

ILLINOIS POLLUTION CONTROL BOARD  
May 4, 2005

WASTE MANAGEMENT OF ILLINOIS	)	
INC.,	)	
	)	
Petitioner,	)	
	)	PCB 04-186
v.	)	(Pollution Control Facility
	)	Siting Appeal)
COUNTY BOARD OF KANKAKEE	)	
COUNTY, ILLINOIS,	)	
	)	
Respondent.	)	

**HEARING REPORT**

On April 6 and 7, 2005, a hearing was held in the above-captioned matter at the County Administration Building, 189 East Court Street, County Board Room, Kankakee, Illinois. Attorney Donald Moran appeared and participated on behalf of the petitioner. Attorneys' Charles Helsten, Richard Porter and Assistant State's Attorney Brenda Gorski appeared and participated on behalf of the respondent.

**Preliminary Matters**

On April 5, 2005, a written hearing officer order was entered denying petitioner's motion to compel answers to questions it had posed in discovery depositions taken between June 22, 2004 and January 2005. The questions related to reasons why certain members of the respondent County Board of Kankakee (County Board) had voted against the siting application at issue here. At a pre-hearing status conference on April 5, 2005, the respondent inquired whether the petitioner would be allowed to question the certain members of the County Board under an offer of proof as to the reasons why they voted against the siting application at issue here. On April 6, 2005, the parties orally argued their respective positions regarding the offer of proof matter. After hearing argument, I ruled that any offer of proof regarding the mental processes of the County Board members would be disallowed.

On April 4, 2005, the respondent filed a *motion in limine* to bar the petitioner from attempting to elicit statements regarding County Board member Ann Bernard's failed attempt to retain a seat on the Illinois state legislature. After hearing arguments, I granted the respondent's *motion in limine*, but allowed the petitioner to elicit such statements under an offer of proof.

**Witness Credibility**

Based upon my legal judgment, experience and observations at the hearing, I find that the credibility of the witnesses is not an issue in this matter.

### **Exhibits**

A list itemizing the exhibits and their status is attached to this order.

### **Briefing Schedule**

A briefing schedule in light of the then statutory decision due date was discussed and agreed to at the hearing. However, the petitioner represented on April 28, 2005, that it will extend the statutory decision deadline by filing a waiver decision deadline to and including July 21, 2005. To that end, the post-hearing briefing schedule has been modified as follows: the petitioner's opening post-hearing brief must be served and filed on or before May 13, 2005. The mailbox rule does not apply. The respondent's post-hearing brief must be served and filed on or before June 3, 2005. The mailbox rule does not apply. Petitioner's reply, if any, must be served and filed on or before June 17, 2005. The mailbox rule does not apply. Public comment is due to be filed on or before May 20, 2005. Michael Watson, Merlin Karlock and Keith Runyon's *amicus curiae* brief is due to be filed on or before May 20, 2005.

IT IS SO ORDERED.

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Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.8917

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April 6 and 7, 2005 Hearing**Exhibit List**

Exhibit	Description	Status
Hearing Officer Exhibit 1	Trial Brief of respondent regarding offer of proof	Taken with the case
Hearing Officer Exhibit 2	Evidence Deposition of Lisa Latham	Admitted
Hearing Officer Exhibit 3	Evidence Deposition of Douglas Graves	Admitted
Hearing officer Exhibit 4	Discovery Deposition of Pamela Lee	Admitted
Hearing Officer Exhibit 5	Evidence Deposition of Duane Bertrand	Admitted
Hearing Officer Exhibit 6	Evidence Deposition of William Olthoff	Admitted
Petitioner's Exhibit 1	Letter dated February 19, 2004, from Tammy Focken	Admitted
Petitioner's Exhibit 2	Letter dated February 18, 2004, from Karon Mallaney	Admitted
Petitioner's Exhibit 3	Undated letter from Linda Olson	Admitted
Petitioner's Exhibit 4	IVI – IPO 2004 General Assembly Questionnaire re: Ann Bernard	Taken as offer of proof
Petitioner's Exhibit 5	Newspaper article dated March 10, 2004	Taken as offer of proof
Petitioner's Exhibit 6	Ann Bernard's website article	Taken as offer of proof
Petitioner's Exhibit 7	Roll Call and Votes dated, January 31, 2003	Admitted
Petitioner's Exhibit 8	Roll Call and Votes dated, March 17, 2004	Admitted
Petitioner's Exhibit 9	Roll Call and Votes, dated April 13, 2004	Taken as offer of proof