

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 2, 2005  
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC., )  
A Delaware corporation, )

Petitioner, )

v. )

COUNTY BOARD OF KANKAKEE, )

Respondent. )

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

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 2<sup>nd</sup> day of May, 2005, we had filed with the Illinois Pollution Control Board, the attached:

**MICHAEL WATSON'S MOTION TO EXTEND TIME TO FILE  
AN AMICUS CURIAE BRIEF**

AMICUS CURIAE MICHAEL WATSON

By: *Jennifer J. Sackett Pohlenz*  
One of his Attorneys

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**AFFIDAVIT OF SERVICE**

I, Karen Gryczan, a non-attorney, on oath state that I caused to be served this Notice of Filing and relevant document on the attorney listed, on the Service List attached, by depositing into the U.S. Mail Depository located at 175 West Jackson Boulevard, Chicago, Illinois, this 2<sup>nd</sup> day of May, 2005.

*Karen Gryczan*

SUBSCRIBED AND SWORN to before  
me this 2<sup>nd</sup> day of May, 2005.

*Dana E. Kastner*

Notary Public



**SERVICE LIST**

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	)	Docket Number: <b>PCB 04-186</b>
v.	)	(Pollution Control Facility
	)	Siting Appeal)
COUNTY BOARD OF KANKAKEE	)	
	)	
Respondent.	)	
_____	)	

**MICHAEL WATSON'S MOTION TO EXTEND TIME TO FILE**  
**AN AMICUS CURIAE BRIEF**

Now comes MICHAEL WATSON (Watson), by and through his attorneys, QUERREY & HARROW, LTD., and requests the Hearing Officer to extend the date for filing amicus briefs in this matter from May 2, 2005, to a date at least one week following the date Waste Management of Illinois, Inc.'s opening brief is due. In the alternative, Watson seeks an extension *after* the date Waste Management, of Illinois, Inc.'s opening brief, the same or similar as what was provided in the original schedule that was extended. In support of this motion, Watson states as follows:

1. During the Board hearing on April 6 and 7, 2005 a briefing schedule was set, in which Waste Management of Illinois, Inc.'s (WMII) opening brief was due on Friday, April 29, 2005, the amicus briefs were due Monday, May 2, 2005 (mailbox rule), the Kankakee County Board's response brief was due on May 9, 2005, and WMII's reply due on May 16, 2005.

2. Watson did not receive a copy of WMII's opening brief on April 29, 2005 and when, though his counsel, inquiry was made with the Clerk's Office of the Illinois Pollution Control Board, learned that WMII did not file a brief on April 29, 2005.

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3. It is Watson's understanding from a discussion with counsel for the Kankakee County Board that WMII obtained an extension of time for its brief, the briefing schedule for the parties was moved accordingly, and the decision deadline of the Board was likewise extended by WMII. However, it is not clear that when the briefing schedule was extended whether the deadline for amicus briefs of May 2, 2005, was likewise extended.

4. Watson seeks to extend the amicus curiae brief deadline such that it is at least a week (or alternatively, at least a weekend with mailbox rule as it was originally set up) to respond to WMII's opening brief.

5. Requiring the amicus participants to submit briefs prior to the opening brief and notwithstanding an extension granted to the parties is unfair, as it fails to allow any time for the amicus to respond to arguments raised by WMII in their opening brief. As such, the amicus can, at best, take a "stab in the dark" at what it believes will be the issues raised. This is particularly true, given that WMII is not required to and, in fact, did not identify its "issues" in its petition for appeal, other than broad-brushed "fundamental fairness" and "against manifest weight," and that other than the Board hearing, the amicus have not been privy to discussions between parties and the Board Hearing Officer, or discovery in the case, from which one might glean some information as to the specific direction of WMII's arguments.

6. Moreover, pursuant to Illinois Supreme Court Rule 345(b), an amicus brief is to be "filed on or before the due date of the initial brief of the party whose position it supports." Illinois Pollution Control Board Rule 101.100(b) provides that although the Illinois Supreme Court Rules do not expressly apply to proceedings before the Board, that the Board may look to them where its rules are silent. In this instance, although Board Rule 101.110(c) provides for

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when amicus briefs may be filed and Rule 101.302 provides for the page limitation of such briefs, no Board rule addresses the timing for filing as does Illinois Supreme Court Rule 345(b). Thus, Illinois Supreme Court Rule 345(b) should be applied to this circumstance to extend the filing date for the amicus briefs.

7. Further, in practice, the Illinois Pollution Control Board has regularly scheduled amicus filings in accordance with the scheduling for the party whose position in the matter the amicus would support. *E.g., Waste Management of Illinois, Inc. v. County Board of Kane*, 03-104 (April 24, 2003, Hearing Officer Order)(amicus brief due same day as respondent's brief); *Prairie Rivers Network v. IEPA and Black Beauty Coal Company*, 01-112 (May 11, 2001, Hearing Officer Order)(amicus brief due after petitioner's opening brief); *Medical Disposal Services, Inc. v. Illinois Environmental Protection Agency*, 95-75 & 95-76 (April 20, 1995)(amicus brief due after petitioner's opening brief). Thus, there is precedent by prior Hearing Officer and Board actions that coincide with the purpose and fairness behind Illinois Supreme Court Rule 345(b).

8. Therefore, Watson respectfully requests that he be granted an extension of time and that the amicus brief filing date be moved such that amicus participants have at least one week to respond to WMII's opening brief, or alternatively, the original schedule is extended equally for all parties and amicus participants.

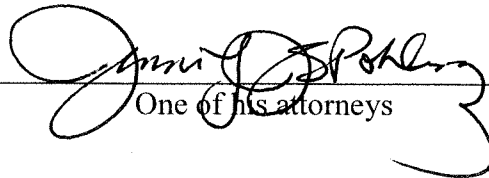
9. WHEREFORE, MICHAEL WATSON respectfully prays that the Illinois Pollution Control Board grants his Motion to Extend the Time to File an Amicus Brief, such that amicus participants have at least one week to respond to WMII's opening brief, or alternatively, the original schedule is extended equally for all parties and amicus participants.

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Dated: May 2, 2005

Respectfully Submitted,

MICHAEL WATSON

By:  \_\_\_\_\_  
One of his attorneys

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