

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 10 2005

WASTE MANAGEMENT OF ILLINOIS, INC.,)

Petitioner,)

vs.)

COUNTY BOARD OF KANKAKEE COUNTY,)
ILLINOIS,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 04-186

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on June 10, 2005, we filed with the Illinois Pollution Control Board, an original and four copies of the attached Waste Management of Illinois, Inc.'s Stipulation and Joint Motion for Remand.

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

JUN 10 2005

WASTE MANAGEMENT OF)
ILLINOIS, INC.,)

Petitioner,)

v.)

COUNTY BOARD OF KANKAKEE)
COUNTY, ILLINOIS,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB 04-186

STIPULATION AND JOINT MOTION FOR REMAND

Petitioner Waste Management of Illinois, Inc. ("WMII"), by its attorneys, Pedersen & Houpt, and Respondent County Board of Kankakee County, Illinois ("County Board") by its attorneys, Hinshaw & Culbertson, hereby submit this Stipulation and Joint Motion for Remand, and in support thereof, state as follows:

1. The County Board denied the Site Location Application for Expansion of the Kankakee Landfill, filed September 26, 2003, on March 17, 2004. The denial was based on a determination that Criteria (i), (iii) and (vi) had not been satisfied.

2. On April 21, 2004, WMII filed this appeal, asserting that the rejection of Criteria (i), (iii) and (vi) were unsupported and against the manifest weight of the evidence. WMII further asserts that the March 17 decision was based not on the evidence but, rather, on improper ex parte communication and political pressure, thus rendering the process fundamentally unfair. WMII sought reversal of the March 17 decision, or, in the alternative, a finding that the proceedings were fundamentally unfair and a remand to the County Board.

3. On May 2, 2005, WMII submitted to the County Board a proposal to enter into certain stipulations regarding this appeal.

4. The County Board did not believe it had the authority to act on or respond to the proposal because of the pendency of this appeal. As a result, the County Board adopted Resolution No. 2005-05-25-76, authorizing that a request be made of this Board to remand the proceeding to permit continuing consideration of the application. A true and correct photocopy of the Resolution is attached as Exhibit A.

5. WMII and the County Board agree that the most appropriate course of action with respect to this appeal would be for the PCB to remand the proceeding back to the County Board for further consideration. The remand would allow the County Board to further deliberate as to the Site Location Application and proposal within the procedures set forth in Section 39.2 of the Illinois Environmental Protection Act. 415 ILCS 5/39.2 (2002) The remand would also allow the PCB to close this docket.

6. The PCB has the authority to remand an appeal of an administrative decision to the decisionmaker for further consideration. Caterpillar Tractor Company v. Illinois Environmental Protection Agency, No. PCB 83-58, slip op. at 1 (March 7, 1985).

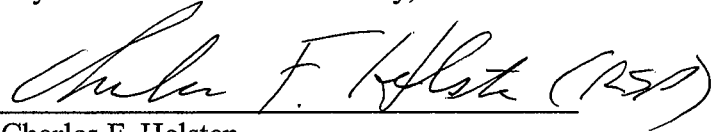
7. Resolution of this appeal by remand back to the County Board will result in substantial saving of time, effort and expense by the parties and the PCB in litigating and rendering a decision in this appeal.

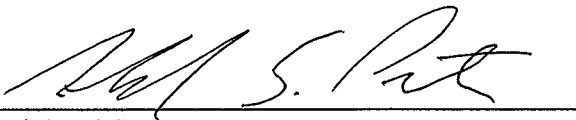
8. Remand will preserve any rights interested persons may have to appeal a siting decision pursuant to Section 40.1 of the Act.

WHEREFORE, WMII and the County Board respectfully request that the PCB accept this Stipulation and remand this to the County Board for further consideration.

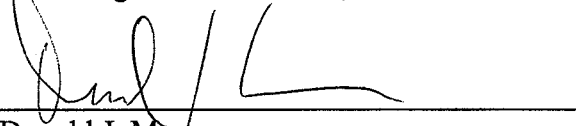
Respectfully submitted,

County Board of Kankakee County, Illinois

By: 
Charles F. Helsten

By: 
Richard S. Porter

Waste Management of Illinois, Inc.

By: 
Donald J. Moran

Charles F. Helsten
Richard S. Porter
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STATE OF ILLINOIS, }
County of Kankakee, } ss.

I, Bruce Clark, County Clerk of said County, and custodian of the Records and Files
of said office do hereby certify that the annexed is a true and correct copy of
..... A RESOLUTION PASSED AT A SPECIAL MEETING OF
..... THE KANKAKEE COUNTY BOARD HELD MAY 25, 2005.
..... RESOLUTION #2005-05-25-76
.....
.....
.....
.....

as appears from the Files and Records now in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my official seal, at
Kankakee, in said County, this .25..... day of... MAY.....,
A.D. 2005..

..... *Bruce Clark*
Clerk.

By
Deputy.

EXHIBIT
A

**RESOLUTION OF THE COUNTY BOARD
Of
KANKAKEE COUNTY, ILLINOIS**

Resolution No.: 2005-05-25-76

**RE: Request to the Illinois Pollution Control Board as to
PCB Case No.: 04-186**

WHEREAS, the County of Kankakee, a body corporate and politic, denied siting approval of Waste Management of Illinois, Inc., seeking to site the lateral expansion of a sanitary landfill within the County; and

WHEREAS, an appeal was taken of said denial by Waste Management of Illinois, Inc. to the Illinois Pollution Control Board; and

WHEREAS, the County of Kankakee is engaged in certain litigation (No. PCB 04-186) with Waste Management of Illinois, Inc., now pending before the Illinois Pollution Control Board; and

WHEREAS, the County of Kankakee has received a communication from Waste Management of Illinois, Inc., in the nature of an offer to enter into a certain Stipulations;

WHEREAS, the County of Kankakee, as the siting authority under the provisions of the Illinois Environmental Control Act, has lost jurisdiction to entertain any substantive matters, for the reason that its previous denial of said siting application was a final action; and

WHEREAS, the only remaining mechanism for the County Board of the County of Kankakee to entertain any such matters would be for the Pollution Control Board to remand the pending case to the siting authority for the sole purpose of allowing an opportunity for further deliberations; and


WHEREAS, the County wishes to exercise this final opportunity to fully explore and deliberate further on various matters;

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

The Chairman of the Kankakee County Board be and is hereby authorized and directed, either himself or through his attorneys, designees, and/or agents, to request the Illinois Pollution Control Board to remand said pending case No. 04-186 to the local siting authority, to-wit: the Kankakee County Board, for the sole

and singular purpose of continuing deliberations on the application, based on the record heretofore made in the underlying siting proceeding, without prejudice to or in anyway waiving the position presently taken by the Kankakee County Board in this matter on appeal.

SO RESOLVED this 25th day of May, 2005.


Board Chairman

ATTEST: 
Board Secretary (County Clerk)

AYES: 19

NAYS: 6

PROOF OF SERVICE

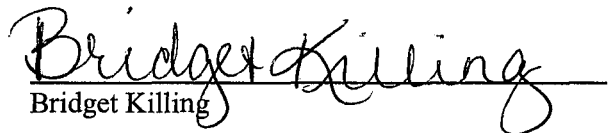
Bridget Killing, a non-attorney, on oath states that she served the foregoing **Waste Management of Illinois, Inc.'s Stipulation and Joint Motion for Remand** by enclosing same in an envelope addressed to the following parties as stated below, and by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, on or before 5:00 p.m. on this 10th day of June, 2005:

Mr. Rick Porter
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

and by hand delivery to:

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601


Bridget Killing