

**Electronic Filing - Received, Clerk's Office, March 19, 2008**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

WASTE MANAGEMENT OF ILLINOIS,  
INC.,,

Petitioner,

v.

COUNTY BOARD OF KANKAKEE  
COUNTY, ILLINOIS,

Respondent.

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

**NOTICE OF FILING**

TO: All Attorneys of Record

PLEASE TAKE NOTICE THAT on March 19, 2008, I electronically filed with the Illinois Pollution Control Board, Chicago, Illinois, the attached **County Board of Kankakee County's Response in Opposition to Waste Management of Illinois' Motion to Reconsider**, a copy of which is herewith served upon you.

Illinois opposes Waste Management's Motion to Reconsider.

Dated: March 19, 2008

Respectfully submitted,  
  
On behalf of County Board of Kankakee  
County, Illinois  
  
/s/ Charles F. Helsten  
Charles F. Helsten  
One of Its Attorneys

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PCB No. 04-186  
(Pollution Control Facility Siting  
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**COUNTY BOARD OF KANKAKEE COUNTY'S RESPONSE IN OPPOSITION TO  
WASTE MANAGEMENT OF ILLINOIS' MOTION TO RECONSIDER**

Respondent, County Board of Kankakee County, Illinois ("Kankakee County Board"), files this response in opposition to the Motion to Reconsider filed by Waste Management of Illinois, Inc. ("Waste Management"), stating as follows:

1. Waste Management has filed a Motion to Reconsider asserting that the Board incorrectly utilized the "manifest weight of the evidence" standard when it reviewed the decision by the local siting authority in this case.
2. Oddly enough, Waste Management's Petition seeking review of the siting authority's decision specifically asserted that the siting authority's decision was "against the manifest weight of the evidence." (WMI Petition at 7).
3. Moreover, Waste Management's Brief in this appeal, in fact, also argued that the Board should reverse the siting authority's decision because it was against the manifest weight of the evidence. (WMI Br. at 29).
4. In its Reply, Waste Management once more argued that with respect to criterion (i) "there is absolutely nothing in the record to justify the County Board's finding that the need criterion was not met, and such a finding, therefore, is against the manifest weight of the

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evidence.” (WMI Reply at 14) (emphasis added). With respect to criterion (iii), Waste Management similarly argued “the County Board’s decision that criterion (iii) was not satisfied is against the manifest weight of the evidence.” (WMI Reply at 18) (emphasis added). Finally, with respect to criterion (vi), Waste Management argued, unsurprisingly, that the decision on this criterion “is, therefore, against the manifest weight of the evidence.” (WMI Reply at 21) (emphasis added).

5. Suddenly, in its Motion to Reconsider, Waste Management now asserts that the Board must not apply the manifest weight of the evidence standard, and argues that instead, “the proper standard to be used by the Board on review is ... whether, after applying eth (sic) Board’s technical scrutiny to the record, it contains reliable and accurate evidence to support the local authority’s decision.” (WMI’s Motion to Reconsider at ¶ 7).

6. Notwithstanding Waste Management’s sudden change in position, the Board’s Order makes clear that when it assessed each criterion at issue in this appeal, the Board carefully and thoroughly examined and considered the evidence in the record and found that it supported the local authority’s decision as to each criterion. (*See, e.g.*, Board’s order at 50, 51).

7. For the reasons set forth above, it is unnecessary to refute the alleged implications of *Town and Country Utilities v. Illinois PCB*, 225 Ill.2d 103, 866 N.E.2d 227 (2007) with respect to this case, however the County notes that the Supreme Court in *Town and Country* did not disturb the well-established standard of review to be applied by the Board in reviewing a local siting authority’s decision. Rather, *Town and Country* held that under the Illinois Environmental Protection Act and Illinois Administrative Review law, a reviewing *court* will review the decision of the *Board*, rather than the decision of the local siting authority, and will do so utilizing the familiar “manifest weight of the evidence” standard. *Id.* Thus, the dicta from

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*Town and Country* which is cited by Waste Management, at ¶ 6 of its Motion, has no application with respect to the standard of review to be applied by the Board in its review of a local siting authority. Moreover, the decision-making process of the Board in this appeal comports with the descriptive dicta from *Town and Country*, inasmuch as the Board applied “its technical expertise” and reviewed the evidence in the record to determine whether it supported the siting authority’s decision.

8. For the reasons set forth above, Respondent County Board of Kankakee County, Illinois opposes Waste Management’s Motion to Reconsider.

Dated: March 19, 2008

Respectfully submitted,

On behalf of County Board of Kankakee  
County, Illinois  
/s/ Charles F. Helsten  
Charles F. Helsten  
One of Its Attorneys

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## 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 March 19, 2008, a copy of the foregoing was served upon:

<b>(Via Electronic Filing)</b> Mr. John T. Therriault Illinois Pollution Control Board 100 W. Randolph, Suite 11-500 Chicago, IL 60601	<b>(Via E-Mail)</b> Jamie Boyd Brenda Gorski Kankakee County State's Attorney 450 East Court Street Kankakee, IL 60901
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Via E-Mail or 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.

/s/ Joan Lane

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