

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on March 5, 2008, the undersigned electronically filed with the Clerk of the Illinois Pollution Control Board **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO RECONSIDER** in the above entitled matter, a copy of which is attached hereto.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: /s/ Donald J. Moran
One of Its Attorneys

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WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO RECONSIDER

Petitioner, Waste Management of Illinois, Inc. ("WMII"), by its attorneys, Pedersen & Houpt, and pursuant to Sections 101.520 and 101.902 of the Illinois Pollution Control Board ("Board") Procedural Rules ("Rules"), moves the Board to reconsider and reverse its January 24, 2008 Opinion and Order ("Opinion") affirming the decision to deny WMII's Site Location Application ("Application"). In support thereof, WMII states as follows:

1. On January 24, 2008, the Board affirmed the decision of the Kankakee County Board ("County") denying WMII's Application on the grounds, *inter alia*, that criteria (i), (iii) and (vi) of Section 39.2(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39.2(a) (2000), were not met.

2. In the Opinion, the Board identified its standard of review of the County's decision as follows:

The Board will not disturb a local siting authority's decision regarding the applicant's compliance with the statutory siting criteria unless the decision is contrary to the manifest weight of the evidence. *See Concerned Adjoining Owners*, 288 Ill. App. 3d at 576, 680 N.E.2d at 818; *see also Land and Lakes*, 319 Ill. App. 3d at 53, 743 N.E.2d at 197. "That a different conclusion may be reasonable is insufficient; the opposite

conclusion must be clearly evident, plain or indisputable.' *Concerned Adjoining Owners*, 288 Ill. App. 3d at 576, 680 N.E.2d at 818, *quoting Turlek v. PCB*, 274 Ill. App. 3d 244, 249, 653 N.E.2d 1288, 1292 (1st Dist. 1995). The Board may not reweigh the evidence on the siting criteria to substitute its judgment for that of the local siting authority. *See Fairview Area Citizens Taskforce v. PCB*, 198 Ill. App. 3d 541, 550, 555 N.E.2d 1178, 1184 (3d Dist. 1990); *Waste Management of Illinois, Inc. v. PCB*, 187 Ill. App. 3d 79, 81-82, 543 N.E.2d 505, 507 (2d Dist. 1989); *Tate v. PCB*, 188 Ill. App. 3d 994, 1022, 544 N.E.2d 1176, 1195 (4th Dist. 1989).

Waste Management of Illinois, Inc. v. County Board of Kankakee County, PCB 04-186, slip op. at p. 25 (January 24, 2008).

3. Applying the manifest weight of the evidence standard, the Board affirmed the County's decision on criteria (i), (iii) and (vi), without applying any of its technical expertise in examining the record to determine if there is relevant evidence to support the denial. *Id.*, slip op. at pp. 49, 50, 51.

4. In accordance with the recent Illinois Supreme Court case of *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 866 N.E.2d 227 (2007), the proper standard of review is not the manifest weight of the evidence standard, but rather one that requires a higher level of scrutiny to determine if there is competent evidence in the record that supports the local siting authority's decision.

5. In *Town & Country*, the Illinois Supreme Court stated that:

section 40.1(b) grants the Board an important role in the permit process. Section 40.1 requires the Board's technically qualified members to conduct a "hearing," which shall include the procedures outlined in sections 32 and 33 of the Act. 415 ILCS 5/40.1 (West 2002), *citing* 415 ILCS 5/32, 33(a) (West 2002). These sections require the Board to make factual and legal determinations on evidence. While the Board may not receive new or additional evidence, the statute still provides that the petitioner has the "burden of proof." 415 ILCS 5/40.1(a), (b) (West 2002).

Id., 225 Ill. 2d at 120, 866 N.E.2d at 237.

6. The Illinois Supreme Court further stated that: "The fact that the Board undertakes consideration of the record prepared by the local siting authority rather than preparing its own record does not render the Board's technical expertise irrelevant. Instead, the Board applies that technical expertise in examining the record to determine whether the record supported the local authority's conclusions." *Id.*, 225 Ill. 2d at 123, 866 N.E.2d at 238.

(Emphasis added.)

7. Thus, in light of *Town & Country*, the proper standard to be used by the Board on review is not whether the opposite conclusion is clearly plain and evident (*i.e.*, manifest weight review), but whether, after applying the Board's technical scrutiny to the record, it contains reliable and accurate evidence to support the local authority's decision. *See Id.*, 225 Ill. 2d at 124, 866 N.E.2d at 239. In this case, the Board did not apply the standard of review articulated in *Town & Country* in reviewing the denial of criteria (i), (iii) and (vi).

8. A motion to reconsider is proper where it seeks to bring to the Board's attention clear errors in the Board's application of the law. *See Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). This Motion asks the Board to reconsider its decision and apply the correct legal standard of review as set forth in *Town & Country*.

9. Applying the correct standard of review, the Board should determine that the record lacks any reliable or accurate evidence to support the County's denial of criteria (i), (iii) and (vi).

Electronic Filing - Received, Clerk's Office, March 5, 2008

WHEREFORE, Petitioner, WASTE MANAGEMENT OF ILLINOIS, INC., respectfully requests that the Board:

- A. Reconsider its January 24, 2008 ruling that the Application did not satisfy criteria (i), (iii) and (vi) of Section 39.2(a) of the Act;
- B. Apply the proper standard of review and determine that the record does not contain evidence sufficient to support the denial of criteria (i), (iii) and (vi);
- C. Reverse the County's denial of the Application; and
- D. Grant such other and further relief as it deems appropriate.

Respectfully Submitted,
WASTE MANAGEMENT OF ILLINOIS, INC.

By: /s/ Donald J. Moran
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Donald J. Moran, an attorney, on oath certify that I caused to be served the foregoing, **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO RECONSIDER**, upon the following:

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via electronic mail or by depositing a copy thereof, enclosed in an envelope at 161 N. Clark Street, Chicago, IL 60601 with proper postage pre-paid as addressed above before 5:00 p.m. on this 5th day of March, 2008.

/s/ Donald J. Moran
Donald J. Moran