

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STOP THE MEGA-DUMP,)	
)	
Petitioner,)	
)	
v.)	PCB
)	(Pollution Control Facility Siting Appeal)
COUNTY BOARD OF)	
DEKALB COUNTY, ILLINOIS)	
AND WASTE MANAGEMENT)	
OF ILLINOIS, INC.,)	
)	
Respondent.)	

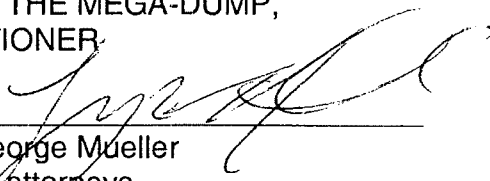
NOTICE OF FILING

To: See attached service list

PLEASE TAKE NOTICE THAT on the 11th day of June, 2010, George Mueller, the attorneys for Petitioner, Stop the Mega-Dump, filed the original by electronic filing of Petitioner's Petition for Review, pursuant to 415 ILCS 5/40.1(b), with the Clerk of the Illinois Pollution Control Board.

Respectfully submitted,

STOP THE MEGA-DUMP,
PETITIONER

By: 
George Mueller
Its attorneys

George Mueller
Mueller Anderson, P.C.
609 Etna Road
Ottawa, Illinois 61350
Telephone – 815-431-1500
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george@muelleranderson.com

STATE OF ILLINOIS)
)
COUNTY OF LASALLE) SS

AFFIDAVIT OF SERVICE

The undersigned, a non-attorney, being first duly sworn upon oath, states that a copy of the Petition for Review of Petitioner, Stop the Mega-Dump, was served upon the following persons by enclosing such documents in separate envelopes, addressed as follows, and depositing said envelopes in a U.S. Postal Service mail box at Ottawa, Illinois on the 11th day of June, 2010, before 5:00 p.m., with all fees thereon fully prepaid and addressed as follows:

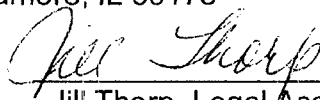
Service List

Donald Moran
Attorney for WMII
Pedersen & Houpt
161 N. Clark St., Suite 3100
Chicago, IL 60601-3242

Renee Cipriano
Special Counsel for DeKalb County
Schiff Hardin, LLP
6600 Willis Tower 233 S. Wacker Drive
Chicago, IL 60606-6306

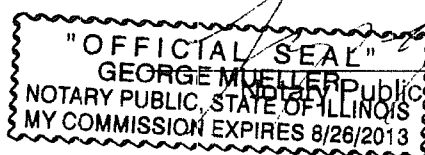
Sharon L. Holmes
DeKalb County Clerk
110 E. Sycamore St.
Sycamore, IL 60178

Ruth Anne Tobias
DeKalb County Board Chairman
200 N. Main St.
Sycamore, IL 60178



Jill Thorp, Legal Assistant

Subscribed and sworn to before me, a Notary Public, in the County and state as aforesaid, this 11th day of June, 2010.



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ENTRY OF APPEARANCE

TO: Clerk of the Pollution Control Board and all parties of record:

Please enter my appearance as counsel of record in this case for the following:

STOP THE MEGA-DUMP, A/K/A STOP THE DEKALB COUNTY MEGADUMP

Dated: June 11, 2010

Respectfully submitted,


George Mueller, Attorney

George Mueller
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Ottawa, Illinois 61350
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Facsimile – 815-431-1501
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PETITION FOR REVIEW

NOW COMES Stop the Mega-Dump, a citizens' group ("Petitioner") by its attorney, George Mueller, pursuant to §40.1(b) of the Environmental Protection Act ("the Act") (415 ILCS 5/40.1(b)) and petitions for review of the decision of the County Board of DeKalb County, Illinois on May 10, 2010, in which it approved the Application of Waste Management of Illinois, Inc., for Site Location Approval of a new pollution control facility, namely vertical and horizontal expansion of the DeKalb County Sanitary Landfill located in Cortland Township, DeKalb County, Illinois. In support of its Petition, Stop the Mega-Dump states and alleges as follows:

1. Stop the Mega-Dump, also known as Stop The DeKalb County Mega-Dump, is a voluntary association of citizens formed for the purpose of participating in and contesting the application of Waste Management of Illinois, Inc., for vertical and horizontal expansion of the DeKalb County Sanitary Landfill. Stop the Mega-Dump is comprised of citizens who reside in DeKalb County, including citizens who reside in Cortland Township in close proximity to the DeKalb County Sanitary Landfill. The citizens of DeKalb County generally and the members of Stop the Mega-Dump

specifically are so located as to be affected by the proposed facility, including, but not limited to negative impacts on groundwater quality, air quality, traffic, real estate values and the public health, safety and welfare generally.

2. Stop the Mega-Dump participated actively in the public hearing on the siting approval request, including but not limited to the filing of an Appearance, the filing of substantive motions, cross examination of witnesses by and through its chairman Dan Kenney and its officer Mac McIntyre, presentation of evidence and submission of written arguments.

3. A Public Hearing was had on the application for siting approval pursuant to §39.2 of the Act, commencing on March 1, 2010. On May 10, 2010, the DeKalb County Board adopted Resolution #R2010-31, "approving the request of Waste Management of Illinois, Inc. for site location of the DeKalb County Landfill Expansion." This is the final decision of the County Board, and a copy of the same is attached hereto and made a part hereof.

4. The hearing on the petition for site location approval was not conducted in accordance with the requirements of §39.2 of the Act and the action of the DeKalb County Board was not taken in accordance with the requirements of §39.2 of the Act.

5. The proceedings of the DeKalb County Board, including the public hearing, post-hearing procedures and the decision making process as well as the actions of the DeKalb County Board prior to the public hearing were not fundamentally fair for the following reasons:

A. The DeKalb County Pollution Control Facility Siting Ordinance and the Articles of Rules and Procedures supplementary to the provisions of that Ordinance

improperly limited, restricted and discouraged public participation and otherwise violated the requirements of fundamental fairness, including the requirement for at least minimal procedural due process.

B. The DeKalb County Board and its agents and employees otherwise improperly limited and restricted full public participation in the siting process, including but not limited to restriction of public access to the Siting Application, refusal to provide information regarding the duplication of the Application or portions thereof, refusal to provide to members of the public, upon their request copies of the electronic version of the Siting Application on file and generally making it as difficult as possible for the public or members thereof to access, view, study and duplicate the Siting Application.

C. Multiple members of the DeKalb County Board had prejudged the Application and were biased in favor of Waste Management of Illinois, Inc.

D. The entire DeKalb County Board was tainted by improper *ex parte* contacts, including but not limited to a private tour of Waste Management's Prairie View landfill in Will County, Illinois.

E. The DeKalb County Board improperly committed and or earmarked expected Host fees from the expanded landfill prior to making a decision on the Siting Application.

F. The DeKalb County Board failed to properly understand the burden of proof, its role in the siting process and the legal effect of siting approval.

G. The DeKalb County Board had other improper *ex parte* contacts including conducting a pre-filing review of the Siting Application during which the public was excluded.

H. The action taken by the DeKalb County Board was not based upon the evidence.

I. The public hearing on the Application, the hearing procedures and the decision making process employed in this matter were otherwise fundamentally unfair.

6. The finding of the DeKalb County Board that the nine statutory siting criteria had been proven subject to certain conditions was against the manifest weight of the evidence as to criteria i, ii, iii, v and vi.

7. The siting conditions imposed in Resolution #R2010-31 with respect to criterion ii are so vague and indefinite that they improperly defer determination of whether or not the facility was so designed, located and proposed to be operated that the public health, safety and welfare will be protected for future determination. Specifically, three of the conditions imposed in connection with the finding that criterion ii had been met relate to Hydrogen Sulfide emissions from the existing facility. These conditions imply the County Board's recognition of the current danger posed by Hydrogen Sulfide emissions and contemplate a continuation of these emissions, including emissions which directly impact the children attending nearby Cortland Elementary School. Accordingly, it is obvious, with regard to these Hydrogen Sulfide emissions and the need to impose multiple conditions related thereto, the Application, as submitted, was not protective of the public health, safety and welfare. However, the three special conditions included relating to Hydrogen Sulfide do not impose or lay out a solution to the existing health hazard. Instead, the conditions improperly defer

remediation of this existing health hazard to the IEPA and to the DeKalb County Health Department.

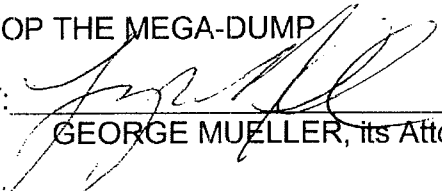
8. The DeKalb County Board's approval is otherwise not supported by the evidence and is contrary to law.

WHEREFORE, Stop the Mega-Dump prays that the action of the DeKalb County Board approving Waste Management of Illinois, Inc.'s Application for Site location approval be reversed or, alternatively, that the same be remanded with instructions to correct fundamental fairness errors, if correction of the same is even possible, or for such other relief as is appropriate under the circumstances.

Respectfully submitted,

STOP THE MEGA-DUMP

BY:


GEORGE MUELLER, its Attorney

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RESOLUTION #R2010-31

**APPROVING
THE REQUEST OF WASTE MANAGEMENT OF ILLINOIS, INC. FOR
SITE LOCATION OF THE DEKALB COUNTY LANDFILL EXPANSION**

WHEREAS, the DeKalb County Board has the authority pursuant to the Illinois Environmental Protection Act (415 ILCS 5/39.2) to approve or deny requests for siting pollution control facilities in DeKalb County; and

WHEREAS, the Act establishes the criteria a proposed facility must meet before a local siting authority may grant approval; and

WHEREAS, the Act allows the DeKalb County Board, in granting site approval, to impose such conditions as may be reasonable and necessary to accomplish the purposes of Section 39.2 of the Act and as are not inconsistent with Illinois Pollution Control Board regulations; and

WHEREAS, Pursuant to 50-57(c) of the DeKalb County Regional Pollution Control Facility Siting Ordinance, whether the Board approves or disapproves of the proposed site location, a resolution shall be passed to that effect, stating the reasons for the decision; and

WHEREAS, Waste Management of Illinois, Incorporated, as operator of the DeKalb County Sanitary Landfill, has submitted an Application for site approval of an expansion of that landfill; and

WHEREAS, Waste Management of Illinois, Incorporated has paid the established County Application fee; and

WHEREAS, the DeKalb County Board, having considered the Application, the record of hearing, public comments, and the recommendation of the DeKalb County

Pollution Control Facilities Committee finds that Waste Management of Illinois, Incorporated has met each of the nine siting criteria subject to the special conditions as follows:

Criterion 1: The facility is necessary to accommodate the waste needs of the area it is intended to serve, provided:

1. Provided the required permits and approvals are obtained for the expansion, WMII will guarantee disposal capacity at the Landfill for non-hazardous solid waste, as defined in the Host Community Agreement, generated in DeKalb County, for a period that equals the life of the landfill.

Criterion 2: The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected, provided:

2. WMII shall, except for the roadway bridge, avoid development on, and allow, at least 25 foot of open area on either side of Union Ditch for the purpose of maintenance.
3. Any Henry Formation found to intersect the excavation for the liner will be removed by over-excavation and replaced with a cohesive silty clay backfill up to the bottom of composite liner grades. Although the proposed waste footprint is underlain by clayey soils, there are areas where the location of the bottom recompacted clay liner would sit on a lense of sandy materials. Patrick Engineering recommends that these areas be over excavated and replaced with soil with a lower permeability material. The backfill shall be compacted to a minimum of 95% of the

Standard Proctor density and have a maximum triaxial permeability of 1 x 10⁻⁶ centimeter per second and properly documented by the CQA Officer.

4. The 20-inch drain that captures flow from the south infiltration swale shall be extended to the Union Ditch and not terminated at other drain tiles.
5. Hydrogen Sulfide Monitoring. WMII shall maintain an ongoing and continuous monitoring program for hydrogen sulfide (H₂S) emissions around the perimeter of the operating landfill. This program shall be described in a Perimeter Air Monitoring Plan (the Monitoring Plan), a document that shall be submitted to the County within 60 days of the occurrence of a non-appealable siting approval, and at least 30 days prior to submission of the developmental permit application to IEPA for the expansion. The Plan will be subject to the approval of the County Health Department staff in conjunction with appropriate professional engineers retained by the County. WMII must implement an approved Plan within 120 days of County Health Department staff approval of the Monitoring Plan.

At a minimum, the Plan must include provisions for multiple air monitoring stations around the perimeter of the operating landfill. These stations must be capable of continuously monitoring H₂S concentrations such that a concentration of 10 parts per million of H₂S will sound an alarm, immediately alerting the operator of this condition. The Monitoring Plan must also contain a Contingency Plan for addressing an

alarm condition as defined above (e.g., investigation of the emission source, remedial actions, etc.).

A contingency plan that responds to an H₂S concentration alarm shall be prepared by WMII prior to submittal of a permit for expansion to the IEPA. It shall be consistent with any Notification Protocol prepared by WMII and approved by County Health Department staff.

6. WMII shall continue to monitor the ambient levels and ground level gas constituents for at least six (6) months after any portion of the active gas system is installed and operational to verify the system is operating effectively. The County Health Department staff shall be made aware of the installation of the active system and of the monitoring data. WMII shall continue to monitor until such time after the 6-month period it demonstrates the ambient and ground levels are below levels of concern, which is a methane concentration level over 50% of the lower explosive limit in air. The County Health Department staff shall approve the reduction of frequency prior to WMII requesting a reduction with the IEPA. The County Health Department staff shall not unnecessarily withhold approval when shown adequate demonstration.
7. WMII shall notify the County Health Department staff of the need to temporarily extend the hours of operation, and that a 24-hour notification is required for waste resulting from any emergency or public benefit purpose within DeKalb County.

8. The minimum number of random load inspections shall be three per week as specified in state regulations. For any amount of tonnage received above an average of 500 tons per day, the number of inspections shall be increased based on the following basis:

For each 500 ton per day average increase, the number of random weekly inspections shall be increased by two. For example, if up to 1,000 tons per day average is accepted the previous week, the following week shall have five inspections (three inspections for the first 500 tons, and two for the next 500). If the weekly rate is between 1,000 and 1,500 tons per day, then 7 random inspections shall be scheduled. If the weekly rate is between 1,500 and 2,000 tons per day, the inspection rate is nine random inspections.

After two years of operations, WMII may request a reconsideration from the County Health Department staff for this random inspection requirement. A County Health Department representative shall have the right to inspect and to be present at any random load inspection.

9. Litter from the Landfill expansion found on adjacent property shall be removed by WMII in an expeditious manner with consent of the landowner.
10. WMII shall, at a minimum, inspect the public right of ways, and areas adjacent to these right of ways, from the landfill facility gate north to Route 38, west to the Peace Road, and then south to Interstate 88 interchange. Litter collection along these rights of ways shall be performed at least once per week. WMII shall also inspect daily Somonauk Road from the entrance south to Keslinger Road and address visible litter. WMII shall develop a procedure that ensures that all transfer

trailers are empty when leaving the facility, either from the active face or at the gatehouse through a visual observation.

11. WMII shall have a 24-hour complaint hotline established prior to submitting a development permit application to the IEPA for the proposed expansion.
12. WMII shall, upon receiving complaints from the Cortland school or residents about odor, log the complaint, and within one day work with the complainant to determine if the landfill is the source.
13. WMII shall prepare a Notification Protocol, reviewed and approved by the County Health Department staff, for the purpose of informing adjacent property owners and residences of an occurrence or a detection of exceedance of landfill gas monitoring point threshold of 10 ppm for Hydrogen Sulfide. Residences within one half (½) mile of the property boundary shall be included on the notification list. The Notification Protocol shall be submitted to the County Health Department staff for approval prior to the submittal of an IEPA development permit application to expand the landfill and shall be implemented consistent with the Hydrogen Sulfide Monitoring Plan.
14. Soil shall be the only approved daily cover permitted to be used on an exterior permanent perimeter slope in conjunction with effective operating berms. Alternative daily cover is allowed in areas that are screened by operational berms. The purpose of this condition is to minimize potential odor and litter escape from the Landfill during placement of the waste.

15. Within 4 years from receipt of the IEPA operating permit for the expansion, WMII shall construct and operate a gas to energy facility unless it can be demonstrated to the County Health Department Staff that this timing cannot be met. An alternative time frame shall be presented for review by the County Health Department Staff and approval by the DeKalb County Board.
16. During the exhumation of waste from the 24-acre old area, WMII shall not allow ponding liquid levels within any portion of the exhumed areas, at any time, to be in excess of two feet in height. In addition, during the exhumation activities, WMII shall provide sufficient leachate storage, temporary or otherwise, as is necessary to satisfy this condition.
17. If the waste exhumation and relocation process generates odor that is not controlled and subsequently drifts beyond the property boundary, the County Health Department staff shall then restrict the exhumation activity to the months of October, November, December, January, February, March and April. If and once restricted to these months, WMII may request year round exhumation only if it can demonstrate to the County Health Department staff that the process can occur without off-site odor migration or other impacts associated with the process.
18. All exhumed and relocated waste, shall be covered with a minimum of six inches of soil at the end of each working day.
19. WMII shall inspect the waste, as it is being excavated, for signs of inappropriate or hazardous materials. A site worker shall be present

during excavation that has been trained to identify asbestos materials and other hazardous materials to understand proper handling. If asbestos is identified, then it shall be carefully handled by experienced personnel such that it is contained and not allowed to become windblown on or off-site.

20. The excavated area of exhumed waste, on surfaces where waste remains, shall be covered with a minimum of twelve (12) inches of compacted soil should exhumation activities cease for a period longer than 60 days.
21. Dust from the excavation shall be controlled to prevent off-site drift of the excavated waste materials. If necessary, the operator shall utilize water spray, chemical foams, or other IEPA-approved methods.

Criterion 3: 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, provided:

22. The Application of the operational screening berms (shown on Drawing 41 in the Application) shall be included in routine daily operations at the landfill. The operational berms may be constructed of waste and/or cover materials and be at least 8 feet in height (and within the permitted airspace) with subsequent filling to take place "inside" said operational berms, thereby providing screening of most landfill operations at most times. From time to time, for short durations of time the operational berm will be under construction and thus the waste operations will be visible these short time frames. The waste berms will be covered daily with soil.

23. WMII shall build the screening berms on the east landfill property at least 500 feet in advance of any cell construction. Vegetation shall be planted upon berm completion allowable by weather conditions, within the same season the berm is constructed. The berm shall be at least 8 feet above surrounding grade.
24. The screening berm on the east side of the eastern landfill expansion shall be built and vegetated at the time construction of Phase I of the Eastern Unit begins.
25. Trees selected as for planting on the screening berms shall be a minimum of 8 feet tall.
26. The screening berm on the east side of the east landfill expansion shall be built near the property line instead of adjacent to the Landfill unless WMII can demonstrate to the County Health Department staff that significant disadvantages result from this condition.
27. The screening berm on the north side of the east landfill expansion shall be built near the property line instead of adjacent to the Landfill unless it can be demonstrate to the County Health Department staff that significant disadvantages result from this condition. The center of the berm shall be approximately 50 feet from the property line unless site conditions warrant a greater distance.
28. WMII shall extend the Property Value Guarantee Plan as set forth in the Host Community Agreement approved by DeKalb County on March 18, 2009, to current owners of properties located at least 1 mile from the

landfill expansion footprint (this area is depicted in map attached as Exhibit C).

Criterion 4: The facility is located outside of the 100-year floodplain.

Criterion 5: The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

Criterion 6: The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows, provided:

29. WMII shall inform all haulers to and from the facility of the designated truck routes, in writing. WMII shall inquire of new haulers of the route taken, and provide warning to all haulers to not use roads with insufficient weight limits.
30. WMII shall develop a system whereby a WMII employee will observe the top of incoming commercial waste hauler vehicles to determine whether the cover or tarp is inadequate to contain waste. The driver of any vehicle observed to have inadequate covering shall be provided one warning and education of the importance of containment, and if a second offense occurs, that driver shall have his rights to use the Landfill terminated.

Criterion 7: The facility will not be treating, storing or disposing of hazardous waste.

Criterion 8: The facility is consistent with the county solid waste management plan.

Criterion 9: The facility is not located in a regulated recharge area.

GENERALLY APPLICABLE

31. WMII shall include these special conditions in its IEPA development and operating permit applications and shall request that IEPA include those conditions in the issued IEPA permits.

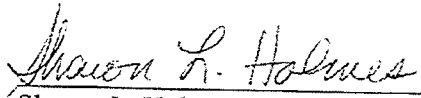
CRITERON 6: ADDITIONAL CONDITION

32. The road shoulder width shall be increased to five (5) feet on either side of Somonauk Road from the I-88 overpass to Route 38 and shall be built to the standard slope for an aggregate shoulder, which is 6%. In addition, the slope of the embankments from the shoulder edge to the toe of slope shall be standard slope and fall within approved IDOT standards. In no case shall the embankment slope be steeper than 1 vertical to 3 horizontal (1V:3H). WMII shall be responsible for funding and maintaining the shoulder improvements and the slope improvements.

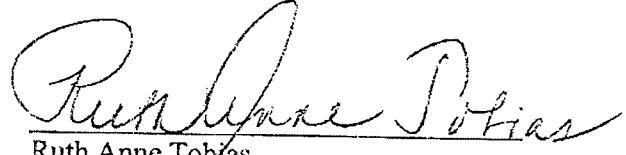
NOW, THEREFORE, BE IT RESOLVED by the DeKalb County Board that siting approval, subject to the conditions set forth above, is hereby granted to Waste Management of Illinois, Incorporated.

PASSED AT SYCAMORE, ILLINOIS, THIS 10th DAY OF MAY, 2010, A.D.

ATTEST:


Sharon L. Holmes
County Clerk

SIGNED:


Ruth Anne Tobias
County Board Chairman