

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2004

CITY OF KANKAKEE,)
)
Petitioner,)
)
v.) PCB 03-125
) (Third-Party Pollution Control Facility
COUNTY OF KANKAKEE, COUNTY) Siting Appeal)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

MERLIN KARLOCK,)
)
Petitioner,)
)
v.) PCB 03-133
) (Third-Party Pollution Control Facility
COUNTY OF KANKAKEE, COUNTY) Siting Appeal)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

MICHAEL WATSON,)
)
Petitioner,)
)
v.) PCB 03-134
) (Third-Party Pollution Control Facility
COUNTY OF KANKAKEE, COUNTY) Siting Appeal)
BOARD OF KANKAKEE, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)
)
Respondents.)

KEITH RUNYON,)	
)	
Petitioner,)	
)	
v.)	PCB 03-135
)	(Third-Party Pollution Control Facility
COUNTY OF KANKAKEE, COUNTY)	Siting Appeal)
BOARD OF KANKAKEE, and WASTE)	
MANAGEMENT OF ILLINOIS, INC.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by G.T. Girard):

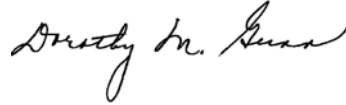
On August 6, 2004, Waste Management of Illinois, Inc. (Waste Management) filed a motion for relief from judgment with the Board. On August 20, 2004, Waste Management filed a motion to schedule oral argument to consider the request for relief from judgment. Also on August 20, 2004, petitioner Michael Watson filed a response in opposition to the motion for relief from judgment. On August 24, 2004, petitioner Merlin Karlock filed a motion to file a response *instanter* and a response to the motion for relief from judgment. The Board notes that the time to respond to Waste Management's motion for oral argument has not expired and will not until September 3, 2004. However the Board finds that undue delay will result in this matter if the Board delays a decision until the full response time elapsed to rule on the pending motions. *See* 35 Ill. Am. Code 101.500(d). For the reasons discussed below, the Board declines to consider the motions.

The Board has consistently held that if a matter is filed with the Appellate Court, the Board does not consider substantive motions regarding the matter. *See ESG Watts, Inc. v. IEPA*, PCB 01-139 (June 6, 2002). The Board's position is consistent with that of the courts wherein the courts have found that the filing of a notice of appeal causes the jurisdiction of the appellate court to attach *instanter* and deprives the trial court of jurisdiction to modify its judgment or to rule on matters of substance, which are the subject of appeal. *Cain v. Sukkar*, 167 Ill. App. 3d 941, 521 N.E.2d 1292, 1294 (4th Dist. 1988); citing, *Montgomery Ward & Co. v. Wetzel*, 98 Ill. App. 3d 243, 423 N.E.2d 1170 (1st Dist. 1981).

This matter is pending before the Appellate Court, Third District, Docket No. 3-03-0924, and Waste Management has filed a motion before the Appellate Court asking the court to remand the case to the Board. However, at this time, the matter is before the Appellate Court and the Board's decision concerning jurisdiction is squarely before the court. The Board lacks jurisdiction to modify the Board's judgment or to rule on matters of substance, which are the subject of appeal. Therefore, the Board declines to consider the motions.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 2, 2004, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board