

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 05 2005

STATE OF ILLINOIS
Pollution Control Board

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

No. PCB 04-186
(Pollution Control Facility
Siting Appeal)

NOTICE OF FILING

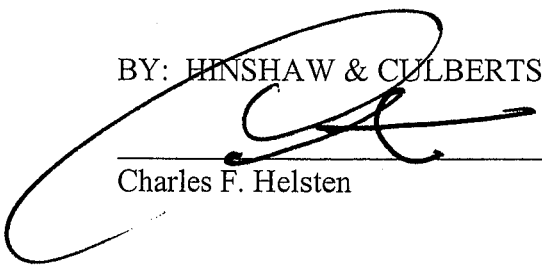
TO: All Attorneys of Record

PLEASE TAKE NOTICE THAT on July 1, 2005, I mailed for filing with the Illinois Pollution Control Board, Chicago, Illinois, the attached **Respondent's Response to Keith Runyon's "Rational and Motions"**, a copy of which is herewith served upon you.

DATED: 7/1/05

COUNTY BOARD OF KANKAKEE COUNTY,
ILLINOIS,

BY: HINSHAW & CULBERTSON



Charles F. Helsten

HINSHAW & CULBERTSON
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RESPONDENT'S RESPONSE TO KEITH RUNYON'S "RATIONAL AND MOTIONS"

NOW COMES Respondent, COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, by and through its Attorneys, HINSHAW & CULBERTSON LLP, and as and for its Response to Keith Runyon's "Rational and Motions," states as follows:

I. BACKGROUND

1. On September 26, 2003, Waste Management of Illinois, Inc. ("WMII") filed a site location application with the County Board of Kankakee, Illinois ("County Board") for expansion of an existing landfill located in the County of Kankakee, Illinois.
2. On March 17, 2004, the County Board denied WMII's application.
3. WMII has sought review of the County Board's decision pursuant to Section 40.1(a) of the Illinois Environmental Protection Act ("Act").
4. Keith Runyon and two other objectors at the local siting hearing, Merlin Karlock and Michael Watson, sought to intervene in these proceedings one year ago, in June and July of 2004, arguing that the County and its attorneys would not advocate zealously in defending the County Board's denial of siting approval.

5. This Board properly denied intervention to those individuals but allowed them to file amicus curiae briefs, which Mr. Runyon, Mr. Karlock and Mr. Watson each did in May of 2005.

6. Despite this Board's previous ruling denying intervention, Mr. Runyon again requests leave to file a motion to intervene, asserting that he should be entitled to intervene in this proceeding because, according to Mr. Runyon, "the County's Attorney has abandoned his defense of the County's denial," so "there is no one defending the County's denial and the rights and interests of the objectors and the citizens of the County." (Runyon's pleading, p. 1)

7. Mr. Runyon further requests "that this Board bar the County of Kankakee and its Attorney from further participation in this matter." (Runyon's pleading, p. 1)

8. Mr. Runyon does not cite to any legal authority in support of his requests to intervene or to bar the County and its Attorney from participating in this matter.

II. ARGUMENT

A. MR. RUNYON'S REQUEST FOR LEAVE TO INTERVENE SHOULD BE DENIED BECAUSE THE COUNTY BOARD, THROUGH ITS COUNSEL, IS ZEALOUSLY DEFENDING ITS DENIAL OF WMII'S APPLICATION.

9. In his "Rational and Motions," Mr. Runyon makes accusations against the County Board and its Attorney that have absolutely no basis in fact. Specifically, Mr. Runyon unjustifiably and wrongfully accuses the County Board's legal counsel of failing to defend the County Board's denial of WMII's application.

10. The facts, however, clearly establish that counsel for the County Board has and will continue to vehemently and zealously defend the County Board in its decision to deny siting approval to WMII.

11. Despite Mr. Runyon's contention that counsel for the County Board is "biased in Waste Management's favor," counsel for the County Board has continuously represented the County Board's interests against WMII throughout the course of this proceeding.

12. In fact, in March of 2005, counsel for the County Board opposed a Motion to Compel filed by WMII, arguing that WMII should not be allowed to delve into the mental processes of County Board members.

13. Soon thereafter, on April 4, 2005, counsel for the County Board filed a Motion in Limine to bar WMII from presenting any evidence or testimony about statements made by a County Board member during her State Representative Election Campaign regarding landfills in Kankakee County.

14. Moreover, on April 6 and 7, 2005, counsel for the County Board participated in this Board's hearing, and at that hearing properly defended the County Board and its members by repeatedly objecting to WMII's attempts to illicit improper information from County Board members.

15. Currently, counsel for the County Board is in the process of drafting its Post-Hearing Brief, which is due on or before July 22, 2005. In that Brief, counsel for the County Board will refute each and every argument presented in WMII's Brief and will persuasively argue that the County Board's decision denying WMII's siting application was correct and fundamentally fair.

16. Mr. Runyon's assertions that Hinshaw & Culbertson LLP is somehow not adequately representing the County Board because of its "bias[] in Waste Management's favor" is simply nonsense, as evidenced by Hinshaw & Culbertson LLP's vigorous defense of the

County Board's denial of WMII's application before, during and since the Illinois Pollution Control Board Hearing.

17. Mr. Runyon has provided no factual support for his accusation that the County Board will not vigorously defend its denial of siting approval, and his Motion is based only upon unsupported accusations, including the improper and incorrect insinuation that counsel for the County Board is being paid by WMII.

18. This issue was thoroughly addressed and reconciled in PCB 03-125, 133, 134, 135 (cons.) after Hinshaw & Culbertson LLP clearly established that it has always represented and been paid by the County of Kankakee. *See* Affidavit of Joan Lane submitted as public comment in PCB 03-125, 133, 134 and 135 (cons.), and attached hereto as Exhibit A.

19. Furthermore, as set forth in an affidavit drafted by the Kankakee County Planning Director, and submitted as public comment in PCB 03-125, 133, 134 and 135 (cons.), the law firm of Hinshaw & Culbertson LLP never represented WMII in connection with the Kankakee County Landfill. *See* Affidavit of Mike Van Mill, attached hereto as Exhibit B.

20. Mr Runyon also suggests that counsel for the County Board has somehow "advocat[ed] in favor of Waste Management" by defending the County's approval of WMII's first application. However, the fact that Hinshaw & Culbertson LLP defended the County Board's decision to grant site location approval of WMII's previous application does not prove any advocacy, but actually establishes Hinshaw & Culbertson LLP's loyalty and commitment to vigorously defend its clients in all cases on the separate merits of each case.

21. As is made clear in his "Rational and Motions," Mr. Runyon has not and cannot allege any real facts to support his accusation that the County and its attorneys will not advocate

zealously and, instead, relies on a letter drafted by the County Board's counsel regarding a proposed stipulation to remand in support of his accusations against the County and its counsel.

22. However, Mr. Runyon fails to point out that that the letter written by Mr. Helsten specifically states that the request for remand "does not in anyway obviate or negate the County Board's denial of the application for site location approval in question, and unless that prior determination is rescinded and/or modified, that prior determination stands." See Letter, attached hereto as Exhibit C.

23. This provision, in and of itself, specifically and directly establishes that the County Board and its attorney will continue to stand by and defend the County Board's denial of site location approval.

24. Because Mr. Runyon has failed to present a single piece of evidence to support his accusation that the County Board of Kankakee County and its attorney has not and will not zealously defend the County Board's decision, intervention is neither necessary nor appropriate. *See Rochelle Waste Disposal, L.L.C. v. City Council of Rochelle*, PCB 03-218 (June 19, 2003) (finding that the a citizens group should not be allowed to intervene despite the group's accusations that the City counsel might not adequately defend its decision).

B. MR. RUNYON'S REQUEST FOR LEAVE TO FILE A MOTION TO INTERVENE SHOULD BE DENIED BECAUSE THE UNANIMOUS LEGAL AUTHORITY PROHIBITS INTERVENTION.

25. Mr. Runyon should not be granted leave to file a motion to intervene because intervention is clearly prohibited by the IPCB Procedural Rules, the Illinois Environmental Protection Act and IPCB precedent.

26. Rule 107.200 of the PCB Procedural Rules sets forth who may file a petition for review concerning siting of a new pollution control facility, and allows only two types of people

to do so: 1) siting applicants when there has been a "decision to deny siting" or to "appeal conditions imposed in a decision granting siting approval"; and 2) a person who participated in the local siting hearing who is adversely affected by a unit of local government's "decision to grant siting." 35 Ill. Adm. Code 107.200 (emphasis added).

27. As set forth above, only the applicant may be a petitioner when a siting application is denied by a local governing unit. *See* 35 Ill. Adm. Code 107.200.

28. Furthermore, Rule 107.202 specifically sets forth who may be parties to a review of a local government's decisions concerning a new pollution control facility. Rule 107.202 provides:

a) In a petition to review a local government's decision concerning a new pollution control facility, the following are parties to the proceeding:

1) The petitioner or petitioners are the persons described in Section 107.200 of this Part. If there is more than one petitioner, they must be referred to as co-petitioners; and

2) The unit(s) of local government whose decision is being reviewed must be named the respondent(s). In an appeal pursuant to Section 107.200(b), the siting applicant must also be named as respondent.

b) Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

35 Ill. Adm. Code 107.202.

29. Rule 107.202 clearly does not allow for an objector such as Mr. Runyon, to be a party to this proceedings, as Rule 107.202 clearly limits the parties to the petitioner(s), the unit(s) of local government, and the Attorney General or State's Attorney (if they seek intervention).

30. Therefore, IPCB Rules 107.200 and 107.202 clearly do not allow intervention.

31. Mr. Runyon's Petition to Intervene must also be denied pursuant to the plain language of Section 40.1 of the Illinois Environmental Protection Act, which provides:

(a) If the county board * * * refuses to grant approval * * * the applicant may * * * petition for a hearing before the [IPCB] to contest the decision * * *.

(b) If the county board * * * grants approval * * * a third party other than the applicant * * * may petition the [IPCB] * * * for a hearing to contest the approval * * *

415 ILCS 5/40.1(a).

32. While the Act allows for intervention by third parties when an application is approved, "[t]he Act thus does not provide for a third-party appeal where the PCB has refused to grant site approval." *McHenry County Landfill, Inc. v. Illinois Environmental Protection Agency*, 154 Ill.App.3d 89, 95, 506 N.E.2d 372, 376 (2d Dist. 1987); *see also Waste Management of Illinois, Inc. v. Illinois Pollution Control Board*, 160 Ill.App.3d 434, 444, 513 N.E.2d 592, 598 (2d Dist. 1987) ("following a county board denial of a site approval request, section 40.1 of the Act precludes objectors from becoming parties to a PCB review hearing").

33. Based on the explicit language contained in Section 40.1 of the Act, this Board must deny Mr. Runyon's petition to intervene because "[t]he PCB is powerless to expand its authority beyond that which the legislature has expressly granted to it." *McHenry County*, 154 Ill.App.3d at 95, 506 N.E.2d at 376. As such, it would be improper and unlawful for this Board to allow Mr. Runyon to intervene as a party in this proceeding. *See id.* (holding that "the PCB improperly permitted the objectors to become parties to the proceeding before it" and therefore finding that the objectors had no standing to appeal under section 41 of the Act).

34. It is clear that Mr. Runyon's Petition to Intervene should be denied, as this Board has universally held that third-party objectors, like Mr. Runyon, are not entitled to intervention when the local unit of government denies an applicant's request for site location approval. *See Rochelle Waste Disposal, L.L.C. v. City Council of Rochelle*, PCB 03-218 (July 10, 2003) (explaining that a third-party objector did not have special intervention rights, and therefore

could not intervene); *Waste Management of Illinois, Inc. v. County Board of Kane County*, PCB 03-104 (Feb. 20 (2003) (same); *Land and Lakes Co. v. Randolph County Board of Commissioners*, PCB 99-69 (March 18, 1999) (finding that "allowing a third-party to intervene would be granting party status to someone who does not have party status under Section 40.1 of the Act"); *Lowe Transfer, Inc. v. County Board of McHenry County*, PCB 03-221 (July 10, 2003) ("It is well established that third-party objectors are precluded from intervention in an appeal from a denial of siting approval."); *Riverdale Recycling, Inc. v. IEPA*, PCB 00-228 (same); *Land and Lakes Co. v. Village of Romeoville*, PCB 94-195 (Sept. 1, 1994) (same).

35. Because it is well-settled that a third-party objector, like Mr. Runyon, has no right to intervene in a case involving landfill siting approval where approval is denied by the local governing body, Mr. Runyon's should not be granted leave to file a motion to intervene.

C. THE COUNTY BOARD AND ITS ATTORNEY CANNOT BE BARRED FROM PARTICIPATING IN THIS PROCEEDING.

36. Not only has Mr. Runyon failed to present any facts or evidence in support of his request to bar the County Board and its attorney from further participation in this matter, but Mr. Runyon has also failed to provide any legal authority that would allow this Board to do so.

37. In fact, there is no legal authority to support Mr Runyon's request, as both the Illinois Environmental Protection Act and the Rules of the Illinois Pollution Control Board specifically require that the County Board be a party in this proceedings.

38. Section 40.1(a) of the Illinois Environmental Protection Act specifically provides that when an applicant petitions for a hearing before the Illinois Pollution Control Board based on a county board or municipality's refusal to grant local siting approval, "[t]he county board or governing body of the municipality shall appear as respondent in such hearing. . ." 415 ILCS 5/40.1(a).

39. Furthermore, Rule 107.202(a)(2) of the Illinois Pollution Control Board Rules specifically provides: "In a petition to review a local government's decision concerning a new pollution control facility . . . [t]he unit(s) of local government whose decision is being reviewed must be named the respondent(s)." 35 Ill. Adm. Code 107.202(a)(2).

40. Based on the provisions above, the County Board has an absolute right and duty to participate in this proceeding and may do so through the attorney of its choice.

41. Consequently, this Board must deny Mr. Runyon's request to bar the County Board and its attorney from participating in this matter.

III. CONCLUSION

WHEREFORE, Respondent, COUNTY BOARD OF KANKAKEE, ILLINOIS, respectfully requests that this Board deny Mr. Runyon's request for leave to file a motion to intervene and deny his request to bar the County Board and its attorney from further participation in this matter.

DATED: 7/1/05

COUNTY BOARD OF KANKAKEE COUNTY,
ILLINOIS,

BY: HINSHAW & CULBERTSON LLP



Charles F. Helsten

Firm No. 695
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900

AFFIDAVIT

I, JOAN LANE, the undersigned being first duly sworn on oath depose and state as follows:

1. I am an employee of Hinshaw & Culbertson and the Administrative Assistant for Charles F. Helsten who is a Special Assistant State's Attorney for the County of Kankakee for environmental and solid waste matters.

2. Mr. Helsten and Hinshaw & Culbertson were hired by the State's Attorney for the County of Kankakee in late 2001.

3. At the time that Hinshaw & Culbertson and Mr. Helsten were hired by the Kankakee County State's Attorney, a file was opened, Matter Number 809319, at which time the matter was referred to as the "Kankakee County Landfill".

4. I was responsible for opening the file for Mr. Helsten, and at that time I inadvertently listed the Kankakee County Landfill as the both the "matter" and the "client".

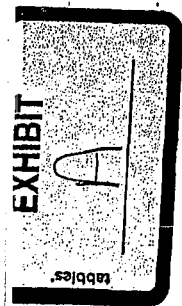
5. The landfill itself was not the client.

6. Since the date that Hinshaw was first retained by the Kankakee County State's Attorney several other files have been opened for Hinshaw's representation of the State's Attorney, Kankakee County or Kankakee County staff, including Matter Numbers, 813053, 813333, and 815142.

7. I used the "file intake sheet" for Matter Number 809319 as a template for the file intake sheets for Matter Numbers 813053, 813333, 815142 and any other file opened on behalf of the Kankakee County State's Attorney, Kankakee County or Kankakee County staff.

8. Because I used the file intake sheet for 809139 as a template for the subsequent files, the same typographical error referencing that the client was "Kankakee County Landfill" was made in each of these subsequent files.

9. All of the bills concerning the application to expand the landfill operated by Waste Management in Kankakee County have been paid by Kankakee County.



10. The reference to "Kankakee County Landfill" as the client on the file intake sheet was merely an inadvertent typographical error.

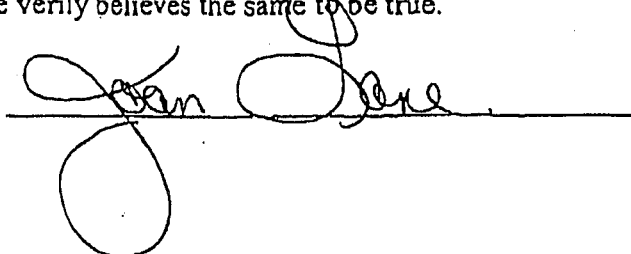
11. The result of the client being identified as Kankakee County Landfill on the file intake sheets was that the invoices sent to Kankakee County State's Attorney Edward Smith erroneously indicated "Represent: Kankakee County Landfill".

12. In January 2003, I had the error corrected on all of the files.

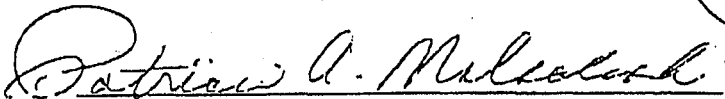
13. At no time has Hinshaw & Culbertson represented the Kankakee County landfill or its operator, Waste Management of Illinois, Inc., in regard to any siting application, host agreement negotiation, or otherwise, in Kankakee County.

FURTHER AFFIANT SAYETH NOT.

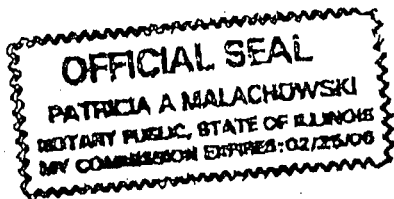
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

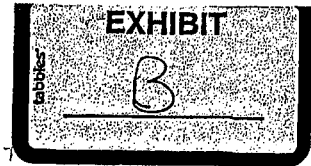


SUBSCRIBED and SWORN to
before me this 21st day of May, 2003.



Notary Public





AFFIDAVIT

I, MIKE VAN MILL, the undersigned being first duly sworn on oath depose and state as follows:

1. I am the Kankakee County Planning Director.
2. I am familiar with the attorneys that have been hired by the County of Kankakee to assist in the legal aspects of the County's environmental and solid waste management issues.
3. In 2001 Attorney Charles Helsten and the law firm of Hinshaw & Culbertson were hired by the State's Attorney for County of Kankakee.
4. At various times Hinshaw & Culbertson has represented the County of Kankakee, County staff, and/or the Kankakee County State's Attorney.
5. At no time did the State's Attorney, Kankakee County, or Kankakee County staff retain Hinshaw & Culbertson or Mr. Helsten to represent Waste Management of Illinois, the operator of the Kankakee County Landfill.
6. The County of Kankakee has paid all of Hinshaw & Culbertson's invoices which are in any way associated with the negotiation of a host agreement with Waste Management of Illinois.
7. The County of Kankakee has paid all of Hinshaw & Culbertson's invoices concerning the application of Waste Management of Illinois to site a landfill expansion in Kankakee County.

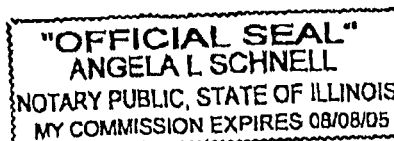
FURTHER AFFLIANT SAYETH NOT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Mike Van Mill
MIKE VAN MILL

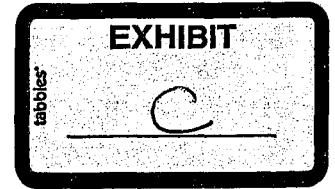
SUBSCRIBED and SWORN to before me this 21 day of May, 2003.

Angela L. Schnell
Notary Public



HINSHAW

& CULBERTSON LLP



May 27, 2005

Mr. Donald J. Moran
Pederson & Houpt
161 N. Clark Street, Suite 3100
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815-490-4900
815-490-4901 (fax)
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Re: Waste Management II Siting Appeal (PCB No. 04-186)

Dear Mr. Moran:

Please find enclosed herewith a copy of a Resolution passed by the Kankakee County Board on May 25, 2005, authorizing the County to join a Stipulation which requests this matter be remanded by the Pollution Control Board to the Kankakee County Board for further deliberation.

Please prepare such a stipulation for my review and approval.

In my opinion, the Stipulation need only refer to the fact that the Kankakee County Board is agreeing to this matter being remanded back to the County Board for further deliberation; nothing more, nothing less.

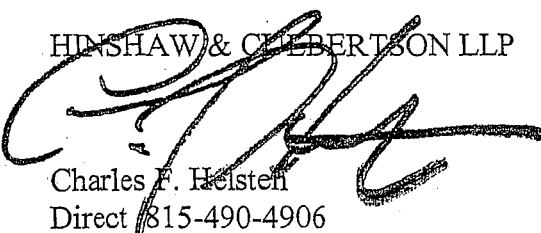
Again, please note that the Resolution that was passed provides that the remand request is without prejudice to and does not in any way waive the position presently taken by the Kankakee County Board in this matter on appeal. As I have also indicated to you, in my opinion, the procedural request for remand alone does not in anyway obviate or negate the County Board's prior denial of the application for site location approval in question, and unless that prior determination is rescinded and/or modified, that prior determination stands.

I am providing a copy of this correspondence and the Resolution to amicus parties as well.

Should you have any questions concerning this matter, feel free to contact me.

Sincerely,

HINSHAW & CULBERTSON LLP



Charles F. Helsten
Direct 815-490-4906
chelsten@hinshawlaw.com

CFH:jml

Mr. Donald J. Moran
May 27, 2005
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Enclosures

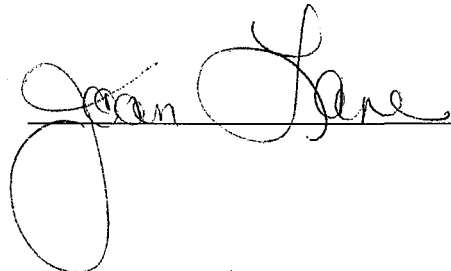
cc: Jennifer Sackett Pohlenz
George Mueller
Keith Runyon
Ed Smith
Karl Kruse

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on July 1, 2005, a copy of the foregoing was served upon:

Dorothy M. Gunn, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, IL 60601-3218	Edward Smith Kankakee County State's Attorney 450 East Court Street Kankakee, IL 60901
George Mueller George Mueller, P.C. 501 State Street Ottawa, IL 61350	Christopher Bohlen Barmann, Kramer & Bohlen, P.C. 200 East Court Street, Suite 502 Kankakee, IL 60914
Kenneth A. Bleyer 923 W. Gordon Ter., #3 Chicago, IL 60613-2013	Keith Runyon 1165 Plum Creek Drive Boubannais, IL 60914
Elizabeth Harvey Swanson, Martin & Bell One IBM Plaza – Suite 3300 330 N. Wabash Chicago, IL 60611	Jennifer Sackett Pohlenz David Flynn Querry & Harrow 175 W. Jackson Blvd., Suite 1600 Chicago, IL 60604-2827
Brad Halloran Hearing Officer Illinois Pollution Control Board 100 West Randolph, 11th Floor Chicago, IL 60601	

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford,, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.



HINSHAW & CULBERTSON
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Rockford, Illinois 61101-1389
(815) 490-4900

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