

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUL 12 2004

STATE OF ILLINOIS
Pollution Control Board

WASTE MANAGEMENT OF)
 ILLINOIS, INC., A Delaware)
 Corporation,)
)
 Petitioner,)
 vs.)
)
 COUNTY BOARD OF KANKAKEE,)
)
 Respondent.)

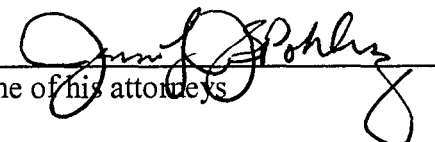
Docket Number: **PCB 04-186**
(Pollution Control Facility
Siting Appeal)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this **12th day of July, 2004**, we had filed with the Illinois Pollution Control Board, the attached document entitled: **MICHAEL WATSON'S MOTION TO STRIKE PORTIONS OF THE COUNTY BOARD'S RESPONSE TO HIS MOTION TO INTERVENE/FILE AMICUS BRIEF**, a copy of which is hereby served upon you.

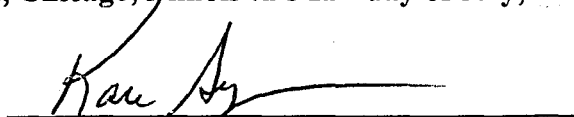
Intervener, Michael Watson

By: 
One of his attorneys

Jennifer J. Sackett Pohlenz
QUERREY & HARROW, LTD.
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PROOF OF SERVICE

Karen Gryczan, a non-attorney, on oath, certifies that she served the foregoing Notice of Filing, and document set forth herein, on the attorneys named on the attached service list via U.S. Mail at 175 W. Jackson Blvd., Chicago, Illinois this 12th day of July, 2004, before the hour of 5:00 p.m.



[x] Under penalties as provided by law pursuant to
IL. REV. STAT. CHAP 110 SEC 1-109 I certify
that the statements set forth herein are true and correct.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 12 2004

WASTE MANAGEMENT OF ILLINOIS, INC.,)
A Delaware corporation,)
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COUNTY BOARD OF KANKAKEE)
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Respondent.)
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STATE OF ILLINOIS
Pollution Control Board

Docket Number: **PCB 04-186**
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Siting Appeal)

MICHAEL WATSON'S MOTION TO STRIKE PORTIONS OF THE COUNTY BOARD'S RESPONSE TO HIS MOTION TO INTERVENE/FILE AMICUS BRIEF

Now comes MICHAEL WATSON (Watson), by and through his attorneys, QUERREY & HARROW, LTD., and moves this Honorable Pollution Control Board (Board) to strike Paragraphs 24, 36-39, 42-44 of the County Board's response to Watson's Motion to intervene/amicus brief. In support of this motion, Watson states as follows:

1. The County Board, while alleging that it will proceed to represent the "public interest" in this matter, falsely attacks one of the citizens of Kankakee. The allegations set forth in Paragraphs 24, 36-39, and 42-44 are not only not supported by the record before the Board, but they are plainly false and therefore should be stricken. As such, these references should be stricken. State Security Insurance Company v. Ramon Soto Burgos, et al., 145 Ill.2d 423, 430, 583 N.E.2d 587, 550 (S.Ct. 1991)(statements in a brief not supported by the record were stricken).

2. In Paragraph 24, the County Board alleges that a property value protection plan will protect Watson's property interests and, thus, should be deemed by the Board adequate and should serve as, essentially, a bar to Watson submitting any brief, be it intervener or *amicus*, in

this proceeding. However, the County Board's assertion is simply false. The property value protection plan fails and, as written, apparently does not apply, to protect property zoned agricultural. Further, Watson has been excluded from WMII's property value protection plan correspondence and told that the plan does not apply to his adjacent property to the East, even though it has a home on it, as it is zoned agricultural.¹ Further, the remaining acreage of which Watson is a beneficial owner, surrounding the proposed site, is agricultural. As such, *there is absolutely no protection for and no protection for the majority* of the property, including but not limited to Watson's, in the immediate vicinity of the proposed expansion.

3. Likewise, the County Board's allegation in Paragraphs 36-39 that Watson is a "competitor" of WMII is false. Watson is an individual and a beneficial owner of property. He also is an officer and shareholder of United Disposal of Bradley, Inc. (hauling company and transfer station). However, United Disposal of Bradley, Inc. is not seeking intervention or leave to file an *amicus*, is not the owner of property adjacent to the proposed WMII landfill expansion, and has not taken a role in any of the WMII proceedings. Further, United Disposal of Bradley, Inc. is an Illinois corporation and, under Illinois law, a separate person from Watson. Finally, even if United Disposal of Bradley, Inc. were the one to be seeking leave to intervene or file an *amicus* (which it is not), the County Board's statement is still false, as WMII does not have hauling routes in Kankakee (and thus does not compete with United Disposal of Bradley, Inc. for customers) *and*, pursuant to a recent Board opinion in United Disposal of Bradley, Inc., et al. v. IEPA, PCB 03-235, the transfer station has geographic boundaries set per a condition on its

¹ Watson has been a beneficial owner of this property, since the 1980's, long before this landfill expansion was proposed.

permit. Thus, even if United Disposal of Bradley, Inc. were the person seeking intervention/*amicus* status, which it is not, the County Board's allegation of being a competitor is incorrect.

4. Additionally, as respects Paragraphs 43-44, the County Board's allegations that Watson delayed the appeal of the Board's decision on Watson, et al. v. County Board of Kankakee, et al., PCB PCB 03-134 (consolidated with PCB 03-125, 03-133, 03-135) is false. On appeal (3rd Dist. Appellate No. 03-03-0924), it is WMII who has delayed the proceedings, not Watson. WMII's first brief in the appeal was due on January 27, 2004. That deadline was extended by the Appellate Court, at WMII's request, by order of February 3, 2004, to March 16, 2004. WMII then filed another motion to extend the briefing schedule, which was granted by this Appellate Court on March 24, 2004 and which moved WMII's brief date to April 20, 2004. Thus, WMII sought 84 days of extended time in the appeal. Watson never sought an extension that was not likewise sought by other parties to the appeal. All totaled, the period of time the briefing was extended for all appellees' briefs (not including the County, who has conflicting interests with the other appellees and filed a brief separately, as it supported WMII's arguments in the appeal, whereas the other appellees did not) is 49 days, which is not nearly as long as the delay caused in the appeal by WMII. Therefore, Paragraphs 43-44 should be stricken as they allege incorrect information that is not contained anywhere in the record before the Board.

5. Finally, the County Board's position in its brief that it, alone, should be trusted to protect the "public interest" is nothing less than shocking, when by its own writings, the County Board's (or at least its counsel's) conflicted position in this proceeding should be questioned. For example, the County Board, not WMII, argues that Watson should be denied any status

before the Board by falsely alleging he is a competitor of WMII. Further, amazingly, the County Board argues that Watson should be denied access to brief the issues before the Board, based on the allegation that he *“will not simply be advising this Board regarding the law, but he will be advocating a point of view and urging this Board to find in favor of the County Board and against WMII.”* Thus, apparently, as ridiculous as it sounds, the County Board’s attorneys do not want anyone advocating the law in favor of the County Board.

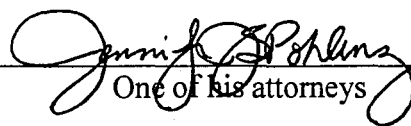
6. The aforementioned portions of the County Board’s response to Watson’s Motion only reinforces Watson’s concern that the public interest and his property interests are not being represented on appeal in this matter. Particularly given the fact that the County Board not only fails to recognize that the property value protection plan, as written, does not apply to agriculturally zoned property such as Watson’s (and the majority of the property in the vicinity of the proposed expansion), but falsely asserts that it does apply, and, as shown by the other incorrect references in its response to Watson’s Motion, that the County Board actively represents the interests of WMII in this (and the 3rd Dist. Appellate No. 03-03-0924) appeal.

WHEREFORE, MICHAEL WATSON respectfully prays that the Illinois Pollution Control Board grant this Motion and strike Paragraphs 24, 36-39, 42-44. Additionally, WATSON respectfully prays that the Illinois Pollution Control Board grants his Motion to Intervene, or in the alternative, grant permission for Watson to file an *Amicus Curiae Brief* in this matter.

Dated: July 12, 2004

Respectfully Submitted,

MICHAEL WATSON

By:  _____
One of his attorneys

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