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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 13 2007

AMERICAN BOTTOM CONSERVANCY,)
and SIERRA CLUB,)

STATE OF ILLINOIS
Pollution Control Board

Co-Petitioners,)

v.)

PCB 07-84
(Pollution Control Facility
Siting Appeal)

CITY OF MADISON, and WASTE)
MANAGEMENT OF ILLINOIS, INC.,)

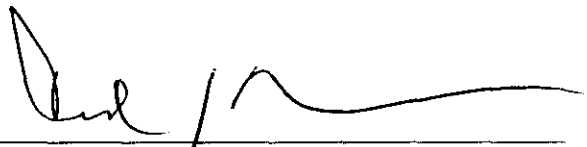
Respondents.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on April 13, 2007, we filed with the Illinois Pollution Control Board, the attached Waste Management of Illinois, Inc.'s **APPEARANCE** in the above entitled matter.

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

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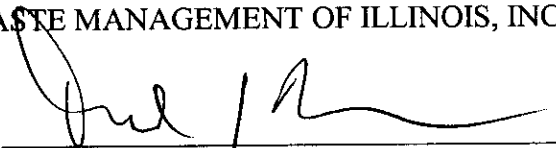
APPEARANCE

Now comes WASTE MANAGEMENT OF ILLINOIS, INC., by one of its attorneys,
Donald J. Moran of Pedersen & Houpt, and hereby enters its appearance in the above-referenced
matter regarding the Petition for Review of Pollution Control Facility Siting Approval filed by
American Bottom Conservancy and Sierra Club, and gives notice that it intends to participate in
the hearings thereon.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By: _____



Donald J. Moran
One of Its Attorneys

Donald J. Moran
PEDERSEN & HOUP
161 North Clark Street
Suite 3100
Chicago, Illinois 60601
Telephone: (312) 641-6888

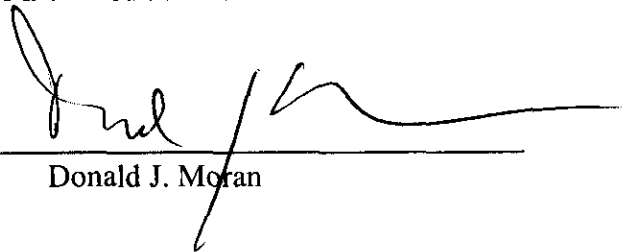
CERTIFICATE OF SERVICE

I, Donald J. Moran, an attorney, on oath state that I caused a copy of the foregoing APPERANCE to be served on the following parties:

Bruce A. Morrison
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, MO 63101-2208

John T. Papa
Callis, Papa, Hale, Szewczyk & Danzinger
1326 Niedringhaus Avenue
Granite City, IL 62040

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 13th day of April, 2007 to the addresses indicated above.



Donald J. Moran

APR 13 2007

STATE OF ILLINOIS
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**ANSWER OF WASTE MANAGEMENT OF ILLINOIS, INC.
TO PETITION FOR REVIEW**

Waste Management of Illinois, Inc., by its attorneys Pedersen & Houpt, answer the Petition for Review of Pollution Control Facility Siting Approval as follows:

Jurisdiction and Venue

1. American Bottom Conservancy (ABC), an Illinois not-for-profit corporation, is a volunteer, grass-roots organization based in metropolitan East St. Louis, Illinois. ABC works to protect Illinois natural and cultural resources, with particular emphasis on wetlands and the American Bottom floodplain of the Mississippi River. A primary concern of ABC is the preservation of natural areas and the environment in and around Horseshoe Lake State Park and Cahokia Mounds World Heritage Site. ABC is also committed to the proper siting and operation of solid waste disposal facilities.

ANSWER: Waste Management of Illinois, Inc. ("WMII") lacks knowledge sufficient to admit or deny the allegations contained in paragraph 1.

2. ABC is a membership organization. ABC members travel on roads, walk trails, observe nature, and fish in the vicinity of the proposed landfill and would be impacted by the noise and smells emanating from the landfill and the possible contamination by the landfill of Horseshoe Lake. Further, ABC has Native American members who would be negatively

impacted by the construction of a landfill where Indian remains and mounds have been found—on land they consider sacred.

ANSWER: WMII lacks knowledge sufficient to admit or deny the allegations contained in paragraph 2.

3. ABC and its members participated in the public hearing before the City of Madison. ABC brings this petition for review to redress its injuries and the injuries to its members.

ANSWER: WMII lacks knowledge sufficient to admit or deny the allegations contained in paragraph 3.

4. Sierra Club is a nonprofit corporation incorporated under the laws of the State of California. Sierra Club is a membership organization, composed of more than 700,000 members nationally, and more than 26,000 members in the State of Illinois. From its founding in 1892, Sierra Club has been actively engaged in efforts to preserve the natural values of the Mississippi River and its adjoining floodplains. These interests of Sierra Club and its members will be adversely affected by the City of Madison’s approval of the application.

ANSWER: WMII lacks knowledge sufficient to admit or deny the allegations contained in paragraph 4.

5. Members of the Sierra Club Kaskaskia and Piasa Palisades groups participated in the public hearing before the City of Madison. Sierra Club files this petition for review on its own behalf and on behalf of its members.

ANSWER: WMII lacks knowledge sufficient to admit or deny the allegations contained in paragraph 5.

Respondents

6. Respondent City of Madison, Illinois, approved the Application for siting approval for the North Milam Recycling and Disposal Facility.

ANSWER: WMII admits the allegations contained in paragraph 6.

7. Respondent Waste Management of Illinois, Inc., is the applicant.

ANSWER: WMII admits the allegations contained in paragraph 7.

Proceedings before the City of Madison

8. On September 22, 2006, Respondent Waste Management of Illinois, Inc. (“WMII” or “Applicant”), filed an application with the City of Madison for siting approval pursuant to §39.2 of the Act of a pollution control facility, specifically an expansion of WMII’s Milam Recycling & Disposal Facility located in Fairmont City, St. Clair County, to be called “North Milam,” located in the City of Madison, Madison County, Illinois.

ANSWER: Under proceedings before the City of Madison, WMII admits the allegations contained in paragraph 8.

9. The proposed landfill site is within 2100 feet of the Cahokia Mounds National Historic Landmark boundaries. Cahokia Mounds is a UNESCO World Heritage Site as well as a state historic site. Cultural artifacts, Indian mounds and an ancient skull have been found on and around the site of the proposed landfill.

ANSWER: WMII admits that the Cahokia Mounds is a UNESCO World Heritage Site as well as a state historic site. WMII denies the remaining allegations contained in paragraph 9.

10. The proposed landfill is to be located on 18 acres of wetlands.

ANSWER: WMII denies the allegations contained in paragraph 10.

11. The area surrounding the proposed landfill includes Horseshoe Lake State Park and Lake, visited by 360,000 people annually and used for both recreational and subsistence fishing, walking and nature trails, and a campground. There is open space, farmland, wetlands and Eagle Park Marsh—listed on the Illinois Natural Areas Inventory.

ANSWER: WMII lacks knowledge sufficient to admit or deny the allegations contained in paragraph 11.

12. A public hearing was held on the Application on December 21 and 22, 2006.

ANSWER: WMII admits the allegations contained in paragraph 12.

13. On February 6, 2007, the Aldermen of the City of Madison approved the Application. According to the Deputy City Clerk, the City's written decision is set forth in the minutes of the Madison City Council meeting of February 6, 2007, and that there is no other written decision or ordinance of the City concerning the Application. The minutes of the Madison City Council meeting of February 6, 2007, are attached to this petition as Ex. 1.

ANSWER: WMII admits that the City of Madison approved the Application on February 6, 2007. WMII lacks knowledge sufficient to admit or deny the remaining allegations contained in paragraph 13.

Count I - Fundamental Fairness

14. Co-petitioners incorporate by reference paragraphs 1 through 13 above.

ANSWER: WMII restates and incorporates by reference its answers to paragraphs 1 - 13.

15. The proceedings of the City of Madison, including the City's pre-hearing, hearing, and post-hearing procedures, and the City's decision-making process, as well as the action of the City taken on February 6, 2007, were defective, unlawful, and not fundamentally fair for reasons including those set forth below.

ANSWER: WMII denies the allegations contained in paragraph 15.

16. On June 13, 2006, the City of Madison passed Ordinance 1670 governing the procedures for a public hearing for siting a pollution control facility. The City did not make the ordinance available for inspection and copying online or at any public library but, instead, sought to charge the public an excessive amount to obtain a copy. The sums that the City sought to charge the public for access to the ordinance and for other documents is not in accordance with fundamental fairness or fair public process. Further, in light of the excessive sum the City sought to charge for a copy of Ordinance 1670, the City should have borne the burden of including Ordinance 1670 within the record.

ANSWER: WMII admits that on June 13, 2006, the City of Madison passed Ordinance 1670. WMII denies the remaining allegations contained in paragraph 16.

17. Before the public hearing, the City gave to ABC and Sierra Club inaccurate information about the manner in which the City would conduct the public hearing. Further, before and during the hearing, the City repeatedly changed its rules governing the conduct of the proceedings and improperly excluded evidence offered by ABC and Sierra Club. These actions of the City negatively affected the manner in which co-petitioners examined witnesses at the hearing, and negatively affected the ability of ABC and Sierra Club to make a full record for review.

ANSWER: WMII denies the allegations contained in paragraph 17.

18. At the hearing petitioners sought to cross-examine Waste Management's expert on compatibility about the archeological findings, but were told archeology was not a part of the siting process. Further, Native Americans testified during the public hearing in opposition to the application. Further, letters from the Powell Archeological Research Center and the Cahokia Archeological Society were submitted to the City during the public comment period opposing the siting approval. Also submitted during the public comment period was a letter from the firm hired as archeological consultant by Waste Management, accompanied by a lengthy report. The day after the City Council voted to approve the Application, the City's Mayor wrote the two archeological organizations stating that the City reviewed the material provided by the consultant and that the report contradicted the contentions of the archeological organizations. By submitting the report after the close of the public hearing, petitioners were unfairly denied the opportunity to examine the material and cross-examine the consultant producing the report, and to rebut the conclusions of the report.

ANSWER: WMII denies that by submitting the report after the close of the public hearing, petitioners were unfairly denied the opportunity to examine the material and cross-examine the consultant producing the report, and to rebut the conclusions of the report. WMII admits the remaining allegations contained in paragraph 18.

19. At the hearing petitioners sought to examine Waste Management's consultant on the compatibility of the proposed facility and the wetlands at the site, but were told that wetlands was not part of siting. Yet, after the close of the public hearing, Waste Management's wetlands consultant submitted a letter and a lengthy report on wetlands during the public comment period.

Petitioners were unfairly denied the opportunity to examine the material and cross-examine the consultant producing the report.

ANSWER: WMII denies that petitioners were unfairly denied the opportunity to examine the material and cross examine the consultant producing the report. WMII denies that the wetlands consultant submitted a lengthy report on wetlands during the public comment period. WMII admits the remaining allegations contained in paragraph 19.

20. The City of Madison failed to respond, weigh, or otherwise acknowledge opposing views, comments and facts offered in opposition to the application.

ANSWER: The allegation contained in paragraph 20 is a legal conclusion to which an answer is neither necessary nor appropriate.

21. By merely voting to approve the application and failing to put in writing the reasons for its vote, the City of Madison failed to create an adequate record of its decision. (Petitioners recognize that the action by the City of Madison does not fulfill the regulatory requirements for siting approval.)

ANSWER: WMII denies the allegations contained in paragraph 21.

Relief Requested

Wherefore, American Bottom Conservancy and Sierra Club respectfully request that the Illinois Pollution Control Board set this matter for hearing and discovery, that the City of Madison's approval of the application be reversed and the application denied, and for such other and further relief as the Board deems just and appropriate.

Count II - Failure to Meet Siting Criteria

22. Co-petitioners incorporate by reference paragraphs 1 through 21 above.

ANSWER: WMII restates and incorporates by reference its answers to paragraphs

1-21.

23. The City's approval of the application is against the manifest weight of the evidence for the reasons set out below.

ANSWER: WMII denies the allegation contained in paragraph 23.

24. The landfill is not necessary to accommodate the waste needs of the area it is intended to serve because landfill capacity in the Metro East increased 28 per cent from the previous year, providing enough capacity for the area for the next 19 years.

ANSWER: WMII denies the allegation contained in paragraph 24.

25. The facility is not located so that the public health, safety and welfare will be protected because:

- A. The landfill would be located in the American Bottom floodplain, adjacent to the Cahokia Canal, less than three miles from the Mississippi River;
- B. The landfill would be located on soils that have severe restrictions for a sanitary landfill;
- C. The site is in the New Madrid Fault Zone;
- D. The landfill would be located on fragile soils subject to liquefaction;
- E. The proposed site is within 2000 feet of Horseshoe Lake State Park and the lake itself, where there is both recreational and subsistence fishing, hunting, picnicking, camping and walking and nature trails;
- F. The base of the landfill would sit virtually on top of the water table;
- G. There is the potential for groundwater contamination that could migrate to Horseshoe Lake, the Cahokia Canal and the river; and
- H. Toxic and noxious gases emanating from the landfill could easily impact visitors to the state park, which sits immediately downwind of the proposed landfill.

ANSWER: WMII denies the allegations contained in paragraph 25.

26. The facility is not 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 because the area surrounding the proposed landfill includes Horseshoe Lake State Park and Lake, visited by 360,000 people annually and used for both recreational and subsistence fishing, walking and nature trails, and a campground. There is open space, farmland, wetlands and Eagle Park Marsh—listed on the Illinois Natural Areas Inventory. Further, the proposed site is just 2100 feet from the Cahokia Mounds National Historic Landmark boundaries, a National Historic

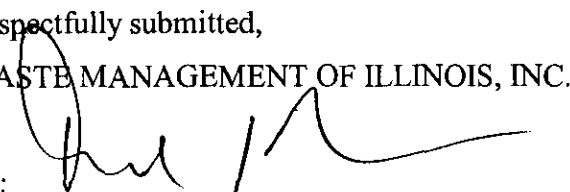
Landmark and State Historic Site and an important American Indian Cultural center that has been designated by UNESCO as a World Heritage Site and is an important Illinois tourist attraction, Further, surveys conducted preliminary to the filing of the Application produced evidence of ancient human remains, pre Columbian mounds and other features that are eligible for inclusion on the National Register of Historic Places.

ANSWER: WMII denies the allegations contained in paragraph 26.

27. The evidence in the record is insufficient to show that the proposed facility is outside of the floodplain.

ANSWER: WMII denies the allegations contained in paragraph 27.

Wherefore, WMII respectfully requests that the Illinois Pollution Control Board deny the relief requested in the Petition for Review, affirm the decision of the City of Madison granting site location approval, and award such other and further relief as the Board deems just and proper.

Respectfully submitted,
WASTE MANAGEMENT OF ILLINOIS, INC.
By: 

One of its Attorneys

Donald J. Moran
PEDERSEN & HOUP
161 N. Clark Street, Suite 3100
Chicago, Illinois 60601
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