

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty perjury under the laws of the United States of America, certifies that on **May 20th. 2005 the Pollution Control Board** was served an original and five copies of the foregoing enclosed Amicus Curiae brief by depositing an original and five copies thereof, enclosed in an envelope in the United States Mail at Bourbonnais, Illinois, proper postage prepaid, and postmarked before 5:00 P.M. on May 20th...2005. addressed as below.. via U.S. Mail,, mailed from the Bourbonnais, Il. Post Office 60914

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MAY 23 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**Submitted by Authority of the PCB Administrative Order of August 19, 2004
In matter captioned below.**

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C)Concerned Citizens For A Better Environment v. City of Havanna and Southwest Energy Corporation. PCB 94-44.

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F) Waste Management Proposal for Settlement

In support of the decision of County of Kankakee and the County Board of Kankakee and its overwhelming decision of March the 17th. of 2004, to deny Waste Management's Landfill Expansion Siting Application.

II) STATEMENTS OF FACT

II) Applicant engaged in Fundamentally Unfair practices against the people of Kankakee County and the Kankakee County Board, in attempting to coerce an affirmative vote from the Board on its 2003 Siting Application.

And

III) The manifest weight of evidence fails to support Applicants allegations that Fundamental Unfairness entered into the Kankakee County Board's decision to deny Waste Management's Application for a proposed expansion of the Kankakee Landfill. on March 17th. 2004.

VI) ARGUMENT

Waste Management has created a fictitious myth in attempting to establish that the 2003 landfill expansion Application vote by the Kankakee County Board, was subject to fundamentally unfair practices. When facts fail, myths must prevail.

Fiction,: Applicant alleges Bruce Harrison, a Democrat, unemployed iron worker persuaded a bedrock Republican County Board to vote against the landfill expansion. The County Was incorporated in 1853 and throughout its entire history it has been controlled by Democrats for only two years.(1999-2000) It held a 17 to 11 majority at the time of the 2004 vote. In truth, the majority is more like 20 to 8 because Board Members Wilson, Washington and Waskowsky are Democrats in name only. They nearly always vote with the Republican majority. In the last election the Democrats ran a full slat of candidates and failed to pick a single seat on the Board.

Fact: Most Board Members did not speak with Mr. Harrison and those who did said he did not influence their votes and were not intimidated on threatened by Mr. Harrison. All Board Members admitted they based their votes on the record. Mr. Moran would have had to impeach each and every Board Member's testimony to prove that Mr. Harrison influenced their votes. Mr. Halloran assessed that all witnesses were credible.

Fact: We are led to believe that Mr. Harrison-had he talked with all the board members, was more persuasive than Waste Management's professional hearing team.. Each and every Board Member testified that he or she made their vote decision on the record. Logic and facts prevail.

Fiction: Applicant alleges the first and second applications were the same, therefore, there could be no reason for the board to voter against the 2003 Application.

Fact: The site is the same in both Applications which is why most board members voted against the application. They were mislead during he resolution hearing into thinking the protection of the public's Health Safety and Welfare was to be voted on in a later criterion. That's the reason they did not vote no on Criterion II. The real reason the

objector's Further, Waste Management assumes the PCB would have ruled for approval of the first Application on the manifest weight of the evidence. The PCB reversed the first application on notification and never reviewed the manifest weight of the evidence. The objectors presented more convincing evidence than that presented by Waste Management's team. Their real estate expert's credibility was totally impeached during the hearing. The Board Members voted on the record and denied the Application.

Fact: Waste management alleges that conspiracy, deceit, perjury, and political intimidation took place during the ex parte period. They are correct because it is they who committed those acts. Waste Management violated the ex parte rule through Moran's letters and through agent O'conner and suspected agent Wiseman's contact with a Board Member. Waste Management conspired with a small group of County Board members in secret and illegal meetings, for three years prior to announcing the amendment to the solid waste Management Plan to allow out of county garbage and the planned 302 acre expansion of the present landfill. It was Waste Management who intimidated Bruce Harrison and Robert Keller. Waste Management had many opportunities to locate and subpoena Mr. Harrison during the Kankakee County fair of 2004. He was there the whole time as Was Lee Addleman of Waste Management. Waste Management also resorted to Political Intimidation-Monopolizing the Board Room to the exclusion of County residents and by picketing the board, the day of the vote. Further they are actively involved in attempting to Intimidate the county board into doing a back door approval of the expansion.

Fact: Waste Management, certain Members of the Kankakee County Board, State's Attorney Ed Smith and County's hired Attorney are presently engaged in a conspiracy to deceive all parties including the Pollution Control Board and to undermine the whole sitng process and to do a back door sitng of the proposed expansion. County Chairman Karl Kruse has scheduled a Special Meeting of the County Board forge an agreement with Waste Management and to withdraw form the PCB Appeal.

This deal is being offered by Waste Management's Attorney via the County's Special Attorney Chuck Helsten. (Exhibit F)

(All data submitted herein are from PCB File 47311-1 06, PCB, 47353-07 and PCB File 47359-1. The first two are hearing transcripts, the latter is the Olthoff,/Bertrand deposition. File 47359. There are five a source documents submitted as exhibits

II)Applicant engaged in Fundamentally Unfair practices against the people of Kankakee County and the Kankakee County Board, in attempting to coerce an affirmative vote from the Board on its 2003 Siting Application Including the above reference Special Meeting.

A)Applicant Participated in Illegal Secret meetings with an informal group of County Board Members for three years prior to announcing plans for the Expansion of the landfill to the public.

1)Secret Meetings Runyon public Comment P-114 ,File 47353

5-6 Waste Management had been meeting secretly with a,
7 "Special group of board members or an
8 informal group of board members," for
9 three years prior to the announcement of the
10 amendment of the solid waste plan. This was
11 corroborated two people, county board member
12 Mike Quigley, who said when they introduced
13 the host fee agreement that members of the

12 Mike Quigley, who said when they introduced
13 the host fee agreement that members of the
14 board had been meeting with Waste Management
15 for up to three years prior to this, and the
16 host fee agreement was simply the culmination
17 of those meetings.....
21 vice-chairman Pam Lee, corroborated what
22 Mr. Quigley had to say in her deposition when
23 she said, an informal group of county board
24 members has been meeting with Waste Management

B)Applicant committed violations of the ex parte rule through written correspondence to the County an by having its agents and suspected agents Communicate with one or more Board Members during the ex parte period.

1)Board Member Stanley James testified that he was contacted by "Conner and Wiseman" prior to the Board's vote. He was referring to Sue Ann O'conner, a known agent of Waste Management. Wesley Wiseman who was one to the "informal group" of Board Members that met with Waste Management in a series of secret meetings Wiseman has been a supporter and is believed to be an agent of Waste Management In addition, Waste Management Attorney, Don Moran sent a letter to Board Chairmen Karl Kruse on March 11, 2004, twenty days after the public comment period had been closed.

2)Stan James testimony about O'conner contact p-155 ,File 47353

15 A. I had two phone calls that supported
16 it, Connor and Weisman. 2
2 A. Basically that I should consider all
3 the facts.
4 Q. What else?
5 A. That she basically supported. She had
6 no objection to it, and that was it.

3)Stan James testimony regarding Wiseman contact. 0156-57 ,File 47353

19 Q. You said you also got a call from
20 Weisman?
21 A. Yes.
22 Q. What did Weisman say to you?
23 A. Weisman favored the expansion, the --
24 approving it.

3)Donald Moran, Attorney for Waste Management submitted a letter to County Board Chairman Karl Kruse March 11, 2004, twenty days beyond the cut off period for public comment. (See exhibit B)

C)Applicant stationed picketing agents in front of the County Building the Day of the vote, in violation of the ex parte rule. In public comment both Bruck and Runyon testified to the existence of Waste Management's pickets.

1)Bruck public Comment p- 0370 File 47311-1

20 I would just like to note for the
21 record that there was also picketers out
22 there in favor of the Waste Management
23 landfill and I can determine that because I
24 saw their signs picketing in favor of the
1 0370 dump and I asked them who they were and they
2 said they were Waste Management employees and
3 they said they had been told that if the
4 expansion didn't happen, that they were going
5 to lose their jobs and so they were out there
6 picketing in favor of the dump and that has

7 not been mentioned to this point.

2)Runyon Public comment. about Waste Management pickets. P-0113 File 47353

10 We've heard a lot about signs as
11 if they're a mean thing to have, and yet, I
12 also testified yesterday -- or Daryl Bruck
13 did, that Waste Management had picketers
14 outside with signs. Now, just why is it that
15 that's good for them and bad for the people

D)Applicant was guilty of packing the County Board Room gallery with its employees barring citizens from entering the room during the March 17, 2004 siting meeting.

1)Romer public comment regarding Waste Management Board Room Packing P-0111, File 47353

3 I was not
4 outside picketing. I came in. I came in
5 about 8:00. The room was already full, and I
6 inched my way into the room; and when I got
7 in, I found Lee Addleman was talking to Waste
8 Management employees. I know they were
9 employees because they were wearing badges,
10 and they had filled the room, and they stated
11 that they were there to keep the citizens
12 out. That was the day they voted the
13 landfill down.

2)Keith Runyon's testimony in public comment. P-0112, File 47353

14 MR. RUNYON: first of all I want to second
15 what Ms. Romer had to say. I too witnessed
16 exactly what she saw, the room. The galley
17 was totally flooded with Waste Management
18 employees with very large badges, probably
19 eight inches by six inches, very predominant.

22 In addition to that, the sheriff
23 stood outside the door and would not allow
24 people in, and if anybody had any sign or
1 0113 placard that was in opposition to the
2 landfill, he certainly would not let them in.

E)Applicant is accused of intimidating an opponent of the landfill expansion

1)Mr. Keller testified that Mr. Harrison was in fear for his life P0123,124,152, 153 File 47311-1

MOran

6 0152 Q. has
9 not provided any location as to where he may be that
10 he is fearful for his physical safety from Waste
11 Management?

12 A. Is that my assumption, yes.

13 Q. Is that your belief based upon what he
14 has told you?

15 A. Yes.

16 Q. And is it accurate to say, Mr. Keller,
17 that Mr. Harrison has not told you about any
18 specific acts or instances in which his life or his
19 personal safety was threatened by any person or
20 representative of Waste Management?

21 A. He is the one that told me and showed
22 me the truck that drives by my house and now I have
23 noticed it on my own daily from Waste Management.

5 A. No, mine.
6 Q. And can you describe that truck for
7 us?
8 A. It's a maroon, I believe it's a Chevy,
9 I've followed it numerous times and they've pulled
10 back into the dump.
11 Q. You followed the truck?
12 A. I have, yes.
13 Q. So you have observed this vehicle
14 driving around the landfill, driving by your
15 property?

1)Mr. Runyon Also testified that Mr. Harrison was in fear for his life P195-196 File 47311-1

BY THE WITNESS:

5 he told me that he was going
6 to disappear because he feared for his life.
7 BY MR. MORAN:
8 Q. This is consistent with what
9 Mr. Keller indicated this morning?
10 A. That's what he told me and I said why
11 are you afraid and he said I'm afraid I could be --
12 end up in a landfill.
13
19 Q. It was your understanding based upon
20 what he told you that he was in fear for his life
21 because of what?
22 A. Because of his opposition to the
23 landfill.
8 0196 Q. Do you have any reason to believe
9 that Mr. Harrison fears for his life?
10 A. I can only go by what he told me.
11 Q. So you accepted what he said?
12 A. I beg your pardon?
13 Q. You accepted what he said, the reason
14 he has disappeared is that he fears for his life?
15 A. That's what he told me.
20 Q. Where did this take place?
21 A. I believe it was at the fairgrounds.
1 0197 Q. Was anyone else present for this
2 discussion?
3 A. No.
4 Q. How long did the discussion last?
5 A. About three minutes.

III) Manifest weight of the evidence fails to support Applicant's allegations that Fundamental Unfairness entered into the Kankakee County Board's decision to deny Waste Management's Application for a proposed expansion of the Kankakee Landfill. On March 17th. 2004.

Waste Management's case in chief is predicated upon the false allegations,

1)That:

- 1)County Board Member votes were influenced by possible contacts with the public.
- 2) letters presumably, opposing the landfill, influenced votes of the Board Members.
- 4) pickets outside the County Building on the day of the vote influenced Board members votes.

5) County Board member Ann Bernard unfairly pre-announced her opposition to the landfill and did not base her opposition on testimony from the hearings. And, further that her campaign influenced 19 Board Members to vote against the Application.

6) Bruce Harrison had communications with several board members during the ex parte period and that he persuaded the Board Members to vote to deny. No board member indicated that the alleged contacts by Mr. Harrison influenced his or her vote.

7) In addition, Mr. Harrison was not a party to the hearings. The parties are: Waste Management, The County of Kankakee, Merlin Karlock, Michael Watson, Keith Runyon, Kenneth Bleyer and the City of Kankakee.

In a parallel case, *LAND AND LAKES v. RANDLOPH COUNTY BOARD OF COMMISSIONERS*, (PCB99-69) the Pollution Control Board ruled against Land and Lakes. " PP 23-24 CONCLUSION " The Board finds that the members of the Randolph County Board were subjected to numerous contacts outside the record of the However, these contacts did not affect the ultimate decision and did not prejudice Land and Lakes. Therefore pursuant to *Waste Management v. PCB* and *E&E Hauling v. PCB* the proceedings were not tainted by the contacts and were not fundamentally unfair.

(Exhibit E)

III) The manifest weight of the evidence fails to support Applicant's allegations that fundamental unfairness entered into the Kankakee County Board's denial, on March 17th.2004, of Waste Management's Application for a Proposed Expansion of the Kankakee Landfill.

Just as in the Randolph County case, there were scattered incidents of attempted communication with the board, nonetheless the Applicant failed to prove that these scattered attempts persuaded any Board Members to vote to deny the landfill. The following summation of each county Board Members testimony clearly indicates no outside actions influenced their votes and that they indeed made their judgments from the record.

A) County Board Member Karen Hertzberger was not influenced by public contacts, letter, pickets on the day of the meeting or posted signs. She voted no to both the 2003 application and the 2004 application. Nor was Ms. Hertzberger intimidated by contact from Bruce Harrison.

1) Ms. Hertzberger Testimony documenting her denial vote. P_0045,46 File 47311-1 06

5	0046	Q.	And in voting on the 2003 siting
6			application, you voted to deny certain of the
7			criteria, is that correct?
8		A.	That's correct.
9		Q.	And you voted to deny certain of the

10 criteria that you had approved when you voted on the
11 2002 siting application, correct?
12 A. Correct.

1)Ms Hertzberger made her decision on the record. P-0073, 74

P- 0071 File 47311-1 06

21 Q. Did you consider any factors or
22 information outside the record in rendering your
23 decision on January 31, 2003?

P=0071 1 BY THE WITNESS:

2 A. No.

2)Ms.Hertzbergers vote was not influenced by Mr. Harrison's attempt to talk with her. P-0074 File, 47311-1

A. Never.

12 Q. Did you consider anything Mr. Harrison
13 said to be evidence?

14 A. No.

15 by Mr. Porter

16 Q. Did Mr. Harrison coming to your office
17 in any way intimidate you?

18 A. Nobody intimidates me.

B)County Board Member Larry Gibbs vote on the Application was not influenced by public contacts, letters, pickets on the day of the meeting or posted signs.

1)Mr. Gibbs admits receiving letters but didn't read them read them.

13 Q. Were these letters or written
14 materials opposed to the proposed expansion?

15 A. I never read any of them but one.

16 When I first received them,-----

18 -was for the landfill, I closed it up, sealed it
back

19 and took it to the clerk and all the rest of them.

1)Mr. Gibbs not influenced by people who tried to speak with him about the landfill outside the hearing. P-0222, 23 , File 47311-1 06

16 BY MR. PORTER:

20 Q. And as soon as you found out he wanted
21 to talk about the application, you stopped his
22 attempted communication, is that right?

23 A. Yes.

24 Q. Now, there was some mention of a few

0222

1 people that apparently stopped you on the street and
2 mentioned the landfill. Did you tell those people
3 that you could not discuss it?

4 A. Yes.

C)County Board Member Jamie Romein was not influenced by public contacts, letter, Pickets on the day of the meeting, or posted signs.

1)Mr Romein admits to having receiving letters but was not influenced or threatened by them. P-0254,255, File 47311-1 06

BY MR. MORAN:

22 Q. Mr. Romein, does that refresh your
23 recollection?

24 A. It does, but I still didn't feel

0237

10 0255 Q. So would your answer be yes?

11 A. I still don't think this letter is

12 threatening, so I don't feel threatened by it.
13 Q. And what was your answer?
14 0255 A. I didn't feel threatened by the
15 letters.

2)Mr. Romein did not feel threatened by attempts of Mr. Harrison, of the public, to talk with him about the landfill.

Porter CrossP- 0254 ,255 File 47311-1 06

24 Q. At any time did you feel threatened by
1 0254 the conduct of Mr. Harrison?
14 BY THE WITNESS:
15 A. Absolutely not, no.

D)County Board Member Elmer Wilson was not influenced by public contacts, letters, Pickets on the day of the meeting or posted signs.

1)Mr. Wilson voted to approve both applications. It is obvious that none of the alleged "unfair practices" influenced his vote on the 2004 Application.

Wilson Testimony P-0259,60, File 47311-1 06

20 Q. And you voted to approve the 2002
21 application?
22 A. Yes.
8 0260 Q. And you voted to approve the 2003
9 application?
10 A. Yes.

2)Mr. Wilson rebuffed attempts on the part of Mr. Harrison to talk about the landfill expansion.P-0264,65 File 47311-1 06

0264
23 Q. And what did he continue to say?
24 A. That he had talked to people about
0265
1 support and my reference always was are we talking
2 about the same matter and he'd say yes, and I'd say
3 you know I can't talk about it. Thank you for the
4 meal.
16 0269 Q. And each time he attempted to talk to
17 you, you told him you couldn't talk to him about the
18 landfill expansion?
19 A. Correct.
19 A. Correct.
24 Q. Did you feel threatened or intimidated
0270
1 by anything he said to you?
2 A. No.

3)Mr. Wilson was not threatened or influenced by any actions of the public who apposed the expansion. Helsten cross exam P-0169,70 File 47311-1 06

10 0270 Q. By the way, were you threatened by any
11 of the petitions that Mr. Watson handed you?
12 A. No.
13 Q. Did you even look at them?
14 A. No.
15
Q. Did you immediately throw them into a
16 waste paper basket?
17 A. Yes, I did.

4)Mr. Wilson was not threatened or influenced by any actions of the public who apposed the expansion. Helsten cross exam P-0269,270 File 47311-1 06

2 0269 A. No.

3 Q. Okay. Reverend Wilson, had you
4 previously been instructed not to talk to members of
5 the public about the proposed expansion?
6 A. Yes.
7 Q. And not to engage in any communication
8 with them over the telephone either?
9 A. Yes.
10 Q. By the way, were you threatened by any
11 of the petitions that Mr. Watson handed you?
12 A. No.
13 Q. Did you even look at them?
14 A. No.
15 Q. Did you immediately throw them into a
16 waste paper basket?
17 A. Yes, I did.
18 MR. HELSTEN: Thank you. That's all.

E) County Board Member Robert Scholl was not influenced by public contacts, letters, phone calls Pickets on the day of the meeting or signs opposing landfills. P-0274, 75, File 47311-1 06

1)Mr. Scholl Received one phone call from a supporter of the landfill.

1) 0274
19 Q. Mr. Scholl, prior to the vote on
20 March 17th, 2004, did you receive any phone calls
21 regarding the proposed expansion?
22 A. Prior to the vote?
23 Q. Yes.
24 A. Yes.
0275
1 Q. How many phone calls did you receive?
2 A. I received one phone call.
3 Q. From whom?
4 A. It was from a trucking business that
5 was in support of the landfill.

2)Signs did not affect Mr. Scholl's vote on the expansion. P- 0297 ,File 47311-1 06

15 MR. PORTER: Again, I
22 I at least get to ask if he was threatened by the
23 fact that he saw these yard signs.
24
19 A. Physically threatened is -- it's an
20 inanimate object. Was I threatened by the sign
1 BY THE WITNESS:
3 A. Not at all.

3)Mr. Scholl was not threatened by the picketers.P-0297,98 File47311-1 06

BY MR. PORTER:
5 Q. And finally, were you threatened or
6 intimidated by seeing picketers?
7 A. No.

4)Did not read letters from the public, thus they had no influence on Mr. Scholl's vote. P-0295 File 47311-1 06

12 Q. And what did you do with them?
13 A. It is my recollection I brought them
14 into the county clerk's office.
15 Q. The letter that you did open and read,
16 did you --
17 A. Excuse me. I did not read it. I

18 glanced at the letters.

P-0296 File 47311-1

21 BY MR. PORTER:

22 Q. Did you feel threatened or intimidated
23 by the receipt of those letters?

24 A. No.

5) Mr. Scholl was not threatened or intimidated by Mr. Harrison. P-0297

10 by Mr. Porter

11 Q. If I understood your direct testimony,
12 you had one communication with Mr. Harrison in the
13 breaks during the hearings, is that right?

14 A. That is correct.

15 Q. Was anything that Mr. Harrison said to
16 you different than what he said to the public during
17 the hearings?

18 A. Not to my recollection, no.

19 Q. Did you feel threatened or intimidated

0296

1 by anything Mr. Harrison said?

2 A. No.

6) Mr. Scholl was not threatened or intimidated by letters. P-0297,96

3 Q. There was reference to some letters
4 that you received and I'm sorry, refresh my
5 recollection, did you read those letters?

6 A. No.

7 Q. Did you feel threatened or intimidated
8 by receipt of those letters?

24 A. No.

7) Mr. Scholl was not threatened or intimidated by the yard signs. P-0296 File 47311-

1 0297 Q. I believe there was some mention of
2 yard signs in your direct. Did you see the yard
3 signs?

4 A. Yes.

5 Q. Did you feel threatened or intimidated
6 by yard signs?

1. 0298

2 BY THE WITNESS:

3 A. Not at all.

0297

8) Mr. Scholl was not threatened or intimidated by picketers. P-0297, File 47311-1

4 BY MR. PORTER:

5 Q. And finally, were you threatened or
6 intimidated by seeing picketers?

7 A. No.

8 MR. MORAN: Objection.

9 HEARING OFFICER HALLORAN: Overruled.

10 MR. PORTER: Nothing further.

F) Former County Board Member Ed Meents was not influenced by public contacts, letters, pickets on the day of the meeting or posted signs

1) Mr. Meents refused to discuss the landfill expansion with Mr. Harrison.

P-0306 File 47311-1 06

14 A. Mr. Harrison started to address the
18 question and I told him we're not going to talk
19 about the landfill, we can talk about the family and
20 that, but we're not talking about the landfill.

21 Q. Having told him that, did he continue

22 to talk about the proposed expansion?
23 A. He tried, but each time he was cut off.

2)Mr.Meents faithfully followed the ex parte rule.

P-0321-22 File 47311-1 06

5 0322 Q. You had been counseled to that effect?
6 A. Yes.
7 Q. You followed that direction?
8 A. Other than this one phone call, if you
9 consider that a violation, I would admit to that.
10 Q. Well, did you talk to Mr. Harrison
11 about the substance of the application when he
12 called?
13 A. No.

3)Mr. Meents turned all communications regarding the landfill into the County Clerk. P- 0322 File 47311-1 06

18 Q. Likewise in regard to the letters, you
19 turned those into the county clerk?
20 A. Yes.

G)County Board Member Ann Bernard was not influenced by public contacts, letters, phone calls, pickets or posted signs.

1)Her vote was based on the testimony in the record of the first hearing.

The site was the same in both Application

P-0363-64 File 47311-1 06

Q. Okay. Likewise, when you drafted your
21 web pages, you had already been through the entire
22 first siting hearings, correct?
23 A. Yes.
24 Q. And you, according to Mr. Moran's
0364
1 statement, understood that the second application
2 was similar, is that right?
3 A. He said it was essentially the same
4 with some updates.

2)The 39.2 legislation does not preclude a member from the siting proceeding even if she has a pre-disposition on how she will vote. (Exhibit C)

415 ILCS,ILCS 5/39.2(d), which states in pertinent part: ..".The fact that a member of the county board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue."

The PCB upheld this statute in Concerned Citizens for a Better Environment, Petitioners v. City of Havana and Southwest Energy Corporation, (See Exhibit C)

3)Ms. Berard voted no on both the 2002 application and the 2003 application.

P-0327 File 47311-1 06

17 Q. And you voted on each of the criteria,
18 is that correct?
19 A. Yes.
20 Q. And you voted to deny certain of the
21 criteria, is that correct?
21 A. Yes

4(Ms. Bernard voted against the 2002 Application P-0328 ,File 47311-1 06

10 Q. Would it be accurate to say that you
11 voted against certain criteria in the first
12 application?
13 A. Yes. I want the record to reflect
14 when I went to look for the roll call sheet it was

15 missing.

5)Ms. Bernard voted against 2003 application. P-0216,217 File 47311-1 06

20 Q. And you also voted against certain
21 criteria for that 2003 application, is that correct?

22 A. Yes.

23 Q. So in both instances you voted against
24 the application, is that correct?

6)Ms. Bernard objected to site over the major aquifer- which is the source of the area's drinking water. Documentation , in the record, and attached as (Exhibit D) from the Illinois Geological Survey deems the two proposed sites to be among the least suitable for landfills in Kankakee County.

7)Ms. Bernard was concerned about the safety of the County's water. P- 0336 File 47331-1 06

3 A. Well, I would say generally he made it
4 clear he's an opponent of the landfill and the one
5 thing that's sticks in my craw is that I based -- I
6 was going to base my decision on the evidence
7 presented, the testimony, and people can talk to me
8 until they're blue in the face. You know, to me it
9 was criteria two and that aquifer.

8)The both Applications offered the same site location over the aquifer.P0-362, File 47331-1

22 heard Mr. Moran reference that the applications were
23 very similar between the first and second, is that
24 correct?

1 0363 A. Uh-huh.

2 Q. Is that yes?

3 A. Yes. I'm sorry.

9)Waste Management alleges that Ms. Bernard's Candidacy influenced County board members to against the application. This point was refuted by Board Member Martin. In addition, she did not persuade the voters, losing her primary race by a landslide margin of 66% to 34%.

Ms. Bernard is not a persuasive board member.

19 In your experience, has

20 Ms. Bernard's statements at the county board been
21 well received by other county board members?

22 A. I don't know.

23 Q. Do you consider her to be an extremely
24 persuasive board member?

1 0042 A. Not really.

File 47353 April 07-2005. Covers the testimony of April 07, 05

G) County Board Member Leonard Martin was not influenced by public contacts, letter, Pickets on the day of the meeting or signs opposing the landfill.

landfills . Mr. Martin voted to deny both applications, therefore, the scattered incidents of public protest did not influence his vote.

1)Mr. Martin voted to deny both applications.p-0010-11 47353-07

24 Q. And when you say that they were

0011

1 different, did you vote against more criteria on the
2 second application than you did the first?

3 A. I believe I did.

2)Letters did not influence Mr. Martin's vote. 0009-10

22 A. A few, yes.

23 Q. Did you open any of these letters or
24 read any of these materials?
1 0010 A. I open all my mail irregardless of
2 what it is, but I ignored what was said in there. I
3 read them, but then I knew that I was not supposed
4 to make my decision on outside influences, so as a
5 result, I just threw them away.

3)Mr. Martin did not talk to Mr. Harrison about the landfill.

P-0039 File 47353 07

11 Q. Why didn't you talk to Mr. Harrison
12 about the landfill?
13 A. Because at the time we were interested
14 in electing candidates, not the waste management
15 thing.
16 time in electing democrats for offices.

H) County Board Member Ralph Marcotte was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or posted signs

Mr. Marcotte voted to deny both applications, Testimony P-0048 File 47353 07

I)Mr. Marcotte Threw away letters. Moran Cross P-0054 File 47353-07

14 Q. And you took those letters and just
15 threw them away, is that correct?
16 A. Yes, I did.

2)Letters he received simply echoed what he had already heard at the hearings

P-0058 File 47353 07

7 Q. In general, the letters you received
8 stated opinions in opposition of landfill, is that
9 right?
10 A. Correct.
11 Q. And you heard the same type of opinion
12 in opposition at the hearings, is that correct? Fill

3)Mr. Marcotte was not threatened by pickets. P-0055 File 47353 07

BY MR. PORTER:

Did you feel threatened or intimidated by the picketers?

2 A. No, sir.

I)County Board Member James Staufenberg was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or posted signs.

1)Mr. Staufenberg did not vote on first Application P-0060 File 47353 07

11 Q. And what was the reason why you didn't
12 vote on January 31, 2004 --
13 A. I was on vacation.

2)Recieved no phone calls regarding the expansion. P- 0066 File 47353 07

17 Q. Now, Mr. Stauffenberg, prior to the
18 March 17th, 2004 vote, did you receive any phone
19 calls regarding the proposed expansion?
20 A. No, I did not.

3)Mr. Staufenberg received letters. Did not read them. P. 0066-67 File 47353

9 0067 Q. Were the letters about the proposed expansion?
10 A. I did not read them.

4)Mr. Staufenberg threw letters without opening them away. P-0068 File 47353 07

5 0077 Q. You just threw them away?
6 A. Yes, I did.

7) Mr. Staufenberg did not meet with Bruce Harrison P-0069-70 File 47353 07

11 0069 Pam Lee, (told him) who Bruce Harrison was, and

12 she told me that I shouldn't be talking to him about
13 the landfill. So I canceled that appointment.

**6)Mr. Staufenberg did not have conversations with anyone outside the hearings
P-0076-78, File 47353 07**

24 Q. You told Mr. Harrison you couldn't
0077
1 discuss anything with him concerning the landfill
2 expansion, correct?
3 A. Correct.

**D) County Board Member Michael LaGesse was not influenced by public contacts,
letters, phone calls, pickets on the day of the meeting or posted signs
LaGesse Testimony P- 0078 File 47343 07**

1)Mr LaGesse voted no on the second Application 0083 File 47353 07

6 Q. How did you vote on the second
7 application?
8 A. I voted no.

2)One phone call from Bruce Harrison P- 0084 File 47353 07

4 Q. How many phone calls did you receive?
5 A. One.

3)Mr. LaGesse refused to meet with Harrison P-0090 File 47353 07

6 0091 Q. What did you say in response to his
7 arguing with you about the appropriateness of being
8 able to meet him?
9 A. I just flat out stated that I was not
10 going to meet with him, and I didn't.

4)Mr. LaGesse threw away letters he received unopened. P- 0093 File 47353 07

19 Q. Was that letter opposed to the
20 expansion?
21 A. Yes.
22 Q. What did you do with these letters?
23 A. I threw them away unopened.

**5)Mr. LaGesse was not threatened or intimidated by picketers P- 0102 File 47353 07
Porter**

24 Q. Were you threatened or
0102
1 intimidated by those picketers?
2 A. No.

6)Not threatened by letters 0102

8 Q. There was also some reference to some
9 letters that may have been received. Were you
10 threatened or intimidated by any of the content of
11 those letters?
12 A. No.

7)Mr. LaGesse relied on No outside of hearing information. P- 0093-94 File 47353

20 Q. Now, you had been instructed to
21 disregard any information that you acquired outside
22 of the hearing process; correct?
23 A. That's correct.
24 Q. And did you follow that instruction?

0104

8)Mr. LaGesse never solicited communication from Harrison. P-0104 File 47353 07

18 Q. Did you ever solicit a communication

19 from Mr. Harrison?

20 A. No.

**9)Mr. LaGesse was not threatened or intimidated by Harrison or Flagole F-0105
File 47353 07**

11 Q. Were you at all intimidated or
12 threatened by Mr. Harrison attempt to speak with
13 you?

14 MR. MORAN: Objection.

15 HEARING OFFICER: Overruled.

16 BY THE WITNESS:

17 A. Absolutely not.

1 Q. Were you at all threatened or
2 intimidated by the contact with Mr. Flageole?

3 A. No.

**K)Former County Board Member Linda Faber was not influenced by public
contacts, letters, phone calls, pickets on the day of the meeting or signs opposing the
landfills.**

**1)Ms. Faber noticed the picketers outside the building. 0123
0122-23 File 47353 07 picketers**

19 Q. Were there picketers inside or outside
20 the building on that day?

21 A. Outside.

1 A. Yes.

2 Q. How many picketers did you observe?

3 A. Maybe between 10 and 12. I don't
4 know.

**2)Ms. Faber received one phone call from Mr. Bennoit-wouldn't talk to him about
the landfill.P-0127 File 47353 07**

4 0127 A. He called us.

5 Q. And you talked to him on that
6 occasion?

7 A. Yes, I did.

8 Q. And what did Mr. Bennoitt say?

9 A.
11 when he mentioned the landfill, I told him I
12 couldn't talk about it and ended the conversation.

11 Q. Did you terminate that conversation as
12 soon as you thought it was polite and courteous to
13 do so?

10 A. Correct.

3)Ms. Faber was not threatened or intimidated by Bennoit call.P-0141 File 47353 07

Q. Ms. Faber, did you feel threatened or
5 intimidated by the telephone call you received by
6 Mr. Bennoitt?

7 A. No.

4)Ms. Faber threw letters away unopened. P- 0129 File 47353 07

23 A. I only opened the first one or two and
24 got the impression they were opposed to it, but I
1 0129 didn't read the rest of them as per instructed.

2 Q. And did you then take the letters and
3 throw them away?

4 A. Yes, I did.

5)Ms. Faber paid no attention to posted signs. P-0132 File 47353 07

3 Q. Now, as I understand it, you told
4 Mr. Moran you didn't pay any attention to the signs

5 the picketers had; correct?

6 0133 A. Right. Yes.

6)She was not threatened or intimidated by the signs. P-0141 File 47353

15 Q. Now, the yard signs, did you feel
16 threatened or intimidated by those yard signs?

18 HEARING OFFICER: Overruled based on
19 my prior decision.

20 BY THE WITNESS:

21 A. No.

7)No discussions with people outside the hearing process 0135-36 File 47353

19 A. Yes.

20 Q. And also to ignore any outside
21 c communication, right?

22 A. Yes.

23 Q. And did you do that?

24 A. Yes, I did.

8)Ms. Faber was not threatened or intimidated by picketers P-0142 File 47353 07

2 Mr. Moran's questions, you weren't paying any
3 attention to the picketers and the signs that they
4 had; correct?

6 BY THE WITNESS:

7 A. No, I was not.

8 BY MR. HELSTEN:

9 Q. So did you feel threatened or
10 intimidated in any way by those picketers?

11 MR. MORAN: Objection.

12 HEARING OFFICER: Overruled.

13 BY THE WITNESS:

14 A. No.

K)County Board Stanley James was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or posted signs.

1)Mr. James Voted no on both applications P-0149 File 47353 07

a)Mr. James voted no 2002 Application Vote P-0153 File 47353 07

15 A. On all the criterias, I don't recall
16 exactly which ones I voted no on.

b)Mr. James voted no on 2003 Application Vote. P- 0153 File 47353 07

15 Q. How did you vote on the second
16 application?

17 A. I think the record shows that I voted
18 probably on a no vote that was seven or eight
19 criterias, I believe.

2))Mr. James Got calls in support of the expansion. P-0514 File 47353 07

15 A. I had two phone calls that supported
16 it, Connor and Weisman. 2

2 A. Basically that I should consider all
3 the facts.

4 Q. What else?

5 A. That she basically supported. She had
6 no objection to it, and that was it.

3)Mr., James received a call from Wes Wiseman in support P-0156-57 File 47353 07

Q. 0156 You said you also got a call from
20 Weisman?

21 A. Yes.

22 Q. What did Weisman say to you?

23 A. Weisman favored the expansion, the --
24 approving it.

4) Mr. James refused to talk with Mr. Harrison About the expansion. P- 0167-168. File 47353 07

10 A. Yes, he approached me.
11 Q. When did he approach you?
12 A. He came in my office and wanted to
13 talk about it. I told him there was nothing I could
14 talk about.
24 A. It couldn't have exceeded five minutes
1 0168 because it was long enough to walk through the door,

5)Mr. James received letters but disregarded them. P-0177 File 47353 07

7 Q..... you were instructed by
10 Mr. Helsten and Mr. Smith to disregard any
11 communications you received outside the hearing
12 process?
13 A. Correct. Yes.
14 Q. Did you do that considering those
15 letters?
16 A. Yes, I did.

8)No one outside hearing process told him not to vote against the siting. P-0177 File 47353 07

1 Q. Do you have a clear recollection of
2 anybody telling you outside of the hearing process
3 to vote against the landfill?
4 A. Outside of the hearing process, no.
5 Q. So when Mr. Moran was asking you about
6 individuals that told you to vote against the
7 landfill, was that during the hearing that you heard
8 that?
9 A. Yes.
8 A. Could be, yes.

9)Picketers did not threaten or intimidate Mr. James. P- 0179 File 47353 07

14 A. Correct.
15 Q. What about -- there was some reference
16 to the pickets, did the pickets -- or picketers in
17 any way threaten or intimidate you?
18 A. No.

10)People didn't tell Mr. James how to vote. P- 0181 File 47353 07

17 Q. That's what I thought I heard you say.
18 My question is, do you want to clarify that? Did
19 the people who told you to vote no, tell you to vote
20 no at the public hearing?
21 A. No, they told me what their position
22 was, but they didn't tell me how to vote.

L) County Board Culver Vickery was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or signs opposing the landfills .

1)Mr. Vickery voted yes on 2002 Application, P-0187 File 47353 07

20 Q. How did you vote on the first
21 application?
22 A. I voted to approve.
23 Q. And you considered each of the nine
24 statutory criteria?
1 0188 A. Yes.

2)Mr. Vickery saw pickets the day of the vote. P-190, File 47353 07

5 the building on that day?
6 A. Yes, there were.
7 Q. You saw those picketers?

8 A. Yes.
9 Q. How many did you see?
10 A. As I drove up, it seemed the sidewalk
11 was full of them. I didn't count.
12 Q. Were any of them carrying signs?
13 A. Yes.
14 Q. What did the signs say?
15 A. No Chicago garbage, no dump, things to

3) Mr Vickery voted no on Criterion one and yes on the rest. P- 0191 47353 07

A. I voted no on criteria one and voted
yes on the other eight criteria.

4)Mr. Harrison phoned Mr. Vickery, he did not return the call. P-0193 File 473534 07

18 Q. And is it your belief that it was
19 Bruce Harrison who tried to call you that day?
20 A. I don't know if belief is the word,
21 but I assume it was.
22 Q. And what you've said is that you never
23 returned his call?

5) Mr. Vickery would not talk outside the hearing. P- 0195-196 File 47353 07

By Mr. Porter

17 Why didn't you return the phone
18 call from Bruce?
19 A. Well, I was -- I did not want to get
20 involved in any conversation outside of the hearing
21 process.
22 Q. Is that because you've been instructed
23 not to?
24 A. That's correct.
0196

6)Mr. Vickery was not threatened by Harrison's attempted call P-0197-198 47353 07

19 Q. And the one phone call that your wife
20 took, did that in any way intimidate or threaten
21 you?
24

1 0198 BY THE WITNESS:
2 A. No.

7)Mr. Vickery received letters, read two then turn the rest, unopened, to the Clerk's Office P-0194 , 195 File 47535 07 0194-195

23 Q. Did you read it?
24 A. Perhaps two. I would say no more than two
0194
1 two.
2 Q. Did you read the letters that you
3 opened?
4 A. Well, the opening line indicated that
5 we're against the landfill. So I kept a file of
6 those letters unopened from that point on in my desk
7 drawer, and upon conclusion of this matter, I turned
8 them over to county clerk Bruce Clark.

8)Mr. Vickery was not threatened by the letters. P-0199 File 47353 07

1 0199 The letters that were sent to you,

2 even though you didn't read them, was the fact that
3 they were sent to you threatening or intimidating
to
4 you?.

5 A.: No,

M) County Board Ruth Barber was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or signs opposing the landfills . therefore, the scattered incidents of public protest did not influence her vote.

1)Ms. Barber received only one phone call via voice mail. P- 0213 47353-1

5 A. Home.
6 Q. Who was the message left by?
7 A. I don't know. My husband cleared the
8 messages that night, just listened to it long enough
9 to know it was about the landfill and erased it, but
10 did at the time.

2)Ms. Barber Received letters opened two. P-0214 File 47353-1

21 A. Yes.
22 Q. How many?
23 A. I'll say 30, 40.
24 Q. Did you open any of these letters?
0215
1 A. The first couple letters I opened.
2 Q. And did you read them?

3)Ms. Barber trashed letters without reading them. P-0215, 216 File 47353-1

21 your reason for concluding that they were relating
22 to the proposed expansion?
23 A. The addresses were primarily all
24 Chebanse. I have had no reason to be in Chebanse in
1 0216 the last 40 years. I just tossed them in the
2 recycle bin.

4)Ms. Barber had no other communications from the public. 0216-217 File 47353-1

2 Q. Did you have any other communications
3 with any persons about the proposed expansion prior
4 to March 17th, 2004?
22 A. No.

5)Ms. Barber was contacted by Harrison but there was no conversation regarding the Application. 0220-221 File 47353-1

0220
20 Q. Did he say anything about the proposed
21 expansion?
22 A. He started rambling on. I pushed him
23 out of my office. He just rambled and rambled, and
24 I kind of started walking towards him to his
1 0221 vehicle, and that was about it.

6)Ms. Barber had no other communication outside the hearing process. P-0225 File 47353-1

21 Q. You did not speak with anyone outside
22 of the hearings about the application before March
23 17th, 2004, did you?
24 A. Correct. No, I did not.
0226

7)Ms. Barber received letters but did not read them and was not influenced by them. P-0226. File 47535-1

21 0226 Q. Well, Mr. Moran asked you or intimated
22 a question that you had received communications

23 about the landfill application. Since you didn't
24 read the letters, would you agree that you did not
1 0227 receive any such communication?

2 A. No, I didn't receive any
3 communications.

7) Receipt of letters did not threaten Ms. Barber. P- 0227 File 47353-1

15 Did the fact that you received any
16 of these letters in any way intimidate or threaten
17 you?

21 BY THE WITNESS:

22 A. No.

8) Ms. Barber saw posted signs. P-0224 File 47353-1

16 Q. Did you see any signs that were posted
17 in or around the area saying no dump, no Chicago
18 garbage?

19 A. Yes.

Q) County Board Member Kelly McLaren was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or signs opposing the landfills , gainst Criterion 3, Traffic.

1) Mr. McLaren didn't vote on 2002 Application 0231 File 47353

10 A. No, I did not.

11 Q. And why didn't you vote on it?

12 A. I was vacationing out of the country.

2) Mr. McLaren saw no outside picketers. P- 0232-233 File 47353

19 Q. Were there picketers outside or inside
20 the building on that day?

21 A. When I arrived, no.

22 Q. Did you see any picketers in or
23 outside the building on that day?

24 A. I think there might have been some in
1 0233 the hall.

3) Mr. McLaren was not threatened or intimidated by picketers P-0251 File 47353

23 BY MR. HELSTEN:

24 Q. Did any of the picketers that you saw
1 0252 up front threaten you or intimidate you?

2 A. No.

4) Mr. McLaren voted no on Criteria six. P-0233, 234 File 47353

22 Q. How did you vote on the second
23 application?

24 A. The only no vote I had was, I believe,
1 0234 criteria six, which was traffic.

5) Mr. McLaren Received no calls prior to March 17 P-0234 File 47353

2 Q. Prior to March 17th, 2004, did you
3 receive any phone calls regarding the proposed
4 expansion?

5 A. No.

6) Mr. McLaren Received written materials. P 0234 File 47353

6 Q. Prior to March 17th of 2004, did you
7 receive any letters or written materials regarding
8 the proposed expansion?

9 A. Yes.

7) Mr. McLaren did not read letters. 0234 File 47353

14 Q. Did you open any of these letters?

15 A. My daughter opened one.

16 Q. And did she tell you what was in the
17 one letter?

18 A. She saw the word landfill, and that
19 was where it was cut off.

8) Mr. McLaren Turned letters into County Clerk. File 47353

4 Q. What did you do with them?

5 A. I brought them in downstairs on the
6 first floor.

Helsten Cross P- 0248-249 File 47353

21 and you took that and all the
22 other letters and took them to the clerk's office?

23 A. Correct.

24 Q. Why did you do that?

1 0249 A. That's what we were told to do and
2 were advised to do.

9) Mr. Harrison talked with Mr. McLaren about environmental issues and the landfill P-0237 File 47353

8 A. He spoke in general environmentally, I
9 believe.

10 Q. Saying that the proposed expansion
11 presented certain environmental risks?

10) Mr. Harrison's remarks did not threaten or intimidate McLaren 0248 File 47353

4 Q. Now, Mr. McLaren, you told Mr. Moran
5 that you viewed Mr. Harrison's comments to you as a
6 threat?

7 A. Yes.

8 Q. Did it, in fact, though, threaten you
9 or intimidate you?

10 A. By no means. It infuriated me.

11) Mr. McLaren Did not engage in conversation with Harrison 0249-250 File 47353

22 Q. Did you engage in any conversation
23 with Mr. Harrison when he first came in into your
24 business?

1 0250 A. As far as engaging, no. I listened.

2 Q. Did you tell him you couldn't talk
3 about it?

4 A. As he was leaving, yes.

12) Mr. McLaren refused petitions from Bruce Harrison by Mr. McLaren P-0250 File 47353

18 Q. Did you throw away the petition?

19 A. No, I never took them. I looked at
20 one of the addresses just to verify it was my
21 district.

22 Q. And you refused to look at them then
23 and refused to take them?

24 A. Correct.

13) The petitions did not threaten or intimidate Mr. McLaren 0253, File 47353

BY MR. HELSTEN: 0253=2-253

24 Q. Mr. McLaren, did that petition -- the
1 0253 fact that he handed you that petition threaten
2 you or intimidate you in any way?

10 A. No.

14) Mr. Harrison did not threaten or intimidate Mr. McLaren. P- 0253.54. File 47353

17 Q. Mr. McLaren did any of Mr. Harrison's
18 contacts with you or attempts to talk to you
19 threaten or intimidate

20 A. No.

R) County Board Francis Jackson was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or signs opposing the landfills . 1)Ms. Jackson was opposed to the first application, might have inadvertently voted for it. P-0261, 0262 File 47353

22 January 31st, 2003, the vote on the first
23 application, you don't recall having been for it or
24 against it; would that be accurate?
A. Truthfully, I would have been against
0262
1 it, unless I was confused on something. That's
2 possible.

2)Ms. Jackson saw picketers but was not threatened or intimidated by them 0294 File 47353

1 BY MR. HELSTEN:
2 Q. Did the presence of the picketers
3 outside the county building threaten or intimidate
4 you in any way?
5 MR. MORAN: Objection.
6 HEARING OFFICER: Overruled.
7 BY THE WITNESS:
8 A. No.

3)She based her decision on the hearings not phone calls or personal contacts 0276 File 47353

0276
1 but the meetings that we had at the Quality Inn I
2 think was more educational to me, and I think I got
3 more out of that. I had more concern with that than
4 I did with the phone calls. The phone call didn't
5 even say who they were.

4)Received Phone calls but not threatened or intimidated by them. 0292-293 File 47353

24 Q. Ms. Jackson, these telephone calls
1 that you received, did they threaten you or
2 0293 intimidate you in any way?
7 A. Did they like --
8 BY MR. HELSTEN:
9 Q. You personally.
10 A. No, no.
11 Q. Do people generally tell you what to
12 do?
13 A. No.

5)Hearings were what guided her vote P-0276 File 47353

1 but the meetings that we had at the Quality Inn I
2 think was more educational to me, and I think I got
3 more out of that. I had more concern with that than
4 I did with the phone calls. The phone call didn't
5 even say who they were.

6) Ms. Jackson Received Lots of letters 0278-279 File 47353

15 Q. Prior to the vote on the second
16 application, did you receive any letters or written
17 materials?
18 A. Yes.
19 Q. And you received these letters or
20 written materials at home?

21 A. Yes.
22 Q. And you received a lot of letters and
23 written materials, is that correct?
24 A. Yes.
0279

7)Ms. Jackson not threatened or intimidated by the letters. P-0294 File 47353

BY MR. MORAN:

10 Q. Did the letters you received threaten
11 or intimidate you in any way?
14 BY THE WITNESS: A. No

8)Ms. Jackson only had conversations with others at the hearings 0289 File 47353

10 0289 A. Yes.
11 Q. They didn't have you off to the side
12 talking to you off the record?
13 A. No, at no point.
14 Q. And were they talking about such
15 things as the health of their kids?
16 A. Yes.
17 Q. Were they talking about such things as
18 the water quality?
19 A. Yes.
20 Q. Were they talking about such things as
21 impact on property values?
22 A. Yes.
23 Q. Were they talking about other
24 environmental concerns?
1 0290 A. Yes.
2 Q. And you were there as a board member
3 at the hearing listening to those comments, correct?
4 A. Yes, I was.
5 Q. And some of those people had their
6 kids there with them, correct?
7 A. Yes.
8 Q. And they were getting up and giving
9 public comments, correct?
10 A. Right. Yes.
11 Q. And you were just listening to those
12 public comments, correct?
13 A. Yes.

P) County Board George Washington, Jr. was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or posted signs

1)Mr. Washington voted to approve both applications. He, therefore, clearly was influenced. threatened or intimidated into voting against the application.

2)Mr. Washington voted to approve the first application, P-0301 file 47353 07

2 Q. And how did you vote on the first
3 application?
4 A. To approve.

3)Voted to approve the second application P.0301 File 47353 07

3 Q. How did you vote on the second
4 application?
5 A. The same as the first, in the
6 affirmative.
7

3)He saw picketers on March 17, 2005 P-0302 File 473534 07

6 Q. Were there picketers in or around the
7 county board building on that occasion?

8 A. Yes, there were.

4)Mr. Washington saw three posted signs 0302-303 File 47353 07

18 Q. Prior to that date, had you seen any
19 signs posted on properties throughout the area which
20 indicated or which stated no dump, no Chicago
21 garbage?

22 A. Three.

23 Q. And where did you see these signs?

24 A. One was on Kennedy Drive, and the

0303

5)Mr. Washington didn't get phone calls on the expansion P-0303 File 47353 07

3 Q. Prior to March 17th of 2004, did you
4 receive any phone calls regarding the second
5 application?

6 A. Like I said, if I did, I didn't answer
7 them. I didn't get any phone calls where I held any
8 conversations with anybody.

6)He received letters but turned them over to the County Clerk. P- 0304 File 47353 07

17 receive any letters or written materials regarding
18 the proposed expansion or relating to the second
19 application?

20 A. Again, the letters that I received
21 were not opened, and I turned them into the clerk.

22

7)Only conversation outside the record was with Board Member Marcotte giving an explanation P-0305 File 47353 07

7 Q. Prior to March 17th of 2004, did you
8 have any communications with any persons regarding
9 the second application?

10 A. I think I talked with Red Marcotte,
11 and one other board member, just talked in general
12 about it explaining --

8)Had only a passing contact with Mr. Harrison P-0306-307 File 47353 07

20 Q. Did he try to tell you his reasons for
21 opposing the proposed expansion?

22 A. It's hard to say what he was trying to
23 tell me because he talked around in circles, and I
24 couldn't quite understand it, but I just rejected

0307

1 what he was saying because I wasn't going to get
2 into a conversation with him about it.

3 Q. And how long did this communication
4 with Mr. Harrison last?

5 A. A couple minutes.

9)Mr. Washington was neither threatened not intimidated by Mr. Harrison. P-0308 File 47353 07

19 BY MR. PORTER:

20 Q. Mr. Harrison's statements to you did
21 not intimidate or threaten you, correct?

22 A. Of course not.

23

Q) County Board William Olthoff was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or posted signs Ohltoff Deposition File 47359 1

1)Mr. Olthoff Didn't vote on first application, voted no on 1, 3 and 6 of the second application P-5 File 47359-1

P-5

11 Q. Moran: What was your reason why
12 didn't vote?

13 A: Witness: I was out of town.

P-7

7 Q: Did you vote on the second Application?

11 A: How did you vote on the second Application

13 A: I voted nay on three of the criterion

14 Q: Were those criterion 1,3, and 6?

15 A: I believe so.

2)Mr. Olthoff Received no phone calls regarding the expansion. P-8 File 47359-1

16 Q: Prior to your vote on March 17, 2004 did
17 receive any phone calls from any persons regarding
18 the proposed expansion?

19 A: No

20 Q: Prior to your vote on March 17, 2004 did
21 you receive any letters or written materials
regarding

22 proposed expansion?

23 A: Yes.

3)Mr. Olthoff didn't read letters-turned them into the County ClerkP-8, 9 File 47359-1

9 A: I opened them and when I saw they were
10 about the expansion, I put them in a stack and turned them
11 All in to the County Clerk

4)Mr. Olthoff had a discussion with Bruce Harrison P-9 File 47359-1

20 A: He came to our church.

1 P-10 Q: How did he come to have communication with
2 You through the Church?

3 A: He made a request of our Associate Pastor
4 to speak to our congregation about the landfill.

14 Q: How did you learn of this request that Mr.
15 Mr. Harrison made.?

16 A: Mr. Guilford called me.

17 A: I said tell him no.

5)Mr. Olthoff Denied Mr. Harrison's request to speak to the congregation. P-19 File 47359-1

15 Q: How did you conclude the meeting with him?

16 A: I just said he couldn't speak to the
17 Congregation

3 P-19 Q: Do remember seeing those signs Around town?

7. A: Yes

6)Mr. Olthoff saw picketers outside county building on March 17th. P- 21, File 47359-1

7. Q: Were there picketers outside the
8 building that day?

9. A: Yes

7)Mr. Olthoff met with Mr Harrison on a Church related issue. P-29, 30 File 47359-1

24 Q: And was your purpose in meeting with Mr.

1 Harrison to inform him he could not speak to the church
2 About the landfill application or the landfill in genera

4 A: Yes

8)Mr. Olthoff wst not threatened or intimidated by Mr. Harrison. P-290, 30 File 47359-1

12 Q: Did you feel threatened or intimidated by
13 Mr. Harrison's Statements.?.....

14 A: No.

15 Q: You had been instructed to disregard any
statements that were made outside of the hearing process
17 is that correct?
18 A: Yes.
19 Q: Did you follow instructions?

9)Mr. Olthoff was not threatened or intimidated by letters he received. P-30, 31 File 47359-1

24 Q: Did you feel threatened or intimidated by t
1 the receipt of those letters?
3 A: No.

10)Mr. Olthoff was not threatened or intimidated by the picketers. P-31 File 47359-1

8 Seeing those picketers?
10 A: No.

11)Mr. Olthoff was not threatened or intimidated by the posted signs. P-31 File 47359-1

11 Q: It was also mentioned
12 that the signs were posted around Kankakee. Did you feel
13 Threatened or intimidated by those signs.
14 The Witness A: No.

12)Mr. Olthoff was not threatened by the letter, picketers and signs P-31 File 47359-1P-31

16 Mr. Porter Q: In regard to the letters,
Picketers, again did you follow the instruction
18 to disregard statements or materials that were submitted
19 outside the hearing process?
20 The Witness: A: Yes.

Deposition of Duane Bertrand , File 47359-1 4-15-05

Q)County Board Member Duane Bertrand was not influenced by public contacts, letters, phone calls, pickets on the day of the meeting or posted signs vote.

1)Mr Bertrand was not threatened or intimidated by posted signs. File 47359-1 4-15-05

8 Q: There was some mention of signs
9 Were you threatened or intimidated by any signs?
13 A: No.
17 Isn't ot true that at that breakfast you told
18 Mr. Harrison several times you were not going to
17 Talk to him about landfills.
20 A: Yes.

2)Mr. Bertrand disregarded any statements made by anyone outside the hearing.P-25 File 47359-1

P-25 17 Mr. Porter Q: And when they would start
18 talking to you would you disregard their statements if
19 they were made outside the hearing?
20 THE WITNESS: A: Yes.

3)Mr. Bernard did not feel threatened or intimidated by Ron Thompson. P-26

P25 24 Did you feel intimidated or threatened by
P26 3. A: No.
4 Q: Again did you follow the
5 nstruction to disregard statements made
6 outside the hearing process?
10 A: Yes.

3)Mr. Bertrand did not change his vote after statements made to him by Mr. Harrison And Mr. Thompson. P-26 File 47359-1

P26 18 Q: After Mr. Harrison made statements to
18 o you and Mr. Thompson made his statements to you did
you
19 change your vote?

21 A: No.
22 Q: So you voted the same way you did the
23 first time, correct?
24 A: Yes.

4)Mr. Bertrand voted to approve both applications. It is obvious he was not influenced or imidate by actions of the public or Mr. Harrison. P-6 File 47359-1

P-5 Moran's direct 47359-1

16 Q: And you voted to approve the first application?
17 A: Yes.
P-6 1 Q: And you voted to approve the second
2 Application?
3 A: Yes

Mr. Bertrand received about six phone calls prior to the March 17th. 2004 vote. P- 6 47359-113

Q: You received about a half a dozen phone
14 calls?
15 A: Yes.

6)Mr..Bertrand received a call from dog Flageole but was not threatened by it. P- 7 File 47359-1

3 A: So he said , "I'm going to run against you
15 and beat you the next time you are up for election."
5 But I told him , I said, Well, you will
6 Have to move because I am not in your district.
7 Q: Did you view his statements as being a
8 threat to you?
8 A: Not really.

9 Porter Cross of Mr. Bertrand. No Threats. P-22-23 File 47359-1

24 Q :.....and when you spoke to Mr. Flageole there was some statement that maybe he was
2 threatening to run against you?
3 Q: Did you feel threatened by that statement?
10 A: No, I didn't feel threatened.

7) Mr. Bertrand met with Mr. Harrison and listened but did not respond. P-17 File 47359-1

14 Q: That you would listen but you wouldn't
15 Make any comment
18 A: That's correct.

. Bertrand was not threatened or intimidated by the presence of pickets. P-23 File 47359-1

13 Porter, Q: Were you threatened or intimidated by
the
14 presence of picketers?
15 A: No

ertrand was not threatened or intimidated by the letters he received. P-23, 24 File 47359- 1P-24
rd to the letters there was some mention of letters stating Dump the Dump or
ump you.

Were you threatened or intimidated by that
1 statement in the letter?
2 The Witness A: No.

0)Mr.Bertrand was not threatened or intimidated by signs in Kankakee County,P-24 , File 47359-1

11 Were you threatened or intimidated by any signs?
13 A: No.
20 Isn't ot true that at that breakfast you told Mr.
Harrison several times you were not going to talk him about
landfills.
22 A: Yes.

**11)Mr. Bertrand disregarded any statements made by anyone outside the hearing. P- 25
47359-1 File**

17 P-25 Mr. Porter Q: And when they would start
20 talking to you would you disregard their statements if
19 they were made outside the hearing?
17 THE WITNESS: A: Yes.

**12)Mr. Bernard did not feel threatened or intimidated by Ron Thompson. P-25 File 47359-1
.P25**

24 Did you feel intimidated or threatened by
3. A: No.
4 Q: Again did you follow the
7 instruction to disregard statements made outside
9outside the hearing process?
10 A: Yes.

**13)Mr. Bertrand did not change his vote after statements made to him by Mr. Mr. Thompson
and Mr. Harrison. P-26 File 47359-1**

P26 18 Q: After Mr. Harrison made statements to
19 to you and Mr. Thompson made his statements
20 to you did you change your vote?
21 A: No.
22 Q: So you voted the same way you did the
23 first time, correct?
24 A: Yes.

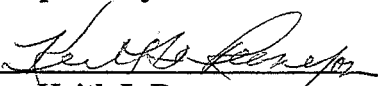
V Conclusion

The Applicant is guilty of committing serious violations of the ex parte rule and engaging in other fundamentally unfair practices while continuing to bring political pressure on the County Board to make a settlement and to withdraw their from the Waste Management Appeal before this board. Waste Management is attempting to turn the siting process on it's head.

The manifest weight of the evidence clearly indicates that Waste Management has no basis for appealing the County's Denial to this Body. Not one Board Member was influenced by contacts, from the public signs, pickets, or phone calls letters. They all based their votes on the record.

For these reasons we pray that this Board will uphold, intact the County of Kankakee's Decision to deny Waste Management's Application for expansion.

Respectfully Submitted


Keith L Runyon

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AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty perjury under the laws of the United States of America, certifies that on **May 20, 2005 the Pollution Control Board** was served an original and five copies of the foregoing enclosed Brief, by depositing copies thereof, enclosed in an envelope in the United States Mail at Bourbonnais, Illinois, proper postage prepaid, and postmarked before the hour of 5:00 P.M., on May 20th..2005. addressed as below.. via U.S. Mail, postmarked before 5:00 P.M. on said date and mailed from the Bourbonnais, Il. Post Office 60914

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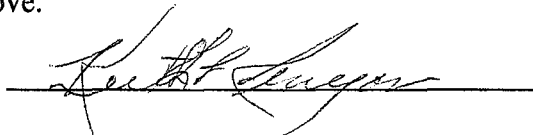
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By depositing a copies (copy) thereof, enclosed in an envelope in the United States Mail at Bourbonnais, Illinois, proper postage prepaid, before the hour of 5:00 P.M., on May 20th..2005. addressed as above.

A handwritten signature in dark ink, appearing to read "Keith Runyon", is written over a horizontal line.

Keith Runyon
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#040325-114

FILED

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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**

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.

EXHIBITA

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.

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 ± 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 1×10^{-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 1×10^{-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 8 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

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **Waste Management of Illinois, Inc.'s Petition for Hearing to Contest Site Location Denial** by enclosing same in an envelope addressed to the following parties as stated below, and by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, on or before 5:00 p.m. on this 21st day of April, 2004:

Mr. Charles F. Helsten
Hinshaw & Culbertson
P.O. Box 1389
Rockford, IL 61105-1389

Mr. Edward Smith
Kankakee County State's Attorney
450 East Court Street
Kankakee, IL 60901

Mr. George Mueller
George Mueller, P.C.
501 State Street
Ottawa, IL 61350

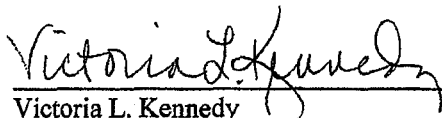
Mr. Christopher Bohlen
Barmann, Kramer, and Bohlen, P.C.
200 East Court Street, Suite 502
Kankakee, IL 60901

Mr. Kenneth A. Bleyer
Attorney at Law
923 W. Gordon Ter., #3
Chicago, IL 60613-2013

Mr. Keith Runyon
1165 Plum Creek Dr.
Bourbonnais, IL 60914

Ms. Elizabeth Harvey
Swanson, Martin & Bell
One IBM Plaza - Suite 3300
330 North Wabash
Chicago, IL 60611

Ms. Jennifer J. Sackett Pohlenz
Mr. David Flynn
Querrey & Harrow
175 West Jackson Boulevard
Suite 1600
Chicago, IL 60604-2827


Victoria L. Kennedy

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD APR 22 2004

WASTE MANAGEMENT OF ILLINOIS, INC.,)

Petitioner,)

vs.)

COUNTY BOARD OF KANKAKEE COUNTY,)
ILLINOIS,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 04-186

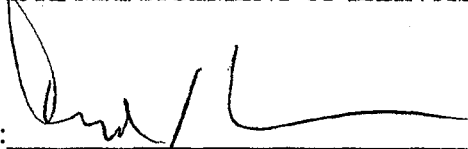
(Pollution Control Facility
Siting Appeal)

**NOTICE OF FILING PETITION FOR HEARING
TO CONTEST SITE LOCATION DENIAL**

TO: See Attached Service List

PLEASE TAKE NOTICE that on April 21, 2004, we filed with the Illinois Pollution Control Board, the attached Waste Management of Illinois, Inc.'s **PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL**.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 
One of Its Attorneys

Donald J. Moran
PEDERSEN & HOUP
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
(312) 641-6888
Attorney Registration No. 1953923

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty perjury under the laws of the United States of America, certifies that on **May 2, 2005 the Pollution Control Board** was served an original and four copies a copy of the foregoing Brief via letter:

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

Attorney George Mueller
501 State Street
Ottawa, Il 61350
815 433 4705
Fax 815 422 4913

Donald J. Moran
Perterson & Houpt
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312 261 2149
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Elizabeth Harvey, Esq.
Swanson, Martin, & Bell
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Jennifer J. Sackett Pohlenz
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Mr. Brad Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, 11th Floor
Chicago, Il. 60601

312 814 8917
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Richard S. Porter
Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue, P.O. Box 1389
Rockford, Il. 61105-1389

Barmann, Kramer, and Bohlen, P.C.
300 East Court Street
Suite 502
P.O.Box 1787
Kankakee, Il 60901

c

Karl Kruse
Kankakee County Board
189 E. Court Street
Kankakee, Il 60901

Kankakee County States Attorney
Ed Smith Kankakee County State's Attorney
Bremda Gorski
450 E. Court Street.
Kankakee, Il 60901

By depositing a copies (copy) thereof, enclosed in an envelope in the United States Mail at Bourbonnais, Illinois, proper postage prepaid, before the hour of 5:00 P.M., on May 2nd.2005. 2003 addressed as above. Local parties will be personally served.

Keith Runyon
1165 Plum Creek Dr. Unit D.
Bourbonnais, IL 60914
815 937 9838
Fax 815 937 9164

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March 11, 2004

Bruce Clark
COUNTY CLERK
KANKAKEE COUNTY

Donald J. Moran
Attorney at Law
312.261.2149
Fax 312.261.1149
dmoran@pedersenhoupt.com

Mr. Karl Kruse
c/o Mr. Bruce Clark
Kankakee County Clerk
Kankakee County Administration Building
189 East Court Street
Kankakee, Illinois 60901

Dear Mr. Kruse:

On the last day of the public comment period, February 20, 2004, Michael Watson mailed his Summary of Proceedings, Proposed Findings and Written Comment ("Watson Comment") to the Kankakee County Clerk. Waste Management of Illinois, Inc. ("WMII") did not receive the Watson Comment until February 25, 2004, and thus had no opportunity to respond during the public hearings or the written comment period.

The Watson Comment raised for the first time a jurisdictional challenge relating to the pre-filing notice required for the property at 6933 South Route 45-52, Chebanse, Illinois. Page 44 of the Watson Comment alleges that Mrs. LaFerne A. Foster, along with her husband, Leonard, was entitled to notice, but was not served. According to the Watson Comment, because Mrs. Foster was not served, WMII failed to complete notice, and the County Board is without jurisdiction to decide the Site Location Application for the Expansion of the Kankakee Landfill.

The claim is without merit. However, as the public comment period ended February 20, 2004, WMII had no opportunity to respond to this claim. To avoid the implication that any silence may be viewed as agreement to or acquiescence in the claim, WMII respectfully requests permission to file the attached Response to Jurisdictional Claim.

Thank you for your consideration.

Very truly yours,


Donald J. Moran

DJM:vlk
Enclosure

cc: Mr. Charles F. Helsten
Mr. George Mueller
Ms. Elizabeth Harvey
Mr. Kenneth A. Bleyer

Mr. Christopher Bohlen
Mr. Keith Runyon
Ms. Jennifer J. Sackett Pohlenz
Mr. Byron Sandberg

FILED

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**BEFORE THE KANKAKEE COUNTY BOARD
KANKAKEE COUNTY, ILLINOIS**

Brian Clark
COUNTY CLERK
KANKAKEE COUNTY

IN THE MATTER OF:

Site Location Application of
Waste Management of Illinois, Inc.,
For Expansion of the
Kankakee Landfill

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RESPONSE TO JURISDICTIONAL CLAIM

Waste Management of Illinois, Inc. ("WMII"), through undersigned counsel, submits the following response to the jurisdictional challenge raised on page 44 of "Michael Watson's Summary of the Siting Proceedings (*sic*), Proposed Findings and Written Comment" postmarked February 20, 2004 ("Watson Comment").

1. The Watson Claim

The Watson Comment alleges that based on information contained in a property record card maintained in the Kankakee County Assessor's office, Leonard G. Foster and LaFerne A. Foster are both shown as owners of the property located at 6933 South Route 45-52, Chebanse, Illinois, and hence both must be served pre-filing notice pursuant to Section 39.2(b) of the Illinois Environmental Protection Act ("Act"). According to Objector Watson, as WMII only attempted to serve Mr. Foster, pre-filing notice was incomplete and the Kankakee County Board lacks jurisdiction to decide the Application. Watson Comment, p. 44.

The property record card contained in the Watson Comment is eight years old and not kept current. The County Assessor no longer prepares property record cards for the properties it

assesses, and instead maintains the necessary information in its computer database. The second page of Exhibit N to the Watson Comment, which is more current than the property record card to which it is attached, confirms that the County Assessor's records indicate Leonard G. Foster as the sole owner of the subject property.

2. **The Watson Claim is Baseless**

The Watson Claim is not supported by law or fact. It ignores the plain meaning of the Act and long-established Pollution Control Board and judicial decisions.

Section 39.2(b) of the Act requires that pre-filing notice be served on owners of property within 250 feet of the subject site, "said owners being such persons or entities which appear from the authentic tax records of the County in which the facility is to be located..." 415 ILCS 5/39.2(b) (2003). Thus, Section 39.2(b) requires a siting applicant to use the "authentic tax records" to determine the owners to whom notice must be sent. Bishop v. Illinois Pollution Control Board, ___ Ill.App.3d ___, 601 N.E.2d 310, 311 (5th Dist. 1992).

Case law has established that "authentic tax records" may include the records of the county treasurer, the county assessor or the county clerk. Bishop, 601 N.E.2d at 311, 315. "Authentic tax records" are not the records maintained or available at each and every one of those offices. Bishop, 601 N.E.2d at 315; C.O.A.L. v. Greater Egypt Regional Environmental Complex, No. PCB 97-29, slip op. at 6 (December 5, 1996). A siting applicant may rely upon the records maintained by any one of these offices, and is not required to review all records held in these offices. Bishop, 601 N.E.2d at 315; C.O.A.L., slip op at 6; DiMaggio v. Solid Waste Agency of Northern Cook County, No. PCB 89-138; slip op. at 8-9 (January 11, 1990).

The "authentic tax records" for the County of Kankakee are those maintained by the Kankakee County Treasurer. County of Kankakee v. City of Kankakee, Nos. PCB 03-31, 03-33

and 03-35 (cons.), slip op. at 16 (January 9, 2003). A siting applicant satisfies its Section 39.2(b) notice obligation by serving notice on those owners appearing in the records of the County Treasurer. County of Kankakee, slip op. at 16-17. An applicant may rely exclusively on the records maintained by the county treasurer's office, even though the county assessor or county clerk may have more accurate or current information. Bishop, 601 N.E.2d at 315; County of Kankakee, slip op. at 16-17; C.O.A.L., slip op. at 6. The reason is that the county treasurer's books are authentic tax records as defined by Section 39.2(b), and the applicant is authorized to use and rely upon such records to identify the property owners entitled to notice. Bishop, 601 N.E.2d at 315; C.O.A.L., slip op. at 6.

WMII used the records maintained by the Kankakee County Treasurer to identify those property owners entitled to Section 39.2(b) notice. The records of the County Treasurer identify Mr. Leonard G. Foster as the sole owner of the property located at 6933 South Route 45-52, Chebanse, Illinois, and the only person to whom the real estate tax bill is sent. See attached Group Exhibit 1, Kankakee County Real Estate Tax Bill, Parcel Number 13-25-05-300-005 and related documents, Kankakee County Treasurer. WMII satisfied its Section 39.2(b) notice obligation for this property when it personally served Mr. Foster with pre-filing notice on August 10, 2003. Site Location Application for Expansion of Kankakee Landfill, filed September 26, 2003, Additional Information, Tab A, Exhibit E.

Moreover, the records of the Kankakee County Assessor are not inconsistent with the records of the Kankakee County Treasurer. They both indicate that Leonard G. Foster is the sole owner of the subject property. See attached Group Exhibit 2, Parcel Information Report, Parcel Number 13-25-05-300-005 and related documents, Kankakee County Assessor. While the eight year old property record card lists LaFerne Foster as an owner, the current owner information

identifies Leonard Foster as the sole owner. See Exhibit N to Watson Comment, page two; Group Exhibit 2.

Conclusion

Objector Watson has raised a last minute challenge to jurisdiction, based upon an entry contained in a property record card held in the Kankakee County Assessor's office. The information suggested in that card, that Mrs. LaFerne A. Foster is an owner of the property at 6933 South Route 45-52, Chebanse, Illinois, is not supported or indicated in any of the other records maintained by the Assessor regarding this property. Those records clearly indicate that Mr. Foster is the sole owner.

Moreover, the records of the Kankakee County Treasurer, which are the authentic tax records of Kankakee County, unequivocally indicate that Leonard G. Foster is the sole owner of the subject property. Accordingly, WMII has satisfied the statutory notice requirements for this property by personally serving Mr. Foster with pre-filing notice.

Respectfully submitted,

Waste Management of Illinois, Inc.

By: 

Its Attorney

Donald J. Moran
Pedersen & Hout
161 North Clark
Suite 3100
Chicago, IL 60601
Telephone: (312) 641-6888

Exhibit C

CONCERNED CITIZENS FOR A BETTER ENVIRONMENT, PETITIONERS v. CITY OF HAVANA AND SOUTHWEST ENERGY CORPORATION, RESPONDENT PCB 94-44 May 19, 1994

The petitioners next assert that the councilmen and the mayor showed a predisposition to the incinerator by their actions in regard to the referendum and the annexation. (Pet.Br. at 6-7.) Specifically, petitioners point to a letter from the Mayor on city stationery which was mailed to the citizens of Havana urging support of the incinerator in the referendum. (Pet.Br. at 6; Pet.Exh. 6.) The petitioners assert that the letters were sent in envelopes belonging to Southwest. (Id.) The petitioners also allege that some of the councilmen placed yard signs in support of the incinerator in their yards prior to the referendum. (Pet.Br. at 6; Tr. at 144.) The petitioners also presented testimony indicating that Councilman Schmidt confronted an opponent to the landfill during the annexation hearing and became verbally and physically abusive. (Pet.Br. at 7; Tr. at 208-210.) Testimony was also presented that the mayor had become verbally abusive to some of the opponents of the incinerator. (Id.)

The petitioners argue that the mayor's actions at the council meeting where the siting vote was taken also showed bias. (Pet.Br. at 8.) Petitioners assert that the proponents were allowed to make excessive noise and show approval or disapproval of council action. However, opponents were "yelled at" by the mayor for quietly talking among themselves. (Pet.Br. at 8-9; Tr. at 247-249.)

Southwest points out that local officials are presumed to be objective and the presumption is not overcome by the mere fact that an official has taken a public position or expressed a strong view on a siting proposal. (Res.Br. at 15 citing *E & E Hauling v. PCB*, 481 N.E.2d 664, 668 (Ill 1985); *Waste Management of Illinois v. PCB*, 530 N.E.2d 682, 695-696 (2nd Dist 1988); *Citizens for a Better Environment v. PCB*, 504 N.E.2d 166, 171 (1st Dist. 1987). Southwest further cites to Section 39.2(d) of the Act which specifically allows participation in the decision by a member of the county board even if that member has expressed an opinion publicly. (Res.Br. at 15.)

Southwest argues that, given this legal framework, the allegations made by CCBE are not sufficient to overturn Havana's siting decision. (Res.Br. at 16.) According to Southwest, the mayor did not vote on the siting issue (Res.Br. at 16; C000078-0081) and the expressions of support by two council members eight months prior to voting on the projects "do not demonstrate the kind of bias or predisposition necessary to nullify a siting determination". (Res.Br. at 16-17; Tr. at 144-145.)

Southwest has properly cited some of the extensive case law regarding alleged predisposition of the decisionmaker. (Res.Br. at 15.) Although the record indicates that members of the council made statements indicating a bias such

statements are not sufficient to disqualify a decisionmaker. All of the councilmen testified that their decision was based on the record developed at hearing and on the application. Therefore, the Board finds that the councilmen were properly allowed to participate in the siting process and any predisposition did not result in a fundamentally unfair proceeding.

1994 WL 235432, *6

See also 415 ILCS 5/39.2(d), which states in petinant part: ...

The fact that a member of the county board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue

Lastly review a portion of E & E Hauling from the Illinois Supreme Court:

In contending that the board was disqualified from acting as decision- maker of the permit application, the village first claims that the board had an interest in the permit application. This interest was the \$30,000 per month, on the average, that the board and its members in their capacity as commissioners of the district received. These payments, of course, were not a direct pecuniary benefit to the commissioners, but rather a benefit to the community that they serve. A classic example of an impermissible indirect interest appeared in *Ward v. Village of Monroeville* (1972), 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267. There the defendant was tried and convicted of two traffic offenses by the mayor of the village. The mayor had a broad control over the village *42 government and its finances, and traffic fines generated a "substantial portion" of the village's annual revenue. The Supreme Court held that though the interest was not a personal one, the important impact that fines had on village finances that the mayor supervised created sufficient temptation not to accord the defendant due process of law. The situation here is clearly distinguishable. The revenue from the landfill of \$30,000 per month must be considered in perspective. The annual budget of the district was \$163.5 million in 1982. The mayor's reliance in *Ward* on traffic fines was obviously a different matter.

[4] More fundamentally, the board should not be disqualified as a decision-maker simply because revenues were to be received by the county. County boards and other governmental agencies routinely make decisions that affect their revenues. They are public service bodies that must be **668 ***825 deemed to have made decisions for the welfare of their governmental units and their constituents. Their members are subject to public disapproval; elected members can be turned out of office and appointed members replaced. Public officials should be considered to act without bias. Cf. *Memphis Light, Gas & Water Division v. Craft* (1978), 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30; *Goss v. Lopez* (1975), 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725.

It does not seem unusual that a landfill would be proposed for location on publicly owned property. The Act was amended to place decisions regarding the sites for landfills with local authorities and to avoid having a regional authority (the Agency) in a position to

impose its approval of a landfill site on an objecting local authority. Here, a local authority approved the landfill, but the village, a local authority itself, is alleging that the county board should be disqualified because it owns the landfill property. We do not consider that the legislature intended *43 this unremarkable factual situation to make "fundamental fairness of the procedures" impossible.

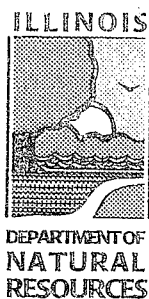
[5] The village next claims that the hearing was unfair because both the county and the district had earlier approved the landfill by ordinance. The village thus is claiming a type of bias that has been called "prejudgment of adjudicative facts." (See K. Davis, 3 Administrative Law Treatise sec. 19:4 (2d ed. 1980).) But the ordinances were simply a preliminary to the submission of the question of a permit to the Agency. Subsequently, the Act was amended and the board was charged with the responsibility of deciding whether to approve the landfill's expansion. The board was required to find that the six standards for approval under the amended act were satisfied. It cannot be said that the board prejudged the adjudicative facts, i.e., the six criteria. This conclusion is supported by the line of decisions that there is no inherent bias created when an administrative body is charged with both investigatory and adjudicatory functions. See, e.g., *Withrow v. Larkin* (1975), 421 U.S. 35, 47-50, 95 S.Ct. 1456, 1464-65, 43 L.Ed.2d 712, 723-25; *Scott v. Department of Commerce & Community Affairs* (1981), 84 Ill.2d 42, 54-56, 48 Ill.Dec. 560, 416 N.E.2d 1082.

We consider that the appellate court properly held that the board was correct in finding that the statutory standards had been satisfied, and that portion of the appellate court's judgment is affirmed.

The appellate court's conclusion that the PCB erred in deciding that the board was disqualified from conducting a hearing was correct, but its reasoning was erroneous. The court deemed that the board was an improper tribunal, but since there was no other forum available, the rule of necessity required the board to act as the forum. As we have stated here, the board was not to be judged biased and disqualified from acting. Because the appellate court's conclusion to reverse the decision of the *44 PCB was correct, we affirm that portion of the judgment also. Judgment affirmed.

citation for the foregoing is

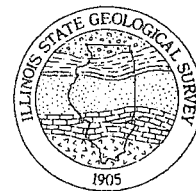
E & E Hauling, Inc. v. Pollution Control Bd. 107 Ill.2d 33, *41, 481 N.E.2d 664, **667-668, 89 Ill.Dec. 821, **824 - 825 (Ill., 1985)



ILLINOIS STATE GEOLOGICAL SURVEY

Natural Resources Building
615 East Peabody Drive
Champaign, IL 61820-6964
217/333-4747
FAX 217/244-7004

EXD



January 8, 2004

Mr. Keith Runyon
1165 Plum Creek Drive, Unit D
Bourbannais, Illinois 60914

Dear Mr. Runyon:

Per our phone conversation this afternoon, I am sending you a copy of a letter that I sent to Mr. Richard Murray regarding two potential landfill sites in Kankakee County. The original letter was dated June 4, 2002 and contained the original, hand-colored figures. I am sending you a copy of the letter. I recolored the figures to match the originals.

I understand that additional site information has been developed for the proposed landfill sites, but the content of my letter is still valid. From a geologic perspective, better landfill sites are available in southwestern Kankakee County.

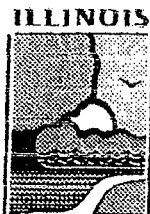
Please call me (217-244-2765) or email me (mehnert@isgs.uiuc.edu) if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Mehnert".

Edward Mehnert, Ph.D.
Sr. Geohydrologist & Section Head
Groundwater Geology Section

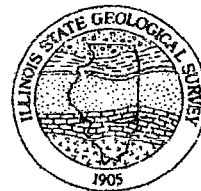
Enclosure



DEPARTMENT OF
NATURAL
RESOURCES

ILLINOIS STATE GEOLOGICAL SURVEY

Natural Resources Building
615 East Peabody Drive
Champaign, IL 61820-6964
217/333-4747
FAX 217/244-7004



June 4, 2002

Richard Murray
OUTRAGE
P.O. Box 222
Bradley, Illinois 60915

Dear Mr. Murray:

This letter is in response to your phone call of May 30th. We discussed the siting of a landfill in Section 25, T30N, R14W and the expansion of a landfill in Section 5, T29N, R13W in Kankakee County. Both sites are near Otto, IL. As we discussed on the telephone, geology is an important consideration in landfill siting, but it may not be the sole basis that local decision makers use to site landfills. I'll provide some information about the geology of the two sites and describe the suitability for siting landfills at these locations. I have also included a brief bibliography that describes the geology and groundwater of the area.

The Illinois Environmental Protection Agency regulates landfills in Illinois. The Bureau of Land handles landfills. You may wish to contact them to determine the permit status and additional information for the two landfill sites. Here is some contact information for IEPA's Bureau of Land-- Bureau Chief= Bill Child (217) 785-9407, Division of Land Pollution Control Manager= Michael Nechvatal (217) 785-9407, Field Operations= Paul Purseglove (217) 785-8604, Permits= Joyce Munie (217) 524-3300 Solid Waste Management= David Walters (217) 785-8604.

Please call me (217-244-2765) or email me (mehnert@isgs.uiuc.edu) if you have any questions regarding this letter.

Sincerely,

Edward Mehnert, Ph.D.
Senior Geohydrologist & Section Head
Groundwater Geology Section

Enclosures

Geologic Suitability for Potential Landfill Sites in Kankakee County

Prepared by Edward Mehnert, Illinois State Geological Survey

June 3, 2002

This report describes the geologic suitability for siting of a landfill in Section 25, T30N, R14W and the expansion of a landfill in Section 5, T29N, R13W in Kankakee County.

Background Information

Section 5, T29N, R13W, Kankakee County

USGS 7.5 minute topographic map= Kankakee, highs in western (highest elev= 700 ft) and eastern (highest elev= 665 ft) sides of section, low in center of section, land generally slopes east toward the Iroquois River.

Drift thickness (thickness of geologic materials above the bedrock, see figure 1)= 25 to >50 feet, generally decreases toward the east.

Stack Unit Map (geologic materials to a depth of 50 ft, see figure 2 & key)= area is mapped primarily as (g)I5 with some areas of I and I5. In I areas, 50 feet of silty and clayey diamictos of the Wedron Formation would be expected to be found. In I5 areas, >20 feet of silty and clayey diamictos of the Wedron Formation over >20 feet of Silurian and Devonian rocks (mainly dolomite) would be expected to be found. In (g)I5 areas, <20 feet of the Dolton Member of the Equality Formation (sand deposited in beaches and bars) [this sand may not be present in all locations] overlies >20 feet of silty and clayey diamictos of the Wedron Formation over >20 feet of Silurian and Devonian rocks (mainly dolomite).

Potential for Contamination of Shallow Aquifers/Land Burial of Municipal Wastes (interpretative map to assess area geology for siting municipal landfills, see figure 3, key & table)= mainly B1 with some areas mapped as C1 and E. As shown in the table for figure 3, areas mapped as D, E, F or G (colored green on figure 3) are expected to have few geologic limitations for land burial of municipal wastes. Other areas would be expected to have a higher potential for groundwater contamination (B1 and C1 areas) or trench design problems and surface contamination (B1 areas).

Section 25, T30N, R14W, Kankakee County

USGS 7.5 minute topographic map= West Kankakee, generally flat lying (elev= 620 to 625 ft) with natural and man-made drainage, Interstate 57 runs through the eastern part of the section.

Drift thickness (thickness of geologic materials above the bedrock, see figure 1)= <25 to 50 feet, generally decreases toward the east.

Stack Unit Map (geologic materials to a depth of 50 ft, see figure 2 & key)= area is mapped as gI. In gI areas, <20 feet of the Dolton Member of the Equality Formation (sand deposited in beaches and bars) overlies >20 feet of silty and clayey diamictos of the Wedron Formation.

Potential for Contamination of Shallow Aquifers/Land Burial of Municipal Wastes (interpretative map to assess area geology for siting municipal landfills, see figure 3, key & table)= B1. As shown in the table

for figure 3, areas mapped as D, E, F or G are expected to have few geologic limitations for land burial of municipal wastes. Other areas would be expected to have a higher potential for groundwater contamination (B1 and C1 areas) or trench design problems and surface contamination (B1 areas).

Groundwater of the Area

The groundwater resources of eastern Kankakee County and northern Iroquois County were described by Cravens et al. (1990). The Silurian dolomite, which is highly fractured in its upper 50 to 100 feet, is the primary aquifer in Kankakee County. The Silurian dolomite is the uppermost bedrock unit in most of Kankakee County. In addition, significant groundwater supplies are obtained from deeper bedrock aquifers throughout Kankakee County and from shallow sand and gravel deposits in the southeast part of Kankakee County. In addition, the report by Cravens et al. (1990) contains a considerable amount of geochemical data for wells completed in the Silurian dolomite.

Summary

From a geologic perspective, better landfill sites are available in the southwestern portion of Kankakee County than those proposed in Section 25, T30N, R14W and Section 5, T29N, R13W. In both sections 5 and 25, surficial sands may be present. Contaminants from the landfill could be transported to nearby surface water and groundwater through these sands. In Section 5, the shallow depth of the Silurian dolomite (areas mapped as (g)I5 and I5 in figure 2) is also a concern for groundwater contamination in that aquifer. Please be aware that the enclosed maps were developed from regional information and represent the geology on a regional basis. To assess the suitability of any site, site investigations are necessary to confirm the regional geologic interpretation and evaluate the suitability for siting a landfill or other facility.

Bibliography

Berg, R.C., and J.P. Kempton, 1988. Stack-Unit Mapping of Geologic Materials in Illinois to a Depth of 15 Meters, Illinois State Geological Survey Circular 542, 23 p. (statewide map showing 3D geology to a depth of 50 feet)

Berg, R.C., J.P. Kempton, and K. Cartwright, 1984. Potential for Contamination of Shallow Aquifers in Illinois, Illinois State Geological Survey Circular 532, 30 p. (statewide map showing potential for contamination from waste disposal)

Cravens, S. J., S.D. Wilson, and R.C. Barry, 1990. Regional Assessment of the Ground-Water Resources in Eastern Kankakee and Northern Iroquois Counties, Illinois State Water Survey Report of Investigation 111, 86 p. (describes geology and groundwater in an area just east of 2 sections)

Frankie, W.T., 1998. Guide to the Geology of Kankakee River State Park Area, Kankakee County, Illinois, Illinois State Geological Survey Field Trip Guidebook 1998B, 62 p. (Geologic report describing the geology of Kankakee River State Park in particular and Kankakee County in general. Good basic discussion of geology.)

Piskin, K., and R.E. Bergstrom, 1975. Glacial Drift in Illinois: Thickness and Character, Illinois State Geological Survey Circular 490, 35 p. (statewide map showing the thickness of the geologic materials above the bedrock or "drift")

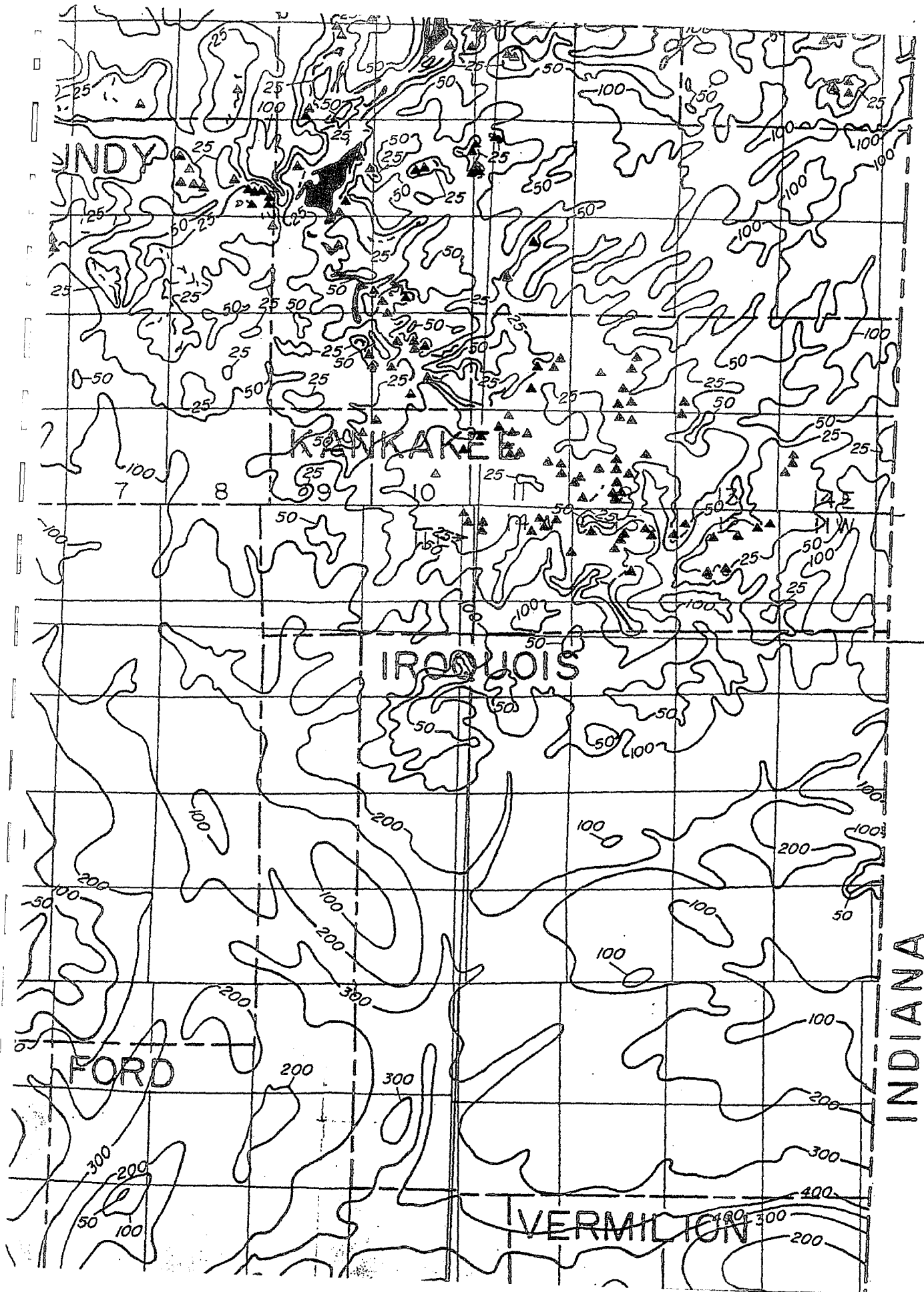
Visocky, A.P., M.G. Sherrill, and K. Cartwright, 1985. Geology, Hydrology, and Water Quality of the Cambrian and Ordovician Systems in Northern Illinois, Illinois State Geological Survey and Illinois State Water Survey Cooperative Groundwater Report 10, 136 p. (describes bedrock geology and groundwater of northern IL).

Note: ISGS publications are available at many local libraries or from the ISGS at 217/244-2414. ISWS publications are also available at many local libraries or by phoning 217/333-8888.



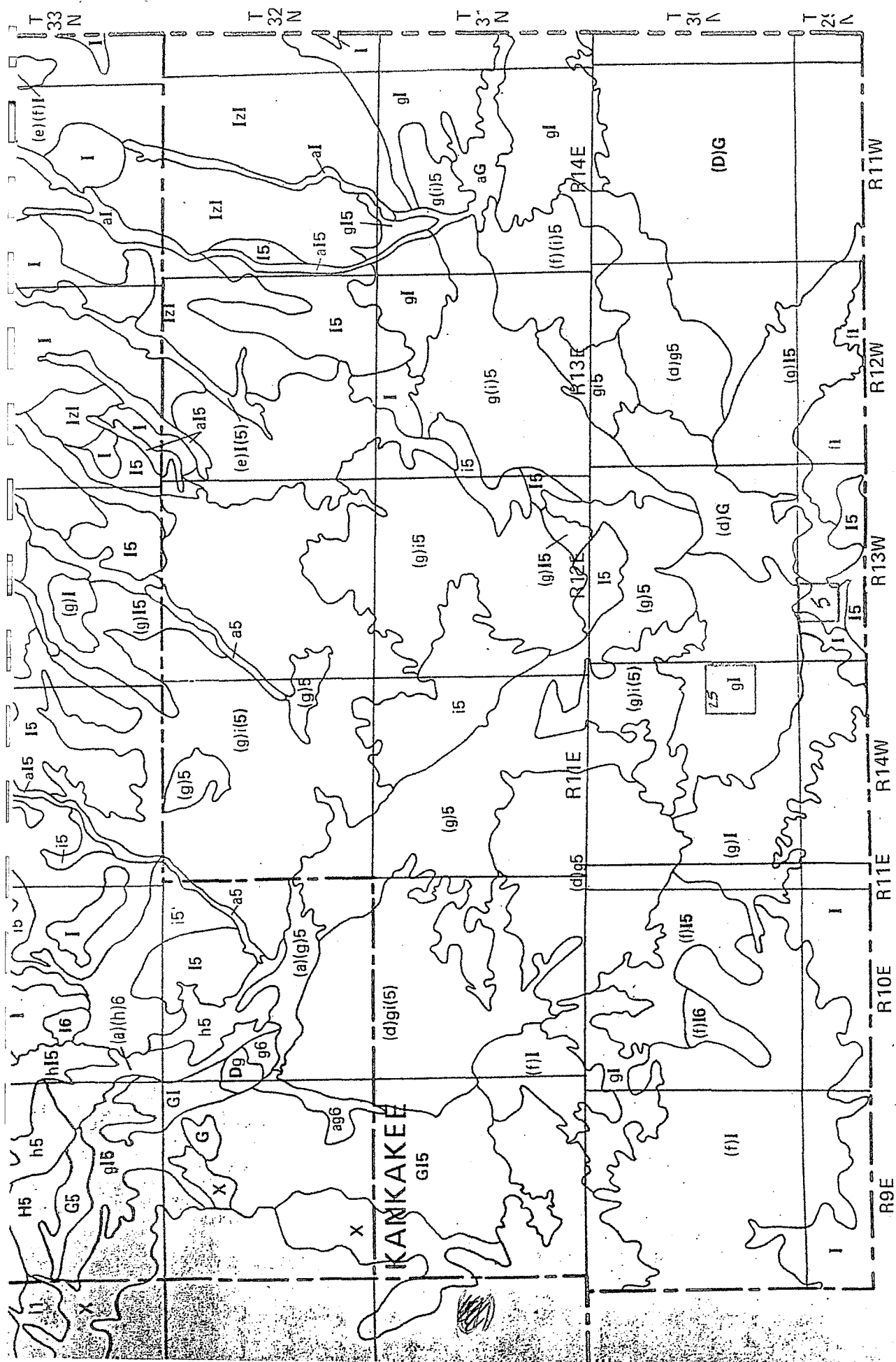
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Figure 1

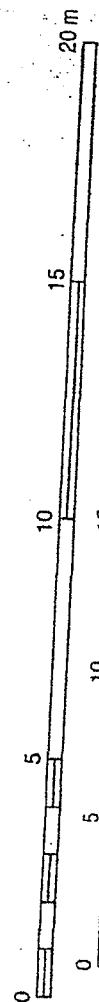


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State Circular 490



Scale 1:250,000



from ISGS Circular 542

Figure 2

Time-Stratigraphy	Alphanumeric Code	Quaternary Deposits Map*
	A	Calabria Alluvium
	B	Richland Loess
	C	Peoria Loess and Roxana Silt
Holocene/late	D	Parkland Sand
	E	Graystake Peat
Wisconsinan	F	Equality Fm, Carmi Mbr
	G	Equality Fm, Dolton Mbr
	Y	Peyton Colluvium
	H	Henry Fm
	I	Wedron Fm, silty and clayey diamictions
	J	Wedron Fm, loamy and sandy diamictions
Wisconsinan	K	Sand and gravel within Wedron Fm:
	k	within 6 m (19.7 ft) of surface
	z	between 6-15 m (19.7-49.3 ft) of surface
	L	Winnebago Fm, mainly sandy diamictions
	M	Sand and gravel within Winnebago Fm:
	m	within 6 m (19.7 ft) of surface
	z	between 6-15 m (19.7-49.3 ft) of surface
	N	Tonelle Silt
Illinoian	O	Peat Fm (includes Hagerstown Mbr)
	P	Clarendon Fm, silty and clayey diamictic
	Q	Glasford Fm, loamy and sandy diamictions
	R	Sand and gravel within Glasford Fm:
	r	within 6 m (19.7 ft) of surface
	z	between 6-15 m (19.7-49.3 ft) of surface
Pre-Illinoian	U	Wolf Creek Fm (mainly diamictions)
Pliocene	V	Mounds Gravel and related units
Cretaceous	W	Cretaceous sediments, silts, sands, etc.
Miscellaneous	X	Surface mines/manmade land

NOTE: Boldface letters represent materials greater than 6 meters (19.7 ft) thick; lowercase letters represent those materials less than 6 meters thick. Most diamictions are genetically glacial tills or derived from glacial fills.

*Lineback, J. A., 1979, Quaternary Deposits of Illinois: Illinois State Geological Survey map, scale 1:500,000.

Alphanumeric Code	Geologic Map of Illinois Equivalent*
1	Pennsylvanian rocks, mainly shales
2	Pennsylvanian rocks, mainly sandstones
3	Mississippian rocks, mainly shales
4	Mississippian rocks, mainly limestones, some sandstones
5	Silurian and some Devonian rocks, mainly dolomite
6	Ordovician rocks, mainly shale (Maquoketa Group)
7	Ordovician and Cambrian rocks, mainly dolomite, some sandstone

NOTE: Boldface numerals represent materials greater than 6 meters (19.7 ft) below 15 meters in regular topography; lowercase numerals represent materials within 6 meters (19.7 ft) of surface. The thickness below 15 meters is undetermined for the lowest unit shown.

*Willman, H.B., 1967, Geologic Map of Illinois: Illinois State Geological Survey map, scale 1:500,000.

can be distinguished: silty or clayey and loamy or sandy. Within the nebrago Formation, all diamictions are sandy; within the Wolf Creek Formation, the diamictions have not been differentiated. (See table letter codes for these formations.) There are unnamed but widespread or exhumed deposits of sand and gravel that are within 6 m (19.7 ft) of the surface and stratigraphically between diamictions. These materials are designated by the letter "k" in the V Formation, "m" in the Winnebago Formation; "r" within the Glasford Formation. The letter "z" is used to designate any sand and gravel between 6 and 15 meters (19.7 and 49.3 ft) of the surface regardless of the formation in which it occurs.

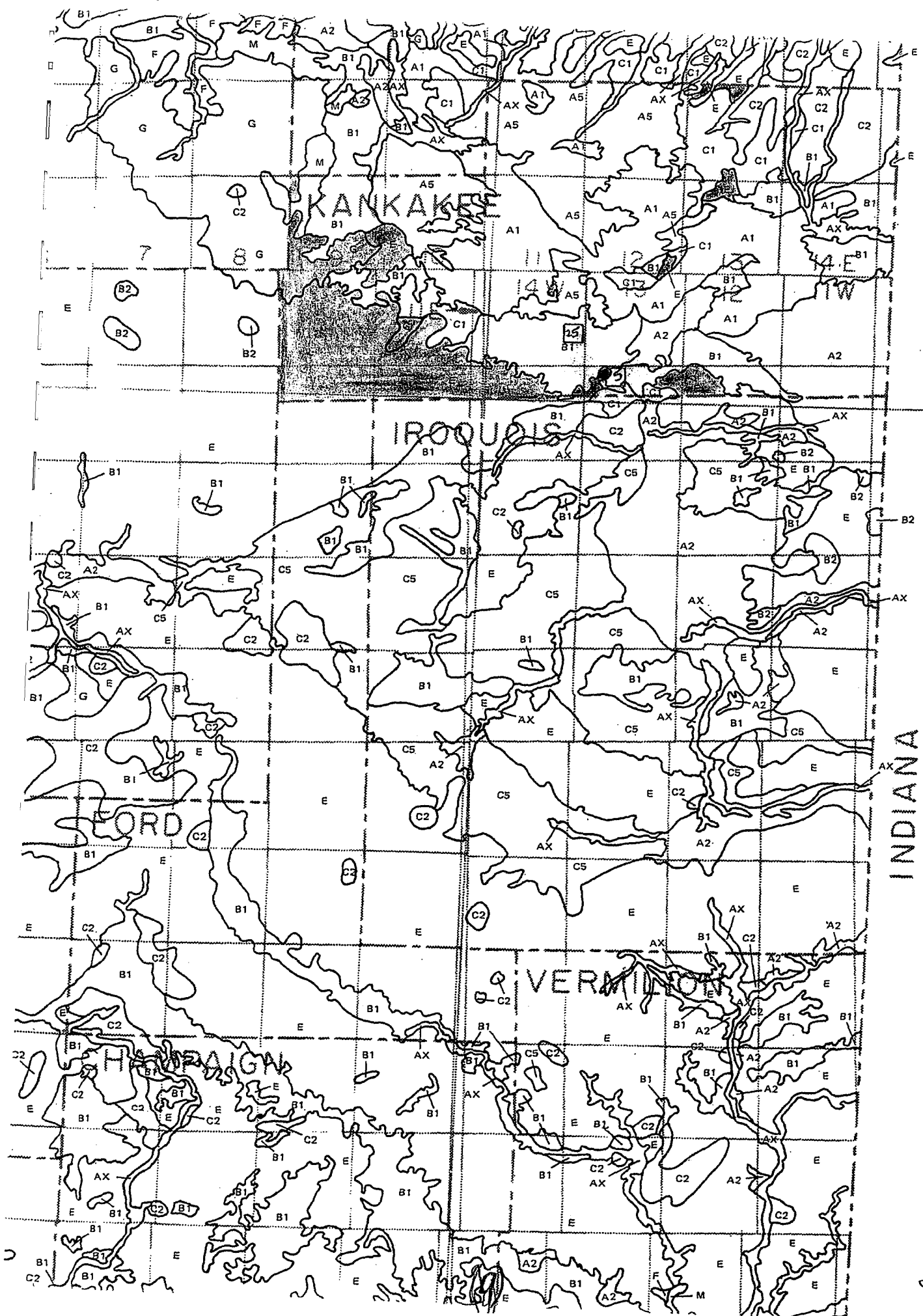
Because the Pliocene-Pleistocene Mounds Gravel and related deposits (V) and Cretaceous sediments (W) have hydrogeologic and engineering properties that are similar to those of drift materials, they are not grouped with the bedrock materials. Both are present in restricted portions of the state.

The letter "X" is used to designate areas of disturbed materials, as strip mine land, or manmade land. Geologic data in surrounding areas indicate the materials that make up this disturbed land.

Lithified materials (bedrock units) are designated by numbers 1 through 7 (table 2).

Boldface numerals identify bedrock units occurring between 6 and 15 meters (19.7 and 49.3 ft) of the surface.

Figure 3



from ISGS Circular 532

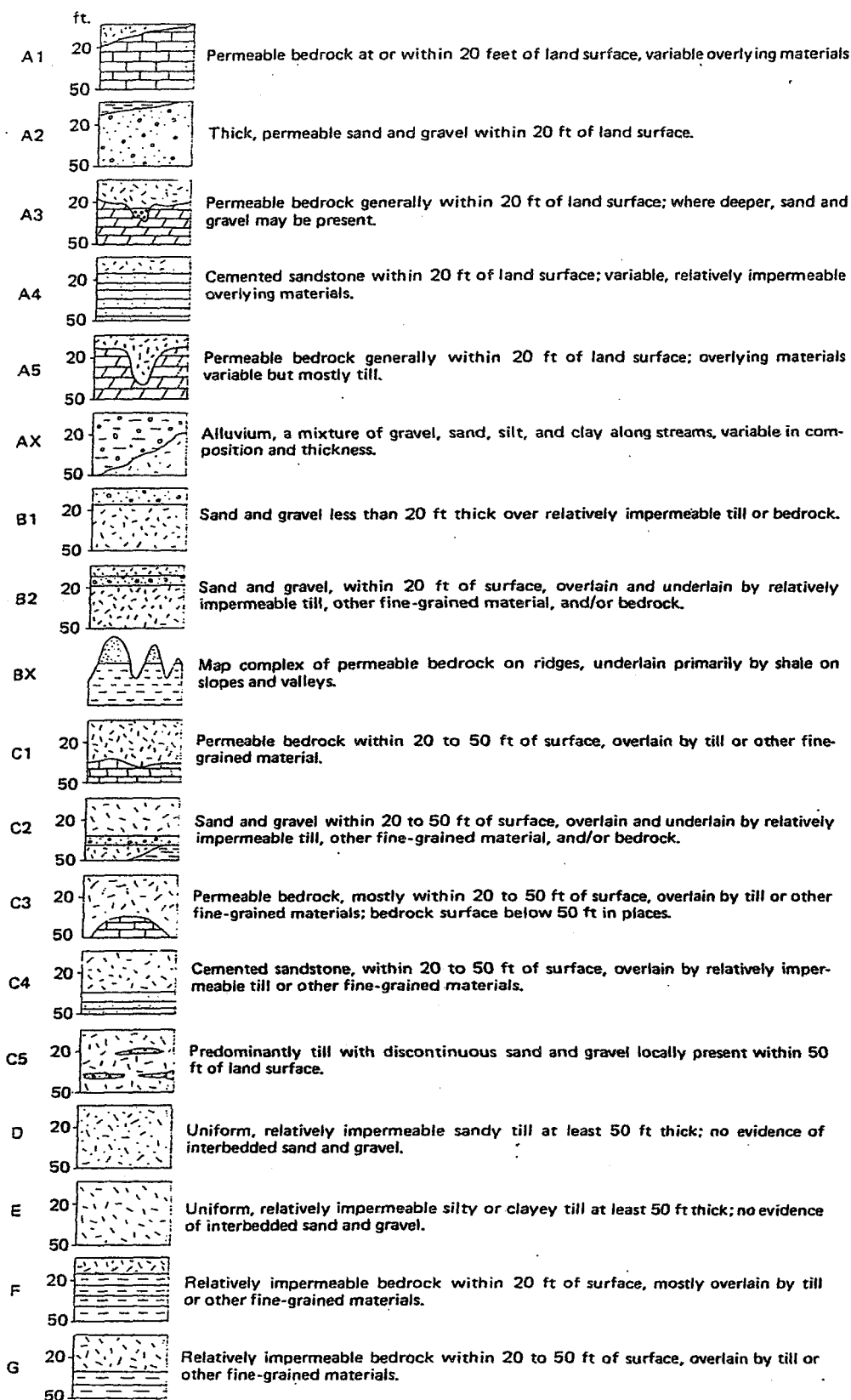


Figure 9

Ratings, vertical sequences, and descriptions of geologic materials for Plate 1: Land Burial of Municipal Wastes. The ratings are based on the capacities of materials to accept, transmit, restrict, or remove contaminants from waste effluents.

Table
Figure 3

Primarily bedrock		Primarily glacial drift		Materials generally having few limitations
Limitation		Limitation		
Groundwater contamination potential	Trench construction problems and/or surface contamination	Groundwater contamination potential	Trench design problems and surface contamination	
A1	(A1)*	A2		
A3				
A4	(A4)			
A5			AX	
		(B1)	B1	
		B2	(B2)	
	BX			
C1		C2		
C3				
C4		C5		(C5)
	(F)			D E F G

Figure 11 Summary: geologic limitations for land burial of municipal wastes. (*Map units in parentheses indicate secondary or local limitations.)

Primarily bedrock		Primarily drift		Materials generally having few limitations
Limitation		Limitation		
Groundwater contamination potential	Surface contamination (acceptance) or construction problems	Groundwater contamination potential	Surface contamination (acceptance) problems	
A1	(A1)*	A2		
		A3	(A3)	
			AX	
B1			(B1)	
B2			(B2)	
B3			(B3)	
B4			(B4)	
		(C1)	C1	
		C2	(C2)	
			(D1)	D1
			(D2)	D2
	(D3)		(D3)	D3

Figure 12 Summary: geologic limitations for surface and near-surface waste disposal. (*Map units in parentheses indicate secondary or local limitations.)

(11)

#040220-054

FILED

Public Commentary:

The attached case document reveals the fundamental unfairness of the January 12, 2004 application submission by Waste Management. The County's attorneys Harvey and Helsten, along with Kankakee County States Attorney Ed Smith were complicit in misinforming and deceiving the County Board regarding communications from their constituents.

FEB 20 PM 3:08

COUNTY CLERK
KANKAKEE COUNTY

The above mentioned Attorneys s told the County Board that they could not talk to their constituents regarding the pending landfill application. In so doing they violated the public's 1st Amendment rights and prejudiced the County Board by excluding the public from expressing their views to their elected representatives. Only Waste Management was allowed to give information via the Siting Hearings.

It is ironic that the attached case proves that Harvey distorted the entire process. Ms. Harvey in behalf of Land And Lakes, the applicant in Randolph County. That citizen communications violated the *ex parte* rule,. Ms. Harvey lost that decision to Richard Porter of Hinshaw and Culbertson, Mr. Helsten's firm.

That decision was later upheld at the 5th District Appellate Court in Mount Vernon, Illinois

This is just another in a long line of fundamentally unfair practices engaged in by the Applicant and the County. Just one more instance in which the citizens rights were abrogated in the whole ugly process.

Keith L Runyon
Objector
1165 Plum Creek Dr. Unit D
Bourbonnais, IL 60914
2/20/04

ILLINOIS POLLUTION CONTROL BOARD
September 21, 2000

LAND AND LAKES COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 99-69
)	(Pollution Control Facility Siting Appeal)
RANDOLPH COUNTY BOARD OF COMMISSIONERS,)	
)	
Respondent.)	
)	

ELIZABETH S. HARVEY, MCKENNA, STORER, ROWE, WHITE & FARRUG, APPEARED ON BEHALF OF PETITIONER;

STEPHEN HEDINGER APPEARED ON BEHALF OF PETITIONER;

JAMES W. KELLEY APPEARED ON BEHALF OF PETITIONER; and

RICHARD S. PORTER, HINSHAW & CULBERTSON, APPEARED ON BEHALF OF RESPONDENT.

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

On November 23, 1998, Land and Lakes Company (Land and Lakes) filed an appeal pursuant to Section 40.1 of the Environmental Protection Act (Act) (415 ILCS 5/40.1(1998)) of an October 19, 1998 decision by the Randolph County Board of Commissioners (Randolph County) denying siting of a pollution control facility. Randolph County denied the siting based on Land and Lakes' failing to meet two of the nine criteria listed in Section 39.2 of the Act (415 ILCS 5/39.2 (1998)). In this appeal Land and Lakes asserts that the proceedings before Randolph County were fundamentally unfair and that the decision by Randolph County was against the manifest weight of the evidence.

Hearings were held before Chief Hearing Officer John Knittle on May 9 and 10, 2000. The hearings were held in Chester, Randolph County, Illinois. Land and Lakes filed its brief on June 16, 2000, and a reply brief on July 28, 2000. Randolph County filed its brief on July 17, 2000. In addition to the briefs filed by the parties, an *amicus curiae* brief was filed on July 14, 2000, by Kenneth Bleyer and Dora Spinney.

The Board affirms the Randolph County Board of Commissioners' denial of siting for a pollution control facility. Based on the record and as explained below, the Board finds that the proceedings were not fundamentally unfair and the decision to deny siting based on two statutory criteria was not against the manifest weight of the evidence.

PRELIMINARY MATTERS

As a preliminary matter the Board will address Land and Lakes' motion to strike filed on July 28, 2000. Randolph County filed a response to that motion along with alternative motions on August 10, 2000. On August 18,

The transcript of the hearings will be cited as "Tr. at"; the petitioner's brief will be cited as "Pet. Br. at"; the reply brief will be cited as "Reply"; respondent's brief will be cited as "Resp. Br. at". The Randolph County record will be cited by referring to the county record table of contents number and, where appropriate, a page number "TOC # at #".

2000, Land and Lakes filed an objection. The Board denies the motion to strike and allows Randolph County's brief to exceed 50 pages.

STATUTORY BACKGROUND

Section 39.2(a) of the Act 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. An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets the following criteria:

* * *

- ii. the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

* * *

- viii. 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;

* * *

415 ILCS 5/39.2(a) (1998).

Section 40.1(a) of the Act provides in pertinent part:

If the county board or the governing body of the municipality . . . refuses to grant approval under Section 39.2 of this Act, the applicant may, within 35 days, petition for a hearing before the Board to contest the decision of the county board or the governing body of the municipality. * * * The county board or governing body of the municipality shall appear as respondent in such hearing, and such hearing shall be based exclusively on the record before the county board or the governing body of the municipality. * * * In making its orders and determinations under this Section, the Board shall include in its consideration the written decision and reasons for the decision of the county board or the governing body of the municipality, the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2, and the fundamental fairness of the procedures used by the county board or the governing body of the municipality in reaching its decision. 415 ILCS 40.1(a) (1998).

FACTS

The pertinent facts of this case are described in the following section. First, the procedural history is presented. Next, there follows a summary of testimony at the Board's May 9 and 10, 2000 hearings. Lastly, there is a discussion of the facts relevant to the denial of siting based on Section 39.2(ii) and (viii) of the Act.

On April 28, 1998, Land and Lakes filed a siting application seeking approval to site a pollution control facility in Randolph County, pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (1998)). TOC 3. Under Randolph County's ordinance, the Randolph County Planning Commission (Planning Commission) coordinated receipt of evidence. Four members of the Planning Commission (Marvin Campbell, Mike Riebeling, Dorothy Rinne, and Tom Smith) conducted a public hearing on the siting application. Resp. Exh. 1. Those public hearings were held on July

28 and July 29, 1998, and written comments were accepted for a period of 30 days after the public hearing. TOC 2, 9, 10, and 11. The Planning Commission was charged with preparing a report and recommendation to be submitted to the Randolph County Board. Resp. Exh. 1.

On September 21, 1998, after the close of the public comment period, the Planning Commission filed its report titled "Proposed Findings, Conditions & Recommendations of the Randolph County Commission" (Report). TOC 8. The Report concluded with a recommendation that siting be denied. *Id.* The Planning Commission recommended denial because the Planning Commission found that the facility would not be located consistent with the Solid Waste Management Plan of Randolph County contrary to Section 39.2(viii) of the Act (415 ILCS 5/39.2(viii) (1998)). *Id.* On October 19, 1998, the Randolph County Board voted on the application and denied siting on the grounds that criterion ii (415 ILCS 5/39.2(a)(ii) (1998)) and criterion viii (415 ILCS 5/39.2(a)(viii) (1998)) were not met.

The Randolph County Board consists of three members. At the time of the vote on Land and Lakes' siting application, those members were: Clem Esker, Terry Moore, and Ronald Stork. Tr. at 68, 134, 147. Stork was Chairman of the Board. Tr. at 68. All three members of the Board received contacts concerning the siting application that were outside the record of the proceedings. Members of the Planning Commission also received comments that were outside the record. A summary of each person's testimony at the Board's hearing will follow.

Ron Stork

Stork testified that he received a number of phone calls regarding the siting application at both his home and his business. The calls occurred after the application was filed in April 1998 but before the County Board's decision in October 1998. Tr. at 73-74; 91-92; 96-98. Stork did not remember the exact number of calls he received. He testified at hearing to receiving five or six phone calls. Tr. at 73. However, in deposition, he testified that he received two or three dozen calls. Tr. at 97-98. Stork installed a "trap and trace" on his phone lines at home and at work. Stork did so because he was concerned about his family. Tr. at 97-100. Many callers did not identify themselves, but wanted to discuss the substance of the landfill siting application. Tr. at 73. Stork stated that he did not speak to the callers regarding the substance of the application. Tr. at 91. Stork specifically remembers a phone conversation with Kenneth Markley, during which Markley made substantive statements about the proposed landfill. Tr. at 94-97. Markley is, and was at the time, the vice president of a group known as FORCE. Tr. at 39, 40.

Stork testified that he received some written comments regarding the landfill which opposed the landfill. Tr. at 70, 72, 92. He took the comments he received to the county clerk's office to be placed in the record. Tr. at 70, 92.

Stork testified that he was approached in person about the siting process. Alan Corbin told Stork that people were opposed to the landfill, and stated that he did not think it would be good for Stork's business if the landfill were sited. Tr. at 103-104. Stork also received a phone call from Dave and Peggy Guebert. The Gueberts opposed the landfill. Tr. at 105. Stork stated that he did not discuss the merits of the application with these people. Tr. at 125.

Stork was invited to attend two meetings regarding the landfill siting. Stork was asked to speak at a meeting of the Randolph County Farm Bureau while the landfill application was pending. Tr. at 69. Stork accepted that invitation, and appeared at the Farm Bureau meeting to answer questions about the application. Tr. at 70-71. Additionally, Stork was asked to attend a meeting of FORCE, which he did not attend. Tr. at 71.

Stork received one phone call in which the caller stated that she had overheard conversations that Stork's construction equipment could be vandalized. Tr. at 78. Shortly after that phone call, Stork discovered four flat tires on his construction equipment in one day, which was unusual. Tr. at 101-102.

Stork also received a package in the mail, while the siting application was pending. Tr. at 75. The package was in a manila envelope, and it appeared to be full of garbage. "Stuff was leaking from the package." Tr. at 75-76.

Stork did not open the package, but turned it over to the Sparta Police Department. Tr. at 76. Stork believes that his receipt of this package of garbage was related to the landfill siting proceeding. Tr. at 77.

Additionally, Stork was the target of pranks, which he believes were related to the landfill siting process. Tr. at 82, 128. But Stork also indicated that "sometimes as an elected official there is little games that are played and you tend to forget them." Tr. at 82. Once Stork's wife was called at work by a local florist, asking where the florist should deliver the large number of flowers or plants supposedly ordered by her. However, Stork's wife had not ordered flowers. Tr. at 81-82. On another occasion, someone called the restaurant where the Sparta Chamber of Commerce holds its meetings. It was Stork's last meeting as president of the Chamber of Commerce, and the caller told the restaurant manager that Stork's wife was going to pick up the tab for the entire lunch. In fact, Stork's wife had not made the phone call, and had not intended to pay for lunch for the entire Chamber of Commerce. Tr. at 79, 81. On a third occasion, Stork's office received a phone call from a local furniture store, asking when Stork's wife would pick up the two chairs she had allegedly ordered for Stork's birthday. She had not ordered any chairs. Tr. at 79-80.

Stork first testified that the events did not affect his decision "in the end." Tr. at 105-106. Stork also testified in his earlier deposition that the phone calls, personal contacts, threats, and pranks cumulatively had an effect on his ability to make a decision on the landfill siting application. Tr. at 109. Stork indicated that pressure and "extenuating factors" makes decisionmaking more difficult, and does affect one's ability to make a decision. Tr. at 110. However, Stork also stated that his decision was based solely on the record. Tr. at 120-121. Stork stated that "if all the criteria had been met that would have been a difficult decision to make based on the overwhelming opposition to the landfill." Tr. at 128.

Terry Moore

Moore estimated that he received one call in favor of the landfill, and about four calls against the landfill at his home. Tr. at 134-136. He allowed one of the callers, who was opposed to the landfill siting, to express her opinion at more length than the other callers, since the caller was a friend of Moore's wife. Tr. at 134-135. However, he stated her comments were no different than those placed on the record. Tr. at 140-141.

Moore was invited to attend a meeting of FORCE, as Stork had been. The invitation was extended by mail and he did not attend the meeting. Tr. at 138. Moore also received three or four letters about the landfill, which he threw away. Tr. at 136. Additionally, Moore received some campaign literature in the mail opposing the landfill siting application. Tr. at 137. Moore testified that he based his decision solely on the record and he did not "pay attention" to comments outside the hearing process. Tr. at 142. Moore indicated that when he received phone calls he would tell the callers that he would not discuss the landfill siting and would then end the conversation. Tr. at 135, 140.

Clem Esker

Esker was approached by one man who came to see Esker at his office regarding the proposed landfill. Tr. at 150. Esker testified that he informed the individual that he could not talk about the landfill siting. Tr. at 150. Esker stated that he did not have a substantive discussion with the individual. Tr. at 150. Additionally, Esker received a phone call at home regarding the siting application. Tr. at 150-151. Esker also testified that he did not take the phone call. Tr. at 151.

Marvin Campbell

Campbell testified that he received phone calls regarding the siting application at both home and work. He estimated that he received about 30 messages on his home answering machine. Tr. at 190. Campbell did not recall if the messages indicated opposition to the landfill application. Tr. at 189-190. Campbell received three to five calls at work. Tr. at 189-190. He indicated to the callers that he could not discuss the siting and they should testify at the hearing. Tr. at 190. Some of the callers were unhappy when he indicated that he would not discuss the siting application but he received no threats. Tr. at 190-191.

Campbell was also approached approximately eight to ten times in person regarding the landfill siting. On one occasion, a woman active in the opposition approached Campbell at McDonald's restaurant. Campbell found it obvious that the woman opposed the landfill. Tr. at 193. On another occasion, Campbell was approached at the airport, where Campbell works. Those people were against the siting of the landfill. Tr. at 193. Campbell testified that the atmosphere was intimidating to some people, but not to him. Tr. at 195. Campbell also testified that none of the calls or contacts affected his decision in any way. Tr. at 194.

Michael Riebeling

Riebeling also received phone calls regarding the landfill at home and at work. Riebeling received between six and eight phone calls at home, and six to eight phone calls at work. Tr. at 157. Of those callers who expressed an opinion, all opposed the landfill siting. Tr. at 158. Riebeling did not discuss the merits of the application with the callers. Tr. at 167-168. In fact, Riebeling stated that he would get the callers off the phone as quickly as possible and he would indicate that he could not discuss the application. Tr. at 167.

Additionally, Riebeling received one item in the mail. Inside the envelope (which did not have a return address) was a three-inch piece of paper with what appeared to be an official State of Illinois seal. Handwritten on that paper were the words "Oppose Landfill." The rest of the items in the envelope were copies of letters to the editor, or newspaper articles, all of which opposed the siting of the proposed landfill. Tr. at 158-160; Pet. Ex. 4. Riebeling told the other members of the Planning Commission about the letter, and may have shown them the letter. Tr. at 162, 165. Riebeling did not give the letter to the Randolph County Clerk for inclusion in the public record of the siting proceeding. Tr. at 162. Riebeling testified that the note did not affect his decision. Tr. at 167.

Dorothy Rinne

Rinne received contacts outside the record of the siting proceeding in that she received phone calls at home. Rinne was unsure of the number of calls she received, but indicated that it was less than ten calls. The callers opposed the landfill. Tr. at 175. Rinne indicated that she declined to talk about the landfill siting process with the callers. Tr. at 175.

Rinne also received fewer than ten letters in the mail regarding the landfill siting proceeding. Tr. at 175-176. She skimmed the letters, and after determining that the letters related to the landfill siting proceeding, she did not read the letters further. Tr. at 176, 181. Rinne threw the letters away, and did not give the letters to the county clerk to place in the record. Tr. at 176. Rinne did not give any weight to the phone conversations and did not consider the calls as evidence. Tr. at 177. In addition, Rinne indicated that the mailings did not influence her decision on the landfill siting. Tr. at 179-180.

Thomas Smith

Smith also received phone calls and a letter regarding the landfill siting proceeding. He received at least two phone calls at home and he informed the callers that any information the callers wanted to present had to be in writing and filed with the county clerk. Tr. at 205. Smith specifically remembers two callers who opposed the landfill. Tr. at 207. Additionally, Smith received a letter at his home, opposing the landfill siting. Tr. at 207-208. A copy of the letter that he received was also filed with the county clerk. Tr. at 208. Smith did not consider the two calls to be evidence in the siting hearing. Tr. at 222. Smith based his decision on the information provided at the public hearings and in the written comments. Tr. at 222.

Ex Parte Contacts at County Board Meeting

Representatives of the opposition group FORCE were given the opportunity to speak on the substance of the siting application at a regular meeting of the county board. Mr. Alan Weber, the president of FORCE, was allowed to address the county board at its regularly scheduled Board meeting on August 24, 1998. Tr. at 85-91, 229, 240. Weber stated that the public, and FORCE, were opposed to the proposed landfill. Tr. at 88-89. Additionally,

Kenneth Markley, the vice president of FORCE, was also allowed to speak at that August 24, 1998 county board meeting. Tr. at 36, 40, 89-91. Kenneth Markley also opposed the proposed landfill, and specifically discussed traffic and road issues. Tr. at 90. There were no Land and Lakes representatives present at the August 24, 1998 meeting. Tr. at 86.

Stork testified that as chairman of the county board, it was his policy "to allow anyone that wanted to show up at a County Board meeting to have an opportunity to speak of any issue that they choose to speak about." Tr. at 124. Moore also testified that since he began to serve on the county board in 1988 (Tr. at 134) it had been the "tradition" to let anyone speak at a county board meeting. Tr. at 144. County Board meetings were set on a quarterly basis, publicized by the County Clerk, and public meetings were open to anyone who wished to attend. Tr. at 124-125.

Section 39.2(ii) and (viii) of the Act

On October 19, 1998, Randolph County Board denied siting for a facility to be owned and operated by Land and Lakes. TOC 4 at 1-4. The Randolph County Board denied the request for siting because it found Land and Lakes failed to demonstrate that the facility would meet Section 39.2(ii) (criterion ii) and (viii) (criterion viii). TOC 4 at 2 and 4. The Randolph County Board's reasons for denial relate to the provisions of the Randolph County Solid Waste Management Plan (Randolph County Plan).

The Randolph County plan provides, in part:

Environmental protection, especially in the context of protecting regional groundwater resources, is a primary consideration of local siting criteria. Recommended local criteria were developed to clarify what constituted acceptable potential sites for a landfill. The criteria are grouped into exclusionary and inclusionary criteria. Exclusionary criteria are used to screen individual parcels or areas. Parcels or areas which contained any of the exclusionary characteristics would not be considered in the site identification process. Areas or parcels which remain after the exclusionary criteria, would be screened against the inclusionary criteria to identify parcels for consideration for on-site investigations. Table 61 lists the exclusionary and inclusionary local siting criteria. Pet. Exh. 2, at 205; Resp. Br. at 15.

Among the "Exclusionary criteria" listed in table 61 is "exclude all areas with[in] 1 1/2 miles of municipal corporate limits." Pet. Exh. 2, at 207.

The Randolph County Plan was approved by the Illinois Environmental Protection Agency (Agency) as being consistent with the Illinois Environmental Protection Act. TOC 3, Vol 3, at 1. On February 27, 1995, after reviewing the Randolph County Plan, the transcript of the testimony given during the public hearing on the Randolph County Plan, and the responses and substantive questions received during the public review period on the Randolph County Plan, the Randolph County Board adopted the Randolph County Plan as its own (see Resolution attached to Randolph County Plan, Pet. Exh. 2).

On April 28, 1998, Land and Lakes filed its application for siting approval for a new disposal and recycling facility, which was to be located less than a mile from Sparta, Illinois. The hearing on the application was held on July 28 and 29, 1998. TOC 2 at 1-352.

Criterion ii

Land and Lakes presented evidence and testimony that the proposed facility is so designed, located, and proposed to be operated as to protect health, safety, and welfare. TOC 3, Vols. 3-10. Dr. Neil Williams, an expert in landfill design and construction, testified extensively on behalf of Land and Lakes on the design and operation of the proposed landfill. TOC 2 at 97-136. Dr. Williams concluded that the proposed facility satisfies criterion ii. TOC 2 at 136. Additionally, James Cowhey Jr. and Eileen Sheliga testified on the proposed design and operation of the facility. TOC 2 at 40-51; 311-350.

Randolph County retained Rhutasel and Associates, consulting engineers, to review and evaluate Land and Lake's application. TOC 2 at 52. Rhutasel and Associates issued a written report of its findings ("the Rhutasel Report") (Pet. Ex. 1), and Mr. Larry J. Rhutasel testified at hearing. TOC 2 at 51-74. Rhutasel testified that his firm "point[ed] out...a particular table - it was Table 61 - which is a list of exclusionary landfill site identification criteria." TOC 2 at 61. Rhutasel further testified that included in those criteria was the one and a half-mile exclusion. TOC 2 at 61-62. Finally Rhutasel testified to concerns about traffic. TOC 2 at 60-61. Specifically, the concerns were not about patterns, but the weight loads and width of roads. *Id.* The Rhutasel Report concluded that Land and Lakes had adequately addressed the protection of health, safety, and welfare. Pet. Ex. 1 at 5-6. Rhutasel testified that issues identified in the report were minor, and did not rise to any finding that criterion ii was not met. TOC 2 at 63-65.

Extensive testimony was provided on this issue at the public hearings by concerned citizens. See e.g., TOC 2 at 91. Also numerous comments were filed discussing the issue of road safety. TOC 9.

The Planning Commission met on September 21, 1998, to make its recommendations on the application. The Planning Commission voted unanimously that Land and Lakes' application satisfies criterion ii. TOC 2, planning commission hearing, at 8-12.

Criterion viii

Randolph County is one of four counties which jointly adopted a solid waste management plan prepared on their behalf by the Southwestern Illinois Planning Commission (SIMAPC). (Pet. Ex. 2.) As part of its application, Land and Lakes submitted a letter from Darryl L. Thompson, Manager of General Planning for SIMAPC. Thompson stated that SIMAPC had reviewed Land and Lake's application for consistency with the solid waste management plan for Randolph County. Thompson concluded that "the location of a new landfill in Randolph County, that is acceptable to local governments is consistent with their Solid Waste Management Plan. ..." TOC 3 at Vol. 2, Crit. 8. Land and Lakes' application also analyzed the solid waste management plan, and noted that the Randolph County Plan identifies the need for source reduction and final waste disposal capacity, with a corresponding support of the development of landfills to meet final disposal needs. TOC 3 at Vol. 2, Crit. 8 at 1.

ISSUES

Land and Lakes raised three issues in its petition for review. The first issue is whether the combination of *ex parte* contacts and an atmosphere of fear and intimidation resulted in a fundamentally unfair proceeding. The second and third issues both deal with whether Randolph County's decision on the criteria (ii and viii) is against the manifest weight of the evidence. The Board will first address the fundamental fairness of the proceedings and then discuss the criteria.

FUNDAMENTAL FAIRNESS

In this section the Board will address the issue of whether the proceedings were fundamentally unfair. The Board will begin by summarizing the arguments of Land and Lakes, and follow with a discussion of Randolph County's arguments. Then, the Board will discuss Land and Lakes' response to Randolph County's arguments. The Board will then address the positions of the *amicus curiae*. Finally, in this section the Board will analyze the arguments and render its decision on the fundamental fairness of the proceeding.

Land and Lakes' Arguments

Generally, Land and Lakes maintains that an "*ex parte* contact" is one that takes place without notice and outside the record between a person in a decisionmaking role and parties before that person. Pet. Br. at 16. Land and Lakes cites to Residents Against a Polluted Environment v. County of LaSalle (RAPE v. LaSalle County) (September 19, 1996), PCB 96-243 to support its definition of *ex parte* contact. Land and Lakes also maintains that contact between a local decision maker and constituents outside the presence of the applicant in which a position in

opposition to the siting is taken is an improper *ex parte* contact. Pet. Br. at 16. Land and Lakes relies on Waste Management of Illinois, Inc. v. Pollution Control Board, (Waste Management v. PCB) 175 Ill. App. 3d 1023, 530 N.E.2d 682,697 (2d Dist. 1988) to support its argument that such contacts are improper. Further, Land and Lakes argues that there must be a showing that the complaining party suffered prejudice from the *ex parte* contacts before the local decision can be reversed. Pet. Br. at 16, citing Waste Management v. IPCB, 530 N.E.2d at 698 and RAPE v. LaSalle County. Land and Lakes points to the five-part inquiry enunciated in E & E Hauling, Inc. v. Pollution Control Board, (E & E Hauling v. PCB) 116 Ill. App. 3d 586, 451 N.E.2d 555, 571 (2d Dist. 1983) as the standard for determining for whether a county board's decision is tainted.

E & E Hauling v. PCB quotes PATCO v. Federal Labor Relations Authority, 685 F.2d 547 (D. C. Cir. 1982) and states, in part that in deciding if a proceeding is tainted:

a number of considerations may be relevant: the gravity of the *ex parte* communications; whether the contacts may have influenced the agency's ultimate decision; whether the party making the improper contacts benefited from the agency's ultimate decision; whether the contents of the communication were unknown to opposing parties, who therefore had no opportunity to respond; and whether vacation of the agency's decision and remand for new proceeding would serve a useful purpose. E & E Hauling v. PCB, 451 N.E.2d 555, 571.

The Board will address the specifics of this inquiry in more detail below.

Land and Lakes specifically argues:

1. The repeated contacts between the Randolph County Board and Planning Commission members and opponents of the siting were improper *ex parte* contacts;
2. The discussion of the substance of Land and Lakes' application by representatives of the objectors group was an improper *ex parte* contact;
3. Land and Lakes was prejudiced by the extensive *ex parte* contacts in this case;
4. The cumulative effect of the *ex parte* contact and the threats and intimidation made it impossible for Land and Lakes to receive a fair hearing; and
5. The Randolph County Board should be reversed not remanded.

Each of these arguments is discussed in turn.

Land and Lakes asserts that the repeated contacts between the Randolph County Board and Planning Commission members and opponents of the siting were improper *ex parte* contacts

Land and Lakes notes that at deposition all three members of the Randolph County Board and all four members of the Planning Commission testified that they received *ex parte* contacts. Pet. Br. at 19-20. Land and Lakes points to the fact that the contacts included phone calls, as few as one received by Esker and as many as three dozen received by Stork. Pet. Br. at 20. Also, several of the local officials were contacted in person and some received items in the mail. *Id.* The "vast majority" of the comments were in opposition, argues Land and Lakes. *Id.* Land and Lakes asserts that this "pattern of contacts" between opponents to siting and the Randolph County Board and Planning Commission members took place outside the presence of Land and Lakes. Pet. Br. at 20. Land and Lakes argues that applying the definitions articulated in Waste Management Inc. v. PCB and RAPE v. LaSalle County, the contacts were improper *ex parte* contacts. *Id.*

Land and Lakes asserts that the discussion of the substance of Land and Lakes' application by representatives of the objectors' group was an improper *ex parte* contact

Land and Lakes argues that the courts and the Board have previously held that allowing substantive presentations regarding a landfill siting at a county board meeting, without prior notice to Land and Lakes, is an improper *ex parte* contact. Pet. Br. at 21. In support of its position Land and Lakes cites to E & E Hauling v. PCB and City of Rockford v. Winnebago County Board (November 19, 1987), (Rockford v. Winnebago) PCB 87-92, aff'd 186 Ill. App. 3d 303, 542 N.E.2d 423 (2d Dist. 1989). In E & E Hauling v. PCB, the applicant had several contacts with the county board at finance committee meetings held after the close of the public hearings. Pet. Br. at 21. The court stated that the lack of notice to the public that the landfill would be discussed sufficed to characterize those meetings as *ex parte*. E & E Hauling v. PCB, 451 N.E.2d at 671. In Rockford v. Winnebago County, the Board found that improper *ex parte* contacts occurred when members of the public were allowed to address the county board just prior to the county board's vote on a siting application. Pet. Br. at 21-22.

Land and Lakes asserts that the facts in this case regarding FORCE's presentation to the County Board on August 24, 1998, are almost identical to those in the above two cases. Pet. Br. at 22. Land and Lakes maintains that FORCE was given an opportunity to substantively address the Randolph County Board in opposition to the siting, without notice to the public or Land and Lakes. *Id.*

Land and Lakes argues it was prejudiced by the extensive *ex parte* contacts in this case

Land and Lakes argues that it was prejudiced by the extensive *ex parte* contacts between opponents of the landfill siting and the Randolph County Board and the Planning Commission. Pet. Br. at 23. Land and Lakes further argues that the prejudice was exacerbated because of the threats and intimidation directed at Stork. *Id.* To support its assertion, Land and Lakes points to Stork's testimony that the pressure and "extenuating factors" made decisionmaking more difficult, and Stork's admission that "if all the criteria had been met that would have been a difficult decision. . . ." (Tr. at 110, 128. Pet. Br. at 25. Land and Lakes also points to Stork's deposition testimony wherein he stated that "all of the events cumulatively did have an affect" on his ability to make a decision. Pet. Br. at 25, citing Tr. at 109.

Land and Lakes asserts that, applying the factors enunciated in E & E Hauling v. PCB, the *ex parte* contacts irrevocably tainted Randolph County Board's decision denying siting approval. Pet. Br. at 24. The first inquiry is the gravity of the *ex parte* contacts. E & E Hauling v. PCB, 451 N.E.2d 555, 571. Land and Lakes argues that there was a pattern of *ex parte* contacts, from phone calls to personal approaches and mailings. Further, FORCE and two individuals were given an opportunity to address the Randolph County Board on the substance of the application at the August 24, 1998 Randolph County Board meeting after the close of the hearings without notice to either the public or Land and Lakes. Pet. Br. at 24. Finally, Land and Lakes contends that Stork, the chairman of the Randolph County Board, was subjected to threats and intimidation. *Id.* Thus, Land and Lakes argues there was a pattern of *ex parte* contacts, which tainted the proceeding. *Id.*

The second inquiry is whether the *ex parte* contacts influenced or may have influenced the ultimate decision. E & E Hauling v. PCB, 451 N.E.2d 555, 571. Land and Lakes argues that Stork admitted, in his deposition testimony, that the cumulative effect of the *ex parte* contacts had an impact on his decision. Pet. Br. at 25, citing Tr. at 109.

The third inquiry is whether the party making the contacts benefited from the ultimate decision. E & E Hauling v. PCB, 451 N.E.2d 555, 571. Land and Lakes argues that it is undisputed that a vast majority of the contacts came from opponents to the siting, and the ultimate decision was to deny siting. Clearly, the persons making the contacts benefited from the Randolph County Board's decision. Pet. Br. at 25.

The fourth inquiry is whether the content of the improper communications was unknown to opposing parties, who therefore had no opportunity to respond. E & E Hauling v. PCB, 451 N.E.2d 555, 571. Land and Lakes argues that it did not know of the contacts until after the decision and therefore could not respond to the content of the contacts. Pet. Br. at 26. Land and Lakes' inability to respond was exacerbated by the "undefined nature of FORCE, an opposition group." Pet. Br. at 26. FORCE never formally appeared as a group in the hearings on the siting. Pet. Br. at 26. Therefore, Land and Lakes argues it is difficult to respond to improper contacts by an "undefined and shadowy opposition group." *Id.*

The fifth inquiry is whether vacating the decision and remanding for a new proceeding would serve a useful purpose. E & E Hauling v. PCB, 451 N.E.2d 555, 571. Land and Lakes argues that it was clearly prejudiced by the extensive and threatening *ex parte* contacts in this case. Pet. Br. at 26. Land and Lakes asserts that the Randolph County Board's decision was irrevocably tainted by "these illegal and prohibited contacts." *Id.* However, Land and Lakes argues that this case should not be remanded but reversed because no fair decision could be made on remand. Pet. Br. at 26-27.

Land and Lakes asserts that the cumulative effect of the *ex parte* contact and the threats and intimidation made it impossible for Land and Lakes to receive a fair hearing

Land and Lakes argues that while the *ex parte* contacts alone are sufficient to find the proceeding fundamentally unfair, the cumulative effect of the contacts along with the threats and intimidating tactics directed at Stork, made it impossible for Land and Lakes to receive a fair hearing on the application. Pet. Br. at 27. Land and Lakes maintains that the opponents of the siting "engaged in a pervasive pattern of improper contacts" and threats against Stork. *Id.*

Land and Lakes asserts that the Randolph County Board decision should be reversed not remanded

Land and Lakes concedes that the usual remedy for a fundamentally unfair proceeding is to remand the proceeding to the local decision maker. Pet. Br. at 28. However, Land and Lakes argues that in this case such a remedy would not cure the prejudice suffered by the applicant. *Id.* Land and Lakes opines that remand would punish the applicant while producing the same result of *ex parte* contacts and attempts at intimidation and fear. *Id.* Therefore, Land and Lakes asserts that the Board should reverse the Randolph County Board's decision and grant siting approval by operation of law. Pet. Br. at 28-29.

Randolph County's Arguments

Randolph County sets forth numerous arguments in support of its contention that the Randolph County Board's decision should be affirmed. First, Randolph County maintains that Land and Lakes was given ample opportunity to present its case and the decision by the Randolph County Board was based on the record. Second, Randolph County asserts that Land and Lakes has not shown that the process was irrevocably tainted using the E & E Hauling v. PCB test. Third, Randolph County asserts that the communications were not *ex parte* communications. Fourth, Randolph County argues that a majority of the county board had few to no contacts so the process was not tainted. Fifth, Randolph County argues that any communications with the Planning Commission are irrelevant as the Planning Commission was not the decisionmaker. Sixth, Randolph County maintains that the appropriate redress has been had and neither reversal nor remand are appropriate.

Randolph County maintains that Land and Lakes was given ample opportunity to presents its case and the decision of the Randolph County Board was based on the record of the preceding

Randolph County points out that the application filed by Land and Lakes was 10 to 12 volumes of material and the hearings held on that application included 670 pages of testimony. Resp. Br. at 21. After the hearings were held, the Planning Commission made its recommendation to the county board. *Id.* Land and Lakes was allowed to present testimony at the hearing. Resp. Br. at 22. Randolph County asserts that the testimony of the county board members was that their decision was "not influenced or affected by any unsolicited communications." Resp. Br. at 24. Therefore, Randolph County asserts that the Planning Commission members and the Randolph County Board made their decisions solely on the record and not on the public opposition. *Id.*

Randolph County argues that in Rockford v. Winnebago the court enunciated a test to be used to determine if prejudice occurred to the applicant. Resp. Br. at 20-21. Randolph County points to the following quote from that case:

However, the existence of strong public opposition does not invalidate the [county] board's decision where the applicant was given an ample opportunity to present its case and where the

applicant has not demonstrated that the [county] board's denial was based upon the public opposition rather than the record. Rockford v. Winnebago, 186 Ill. App. 3d, 542 N. E. 2d 423, 431.

Randolph County maintains that it is clear that Land and Lakes was given ample opportunity to present its case and the decision by the Randolph County Board was based on the record not public opposition. Resp. Br. at 24. Therefore, based on the Rockford v. Winnebago case, Randolph County asserts that the Randolph County Board's decision should be affirmed. Resp. Br. at 24.

Randolph County maintains that the proceedings before the Randolph County Board were not irrevocably tainted and Land and Lakes was not prejudiced

Randolph County argues that using the factors enunciated in E & E Hauling v. PCB, the record indicates that Land and Lakes has failed to prove that the proceedings before the Randolph County Board were irrevocably tainted. Resp. Br. at 24. As indicated above, the first inquiry from E & E Hauling v. PCB is gravity of the communications. Randolph County relies on Gallatin National Company v. Fulton County (Gallatin v. Fulton) (June 15, 1992), PCB 91-256 to support its position. In that case the Board held that the contacts were about non-substantive matters, there was no discussion of the merits of the case, and the participants were not influenced in any way in making their recommendation. Gallatin National Company v. Fulton County (June 15, 1992), PCB 91-256. Randolph County asserts that because the testimony indicates that the contacts in this case were also non-substantive, the contacts were not "grave" under E&E Hauling v. PCB. Resp. Br. at 26-27.

Randolph County argues that the second inquiry from E&E Hauling v. PCB, whether the communications influenced the ultimate decision, has also not been substantiated by Land and Lakes. Resp. Br. at 27. Randolph County contends that the testimony of the county board members indicates that all three members made their decision based on the record and that the contacts did not influence their decision. *Id.* Specifically, Randolph County cites to Moore's testimony that no call, mailing, or contact he received impacted his decision. Resp. Br. at 27, citing Tr. at 141-142. Randolph County also cites Esker's testimony that his decision was based solely upon the record. Resp. Br. at 27, citing Tr. at 152. Finally, Randolph County points to Stork's testimony that the phone calls, mailings, package and pranks did not impact his ability to make an objective decision in the end. Resp. Br. at 28, citing Tr. at 105-106.

Randolph County argues that because the contacts were not by a "party" to the proceeding, the third inquiry of E&E Hauling v. PCB (whether the party making the contacts benefited from the ultimate decision) is not met. Resp. Br. at 29. Randolph County reasons that because the general public made the contacts, no party to the hearing benefited by the contacts.

The fourth inquiry, whether the content of the communication was unknown and thus there was no opportunity for response, also must fail according to Randolph County. Resp. Br. at 30. Randolph County states that Land and Lakes was given an opportunity to address *ex parte* communications at a county board meeting on October 19, 1998. *Id.* Further, Land and Lakes was given the opportunity to speak because Land and Lakes filed an objection to statements made at county board meetings about the landfill when Land and Lakes was not present. *Id.* Therefore, Randolph County maintains Land and Lakes was given an opportunity to respond. Resp. Br. at 31.

The last inquiry enunciated in E&E Hauling v. PCB is whether remand will serve a useful purpose. Randolph County points out that Land and Lakes is not seeking a remand, but rather a declaration that siting is granted and vacating the Randolph County Board decision. Randolph County maintains that first, Land and Lakes has not demonstrated, based on the factors of E&E Hauling v. PCB, that the Randolph County Board decision should be vacated. Second, Randolph County asserts that Land and Lakes failed to identify "the heretofore unknown body of law, which . . . would operate to totally avoid the requirements of Section 39.2 [of the Act] merely on the basis of public opposition to a landfill." Resp. Br. at 31-32.

Randolph County argues that the cases cited by Land and Lakes to support Land and Lakes' request that the Board overturn the Randolph County Board's decision are not applicable to this case. Resp. Br. at 32-33. Randolph County asserts that in this case the decisionmakers did not act in an affirmative manner, but rather merely

answered their phones. Resp. Br. at 33. Also in the cases cited by Land and Lakes, the Board overturned siting approvals, not siting denials. Thus, the Board maintained the *status quo*, whereas in this case the Board would be allowing the construction of a landfill site, which arguably violates Section 39.2 of the Act. *Id.*

Randolph County maintains that the communications with the public were not *ex parte* communications

Randolph County asserts that the communications which took place between the public and the Randolph County Board were not *ex parte* contacts because an *ex parte* contact "is one which take place without notice and outside the record between one in the decision-making role and 'a party before it'." Resp. Br. at 37, citing Town of Ottawa v. Pollution Control Board, 129 Ill. App. 3d 121, 126, 472 N.E.2d 150, 154 (3d Dist. 1984) (Ottawa v. PCB). Randolph County argues that because the communications were not from a party to the decision maker, the comments were not *ex parte*.

Randolph County concedes that Waste Management v. PCB does not completely agree with Ottawa v. PCB. Resp. Br. at 38. Randolph County does, however, maintain that the Waste Management v. PCB court's rationale that communications from the public may be *ex parte* contact is not a well-reasoned analysis. Resp. Br. at 38. Randolph County asserts that if the Waste Management v. PCB court's rationale were correct, anytime a judge received a comment from the public on a pending case the proceeding would be tainted. *Id.* In fact, Randolph County points out, the Supreme Court Rules distinguish between *ex parte* communications (a communication of the judge with one party) as opposed to "other communications made to the judge outside the presence of the parties concerning a pending matter." Resp. Br. at 38, citing Illinois Supreme Court Rule 63A(4)(1999).

Randolph County argues that it would be a "ridiculous burden" upon siting proceedings if a county board member were required to be disqualified because of "unsolicited contacts" from members of the public. Resp. Br. at 38. Randolph County maintains that such a ruling would provoke members of the public to make contacts to taint a process, so that to protect against this, governing authorities would need to be made up of anonymous members. Resp. Br. at 38-39. Therefore, Randolph County asserts the only contacts which should be held to affect the fundamental fairness in a siting hearing are substantive contacts of the decision maker with a party outside the presence of another party which result in actual prejudice. Resp. Br. at 39.

Randolph County maintains that a majority of the Randolph County Board had few to no contacts outside the hearing

Randolph County argues that the testimony of Esker and Moore indicates that these individuals had "next to no contact" with anyone regarding siting outside the hearing process. Resp. Br. at 36. Randolph County also asserts that Stork testified that the calls did not influence his decision. *Id.* However, even if Stork's vote had been tainted, the vote against the landfill was unanimous. *Id.* Thus, Randolph County observes, Land and Lakes would not have been granted siting approval. Resp. Br. at 37. Randolph County cites to three Board cases to support this argument. Those cases are Waste Management of Illinois v. Lake County Board (April 6, 1989), PCB 88-190, National Company v. Fulton County Board (June 15, 1992), PCB 91-256, and St. Charles v. Kane County Board (March 21, 1984), PCB 83-228, 83-229, and 83-230 (cons.). In those cases the Board found that even if a county board member were tainted that did not mean the entire decisionmaking process was tainted. Resp. Br. at 36-37.

Randolph County maintains that the contacts with members of the Planning Commission by the public were irrelevant

Randolph County argues that there were few contacts by the public with the Planning Commission and that these contacts were irrelevant. Resp. Br. at 39. While the Planning Commission drafted a report with recommendations to the Randolph County Board, the Planning Commission did not have the decision making authority. Resp. Br. at 39. Randolph County cites Gallatin National Company v. Fulton County (June 15, 1992), PCB 91-256 in which the Board affirmed the county board decision in part because the alleged improper communications involved a committee which merely advised the county board.

Further, Randolph County asserts that there is no evidence that the Planning Commission members discussed any "nonparty" communication they received outside the hearing process with the Randolph County Board. Resp. Br. at 40. Also, Randolph County maintains there is no evidence that any such communication was used by the Planning Commission in its deliberations on its recommendation to the Randolph County Board. *Id.* Also, Randolph County maintains that unlike the RAPE v. LaSalle County case the evidence in this case is clear that any communication with the Planning Commission did not affect the recommendation to the Randolph County Board. Resp. Br. at 40. Therefore, the contacts were irrelevant. *Id.*

Randolph County maintains that the appropriate redress has already occurred

Randolph County argues that there is no reason to remand this matter to the Randolph County Board as the communications have been placed on the record through the discovery process before the Board. Resp. Br. at 40. Randolph County asserts that the applicant "does not have a right to remove the decision making authority" from the Randolph County Board; rather the applicant only has the "right to have those contacts disclosed" in order to determine if there was prejudice to the decision. Resp. Br. at 40. Randolph County maintains that there is no evidence of prejudice and the Randolph County Board's decision should be affirmed. *Id.*

Land and Lakes' Reply

In its reply, Land and Lakes responded to several of the points made in the Randolph County brief. However, the Board will only discuss two of those responses as only those two responses present arguments not already discussed. First, Land and Lakes maintains that Randolph County's reliance on Gallatin v. Fulton is misplaced. Reply at 8. Land and Lakes asserts that in Gallatin v. Fulton the Board found no fundamental unfairness when the applicant's attorney discussed non-substantive matters with the hearing officer and members of the hearing committee. *Id.* Land and Lakes asserts that the committee members in Gallatin v. Fulton could not remember if or when the *ex parte* contacts occurred. *Id.* It was under these circumstances that the Board found no prejudice resulted. *Id.*

Land and Lakes argues that the facts in this proceeding are more analogous to those in Concerned Citizens of Williamson County v. Bill Kibler Development (CCWC v. Kibler) (January 19, 1995), PCB 94-262. Reply at 9. In CCWC v. Kibler, the applicant attended a meeting of the county board and discussed technical matters. Reply at 9. Although members of the public were present, they were unable to participate in the meeting. *Id.* Land and Lakes argues that the prejudice to Land and Lakes is even more severe than to the objectors in CCWC v. Kibler because all the contacts took place outside the presence of Land and Lakes. *Id.*

Secondly, Land and Lakes also disputes the argument made by Randolph County that a majority of the Randolph County Board had little to no contacts outside the hearing. Land and Lakes argues that the cases cited by Randolph County to support its position are cases which involve many more county board members than Randolph County. Land and Lakes states that Randolph County "cites no authority for its proposition that disqualifying one-third of the decisionmakers (one of just three members) on the grounds of *ex parte* contacts is allowable." Reply at 13. Land and Lakes maintains that the Board has previously decided not to apply such a simplistic mathematical formula and in support of its position cites to Rockford v. Winnebago where the Board remanded a case to the county board after disqualifying four of the 26 members. Reply at 14.

Amicus Curiae

The *amicus* brief filed in this case urges the Board not to "adopt the decision" in Waste Management v. PCB. *Amicus* at 5. The brief asks that the Board not find contacts by the non-parties in this case to be *ex parte* contacts with the Randolph County Board. If the Board does find that the contacts are *ex parte*, then the brief argues that the contacts do not meet the test in E & E Hauling v. PCB. *Amicus* 9-14.

Discussion

The first step in our discussion is to determine whether the contacts that occurred in this proceeding were *ex parte* contacts. If the answer is yes, then the Board must decide if Land and Lakes was prejudiced by those contacts. If the contacts are not *ex parte* then the Board need not examine the issue of prejudice. After careful consideration of the facts in this case, the Board finds that the contacts were *ex parte* contacts for the following reasons.

Both parties rely on Waste Management v. PCB to argue their positions. The Board is convinced that Waste Management v. PCB supports a finding that the contacts were *ex parte* contacts. The court affirmed the Board's decision in that case where the Board referred to telephone calls to the board members as *ex parte* contacts. See Waste Management of Illinois v. Lake County Board (December 17, 1987), PCB 87-75, slip op at 22-23. Thus, the Board's decision was consistent with the holding of the court.

Further, in Waste Management v. PCB the court stated:

A court will not reverse an agency's decision because of *ex parte* contacts with members of that agency absent a showing that prejudice to the complaining party resulted from these contacts. E & E Hauling v. PCB 451 N.E.3d 555, 571. Here the record does not indicate that Waste Management suffered any prejudice as a result of contacts between citizens of Lake County and LCB [Lake County Board] members. The various telephone calls, letters, and personal contacts were merely expressions of public sentiment to county board members on the issue of Waste Management's landfill application. Moreover, existence of strong public opposition does not render a hearing fundamentally unfair where, as here, the hearing committee provides a full and complete opportunity for the applicant to offer evidence and supports its application. Waste Management of Illinois v. Pollution Control Board 160 Ill. App. 3d 434, 513 N.E.2d 592, 112 Ill. Dec. 178 (1987). Further, *ex parte* communications from the public to their elected representatives are perhaps inevitable given a county board member's perceived legislative position, albeit in these circumstances, they act in an adjudicative role as well. Thus, although personal *ex parte* communications to county board members in their adjudicative role are improper, there must be a showing that the complaining party suffered prejudice from these contacts. Waste Management v. PCB 530 N.E.2d 682, 697-698, citing E & E Hauling v. PCB 451 N.E.3d 555, 571.

The court in Waste Management v. PCB (citing E & E Hauling v. PCB) clearly found contacts between nonparties with board members could be *ex parte* communications. This position was reiterated by the court in Fairview Area Citizens Taskforce v. Illinois Pollution Control Board (FACT v. PCB), 198 Ill. App. 3d 541, 555 N.E.2d 1178 (3rd Dist. 1990) and by the Board in at least two cases, Citizens Opposed to Additional Landfills and Harvey Pitt v. Greater Egypt Regional Environmental Complex (COAL v. GERE) (December 5, 1996), PCB 97-29 and Residents Against a Polluted Environment v. County of LaSalle and Landcomp Corporation (September 19, 1996), PCB 96-243. Thus, it is well established that contact by nonparties, outside the public hearing, with a board member concerning a pollution control facility siting proceeding is an *ex parte* contact.

Having determined that the contacts were *ex parte* contacts, the Board must now decide if the contacts prejudiced Land and Lakes. First, the Board agrees with Randolph County that the contacts with members of the Planning Commission were irrelevant. All four members of the Planning Commission testified that the limited contacts did not affect their decision and the recommendation they made to the Randolph County Board. The Planning Commission members testified that their recommendations were based solely on the record before them. The Planning Commission was only in the position of making recommendations to the Randolph County Board; it was not in a position to make the ultimate decision. And although the Board has found in some prior cases that contacts with an individual or group making recommendations to the decision making body can be improper contacts which prejudice the proceeding (see RAPE v. LaSalle), the Board finds that the contacts in the instant case do not rise to that level and are more analogous to those in Gallatin v. Fulton.

Next, the Board will examine the factors from E & E Hauling v. PCB to determine if the *ex parte* contacts tainted the Randolph County decisionmakers' process so that the proceeding was fundamentally unfair. The Board will first look to the contacts with Randolph County Board members Esker and Moore. Again, the testimony indicates that there were very few contacts and that the contacts did not affect their decision. Also, the Randolph

County Board members did not discuss the *ex parte* contacts they received with the other board members. Thus, the contacts were minor and "are perhaps inevitable given a county board member's perceived legislative position." Waste Management v. PCB 530 N.E.2d 682, 697-698, citing E & E Hauling v. PCB 451 N.E.3d 555, 571. The contacts did not affect the agency's ultimate decision and as the identity of the contacts is not clear and some of the contacts supported the landfill, the Board cannot find that there was a benefit in the ultimate decision. See E & E Hauling v. PCB. Therefore, because Esker and Moore based their decisions on the hearing record, the contacts with Esker and Moore did not prejudice Land and Lakes. See Waste Management v. PCB.

The Board now looks to the testimony of Randolph County Board Chairman Stork. While the Board is initially dismayed at the number and type of *ex parte* contacts directed at Stork, the Board must also take into account the context that as chairman of the Board, citizens would inevitably direct more comments to Stork as the perceived leader of an elected body of representation. Stork's testimony is ambiguous as to the effect the contacts had on his ability to make a decision. However Stork states that his vote to deny siting was based on the evidence before the Randolph County Board. Therefore, the Board finds that although the contacts with Stork were improper *ex parte* contacts, the existence of the contacts did not prejudice Land and Lakes. See Waste Management v. PCB.

Finally with regard to *ex parte* contacts, the Board examines the contacts at the county board meeting. Again the Board finds that the contact did not prejudice Land and Lakes. The Board notes that this circumstance is unlike CCWC v. Kibler. In CCWC v. Kibler, the county board asked specific substantive questions of the applicant while refusing to allow opponents to speak and relied on those answers to make the decision. In this case, the county board had a long tradition of allowing anyone to speak at county board meetings. The county board members all indicate that they gave no weight to the statements made. Thus, the Randolph County Board members did not rely on the information presented at the county board meeting to make a decision and Land and Lakes was not prejudiced. Citizen statements at the regularly scheduled county board meetings "were merely expressions of public sentiment to county board members" and did not "render hearing fundamentally unfair." Waste Management v. PCB 530 N.E.2d 682, 697-698, citing E & E Hauling v. PCB 451 N.E.3d 555, 571.

The Board also notes that the "existence of strong public opposition does not render a hearing fundamentally unfair where, as here, the hearing committee provides a full and complete opportunity for the applicant to offer evidence and supports its application." Waste Management of Illinois v. Pollution Control Board 160 Ill. App. 3d 434, 513 N.E.2d 592, 112 Ill. Dec. 178 (1987). Land and Lakes was given a full and complete opportunity to offer and support its application. Public hearings were held before the Planning Commission where witnesses for Land and Lakes testified in support of the multi-volume application. Opposition to the application was also heard at that hearing. After the close of the public hearing, a thirty-day comment period was held. Thus, Land and Lakes was aware of the opposition and had the opportunity to respond.

In summary, the Board finds that the proceedings before the Randolph County Board were not fundamentally unfair. The Board does find that the contacts were *ex parte* contacts; however under the inquiry enunciated in E & E Hauling v. PCB and reiterated in Waste Management v. PCB, the applicant was not prejudiced.

CRITERIA ii and viii

Having determined that the proceedings were not fundamentally unfair, the Board next must examine if the Randolph County Board's decision to deny siting based on Section 39.2(ii) and (viii) of the Act was against the manifest weight of the evidence. As indicated above, criterion ii is that the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. Criterion viii is that the facility is to be located consistent with the planning requirements of the solid waste management plan.

The Board's standard for reviewing a local decision has long been established. The courts have stated that the Board must determine if the local decision was against the manifest weight of the evidence. McLean County Disposal, Inc. v. County of McLean, 207 Ill. App. 3d 352, 566 N.E.2d 26, 29 (4th Dist. (1991)); E & E Hauling v. PCB 452 N.E.2d at 572. A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. File v. D & L Landfill, Inc. 219 Ill. App. 3d 897, 579 N.E.2d

1228, 1231 (5th Dist. 1991); Turlek v. Pollution Control Board, 274 Ill. App. 3d 244, 653 N.E.2d 1288, 1292 (1st Dist. (1995)). Simply because the Board could reach a different conclusion is not sufficient to warrant reversal of a local decision. City of Geneva v. Waste Management (July 21, 1994), PCB 94-58.

In this section the Board will begin by summarizing the arguments of Land and Lakes. Then a discussion of Randolph County's arguments follows. The Board will then discuss Land and Lakes' response to Randolph County's arguments. Finally, in this section the Board will analyze the arguments and render its decision on whether the Randolph County Board's decision was against the manifest weight of the evidence.

Land and Lakes' Arguments

Land and Lakes argues that the findings by the Randolph County Board that the application did not demonstrate that the Randolph County Plan was designed to protect the health, safety and welfare (criterion ii) and that the facility was consistent with the solid waste management plan (criterion viii) is against the manifest weight of the evidence. Land and Lakes sets forth three arguments with regard to criterion ii. First, Land and Lakes maintains that the Randolph County Board improperly found that the criterion was not met because of an alleged inconsistency in the solid waste management plan. Pet. Br. at 30. Second, Randolph County Board's use of traffic concerns as a basis for denial of criterion ii is inconsistent with the decision on criterion vi,² which deals explicitly with traffic patterns. Pet. Br. at 33. Third, Land and Lakes argues that the use of traffic concerns in Randolph County Board's denial of criterion ii is an illegal "conditional denial". Pet. Br. at 36.

On the denial of criterion viii, Land and Lakes also puts forth three arguments. The first is that the "exclusionary" factors relied upon by the Randolph County Board are not a part of the solid waste management plan. Pet. Br. at 39. Secondly, the "exclusionary" factors are merely recommendations. Pet. Br. at 41. Finally, Land and Lakes argues that the setback clause violates the Act; exceeds the authority of Randolph County under the Solid Waste Planning Act; and is bad policy.

Land and Lakes maintains that the Randolph County Board improperly found that criterion ii was not met because of an alleged inconsistency in the solid waste management plan

Land and Lakes points out that the Randolph County Board indicated that the provision in the solid waste management plan prohibiting landfills within one and a half-miles of a municipality was intended to protect the health, safety and welfare of Randolph County residents. And based on that, as well as other reasons discussed below, Randolph County Board determined that criterion ii was not met.

Land and Lakes argues that the Randolph County Board erroneously used its interpretation of the facility's consistency with the solid waste management plan to deny compliance with criterion ii. Pet. Br. at 30. Land and Lakes reasons that criterion viii is the proper criterion under which to consider consistency with the solid waste management plan. *Id.* Land and Lakes states: "[t]o allow a decisionmaker to deny an application under more than one criteria, for the same reason, would render the separate criteria meaningless." Pet. Br. at 31. If a proposed facility is not consistent with the solid waste management plan the proper criterion for denial is criterion viii. *Id.*

Land and Lakes also asserts that no person presented any testimony or comment on the purpose of the one and a half-mile setback. Pet. Br. at 32. Land and Lakes, however, presented evidence that the facility complies with all federal and state location standards. TOC 3 at Vol. 3, Part IV. There was no challenge to Land and Lakes' evidence on the location standards and no comment was made. Pet. Br. at 32.

Land and Lakes also argues that Randolph County Board's expert, Rhutasel, testified to the existence of the setback but only as it relates to criterion viii. Pet. Br. at 32. Land and Lakes argues that there is no evidence that the one and a half-mile setback is related to the public health, safety, and welfare. *Id.*

² Section 39.2(vi) of the Act (criteria vi) provides that "the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows."

Land and Lakes maintains that the Randolph County Board's use of traffic concerns as a basis for denial of criterion ii is inconsistent with the decision on criterion vi which deals explicitly with traffic patterns

Land and Lakes indicated that a second reason for denying siting based on criterion ii, was Randolph County Board's concerns about traffic patterns. Land and Lakes argues that the decision on criterion ii directly conflicts with Randolph County Board's decision that the application met the requirements of criterion vi. Pet. Br. at 34. Land and Lakes argues criterion vi is the proper place to direct concerns about traffic patterns. *Id.* Land and Lakes also argues that the denial based on criterion ii is "particularly objectionable" because it is based on issue over which Randolph County has control, not Land and Lakes. Pet. Br. at 35.

Land and Lakes maintains that the use of traffic concerns in Randolph County Board's denial of criterion ii is an illegal "conditional denial"

Land and Lakes argues that the Randolph County Board's decision is internally inconsistent and in effect is a "conditional denial". Pet. Br. at 36. Land and Lakes argues that the Randolph County Board found that criterion ii was not met and then states:

any effort to cure this lack of compliance, would at a minimum, require the Applicant to comply with any and all recommendations made by the Randolph count Highway Department concerning permanent road upgrades, permanent road improvements. . . . In addition, the Applicant, would at a minimum, need to implement and comply with all ongoing road maintenance equipment which would be prescribed by the Randolph County Highway Department. Pet. Br. at 36, citing Exh. C at 4.

Land and Lakes argues that the above language constitutes a "conditional denial" of the type which the Board found to be inappropriate in Land and Lakes Company v. Village of Romeoville (December 6, 1991), PCB 91-7. In that case the Board stated:

Sections 39.2(a) and (e) of the Act, however, do not contemplate the imposition of conditions upon a denial. Rather, any applicant who seeks site approval of a proposed regional pollution control facility has the right to expect the county board or municipal governing body to issue definitive approval (which allows for the addition of conditions that are reasonably related to the criteria) or denial of its siting application. To hold other wise would be unfair to the applicant. Land and Lakes Company v. Village of Romeoville (December 6, 1991), PCB 91-7

Land and Lakes maintains that the "exclusionary" factors relied upon by the Randolph County Board, in finding that criterion viii was not met, is not a part of the solid waste management plan

In determining that the application had not demonstrated compliance with criterion viii, the Randolph County Board adopted the finding of the Planning Commission. Pet. Br. at 39. The Planning Commission found that the solid waste management plan "excludes sites within 1.5 miles of municipal limits" and that the facility's proposed siting within one mile of Sparta meant that the application did not meet criterion viii. TOC 8 at 6.

Land and Lakes contends that the solid waste management plan does not exclude facilities located within one and a half-miles of a municipality. Pet. Br. at 40. Specifically, Land and Lakes argues that only a part of the document entitled "Solid Waste Management Plan for Bond, Clinton, Randolph, and Washington Counties in Illinois" is an actual "solid waste management plan". *Id.* The part of the documents Land and Lakes considers the "solid waste management plan" is chapter 12. Land and Lakes asserts that the rest of the document's chapters "provide extensive background on solid waste management issues, including landfills, but are not part of the 'county solid waste management plan'." *Id.*

The provision in the Randolph County Plan where the setback is located is not in chapter 12, according to Land and Lakes. And, Land and Lakes asserts nowhere in chapter 12 is there a mention of location criteria. Therefore, Land and Lakes concludes it is clear that the setbacks are not a part of the Plan. Pet. Br. at 40.

Land and Lakes maintains that the "exclusionary" factors relied upon by the Randolph County Board, in finding that criterion viii was not met, are merely recommendations

Land and Lakes argues that, even if the setback is a part of the Plan, the text of the Randolph County Plan refers to the location factors as "recommended local criteria". Pet. Br. at 41. Further, Land and Lakes argues that Darryl Thompson Manager of General Planning for SIMAPC, the entity that drafted the document, opined that the location of a new landfill in Randolph County that is acceptable to local government is consistent with their Solid Waste Management Plan. Pet. Br. at 41. Therefore, Land and Lakes asserts that Thompson "was of the opinion that the proposed landfill is consistent with the solid waste management plan." *Id.*

Land and Lakes asserts that there is no evidence in the record that contradicts Thompson's opinion. Pet. Br. at 43. Further, the report prepared for Randolph County by Rhutasel and Associates, consulting engineers (Rhutasel Report), only stated that the setback warranted further consideration. *Id.* The Rhutasel Report went on to conclude that "there was no reason to disagree with the conclusions" of Land and Lakes and Thompson, according to Land and Lakes. *Id.* Thus, Land and Lakes maintains the decision by the Randolph County Board that criterion viii is not met was against the manifest weight of the evidence. *Id.*

Land and Lakes maintains that the setback clause violates the Act; exceeds the authority of Randolph County under the Solid Waste Planning Act; and is bad policy

Land and Lakes points out that Section 39.2 of the Act establishes a unified, statewide, siting process. Pet. Br. at 43-44. The Board has adopted regulations for landfills which include location standards and setbacks. Pet. Br. at 44. The Board did not include a setback for municipalities. *Id.* Land and Lakes argues that allowing counties to begin adding additional siting location criteria, outside those in Section 39.2 of the Act would violate the unified statewide plan envisioned by the legislature. *Id.* Land and Lakes further argues that the setback is an attempt to incorporate "zoning powers" in the Plan. Pet. Br. at 44-45. Thus, Land and Lakes reasons since zoning is specifically exempt from consideration in Section 39.2 siting proceedings, the inclusion of the setback violates the Act.

Land and Lakes also argues that a county board has the authority to adopt a solid waste management plan under the Solid Waste Planning and Recycling Act. 415 ILCS 15/1 *et. seq.* (1998). However, that authority does not allow a county board to "add location criteria" to the criteria already adopted by the legislature, argues Land and Lakes. Pet. Br. at 45.

Finally, Land and Lakes suggests that the setback is bad policy because it would not allow a municipality to own and operate a facility within the municipality boundaries. Pet. Br. at 46.

Randolph County Arguments

Randolph County argues that the decision by the Randolph County Board is supported by the record. Specifically, on criterion ii, Randolph County sets forth four arguments: first, that the one and a half-mile exclusion is related to criterion ii; second that the condition of the surrounding roads is related to criterion ii; third, Randolph County may use the same facts to find a failure to meet two separate criteria; and, fourth, that the Randolph County Board did not issue a conditional denial. On criterion viii, Randolph County enunciates five arguments. Randolph County argues that the plain language of the Randolph County Plan and the testimony of Randolph County's experts supports the decision on criterion viii. Next, Randolph County argues that a determination on the consistency of the Randolph County Plan does not require expert testimony. Third, Randolph County argues that it is beyond the Board's authority to determine the propriety of the solid waste management plan. Fourth, Randolph County asserts the one and a half-mile exclusion does not violate the Act. And fifth, Randolph County maintains the one and a half-mile exclusion is a part of the Act. The Board will summarize each of those arguments.

Randolph County asserts that the one and a half-mile exclusion is related to the public's health, safety, and welfare

Randolph County asserts that it was free to consider the proximity of the landfill in its assessment of whether the landfill was located to promote health, safety, and welfare. Resp. Br. at 52. Randolph County

maintains that it is "consistent with conventional logic and reason" that the closer a landfill is to population the more likely it will affect health, safety, and welfare. *Id.* Randolph County believes that the solid waste management plan reflects this logic because the exclusionary factors are listed because of environmental protection particularly of groundwater is a primary concern. *Id.* Further, because the application included one of the exclusionary factors identified by the Plan, it is evidence of the potential negative impact to the health, safety, and welfare. *Id.*

Randolph County asserts that the condition of the surrounding roads is related to the public's health, safety, and welfare

Randolph County maintains that the Randolph County Board found that criterion ii was not met because of the "excessive wear and tear" on the roads, not because of traffic patterns. Resp. Br. at 53. Rhutasel made these distinctions in the testimony. *Id.* Randolph County asserts that it was not against the manifest weight of the evidence to follow this distinction and find that criterion ii was not met. Resp. Br. at 54.

Randolph County asserts that the Randolph County Board may use the same facts to find failure to meet two separate criteria

Randolph County first asserts that Land and Lakes does not point to any authority for its argument that the Randolph County Board cannot use the same facts to find that two criteria are not met. Resp. Br. at 54. Next, Randolph County argues that the criteria of Section 39.2 overlap and criterion ii is so broad that it is likely that any failure to meet one of the Section 39.2 criteria would also be a failure to meet criterion ii. *Id.* Randolph County also argues that this is not a case of first impression. Randolph County cites to Industrial Fuels and Resources/Illinois v. Harvey (September 27, 1990), PCB 90-53, in support of this proposition. Randolph County maintains that Harvey used the same reasons to deny siting on two separate criteria in that instance. Resp. Br. at 55.

Randolph County asserts that the Randolph County Board did not issue a conditional denial

Randolph County contends that the denial of siting under criterion ii was not a "conditional denial" because siting was "flatly" denied under criterion ii. Resp. Br. at 55. Randolph County asserts that there is no indication that the Randolph County Board would reverse its decision if the applicant met the "recommendations" made by the Randolph County Board. Resp. Br. at 56. Therefore, the denial was not conditional.

Randolph County also asserts that the Randolph County Board noted in its decision that "notwithstanding Land and Lakes' failure to demonstrate compliance" with criterion ii, the Randolph County Board "feels compelled to make certain additional Findings" concerning criterion ii. *Id.* Among those additional findings was that the routes preferred by Land and Lakes were not Class I roads and thus would put high weight and stress demands on the roads. Resp. Br. at 55-56.

Randolph County asserts that the plain language of the Randolph County Plan and the testimony of the experts supported Randolph County Board's decision on criterion viii

Randolph County argues that the plain language of the solid waste management plan supports the decision that Land and Lakes' application was inconsistent with the Plan. Resp. Br. at 43. Randolph County asserts that, regardless of whether the language in the Randolph County Plan is a recommendation or a required exclusion, it is within the authority of the siting authority to follow the Randolph County Plan and exclude siting. Resp. Br. at 43. Randolph County maintains that all solid waste management plans are "to some extent" recommendations since it is within the county's purview to determine consistency. Second, Randolph County argues that the Randolph County Plan states that "parcels or areas of which contained any of the exclusionary characteristics would not be considered in the site identification process." Resp. Br. at 43, citing Exh. 6 at 207. The exclusionary characteristics include the one and a half-mile restriction and the Randolph County Plan could not be any clearer that such proposals should be excluded, argues Randolph County. *Id.*

Randolph County further states that the testimony of Rhutasel was that the one and a half-mile restriction was an exclusionary provision. Resp. Br. at 44. Randolph County maintains it was not necessary for Rhutasel to

give Randolph County Board the ultimate legal conclusion that the application was inconsistent with Plan, the Randolph County Board alone is the one who must make that determination. Resp. Br. at 44. The Planning Commission also made that determination. *Id.*

Randolph County also points out that Land and Lakes relies on a letter from Thompson, who did not testify at hearing. Resp. Br. at 45. The Planning Commission found the letter to be "equivocal" and the letter does not even mention the one and a half-mile exclusion. Resp. Br. at 45. Therefore, Randolph County asserts it was appropriate for the Planning Commission and the Randolph County Board to hesitate to rely on Thompson's conclusions. *Id.*

Randolph County asserts that a determination of the consistency with the Randolph County Plan does not require expert testimony

Randolph County argues that it does not take an expert to determine what is intended by the plain language of a solid waste management plan, or to tell the Randolph County Board that one mile is less than one and a half-miles. Resp. Br. at 46. Randolph County states that generally expert opinions need only be used when the subject matter is beyond the "ken or understanding of the average person." Resp. Br. at 46, citing Hernandes v. Power Construction 73 Ill. 2d 90, 382 Ill.App. 3d 1201,1205 (1978). Thus even without the testimony of Rhutasel, the Randolph County Board could determine that the application was inconsistent with the Plan. Resp. Br. at 46.

To further substantiate the argument that additional expert testimony was not required, Randolph County asserts that both Stork and Moore served on the executive committee of SIMPAC, which authored the Plan. Resp. Br. at 47. Therefore, Randolph County argues, it was not against the manifest weight of the evidence to find the application inconsistent with the Plan. Resp. Br. at 47.

Randolph County asserts that it is beyond the Board's authority under Section 40.1(a) to determine the propriety of Randolph County's solid waste management Plan

Randolph County argues that the Board's Section 40.1 of the Act allows the Board to review a local decision made under Section 39.2 of the Act. Thus, Randolph County asserts the Board may review only the substance of a Section 39.2 hearing and there is no authorization to review the Randolph County Plan itself. Resp. Br. at 48.

Randolph County asserts that the one and a half-mile exclusion does not violate the Act

Randolph County first asserts that the exclusion does not violate the Act because the Randolph County Plan was reviewed by the Illinois Environmental Protection Agency pursuant to Section 4(b) of the Solid Waste Planning and Recycling Act (415 ILCS 15/4(b)) to insure consistency with the Act. Resp. Br. at 48. Randolph County argues that it is "ludicrous" for Land and Lakes to argue the Randolph County Plan violates the Act when "the agency responsive for enforcing the Act has already configured the Plan's consistency with the Act." Resp. Br. at 48.

Randolph County asserts that the one and a half-mile exclusion is a part of the solid waste management plan

Randolph County asserts that the plain language of the Randolph County Plan makes clear that the entire document is the solid waste management plan. Resp. Br. at 50.

Land and Lakes' Reply

Land and Lakes, in its reply, makes some new arguments in response to Randolph County and reasserts its position on others. The Board will summarize briefly the new arguments, and where necessary, the reassertion.

Land and Lakes argues that Randolph County has "filled" its response "with misstatements of fact and unsupported declarations." Reply at 19. Land and Lakes asserts that Randolph County has mischaracterized the conclusions of Rhutasel. *Id.* Land and Lakes argues that Rhutasel simply identified the existence of the setback and found no "reason to disagree" with the conclusion of Land and Lakes. *Id.* Further, Land and Lakes argues that there is no evidence that Stork and Moore were members of SIMPAC when the solid waste management plan was

adopted. *Id.* Land and Lakes maintains that Randolph County relies on the letterhead from Thompson's letter for support that Stork and Moore served on the SIMPAC at the time the Randolph County Plan was authored. *Id.* Land and Lakes points out the Randolph County Plan was authored in 1996 and the Thompson letter was written in 1998. Reply at 19; citing TOC 3 at Vol. 2.

Land and Lakes also contends that Randolph County makes several "bald statements of what it asserts to be the law" without supporting citations to the law. Reply at 20. Specifically Land and Lakes points to Randolph County's assertion that a local government is free to legislate environmental standards more stringent than those of the Act. Reply at 20. Land and Lakes argues that this assertion misses the distinction between "environmental standards" and the siting process. *Id.* Land and Lakes sites to Section 39.2(g) of the Act as support for its argument.

Land and Lakes also responds to Randolph County by reasserting that the setback or "exclusionary" factor is not part of the plan. Reply at 17. Land and Lakes argues that the plain language of the document indicates that the Randolph County Plan is in chapter 12. Land and Lakes also reasserts that it is improper to use the same facts to deny siting for two separate criteria. Reply at 22. Land and Lakes goes on to point out that the case cited by Randolph County to support its position on this issue was a case wherein the Board was reversed. Industrial Fuels v. PCB, 227 Ill. App. 3d 533, 592 N.E.2d 148, 159 (1st Dist. 1992).

Finally, Land and Lakes argues that the Board does have the authority to review Randolph County's decision on consistency with the Plan. Reply at 18. Land and Lakes argues that the Board is reviewing the interpretation of the Randolph County Plan used by Randolph County, not the Randolph County Plan itself. *Id.*

Discussion

As stated above, the Board reviews the decision of the Randolph County Board to determine if the decision is against the manifest weight of the evidence. The Board is not in a position to reweigh the evidence, but must determine if the decision is against the manifest weight of the evidence. Fairview Area Citizens Taskforce v. PCB, 198 Ill.App. 3d 541, 555 N.E.2d 1178 (3rd Dist. 1990). Therefore, the Board must decide if the evidence in the record supports the decision by Randolph County Board that Land and Lakes failed to meet criteria ii and viii. Based on a review of the record and for the following reasons, the Board finds that the record supports the Randolph County Board's findings on both criteria ii and viii.

One general argument which Land and Lakes makes concerning the Randolph County Board's decision on the two criteria is that Randolph County's expert, Rhutasel, found that Land and Lakes had satisfied the two criteria. The Board is not persuaded that the recommendations of Randolph County's expert are binding on the decisionmaker. See McLean County Disposal Company, Inc. v. County of McLean (November 15, 1989), PCB 89-108, aff'd. McLean County Disposal, Inc. v. County of McLean, 207 Ill. App. 3d 352, 566 N.E.2d 26, 29 (4th Dist. 1991)). The Board will now continue its discussion by focusing first on criterion ii and then on criterion viii.

Criterion ii

The Board finds that the decision to deny siting based on criterion ii is not inconsistent with the Randolph County Board's decision on criterion vi. Randolph County's findings on criterion ii indicate that there were concerns raised during the course of the siting hearing on the matter of roads. Resp. Exh. 4 at 3. More specifically, the findings indicated that most of the roads suggested by Land and Lakes as preferred transport routes are not classified as Class I Illinois Department of Transportation "80,000 pound" roads. However, a significant number of vehicles transporting waste to the facility would be over 80,000 pounds in weight. *Id.*

The Randolph County Board found that if the roads are not upgraded or restricted the roads would be subject to excessive wear and deterioration. *Id.* This could cause increasingly narrow pathways of travel. Resp. Exh. 4 at 4. This finding was based in part on the testimony of Rhutasel at the county hearing. He stated that: "[o]ur concerns are not related to the traffic patterns, but related to the capability of the existing roads to handle the - I guess the weight of the loads that would be placed on them, and the actual width of the roadways and the impact

that the trucks carrying the refuse to the landfill would have on them." TOC 2 at 60-61. Thus, Randolph County's expert expressed concerns about the roads, which were not related to traffic patterns.

In addition, testimony was provided by Craig Holan³ at the public hearing on the issue of road safety. Holan testified that he disagreed with the conclusions made by Land and Lakes' experts on the issue of traffic. TOC 2 at 91-92. Holan specifically noted the narrow widths of the roadways and steep embankments. TOC 2 at 96. He also indicated that there were "sight distance problems" with some of the intersections. TOC at 97.

In contrast, the testimony of Land and Lakes' expert Norman Roden indicates that the report prepared and submitted as a part of the application did not look at the structural conditions of the roads. TOC 2 at 191. Roden stated that:

We made an inspection of the site and the area and then prepared some traffic surveys which included traffic volume counts, surveys of time and distance, relative times of distances via alternative routes from various points to the potential landfill site and then performed a capacity analyses for a couple of key intersections within that area. TOC 2 at 191.

Randolph County also received a number of comments which indicated a concern with the condition of the roads. Some of the comments presented include that there would be a "break down of roads", that there would be "danger from truck traffic", and the presence of the landfill would not "allow for safe travel." TOC 9 at C2, C3, C21, C24, C26, C27, C35, C54, C55, and C56.

The transcript from the county board meeting where the Randolph County Board made its decision clearly indicates that each of the members shared the concerns of their expert about roads. All three members indicated that they were concerned about the ability of the roads to handle the trucks weighing over 80,000 pounds. Resp. Exh. 3 at 16-17. In fact Chairman Stork states: "I think simply the hills - - if you've traveled the road, there's hills and narrow (sic), and the amount of truck traffic on there would not be conducive to the residences there." Resp. Exh. 3 at 17. In contrast on criterion vi, the members expressed concerns on the maintenance of the roads but the members felt that the actual traffic plan was sufficient. Resp. Exh. 3 at 24-26. Chairman Stork stated: "I think that most of it is immaterial how they get to the Holloway Road, but I do feel like they have minimized it." Resp. Exh. 3 at 25. Thus, the Randolph County Board did not adopt inconsistent findings on the criteria ii and vi, but rather distinguished between the two.

The Board disagrees with Land and Lakes' contention that this is a conditional denial. The language quoted by Land and Lakes is only a part of the entire finding on criterion ii. Randolph County found that the record did not support a finding that criterion ii had been met; then Randolph County went on to make additional findings. Resp. Exh. 4 at 3. These additional findings involved the concerns about traffic on the county roads and the language quoted by Land and Lakes. The Board's reading of that language is that the Randolph County Board was only explaining what lengths would be necessary to demonstrate compliance with criterion ii, not a conditional denial. The Board has reviewed its decision in Land and Lakes Company v. Village of Romeoville (December 6, 1991), PCB 91-7 and the Board is not convinced that the two cases are factually similar. Therefore, the Board finds that this is not a conditional denial.

The Board does agree with Land and Lakes that the Randolph County Board improperly found that criterion ii was not met because of the lack of a one and a half-mile setback. The only indication that this issue was raised before Randolph County that the Board can find in the record is in letters from persons opposing the landfill. e.g., TOC 9 at C15, C27. Further, Randolph County has not pointed to any evidence in the record. Therefore, the Board agrees that denial of siting approval under criterion ii based on the one and a half-mile setback was inappropriate. However, as the Board agrees with the use of the traffic concerns as a denial reason, the Board upholds Randolph County's decision on criterion ii.

³ Holan has about eight years of post-graduate school work doing traffic impact studies and transportation planning. TOC 2 at 90.

Criterion viii

The Board is not persuaded by Land and Lakes argument that the one and a half-mile setback or "exclusionary" factor is not a part of the Plan. If the Board were to agree that only "Chapter 12" was the Plan, then the solid waste management plan would not include a discussion on "Solid Waste Needs Review" (chapter 2) or a discussion on "Recycling" (chapter 4). Further, the Solid Waste Planning and Recycling Act (415 ILCS 15/1 *et seq.*), which required the adoption of solid waste management plans, sets forth the minimum requirements for a plan. Those requirements include a review of solid waste needs and a recycling program. See 415 ILCS 15/4 and 15/6 (1998). Thus, the Solid Waste Planning and Recycling Act supports an interpretation that the Randolph County Plan adopted by Randolph County is the entirety of the document.

Next, Land and Lakes argues that the one and a half-mile setback is not an exclusionary factor. Again, the Board must disagree. The plain language of the Randolph County Plan indicates that: "exclusionary criteria are used to screen individual parcels or areas. Parcels or areas which contained any of the exclusionary characteristics would not be considered in the site identification process. Areas or parcels which remain after the exclusionary criteria, would be screened against the inclusionary criteria to identify parcels for consideration for on-site investigations." The language is clear that exclusionary criteria are designed to eliminate sites. The exclusionary criteria include the one and a half-mile setback. Therefore, the Randolph County Plan clearly excludes facilities within one and a half-miles of a municipality. The application submitted by Land and Lakes placed the pollution control facility within one mile of Sparta. Therefore, the record indicates that the application was not consistent with the plan and criterion viii has not been met.

Land and Lakes also argues that the setback clause violates the Act, is beyond Randolph County's authority, and is bad policy. Randolph County argues in response that the Board does not have the authority to review the provisions of the solid waste management plan. The Solid Waste Planning and Recycling Act requires that solid waste management plans be prepared and submitted to the Agency for review. 415 ILCS 15/4 (1998). The Agency is charged with reviewing the plan "to ensure consistency with the requirements of this Act." 415 ILCS 15/4 (1998). However, there is no mention that a review for consistency with the Environmental Protection Act has been performed, either by the Agency or the Board.

Section 40.1 of the Act grants the Board the authority to review a local decision on siting of a pollution control facility. Specifically, Section 40.1 of the Act states, in part:

no new or additional evidence in support of or in opposition to any finding, order, determination or decision of the county board . . . shall be heard by the Board. In making its orders and determinations under this Section, the Board shall include in its consideration the written decision and reasons for the decision of the county board . . . , the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2, and the fundamental fairness of the procedures used . . .
.. Section 40. 1 of the Act.

Thus, the Board may only review the county board's decision under Section 39.2 of the Act. And under Section 39.2 (viii) of the Act, the issue is whether the application is consistent with the solid waste management plan. Therefore, the Board may only look to the record and determine if the finding that the application is inconsistent with the Randolph County Plan was against the manifest weight of the evidence.

As discussed above, the language of the Randolph County Plan is clear that the one and a half-mile setback is exclusionary. As the language of the Randolph County Plan is clear, the Randolph County Board's decision that the application for a facility within one mile of Sparta was inconsistent with the Plan, is not against the manifest weight of the evidence. The Board therefore, upholds the decision by Randolph County on criterion viii.

CONCLUSION

The Board finds that the members of the Randolph County Board were subject to numerous contacts outside the record of the proceeding. These contacts were *ex parte* contacts. However, these contacts did not affect

the ultimate decision and did not prejudice Land and Lakes. Therefore pursuant to Waste Management v. PCB and E & E Hauling v. PCB the proceedings were not tainted by the contacts and were not fundamentally unfair.

The Board also finds that the Randolph County Board's decision to deny siting based on failure to satisfy Section 39.2 (ii) and (viii) if the Act is not against the manifest weight of the evidence. The record contains evidence that there are concerns for public safety due to road configuration as well as wear and tear on county roads. The record also indicates that the solid waste management plan contains an exclusionary clause against siting a facility within one and a half-miles of a municipality. Land and Lakes' application would site its pollution control facility within one and a half-miles of the municipality of Sparta. Therefore, the decision is not against the manifest weight of the evidence.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter

ORDER

For the reasons presented in the Board' opinion, the Board affirms the October 19, 1998 decision by the Randolph County Board of Commissioners denying siting of a pollution control facility for Land and Lakes Company.

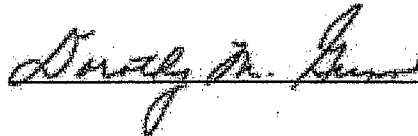
IT IS SO ORDERED.

Board Members E.Z. Kezelis and S.T. Lawton, Jr. dissented.

Chairman C.A. Manning concurred.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of September 2000 by a vote of 5-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

Criterion viti

CONCLUSION

The Board finds that the members of the Randolph County Board were subject to numerous contacts outside the record of the proceeding. These contacts were *ex parte* contacts. However, these contacts did not affect

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May 2, 2005

VIA FACSIMILE (815/490-4901)
AND FIRST CLASS MAIL

WASTE MANAGEMENT

Midwest Group
720 E. Butterfield Road
Lombard, IL 60148
(630) 572-8800
(630) 916-6280 Fax

Mr. Charles F. Helsten
Hinshaw & Culbertson
100 Park Ave.
Rockford, IL 61101

Re: Waste Management of Illinois v. Kankakee County Board, PCB 04-186

Dear Mr. Helsten:

The purpose of this letter is to make a settlement proposal to Kankakee County regarding the pending litigation before the Illinois Pollution Control Board ("PCB"). Waste Management believes that a settlement pursuant to the terms set forth below provides both parties with a myriad of benefits, while both parties avoid a worst case scenario. The proposed settlement is simple and straightforward and can be consummated within a very short period of time, assuming both parties are amenable.

1. Settlement of Pending Pollution Control Board Case (No. 04-186). Kankakee County and Waste Management are the only parties to the pending PCB case. Like any other contested legal matter, the parties to this case may settle their dispute pursuant to an appropriate Stipulation filed with the PCB. Here, Waste Management and the County would enter into a Stipulation in which the County agrees not to contest Waste Management's appeal and acknowledges that the underlying record contains evidence supporting Waste Management's contention that siting approval should have been granted. The Order issued by the PCB as a result of this Stipulation would be the same as the Order the PCB would issue if it found in Waste Management's favor in the pending appeal.

2. Amendment of Host Community Agreement. Simultaneously with Waste Management and the County entering into a Stipulation to settle the pending PCB case, Waste Management and the County would enter into a further Amendment to the Host Community Agreement, conditioned on Waste Management achieving final and non-appealable siting pursuant to the settlement described above. The Amendment would provide for the following, as well as any other conforming changes identified by either of us.

a. Siting Conditions. Waste Management would agree to all of the conditions set forth in the March 9, 2004 Kankakee County Regional Planning Commission report entitled "Recommendations Relating to the Application of WMII for Local Siting Approval of an Expansion of the Existing Kankakee Landfill." Among other things, this will insure that the expansion will be developed with a double composite liner system.

b. Reduction in Out-of-County Waste. The annual cumulative amount of out-of-county waste Waste Management would be able to accept in the expansion area would be reduced by one-third (a reduction of 328,967 tons per year).

c. Host Fee Payments. The one-time expansion fee would be reduced by one-third (to \$1,166,725) and the minimum guaranteed host fees would be similarly reduced by one-third. However, the per ton host fee paid to the County would not decrease.

d. Environmental Enhancement Fund. In addition to the existing per ton host fee, Waste Management will pay an additional ten cents per ton in order to fund a new Environmental Enhancement Fund to be managed by the County and used, in the County's discretion, to fund environmental projects, including clean up projects, throughout the County.

e. Support of New Technologies. In order to support the development of new technologies for the management of solid waste, Waste Management will make available to the County, or its designee, a five-acre parcel of property adjacent to the Kankakee Landfill or at another location acceptable to the County. This site can be used, at the County's discretion, as a location on which new waste management technologies can be tested and refined.

3. Benefits of Settlement. Obviously, both the County and Waste Management would avoid the uncertainties of continued litigation with respect to siting. If Waste Management prevails in the pending case, the result would be an expanded landfill that could accept more than 1M tons of waste per year. If it does not, the Kankakee Landfill will likely close permanently. The settlement would result in the County assuring disposal capacity for its residents and businesses for an extended period and would significantly reduce perceived traffic and other impacts identified by landfill opponents. Assuming the expanded Kankakee Landfill accepts 650,000 tons of waste annually, the County would receive payments exceeding \$2,500,000 per year.

4. Time is of the Essence. If there appears to be a desire on the part of the County to consider a settlement of this dispute pursuant to the terms set forth above, we should move forward quickly to finalize the required documentation so that the full County Board can consider the documented settlement at its May 10 meeting. In order to expedite the County's consideration of this proposal, I have provided a copy of this letter to Ed Smith, the County State's Attorney. I trust that either you or Mr. Smith will provide a copy to the County Board Chairperson, Karl Kruse, for distribution to Board members.

Special Meeting of the Kankakee County Board

A G E N D A


Wednesday, May 25, 2005 at 10:00 a.m.

Kankakee County Administration Building
189 East Court Street, Kankakee, Illinois
Fourth Floor Board Room

1. INVOCATION: George Washington, Jr.
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL: Bruce Clark
4. PUBLIC COMMENTARY
5. OPEN SESSION- To present the issues and entertain positions relating to litigation pending before the Illinois Pollution Control Board. Waste Management of Illinois, Inc. v. County Board of Kankakee County, Illinois, PBC Case No.: 04-186
6. EXECUTIVE SESSION – Discussion of said litigation pursuant to 5 ILCS 120/2(c)(11)
7. OPEN SESSION: Debate, deliberation and to take action on said litigation
8. New Business
9. Old Business
10. Adjournment

I look forward to hearing from you.

Very truly yours,



Dennis M. Wilt
Vice President and General Counsel – Midwest Group

DMW/LK

cc: Lee Addleman
Dale Hoekstra
Don Moran
Chris Rubak
Ed Smith

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