

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
and KENDALL LAND and CATTLE, L.L.C.	)	
	)	
Petitioners,	)	No. PCB 09-43
	)	
vs.	)	(Pollution Control Facility
	)	Siting Appeal)
	)	
COUNTY BOARD OF KENDALL COUNTY,	)	
ILLINOIS,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: See Attached Service List

PLEASE TAKE NOTICE that on March 24, 2009, we filed with the Illinois Pollution Control Board, via electronic filing, **PETITIONERS' AMENDED PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL** in the above entitled matter, which is attached hereto and herewith served upon you.

WASTE MANAGEMENT OF ILLINOIS, INC. and  
KENDALL LAND and CATTLE, L.L.C.

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

Donald J. Moran  
Lauren Blair  
PEDERSEN & HOUP  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60601  
(312) 641-6888  
Attorney No. 07779

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ILLINOIS,	)	
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Respondent.	)	

**AMENDED PETITION FOR HEARING  
TO CONTEST SITE LOCATION DENIAL**

Petitioners Waste Management of Illinois, Inc. ("WMII") and Kendall Land and Cattle, L.L.C. ("KLC"), by Pedersen & Houpt, their attorneys, respectfully request a hearing to contest the decision of the County Board of Kendall County, Illinois ("County Board") denying site location approval for the proposed Willow Run Recycling and Disposal Facility. In support of this Petition, WMII and KLC state as follows:

1. This Petition is filed pursuant to Section 40.1(a) of the Illinois Environmental Protection Act (the "Act") (415 ILCS 5/40.1).
2. On February 5, 2007, WMII and KLC filed a Site Location Application for the Willow Run Recycling and Disposal Facility with the County Board ("2007 Application"). As proposed in the 2007 Application, Willow Run was located on a 669-acre site with a 282-acre waste footprint. Its waste disposal capacity was 35 million tons, and it had a site life of 35 years. Over one-third of the base double composite liner system was to be constructed within the underlying bedrock aquifer. At its highest point, Willow Run would be 235 feet above ground surface.

3. Public hearings on the 2007 Application were held over a three-week period in May, 2007. Having been made aware of the concerns that the County Board and the public had regarding the proposal, WMII and KLC withdrew the 2007 Application in July, 2007.

4. On June 3, 2008, WMII and KLC filed a revised Site Location Application for the Willow Run Recycling and Disposal Facility with the County Board ("2008 Application"). As proposed in the 2008 Application, Willow Run was substantially reduced in size and scope from the facility proposed in the 2007 Application. The site was reduced from 669 to 368 acres, the waste footprint from 282 to 134 acres, the capacity from 35 to 14.5 years and the high point from 235 to 180 feet. In addition, no part of the double composite liner would be constructed in the bedrock aquifer, but would be completely out of, and above, the bedrock aquifer. In fact, the bottom of the double composite liner and the top of the bedrock aquifer would be separated by a low permeability soil layer ranging in thickness from 5.2 to 24 feet providing further environmental protection.

5. Public hearings on the 2008 Application were conducted by the County Board and were held from September 11 to October 1, 2008.

6. On November 20, 2008, the County Board considered the 2008 Application, and voted to approve each of the statutory criteria except criteria (ii) and (iii). A true and correct copy of the Resolution Denying the Application, No. 08-34, is attached as Exhibit A.

7. WMII and KLC contest and object to this decision and its denial of criteria (ii) and (iii) as fundamentally unfair.

8. On information and belief, County Board members had improper *ex parte* communications with third persons both before and after the filing of the Application that prejudiced or otherwise influenced their vote to deny.

9. County Board members considered and relied upon matters outside the record in voting to deny.

10. The hearing officer improperly struck the public comment filed October 28, 2008 by WMII, in violation of Section 39.2(c) of the Act and of Articles 6 and 7 of the Amended and Restated Kendall County Site Approval Ordinance for Pollution Control Facilities ("Ordinance No. 08-15").

11. The hearing officer improperly struck a portion of the written findings of the County Board's legal counsel, in violation of Sections 8.4 and 9.2 of Ordinance No. 08-15.

12. The County Board's denial of criterion (ii) is unsupported by the record and against the manifest weight of the evidence.

13. The County Board's denial of criterion (iii) is unsupported by the record, against the manifest weight of the evidence and contrary to law.

WHEREFORE, WMII and KLC respectfully request that this Board enter an order (1) setting for hearing this contest of Resolution No 08-34, and (2) reversing the County Board siting denial.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC. and  
KENDALL LAND AND CATTLE, L.L.C.

By s/Donald J. Moran  
One of Their Attorneys

Donald J. Moran  
PEDERSEN & HOUP  
Attorney for Petitioners  
161 N. Clark Street  
Suite 3100  
Chicago, IL 60601  
Telephone: (312) 641-6888

EXHIBIT "A"

No. 08-34

**A RESOLUTION DENYING THE APPLICATION OF  
KENDALL LAND & CATTLE, LLC AND WASTE MANAGEMENT OF ILLINOIS, INC.  
FOR SITING APPROVAL OF A POLLUTION CONTROL FACILITY  
LOCATED IN UNINCORPORATED KENDALL COUNTY, ILLINOIS**

**WHEREAS**, pursuant to §39.2 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/39.2, Kendall County, Illinois (the "County") has the authority to approve or deny requests for local siting approval for new pollution control facilities, such as landfills; and

**WHEREAS**, the General Assembly of the State of Illinois has provided in the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.* (the "Act"), that the Illinois Environmental Protection Agency may not grant a permit for the development or construction of a new pollution control facility which is to be located in an unincorporated area without proof that the location of said facility has been approved by the County Board of the County in which said new pollution control facility is proposed to be located; and

**WHEREAS**, Section 39.2 of the Act provides that an applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance with, and the County Board approval shall be granted only if, the proposed facility meets the following criteria (the "criteria"):

- (i) the facility is necessary to accommodate the waste needs of the area that it is intended to serve;
- (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- (iii) the facility is 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;

- (iv) the facility is located outside the boundary of the 100-year flood plain or the site is flood-proofed;
- (v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;
- (vi) the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows;
- (vii) if the facility will be treating, storing, or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and excavation procedures to be used in case of an accidental release;
- (viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed; and
- (ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the [Pollution Control] Board for such areas have been met; and

**WHEREAS**, the County Board may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under §39.2 of the Act; and

**WHEREAS**, in conjunction with the Act, the Kendall County Site Approval Ordinance For Pollution Control Facilities, as amended (the "Siting Ordinance"), establishes certain rules and regulations relating to the form, content, fees, and filing procedures for

applications and other matters relating to the approval of sites for the location of New Pollution Control Facilities in the unincorporated areas of the County; and

**WHEREAS**, on June 3, 2008, Kendall Land & Cattle, LLC and Waste Management of Illinois, Inc. (collectively the "Applicant") filed with the County Board an application for site location approval for the Willow Run Recycling and Disposal Facility in unincorporated Kendall County (the "Application"), which Application consists of nine (9) volumes of reports and supporting data; and

**WHEREAS**, the County Board conducted public hearings on the Application on September 11, 12, 13, 15, 16, 17, 18, 22, 23, 24, 25, 29 and October 1, 2008, and the report of proceedings (transcripts) contains the testimony of each witness, the oral arguments of and cross-examination by the attorneys and participants and oral comments by citizens; and

**WHEREAS**, throughout the proceedings, comments and pleadings were filed by citizens, participants and parties, including but not limited to: (1) the Recommendation dated November 5, 2008 submitted by Mr. Michael S. Blazer, counsel to the County (the "Blazer Recommendation"), and (2) the proposed Findings dated November 11, 2008 submitted by Hearing Officer Patrick Kinnally (the "Kinnally Recommendation"); and

**WHEREAS**, the Siting Ordinance and Act require the County Board to determine compliance or non-compliance with the criteria and the County Board approves or denies a requested site location, which determination by the County Board may include conditions as permitted by the Act; and

**WHEREAS**, the Act requires that the County Board take final action on the Application within 180 days from the date of its filing; and

**WHEREAS**, the County Board undertook all the necessary and legal steps required to review and consider the Application and to develop a written decision consistent with

the requirements of §39.2 of the Act; and

**WHEREAS**, the County Board has accepted and considered all written comments received or postmarked within 30 days after the date of the last public hearing held in this matter; and

**WHEREAS**, the County Board has reviewed and considered the Blazer and Kinnally Recommendations; and

**WHEREAS**, the County Board has reviewed the Application in light of the criteria established for siting new pollution control facilities in §39.2 of the Act and the Siting Ordinance; and

**WHEREAS**, having reviewed the hearing record in accordance with the rulings of the Hearing Officer, the County Board finds that the application process was fundamentally fair and efficient and accessible to the County's citizens and the public generally; and

**WHEREAS**, after review of the Application, all relevant testimony, all exhibits, all public comments, the record made herein in its entirety and, after further consideration of all relevant and applicable factors and matters, the County Board finds that it has jurisdiction to rule on the Application of the Applicant for the Willow Run Recycling and Disposal Facility based upon the Applicant's proper notification as provided by the Act; and

**WHEREAS**, for the reasons set forth in the Kinnally Recommendation, the County Board finds that the Applicant has met its burden with respect to siting criteria 1, 4, 5, 6, 7, 8 and 9; and

**WHEREAS**, for the reasons set forth in the Kinnally Recommendation, the County Board finds that the Applicant has failed to meet its burden with respect to criteria 2 and 3; and

**NOW, THEREFORE, BE IT RESOLVED** by the Kendall County Board as follows:

**SECTION 1. Recitals.** The facts and statements contained in the preambles to this Resolution are found to be true and correct and are hereby adopted as part of this Resolution.

**SECTION 2. Decision.** The County Board denies the Application of Kendall Land & Cattle, LLC and Waste Management of Illinois, Inc. for failure to meet criteria 2 and 3.

**SECTION 3. Findings of Fact.** The County Board adopts the findings of fact and recommendations set forth in the Kinnally Recommendation.

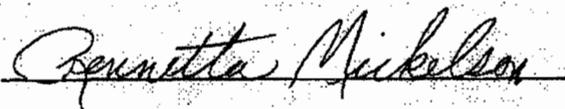
**SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

**SECTION 5. Prior Resolutions.** All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict

**ADOPTED and APPROVED** by the **KENDALL COUNTY BOARD** on this

20<sup>th</sup> day of November, 2008

  
\_\_\_\_\_  
County Board Chairman

  
\_\_\_\_\_  
Bennetta Mickelson

**County Clerk**

**CERTIFICATE OF SERVICE**

I, Lauren Blair, an attorney, on oath certify that I caused to be served the foregoing, **PETITIONERS' AMENDED PETITION FOR HEARING TO CONTEST SITE LOCATION DENIAL** to be served upon the following parties listed below electronically on this 24th day of March 2009.

James F. McCluskey  
James S. Harkness  
Momkus McCluskey, LLC  
1001 Warrenville Road, Suite 500  
Lisle, IL 60532  
E-mail: [jfmccluskey@momlaw.com](mailto:jfmccluskey@momlaw.com)  
[jharkness@momlaw.com](mailto:jharkness@momlaw.com)

Bradley P. Halloran  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601  
E-mail: [hallorab@ipcb.state.il.us](mailto:hallorab@ipcb.state.il.us)

Eric C. Weis  
Kendall County State's Attorney  
807 West John Street  
Yorkville, IL 60560  
E-mail: [eweis@co.kendall.il.us](mailto:eweis@co.kendall.il.us)

George Mueller  
Mueller Anderson, P.C.  
609 E. Etna Rd.  
Ottawa, IL 61350  
[george@muelleranderson.com](mailto:george@muelleranderson.com)

Charles Helsten  
Hinshaw & Culbertson  
100 Park Ave.  
P.O. Box 1389  
Rockford, IL 61105-1389  
[chelsten@hinshawlaw.com](mailto:chelsten@hinshawlaw.com)

Daniel J. Kramer  
Law Office of Daniel J. Kramer  
1107 S. Bridge St.  
Yorkville, IL 60560  
[dkramer@dankramerlaw.com](mailto:dkramer@dankramerlaw.com)

s/Donald J. Moran

Donald J. Moran