental processes of administrative decisionmakers – so inefficient that it might undermine a purpose for which the agency was established. In administrative law, agency decisions enjoy a presumption of regularity precisely because we do not want reviewing courts acting as for a de novo. Conceivably, it was these two considerations which Justice Frankfurter had in mind when he asserted that the *Morgan* privilege (or doctrine) would preserve the 'integrity of the administrative process.'

*Hooker*, 123 F.R.D. at 24. In order to fulfill the purposes of the mental process doctrine, as explained above, it is necessary for the doctrine to extend to post-decisional discussions of a decisionmaker's mental processes. The Supreme Court in *Morgan* clearly agreed, finding that it was inappropriate for the Secretary to be questioned after he made a decision regarding the bases and reasons for that decision. This Board should likewise find that in order to 'preserve the

integrity of the administrative process,' the doctrine must apply to post-decisional discussions of a decisionmaker.

Petitioner's contention that the privilege should be lost if post-decision discussions occur should also be rejected by this Board, as this Board has previously found that post-decision discussions do not waive the privilege. *See Land and Lakes Co. v. Village of Romeoville*, PCB 92-25 (June 4, 1992). In fact, this Board in *Land and Lakes* specifically stated: "The Board does not believe that the decisionmaker can 'waive' the privilege that the thought process of one in an adjudicate capacity is not to be invaded." 1992 WL 142725, slip op. at \*5. Therefore, even if a County Board member has previously explained his or her mental processes to someone else, that does not authorize unfettered inquiry into the thought processes of that County Board member.

Not only should this Board refuse to compel the depositions of Kankakee County Board members, but this Court should also refuse to compel the deposition of Michael Van Mill, an employee of the County because, as set forth above, the County Board members who discussed their decisions with Mr. Van Mill did not "waive" their privilege by doing so. Furthermore, as this Board has specifically found, such statements are protected and not discoverable because they were made by County Board members to a member of the County staff. *See Town of St. Charles v. Kane County Board*, PCB 83-228, 229, 230, 1984 WL 37631, slip op. at \*7 (March 21, 1984) (finding that inquiry about conversations between County Board member and Director of the Environmental Department, who is considered staff of the County Board, "is clearly impressible as infringing on the mental processes of the County"). As such, the additional deposition of Michael Van Mill to discuss the mental impressions of County Board members, in

addition to those of all Kankakee County Board members, should not be compelled by this Board.

WHEREFORE, Respondent, COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, respectfully requests that this Board deny Petitioner's Motion to Compel.

Respectfully Submitted,

COUNTY BOARD OF KANKAKEE COUNTY,  
ILLINOIS, Respondent

By: Hinshaw & Culbertson LLP

Richard S. Porter (HKL)  
Richard S. Porter  
One of Attorneys

HINSHAW & CULBERTSON LLP  
222 N. LaSalle Street  
Suite 300  
Chicago, IL 60601-1081  
312-704-3000

# Exhibit A

#040325-114  
FILED

## KANKAKEE COUNTY BOARD

04 MAR 25 AM 10:18

### Decision Regarding the Application of Waste Management of Illinois, Inc. For Local Siting Approval of an Expansion of the Existing Kankakee Landfill

Whereas, on September 26, 2003, Waste Management of Illinois, Inc. (WMI) filed an application for local siting approval for an expansion of its existing Kankakee Landfill; and

Whereas public hearings have been held on the application, before Hearing Officer John McCarthy, and public comments filed or postmarked by February 20, 2004 have been received; and

Whereas the Kankakee County Regional Planning Commission (KCRPC) has, pursuant to the Kankakee County Siting Ordinance for Pollution Control Facilities (Siting Ordinance), considered the application and the siting record, and has made findings and recommendations to the Kankakee County Board (Board) (see attached Exhibit A); and

Whereas, the KCRPC voted, pursuant to state law and the Siting Ordinance to also consider two comments filed after February 20, 2004, but no comments filed after March 2, 2004; and

Whereas the Board has considered the record of the siting proceeding, including, but not limited to, the testimony, exhibits, and comment given at the public hearings, the application, and the public comments; and

Whereas, the Board has also received and considered the recommendations of the KCRPC; and

Whereas, pursuant to state statute (415 ILCS 5/39.2) and the Siting Ordinance, the Board is to determine compliance or noncompliance with the statutory criteria of Section 39.2 of the Environmental Protection Act;

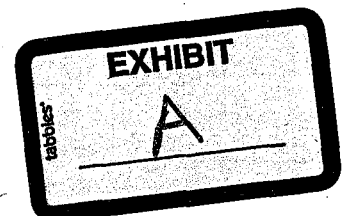
IT IS HEREBY DETERMINED:

### Jurisdiction

The Board finds that all jurisdictional requirements have been satisfied. Thus, the Board has jurisdiction to consider WMI's application.

### Fundamental Fairness

The Board finds that the proceedings have been conducted in a fundamentally fair manner.





### Statutory Criteria

Section 39.2(a) of the Illinois Environmental Protection Act requires that an applicant for local siting approval demonstrate compliance with nine criteria.

1. Whether the facility is necessary to accommodate the waste needs of the area it is intended to serve. The KCRPC recommended that criterion one be found to be satisfied, subject to a special condition. A motion that the Board adopt the KCRPC's recommendation failed on a vote of 12 in favor and 16 opposed. Having no additional motions, the Board finds that criterion one is not satisfied.
2. Whether the facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. The KCRPC found criterion two is satisfied, subject to special conditions. A motion that the Board adopt the KCRPC recommendation passed on a vote of 22 in favor and 6 opposed. The Board finds that the proposed facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. However, that finding is based upon the imposition of the following special conditions:
  - a. There shall be no vertical expansion of the existing facility.
  - b. The lateral expansion must be considered a separate unit from the existing landfill, as defined in 35 Ill. Adm. Code 810.103, and separate groundwater monitoring networks shall be maintained for the expansion and for the existing landfill.
  - c. A field verification must be performed to locate all private wells and community wells, currently used as a source of potable water, located within 1,000 feet of all boundaries of the property.
  - d. Downgradient monitoring well spacing in the uppermost aquifer (regardless of gradient) must be provided, where adjacent potable water supply wells are located in the Dolomite.
  - e. Any and all sand deposits that are one foot thick, twenty feet wide, and/or yield water for a period of more than 24 hours must be monitored as potential contaminant migration pathways.
  - f. Leachate shall not be recirculated for a period of at least five years after the receipt of the operating permit. Following this period, the landfill operator may petition the County Board to recirculate leachate. The County staff shall review the operational record of the site and consult with an independent technical expert to determine if the operator has demonstrated that leachate recirculation is a safe and appropriate method to handle the leachate at this facility. Reasonable expenses of the

technical expert shall be reimbursed by the landfill operator. Leachate may not be recirculated without the express approval of the County Board.

- g. Soil bioremediation and solidification of waste is prohibited at the facility, unless expressly approved in writing by the County Board.
- h. Composting of waste is prohibited at the facility, unless expressly approved in writing by the County Board.
- i. An annual topographic survey of existing waste grades and elevations, of final permitted waste grades and elevations, and final permitted contours shall be conducted by the operator. Results of each annual survey must be submitted to the County Planning Director within thirty days thereafter to ensure ongoing compliance with permit conditions at the facility.
- j. The construction quality assurance (CQA) officer shall be physically present on the landfill site a minimum of once per week during each stage of critical liner construction including: 1) preparation of sub-grade; 2) low permeability soil liner construction; 3) geomembrane installation; 4) geotextile placement; 5) granular drainage layer construction; 6) leachate system and associated piping installation; 7) final cover construction; and 8) gas system installation. Documents signed and dated by the CQA officer must be maintained evidencing his or her physical presence, and must be made available to the County upon request. Technicians utilized shall have at least five years experience and shall be approved by the County Planning Director.
- k. The active face must not exceed an area approved by the County Planning Director. If the operator believes the approved area is not adequate for operations, the operator may petition the County Board for allowance of a larger active face area.
- l. An independent professional engineer (approved by the County Planning Director) shall be on-site to observe placement of the sand drainage layer and the initial lift of waste placed in any new cell. The engineer shall report directly to the County Planning Director, and shall have the authority to stop placement of sand or waste during this initial operation if he or she observes any condition that would or could damage the bottom liner.
- m. Trucks, trailers, or any other vehicle holding waste shall not be parked or stored overnight at the facility, or staged on Route 45/52, or on the right-of-way outside of the landfill facility.
- n. Fencing around the entire facility is required to prevent unauthorized access. An eight-foot high wooden or other view-obstructing, County

acceptable fence shall be constructed on the east side of the property to help block the view of the site. As cells are developed, the fence shall be extended to encompass, at a minimum, the waste footprint, with the fence eventually encompassing the entire facility.

- o. Video recordings of all traffic entering the site shall be retained for a period of at least six months. The County shall have the right to review the recordings within two days of requesting to review a tape.
- p. The minimum number of random load inspections shall be three per week as specified in state regulations. For any amount of tonnage received above an average of 500 tons per day, the number of inspections shall be increased on the following basis:

For each 500 ton per day average increase, the number of random weekly inspections shall be increased by two. For example, if up to 1000 tons per day average is accepted the previous week, the week shall have five inspections (three inspections for the first 500 tons, and two for the next 500). If the weekly rate is 2000 tons per day, the inspection rate is three plus two plus two plus two, to equal nine random inspections.

After five years of operation, the landfill operator may request a review and reconsideration of this random inspection requirement by the County Board. An authorized County official shall have the right to inspect and to be present at any random load inspection.

- q. The landfill operator shall pick up litter on a daily basis along Route 45/52 between the landfill and the I-57 interchange, as well as at least one-quarter mile south of the landfill along Route 45/52. If allowed by adjacent property owners, the landfill operator shall remove any litter attributable to the landfill on those adjacent properties on a weekly basis. Perimeter picking on site shall be performed daily to remove litter from trees, fencing, and berms.
- r. The landfill operator shall install a radiation detector at the scale house. The landfill operator shall record any alarm, and notify the County of each occurrence, the level of radiation detected, and the manner of response.
- s. The maximum height of the landfill, and the lateral extent of the landfill, shall not exceed the height and lateral extent shown on the plans provided in the application.
- t. A Groundwater Impact Assessment (GIA) must be submitted to the

County and its consultants prior to the submittal of a development permit application to IEPA. The landfill owner/operator shall reimburse the County for reasonable and necessary costs incurred in review of the GIA.

- u. Copies of the development permit application and all subsequent permit applications and required submittals to IEPA shall be submitted to the County Planning Director at the same time the applications are submitted to IEPA, at no cost to the County. All permits issued for the facility shall be copied and submitted to the County Planning Director within 30 days after any such permit is received by the landfill owner/operator.
- v. The landfill operator shall build the berms on the west side of the property at least 1,000 feet in advance of any cell construction, measured from the southernmost coordinate of the cell. For example, if the cell's southernmost coordinate is S 3500, then the berm shall extend to S 4500 or further south. The only exception to this condition is during the construction of Phase I.
- w. The gas line that is to be relocated shall be fully sealed from any potential migration from the landfill. Only fine-grained material shall be used as backfill in the trench. The construction shall be certified by an independent professional engineer, such engineer to be approved by the County Planning Director.
- x. Proof of each equipment operator's training shall be provided to the County Planning Director prior to that operator's work at the site.
- y. The landfill operator shall notify the County Planning Director seven days prior to collecting any required sampling or resampling. The landfill operator shall provide the County with split samples for chemical analysis. The County shall select the laboratory to which its sample(s) are sent for chemical analysis. The landfill operator shall reimburse the County for the reasonable and necessary costs of such testing and analyses, provided, however, that such reimbursement shall not exceed \$10,000 per calendar year, adjust annually for the Chicago/Gary Metropolitan Area Consumer Price Index.
- z. The landfill operator shall not request the use of sewage sludge as a component of final cover in its IEPA permit application without first obtaining County Board approval of such use.
- aa. An automatic monitoring system shall be installed to monitor the level of leachate from each leachate sump area. The system shall record the head in the sump such that at no time will the leachate level be allowed to rise above the level that corresponds to one foot of head on the liner. The landfill operator shall maintain the records from the automatic monitoring

system, and make those records accessible to the County.

- bb. The leachate containment area surrounding the leachate holding tanks shall be sized appropriately to handle a potential spill volume equal to all tanks present, unless the operator can demonstrate to IEPA that such a requirement promotes operational safety hazards.
- cc. The landfill operator shall provide, as part of its development permit application to IEPA, a demonstration (water balance) that the watershed north of 7500 S Road will not be negatively impacted by the facility. A copy of this demonstration shall be submitted to the County Planning Director.
- dd. The County Planning Director shall be notified at least fourteen days in advance of construction of the stormwater control planned for each phase of landfill development. The operator shall provide the County Planning Director with a copy of all correspondence to or from IEPA related to stormwater detention and runoff control operations.
- ee. The landfill operator shall implement the complaint procedure outlined in the application, including a hot line phone number, to address complaints.
- ff. The landfill operator shall locate any farm drainage tiles on the property, and cooperate and coordinate with the County and appropriate drainage districts concerning possible and/or necessary removal or relocation of those tiles. Any removed tiles shall be sealed from any potential migration from the landfill. Only fine-grained material shall be used as backfill in the trench. The construction shall be certified by an independent professional engineer, such engineer approved by the County Planning Director.
- gg. A textured geomembrane shall be used when constructing the interior sideslope drainage layer, unless otherwise permitted by IEPA.
- hh. A textured geomembrane shall be used on the final cover layer, unless otherwise permitted by IEPA.
- ii. Final cover over a filled area is to be placed not later than 60 days after placement of the final lift of solid waste, unless otherwise permitted by IEPA. At no time shall the area exceed 10 acres, unless otherwise permitted by IEPA.
- jj. Leachate storage tanks shall be coated with a corrosive-resistant material prior to use, unless otherwise permitted by IEPA.
- kk. The leachate containment area is to be inspected for leaks or spills on a daily basis with all results recorded in a log. The log shall be made

available to the County for review. Any stormwater suspected of being contaminated in the leachate containment area shall be handled as leachate, unless a sample is collected and tested for the annual leachate parameter list, and it is demonstrated that all organic compounds are below detection limits, and all inorganic compounds are detected at concentrations below NPDES discharge limits.

- ll. All stormwater detention basins and stormwater drainage ways/ditches shall be inspected weekly during the operating life of the facility. A written log shall be kept of the inspections and made available to the County for review. The inspections shall be conducted on a quarterly basis for five years after certified closure of the facility. After five years of closure, the frequency of these inspections may be decreased to annually with IEPA approval. At the time of inspection, all debris shall be removed from the inlet/outlet structures. If the sediment buildup in a basin or ditch is within six inches below the invert of the outlet structure, the basin shall be dredged and all sediments removed. All stormwater drainage ways/ditches on property adjacent to the facility shall be inspected on the same schedule (weekly during the operating life, quarterly during the first five years of certified closure, then as approved by IEPA), if located on publicly-owned land. If located on privately owned land, the same inspections shall be performed if allowed by the property owner.
- mm. An independent professional engineer (approved by the County Planning Director) must re-certify any final cover disturbed as a result of installation of the gas management system, unless otherwise permitted by IEPA.
- nn. Due to the number of adjacent private potable water wells and the unknown impact of the landfill on groundwater flow within the bedrock aquifer, the maximum spacing between bedrock monitoring wells around the entire landfill footprint shall be 250 feet, unless otherwise approved by IEPA. No later than five years after the start of landfill operation at the expansion, the operator shall install two additional deep dolomite aquifer monitoring wells at locations and depths specified by the County, unless otherwise permitted by IEPA.
- oo. Leachate generation data will be recorded weekly per phase. The volume of leachate pumped/shipped per week shall be recorded in a written log for each phase of the landfill. A monthly written summary comparing the actual leachate generation data to the theoretical volume expected must be submitted to the County Planning Director.
- pp. To provide additional hydrogeologic data on the southwest side of the facility, two additional piezometers must be installed. The first piezometer shall be installed midway between G119A and G137A. The second piezometer shall be installed midway between G137A and G140A. The

two new piezometers shall be developed, then single well aquifer tested. A minimum of one round of static water levels shall be collected from all the bedrock monitoring wells and piezometers, and the potentiometric surface contour map of the bedrock aquifer shall be updated. The boring logs, as-built diagrams, single well aquifer test data, and test reduction for the two additional piezometers shall be included in the development permit application to IEPA. The two additional piezometers shall be proposed by the operator for the groundwater monitoring network in the development permit application to IEPA.

- qq. Burning of any type (including vegetative prescribed burning) is prohibited at the facility, unless expressly approved by the County Board.
- rr. When collecting groundwater samples, a well must be purged a minimum of 3 well volumes, and two consecutive field measurements with a  $\pm 0.3$  S.U. for pH and within 5% for specific conductivity must be conducted, unless otherwise permitted by IEPA. All field measurements must be performed in the field at the time of sampling, and not at the laboratory, unless otherwise permitted by IEPA.
- ss. The temperature of the constructed soil liner that has not yet been covered by waste shall be monitored continuously and documented in sub-freezing temperatures. Liner soils exposed to freezing temperatures must be retested for permeability by lab (tube) or in-situ testing. Any soil not meeting the  $-1 \times 10^{-7}$  cm/sec requirements shall be reconstructed/recompacted and then retested by permitted methods.
- tt. Citizen refuse boxes shall be emptied daily if refuse is deposited in them.
- uu. Results of any initial test performed to determine the level of noise from the gas flare or generator systems shall be submitted to the County Planning Director. If the gas flare or generator systems are materially changed after initial noise level testing, those systems shall be promptly retested.
- vv. The citizen-use recycling opportunities at the facility shall include, at a minimum, mixed paper, glass (green, brown, and clear), at least two plastic types (numbers 1 and 2 plastics), ferrous metals, aluminum, and cardboard. The operator shall submit, to the County Planning Director, quarterly reports on the tonnage/weight of all material received.
- ww. The hours of operation at the facility are limited to one-half hour before and two hours after waste acceptance hours. Thus, operations are limited to 5:30 a.m. to 8:00 p.m., Monday through Saturday.
- xx. An operable valve shall be installed and continually maintained at each

sedimentation outlet basin. Proper operation of any and all such valves shall be verified by no less than quarterly inspection, with the results of all inspections documented and provided to the County upon request.

- yy. Because the model indicates the thickness of in-situ clay is critical for the diffusion of contaminants, the operator shall verify that clay soil with at least three feet of continuous thickness is located between the bottom of the constructed clay liner and the top of the uppermost aquifer (dolomite bedrock and basal sand unit). If the clay soil is found not to be three feet thick, the underlying three feet of material shall be over-excavated and recompacted so that a minimum of six feet of low permeability material is in place immediately below the HDPE liner, and that this material has a maximum hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec.
  - zz. All conditions must be stated in the development permit application submitted to IEPA. The operator shall provide specific notation to the County Planning Director, with the location of each condition in the development permit application by section, page, and condition numbers.
  - aaa. The operator shall reimburse the County for reasonable expenses for services of professionals reviewing and analyzing the groundwater corrective action and assessment monitoring activities.
  - bbb. The operator shall install and maintain a double composite liner.
3. Whether the facility 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. The KCRPC recommended that criterion three be found to be satisfied, subject to special conditions. A motion that the Board adopt the KCRPC's recommendation failed on a vote of 10 in favor and 18 opposed. Having no additional motions, the Board finds that criterion three is not satisfied.
  4. Whether the facility is located outside the boundary of the 100 year floodplain, or the site is floodproofed. The KCRPC recommended that criterion four be found to be satisfied. A motion that the Board adopt the KCRPC's recommendation passed on a voice vote. The Board finds that the proposed facility is located outside the boundary of the 100 year floodplain.
  5. Whether the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. The KCRPC recommended that criterion five be found to be satisfied. A motion that the Board adopt the KCRPC's recommendation passed on a vote of 20 in favor and 6 opposed, with 2 absent. The Board finds that the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. However, that finding is based upon the



imposition of the following special conditions:

- a. The landfill operator shall install a radiation detector at the scale house. The landfill operator shall record any alarm, and notify the County of each occurrence, the level of radiation detected, and the manner of response.
  - b. The facility's Emergency Action Plan (EAP) shall include contingencies for management of incidental hazardous (including radioactive) waste inadvertently received at the facility. The EAP shall specify, at a minimum, qualified contractor criteria, overpacking, and immediate off-site removal of the incidental hazardous waste.
6. Whether the traffic patterns to or from the facility are designed to minimize the impact on existing traffic flows. The KCRPC recommended that criterion six be found to be satisfied. A motion that the Board adopt the KCRPC's recommendation failed on a vote of 12 in favor and 16 opposed. Having no additional motions, the Board finds that criterion six is not satisfied.
7. If the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release. The KCRPC recommended that criterion seven be found inapplicable. A motion that the Board adopt the KCRPC recommendation passed on a voice vote. The Board finds that the facility will not be treating, storing, or disposing of hazardous waste. Therefore, the Board finds that this criterion is not applicable.
8. If the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan. The KCRPC recommended that criterion eight be found to be satisfied. A motion that the Board adopt the KCRPC recommendation passed on a vote of 25 in favor and 3 opposed. The Board finds that the facility is consistent with the Kankakee County Solid Waste Management Plan. However, that finding is based upon the imposition of the following special conditions:
- a. The landfill operator must comply with all obligations and responsibilities of the Host Agreement between the County and Waste Management of Illinois, Inc.
  - b. The landfill operator must employ independent appraisers acceptable to the County as part of the Property Value Guarantee Program.
  - c. The Property Value Guarantee Program must be amended to provide that the Program continues for thirty years after the included Property Owners

are notified that waste is no longer being disposed of at the facility.

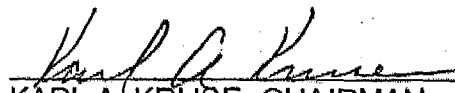
9. If the facility will be located in a regulated recharge area, any applicable requirements specified by the [Illinois Pollution Control] Board for such areas have been met. The KCRPC recommended that criterion nine be found inapplicable. A motion that the Board adopt the KCRPC recommendation passed on a vote of 27 in favor and 1 opposed. The Board finds that the facility will not be located in a regulated recharge area. Therefore, the Board finds that this criterion is not applicable.

### Conclusion

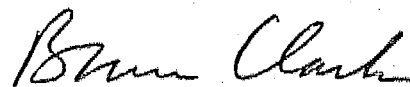
The Board finds that all conditions recommended in this resolution are reasonable and necessary to accomplish the purposes of Section 39.2 of the Environmental Protection Act. (415 ILCS 5/39.2.)

Because the Board has found that criteria one, three, and six are not satisfied, local siting approval for the proposed expansion is denied.

This Decision made and entered on March 17, 2004.

  
KARL A. KRUSE, CHAIRMAN

ATTEST:

  
BRUCE CLARK, COUNTY CLERK

# Exhibit B

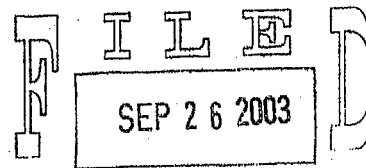
# PEDERSEN & HOUP

September 26, 2003

Donald J. Moran  
Attorney at Law  
312.261.2149  
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dmoran@pedersenhaupt.com

***Via Hand Delivery***

Mr. Karl Kruse  
Kankakee County Board Chairman  
Kankakee County Administration Building  
189 East Court Street  
Kankakee, Illinois 60901



*Bruce Clark*  
Kankakee County Clerk

**Re: Application for Site Location Approval  
Expansion of the Kankakee Landfill**

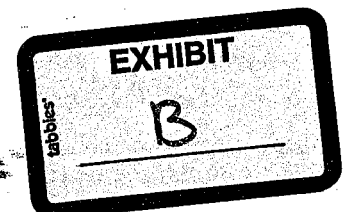
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Dear Mr. Kruse:

Pursuant to Section 2(2) of the Kankakee County Siting Ordinance for Pollution Control Facilities ("Ordinance"), Waste Management of Illinois, Inc. ("WMII") hereby submits 50 copies of the Site Location Application for Expansion of the Kankakee Landfill ("Application"). The Application consists of two three-ring binders identified as Volumes I and II. WMII also submits a check for the filing fee pursuant to Section 2(G) of the Ordinance in the sum of \$250,000.

This Application is essentially the same as the siting request filed by WMII on August 16, 2002, that was approved by the Kankakee County Board on January 31, 2003. With the exception of updated information concerning Ordinance requests, criteria 1, 3 and 8 reports, and new information relating to pre-filing notice, this Application is the same as to the one filed August 16, 2002. This Application is filed as a result of the Illinois Pollution Control Board decision announced August 7, 2003, regarding the sufficiency of pre-filing notice of the prior siting request.

As the documents filed with the Illinois Environmental Protection Agency pertaining to the existing Kankakee Landfill were submitted with the prior siting request, WMII again submits such documents, although not required, with this Application.



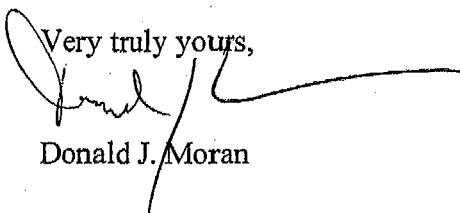
# PEDERSEN & HOUP

September 26, 2003

Page 2

WMII restates its agreement to comply with Section 2(G)(1) and the other applicable provisions of the Ordinance. WMII looks forward to the County's consideration of this proposed expansion and responding to any questions or concerns the County or the public might have concerning this Application.

Very truly yours,



Donald J. Moran

DJM:vlk  
Enclosures

# Exhibit C

## KANKAKEE COUNTY REGIONAL PLANNING COMMISSION

### Recommendations Relating to the Application of Waste Management of Illinois, Inc. For Local Siting Approval of an Expansion of the Existing Kankakee Landfill

Whereas, on September 26, 2003, Waste Management of Illinois, Inc. (WMII) filed an application for local siting approval for an expansion of its existing Kankakee Landfill; and

Whereas the Kankakee County, Illinois Siting Ordinance for Pollution Control Facilities provides that the Solid Waste Sub-committee (SWSC) of the Kankakee County Regional Planning Commission (KCRPC) shall consider all applications for local siting approval filed pursuant to the Siting Ordinance and 415 ILCS 5/39.2; and

Whereas the Kankakee County Board Chairman and the Chairman of the KCRPC have referred the consideration of WMII's application for local siting approval to the full KCRPC; and

Whereas public hearings have been held on the application, before Hearing Officer John McCarthy, and public comments filed or postmarked by February 20, 2004 have been received; and

Whereas, the KCRPC has voted, pursuant to state law and the Siting Ordinance to also consider two comments filed after February 20, 2004, but no comments filed after March 2, 2004; and

Whereas the KCRPC has considered the record of the siting proceeding, including, but not limited to, the testimony, exhibits, and comment given at the public hearings, the application, and the public comments; and

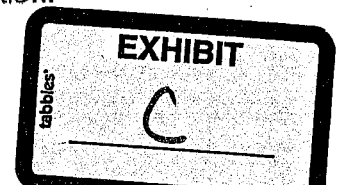
Whereas the KCRPC has met, in sessions open to the public, to discuss and consider WMII's application;

Whereas, pursuant to the Siting Ordinance, the KCRPC is to determine compliance or noncompliance with the statutory criteria and to transmit its recommendations to the County Board;

IT IS HEREBY RESOLVED AND RECOMMENDED:

#### Jurisdiction

The KCRPC finds, and recommends to the County Board, that all jurisdictional requirements have been satisfied. Thus, the KCRPC recommends that the County Board find that the County Board has jurisdiction to consider WMII's application.



### Fundamental Fairness

The KCRPC finds, and recommends to the County Board, that the proceedings have been conducted in a fundamentally fair manner.

### Statutory Criteria

Section 39.2(a) of the Illinois Environmental Protection Act requires that an applicant for local siting approval demonstrate compliance with nine criteria.

1. Whether the facility is necessary to accommodate the waste needs of the area it is intended to serve. The KCRPC finds, and recommends to the County Board, that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. However, that finding is based upon the KCRPC's recommendation that the following special condition be imposed:
  - a. The service area for the expanded facility is limited to the following counties: Kankakee, Cook, DuPage, Kane, Kendall, Grundy, and Will Counties in Illinois, and Jasper, Lake, Newton, and Porter Counties in Indiana.
2. Whether the facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. The KCRPC finds, and recommends to the County Board, that the proposed facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. However, that finding is based upon the KCRPC's recommendation that the following special conditions be imposed:
  - a. There shall be no vertical expansion of the existing facility.
  - b. The lateral expansion must be considered a separate unit from the existing landfill, as defined in 35 Ill. Adm. Code 810.103, and separate groundwater monitoring networks shall be maintained for the expansion and for the existing landfill.
  - c. A field verification must be performed to locate all private wells and community wells, currently used as a source of potable water, located within 1,000 feet of all boundaries of the property.
  - d. Downgradient monitoring well spacing in the uppermost aquifer (regardless of gradient) must be provided, where adjacent potable water supply wells are located in the Dolomite.
  - e. Any and all sand deposits that are one foot thick, twenty feet wide, and/or yield water for a period of more than 24 hours must be monitored as potential contaminant migration pathways.



- f. Leachate shall not be recirculated for a period of at least five years after the receipt of the operating permit. Following this period, the landfill operator may petition the County Board to recirculate leachate. The County staff shall review the operational record of the site and consult with an independent technical expert to determine if the operator has demonstrated that leachate recirculation is a safe and appropriate method to handle the leachate at this facility. Reasonable expenses of the technical expert shall be reimbursed by the landfill operator. Leachate may not be recirculated without the express approval of the County Board.
- g. Soil bioremediation and solidification of waste is prohibited at the facility, unless expressly approved in writing by the County Board.
- h. Composting of waste is prohibited at the facility, unless expressly approved in writing by the County Board.
- i. An annual topographic survey of existing waste grades and elevations, of final permitted waste grades and elevations, and final permitted contours shall be conducted by the operator. Results of each annual survey must be submitted to the County Planning Director within thirty days thereafter to ensure ongoing compliance with permit conditions at the facility.
- j. The construction quality assurance (CQA) officer shall be physically present on the landfill site a minimum of once per week during each stage of critical liner construction including: 1) preparation of sub-grade; 2) low permeability soil liner construction; 3) geomembrane installation; 4) geotextile placement; 5) granular drainage layer construction; 6) leachate system and associated piping installation; 7) final cover construction; and 8) gas system installation. Documents signed and dated by the CQA officer must be maintained evidencing his or her physical presence, and must be made available to the County upon request. Technicians utilized shall have at least five years experience and shall be approved by the County Planning Director.
- k. The active face must not exceed an area approved by the County Planning Director. If the operator believes the approved area is not adequate for operations, the operator may petition the County Board for allowance of a larger active face area.
- l. An independent professional engineer (approved by the County Planning Director) shall be on-site to observe placement of the sand drainage layer and the initial lift of waste placed in any new cell. The engineer shall report directly to the County Planning Director, and shall have the authority to stop placement of sand or waste during this initial operation if he or she observes any condition that would or could damage the bottom liner.

- m. Trucks, trailers, or any other vehicle holding waste shall not be parked or stored overnight at the facility, or staged on Route 45/52, or on the right-of-way outside of the landfill facility.
- n. Fencing around the entire facility is required to prevent unauthorized access. An eight-foot high wooden or other view-obstructing, County acceptable fence shall be constructed on the east side of the property to help block the view of the site. As cells are developed, the fence shall be extended to encompass, at a minimum, the waste footprint, with the fence eventually encompassing the entire facility.
- o. Video recordings of all traffic entering the site shall be retained for a period of at least six months. The County shall have the right to review the recordings within two days of requesting to review a tape.
- p. The minimum number of random load inspections shall be three per week as specified in state regulations. For any amount of tonnage received above an average of 500 tons per day, the number of inspections shall be increased on the following basis:

For each 500 ton per day average increase, the number of random weekly inspections shall be increased by two. For example, if up to 1000 tons per day average is accepted the previous week, the week shall have five inspections (three inspections for the first 500 tons, and two for the next 500). If the weekly rate is 2000 tons per day, the inspection rate is three plus two plus two plus two, to equal nine random inspections.

After five years of operation, the landfill operator may request a review and reconsideration of this random inspection requirement by the County Board. An authorized County official shall have the right to inspect and to be present at any random load inspection.

- q. The landfill operator shall pick up litter on a daily basis along Route 45/52 between the landfill and the I-57 interchange, as well as at least one-quarter mile south of the landfill along Route 45/52. If allowed by adjacent property owners, the landfill operator shall remove any litter attributable to the landfill on those adjacent properties on a weekly basis. Perimeter picking on site shall be performed daily to remove litter from trees, fencing, and berms.
- r. The landfill operator shall install a radiation detector at the scale house. The landfill operator shall record any alarm, and notify the County of each

occurrence, the level of radiation detected, and the manner of response.

- s. The maximum height of the landfill, and the lateral extent of the landfill, shall not exceed the height and lateral extent shown on the plans provided in the application.
- t. A Groundwater Impact Assessment (GIA) must be submitted to the County and its consultants prior to the submittal of a development permit application to IEPA. The landfill owner/operator shall reimburse the County for reasonable and necessary costs incurred in review of the GIA.
- u. Copies of the development permit application and all subsequent permit applications and required submittals to IEPA shall be submitted to the County Planning Director at the same time the applications are submitted to IEPA, at no cost to the County. All permits issued for the facility shall be copied and submitted to the County Planning Director within 30 days after any such permit is received by the landfill owner/operator.
- v. The landfill operator shall build the berms on the west side of the property at least 1,000 feet in advance of any cell construction, measured from the southernmost coordinate of the cell. For example, if the cell's southernmost coordinate is S 3500, then the berm shall extend to S 4500 or further south. The only exception to this condition is during the construction of Phase I.
- w. The gas line that is to be relocated shall be fully sealed from any potential migration from the landfill. Only fine-grained material shall be used as backfill in the trench. The construction shall be certified by an independent professional engineer, such engineer to be approved by the County Planning Director.
- x. Proof of each equipment operator's training shall be provided to the County Planning Director prior to that operator's work at the site.
- y. The landfill operator shall notify the County Planning Director seven days prior to collecting any required sampling or resampling. The landfill operator shall provide the County with split samples for chemical analysis. The County shall select the laboratory to which its sample(s) are sent for chemical analysis. The landfill operator shall reimburse the County for the reasonable and necessary costs of such testing and analyses, provided, however, that such reimbursement shall not exceed \$10,000 per calendar year, adjust annually for the Chicago/Gary Metropolitan Area Consumer Price Index.
- z. The landfill operator shall not request the use of sewage sludge as a component of final cover in its IEPA permit application without first

obtaining County Board approval of such use.

- aa. An automatic monitoring system shall be installed to monitor the level of leachate from each leachate sump area. The system shall record the head in the sump such that at no time will the leachate level be allowed to rise above the level that corresponds to one foot of head on the liner. The landfill operator shall maintain the records from the automatic monitoring system, and make those records accessible to the County.
- bb. The leachate containment area surrounding the leachate holding tanks shall be sized appropriately to handle a potential spill volume equal to all tanks present, unless the operator can demonstrate to IEPA that such a requirement promotes operational safety hazards.
- cc. The landfill operator shall provide, as part of its development permit application to IEPA, a demonstration (water balance) that the watershed north of 7500 S Road will not be negatively impacted by the facility. A copy of this demonstration shall be submitted to the County Planning Director.
- dd. The County Planning Director shall be notified at least fourteen days in advance of construction of the stormwater control planned for each phase of landfill development. The operator shall provide the County Planning Director with a copy of all correspondence to or from IEPA related to stormwater detention and runoff control operations.
- ee. The landfill operator shall implement the complaint procedure outlined in the application, including a hot line phone number, to address complaints.
- ff. The landfill operator shall locate any farm drainage tiles on the property, and cooperate and coordinate with the County and appropriate drainage districts concerning possible and/or necessary removal or relocation of those tiles. Any removed tiles shall be sealed from any potential migration from the landfill. Only fine-grained material shall be used as backfill in the trench. The construction shall be certified by an independent professional engineer, such engineer approved by the County Planning Director.
- gg. A textured geomembrane shall be used when constructing the interior sideslope drainage layer, unless otherwise permitted by IEPA.
- hh. A textured geomembrane shall be used on the final cover layer, unless otherwise permitted by IEPA.
- ii. Final cover over a filled area is to be placed not later than 60 days after placement of the final lift of solid waste, unless otherwise permitted by IEPA. At no time shall the area exceed 10 acres, unless otherwise

permitted by IEPA.

- jj. Leachate storage tanks shall be coated with a corrosive-resistant material prior to use, unless otherwise permitted by IEPA.
- kk. The leachate containment area is to be inspected for leaks or spills on a daily basis with all results recorded in a log. The log shall be made available to the County for review. Any stormwater suspected of being contaminated in the leachate containment area shall be handled as leachate, unless a sample is collected and tested for the annual leachate parameter list, and it is demonstrated that all organic compounds are below detection limits, and all inorganic compounds are detected at concentrations below NPDES discharge limits.
- ll. All stormwater detention basins and stormwater drainage ways/ditches shall be inspected weekly during the operating life of the facility. A written log shall be kept of the inspections and made available to the County for review. The inspections shall be conducted on a quarterly basis for five years after certified closure of the facility. After five years of closure, the frequency of these inspections may be decreased to annually with IEPA approval. At the time of inspection, all debris shall be removed from the inlet/outlet structures. If the sediment buildup in a basin or ditch is within six inches below the invert of the outlet structure, the basin shall be dredged and all sediments removed. All stormwater drainage ways/ditches on property adjacent to the facility shall be inspected on the same schedule (weekly during the operating life, quarterly during the first five years of certified closure, then as approved by IEPA), if located on publicly-owned land. If located on privately owned land, the same inspections shall be performed if allowed by the property owner.
- mm. An independent professional engineer (approved by the County Planning Director) must re-certify any final cover disturbed as a result of installation of the gas management system, unless otherwise permitted by IEPA.
- nn. Due to the number of adjacent private potable water wells and the unknown impact of the landfill on groundwater flow within the bedrock aquifer, the maximum spacing between bedrock monitoring wells around the entire landfill footprint shall be 250 feet, unless otherwise approved by IEPA. No later than five years after the start of landfill operation at the expansion, the operator shall install two additional deep dolomite aquifer monitoring wells at locations and depths specified by the County, unless otherwise permitted by IEPA.
- oo. Leachate generation data will be recorded weekly per phase. The volume of leachate pumped/shipped per week shall be recorded in a written log for each phase of the landfill. A monthly written summary comparing the

actual leachate generation data to the theoretical volume expected must be submitted to the County Planning Director.

- pp. To provide additional hydrogeologic data on the southwest side of the facility, two additional piezometers must be installed. The first piezometer shall be installed midway between G119A and G137A. The second piezometer shall be installed midway between G137A and G140A. The two new piezometers shall be developed, then single well aquifer tested. A minimum of one round of static water levels shall be collected from all the bedrock monitoring wells and piezometers, and the potentiometric surface contour map of the bedrock aquifer shall be updated. The boring logs, as-built diagrams, single well aquifer test data, and test reduction for the two additional piezometers shall be included in the development permit application to IEPA. The two additional piezometers shall be proposed by the operator for the groundwater monitoring network in the development permit application to IEPA.
- qq. Burning of any type (including vegetative prescribed burning) is prohibited at the facility, unless expressly approved by the County Board.
- rr. When collecting groundwater samples, a well must be purged a minimum of 3 well volumes, and two consecutive field measurements with a  $\pm 0.3$  S.U. for pH and within 5% for specific conductivity must be conducted, unless otherwise permitted by IEPA. All field measurements must be performed in the field at the time of sampling, and not at the laboratory, unless otherwise permitted by IEPA.
- ss. The temperature of the constructed soil liner that has not yet been covered by waste shall be monitored continuously and documented in sub-freezing temperatures. Liner soils exposed to freezing temperatures must be retested for permeability by lab (tube) or in-situ testing. Any soil not meeting the  $1 \times 10^{-7}$  cm/sec requirements shall be reconstructed/recompacted and then retested by permitted methods.
- tt. Citizen refuse boxes shall be emptied daily if refuse is deposited in them.
- uu. Results of any initial test performed to determine the level of noise from the gas flare or generator systems shall be submitted to the County Planning Director. If the gas flare or generator systems are materially changed after initial noise level testing, those systems shall be promptly retested.
- vv. The citizen-use recycling opportunities at the facility shall include, at a minimum, mixed paper, glass (green, brown, and clear), at least two plastic types (numbers 1 and 2 plastics), ferrous metals, aluminum, and cardboard. The operator shall submit, to the County Planning Director,

quarterly reports on the tonnage/weight of all material received.

- ww. The hours of operation at the facility are limited to one-half hour before and two hours after waste acceptance hours. Thus, operations are limited to 5:30 a.m. to 8:00 p.m., Monday through Saturday.
- xx. An operable valve shall be installed and continually maintained at each sedimentation outlet basin. Proper operation of any and all such valves shall be verified by no less than quarterly inspection, with the results of all inspections documented and provided to the County upon request.
- yy. Because the model indicates the thickness of in-situ clay is critical for the diffusion of contaminants, the operator shall verify that clay soil with at least three feet of continuous thickness is located between the bottom of the constructed clay liner and the top of the uppermost aquifer (dolomite bedrock and basal sand unit). If the clay soil is found not to be three feet thick, the underlying three feet of material shall be over-excavated and recompacted so that a minimum of six feet of low permeability material is in place immediately below the HDPE liner, and that this material has a maximum hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec.
- zz. All conditions must be stated in the development permit application submitted to IEPA. The operator shall provide specific notation to the County Planning Director, with the location of each condition in the development permit application by section, page, and condition numbers.
- aaa. The operator shall reimburse the County for reasonable expenses for services of professionals reviewing and analyzing the groundwater corrective action and assessment monitoring activities.

3. Whether the facility 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. The KCRPC finds, and recommends to the County Board, that the proposed facility 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. However, that finding is based upon the KCRPC's recommendation that the following special conditions be imposed:

- a. The landfill operator shall build the berms on the west side of the property at least 1000 feet in advance of any cell construction, measured from the southernmost coordinate of the cell. For example, if the cell's southernmost coordinate is S 3500, then the berm shall extend to S 4500 or further south. The only exception to this condition is during the construction of Phase I.
- b. The landfill operator shall implement the complaint procedure outlined in the application, including a hot line phone number to address complaints.

All complaints shall be kept in a log made accessible to the County for review.

- c. The area on the west side of the landfill that has no proposed berming shall have trees planted on the exterior slope of the access road to provide a visual barrier.
  - d. Any vegetation planted on the west side of the landfill as a visual barrier shall be at least ten feet tall, and at a density adequate to provide a visual barrier.
  - e. A visual barrier independent of the landfill cap shall be placed at least ten feet in height above grade at or near the east property line to include vegetation, undulating berms, and fencing.
  - f. Final cover over a filled area is to be placed not later than 60 days after placement of the final lift of solid waste, unless otherwise permitted by IEPA. At no time shall the area exceed 10 acres, unless otherwise permitted by IEPA.
4. Whether the facility is located outside the boundary of the 100 year floodplain, or the site is floodproofed. The KCRPC finds, and recommends to the County Board, that the proposed facility is located outside the boundary of the 100 year floodplain.
5. Whether the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. The KCRPC finds, and recommends to the County Board, that the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents. However, that finding is based upon the KCRPC's recommendation that the following special condition be imposed:
- a. The landfill operator shall install a radiation detector at the scale house. The landfill operator shall record any alarm, and notify the County of each occurrence, the level of radiation detected, and the manner of response.
  - b. The facility's Emergency Action Plan (EAP) shall include contingencies for management of incidental hazardous (including radioactive) waste inadvertently received at the facility. The EAP shall specify, at a minimum, qualified contractor criteria, overpacking, and immediate off-site removal of the incidental hazardous waste.
6. Whether the traffic patterns to or from the facility are designed to minimize the impact on existing traffic flows. The KCRPC finds, and recommends to the County Board, that the traffic patterns to or from the facility as designed to minimize the impact on existing traffic flows. However, that finding is based upon



the KORPC's recommendation that the following special conditions be imposed:

- a. All construction plans for the facility entrance shall be provided to the County Highway Engineer prior to construction. The landfill operator shall demonstrate to the County that sight distance of at least 1,015 feet of visibility can be achieved by the final entrance design. All improvements higher than three and a half feet above the elevation of the nearest pavement edge shall be set back at least 50 feet from Route 45/52.
- b. The traffic site improvements identified in the application and conditioned in this resolution must be completed prior to operation of the expansion.
- c. The landfill operator shall comply with all use and weight restrictions imposed on area roads by the County Highway Engineer and/or the Otto Township Road Commissioner.
- d. The County Highway Engineer shall be informed of the planned turning radius of the first onsite curve, and his approval of that turning radius must be obtained prior to construction.
- e. The operator shall consult with IDOT and the County Highway Engineer concerning installation of advance warning signs from both directions in advance of the proposed entrance to the facility. For example, a "side road ahead" symbol sign, or a "trucks entering roadway" sign should be pursued. The operator shall also consult with IDOT and the County Highway Engineer concerning designation of reduced speed zones in those areas and at those times of significant school bus activity on Route 45/52 so as to further minimize the impact of the facility on existing traffic flows, and to protect the public health, safety, and welfare. The operator shall use its best efforts to effectuate these further precautions. The operator shall consult IDOT and the County Highway Engineer prior to submitting a development permit application to IEPA.
- f. An adequate wheel wash and speed bumps must be installed near the exit of the facility in such a way to minimize mud and dirt on Route 45/52, prior to the receipt of the first load of waste.
- g. The operator must clean Route 45/52 between S 6000 Road and S 7500 Road of all mud and dirt at least once every two weeks during the active life of the facility, or at a frequency determined necessary by the County Highway Engineer.
- h. The operator shall meet with the local school districts to discuss safety issues to minimize the impact of truck traffic on school bus routes.
- i. The landfill operator shall notify IDOT of all criterion six conditions when

applying for an Intersection Design Study (IDS), and those conditions shall be addressed in the operator's efforts to secure a construction permit. The landfill operator shall provide a copy of its permit application to the County Planning Director for review and comment not less than thirty days prior to submission to IDOT.

- j. The landfill operator shall develop recommended truck routes to and from the facility, using Interstate 57 and Route 45/52, and shall distribute those recommended routes to trucks and contractors using the facility, as well as to County and Township Highway authorities, and the County Planning Director.
  - k. If IDOT has already approved construction details for the proposed traffic improvements, such application must be revised to address and satisfy these conditions, and then be resubmitted for approval.
  - l. Unless the speed limit governing the Route 45/52 road segment between 6000 S Road and 7500 S Road is reduced, the following modifications to the proposed road improvements are required: 1) a full 14-foot median shall be constructed instead of the proposed 12-foot median; and 2) the southbound deceleration lane shall measure 530 feet instead of the proposed 430-foot length.
  - m. The onsite traffic route for the customer convenience area (public drop-off) must be separate from the onsite traffic route designed for the commercial landfill operation.
  - n. Trucks shall not be staged outside the gates prior to the opening of the facility.
7. If the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release. The KCRPC finds, and recommends to the County Board, that the facility will not be treating, storing, or disposing of hazardous waste. Therefore, this criterion is not applicable.
8. If the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan. The KCRPC finds, and recommends to the County Board, that the facility is consistent with the Kankakee County Solid Waste Management Plan. However, that finding is based upon the KCRPC's recommendation that the following special conditions be imposed:
- a. The landfill operator must comply with all obligations and responsibilities

of the Host Agreement between the County and Waste Management of Illinois, Inc.

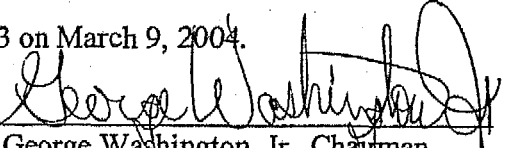
- b. The landfill operator must employ independent appraisers acceptable to the County as part of the Property Value Guarantee Program.
  - c. The Property Value Guarantee Program must be amended to provide that the Program continues for ten years after the included Property Owners are notified that waste is no longer being disposed of at the facility.
9. If the facility will be located in a regulated recharge area, any applicable requirements specific by the Board for such areas have been met. The KCRPC finds, and recommends to the County Board, that the facility will not be located in a regulated recharge area. Therefore, this criterion is not applicable.

#### **Conclusion**

The KCRPC finds that all conditions recommended in this resolution are reasonable and necessary to accomplish the purposes of Section 39.2 of the Environmental Protection Act. (415 ILCS 5/39.2.) The KCRPC further recommends to the County Board that, as the KCRPC has found and recommended that all applicable statutory criteria have been met, local siting approval for the proposed expansion be granted, subject to the recommended conditions.

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This resolution was passed by a vote of 9 to 3 on March 9, 2004.

  
George Washington, Jr., Chairman

ATTEST:

  
David Bergdahl, Secretary

**AFFIDAVIT OF SERVICE**

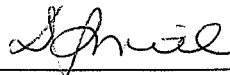
The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on March 29, 2005, a copy of the foregoing Notice of Filing was served upon:

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

Donald J. Moran  
Pedersen & Houpt  
161 N. Clark Street, Suite 3100  
Chicago, IL 60601-3242  
(312) 641-6888  
(312) 641-6895 FAX

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

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



HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, Illinois 61101  
815/490-4900  
815/490-4901 (fax)