

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 AMERICAN BOTTOM CONSERVANCY,
4 EAST ST. LOUIS COMMUNITY ACTION
5 NETWORK, KATHY ANDRIA AND JACK
6 NORMAN,

7 Petitioners,

8 vs.

PCB No. 00-200

9 VILLAGE OF FAIRMONT CITY
10 AND WASTE MANAGEMENT OF
11 ILLINOIS, INC.,

12 Respondents.

13

14 Proceedings held on August 23, 2000, at 9:18 a.m., at the
15 St. Clair County Building, 10 Public Square, St. Clair County
16 Board Room, Belleville, Illinois, before John C. Knittle, Chief
17 Hearing Officer.

18

19

VOLUME II

20

21 Reported by: Darlene M. Niemeyer, CSR, RPR
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A P P E A R A N C E S

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2	NUMBER	MARKED FOR I.D.	ENTERED
3	Respondent Exhibit 1	339	changed to HO-1
4	(Respondent Exhibit 1 was amended to Hearing Officer Exhibit 1 on page 344.)		
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6	Waste Management Exhibit 1	351	361
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1 P R O C E E D I N G S

2 (August 23, 2000; 9:18 a.m.)

3 HEARING OFFICER KNITTLE: Good morning. My name is John
4 Knittle. We are here on the second day of hearing on PCB Docket
5 Number 2000-200, American Bottom Conservancy, East St. Louis
6 Community Action Network, Kathy Andria and Jack Norman versus the
7 Village of Fairmont City and Waste Management of Illinois,
8 Incorporated. It is about 9:18 a.m. We are starting a little
9 bit earlier today to try to get things finished.

10 I note for the record that there are no members of the
11 public present. The two members that were here yesterday have
12 not returned, although they did indicate yesterday that they
13 would be here to provide public comment. We will see if that
14 actually occurs.

15 We are in the middle of cross-examination of Ms. Kathy
16 Andria. We are going to start with John Baricevic's
17 cross-examination for the Village.

18 Mr. Moran, you finished your cross-examination yesterday,
19 correct?

20 MR. MORAN: Yes.

21 HEARING OFFICER KNITTLE: Could you swear Ms. Andria back
22 in, please.

23 Before we get started, is there anything that has come up
24 in the 12 hours I haven't seen you people that we need to address

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1 right now? Seeing nobody making any gestures, then -- oh, I do
2 see a gesture in the back. Yes, sir?

3 MR. BOYNE: I have just got a couple of comments to make if
4 I could. My name is Frank Boyne, and I am on the County Board.
5 I have been involved --

6 HEARING OFFICER KNITTLE: Sir, could you --

7 MR. BOYNE: -- in this landfill situation.

8 HEARING OFFICER KNITTLE: Could you hold on a second?
9 Could you give us your last name, just for the court reporter,
10 and could you spell it?

11 MR. BOYNE: Boyne, B-O-Y-N-E, Frank Boyne.

12 HEARING OFFICER KNITTLE: Okay. Sir, are you going to be
13 here through the remainder of the day?

14 MR. BOYNE: Oh, yes.

15 HEARING OFFICER KNITTLE: Okay. Would you mind holding off
16 on your public comment until the --

17 MR. BOYNE: Whatever you say. You are the man.

18 HEARING OFFICER KNITTLE: Well, that is good to hear. Yes,
19 then I would suggest that we hold off until the parties have
20 finished their case-in-chief. If you have to go somewhere,
21 though, we would be happy to do it now. You don't have to go
22 anywhere?

23 MR. BOYNE: No. I cleared this date out.

24

HEARING OFFICER KNITTLE: All right. You will be given

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1 your opportunity to provide any public comment you want after the
2 cases-in-chief have been completed. So that will be in about an
3 hour and a half or two hours or so.

4 Now can we swear Ms. Andria in, please?

5 (Whereupon the witness was sworn by the Notary Public.)

6 HEARING OFFICER KNITTLE: All right, Mr. Baricevic.

7 MR. BARICEVIC: Thank you.

8

K A T H Y A N D R I A,

9 having been first duly sworn by the Notary Public, saith as
10 follows:

11

CROSS EXAMINATION

12

BY MR. BARICEVIC:

13 Q. Ms. Andria, the organizations that you represent, could
14 you tell us the membership of each?

15 A. The membership of each organization?

16 Q. Yes.

17 A. The East St. Louis Community Action Network consists of
18 I think 23 -- 26 neighborhood and community groups. I will try
19 to get them all.

20 Q. You don't have to name them all.

21 A. Okay.

22 Q. I don't need you to name any of them. Is that
23 organization made up totally of neighborhood organizations?

24 A. Neighborhood organizations, the Conservation Alliance,

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1 Catherine Dunham Institute for Arts and Humanities, the Central
2 Mississippi Archeological Research Center, the Emerson Park
3 Development Corporation, AIM, which is Adventures in Motivation,
4 which is an organization that works with youngsters in the city.
5 Community sites is -- I don't believe it is a neighborhood
6 organization. I am trying to think.

7 Q. How about American Bottom Conservancy?

8 A. It is not a member of the ESL CAN.

9 Q. What is --

10 A. I am sorry.

11 Q. That is all right. What is the membership of American
12 Bottom Conservancy?

13 A. It is not a membership group. It is a board group.

14 Q. A board group?

15 A. Yes.

16 Q. How many people on the board?

17 A. We have four. We identified them, I believe with Mr.
18 Moran's testimony.

19 Q. Okay. So my -- I am not challenging that answer. The
20 four members of the board are the total make-up of American
21 Bottom Conservancy?

22 A. That is the official make-up of the board. We have

23 alliances. We work with other groups.

24 Q. There is no general membership of the American Bottom

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1 Conservancy?

2 A. No, there is not.

3 Q. How about the Conservation Alliance?

4 A. It is not a party to this.

5 Q. Any municipal agencies, members of any of the parties
6 that you represent?

7 A. I don't think so.

8 Q. Okay. Let's go back to the application process. Focus
9 now on the application and not the transcript. As I recall your
10 testimony -- the first question is going to be is this your
11 recollection. As I recall your testimony yesterday, there was
12 one effort to purchase the application?

13 A. Correct.

14 Q. And two efforts to go view the application?

15 A. I believe that is accurate. I believe that is accurate.

16 Q. Now, in addition to -- now, let's focus on the viewing
17 of the application. In addition to those two times that you
18 testified to, there was another time, was there not, when Chief
19 Penny offered to show you the application and you were too busy?

20 A. I had gone to look at something else and I had someone
21 with me and that was not an occasion when I could do that, that
22 is correct.

23 Q. But that did occur?
24 A. That did occur, yes.

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1 Q. And you knew -- did not, at that point, Scott Penny show
2 you where the room was where you could sit and look at the
3 application?

4 A. No, he did not.

5 Q. The two times where you went to view the application,
6 did you call and let them know you were coming?

7 A. I don't recall specifically what I did about calling. I
8 think the first time I went, I went and I just said I would like
9 to look at the application, Waste Management's application for
10 siting. I don't remember who was behind the cage.

11 Q. The person behind the cage, did you not say yesterday
12 that you had asked to see the deputy clerk first?

13 A. On the first instance I did that. I just asked for the
14 application, if I could see the application. And then she,
15 whoever it was behind the window, said Karen is not here now.

16 Q. Did you tell that person that you wanted to see the
17 application anyway?

18 A. No, I did not.

19 Q. So when you were told that Karen was not there, you made
20 no other attempts to see the application?

21 A. No, I went back another time.

22 Q. Okay. Let's focus on the first time. The first time
23 you asked to see the application, the lady says Karen is not
24 there. Was there any other conversation?

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1 A. I think I asked when she would be there, what her hours
2 were or something, and she said that they vary.

3 Q. Did you ask if there was anybody else there that could
4 show you the application?

5 A. I don't know if I did or not. I don't remember
6 specifically all of what I asked at the time.

7 Q. The second time that you went and you were told that
8 Karen was not there, did you ask to see the application anyway?

9 A. No. The second time I went -- I was told Karen was not
10 there the first time. The second time I went I asked to see
11 Karen. I didn't say I am here to view the application, since it
12 was told to me the first time I went when I asked to see the
13 application -- that it seemed to me that they were indicating to
14 me that I had to go through Karen.

15 Q. Well, let's be awful specific here, Ms. Andria. You are
16 making some allegations about how Fairmont City operates. Did
17 anybody tell you, use the words that only Karen can show you the
18 application?

19 A. She did not use the word only. She said, when I asked
20 to see the application, Karen is not here now.

21 Q. And solely based on that sentence, you assumed that you

22 couldn't see the application unless Karen was there?

23 A. Well, there is no other --

24 Q. That was a yes or no, ma'am.

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1 A. Okay.

2 Q. Based on that one sentence, are you telling us that it
3 was your assumption that only Karen could show you the
4 application?

5 A. From that -- I don't know if at that time if I asked
6 about the clerk. I don't know if I knew at that time about
7 anything. I really don't remember the other of the conversation
8 except that I was like instructed that I had to go through Karen.

9 Q. Well, if you don't remember any of the conversation and
10 the only thing you can remember is that one sentence, what part
11 of that indicated that you had to go through Karen?

12 A. They didn't say it is over here in a room, you can come
13 in. Karen is not here now, but if you would like to look at it
14 then you can look at it. They did not tell me that.

15 Q. Well, you spent a lot of time yesterday telling us how
16 you were intimidated by Grey Chatham. Did this lady in the cage
17 intimidate you into not asking for directions on what else you
18 needed to do?

19 A. Excuse me. I would like to correct your question, sir.
20 I don't think I said yesterday I was intimidated by Grey Chatham.

21 Q. Well, were you intimidated by this lady in the cage?

22 A. Of course not.

23 Q. So what kept you from asking for her supervisor?

24 A. There is the cage, you know. I am sure you are very

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1 familiar with that. It is like a little police department.

2 Q. Did you ask to see her supervisor?

3 A. No, I did not.

4 Q. Scott Penny had talked to you about the application. He
5 had offered to show it to you one day.

6 A. Not at that time.

7 Q. I understand that. But during this process you had
8 talked to Scott Penny about the application?

9 A. I don't know when in that time frame that happened. I
10 just remember --

11 Q. Did you ever call him and ask to see the application?

12 A. No, sir, I did not.

13 Q. Did you ever call the mayor and ask to see the
14 application?

15 A. No, sir, I did not.

16 Q. Did you ever call the city clerk and ask to see the
17 application?

18 A. I called for the city clerk and I asked for the city
19 clerk at the window, and the city clerk, they told me, did not
20 work there. He was -- he did not have office hours. That he had

21 a full-time job during the day.

22 Q. And the second time that you went, what did the lady in
23 the cage tell you?

24 A. I asked for Karen and she said Karen was not there.

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1 Q. Did you ask to see the application anyway?

2 A. At that time, no, sir.

3 Q. Did you ask for what the procedures were to see the
4 application if Karen was not there to give it to you?

5 A. No, sir, I did not.

6 Q. And is it your testimony that you were too busy to make
7 other efforts to see the application?

8 A. I am sorry. What was the first part of the question?

9 Q. Were you too busy to see -- you only had these two times
10 available to you to go get the application?

11 A. To go get the application? No. It had been indicated
12 to me that it was 1,200 to 1,500 pages. That is a lot of time.
13 I didn't have time to go and sit for that period of time. And
14 when I went and asked about seeing it or Karen so that I could
15 get -- so that I could get facilitated, that was -- that didn't
16 happen.

17 Q. The application was filed on November 19th, correct?

18 A. That's what the notice says.

19 Q. And between November 19th and March 17th, were those two

20 times that you testified to the only two times that you were
21 available to go view the application?

22 A. Well, the first -- I mean, you are going from November
23 19th. At first I was trying -- through December until the first
24 of the year I had been trying to get a copy of the application.

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1 The December 15th letter and the money issue pretty much cut that
2 out. After the first of the year, I believe it was, I mean, I
3 couldn't be sure if it was before Christmas that I went over
4 there the first time or after.

5 Q. Let me refer you to -- I will show it to you here in a
6 minute. It is Petitioner's Exhibit Number 10. Is this a copy of
7 the December 15th letter that you just referred to?

8 A. Yes, sir.

9 Q. And there is a paragraph which I have made a marking
10 next to. Doesn't that paragraph indicate that the application is
11 available for you to view between the hours of 8:00 and 4:00
12 anytime you wanted to?

13 A. That's what the letter says. And in response to that is
14 why I went to the Village Hall to view it.

15 Q. Okay. So after the -- at least as of December 15th you
16 were put on notice, if not sooner, that you could view the
17 application between the hours of 8:00 and 4:00?

18 A. That's what it says, yes.

19 Q. Were these two times that you testified to after

20 December 15th?

21 A. Yes.

22 Q. Okay. So between December 15th and March 17th, were
23 those the only two times that your schedule allowed you to go
24 look at the application?

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1 A. Those were the two times when I went specifically with
2 the intent of looking at the application.

3 Q. Ma'am, you are not answering my question. Between
4 December 15th and March 17th, yes or no, were you too busy to
5 look at the application any other time between those dates?

6 A. You misstated what I said, sir. Between December --
7 after December 15th I went two different times to view the
8 application. I did not, could not, on those two times view the
9 application. After that, and I don't know when the first time
10 was, and I don't know when the second time was that I went to
11 view the application.

12 Q. Mrs. Andria, you do a great job at --

13 A. It is Ms.

14 Q. Ms. Andria, you do a great job of not answering
15 questions.

16 A. I am sorry, sir. I am trying to.

17 Q. Listen again. The two times, whenever it was, I am not
18 challenging your testimony, you went down and asked for the

19 application and Karen Manso wasn't there and you left. Why
20 didn't you go back a third time or a fourth time or a fifth time?

21 A. I did go back a third, a fourth and a fifth time. I did
22 not go specifically only to see the application.

23 Q. Okay. You went back three other times to view the
24 application? Who did you talk to?

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1 A. Each time I went -- and I was looking to see a public
2 notice. I had not seen anything in the paper.

3 Q. Ma'am, what other time -- I don't care about anything
4 else in this case. I care right now about you going to see an
5 application.

6 A. Yes, sir.

7 Q. When else did you try to see the application?

8 A. After those times I -- those two times that I testified
9 that I went solely to see the application. I was there at other
10 times and I asked for Karen, and I --

11 Q. How many times --

12 A. I do not know.

13 Q. -- and when did you ask for Karen?

14 A. How many times did I go to the Village Hall and ask for
15 Karen.

16 Q. Yes.

17 A. I don't really know, but it was -- I asked for --

18 Q. Who did you ask to see Karen?

19 A. May I finish the question, sir?

20 Q. Go right ahead.

21 A. I went to Village Hall and asked for Karen many times.

22 I do not know, and it was like I said yesterday, it was a

23 continuum in my mind. I would go and it seemed to me that when I

24 went I was --

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1 Q. Ma'am, I didn't ask you for your continuum. I asked you
2 a question. When did you ask to see Karen to get the
3 application?

4 A. I do not know specifically all of the times that I went
5 to see Karen to ask for something from the Village. I said that
6 I went a number of times to the Village and a couple of those
7 times I had hoped to see the application. I had hoped to talk to
8 Karen.

9 Q. And in any of those times, did you ever say to anybody I
10 want to see the application?

11 A. No.

12 Q. Did you ever ask -- tell anybody how do I see the
13 application if Karen is not here?

14 A. No.

15 Q. Did you ever complain to anybody in the Village
16 structure that you were having difficulty seeing the application?

17 A. I don't believe so.

18 Q. Did anybody tell you to get out of city hall, you are
19 bothering us, treat you rudely?

20 A. At that time before that, no.

21 Q. Did anybody ever give you written instructions on how to
22 see the application, other than the December 15th letter?

23 A. Not to my knowledge.

24 Q. You have indicated a number of times that you were too

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1 busy to view the application. Do you have another job?

2 A. I have a job, yes.

3 Q. What is that?

4 A. I work as -- I work on a grant for wetlands preservation
5 and education.

6 Q. How many hours a week does that take you?

7 A. I don't keep track of total number of hours that I work.

8 It is --

9 Q. Is it 20 hours, 40 hours 50 hours?

10 A. I work -- a lot of what I do is connected with it. A
11 lot of what I do is not connected with it.

12 Q. Well, ma'am, I didn't ask you what you do.

13 A. It is not a 9:00 to 5:00 job.

14 Q. I asked you how much time between November 19th and
15 March 17th, on the average, how many hours a week were you
16 spending at your job?

17 A. Between which hours? I am sorry. I mean which dates?

18 Q. Between November 19th and March 17th of 2000, how many
19 hours a week on the average did you spend at your job?

20 A. I would not be able to guess. I would have to look and
21 think about it.

22 Q. Is it 40 hours a week?

23 A. It is more than 40 hours a week.

24 Q. So you would not have had time to look at it anyway if

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1 you are working 40 hours a week and city hall is open 8:00 to
2 4:00, you didn't have time to go see the application no matter
3 what Karen Manso did?

4 A. I didn't say -- I don't think that is the case, sir.

5 Q. Well, tell us when you had time to go see the
6 application?

7 A. I had indicated that I could come whatever hours are
8 available. I mean, I don't -- I don't have a set schedule that I
9 have to follow. I was trying very hard to avail myself of the
10 opportunity to do this.

11 Q. And how did you try very hard to avail yourself?

12 A. I discussed that. I just testified to that.

13 Q. Okay. Nothing else other than what you have already
14 testified to?

15 A. I don't know.

16 Q. Let's go to the hearing. You told us yesterday that you

17 wanted to make sure that the March 13th hearing, that it didn't
18 occur; is that accurate?

19 A. Yes.

20 Q. Had you noticed anybody to be there on March 13th, other
21 than yourself?

22 A. At the Village Hall?

23 Q. No. Anybody, these lists of witnesses that you told Mr.
24 Moran about, friends, neighbors, interested citizens, had you

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1 told anybody that they should be at the Village Center for the
2 hearing on March 13th?

3 A. Did I tell anybody to be at the Village on March the
4 13th?

5 Q. For the hearing, correct?

6 A. So close to March 13th did I tell them?

7 Q. You went to the Village Center for the hearing, as
8 indicated in the very first notice, on March 13th of 2000,
9 correct?

10 A. No, I did not. I don't believe I testified that I went
11 for the hearing that day.

12 Q. What did you go for?

13 A. To see that -- to make sure that it was not taking
14 place, that it wasn't going on. I didn't go inside and prepare
15 to go to the hearing.

16 Q. So on that date in time you did not notify anybody to be

17 there to testify?

18 A. No, I did not.

19 Q. You didn't notify anybody to be there to make public
20 comment?

21 A. No, I did not. On that day I did not.

22 Q. So you were relatively certain by that point that the
23 hearing was not going to be on March 13th? You were just going
24 to make sure, because of the three notices, that it didn't occur?

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1 A. There were people who had been told before March 13th,
2 back several weeks back that it was going to be on the 13th. I
3 did not know who all -- I mean, I announced it at a number of
4 meetings.

5 Q. You announced what?

6 A. That there was going to be a hearing and on the date. I
7 announced -- I go to many meetings. I announce -- I report on
8 environmental activities. I say when hearings are coming up. I
9 give the information that I have.

10 Q. And none of those people showed up on March the 13th?

11 A. I don't know. I mean, we are talking about a lot of
12 people, sir. I do not know.

13 Q. To your knowledge, did anybody show up on March the
14 13th?

15 A. To my knowledge, I don't know who showed up, if anyone.

16 Q. To your knowledge, did anybody -- do you know of anybody
17 that went to the hearing on March 13th, other than you?

18 A. I do not. I didn't go to the hearing.

19 Q. March 17th?

20 A. Yes, March 17th.

21 Q. Did you subpoena anybody to testify at the hearing?

22 A. I don't believe I have that power to do that, sir.

23 Q. Did you ask the board to subpoena anybody to testify at
24 the hearing?

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1 A. I have never heard of such a procedure.

2 Q. Yes or no? Did you --

3 A. No.

4 Q. -- ask, try, have anybody in any manner, whatsoever,
5 subpoenaed to be at the hearing on March 17th?

6 A. No.

7 Q. Did you hire an expert for any reason to testify at the
8 March 17th hearing?

9 A. No.

10 Q. Did you engage any expert witnesses to appear
11 voluntarily at the March 17th hearing?

12 A. Did I -- what was the word?

13 Q. Had you arranged in any manner for any expert witness to
14 be at the March 17th hearing?

15 A. Arrange for an expert witness? No.

16 Q. You were not planning on calling anybody to support your
17 position at the March 17th hearing?

18 A. The people I talked to would have gone on their own
19 accord to testify. I was not calling people, calling in the
20 legal sense of calling a witness. I was not doing that.

21 Q. So you were prepared -- from your perspective, the
22 people that you were representing, you were prepared to represent
23 them without anybody being there but yourself? That was your
24 case? You were presenting your case?

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1 A. I did not go to that hearing to present a case. My
2 understanding of the hearings is that the applicant puts on the
3 case and that the citizens listen and ask questions on the basis
4 of the testimony of the experts.

5 Q. I understand that. Now, from what you were going to
6 question, what you were going to challenge, whatever response you
7 were going to make to the application, you were going to do that
8 by yourself?

9 A. No, sir.

10 Q. Who else was going to help you?

11 A. People who are interested.

12 Q. No, give me a name. Who else did you have -- did you
13 ask to be there on March 17th to help you do that?

14 A. The --

15 Q. A specific name and conditioned on Joe Smith, I want you
16 to be here on March 17th to help me with this hearing. Who fits
17 into that category?

18 A. I think that Dr. Kelly was to notify --

19 Q. Okay. Let's talk about Dr. Kelly.

20 A. Okay.

21 Q. When did you call Dr. Kelly and tell him I want you at
22 the March 17th hearing?

23 A. He knew about the March 13th hearing. I think I called
24 him that afternoon to tell him that it didn't happen that day.

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1 Q. Did you ask him to be there March 17th?

2 A. I don't think he was available to be there on March
3 17th.

4 Q. Did you ask him to be there March 17th?

5 A. I don't know if I asked him to be there. We had a
6 discussion about it.

7 Q. Who else did you ask to be there on March 17th, you
8 personally ask by letter, by phone, by any communication?

9 A. I made no letters that I can think of for March 17th. I
10 think I asked Mr. Suttle to be there on March 17th. I asked Mr.
11 Norman.

12 Q. And Mr. Norman was there?

13 A. Mr. Norman was there.

14 Q. Did Mr. Suttle tell you that he couldn't be there on the

15 17th?

16 A. I don't remember what Mr. Suttle told me at the time. I
17 had thought and I had hoped he would be there.

18 Q. Ma'am, let's talk about your exhibits for a moment. As
19 an example, Petitioner's Exhibit Number 13, which is the Form 8-K
20 that you previously testified to. Let me show that to you to
21 refresh your recollection.

22 (Document passed to the witness.)

23 Q. Where did you get that document from?

24 A. From the internet.

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1 Q. Did you have any witness or witnesses prepared to
2 testify to substantiate the veracity of what was contained in
3 that document?

4 A. That would have to be Waste Management.

5 Q. Did you have any witness prepared to testify?

6 A. No.

7 Q. The photograph that you tried to admit that has now been
8 marked as Petitioner's 28, did you have the person that took that
9 photograph available to testify?

10 A. No, I did not.

11 Q. The map, the FEMA map that you tried to submit, did you
12 have the person that prepared the map or that was responsible for
13 preparing the map prepared to testify at the hearing?

14 A. The map was prepared 20 years ago. I have no idea who
15 that person would be and I have no idea if I could even ascertain
16 that information.

17 Q. Did you --

18 A. I did not have that person available to testify.

19 Q. You don't have any idea whether the -- if the map is 20
20 years old, do you have any idea whether the map is still
21 accurate?

22 MS. HOMEYER: Mr. Hearing --

23 THE WITNESS: It is --

24 MS. HOMEYER: Go ahead.

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1 THE WITNESS: It has been represented to me by your office
2 that it is a --

3 Q. (By Mr. Baricevic) By my office?

4 A. I am sorry. By the Office of the St. Clair County maps
5 and plats, zoning, whatever that office is, that this was the
6 up-to-date current map.

7 Q. And so did you have the person that made that
8 representation to you ready to testify at the hearing on March
9 17th as to the veracity of that map?

10 A. I don't think that that person would be able to testify
11 to that.

12 Q. Did you make any attempts to have anybody else be there
13 to verify that the map was accurate and still the one that is to

14 be used for those purposes?

15 A. I didn't have funding to get people to come to --

16 Q. The question was not whether you had funding. The
17 question was did you have anybody there to testify to help you
18 get that map admitted?

19 A. Like from FEMA you mean?

20 Q. From anybody?

21 A. No, no. There was no one there.

22 Q. The process of the hearing. Let's see what your
23 recollection is about this incident.

24 A. Could I add to my answer that I said just now?

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1 Q. No. I asked you -- no, no.

2 A. Okay.

3 Q. At the beginning of the hearing or early in the hearing,
4 did you recall a time where you indicated to the hearing officer,
5 Mr. Chatham --

6 A. I am sorry. Can you start over? I was --

7 Q. Yes. Let's refer now to the procedure of the operation
8 of the hearing.

9 A. Okay.

10 Q. Sometime towards the front end of the hearing, after Mr.
11 Moran had moved for the admission of -- or had indicated that he
12 was going to stand on the application?

13 A. Yes.

14 Q. And would have witnesses available for
15 cross-examination, but from an offer of proof the application was
16 going to stand on its own merits, did you not then tell Mr.
17 Chatham that you had some exhibits in the car that you were not
18 quite prepared and you needed time to go get those exhibits?

19 A. Yes, that's correct.

20 Q. And he let you do that, did he not?

21 A. Yes.

22 Q. Now, ma'am, Ms. Andria, you had indicated that you had
23 wanted Mark Wusthof of Southwestern Illinois Tourism Bureau to
24 testify?

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1 A. I had hoped that he would.

2 Q. Had you ever talked to him about his testimony?

3 A. No, sir, I didn't. It was indicated to me that he was
4 interested in it.

5 Q. Was it indicated by Mr. Wusthof?

6 A. No, sir.

7 Q. You never talked to Mr. Wusthof?

8 A. No, I did not.

9 Q. And as you sit here today, have you ever talked to Mr.
10 Wusthof about --

11 A. About this particular thing?

12 Q. Yes.

13 A. No, I have not.

14 Q. And, Mr. Fries, he is a structural engineer, is he not?

15 A. I don't know his -- all of his credentials. But I know
16 that he is -- he knows about structural engineering. I think he
17 is a structural engineer, but I do not know.

18 Q. Do you have any idea of his knowledge or expertise in
19 soils?

20 A. It was indicated to me when I discussed with him that he
21 had knowledge of that.

22 Q. Mr. Fries is a guy that is very active in conservation
23 issues?

24 A. Yes, he is.

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1 Q. Mr. Fries is part of a group that does -- is it the bike
2 trail folks in the St. Louis metropolitan area?

3 A. Yes.

4 Q. He spends a lot of times at public hearings?

5 A. I don't believe I have ever seen Mike Fries at a public
6 hearings.

7 Q. You have never seen Mike at a public hearing? What gave
8 you any indication that Mike Fries was going to be at Fairmont
9 City for this public hearing?

10 A. I think I testified that I knew he was not going to be
11 because he said he had a conflict of interest.

12 MR. BARICEVIC: I have nothing else, Mr. Hearing Officer.

13 HEARING OFFICER KNITTLE: Let's go off the record.

14 (Discussion off the record.)

15 HEARING OFFICER KNITTLE: All right. Let's take five
16 minutes.

17 MS. HOMEYER: Yes, that's all I need. Thank you very much.
18 (Whereupon a short recess was taken.)

19 HEARING OFFICER KNITTLE: All right. We are back on the
20 record.

21 Ms. Andria, it is your redirect examination of -- I am
22 sorry. Ms. Homeyer, it is your redirect examination of Ms.
23 Andria.

24 Ms. Andria, I will remind you that you are still under

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1 oath.

2 THE WITNESS: Thank you.

3 MS. HOMEYER: Thank you.

4 HEARING OFFICER KNITTLE: Your witness.

5 REDIRECT EXAMINATION

6 BY MS. HOMEYER:

7 Q. Ms. Andria, there was some testimony by you on direct
8 and cross-examination of your participation in other siting
9 hearings; is that correct?

10 A. Correct.

11 Q. And what procedure were you used to seeing in terms of

12 witnesses in the other hearings?

13 A. That the applicant put on testimony by expert witnesses
14 addressing different criteria.

15 Q. In support of the application?

16 A. In support of the application.

17 Q. And did that occur in the hearing on March 17th?

18 A. No, it did not.

19 Q. In any of those three sitting hearings that you
20 testified about, were you ever on the same side as Waste
21 Management?

22 A. Yes.

23 Q. And in which siting hearing was that?

24 A. The National City landfill.

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1 Q. Was Waste Management also opposing that siting?

2 A. Yes, it was.

3 Q. At the hearing on March 17th of this year, did you have
4 any knowledge of who the court reporter was?

5 A. No.

6 Q. Did the court reporter have any communication with you
7 at all at any time before, during or after the March 17th
8 hearing?

9 A. No.

10 Q. Did she ever give you a business card?

11 A. No.

12 Q. Did you even know that she was with a private company as
13 opposed to a public entity?

14 A. No.

15 Q. You didn't know anything about her, did you?

16 A. No.

17 Q. Who did you think were the most obvious sources of
18 obtaining the transcript?

19 A. The Village, the Village clerk.

20 Q. And why were you led to call Mr. Baricevic?

21 A. Because on April 14th, when I talked to Karen Manso on
22 the telephone, she indicated to me that the transcript was at the
23 courthouse.

24 Q. And who did you call next?

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1 A. I called Mr. Baricevic's office at the courthouse.

2 Q. What were you told?

3 A. I was told that he was not there and that I should try
4 his law office.

5 Q. Then what did you do?

6 A. I called his law office.

7 Q. And then what did you do?

8 A. He was not there and I left a message.

9 Q. And did you testify about this conversation with Karen
10 Manso yesterday?

11 A. I don't remember.

12 Q. Did you review anything last night that refreshed your
13 recollection about your conversation --

14 A. Yes.

15 Q. -- with Karen Manso?

16 A. Yes, I did.

17 Q. What did you review?

18 A. A memo that I had made to myself.

19 Q. And did that refresh your recollection that prior to
20 calling Mr. Baricevic you had talked with Karen Manso?

21 A. Yes.

22 Q. And the date was April 14th, 2000?

23 A. Yes.

24 Q. After your deposition on August 8th, did you -- were you

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1 able to refresh your recollection about conversations with Karen
2 Manso prior to December 15th, 1999, pertaining to obtaining a
3 copy of the transcript?

4 A. Yes.

5 Q. What did you find?

6 A. I was -- I am sorry. I was going back to the
7 deposition.

8 Q. All right. After your deposition on August 8th, of this
9 year --

10 A. Uh-huh.

11 Q. -- at which time you testified about conversations with
12 Karen Manso, did you subsequently find anything that refreshed
13 your recollection about conversations that you had had with her
14 just before December 15th, 1999?

15 A. Oh, yes.

16 Q. What did you find?

17 A. I found a little piece of some scribbled notes that I
18 had made.

19 Q. Of what?

20 A. Of the first telephone conversation with her when I
21 called to ask for a copy of the application.

22 Q. And after you reviewed -- you reviewed this note after
23 your deposition; is that correct?

24 A. Yes, I did.

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1 Q. And did that refresh your recollection?

2 A. Yes, it did.

3 Q. And is that why you were able to testify more fully at
4 this hearing about conversations with Ms. Manso shortly before
5 December 15th, 1999?

6 A. Yes.

7 Q. Ms. Andria, do you have any training in the law?

8 A. No.

9 Q. Are you an expert in any field?

10 A. I don't know.
11 Q. Are you --
12 A. I mean --
13 Q. Are you an expert in civil engineering?
14 A. No.
15 Q. Are you an expert in structural engineering?
16 A. No.
17 Q. Are you an expert on floodplain issues?
18 A. No.
19 Q. Are you an expert on traffic?
20 A. No.
21 Q. Are you an expert on landfill needs?
22 THE WITNESS: Could I ask that they go to the other room?
23 HEARING OFFICER KNITTLE: Yes. Folks, Mr. Baricevic, if
24 you want to talk, take it to the other room. All right.

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1 MR. BARICEVIC: Okay. Excuse me.
2 HEARING OFFICER KNITTLE: Please proceed.
3 Q. (By Ms. Homeyer) Are you an expert on landfill needs?
4 A. No.
5 Q. Are you an expert in any other field that pertained to
6 the nine criteria --
7 A. No.
8 Q. -- pertaining to siting?

9 A. No.

10 Q. I believe you testified yesterday that you had
11 approximately two weeks to look at the documents that were given
12 to you by Joe Durako with Waste Management; is that correct?

13 A. Correct.

14 Q. Did you fully understand everything that you read in
15 those documents?

16 A. No.

17 Q. If you had had more time to look at the application as
18 it was presented to you by Waste Management, what would you have
19 done or what might you have done with respect to the technical
20 aspects of the Waste Management sitting application?

21 A. I would have broken it down into areas and would have
22 attempted to start calling experts and get opinions and try to
23 learn more about what was going on, what the application stated,
24 what were the risks involved. Was this accurate, was that

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1 accurate. I would have made many phone calls and done research.

2 Q. Were you prejudiced in that opportunity by not having
3 more time to look at the application?

4 A. Absolutely.

5 Q. Would you describe what you can see of the Village Hall
6 building when you walk into the entrance or lobby?

7 A. It is a little like a vestibule. I don't know what kind
8 of name you call it. And to the right, as you come in, it is a

9 very little space. To the right there is a window. And then
10 right next to that is a bulletin board. And there is someone who
11 sits behind the window. I think that they call her a dispatcher.
12 I don't know. It is like you can't really see what else is in
13 there. You don't see any other offices or anything.

14 Q. And is this dispatcher blocked off by a glass window?

15 A. Yes.

16 Q. Do you have to talk through a little microphone or a
17 little --

18 A. I don't really know.

19 Q. When you are standing in that vestibule, do you have
20 access to any other part of Village Hall?

21 A. No.

22 Q. Are those doors locked?

23 A. I do not know. I have never tried to enter, but they
24 are closed.

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1 Q. They are closed. And can you see any of the work areas
2 of the employees who work at Village Hall when you are standing
3 in the vestibule?

4 A. Only the desk of the dispatcher person.

5 Q. Is that the police dispatcher also?

6 A. I think so, but I don't know.

7 Q. So there is no opportunity to walk freely through

8 Village Hall, is there?

9 A. Well, no, I don't think so.

10 Q. You testified yesterday that you would have liked to
11 have Paul Osman testify at the hearing, correct?

12 A. Yes.

13 Q. Had you talked with Mr. Osman prior to March 17th?

14 A. Yes.

15 Q. Did you discuss with him the issue of the floodplain
16 matter?

17 A. Yes.

18 Q. And did he express to you any information concerning
19 where the landfill was in relation to the floodplain?

20 A. Yes.

21 Q. What did he tell you?

22 MR. BARICEVIC: Object. Hearsay.

23 MS. HOMEYER: Mr. Knittle, she testified that she didn't
24 know what Mr. Osman was going to testify about, and they opened

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1 that issue up. And what I am asking her to do is clarify that
2 she did have some understanding of what Mr. Osman would have
3 testified about.

4 HEARING OFFICER KNITTLE: Mr. Baricevic?

5 MR. BARICEVIC: Well, that was not the question. She can
6 testify whether or not she had some understanding. She can't
7 testify as to what he would testify to.

8 HEARING OFFICER KNITTLE: The objection is sustained.

9 Q. (By Ms. Homeyer) Did you have an understanding of what
10 Mr. Osman would have said about the floodplain had he testified
11 or had he appeared at the March 17th hearing?

12 A. Yes.

13 Q. Would it have been about where the floodplain was
14 located?

15 MR. BARICEVIC: I object, Your Honor. She is trying to do
16 the same thing. She is going to now testify as to the substance
17 of what he would have testified to.

18 MS. HOMEYER: They opened the issue up by asking her -- Mr.
19 Moran asked her yesterday on cross-examination do you know what
20 Mr. Osman would have testified about. I am asking her to clarify
21 her answer from yesterday.

22 HEARING OFFICER KNITTLE: She can testify as to her own
23 basis and knowledge. I don't have an objection or a problem with
24 that. But regardless of whether they opened it up, I am not

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1 going to allow hearsay testimony from this witness.

2 Q. (By Ms. Homeyer) What do you believe Mr. Osman would
3 have said at the March 17th hearing about the floodplain?

4 A. Based on my conversations with Mr. Osman --

5 MR. BARICEVIC: I object to any further testimony as to
6 what he would say.

7 MS. HOMEYER: My question was what did she expect him to
8 say.

9 HEARING OFFICER KNITTLE: I will overrule the objection.

10 Q. (By Ms. Homeyer) What did you expect him to say?

11 A. That the landfill was located in the floodplain.

12 Q. In Petitioner's Exhibit Number 10, the Village of
13 Fairmont City told you the application would be approximately
14 1,200 to 1,500 pages, correct?

15 A. Correct.

16 Q. At the hearing did the Mayor of the Village of Fairmont
17 City make any statements about how big the application was?

18 A. He said it was 3,000 pages.

19 Q. Now, have you looked at the certificate of the record on
20 appeal that the Village of Fairmont City has filed?

21 A. I have.

22 Q. Have you calculated how many pages the two volume
23 application actually takes up in the record on appeal?

24 A. I believe it is 776 pages.

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1 Q. Ms. Andria, when you were preparing your public comment
2 you testified yesterday that you were prejudiced by not having
3 the transcript of the March 17th hearing available to you,
4 correct?

5 A. Correct.

6 Q. What did you refer to primarily in your public comment

7 as far as supporting documentation?

8 A. My own research that took place after trying to find out
9 information and things related. There was very little reference
10 to testimony.

11 Q. Did you also refer to the exhibits that you tried to
12 offer into evidence --

13 A. Yes.

14 Q. -- but were not allowed to?

15 A. Yes, I did.

16 Q. So your public comment was written primarily based on
17 your own documentation, correct?

18 A. Yes.

19 Q. Do you remember how many exhibits you submitted with
20 your public comment?

21 A. I believe 53.

22 Q. Some of those included the exhibits that you tendered at
23 the March 17th hearing; is that correct?

24 A. That's correct.

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1 Q. And you say there was very little reference to testimony
2 in your public comment, correct?

3 A. That's correct.

4 Q. Why is that?

5 A. My notes were a shambles. I couldn't make anything -- I

6 didn't have the transcript. I was extremely prejudiced.

7 Q. Were you present at a meeting of the board of directors
8 of the East St. Louis Community Action Network at which the board
9 members voted on whether to participate in the petition for
10 review from the April 19th, 2000 ordinance passed by the Village
11 of Fairmont City approving siting?

12 A. Yes, I was.

13 Q. And do you remember when that meeting occurred,
14 approximately?

15 A. It was after the public hearing -- after the public
16 comment period ended, and I don't remember exactly.

17 Q. It was after the March 17th hearing, correct?

18 A. Right.

19 Q. It was prior to what date?

20 A. It was prior to the deadline to file a petition.

21 Q. Do you remember the result of that vote?

22 A. It was unanimous to go forward.

23 Q. So there was a board vote of ESL CAN to participate in
24 this proceeding, correct?

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1 A. There was.

2 Q. Did you make any attempt between March 13th and March
3 17th to let the general public --

4 A. Would you tell me those dates again.

5 Q. Yes. After you went to Village Hall on March 13th and

6 learned that there was no public hearing that date --

7 A. Yes.

8 Q. -- did you make any attempt to let the public know about
9 the March 17th hearing date?

10 A. Yes, I did.

11 Q. What steps did you take?

12 A. I called the newspapers, because I couldn't call
13 everybody and tell them that there was a public hearing on the
14 17th. I called the newspapers so that they could print something
15 about the public hearing was going to be held.

16 Q. What newspapers did you call?

17 A. I called the Belleville News-Democrat. I don't know if
18 I called the -- no, I didn't call the Journal, because they were
19 not --

20 Q. Just testify to the best of your recollection. What
21 newspapers do you remember calling?

22 A. I believe I called the Post and the Belleville
23 News-Democrat.

24 Q. What information did you give each paper?

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1 A. That there was going to be a public hearing on Friday
2 morning, at 9:00, on the landfill, the expansion of the landfill.

3 Q. What other steps did you take?

4 A. I didn't see anything that was printed yet, and I wrote

5 a public press release.

6 Q. And when did you send that out?

7 A. I think I sent it on Wednesday.

8 Q. That would be March 15th?

9 A. I think so.

10 Q. Did an article subsequently run in the Belleville
11 News-Democrat?

12 A. Yes, it did.

13 Q. What date did it appear?

14 A. The morning of the public hearing.

15 Q. You testified about some conversations that you had with
16 people at the Village Hall about when you went there to see the
17 application. Now, at any time did anyone at the Village offer to
18 let you see the application even though Karen Manso was not
19 there?

20 A. No, no.

21 Q. When you received the May 8, 2000 letter from the
22 Village saying that the transcript -- I am sorry -- when you
23 received the May 9th, 2000 letter from the Village saying that
24 you could view the transcript at city hall if you went to see

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1 Karen -- if you arranged it through Karen Manso, do you recall
2 seeing that in the letter?

3 A. Yes.

4 Q. And did that confirm what the Village had been telling

5 you all along that Karen Manso was the gatekeeper for these
6 documents?

7 A. Absolutely.

8 MS. HOMEYER: I don't have any further questions.

9 HEARING OFFICER KNITTLE: Mr. Moran?

10 MR. MORAN: Thank you.

11 RE CROSS EXAMINATION

12 BY MR. MORAN:

13 Q. Ms. Andria, you knew, based upon your reading of the
14 Illinois Environmental Protection Act, that the last day on which
15 the hearings on the siting application of Waste Management of
16 Illinois, Inc., could begin was March 18th of 2000; isn't that
17 correct?

18 A. I did not know until after the hearing that it was --
19 that was the last day.

20 Q. So would it be accurate to say that you, at no point,
21 read the statute, read Section 39.2 of the Act, which set out the
22 time periods within which a hearing must be commenced based on
23 the date the application was filed; would that be accurate?

24 MS. HOMEYER: Objection. Outside the scope of redirect.

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1 HEARING OFFICER KNITTLE: Mr. Moran?

2 MR. MORAN: It is particularly relevant to the redirect in
3 which this witness was asked repeatedly about her inability to

4 prepare for a public hearing that she didn't know was going to be
5 scheduled because of a number of different notices and that she
6 didn't have sufficient time to prepare for that hearing.

7 MS. HOMEYER: Mr. Knittle, I did not go into that. I went
8 into the technical reports and the need to consult with experts.
9 I did not go into the time frame of the public hearing, nor did I
10 go into the three different notices.

11 MR. MORAN: There were questions about whether she had an
12 application in enough time to prepare for this public hearing.
13 This witness has told us and she told us yesterday that she was
14 extremely prejudiced by the fact that she had insufficient time
15 to prepare for a hearing that she was not aware of.

16 HEARING OFFICER KNITTLE: Yes, that was yesterday, though,
17 not on redirect. Let me go through my notes real quick. I have
18 got them.

19 MS. HOMEYER: Also, I believe that the question was asked
20 and answered yesterday on cross-examination by Mr. Moran. He has
21 had an opportunity to go into this before.

22 HEARING OFFICER KNITTLE: Mr. Moran, to the best of my
23 ability, my note taking here, I don't think that that was delved
24 into on redirect. I am going to sustain the objection.

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1 If you want to make an offer of proof about this particular
2 question, I would allow it.

3 MR. MORAN: By all means because it was asked early on in

4 the redirect.

5 HEARING OFFICER KNITTLE: Well, the transcript will show
6 it, so it is --

7 MR. MORAN: Absolutely.

8 HEARING OFFICER KNITTLE: So if you want to --

9 MR. MORAN: Let me go through the --

10 HEARING OFFICER KNITTLE: -- phrase this as an offer of
11 proof, I would let you ask those questions of this witness.

12 Q. (By Mr. Moran) Ms. Andria, is it accurate to say, then,
13 that you made no attempt to review Section 39.2 of the Act to
14 determine the period within which the public hearing must
15 commence, based upon the filing date of the siting application?

16 MS. HOMEYER: Objection. Asked and answered.
17 Argumentative. Calls for a legal opinion as to what the statute
18 requires. And it is outside of the scope of redirect.

19 MR. MORAN: This is an offer of proof. Why are you
20 objecting to --

21 MS. HOMEYER: Oh, I am sorry.

22 HEARING OFFICER KNITTLE: I will note them all for the
23 record. I am sorry, Ms. Homeyer, I --

24 MS. HOMEYER: I thought you overruled my objection.

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1 HEARING OFFICER KNITTLE: No, I sustained your objection.

2 MS. HOMEYER: Okay.

3 HEARING OFFICER KNITTLE: I agree. I think it is outside
4 of the scope of redirect, as well. That's what I sustained.

5 MS. HOMEYER: I apologize. I misunderstood.

6 HEARING OFFICER KNITTLE: Not a problem. Mr. Moran is
7 making an offer of proof.

8 Do you need that question read back to you?

9 THE WITNESS: Oh, I am supposed to answer? I am sorry.

10 HEARING OFFICER KNITTLE: You are supposed to answer.

11 THE WITNESS: Did I make an effort to look at 39.2 to
12 determine when the last date of the public hearing was, is that
13 what --

14 Q. (By Mr. Moran) Or could be based on the statute, yes?

15 A. Did I? No.

16 Q. You talked about the vote of ESL CAN -- this is beyond
17 the offer of proof.

18 HEARING OFFICER KNITTLE: Okay.

19 Q. (By Mr. Moran) You talked about the vote of ESL CAN to
20 participate in this siting process, correct?

21 A. Yes.

22 Q. When did that occur?

23 A. I do not know. It was after --

24 Q. Can you give us a year as to when this happened?

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1 A. I think I just --

2 Q. Was it 1999, was it 2000? Do you have any idea when

3 this vote occurred?

4 MS. HOMEYER: Objection. Asked and answered.

5 HEARING OFFICER KNITTLE: Overruled. I will let this
6 question as to which year it occurred go forth.

7 THE WITNESS: I think I just testified that it was before
8 we filed the petition and after the end of the public comment.

9 Q. (By Mr. Moran) So there was no determination made prior
10 to the public hearing in which ESL CAN agreed to participate in
11 the siting proceedings; is that correct?

12 A. Oh, in the siting proceeding? I thought you --

13 MS. HOMEYER: Objection. My question on redirect was
14 focused on the participation of ESL CAN in the petition for
15 review. This question is outside the scope of redirect.

16 HEARING OFFICER KNITTLE: Mr. Moran, do you have a
17 response?

18 MS. HOMEYER: Also, it was gone into yesterday.

19 MR. MORAN: The point here is that this witness has
20 testified about her inability to prepare for a siting hearing.
21 She has testified to that again on redirect examination. She had
22 insufficient time to prepare for the public hearing, aside from
23 any question as to the petition for review and this appeal. This
24 question goes to that inquiry which was made on redirect

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1 examination which relates to this witness' preparedness and the

2 reasons why she may not have had sufficient time to prepare for
3 this public hearing.

4 MS. HOMEYER: I don't agree with anything he just said.
5 His question is about a vote of the board about something to do
6 with their participation at the hearing. And I never went into
7 that in redirect, and Mr. Moran did go into it yesterday. It has
8 been gone into. It is outside the scope of redirect. All I
9 asked the witness to do is clarify about a board vote concerning
10 the participation of ESL CAN in this proceeding, the appeal or
11 the petition for review.

12 HEARING OFFICER KNITTLE: The proceeding before the
13 Illinois Pollution Control Board.

14 MS. HOMEYER: Yes.

15 HEARING OFFICER KNITTLE: Correct.

16 MR. MORAN: I am not referring to her question regarding
17 ESL CAN for purposes of this appeal. I am referring to her
18 questions to this witness about this witness having an
19 application two weeks before a hearing and being unable to
20 prepare, allegedly, for that public hearing.

21 MS. HOMEYER: My objection is that that question has
22 nothing to do with the issue he claims it is relevant to.

23 HEARING OFFICER KNITTLE: If you can explain to me how that
24 relates to her preparedness because of the siting application, I

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1 would consider it.

2 MR. MORAN: If this witness did not have the authority or
3 the direction to proceed on behalf of either ESL CAN or American
4 Bottom Conservancy in the public hearing in a sufficient enough
5 time prior to the public hearing, that would certainly explain
6 part of her inability to prepare for a hearing that she should
7 have known was going to take place by March 18th.

8 If these two organizations did not vote to authorize
9 participation in the public hearing until the end of February or
10 until -- whenever the date was -- I still don't know after
11 talking to a number of these different witnesses -- then that is
12 a significant factor in determining why she was unable to prepare
13 for this hearing, because she represented and appeared, as she
14 said, on behalf of these two organizations at that hearing.

15 HEARING OFFICER KNITTLE: Anything further, Ms. Homeyer?

16 MS. HOMEYER: No.

17 HEARING OFFICER KNITTLE: Okay. I am overruling the
18 objection.

19 Do you recall the question, ma'am?

20 THE WITNESS: No.

21 HEARING OFFICER KNITTLE: Do you need it read back?

22 MR. MORAN: Yes, please.

23 HEARING OFFICER KNITTLE: Darlene, could you read the
24 question back.

1 (Whereupon the requested portion of the record was read
2 back by the Reporter.)

3 THE WITNESS: That is not correct.

4 Q. (By Mr. Moran) There was a vote prior to the public
5 hearing in which ESL CAN authorized you to participate in the
6 public hearing; is that correct?

7 A. I am the chair of the environment committee and I make
8 environment committee reports at each of the meetings, the
9 membership meetings. And we have -- we discussed it and it was
10 shortly -- I don't know the meeting date that we discussed it,
11 and we decided. It was not a formal resolution or anything to go
12 forward.

13 Q. What year did that happen?

14 A. That happened in the year 2000.

15 Q. Did it happen in January of 2000?

16 A. I don't know.

17 Q. Did it happen in February of 2000?

18 A. I don't know.

19 Q. Did it happen in March of 2000?

20 A. No.

21 Q. Similarly, with the regard to the American Bottom
22 Conservancy, was the decision made in a similar fashion, to
23 participate in the public hearing?

24 A. It was conversations on the telephone or at a meeting.

1 I don't remember.

2 Q. What year did this happen?

3 A. It happened this year.

4 Q. Did it happen in January of this year?

5 A. I do not know, sir.

6 Q. Did it happen in February of this year?

7 A. I do not know the date, sir. I think it might -- I

8 think we discussed it in December.

9 Q. Did it happen in 1999?

10 A. It could have.

11 Q. You have no recollection?

12 A. No, sir.

13 Q. Now, you testified also that in the prior siting

14 hearings in which you have participated, the experts would

15 testify with respect to the specific criterion that they were

16 addressing; is that correct?

17 A. Would you repeat that? I am sorry.

18 Q. You testified on redirect examination that in the prior

19 siting hearings you have worked on, there have been expert

20 witnesses who have testified in those proceedings; is that

21 correct?

22 A. That's correct.

23 Q. And those experts testified based upon written reports

24 that were submitted as part of the siting applications filed in

1 those matters?

2 A. I was not familiar with the process in the first one, so
3 I can't -- I really don't remember that. I think I remember
4 getting -- looking at the reports for National City. I just
5 don't really have a strong memory. It was five years ago, and
6 they all happened about the same time, so I really don't have a
7 strong memory.

8 Q. So as you sit here today, you are unable to tell us
9 whether any of the testimony presented by any of the witnesses in
10 those three prior siting hearings were based upon written reports
11 that were contained in the siting request; is that correct?

12 A. I don't understand the question.

13 Q. Let me try it this way. Do you have any understanding
14 or any knowledge, as you are sitting here now, that the experts
15 who testified in those prior siting hearings did so on the basis
16 of written reports they had submitted as part of the siting
17 applications in those matters?

18 A. Yes, I understand that that is the situation.

19 Q. And that is what happened in those earlier siting
20 proceedings; isn't that correct?

21 A. I said I don't remember precisely everything that went
22 into them.

23 Q. But as you are sitting here now, your understanding is
24 that experts who testified at those siting proceedings did so on

1 the basis of written reports they had written and submitted as
2 part of the siting application in those matters, correct?

3 A. It is my understanding that that is the way it is
4 supposed to work. I do not know if that is the way that it
5 worked during those siting proceedings. I am sorry.

6 Q. Now, you were asked on redirect examination who you
7 thought the most obvious sources of obtaining the public hearing
8 transcript were. Do you recall that question?

9 A. Yes.

10 Q. I think your answer was the Village of Fairmont City?

11 A. That's correct.

12 Q. Now, you had obtained a copy --

13 MS. HOMEYER: Objection. That does not correctly state her
14 testimony.

15 MR. MORAN: She just said it did.

16 THE WITNESS: Well, then read my testimony. I don't know
17 what you are --

18 MR. MORAN: You don't recall your testimony? Do you want
19 to change your answer based on your attorney's statement ?

20 THE WITNESS: No, I would like to -- go ahead. I am sorry.

21 HEARING OFFICER KNITTLE: Yes.

22 MS. HOMEYER: I will object that the question that he posed
23 to her did not correctly summarize the testimony that she just
24 gave on redirect.

1 MR. MORAN: She can explore that on redirect examination.
2 This witness has answered it.

3 HEARING OFFICER KNITTLE: You will have to address that on
4 the re-redirect. She has already answered that question. To be
5 honest with you, Ms. Homeyer, I have the question down but I
6 don't have her response down.

7 Mr. Moran, you can continue.

8 MR. MORAN: Thank you.

9 Q. (By Mr. Moran) Now, Ms. Andria, you had previously
10 testified that you obtained a copy of the siting application from
11 Waste Management of Illinois; is that correct?

12 A. Yes.

13 Q. Did it ever occur to you to contact Waste Management of
14 Illinois to get a copy of the public hearing transcript?

15 A. Did it occur to me to call them to ask for one?

16 Q. Yes.

17 A. No.

18 Q. Now, you also testified on redirect examination that you
19 did not fully understand the copy of the siting application that
20 you obtained from Waste Management of Illinois; is that correct?

21 A. That I didn't fully understand?

22 Q. You didn't fully understand it, correct?

23 A. That's correct.

24 Q. When you recognized that the siting application was

1 perhaps beyond your skills and considerable experience in
2 different areas, did you make any attempt to enlist the
3 assistance or help of those who could provide that understanding
4 for you?

5 A. Yes, I did.

6 Q. And describe for us what you did in order to enlist the
7 assistance of people to help you understand that siting
8 application?

9 A. One of the people that I talked to was -- I believe was
10 Mr. Fries. I called other people asking questions. I called --
11 I think I called the EPA. I made several phone calls.

12 Q. Now, when you say you think you called the EPA, are you
13 just speculating that you may have called them? Do you have any
14 recollection specifically about talking to someone at the EPA
15 about this siting application?

16 A. Right now, of specific recollections I remember that it
17 was very scrambled. I mean, I was trying to both get people to
18 know about it so that they could come testify, and this is on
19 their own, not as my witnesses but to let them know that
20 something was coming up, that this was the procedure. I did not
21 know what exactly what was in the application before that. So I
22 was trying to -- I don't have specific recollections as to who I
23 called, and when I called, but I do know that I attempted to try
24 to make sense of the application.

1 Q. Did you have any discussion with anyone about hiring an
2 attorney to represent you or these organizations in connection
3 with the siting application?

4 MS. HOMEYER: I am going to object. That would be covered
5 by the attorney-client privilege.

6 MR. MORAN: How in the world would a discussion about the
7 possible retention of an attorney to assist in the presentation
8 of the case at a siting hearing in itself violate any
9 attorney-client privilege?

10 HEARING OFFICER KNITTLE: Anything further, Ms. Homeyer?

11 MS. HOMEYER: I will withdraw the objection.

12 THE WITNESS: That was the question, whether to have an
13 attorney present at the siting hearing? Is that what your
14 question was?

15 Q. (By Mr. Moran) My question was this. Did you have any
16 discussion with any person, someone from ESL CAN, someone from
17 American Bottom Conservancy or any other individual about
18 retaining a lawyer to assist you and those organizations in the
19 public hearing that would take place on the siting application?

20 A. No.

21 MS. HOMEYER: I will object. It is outside the scope of
22 redirect.

23 HEARING OFFICER KNITTLE: Mr. Moran?

24 MR. MORAN: Well, she has already answered the question.

1 The question is directed to that line of questioning on redirect
2 in which she was asked whether she understood the application,
3 whether she was able to go forward and prepare for it, and I want
4 to find out if it was so obvious that she didn't understand the
5 application and wanted to appear, was there any effort made by
6 her to get somebody in there to assist her and these
7 organizations at the public hearing.

8 HEARING OFFICER KNITTLE: I will allow the one question,
9 but I don't want to go into any details on any discussions.

10 THE WITNESS: We did not attempt to retain an attorney to
11 go to the siting hearing.

12 Q. (By Mr. Moran) Now, you also testified on redirect as to
13 certain notes or memoranda of yours that you used to refresh your
14 recollection after the date of your deposition and before today's
15 hearing; is that correct?

16 A. I said that -- I believe I said that -- there was a note
17 that I had.

18 Q. This is a written note?

19 A. A written.

20 Q. A written note that you made to yourself?

21 A. No, not that I made to myself.

22 Q. Tell us what was contained in this note.

23 MS. HOMEYER: I am going to object. She testified about
24 two notes, I believe, that she used to refresh her recollection.

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1 I would like to request clarification of which note that Mr.
2 Moran is --

3 MR. MORAN: I want to find out about all of them, because
4 this is the first that I have heard of any notes that she has
5 taken that relate to any of the issues in this case. So I will
6 clearly go into all of them.

7 MS. HOMEYER: Mr. Knittle, I object to the implication that
8 we had some obligation to provide him with information about
9 those notes.

10 HEARING OFFICER KNITTLE: I can't sustain -- without
11 knowing -- I will note it for the record, but without looking
12 into the discovery in this issue --

13 MR. MORAN: I am getting into the obligation to produce
14 these notes. I want to establish what they are, what they
15 contain, when they were prepared, and that's the purpose of this
16 question.

17 HEARING OFFICER KNITTLE: We can note your objection, but I
18 do think the questions are valid, at least to find out what we
19 are dealing with here.

20 Go ahead, Mr. Moran.

21 THE WITNESS: Okay. Could you ask me what you are talking
22 about?

23 Q. (By Mr. Moran) Did you prepare notes that you have used
24 to refresh your recollection about certain questions that had

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1 been posed to you, both at the deposition and at the hearing
2 yesterday?

3 A. No.

4 Q. Well, your attorney asked you earlier this morning on
5 redirect examination if you had an opportunity to refresh your
6 recollection with respect to certain matters, and I thought you
7 answered yes, you did. Now are you saying that you didn't?

8 A. I think the questions are different. You asked me just
9 now if I prepared notes to do this. While I was looking through
10 papers I ran across a note that -- it said, Karen -- it said at
11 the top, application, Karen, Chief, \$500.00, will call back. I
12 think that was the sum and total of that note.

13 Q. When was this note written?

14 A. After I had the conversation the first -- when I first
15 called Karen Manso either at the end of November or the beginning
16 of December, and asked her about the -- that I told her I wanted
17 to get a copy of the application.

18 Q. Did you write this note?

19 A. Yes, I did.

20 Q. You wrote it shortly after you had this conversation
21 with Karen Manso about obtaining a copy of the siting
22 application?

23 A. No, I wrote it while I was having the conversation.

24 Q. Okay. So while you were talking with Karen Manso you

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1 were writing these notes about your conversation with her; is
2 that correct?

3 A. That's correct.

4 Q. Now, where did you maintain these notes?

5 A. This note was just stuck in with a bunch of things that
6 I was looking through. This is not -- this was not maintained.
7 This was not dated. This was just a scribbled note that I had.

8 Q. And you just happened to be looking at these notes after
9 our hearing yesterday?

10 A. No.

11 Q. When did you first review these notes that helped
12 refresh your recollection about your discussion with Karen Manso?

13 A. Let me see. It is all running together now. The note
14 that I found regarding the conversation with Karen Manso I found
15 before yesterday, I believe.

16 Q. When did you find it?

17 A. No, I think it was last night. I am sorry. It is all
18 running together.

19 Q. So as you sit here today, you can't recall whether you
20 reviewed this note about the Karen Manso discussion either after
21 yesterday's hearing or sometime prior to yesterday's hearing?
22 You are unable to differentiate; is that correct?

23 A. Right now I am unable to differentiate much of anything.
24 It is --

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1 Q. Would you have reviewed this note prior to your
2 deposition on August 8th of this year?

3 A. I didn't know the existence of the note.

4 Q. So you found this note sometime between the date you
5 were deposed on August 8th and this morning?

6 A. That's correct.

7 Q. Whenever you reviewed the note, that note refreshed your
8 recollection about a conversation you had with Karen Manso prior
9 to December 15th of 1999; is that correct?

10 A. That's correct.

11 Q. You do not recall whether you had reviewed this note
12 before you testified at any time yesterday, correct?

13 A. I really can't remember. I mean, it is like it is all
14 blurring into one day to me now. I think I did, but I don't
15 remember when I found it.

16 Q. When you say it is all blurring into one day for you,
17 what is what blurring all into one day? This entire month? This
18 whole year? I mean, what period are we talking about just kind
19 of blurring together?

20 A. Well, it has been blurring lately a lot.

21 Q. Are we talking about the last month that is sort of
22 blurred together?

23 A. No, I am saying that I am losing -- right now I am

24 losing track of what I said today and what I said yesterday. So

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1 when you ask me something, like, you just testified, I am not
2 sure whether you are referring to something I just testified to
3 now or something I testified yesterday.

4 Q. Yesterday you did not testify as to this discussion with
5 Karen Manso that you say was refreshed by your reviewing these
6 notes. This is the first time we have heard of it. So my
7 question is those notes for this hearing this morning, have now
8 allowed you to remember this conversation with Karen Manso; is
9 that correct?

10 A. I think I testified yesterday that I had -- I called her
11 first and then I talked to her a second time and the second time
12 I asked her to send me what she told me on the telephone.

13 Q. Other than this note that you at some point have viewed
14 over the last I guess few weeks --

15 HEARING OFFICER KNITTLE: Mr. Moran, are you about to leave
16 this note? I have a question about this note.

17 MR. MORAN: I am about to leave this note and get into the
18 other notes, yes.

19 HEARING OFFICER KNITTLE: Let me interject. Ma'am, are
20 you saying that you don't know if you discovered this note last
21 night? You can't recall?

22 THE WITNESS: I think I saw it yesterday.

23 HEARING OFFICER KNITTLE: For the first time?

24 THE WITNESS: No. I saw it when I wrote it, but I have not

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1 seen it since then.

2 HEARING OFFICER KNITTLE: But do you recall whether or not
3 you saw it last night? Do you recall if that was the first time
4 you discovered the existence of this note after you wrote it?

5 THE WITNESS: I think it was before yesterday, but it has
6 been in the last two days that the note came up.

7 HEARING OFFICER KNITTLE: So it was either last night or
8 the day before?

9 THE WITNESS: That's correct.

10 HEARING OFFICER KNITTLE: Mr. Moran, you can proceed.

11 Q. (By Mr. Moran) Other than this note -- and by the way,
12 was this note written on a page with other writing or notations
13 on it or was this on a separate scratch pad?

14 A. It was a scratch, just a scratch note.

15 Q. It didn't have any date on it?

16 A. No, I don't think so.

17 Q. Do you have that note with you now?

18 A. No, I do not.

19 Q. Where is it?

20 A. I am not sure.

21 Q. You are not sure where it is?

22 A. No.

23 Q. Does someone else have it, have possession of it?
24 A. I don't know where it is. I am sorry.

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1 Q. Has someone destroyed it?
2 A. No.
3 Q. It still exists?
4 A. Yes.
5 Q. But you don't know where it is?
6 A. No.
7 Q. Do you have any other notes that you took that relate to
8 any issues relating to your claims of fundamental fairness, any
9 other notes that you wrote to yourself that you have found either
10 since the date of the deposition or last night or this morning or
11 any other time?
12 A. I had a memo that I did.
13 Q. A memo that you did?
14 A. Yes.
15 Q. When did you prepare the memo?
16 A. I believe it was April 14th.
17 Q. Of this year?
18 A. Yes.
19 Q. Is that memo in written form?
20 A. That one is.
21 Q. Do you have possession of that memo?
22 A. My attorney has it.

23 Q. Did you review this note or document to refresh your
24 recollection about any of the events that have occurred in

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1 connection with this hearing?

2 A. I just read it.

3 Q. Or I should say the siting hearing.

4 A. I just read it.

5 Q. You just read it this morning?

6 A. I would have to look at it again. I am sorry.

7 Q. You don't remember if you looked at it this morning?

8 A. I don't know if I did. I looked at it sometime in the
9 last day.

10 Q. You may have looked at it yesterday?

11 A. I may have.

12 Q. You may have looked at it this morning or you know you
13 didn't look at it this morning?

14 A. I don't know. I don't know whether I did. I think it
15 was probably last night.

16 Q. What does the memo say?

17 A. I will have to get the memo.

18 MS. HOMEYER: I will be happy to provide it, certainly.

19 MR. MORAN: You can show it to your client, sure.

20 MS. HOMEYER: Let the record reflect that I am handing Mr.
21 Moran the memorandum concerning a conversation with Karen Manso

22 on Friday, April 14th, 2000.

23 HEARING OFFICER KNITTLE: Mr. Moran, do you need a second
24 to take a look at that?

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1 MR. MORAN: Sure.

2 HEARING OFFICER KNITTLE: Let's take a couple of minutes.
3 You are to remain on the witness stand, though.

4 THE WITNESS: I can't go to the bathroom?

5 HEARING OFFICER KNITTLE: You can go to the bathroom. I
6 don't want you talking to your attorney during the break.

7 THE WITNESS: Okay.

8 (Whereupon a short recess was taken.)

9 HEARING OFFICER KNITTLE: We are back on the record after a
10 short recess.

11 Ms. Andria, let me remind you that you are still under
12 oath.

13 MR. MORAN: Can we mark this as an exhibit?

14 HEARING OFFICER KNITTLE: Sure. What do you want to call
15 it, Mr. Moran?

16 MR. MORAN: We can identify it as Respondent's.

17 MS. HOMEYER: Are you going to use the letters like R-A. I
18 don't know how you want to do it.

19 MR. MORAN: Do you just want to make it a P number? What
20 are we at, 32?

21 HEARING OFFICER KNITTLE: I would rather separate the

22 petitioner's exhibits and your exhibits. Is this going to be
23 your exhibit?

24 MR. MORAN: Well, I don't really want it as an exhibit. I

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1 just want it as part of the record, because I am going to ask her
2 a few questions about it. I hate to have a record without --

3 MS. HOMEYER: I think it should be marked if we are going
4 to refer to it.

5 MR. MORAN: No, I agree. We will mark it.

6 HEARING OFFICER KNITTLE: I am going to mark it as
7 Respondent's 1, but you don't have to offer it into evidence.

8 MR. MORAN: Yes, right. It is not my intent at this point
9 to offer it, but we need to refer to it somehow.

10 HEARING OFFICER KNITTLE: Right. I understand.

11 (Whereupon said document was duly marked for purposes of
12 identification as Respondent's Exhibit 1 as of this date.)

13 Q. (By Mr. Moran) Ms. Andria, let me show you what we have
14 marked as Exhibit R-1. Can you tell us what that is?

15 A. It is a memo that I wrote.

16 Q. Is that the memo you were just referring to as having
17 been prepared on April 14th of 2000?

18 A. I believe so.

19 Q. And this was one of the other memos or notes that you
20 had made to yourself during the course of this siting proceeding?

21 A. I am sorry. What? I was reading it.

22 Q. This was one of the notes or memos that you had prepared
23 to yourself during the course of this siting proceeding?

24 A. It is probably the only one I did.

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1 Q. Well, in addition to the notes that you referred to
2 earlier in which you made the notation about the discussion with
3 Ms. Manso?

4 A. There was no memo. I just had scratch notes.

5 Q. There were notes. I said notes or memos. I am sorry if
6 I didn't make that clear.

7 A. Okay.

8 Q. Notes or memos. These are the only two things that you
9 have written down during the course of your participation in the
10 siting hearings beginning back in December of 1999?

11 A. These are the only two things I have written down? Is
12 that what you asked?

13 Q. Yes, by way of a note or memo to yourself regarding any
14 of the events or developments of the siting hearing?

15 A. No, I had -- I had a memo a note on something that I
16 think was handed in.

17 MS. HOMEYER: Yesterday we introduced an exhibit that had a
18 handwritten note on it.

19 HEARING OFFICER KNITTLE: Yes, I recall that. Do you need
20 me to find the exhibit, Mr. Moran?

21 MR. MORAN: No.

22 Q. (By Mr. Moran) Those are the only three instances in
23 which you have prepared a memo to yourself regarding any aspect
24 of the siting process?

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1 A. That's the only thing -- I mean, I probably wrote down
2 things. I don't have any kind of official notes that I have that
3 I can think of.

4 Q. I am not asking you about official notes.

5 A. Okay.

6 Q. Just anything you would have written down to yourself,
7 either handwritten, typewritten, entered in any other fashion on
8 any other format where it could be kept or maintained?

9 A. I have not -- I do not have a file of kept or
10 maintained.

11 Q. So other than these three notes or memos to yourself,
12 there are no others?

13 A. I didn't say that. I have not kept or maintained.

14 MS. HOMEYER: I would like to state that the witness did
15 have one other sheet of memos that I have this morning and so,
16 apparently, she has forgotten that she has handed it to me. But
17 to clarify the record, there is another sheet of paper that
18 starts off with the date May 3rd, 2000. So to correct the
19 record, I would like to state that there does seem to be one

20 other memo that she is not remembering at this very moment. I
21 have it with me and I will be happy to share it with you.

22 MR. MORAN: Well, I object to any attempt by an attorney to
23 refresh her client's recollection by offering a document that the
24 client does not even remember. Obviously, it is a highly unusual

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1 and inappropriate procedure to have a lawyer basically testify
2 for a client, remind the client that there is another memo that
3 she prepared when she can't remember it.

4 MS. HOMEYER: Mr. Knittle, we are not holding anything
5 back. If my client does not remember giving it to me this
6 morning, we are not hiding it. I don't want any inference that
7 because I have it in my notebook and she is testifying and I know
8 I have it -- I think I have an obligation to tell the Court I
9 have another memo. I think I have an obligation to tell the
10 Pollution Control Board that. I don't think I am testifying for
11 my client. I don't want any inference that because I have this
12 in my notebook that we are holding it back. We are not.

13 HEARING OFFICER KNITTLE: Mr. Moran, did you have something
14 further or some motion or something that I could rule on or are
15 you just noting things for the record?

16 MR. MORAN: No. I think at this point I think the attempt
17 by Counsel to disclose a document that perhaps should have been
18 disclosed earlier is certainly honorable and I think appropriate.
19 But by the same token, it has acted in a fashion to communicate

20 to this client that there was another document that she should
21 have told us about in response to our questions. So my decision
22 at this point is to accept that offer of the document. Let's
23 explore that document. But I think we ought to clearly note that
24 the witness, at this point, had no recollection of whatever this

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1 document is. So if we could mark this document, I will take a
2 look at it and then proceed.

3 HEARING OFFICER KNITTLE: Do you have a problem with us
4 noting that on the record? I think that is an accurate
5 characterization of Ms. Andria's statement before you showed the
6 document.

7 MS. HOMEYER: Yes. Again, I will just state that I think
8 that if I know that she is testifying incorrectly I think I have
9 an obligation to clarify it, because otherwise it looks like I am
10 holding back a document that I know about, and that is not our
11 intention, to hold it back.

12 HEARING OFFICER KNITTLE: I understand. I don't think Mr.
13 Moran was upset that you produced the document. I think it was
14 the timing of the document. It had the effect of letting this
15 witness know that there were more documents that she didn't
16 recall at this particular point.

17 MS. HOMEYER: Well, isn't that the point of being here,
18 trying to get all of the information out?

19 HEARING OFFICER KNITTLE: I think that is true, but we also
20 want the witness to testify from the witness' own memory and from
21 the witness' own knowledge. I think that is what Mr. Moran was
22 pointing out. And that is something to which I agree and think
23 that Mr. Moran would be within his rights to file a motion at
24 some later point in time regarding the whole situation.

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1 MS. HOMEYER: I would also like to clarify the record that
2 there was no obligation to produce any documents prior to today,
3 and we will go into that later. But I think the inference is
4 that my client has done something wrong. That is not accurate.

5 The document that I am handing to --

6 HEARING OFFICER KNITTLE: Let me see the document, please.

7 MS. HOMEYER: Certainly. Mr. Knittle, I am handing you
8 some handwritten notes that start off with the date of May 3rd of
9 2000.

10 HEARING OFFICER KNITTLE: We are marking this -- are you
11 guys going to have exhibits of your own, Mr. Moran?

12 MR. MORAN: I don't intend to have any. Well, I take that
13 back. I probably will submit one, although I don't know if it
14 will be in the context of any witnesses.

15 HEARING OFFICER KNITTLE: Let's change the previous -- can
16 I have that exhibit, please, ma'am.

17 The document that I had marked as R-1, I am altering, I am
18 changing, I am amending to HO, Hearing Officer 1.

19 Then I am going to have Hearing Officer 2, which is the
20 second notes that I was just handed by Ms. Homeyer, dated 05-03,
21 2000.

22 (Whereupon said documents were duly marked for purposes of
23 identification as Hearing Officer Exhibits 1 and 2 as of
24 this date, with Respondent Exhibit 1 being changed

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1 to Hearing Officer Exhibit 1.)

2 HEARING OFFICER KNITTLE: I am handing them both to Mr.
3 Moran so he can take a look at them.

4 THE WITNESS: May I ask a question?

5 HEARING OFFICER KNITTLE: Mr. Moran?

6 MR. MORAN: Not really. No, you don't --

7 HEARING OFFICER KNITTLE: You would have to --

8 MR. MORAN: Not while you are on the stand under oath.

9 THE WITNESS: No, I wanted to ask him.

10 MR. MORAN: I understand. Mr. Knittle can decide, but --

11 HEARING OFFICER KNITTLE: I don't think it is appropriate,
12 especially in light of the current situation and the fact that
13 Mr. Moran is objecting to it.

14 THE WITNESS: Okay. It is the same --

15 HEARING OFFICER KNITTLE: Ma'am, you cannot ask me a
16 question and you can't ask your attorney a question right now,
17 either or Mr. Norman.

18 THE WITNESS: Okay.

19 HEARING OFFICER KNITTLE: Mr. Moran, are you ready?

20 MR. MORAN: Yes. Thank you.

21 Q. (By Mr. Moran) Ms. Andria, let me show you what has been
22 marked as Exhibit HO-2. You can review that for a moment and
23 tell us what it is.

24 A. It is notes.

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1 Q. Your notes?

2 A. It is my notes, yes. I am sorry. Yes, notes that I
3 have made.

4 Q. When did you make these notes?

5 A. I do not know when I made these notes.

6 Q. Was it in 1999?

7 A. No, it was 2000.

8 Q. Sometime in the year 2000?

9 A. Yes.

10 Q. Do you have a month?

11 A. I do not know. It has -- up at the top of the page it
12 says 05-03, 2000, Karen Manso, in one print, I mean, in one color
13 ink. Then it has some other things underneath that I don't know
14 if they relate to that or not. Then it has two phone numbers
15 that I believe are the city -- the Village of Fairmont City's
16 phone numbers. But I do not know what this note says, what it
17 refers to.

18 Q. Your testimony is that after reviewing exhibit HO-2, you
19 were unable to tell us what the note says?

20 A. No. I can tell you what it says. I don't know -- I
21 have no context for this note. I don't know if these notes were
22 taken all at one time. I don't know if parts of them were taken,
23 one part -- I mean, what I do is I recycle paper. I write on --
24 if I have something that is a mistake, I recycle paper. I take

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1 notes. Sometimes I take notes from one thing on top of another.
2 This is not organized. This is not -- this is not an official
3 kind of note that I am saying this has any kind of -- I can't
4 explain it. I don't know the note, the phone number underneath,
5 I don't know what that is, what that relates to. That's why my
6 question to the Hearing Officer was going to be --

7 Q. Ms. Andria.

8 A. Okay.

9 Q. So your testimony is that the entries on exhibit HO-2
10 could have been made at different times?

11 A. That's correct.

12 Q. But as you sit here now, you have no recollection as to
13 whether that, in fact, occurred?

14 A. I do not know. I cannot testify as to what this
15 represents.

16 Q. Could you tell us what this note says?

17 A. Up at the top it says, 05-03, 2000, Karen Manso, in one
18 color ink. Then it has the phone numbers, which I believe are
19 the phone numbers for Fairmont Village Hall. It says copy of
20 minutes, a copy of record of proceedings on. Who was lawyer who
21 got a copy of application. Called 11:54, went to Community
22 Center, left message with dispatcher to please return call.

23 Then I have got a line. There was a line between copy of
24 minutes and copy of record of proceedings on without completing

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1 it. Then a line. And then it says Karen, and then I have got a
2 copy of minutes from last trustee meeting, and then a question,
3 need FOIA request, question. This looks like to me like
4 questions I was going to ask Karen. Question, did they have a
5 separate meeting or expansion siting, question mark, line.

6 Then the third thing, see copy of administrative record of
7 proceedings on application. And I don't know whether I spoke
8 with Karen or whether I -- I don't have any notes that related to
9 that, but I do know that I wrote a FOIA request that asked for a
10 copy of the administrative record of proceedings on the
11 application. And then down at the bottom is has somebody's name
12 that I have no clue who it is. And this is in the third color
13 ink, and then it has got a phone number.

14 Q. Does this Exhibit HO-2 contain any information that
15 relates to your claim of fundamental unfairness in the siting
16 proceedings before the Village of Fairmont City?

17 A. Well, it shows my attempts to -- that I did -- that a
18 lawyer got a copy of the application. It shows that I called to
19 talk to Karen and I left a message with the dispatcher to please
20 have her return the call. I asked if I needed -- or I was trying
21 to find out if I needed a FOIA request since I was not getting
22 any other documents, whether I needed a FOIA request to request a
23 copy of the minutes that showed that they had returned -- that
24 they had voted on the siting. And then I asked -- it shows that

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1 I didn't know when the meeting was that they had voted on the
2 issue.

3 Q. So is the answer to my question, yes, that this does
4 contain some information that relates to your claim of
5 fundamental unfairness?

6 A. Some information? Yes, it has information.

7 Q. Relating to the fundamental unfairness claim you have
8 made, correct?

9 A. Yes.

10 Q. When did you last -- when were you last aware of the
11 existence of Exhibit HO-2?

12 A. When was I last aware of it?

13 Q. Yes, before today. I mean, you didn't remember it.

14 A. Right.

15 Q. In giving testimony today you didn't remember it

16 yesterday. When do you last remember having any recollection
17 that this exhibit existed?

18 A. I don't remember.

19 Q. Now, other than Exhibit HO-1, HO-2 and the exhibit that
20 was entered yesterday, were there any other notes or memos that
21 you prepared to yourself in connection with this siting
22 proceeding?

23 A. I am sure I made notes. I don't know that -- I don't --
24 I mean, they are probably -- you know, I don't know where they

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1 are.

2 Q. Did you send or deliver Exhibit HO-1 to anybody?

3 A. I am sorry?

4 Q. Did you send or deliver Exhibit HO-1 to anyone?

5 A. No, I don't think so.

6 Q. You just kept that yourself?

7 A. Yes.

8 Q. It was just a memo to yourself that you maintained
9 someplace, correct?

10 A. Yes.

11 Q. Did you send or deliver Exhibit HO-2 to anybody?

12 A. No.

13 Q. Now, Ms. Andria, do you recall having been served with
14 interrogatories in this case in connection with certain claims
15 that you have made in this appeal?

16 A. Yes.

17 Q. Do you remember providing answers to those
18 interrogatories?

19 A. My attorney prepared the interrogatories.

20 Q. The interrogatory answers she prepared?

21 A. Yes.

22 Q. And that you signed a statement under oath that those
23 answers were complete?

24 A. I signed, yes.

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1 Q. Do you recall that? I mean, I don't want to -- if you
2 don't remember, why don't we --

3 MR. MORAN: Can we mark this? And we can mark this as
4 either our exhibit or Hearing Officer exhibit.

5 HEARING OFFICER KNITTLE: I am going to do Waste Management
6 1, WM-1, if that is all right.

7 MR. MORAN: That's fine.

8 (Whereupon said document was duly marked for purposes of
9 identification as Waste Management Exhibit 1 as of this
10 date.)

11 Q. (By Mr. Moran) Let me show you what we have marked as
12 Waste Management Exhibit Number 1. I only have one copy. Just
13 take a look at that and then we will let Ms. Homeyer take a look
14 at it as well.

15 HEARING OFFICER KNITTLE: Do you have a specific portion
16 that you want her to look at?

17 MR. MORAN: It is a long document. These are the responses
18 that she gave.

19 THE WITNESS: Tell me what you want to look at because it
20 has got a lot of stuff. Did you want me to read the whole thing?

21 Q. (By Mr. Moran) I just want you to identify that
22 document, if you have you ever seen it before. First of all,
23 have you ever seen it before?

24 A. Yes.

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1 Q. Are these the answers that you prepared and submitted in
2 response to the interrogatories that were filed by Waste
3 Management of Illinois, Inc.?

4 A. Yes.

5 Q. And is that your signature that appears on the last
6 page --

7 A. Yes.

8 Q. -- of Waste Management Exhibit Number 1?

9 A. What on page one? I am sorry.

10 Q. Is that your signature that appears --

11 A. You either have to decide, Mr. Moran, whether you want
12 me to read what it says or you want me to listen to your
13 questions and answer. I cannot do both.

14 Q. What I first wanted you to do is just look at the

15 document and tell me if you recognize it.

16 A. Okay. Why don't you give me a couple of minutes to do
17 that. I would appreciate it.

18 HEARING OFFICER KNITTLE: Ma'am, you have already stated
19 that you recognized -- I thought that was your response.

20 THE WITNESS: Okay.

21 HEARING OFFICER KNITTLE: I think that is all Mr. Moran
22 wanted.

23 THE WITNESS: Okay.

24 HEARING OFFICER KNITTLE: She has already answered your

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1 question as to whether or not that was her signature. She said
2 yes it was.

3 THE WITNESS: Okay.

4 Q. (By Mr. Moran) Ms. Andria, did you submit any documents
5 in response to these interrogatories?

6 A. I am not aware of what we did.

7 Q. So you are unaware of whether any documents were
8 submitted or referred to in connection with the answers to these
9 interrogatories; is that correct?

10 A. I know that you asked for documents and --

11 HEARING OFFICER KNITTLE: Can I see it, please, while you
12 guys are talking.

13 THE WITNESS: Sure.

14 MS. HOMEYER: I would like to object on the grounds that
15 there is no question here that asks for documents to be produced
16 as part of the interrogatories. I think the question is
17 misleading.

18 HEARING OFFICER KNITTLE: Mr. Moran?

19 MR. MORAN: Look at the last interrogatory. The last
20 interrogatory.

21 MS. HOMEYER: I am sorry?

22 MR. MORAN: The request of documents.

23 MS. HOMEYER: Mr. Knittle, would you direct Mr. Moran to
24 tell us what interrogatories he is looking at.

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1 HEARING OFFICER KNITTLE: I think he said interrogatory
2 eleven.

3 MS. HOMEYER: Eleven. All right. Well, for the record,
4 could we have someone read that into the record?

5 HEARING OFFICER KNITTLE: Yes, I would be happy to.

6 MS. HOMEYER: Thank you.

7 HEARING OFFICER KNITTLE: Interrogatory Number 11 --
8 although this will be an exhibit. Identify the documents,
9 writing, writings, recordings or things that were used or
10 referred to in the preparation of your answers to these
11 interrogatories. Indicate for which answer each document,
12 writing, recording or thing was used or referred to.

13 Is that correct, Mr. Moran?

14 MR. MORAN: That's correct.

15 HEARING OFFICER KNITTLE: Answer, the transcript of the
16 March 17th, 2000 hearing, the original petition for review, the
17 amended petition for review, and my public comment.

18 Q. (By Mr. Moran) Ms. Andria, did you identify HO-1 or HO-2
19 as documents that were responsive to Interrogatory Number 11?

20 A. These documents were not used to prepare the
21 interrogatories.

22 Q. In fact, other than the documents that were identified
23 in the Answer to Interrogatory 11, there were and are no other
24 documents responsive to that interrogatory; is that correct?

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1 A. I would have to read it to see if that's a correct
2 answer.

3 Q. You are unable to respond to that question; is that
4 correct?

5 A. I am unable to respond to that question.

6 MR. MORAN: I have nothing further.

7 HEARING OFFICER KNITTLE: Mr. Baricevic, do you have any
8 recross-examination?

9 MR. BARICEVIC: Yes, sir.

10 RECCROSS EXAMINATION

11 BY MR. BARICEVIC:

12 Q. Ms. Andria, in your responses to questions from your

13 attorney, you indicated that you made an effort to contact me
14 and, in fact, that you called the courthouse and I was not here
15 and they directed you to my law office and I was not there and
16 then you stopped. Didn't we actually talk?

17 A. Yes, we did, on Monday.

18 Q. I called you back, did I not?

19 A. Yes. I think I testified to that yesterday.

20 Q. Is that the only time you attempted to get in touch with
21 me about getting records?

22 A. When I talked to Karen Manso --

23 Q. The question, ma'am, was, was that the only time that
24 you attempted to get ahold of me to help you get any kind of

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1 records?

2 A. Yes, sir.

3 Q. You told us earlier that you were a grant writer; is
4 that right?

5 A. No, I said I was working with a grant on wetlands
6 education and preservation.

7 Q. Did you apply for that -- were you the person that went
8 through the grant application?

9 A. Yes.

10 Q. And in the process of that do you keep notes, make
11 documents?

12 A. In the process of writing a grant?

13 Q. Of applying for the grant and doing the job -- I assume
14 you then have to report back on what the grant does?
15 A. Yes.
16 Q. To the funder?
17 A. Yes.
18 Q. Do you keep notes?
19 A. Somewhat.
20 Q. Do you keep them organized?
21 A. Not very well.
22 Q. Were you a newspaper reporter at some point in your
23 career?
24 A. No, sir.

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1 Q. Did you ever -- in any other occupation have you kept
2 notes or records?
3 A. Yes.
4 Q. What was that?
5 A. I mean, I worked as a reporter, a writer.
6 Q. So you have training in keeping notes and keeping them
7 organized, do you?
8 A. No.
9 MS. HOMEYER: I am going to object. The question is
10 argumentative and totally irrelevant.
11 MR. BARICEVIC: She answered no. I have no other

12 questions.

13 HEARING OFFICER KNITTLE: Do you withdraw your objection?

14 MS. HOMEYER: I will withdraw the objection.

15 HEARING OFFICER KNITTLE: You can do a re-redirect if you
16 would like, Mrs. Homeyer.

17 MS. HOMEYER: Thank you.

18 FURTHER REDIRECT EXAMINATION

19 BY MS. HOMEYER:

20 Q. Ms. Andria, before you signed your answers to
21 interrogatories, did you read through them?

22 A. Yes, I did.

23 Q. Were they true and accurate on the day that you signed
24 them?

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1 A. Yes, they were.

2 Q. Question 11 asks you to identify documents that you
3 referred to or used preparing your answers to the
4 interrogatories, correct?

5 A. Yes.

6 Q. Of course, once you sign the answers to interrogatories
7 on August 11th, 2000, you didn't prepare anymore answers to
8 interrogatories, did you?

9 A. No.

10 MS. HOMEYER: I have no further questions.

11 HEARING OFFICER KNITTLE: Mr. Moran?

12 MR. MORAN: Nothing further.

13 HEARING OFFICER KNITTLE: Mr. Baricevic?

14 MR. BARICEVIC: No.

15 HEARING OFFICER KNITTLE: Ms. Andria, you may step down.

16 THE WITNESS: You are kidding.

17 HEARING OFFICER KNITTLE: No. Surprise, surprise.

18 (The witness left the stand.)

19 HEARING OFFICER KNITTLE: Let's go off the record for a
20 second.

21 (Discussion off the record.)

22 HEARING OFFICER KNITTLE: All right. We are back on the
23 record.

24 We are finished with the testimony of Ms. Andria. Ms.

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1 Homeyer has indicated off the record that before we begin the
2 direct testimony of her next witness that she would like to make
3 a motion, I gather.

4 MS. HOMEYER: Yes. My motion is I move to strike any
5 references in Mr. Moran's comments implying that there was any
6 obligation on the part of Ms. Andria to produce Exhibits HO-1,
7 HO-2, or any other memos at any time. And I believe his
8 statements are prejudicial and unfounded, and I move that they be
9 stricken.

10 HEARING OFFICER KNITTLE: Mr. Moran, any response?

11 MR. MORAN: I have no knowledge of any legal basis in which
12 an attorney's comment regarding questioning or the questions
13 themselves can be stricken from the record. Beyond that, the
14 discovery obligations upon a party who has been requested to
15 respond to interrogatories relating to the claims made in the
16 action are certainly established. In this case the
17 interrogatories requested not only specific responses to
18 questions about information, but the identification of documents.

19 We have, obviously, heard that this witness has had her
20 recollection refreshed since yesterday with respect to testimony
21 she has provided regarding her claim of fundamental unfairness in
22 obtaining a copy of the siting application and a copy of the
23 public hearing transcript. This is, obviously, a highly
24 irregular and inappropriate response to issues that she, herself

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1 and the parties have raised in this appeal. So I, obviously,
2 object to any attempt to strike comments made by me in connection
3 with the various legal positions that need to be asserted by
4 virtue of this witness' tardy and very conveniently timely
5 ability to refresh her recollection with documents that nobody
6 knew about.

7 HEARING OFFICER KNITTLE: Any response, Ms. Homeyer?

8 MS. HOMEYER: No further response.

9 HEARING OFFICER KNITTLE: I am going to deny the motion to
10 strike. While not commenting or reflecting in any way on either

11 position, I do think at least there is an issue there that Mr.
12 Moran may want to address and I think his comments attempt to
13 address that.

14 MS. HOMEYER: All right.

15 HEARING OFFICER KNITTLE: So you may call your next
16 witness.

17 MS. HOMEYER: Thank you.

18 HEARING OFFICER KNITTLE: Oh, before we get started on
19 that, Mr. Moran, are you going to want to offer this Waste
20 Management Number 1, which is the Answers and Objections of Kathy
21 Andria to Respondent's Interrogatories? Or do you want to save
22 that for your case?

23 MR. MORAN: I can offer it now for purposes of making the
24 record clear.

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1 HEARING OFFICER KNITTLE: All right. Any objection, Ms.
2 Homeyer?

3 MS. HOMEYER: No.

4 HEARING OFFICER KNITTLE: Mr. Baricevic?

5 MR. BARICEVIC: No.

6 HEARING OFFICER KNITTLE: Okay. Then that will be
7 admitted.

8 (Whereupon said document was admitted into evidence as
9 Waste Management Exhibit 1 as of this date.)

10 HEARING OFFICER KNITTLE: Then I am going to admit Hearing
11 Officer's 1 and 2. If you have objections to those feel free to
12 make them.

13 MS. HOMEYER: No objection. We produced them.

14 HEARING OFFICER KNITTLE: Any objection?

15 MR. BARICEVIC: No.

16 MR. MORAN: No.

17 HEARING OFFICER KNITTLE: All right. Those will be
18 admitted.

19 (Whereupon said documents were admitted into evidence as
20 Hearing Officer Exhibits 1 and 2 as of this date.)

21 HEARING OFFICER KNITTLE: All right. That's all I had,
22 then.

23 Ms. Andria, you may call your next witness.

24 MS. ANDRIA: Ms. Homeyer.

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1 HEARING OFFICER KNITTLE: I keep doing that, don't I. I am
2 sorry. My apologies. Ms. Homeyer, you may call your next
3 witness.

4 MS. HOMEYER: Thank you. I would like to call Jack Norman.

5 HEARING OFFICER KNITTLE: Mr. Norman, if you could have a
6 seat, please.

7 If you would please swear him in.

8 (Whereupon the witness was sworn by the Notary Public.)

9 HEARING OFFICER KNITTLE: All right. Ms. Homeyer, you may

10 proceed.

11 MS. HOMEYER: Thank you.

12 J A C K N O R M A N,

13 having been first duly sworn by the Notary Public, and saith as

14 follows:

15 DIRECT EXAMINATION

16 BY MS. HOMEYER:

17 Q. What is your name, sir?

18 A. Jack Norman.

19 Q. Where do you live?

20 A. Columbia, Illinois.

21 Q. Are you one of the individual petitioners in this appeal

22 before the Illinois Pollution Control Board?

23 A. I am.

24 Q. Are you here today on behalf of any other petitioner

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1 organization?

2 A. In part.

3 Q. What organization is that?

4 A. American Bottom Conservancy.

5 Q. Do you live and work in close proximity to the Milam

6 Landfill?

7 A. From time to time, yes.

8 Q. And would you be impacted by the siting of the

9 expansion?

10 A. Yes.

11 Q. What is your occupation?

12 A. I am a land surveyor.

13 Q. Were you at the hearing in front of the Village of
14 Fairmont City on March 17th of this year?

15 A. I was.

16 Q. And did you appear at that hearing in your individual
17 capacity?

18 A. In part.

19 Q. And in any other capacity?

20 A. I appeared as an officer of the Sierra Club.

21 Q. Were you there on behalf of American Bottom Conservancy,
22 as well?

23 A. Yes.

24 Q. Prior to the filing of this petition for review, have

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1 you been involved in any other environmental or community
2 activities in the past year?

3 A. Oh, yes.

4 Q. Could you describe some of them for us?

5 A. I am a volunteer in the Sierra Club and have various
6 chores and offices in that. One of them is Conservation Chair of
7 the Kaskaskia Group of the Sierra Club, which I describe as a
8 license to hunt anywhere. I am a member of the Southern Illinois

9 Regional Groundwater Prevention and Planning Committee, Associate
10 Director of the Monroe County Soil and Water Conservation
11 District, a participant in the Kaskaskia Watershed Alliance
12 and -- let me see. The Illinois Council on Food and Agricultural
13 Research, the Mid-West Agricultural Working Group, the Metro-East
14 Groundwater Committee, the Metro-East Smart Growth Committee.

15 Q. Thank you. When and how did you first become aware that
16 Waste Management had filed an application for siting of a
17 vertical expansion of the Milam Landfill?

18 A. In a telephone conversation with Kathy Andria, which was
19 probably in the month of March of this year.

20 Q. You were present at the hearing on March 17th, correct?

21 A. I was.

22 Q. Are you making any claims that the hearing was conducted
23 in a fundamentally unfair manner?

24 A. I am.

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1 Q. And what claims are you making, Mr. Norman?

2 A. One of them is that the procedure to be followed in the
3 hearing was not explained at the beginning or otherwise. Another
4 is that lines of inquiry were prematurely cut off, as it seemed
5 to me.

6 Q. Anything else?

7 A. That will do for now.

8 Q. All right. Can you be more specific about what you mean
9 by saying that the procedure was not explained?

10 A. Well, it just wasn't. The event began by some
11 unidentified person asking whether all of the participants had
12 signed up, and that was followed by an announcement from Mr.
13 Baricevic about notice and we were off and running.

14 Q. Were you expecting the hearing officer to set out some
15 rules?

16 A. I was.

17 Q. Did the hearing officer stop or cut off any lines of
18 inquiry during your questioning of witnesses?

19 A. He did.

20 Q. Can you tell us which witness you were cut off on?

21 A. I would have to refer to notes to get her name.

22 Q. Was it Sheryl Smith?

23 A. Yes.

24 Q. What were you questioning Ms. Smith about?

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1 A. It had to do with one of the criteria for approval of
2 local siting, that having to do with need or necessity, as it is
3 referred to, and had to do with landfill capacity supply and
4 demand.

5 Q. And what happened during your questioning of Ms. Smith?

6 A. We were working our way through some principles of
7 evaluating the economics and of those matters and the hearing

8 officer apparently eventually had enough of that and stopped it.

9 Q. Was there more testimony that you wanted to elicit from
10 Ms. Smith?

11 A. There was.

12 Q. Okay. Do you feel that the record was not developed as
13 fully as you would have liked it to have been developed?

14 A. I do.

15 Q. And do you claim that you were prejudiced by not being
16 allowed to finish your questioning of Ms. Smith?

17 A. I do.

18 Q. Is there any other way that you are claiming that the
19 hearing was fundamentally unfair?

20 A. I guess I should add pre-hearing nonevents. I never had
21 access to the application and very limited opportunity to examine
22 a small part of it.

23 Q. How did you get a small part of it?

24 A. Through Kathy Andria, who had a part of it, but she

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1 permitted me to have copy and I don't remember whether I copied
2 it -- I think I did -- or whether someone else copied it for me.

3 Q. Approximately how many pages of the application did you
4 have available to you?

5 A. Something like 50.

6 Q. Fifty pages?

7 A. Yes.

8 Q. How soon before the hearing of March 17th did you get
9 those?

10 A. I am not sure. I think it was the day before.

11 Q. Do you remember any expert reports being contained in
12 those pages?

13 A. Yes, there were.

14 Q. How many?

15 A. I don't know. I never did get a chance to thoroughly
16 examine even that 50 page fragment.

17 Q. Were you aware that Ms. Andria was trying to get a copy
18 of the March 17th transcript prior to the deadline for public
19 comment?

20 A. Yes.

21 Q. Did you file public comment?

22 A. I did.

23 Q. Did you want to have a copy of the transcript available
24 to you before you filed your public comment?

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1 A. Yes, in that I would have added to my comments had I had
2 the transcript.

3 Q. Okay. Were you one of the people who signed the
4 original petition for review?

5 A. I was. I am.

6 Q. And did you have a copy of the transcript available to

7 you at the time you signed that original petition for review?

8 A. I did not.

9 Q. Did you hear Ms. Andria testify that the two of you were
10 in Village Hall on April 17th of this year to file your public
11 comment and her supplemental public comment?

12 A. I am not sure of the date. Was that the Monday? I
13 thought it was the 18th. I am not sure about that.

14 Q. Well, let's refer, then, to the Monday deadline for
15 public comment, that Monday in April?

16 A. Yes.

17 Q. Were you at Village Hall with Ms. Andria?

18 A. I was.

19 Q. Did you look at the bulletin board in the vestibule?

20 A. I did.

21 Q. What were you looking for?

22 A. Well, first it would just be looking at something
23 because we were kind of waiting in line but shortly we got
24 interested in a meeting notice posted.

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1 Q. Did you see any meeting notices posted?

2 A. I did not.

3 Q. Did you later find out that the Village had passed an
4 ordinance approving the siting on April 19th of 2000?

5 A. I did.

6 Q. Were you wanting to go to the meeting in which they took
7 that vote?

8 A. I would have.

9 Q. Why were you not there?

10 A. I didn't know it was happening.

11 Q. Mr. Norman, the way the hearing was conducted, if a
12 member of the public had not read the application or the expert
13 reports in it, how would they have been able to proceed to
14 examine the witnesses?

15 MR. MORAN: Objection. The question is so obvious it just
16 answers itself. If someone does not come prepared to examine
17 witnesses, how can you prepare a witness. If you don't read an
18 application to prepare, I think the question is just entirely
19 beside the point. It does not contribute anything toward the
20 issues that we are here in this appeal about. Of course, if no
21 one reads an application and does not come prepared for the
22 hearing how can you prepare for it.

23 HEARING OFFICER KNITTLE: Ms. Homeyer?

24 MS. HOMEYER: I will rephrase the question.

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1 Q. (By Ms. Homeyer) What was necessary to be prepared for
2 the hearing on March 17th?

3 A. As it turns out, some familiarity with the subject and
4 access to the application.

5 Q. And that is because the Waste Management witnesses were

6 not examined by Mr. Moran to testify about the reports, correct?

7 A. Yes.

8 MR. BARICEVIC: That is a leading question. Objection.

9 HEARING OFFICER KNITTLE: Sustained.

10 Q. (By Ms. Homeyer) What would be the basis of your
11 questioning a witness at the March 17th hearing, if you had not
12 read the reports?

13 MR. MORAN: Objection. It is a question that, as I said,
14 it answers itself. If you go to a trial or a hearing and you
15 have not prepared to ask a witness questions, how in the world
16 are you going to ask the witness questions. It is a -- it is an
17 insipid question.

18 HEARING OFFICER KNITTLE: Ms. Homeyer, any response?

19 MS. HOMEYER: No.

20 HEARING OFFICER KNITTLE: That objection is overruled.

21 MS. HOMEYER: Could you read -- do you need the question
22 read back?

23 THE WITNESS: I would like that, please.

24 HEARING OFFICER KNITTLE: Could you read it back.

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1 (Whereupon the requested portion of the record was read
2 back by the Reporter.)

3 THE WITNESS: Presentations by the experts in support of a
4 contention that the nine statutory criteria were being met.

5 Q. (By Ms. Homeyer) Did those witnesses present their
6 reports or their testimony?

7 A. In a fragmentary way.

8 Q. Who had to ask the questions?

9 A. Well, Mr. Moran elicited some of that and Kathy Andria
10 most of it.

11 Q. Other than qualify the witness, did Mr. Moran go into
12 the substance of the experts' testimony?

13 A. No, he did not.

14 Q. What are you asking the Pollution Control Board to do?

15 A. To overturn the Board's -- the Village Board's decision.

16 MS. HOMEYER: I don't have any further questions for Mr.
17 Norman.

18 HEARING OFFICER KNITTLE: Mr. Moran, do you have cross?

19 MR. MORAN: Yes.

20 HEARING OFFICER KNITTLE: Please proceed.

21 MR. MORAN: Thank you.

22 CROSS EXAMINATION

23 BY MR. MORAN:

24 Q. Mr. Norman, you took notes at this public hearing,

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1 didn't you?

2 A. I did.

3 Q. And you have those notes to this day, don't you?

4 A. I do.

5 Q. You used those notes in preparing your public comment?

6 A. That's correct.

7 Q. And you used those notes in assisting Ms. Andria in the
8 preparation of her public comment?

9 A. Possibly. I am not sure.

10 Q. Now, Mr. Norman, you made no attempt at any time to
11 obtain a copy of this application; is that correct?

12 A. That is correct.

13 Q. You heard from Ms. Andria about two to three weeks
14 before the hearing on March 17th that the hearing was scheduled
15 for March 17th; isn't that correct?

16 A. I am not sure that that is the case. I had more than
17 one conversation about the coming hearing. I don't know when I
18 was given a firm date. Probably something like a week in
19 advance, I would guess.

20 Q. I don't want you to guess.

21 A. Well, then I don't remember.

22 Q. Okay. Mr. Norman, do you remember appearing to give
23 your deposition on August 10th of this year?

24 A. I do.

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1 Q. Do you remember at that time that you were put under
2 oath?

3 A. Yes.

4 Q. And that you agreed to tell the truth with respect to
5 the questions that were being posed to you in that deposition?

6 A. That's correct.

7 Q. All right. Let me direct your attention to page 17,
8 beginning on line 9, and going through page 18, line 23. And I
9 will ask you to review that, and then I will ask if that
10 refreshes your recollection as to when you learned from Ms.
11 Andria that the hearing was going to be March 17th.

12 A. Okay.

13 (The witness reviewing document.)

14 A. Okay.

15 Q. Does that refresh your recollection of the fact that you
16 learned from Ms. Andria two to three weeks before March 17th that
17 the hearing --

18 A. I don't believe that is different from what I testified
19 to a few minutes ago.

20 Q. So that is correct that you learned from Ms. Andria two
21 to three weeks prior to March 17th that the public hearing would
22 be held on March 17th?

23 A. No, that is not correct. That is not what that says.

24 Q. You had a conversation with Ms. Andria prior to the

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1 public hearing regarding when the public hearing would take
2 place, correct?

3 A. Yes.

4 Q. And in that conversation Ms. Andria told you that the
5 hearing was going to be March 17th; is that correct?

6 A. In a conversation she told me that, yes.

7 Q. This conversation occurred at some point prior to March
8 17th?

9 A. That's correct.

10 Q. This was in a phone consideration with Ms. Andria; is
11 that correct?

12 A. I believe that's correct.

13 Q. In that conversation you talked with her about your
14 attendance at that hearing; is that correct?

15 A. Yes.

16 Q. She had indicated that she wanted you to attend that
17 hearing; is that correct?

18 A. That was an implication at least of what she said.

19 Q. The implication that you received from her was that she
20 wanted someone in addition to herself to be there to testify at
21 the siting hearing, correct?

22 A. No, that is not correct. There is no discussion of
23 testifying.

24 Q. Okay. This phone conversation occurred two to three

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1 weeks before the public hearing, didn't it?

2 A. No, sir.

3 Q. Mr. Norman, you recall having appeared for your
4 deposition on August 10th, correct?

5 A. We met through that, yes, sir.

6 Q. Were you asked this question and did you give this
7 answer:

8 "Question: And how many days before, approximately, the
9 public hearing was this phone conversation with Kathy Andria?

10 Answer: It may have been two or three weeks."

11 Did you give that answer to that question?

12 A. Yes, I did, but the question was about another matter.

13 Q. Now, Ms. Andria at no point ever told you that she
14 intended to have witnesses testify at this siting hearing; isn't
15 that true?

16 MS. HOMEYER: I am going to object. It is outside the
17 scope of direct.

18 HEARING OFFICER KNITTLE: Mr. Moran?

19 MR. MORAN: That is actually correct, and if I need to go
20 through this with this witness subsequently as my witness, I will
21 do that. For the sake of efficiency I can cover some of this
22 now.

23 HEARING OFFICER KNITTLE: Ms. Homeyer, do you want him to
24 call the witness on his own or do you want to waive the

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1 objection?

2 MS. HOMEYER: Well, I don't know that he can because he

3 didn't put Mr. Norman down as one of his witnesses. In fact, he
4 didn't even file a witness list. I did, and I named Mr. Norman.
5 There is no requirement that I have to go into every issue that
6 Mr. Moran might wish to cross-examine on. So I don't believe
7 that he has the right to call Mr. Norman in his case.

8 HEARING OFFICER KNITTLE: Mr. Moran, in light of that
9 statement, I think that I will sustain the objection to beyond
10 the scope and see what happens if you choose to call Mr. Norman.

11 MR. MORAN: Very well.

12 MS. HOMEYER: Thank you.

13 Q. (By Mr. Moran) Now, Mr. Norman, you did not intend to
14 present any evidence at the siting hearing, did you?

15 A. I did not.

16 Q. You were not in any way confused about the date when
17 this public hearing was going to be held; is that correct?

18 A. No. I knew there was confusion, but it was not on my
19 part.

20 Q. You had no confusion?

21 A. That's right.

22 Q. You were able to prepare for your participation at this
23 public hearing in the time before the public hearing; isn't that
24 correct?

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1 A. Well, I was able to prepare in some sense. I got

2 dressed that morning and took a file with me.

3 Q. Other than what you have testified to regarding what
4 occurred at the public hearing, were you unable to in any way
5 prepare to participate at the public hearing on March 17th?

6 A. I did not have access to the application. Had I had
7 access to it, I would have applied myself to reviewing it.

8 Q. Did you ever ask Kathy Andria if she had a copy of the
9 application before the public hearing?

10 A. I did not ask her.

11 Q. So you didn't ask anybody for a copy of the application
12 prior to the public hearing?

13 A. It came out of the clouds and was delivered to me.

14 Q. I am sorry? The application came out of the clouds and
15 was delivered to you before the public hearing?

16 A. The fragment that I did have before the hearing was
17 presented to me. I didn't have to go ask anybody for that much
18 of it.

19 Q. And when did this application come out of the clouds
20 before the public hearing?

21 A. I testified, but I will repeat it. I am not certain,
22 but I believe it was the day before.

23 Q. You don't know who provided that copy to you?

24 A. As a mechanical matter, I don't know whether I made the

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1 copies or someone else did. But the copies were made from part

2 of the documents in the possession of Kathy Andria.

3 Q. Now, you said you prepared a written comment in this
4 matter; is that correct?

5 A. That's correct.

6 Q. And your written comment contained discussion regarding
7 criterion one; is that correct?

8 A. Yes.

9 Q. It contained comment relating to the testimony of Ms.
10 Smith regarding the need criterion, or criterion one; is that
11 correct?

12 A. I don't know that I mentioned her in my comment.

13 Q. But the substance of your comment contained information
14 that she testified about; isn't that correct?

15 A. Or didn't.

16 Q. Even though you didn't mention her name, your comment
17 contained statements that related to testimony that she provided
18 at the public hearing; isn't that right?

19 A. Narrowly considering your words, yes.

20 Q. Your written comment also included a discussion of
21 criterion four, the floodplain, correct?

22 A. That's correct.

23 Q. That was the area that Mr. Connor had testified about at
24 the public hearing; isn't that correct?

1 A. That's correct.

2 Q. Your comment also included a discussion of the hearing
3 officer rulings in connection with criterion one and four; isn't
4 that true?

5 A. That's true.

6 Q. Did you ask anyone or did you make any effort to obtain
7 a copy of the public hearing transcript?

8 A. I did not.

9 Q. Were you in any way unable to offer any evidence
10 relating to any of the statutory criteria at the public hearing?

11 A. I don't know. I had no intention of offering such
12 evidence.

13 Q. Now, you testified during your direct examination that
14 during the course of the hearing you were denied fundamental
15 fairness because in your questioning of Ms. Smith you were cut
16 off by the hearing officer in asking questions; is that right?

17 A. That's correct.

18 Q. Isn't it true that during your entire examination of Ms.
19 Smith there was but one objection made to any of your questions?

20 A. Yes.

21 Q. And that one objection related to your questioning Ms.
22 Smith about what the affects of a future increase in
23 transportation costs may have on the economy or the consumers in
24 the service area?

1 A. Well, I would have to read the transcript to be sure of
2 the question, but that could well be.

3 Q. And when that question was sustained you stopped asking
4 any further questions; isn't that right?

5 A. That's right.

6 MR. MORAN: I have nothing further.

7 HEARING OFFICER KNITTLE: Mr. Baricevic, do you have a
8 cross?

9 MR. BARICEVIC: Yes.

10 CROSS EXAMINATION

11 BY MR. BARICEVIC:

12 Q. Mr. Norman, was there any action by the Village of
13 Fairmont City that prohibited you from getting an application
14 prior to the hearing on March 17th?

15 A. No action directly relating to me.

16 Q. You apparently knew that you only had part of the
17 application when it fell out the clouds to you?

18 A. Well, yes.

19 Q. Did you make any effort to get the rest of the
20 application?

21 A. I did not.

22 Q. You have now seen the transcript of the public hearing?

23 A. I have seen it.

24 Q. Have you bothered to read it?

1 A. I have read parts of it.

2 Q. Based on the part that you read, what part of that would
3 you -- or how would your public comment have changed based on the
4 part that you have read?

5 A. I may have added some specifics about the questioning of
6 Ms. Smith that Mr. Moran was just asking me about.

7 Q. Well, suffer with me if you will. You indicated that
8 you might have added some specifics?

9 A. Yes.

10 Q. Have you taken the time to categorize or to specify
11 exactly how your public comment would have differed now that you
12 have had an opportunity to see the transcript?

13 A. No. There has been no need for it.

14 Q. You had indicated in your answers to questions by your
15 attorney that your basis of cross-examination was interfered
16 with; is that accurate?

17 A. I am not sure about the technical meaning here of
18 cross-examination.

19 Q. The question -- I am referring now to the public hearing
20 on March 17th. That you had indicated that the lack of the
21 application or lack of the ability to have the application
22 prevented you to be prepared to cross-examine witnesses; is that
23 accurate?

24 A. It prevented me from being prepared to the extent that I

1 would have liked to have been prepared.

2 Q. In your preparation for the hearing, would you have done
3 anything else but read the application?

4 A. I don't know. It would depend on --

5 Q. Did you -- I am sorry. I didn't mean to cut you off.

6 A. It would have depended on what I found when I read it.

7 Q. Did you contact any experts prior to the hearing?

8 A. No, I did not.

9 Q. In your various and many not-for-profit ventures, you
10 have multiple interactions with municipal governments, do you
11 not?

12 A. I do.

13 Q. You know that clerks of municipal governments keep
14 records and notices of public meetings?

15 A. Generally they do.

16 Q. Did you bother to call the Fairmont Village Clerk to
17 find out what the schedule of meetings were?

18 A. I was not -- no, I did not, and I was not concerned
19 about the schedule of meetings.

20 MR. BARICEVIC: Thank you. Nothing else.

21 HEARING OFFICER KNITTLE: Ms. Homeyer, do you have any
22 redirect?

23 MS. HOMEYER: I don't have any redirect.

24 HEARING OFFICER KNITTLE: Thank you, sir. You may step

1 down.

2 THE WITNESS: Okay.

3 (The witness left the stand.)

4 HEARING OFFICER KNITTLE: Let's go off the record.

5 (Discussion off the record.)

6 HEARING OFFICER KNITTLE: All right. We will take a five
7 minute break.

8 (Whereupon a short recess was taken.)

9 HEARING OFFICER KNITTLE: All right. We are back on the
10 record.

11 Okay. Ms. Homeyer, you can make that pronouncement again.

12 MS. HOMEYER: During the break that we just took, Ms.
13 Andria looked through some documents that she had with her today
14 and she found the handwritten memo with no date that she
15 testified about earlier that referred to the cost of the
16 application based on a telephone conversation in December of 1999
17 with Karen Manso.

18 During the break I informed Mr. Knittle and Counsel that we
19 have found the memo. I have shown it to Mr. Baricevic and Mr.
20 Moran, and we will be happy to let Ms. Andria get back on the
21 witness stand and have this exhibit marked and answer any
22 questions about it.

23 HEARING OFFICER KNITTLE: Okay. Could I have that, please?

24 MS. HOMEYER: Certainly.

1 HEARING OFFICER KNITTLE: It will be marked as Hearing
2 Officer Exhibit Number 3.

3 (Whereupon said document was duly marked for purposes of
4 identification as Hearing Officer Exhibit 3 as of this
5 date.)

6 HEARING OFFICER KNITTLE: And, Ms. Andria, if you would
7 want to get back on the stand.

8 Mr. Moran and Mr. Baricevic, we discussed this off the
9 record and this was the best course of action we could come up
10 with, correct?

11 MR. BARICEVIC: Correct.

12 MR. MORAN: (Nodded head up and down.)

13 HEARING OFFICER KNITTLE: Note a nod for Mr. Moran.

14 MR. MORAN: Yes.

15 HEARING OFFICER KNITTLE: Do you need to see the
16 handwritten note again?

17 MR. MORAN: Not at the moment.

18 HEARING OFFICER KNITTLE: You have been sworn in, Ms.
19 Andria. You realize you are still under oath?

20 THE WITNESS: Many times yes, sir.

21 HEARING OFFICER KNITTLE: All right. You are still under
22 oath.

23 Ms. Homeyer, do you have any preliminary examination about
24 this document or do you want to just pass it to Mr. Moran for

1 cross-examination?

2 MS. HOMEYER: I will be happy to question the witness about
3 it.

4 HEARING OFFICER KNITTLE: All right.

5 DIRECT EXAMINATION

6 BY MS. HOMEYER:

7 Q. Ms. Andria, I am handing you what has been marked as
8 Hearing Officer Exhibit Number 3. What is this?

9 A. It is a piece of paper that I wrote.

10 Q. Did you refer in your testimony earlier today to this
11 document?

12 A. Yes.

13 Q. And with whom -- this document refers to a conversation
14 over the telephone with whom?

15 A. With Karen Manso.

16 Q. Concerning what subject?

17 A. Concerning my request to get a copy of the application
18 for siting.

19 Q. And does this memo refer to the conversation that you
20 testified took place before Ms. Manso wrote her December 15th
21 1999 letter to you?

22 A. This refers to the first conversation that I had with
23 Karen Manso.

24 Q. Before she wrote the letter to you dated December 15th,

1 1999, correct?

2 A. Yes.

3 Q. All right. And this is the memo that you said had no
4 date, that you saw recently, and you didn't know where it was,
5 correct?

6 A. That's correct.

7 Q. And where did you find it today?

8 A. I looked to see if it was with a copy of my application
9 and I had it with a copy of the -- I mean, of the October notice
10 of intent to file.

11 Q. All right. So you just found it in some papers that you
12 had with you today?

13 A. Yes.

14 Q. At this hearing, correct?

15 A. Yes.

16 MS. HOMEYER: I don't have any further questions.

17 HEARING OFFICER KNITTLE: Mr. Moran?

18 CROSS EXAMINATION

19 BY MR. MORAN:

20 Q. Ms. Andria, is it fair to say that since you prepared
21 Hearing Officer Exhibit Number 3, you at no subsequent point ever
22 read it or reviewed it until today?

23 A. No, that is not fair to say that. I think I testified
24 that I either read it -- I read it yesterday or today. I was

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1 unsure when you asked me. I read it after I looked -- after you
2 were asking me questions about the time line or the days or
3 something and I looked at my notice and this was with it.

4 Q. So between the time you wrote Hearing Officer Exhibit
5 Number 3 and either yesterday or today, you had not reviewed it,
6 seen it, or looked for it, at any time between the October --
7 between when you wrote this and yesterday or today?

8 A. Between -- I didn't -- I didn't know.

9 Q. Between the time you wrote this, which --

10 A. From the time I wrote it -- I didn't remember of its
11 existence. I didn't know that I had notes.

12 Q. And you only realized you had this note either yesterday
13 or today?

14 A. I believe I said yesterday. My testimony earlier this
15 morning saying it was all running together, yesterday and today,
16 I am losing track of yesterday and today. They have been long
17 days. I found it in time to state that I remembered that there
18 were two phone calls, not just one phone call, to Karen Manso
19 before the letter. This was the notes from the first phone call
20 when I called. I do not know the date. When I called the
21 Village to ask for a copy of the application. And I have got her
22 name at the top because that is what she said her name was. Then
23 it says chief. She had to check with the chief to see what the
24 cost of the copies was going to be.

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1 Q. Okay. Ms. Andria, you don't need to continue to
2 describe this. That was not really my question. My question was
3 you have not seen or reviewed this since you wrote it before
4 yesterday?

5 A. That's correct.

6 Q. And you found Hearing Officer Exhibit Number 3 after
7 this morning's session in this hearing ended; is that correct?

8 A. I looked to see if it was with the notice. I had the
9 notice with me and I didn't -- I didn't consider this important.
10 I am sorry. This is -- these are just notes. It is not dated.
11 I knew what it said, but this -- I don't know what you are making
12 the big deal about. I am sorry. It verifies what I said, that I
13 called to try to get a copy.

14 Q. Did you find Hearing Officer Exhibit Number 3 within the
15 last half hour?

16 A. Yes.

17 MR. MORAN: Nothing further.

18 MR. BARICEVIC: Nothing.

19 HEARING OFFICER KNITTLE: Thank you, ma'am.

20 And, Ms. Homeyer, you don't, I take it, want to do any
21 further redirect on this?

22 MS. HOMEYER: I would like to offer it into evidence.

23 HEARING OFFICER KNITTLE: Sure. You can offer it, but I am
24 going to admit it on my own. We will note it for the record that

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1 you wanted it offered as well.

2 MS. HOMEYER: Are you doing Hearing Officer 1, 2 and 3, you
3 are admitting all of them?

4 HEARING OFFICER KNITTLE: Right. I am admitting them all
5 over any objections that anyone may have. But at this point no
6 one has had any objections about my admitting them.

7 MS. HOMEYER: No, I have no objections.

8 HEARING OFFICER KNITTLE: Is there any objection on Hearing
9 Officer 3 from anybody?

10 MR. MORAN: No.

11 MR. BARICEVIC: No.

12 HEARING OFFICER KNITTLE: All right.

13 (Whereupon said document was admitted into evidence as
14 Hearing Officer Exhibit 3 as of this date.)

15 HEARING OFFICER KNITTLE: All right. Thank you, ma'am.
16 Ms. Homeyer, you didn't have anything further?

17 MS. HOMEYER: No.

18 HEARING OFFICER KNITTLE: You may step down, ma'am.

19 (The witness left the stand.)

20 HEARING OFFICER KNITTLE: Ms. Homeyer, does that end your
21 case-in-chief?

22 MS. HOMEYER: Yes, it does.

23 HEARING OFFICER KNITTLE: Mr. Moran, do you have any
24 witnesses you would like to call at this time?

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1 MR. MORAN: I have no witnesses to call.

2 HEARING OFFICER KNITTLE: Ending your case-in-chief? Do
3 you have any exhibits?

4 MR. MORAN: We have an exhibit that I want to submit.

5 HEARING OFFICER KNITTLE: Would you like to do that at this
6 time?

7 MR. MORAN: Yes. I have not marked this.

8 (Mr. Moran handing copy of exhibit to Ms. Homeyer.)

9 HEARING OFFICER KNITTLE: Do you want me to mark it?

10 MR. MORAN: Yes, would you mark that?

11 HEARING OFFICER KNITTLE: I am going to be marking this as
12 Waste Management 2. The answers to the interrogatories were
13 Waste Management 1.

14 MR. MORAN: Correct.

15 (Whereupon said document was duly marked for purposes of
16 identification as Waste Management Exhibit 2 as of this
17 date.)

18 MR. MORAN: This exhibit sets out a response to the
19 contention that has been raised in this appeal that somehow Waste
20 Management of today is different than the Waste Management of
21 yesterday, although, as I think I have mentioned before, it is
22 properly considered as Waste Management of Illinois who is the
23 applicant and not Waste Management, the parent of corporate

24 entity who owns the applicant.

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1 But to respond to this allegation, as is still I think
2 unsupported about the difference between these two entities, this
3 exhibit addresses from a corporate standpoint that specific
4 issue, and that's the reason it is submitted.

5 HEARING OFFICER KNITTLE: Ms. Homeyer?

6 MS. HOMEYER: I would object on the grounds of hearsay.

7 HEARING OFFICER KNITTLE: Any argument?

8 MS. HOMEYER: He could have brought a witness in.

9 HEARING OFFICER KNITTLE: Mr. Moran, anything?

10 MR. MORAN: I think this information is information of
11 which the Board can take judicial notice. It is not a matter
12 which requires live testimony from an individual to basically
13 establish the corporate form or existence of this applicant. I
14 think it also is clear that in addition to the fact that judicial
15 notice can be taken that this is the kind of information based
16 upon corporate organization and corporate documents, that
17 reasonable people can rely upon in the conduct of their own
18 affairs both legally and otherwise. I think on that basis it is
19 appropriate and should be admitted.

20 HEARING OFFICER KNITTLE: Mr. Baricevic?

21 MR. BARICEVIC: I have no objections to the admission of
22 the document.

23 HEARING OFFICER KNITTLE: Okay. Anything further, Ms.

24 Homeyer?

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1 MS. HOMEYER: I am very surprised to hear Mr. Moran
2 describe this as appropriate for judicial notice. I can't think
3 of anything less likely to be the subject of judicial notice.
4 This is an affidavit signed by a corporate officer. There is
5 nothing in the public record about this. And all he has ever
6 done is object to our introduction of documents filed by Waste
7 Management with the SEC and yet here he comes and asks us to take
8 conclusory statements in an affidavit of a witness of his own
9 client that he could have produced as a witness and claims it is
10 judicial notice. It is just ridiculous.

11 HEARING OFFICER KNITTLE: I agree that this is hearsay. I
12 did, though, admit over objection both of the registration
13 statements offered in regards to Waste Management's corporate
14 structure. So I am going to allow this in. The Board can take
15 official notice of things. I don't think it is quite a matter
16 for official notice, but I think it meets the Board's
17 requirements for admissible evidence, which, in essence, can be
18 boiled down to what a reasonably prudent person would rely upon
19 in pursuit of serious affairs. I think this qualifies. In light
20 of the fact I have admitted the other registration statements, I
21 am going to admit this as well.

22 MR. MORAN: Mr. Hearing Officer, when you said the

23 registration statement of Waste Management, you meant the
24 registration and charter of East St. Louis Community Action

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1 Network and American Bottom Conservancy, didn't you?

2 HEARING OFFICER KNITTLE: No, I think we have Form S-8 and
3 Form 8-K, right, that were printed off of the internet?

4 MS. HOMEYER: Yes. But the certificates of good standing
5 that he is referring to are the official Secretary of State
6 documents for proving up corporate existence. That is a
7 different thing than this exhibit.

8 HEARING OFFICER KNITTLE: I understand that.

9 MS. HOMEYER: Okay.

10 HEARING OFFICER KNITTLE: No, I am not admitting it because
11 of that.

12 MR. MORAN: I am sorry. You were referring to the
13 registration statements that were submitted by the petitioners?

14 HEARING OFFICER KNITTLE: Right. All I have is Form S-8,
15 registration statement, and Form 8-K, registration statements,
16 but I know they are both pertaining to Waste Management's
17 corporate structure. I admitted them over objections. I think
18 that in light of that I am going to admit this as well.

19 MS. HOMEYER: How is this being marked as an exhibit?

20 HEARING OFFICER KNITTLE: I have marked it Waste
21 Management-2.

22 MS. HOMEYER: Okay. Thank you.

23 (Whereupon said document was admitted into evidence as
24 Waste Management Exhibit 2 as of this date.)

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1 HEARING OFFICER KNITTLE: Is that it, Mr. Moran?

2 MR. MORAN: That's all.

3 HEARING OFFICER KNITTLE: Mr. Baricevic?

4 MR. BARICEVIC: Thank you. Scott Penny.

5 HEARING OFFICER KNITTLE: Mr. Penny, please come on up and
6 have a seat.

7 Would you swear the witness in, please.

8 (Whereupon the witness was sworn by the Notary Public.)

9 HEARING OFFICER KNITTLE: Mr. Baricevic.

10 MR. BARICEVIC: Thank you.

11 S C O T T P E N N Y,

12 having been first duly sworn by the Notary Public, saith as

13 follows:

14 DIRECT EXAMINATION

15 BY MR BARICEVIC:

16 Q. Mr. Penny, where do you live?

17 A. On 63rd Street, in the Village of Fairmont City,
18 Illinois.

19 Q. What is your position with the Village of Fairmont city?

20 A. I am the chief of police and I am also the
21 administrative officer for the Village of Fairmont.

22 Q. And as the administrative officer for the Village of
23 Fairmont City, do you supervise city employees?

24 A. Yes, I do.

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1 Q. All city employees?

2 A. Yes, and I provide liaison between the mayor and the
3 board of trustees and the actual department heads who work for
4 us.

5 Q. And during the -- you have been present for both days of
6 this hearing?

7 A. Yes sir.

8 Q. During that testimony that you heard, there were a
9 number of city employees referred to either by name or by
10 position?

11 A. That's correct.

12 Q. And do you supervise all of those individuals?

13 A. Yes, sir, I do.

14 Q. As a part of your responsibility in being the
15 administrator for Fairmont City and supervising those city
16 employees, did you have the responsibility for managing the
17 record keeping process for the Milam siting hearing?

18 A. Yes, sir, I did.

19 Q. And did employees under your control have the
20 responsibility of maintaining the application and the record for
21 the siting from the application through today?

22 A. Yes, sir.

23 Q. And did you receive, that is did Fairmont City receive
24 the application for this siting request on or about November 19th

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1 of 1999?

2 A. Yes, we did.

3 Q. Upon receiving that application, what was the policy of
4 the Village as to making that available for anyone?

5 A. When we received the application and supporting
6 documents, it was in excess of 12,000 pages, so we prepared a
7 space by cleaning off the top cabinets in the office next to the
8 city clerk's office or Village clerk's office. And we lined the
9 binders up standing upright and they ran several feet long. I
10 called all of the employees in who would have even remotely any
11 bearing on this issue and pointed out the application and the
12 supporting documents.

13 At about this same time there had been a series of
14 newspaper articles that addressed some experiments done by the
15 Illinois Press Association where they sent reports in unannounced
16 to different local government offices asking for public
17 documents.

18 MS. HOMEYER: I am going to object that this is outside the
19 scope of the question and it is hearsay.

20 HEARING OFFICER KNITTLE: Mr. Baricevic.

21 MR. BARICEVIC: Well, I don't know that it is being -- it
22 is his motivation for setting his policy. It has nothing to do
23 with the truth of the matter.

24 HEARING OFFICER KNITTLE: I agree on the hearsay but I am

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1 going to sustain on the objection on the fact that it is a
2 nonresponsive answer.

3 Q. (By Mr. Baricevic) So what was the policy of the Village
4 of Fairmont City about the public having access to these
5 documents?

6 A. What did I tell the work force about them?

7 Q. Yes.

8 A. I told them just what I started to explain right now.
9 Do you want me to not mention that?

10 Q. Did you advise your employees of the problem with the
11 press?

12 A. Yes. I explained to the employees, that had access and
13 control over these documents, that there had been a series of
14 articles in the local newspapers and that in these articles
15 unannounced inspections by newspaper reporters had occurred at
16 government offices, that some criticism had come up that the
17 employees were unresponsive and uninformed about what was going
18 on and that they had not produced the documents.

19 I told the people involved that the mayor had given very
20 explicit instructions that we were to be ethical, above-board and

21 that we were to make every effort to make these documents
22 available. That either attorneys, newspaper reporters, or
23 business competitors from other landfills were quite possibly
24 going to come in and without announcing themselves ask to see

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1 these documents. They were to be admitted to the room where the
2 documents were kept, and if we were using the room, the city
3 employees, it was to be vacated and those people were to leave
4 the room so that any public inspection that was requested could
5 be conducted.

6 We had prepared a sign in sheet so that anyone who came in
7 to examine the documents could actually list their name so that
8 we could maintain a record of it. And it was hung right below
9 where the records were.

10 Q. And those employees that you provided that policy to,
11 did that group include Karen Manso?

12 A. Yes, it did.

13 Q. And who works in the cage that has been testified to?

14 A. What the cage is, is the front office, and it is behind
15 a bullet resistant glass partition. That is our receptionist and
16 clerk who takes in different utility bills and accepts payments
17 for fees and permits, and that is Ms. Joyce Duley, D-U-L-E-Y.

18 Q. Did you explain your policy to her as well?

19 A. Yes, I did.

20 Q. Let me show you what has been marked for identification
21 purposes as Petitioner's Exhibit 11. Would you tell us what that
22 is, please?

23 A. This is a photocopy of what is titled log sheet, and
24 this was prepared by Ms. Manso. And it is a sign in sheet for

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1 people who came in to view the application for expansion of
2 Milam.

3 Q. Okay. Just to make sure I am clear, that is not a log
4 in sheet for people requesting to have a copy of the application,
5 is it?

6 A. No, it is not.

7 Q. If anybody would have requested to view any or all of
8 those documents, would they have been listed on that sheet?

9 A. Yes.

10 Q. Was anybody listed on that sheet?

11 MS. HOMEYER: Objection. Calls for speculation.

12 MR. BARICEVIC: I didn't hear her. I am sorry.

13 HEARING OFFICER KNITTLE: Objection. Calls for
14 speculation. To which question?

15 MS. HOMEYER: To the question about what would you have
16 done. It is not a question about something that actually
17 happened. It is a question about -- I am objecting to the form
18 of the question.

19 HEARING OFFICER KNITTLE: Mr. Baricevic?

20 MR. BARICEVIC: No response.

21 HEARING OFFICER KNITTLE: I am going to overrule the
22 objection. I think it is more in terms of the policy of the
23 office.

24 MR. BARICEVIC: I think he answered anyway. Did you get

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1 his answer?

2 HEARING OFFICER KNITTLE: Darlene, did you get his answer?

3 (Whereupon the requested portion of the record was read
4 back by the Reporter.)

5 HEARING OFFICER KNITTLE: Okay. So we have his answer
6 to the question that was objected to, so we have that.

7 Do you remember the last question, sir?

8 THE WITNESS: Is there any signature on the sheet?

9 Q. (By Mr. Baricevic) Yes. And the answer is?

10 A. Yes, there is one person who signed in that they wanted
11 to view the document and they conducted an examination of it.

12 Q. How many times did Kathy Andria contact you about seeing
13 anything?

14 A. One.

15 Q. Is that -- would your testimony be the same as she
16 related that incident?

17 A. No, it would not be.

18 Q. How do you recall that incident?

19 A. I happened to be standing in the front area when I heard
20 that it was Ms. Andria, and Ms. Andria asked if this document was
21 available for inspection. I walked around and opened the
22 vestibule door. The documents are contained approximately five
23 feet away from that door. They are actually visible. I pointed
24 to the room and said they are right here if you want to come in

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1 and take a look at them. Her reply to me was that she didn't
2 have time, and that she would do it on some other occasion.

3 Q. Did you hear her actually ask to see the documents?

4 A. Yes.

5 Q. The application?

6 A. Yes.

7 Q. But it didn't happen?

8 A. But it didn't happen because the moment I told her the
9 documents were available and pointed to them, she said that she
10 was busy and would return later.

11 Q. Did you ever receive a complaint from Kathy Andria or
12 concern or any communication from her whatsoever, orally or in
13 writing, that she was having problems with Village employees in
14 gaining access to the application?

15 A. No, sir, I did not.

16 Q. There was some questioning, Chief Penny, about hearing
17 notices. When do you post notices of city meetings? When?

18 A. The notice of the city meeting is posted by my

19 secretary, and that posting occurs at the close of business on
20 Monday preceding the meeting. Meetings are held on the first and
21 third Wednesdays of each month. The policy is that at the close
22 of business at 5:00 p.m. on Monday the secretary then has
23 accepted all business that can be placed on the agenda. She
24 types the agenda, places the agenda and the meeting notice on the

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1 bulletin board, because that then gives us a required 48 hours
2 notice necessary under the open meetings act.

3 Q. At the time that Mr. Norman and Kathy Andria indicated
4 that they were at the Village, had the notice been posted yet?

5 A. Their testimony, as I understood it here, was that they
6 were present at 4:45 p.m. on Monday and it would not have been
7 posted at that time.

8 Q. There has also been some testimony about their inability
9 to get a transcript of the hearing. Did you in any way
10 intentionally prohibit or interfere with them in getting a
11 transcript?

12 A. I didn't intentionally interfere with them, but I was
13 involved in the events that occurred.

14 Q. Do you know -- now, in retrospect now that you know what
15 all of the facts are, do you know when the transcript got to the
16 Village?

17 A. The transcript arrived at Village in probably the latter

18 part of March.

19 Q. How did you find out -- well, I am a little ahead of
20 myself. When Kathy Andria was requesting the transcript, did you
21 know that the transcript was at the Village?

22 A. No, sir.

23 Q. How did you find out that the transcript was at the
24 Village?

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1 A. We had received an inquiry early in April from Ms.
2 Andria asking for a copy of the transcript. I instructed my
3 secretary to check. She telephoned -- she contacted Ms. Manso,
4 who had not received a copy of it. She telephoned your office
5 and spoke to your secretary. The information that I then
6 received was that when it was completed, it would be shipped out
7 and it should be at any time.

8 At about this time we had a variety of other projects going
9 on and so I figured it would be forthcoming and I didn't make a
10 great deal of effort in following up on that. We did make one
11 other effort to check on it and, again, I had my secretary -- I
12 told her, find out what the story is on this transcript. She
13 called your office and spoke to your secretary who said whenever
14 it is finished it should be shipped at any point at this -- or at
15 any point.

16 Q. You eventually found the transcript?

17 A. Yes. I received another written request for that

18 transcript in the month of May from Kathy Andria and I received
19 that on the 8th. And at that time I began feeling there was a
20 serious problem with the transcript. So I telephoned and spoke
21 with you directly saying we have got to get on this guy who is
22 doing the transcription because this thing is way late. Your
23 response was it was finished.

24 We did a -- we had never, to my knowledge, received a copy

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1 of the transcript. At that point you, Mr. Baricevic, checked
2 with the transcription service who stated that it had been
3 shipped to Fairmont City by UPS. We then had a tracer run on the
4 shipment, which revealed that it arrived late in the month of
5 March at Fairmont City. We then conducted an examination of the
6 entire building, and what we found was that the transcription
7 service had packaged all of the copies of the transcript inside a
8 cardboard box. That particular cardboard box was a used
9 photocopy paper box, which contained a case of photocopy paper.

10 Our photocopy paper is shipped in and out of the building
11 by a commercial transport service. So he had reused a box, he
12 had placed his label on the top of the box and, apparently, one
13 of our staff received the box, signed for it, was under the
14 mistaken belief it was photocopy paper, and had filed the entire
15 box with our office supplies and locked it in the cabinet.

16 Q. When you say filed, you are talking about a room that

17 you keep copy paper and office supplies in?

18 A. Yes, that is exactly right. It was locked in with other
19 cases of photocopy paper, is where it was at.

20 Q. And when you found -- when you did that trace and you
21 found the transcript on May 8th, what did you do with it?

22 A. I contacted the clerk's office and we immediately
23 drafted a letter to Ms. Andria, which stated that we now had the
24 document. It was available if she wished to examine it or obtain

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1 a copy of it.

2 Q. When you say the clerk's office, you are talking about
3 the Fairmont Village Clerk?

4 A. Yes.

5 MR. BARICEVIC: No other questions.

6 HEARING OFFICER KNITTLE: Mr. Moran, do you have any
7 questions of this witness?

8 MR. MORAN: No questions.

9 HEARING OFFICER KNITTLE: Okay. Cross-examination, Ms.
10 Homeyer?

11 MS. HOMEYER: Yes. Thank you.

12 CROSS EXAMINATION

13 BY MS. HOMEYER:

14 Q. When Waste Management delivered the application on or
15 about November 19th, 1999, didn't it consist of two volumes?

16 A. The application?

17 Q. Yes.

18 A. It was all brought in as a unit. The application was in
19 two binders and incorporated, as I understood it, by reference
20 were supporting documents and engineering studies, and it was --

21 Q. What physically did you receive on November 19th, 1999,
22 from Waste Management?

23 A. About five or six commercial storage boxes of binders.
24 These are the ones I made reference to. After we examined them,

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1 it ran over 12,000 pages in length. It was actually -- the
2 entire file was listed with the documents that we photocopied and
3 sent up to the Pollution Control Board as part of this process.

4 Q. So you are saying that the application consisted of --
5 that Waste Management delivered more than two loose leaf binders
6 of documents on November 19th, 1999?

7 A. Yes, they did.

8 Q. Did you receive any documents from Waste Management
9 after November 19th, 1999, relating to the vertical siting
10 application?

11 A. Not that I personally recall, ma'am.

12 MS. HOMEYER: Mr. Knittle, I would like to show the witness
13 an exhibit, Petitioner's Exhibit Number 10. May I show him a
14 copy, or do you want me to show him the original?

15 HEARING OFFICER KNITTLE: Is that the letter dated December

16 15th?

17 MS. HOMEYER: It is.

18 HEARING OFFICER KNITTLE: You can show him a copy.

19 MS. HOMEYER: All right.

20 Q. (By Ms. Homeyer) Sir, I am handing you what has been
21 marked as Petitioner's Exhibit Number 10. Is this a letter from
22 Karen Manso, the deputy clerk, to Ms. Andria, dated December
23 15th, 1999?

24 A. Yes, it is.

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1 Q. And does this letter say to Ms. Andria that there are
2 two binder bound volumes involved with the contract?

3 A. Yes.

4 Q. Does Ms. Manso also estimate that the contract or
5 application consists of approximately 1,200 to 1,500 single
6 pages?

7 A. Yes, she does.

8 Q. And she didn't make any reference to over 12,000 pages
9 in that letter, did she?

10 A. Not in this document, no, ma'am.

11 Q. When Mr. Konzen looked at the application, do you know
12 if he made -- if he had any copies made?

13 A. Yes, he did.

14 Q. Do you know how much of the two volume binders he had
15 photocopied?

16 A. He had the two binder set photocopied, yes.
17 Q. He did? Okay. Did you testify that you spoke with Mr.
18 Baricevic and he said that he had the transcript?
19 A. On May 8th, yes.
20 Q. He had the transcript on May 8th?
21 A. Yes.
22 Q. Where did he have the transcript on May 8th?
23 A. Where did he physically have it? I don't know. I
24 called him and said have you received a copy of the transcript

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1 and he said yes.
2 Q. Is that different than the copy that you testified was
3 misplaced in a photocopy paper box?
4 A. Yes. He had received apparently his independent copy,
5 which was shipped to his office.
6 Q. Okay.
7 A. In fact, it is a photocopy, I believe, of his transcript
8 which we shipped the next day to Ms. Andria. I sent a courier to
9 his office to obtain it, or a copy of it so that we could bring
10 it back and begin to photocopy it. That is the one -- when I
11 made reference to a copy, it was a copy I obtained from Mr.
12 Baricevic's office.
13 Q. You didn't actually mail a copy to Ms. Andria, did you?
14 A. No.

15 Q. You told her that if she wanted a copy she needed to
16 send in payment first, correct?

17 A. Yes, I did.

18 Q. I am handing you what has been marked as Petitioner's
19 Exhibit Number 25. Is this a letter from Mr. Prsha to Ms. Andria
20 dated May 9th?

21 A. Yes, it is.

22 Q. Is this the letter -- in this letter did he direct her
23 to send in payment if she wanted a copy, and then he would send
24 her the transcript?

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1 A. Above that is a --

2 Q. Well, I am asking you if she wanted a copy --

3 A. Oh, if she wanted a copy. He is explaining it is
4 available for inspection. Is that what you are referring to?

5 Q. I would direct your attention to paragraph two. If she
6 wanted to have her own copy, isn't it true that Mr. Prsha
7 directed her to send in the money first?

8 A. Yes.

9 Q. And then he would mail her the transcript?

10 A. Yes.

11 Q. Did Mr. Baricevic ever indicate that he had had a
12 conversation with Ms. Andria about the transcript on or about
13 Monday, April 17th of this year?

14 A. Not to me, not that I recall.

15 Q. So he didn't contact you and ever mention anything about
16 that conversation to you?

17 A. No, ma'am.

18 Q. Do you know if he contacted anyone?

19 A. No.

20 Q. So you don't know whether he did, in fact, tell Ms.
21 Andria that he would have someone from the Village call her in a
22 few days?

23 A. I don't have any knowledge about any of that.

24 MS. HOMEYER: Okay. I don't have any further cross. Thank

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1 you.

2 HEARING OFFICER KNITTLE: Mr. Baricevic, do you have any
3 redirect?

4 MR. BARICEVIC: Yes.

5 REDIRECT EXAMINATION

6 BY MR. BARICEVIC:

7 Q. Chief, on or about November 19th, when the application
8 arrived, the Village received more than one application, did they
9 not?

10 A. More copies of the two binder document?

11 Q. Yes.

12 A. Yes. We received a series of binders that were provided
13 by the landfill that were their supporting documents and were

14 included as a part of the application.

15 Q. And was there more than one copy of the application
16 provided to the Village?

17 A. Yes.

18 Q. And the Village got additional documents later on, the
19 IEPA required documents? Do you recall that?

20 A. No, I don't recall that.

21 MR. BARICEVIC: Okay. Thank you. Nothing else.

22 HEARING OFFICER KNITTLE: Mr. Moran?

23 MR. MORAN: I have nothing.

24 HEARING OFFICER KNITTLE: Ms. Homeyer?

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1 MS. HOMEYER: Nothing.

2 HEARING OFFICER KNITTLE: Okay. Thank you, sir. You may
3 step down.

4 (The witness left the stand.)

5 HEARING OFFICER KNITTLE: Mr. Baricevic, anything further?

6 MR. BARICEVIC: Nothing else. That's it.

7 HEARING OFFICER KNITTLE: Ms. Homeyer, do you have any case
8 in rebuttal?

9 MS. HOMEYER: No.

10 HEARING OFFICER KNITTLE: Okay. Then that takes us to --
11 where does that take us? That takes us to public comment.

12 Anybody here interested in providing public comment?

13 We will let this gentleman in the front go first. He has

14 been anxious to go for a couple of hours. Would that be okay,
15 sir?

16 MR. MITCHELL: Mine is brief.

17 HEARING OFFICER KNITTLE: You can go next. Sir, why don't
18 you step up here and we are going to swear you in. Would you
19 state your name for the court reporter and spell it.

20 MR. BOYNE: Frank Boyne, B-O-Y-N-E.

21 HEARING OFFICER KNITTLE: Could you swear him in.

22 MR. BOYNE: I am a member of the St. Clair County Board. I
23 am on the environmental committee.

24 HEARING OFFICER KNITTLE: We have to swear you in first.

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1 MR. BOYNE: All right.

2 HEARING OFFICER KNITTLE: Would you raise your right hand,
3 sir.

4 (Whereupon the witness was sworn by the Notary Public.)

5 HEARING OFFICER KNITTLE: All right, sir. You may provide
6 your public comment.

7 MR. BOYNE: Okay. My interest in this particular situation
8 is very great there. I have been involved in this environmental
9 situations with the landfills and that ever since I came on the
10 County Board in 1982. I don't think anybody on the Board worked
11 any harder at it or is any better versed on the situation than I
12 am in St. Clair County. I have been in, inspected and looked at

13 every landfill in the greater area, and I am talking about St.
14 Louis side, up in Madison County, and that there. So I have a
15 pretty good knowledge of what I am talking about.

16 Now, when this situation started here, although it was not
17 required, Joe Durako got ahold of me and gave me a complete
18 explanation as to what they were going to do here, there. And
19 what I did is I had the environmental committee -- I notified
20 them and we put them on the agenda for the committee. He made a
21 complete explanation to the committee as to what we were going to
22 do. He had the drawings with him and that and we went through
23 the whole thing. There was quite a discussion on it there. The
24 committee had no objections to it whatsoever and supported the

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1 situation there.

2 On one occasion I was talking to my county chairman, Mr.
3 Baricevic, and I made mention of the situation there and he says,
4 Frank, be careful. Now, he says, I am also the attorney for
5 Fairmont City. You and I get into a discussion on this, this
6 comes before a hearing, the committee will be the hearing
7 committee and you will be disqualified. I think it took about 20
8 seconds, didn't it, John? Or did it take 20 seconds? But that
9 ended the conversation between he and I on it there.

10 On the site itself there, the only comments I am going to
11 make on that, when we got into it, and I have had a couple of
12 people ask me questions about it there, and I told them, I said,

13 what you are looking at down here is you are taking a footprint
14 of that site, just as is it right now, it will be no bigger.
15 That it will be an expansion like this (the witness raising his
16 hands up and down in a vertical motion.) And the increase will
17 be -- let's see. They went from five to four on the situation to
18 give them room to do it there. As far as the height had already
19 been determined. It couldn't go over 600 feet. They were not
20 even at that height at that time. And that is where that
21 situation would end right there.

22 Basically I got no comments against the situation there.
23 The area itself is a strong growth area as far as the county is
24 concerned there. We have got a golf course down there. The race

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1 track is down there. It keeps getting bigger and bigger. We
2 have a restaurant now. And as I said before, it is one of our
3 stronger growth areas there.

4 As far as the relationship between Fairmont City and Waste
5 Management there, I was basically one of the ones that was
6 instrumental for getting that started there. One supervisor we
7 had for Canteen Township, Joe Klokotovich (spelled phonetically)
8 and he and I got along real good. He was a great big guy and he
9 could push you around real good there. And he and I got along
10 read good. I told him you had better take a look at that site.
11 There is possibilities for you there. And he did, and actually

12 the end result of the situation was Fairmont City annexed the
13 landfill there, and it was probably the best thing they ever did.

14 As far as the -- how much bigger is this site going to be?
15 There is 20 million tons in there right now. They are talking
16 about putting 4 million more on top of that. Divide the 20 into
17 the 4 there, and it comes out 20 percent is what the expansion of
18 the site is going to be. It is not going to be any larger than
19 that there. Just use the figures there.

20 As to what I want to comment on, let's address the first
21 thing on our nine criteria that we have for landfills. Number
22 one is need. Okay. There is a need for this landfill here, as
23 far as I am concerned there. When I take and I go back over my
24 18 years in working with it there, the first two guys that I came

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1 across there were Rich Coburn (spelled phonetically) and Glenn
2 O'Brien, and we started out from there. The annexation came on.
3 We got it moving there. We have never had any problem with Waste
4 Management as such. Anything that I asked for down there was
5 done. It was taken care of there.

6 When I got into the situation, I found that there was a
7 closure order on Waste Management, July of 1986 or 1987, July 1st
8 there. And I was working on that situation for them there. We
9 had a terrible site down there in National City, the 3D site
10 there. I told Rich Coburn, I said, close that site for them. It
11 will go a long way to help me out as to what you want to do and

12 that you do want to be cooperative and contribute to the county
13 itself there.

14 The people in the IEPA like to fell off the chair when they
15 came up with it. They did. They closed the whole thing and it
16 cost \$750,000.000 to them. They made it a better area there. So
17 what they did was they just contributed to the area, in
18 everything that I have ever worked with them on there.

19 I talked to them about the flares to burn off the gas
20 there. Then they put in the gas conversion plant there, which
21 went a long way. I think we are up to five units on that now,
22 Joe? It is three? We will go to five before they are through
23 with the whole thing there.

24 Now, the one thing, when I say there is a need for this

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1 there, when they got into this situation there, they kept a
2 school from closing. Now, closing that school, what we would
3 have had there is a bigger burden on 189 and another search for
4 how can we accommodate this situation there. They provided
5 services for the people in Fairmont City there, transportation
6 for the elderly there. The police department and the city itself
7 there in furnishing necessary equipment to do it. For a town
8 that size, they wind up with an operation that is unheard of for
9 a town of 4,200 or 4,500 there.

10 And you have never had a tax increase on it, have you,

11 Alex?

12 MR. BREGEN: No, sir.

13 MR. BOYNE: Okay. So when I look at all of this there and
14 somebody says, oh, I don't know about this. I tell them, well,
15 let's stop and take a good look at it and see what it does and
16 who it has contributed to. When you talk about this situation
17 here, you take into consideration what it does for the elderly,
18 what it has done for the working class, what it has done for the
19 basic operations of the city and for the children there. Yes,
20 there is a need for this for what it contributes to.

21 All right. So it is going to be for seven or eight more
22 years it is going to close. What are you going to do then?
23 Well, we have seven or eight years to work on that situation
24 there. Will we work out something to work it out to stay this

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1 way or to keep it as close to this as we can there? Yes, we
2 will. Why will we? We have no other choice. Are we going to
3 just turn these people down and say it is all over now, get your
4 own transportation there and we are not going to worry about your
5 school anymore?

6 This expansion, to me, and to a lot of other people, other
7 than Fairmont City, it is a need. And I just -- I am pushing for
8 this for all I am worth because of what it has done for St. Clair
9 County, and that has basically been my goal ever since I have
10 been at it there, to see how much I could do. I was instrumental

11 in getting this situation moving and started and I think it is
12 one of the best things I ever did there.

13 That takes care of me.

14 HEARING OFFICER KNITTLE: Okay. Thank you very much, sir.

15 MR. BOYNE: Thank you. Thank everybody for listening to
16 me.

17 (The witness left the stand.)

18 HEARING OFFICER KNITTLE: All right, sir. Can you have a
19 seat and identify yourself for the court reporter and spell your
20 last name.

21 MR. MITCHELL: My name is Mike Mitchell, M-I-T-C-H-E-L-L.
22 I am the Director of Zoning for St. Clair County. Part of my
23 duties is enforcing the FEMA flood zone maps. My only comment is
24 that --

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1 HEARING OFFICER KNITTLE: Excuse me, sir. We forgot to
2 swear you in.

3 MR. MITCHELL: Okay.

4 (Whereupon the witness was sworn by the Notary Public.)

5 HEARING OFFICER KNITTLE: If you could start again, we
6 would appreciate it.

7 MR. MITCHELL: I am the Director of Zoning for St. Clair
8 County and part of my duties include enforcing and regulating
9 FEMA flood zone maps. My only comment is that these maps are far

10 from perfect. We find mistakes daily. The maps have never been
11 officially updated since 1981.

12 I know for a fact that the Milam Landfill has made several
13 changes that do not show on these maps. We are currently filing
14 with the Illinois Department of Natural Resources and FEMA on all
15 of the corrections and changes to the Milam site. Other than
16 that, that's it.

17 HEARING OFFICER KNITTLE: All right. Thank you, sir.

18 MR. MITCHELL: Okay.

19 (The witness left the stand.)

20 HEARING OFFICER KNITTLE: Is there anybody else wishing to
21 provide public comment?

22 MR. BREGEN: Yes, I am.

23 HEARING OFFICER KNITTLE: All right, sir. Come on up.

24 MR. BREGEN: Good afternoon.

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1 HEARING OFFICER KNITTLE: Good afternoon, sir. If you will
2 please have a seat and give your name and spell the last name for
3 the court reporter.

4 MR. BREGEN: My name is Alex Bregen, B-R-E-G-E-N, Mayor of
5 Fairmont City.

6 HEARING OFFICER KNITTLE: And could you swear him in,
7 please.

8 (Whereupon the witness was sworn by the Notary Public.)

9 HEARING OFFICER KNITTLE: All right, sir.

10 MR. BREGEN: Okay. Again, I would like to thank the
11 comments of Mr. Boyne on behalf of the community. He knows very
12 well that Milam Landfill has proved a very, very positive
13 community corporate friend. The revenue resources upon their
14 share of tipping fees probably provides two-thirds of the
15 Village's revenue. With that revenue we are able to provide -- I
16 think we have 27 families now fully employed by the community.
17 The added services that Mr. Boyne mentioned just add to the
18 support and services that the city could offer. I think our
19 citizens are very well pleased with our efforts.

20 As Mr. Boyne mentioned, it is a humble community. There
21 are no extravagances, and with the people who serve on any
22 administration of similar nature, probably not the greatest
23 educational background, not experts in the field of what is in --
24 what it takes to be a landfill and all of the various points, but

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1 people that do serve their constituents.

2 Like I say, expected at the hearing that day, there was
3 some anticipation. I had three new board members who had never
4 been through an expansion hearing before. They had to try to
5 absorb the very, very many pages in the applications that they
6 were delivered. No one quite knew -- at least a few of them had
7 never been through it, so they certainly didn't know what to
8 expect. Even it happens so seldom, just a few times. You never

9 know what is going to happen.

10 That morning -- I have been through -- this was my third
11 one. That morning it was the -- I should say the least
12 structured of the three in that it just went a different way than
13 the other two were. The entire session was filled with questions
14 basically by Ms. Andria and Mr. Norman, that I don't know could
15 have been answered, and it led to I think more confusion and
16 chaos. As I say, what had been absorbed and accepted was the
17 application with document after document of professional people,
18 professional experience and affidavits and degrees and resumes.

19 Again, you have got a serving administration who, as people
20 make questions, you believe that they are competent in asking
21 these questions. Like I say, it definitely did influence our
22 decision as far as the review time was much greater than it had
23 been in the last two. We did our best as an administration, I
24 believe, to review all questions and points. We did make a point

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1 to accept information and responses and to review even after the
2 certain due dates. I think that we took every step that we could
3 to make sure that our vote was fair.

4 And really I just wanted to add that, you know, in these
5 things -- like I say, this was my third one, as far as an
6 expansion hearing. The first two were totally professional.
7 There were certainly criticisms and questions and debate. I
8 don't know if I could make a suggestion to your Board or who I

9 have to make the suggestion to but, certainly, the people who
10 speak at this, I feel, should certainly have qualifications that
11 merit their comments and structure. Again, if my small Village
12 has to go through it, I am sure other communities have to go
13 through the same thing and it is definitely a challenge or it
14 could be made challenging.

15 So I learned something through this last day and a half or
16 whatever. I appreciate you coming and we appreciate having this
17 hearing. There is a disappointment and frustration, from the
18 Village's standpoint, that we have to be here because of this.
19 Naturally, when I heard of this hearing and I read the complaint,
20 like I say, there was a disappointment and a frustration. Now I
21 could -- you know, my personal feelings now it is basically
22 sympathetic empathy to the folks who have brought us here today.

23 I thank the Board for hearing us. I appreciate the help of
24 the attorneys and the comments of the public. On behalf of my

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1 Village and the people that I represent, which is a population of
2 probably 2,200, rather than the 4,000, as Mr. Boyne reported, I
3 very much would like to say that Milam is a good friend and
4 hopefully our relationship will go on for quite a period of time.

5 HEARING OFFICER KNITTLE: Thank you, sir.

6 MR. BREGEN: Thank you.

7 HEARING OFFICER KNITTLE: Ms. Homeyer has indicated that

8 she has a question for you.

9 I will allow very limited cross-examination.

10 CROSS EXAMINATION

11 BY MS. HOMEYER:

12 Q. Was Ms. Andria involved in either of the two prior
13 expansions of the Milam Landfill?

14 A. No.

15 MS. HOMEYER: Thank you.

16 HEARING OFFICER KNITTLE: Okay. That was very limited.
17 Anything from the other side?

18 MR. MORAN: No.

19 MR. BARICEVIC: No.

20 HEARING OFFICER KNITTLE: All right. Thank you, sir, for
21 your time.

22 MR. BREGEN: Thank you.

23 (The witness left the stand.)

24 HEARING OFFICER KNITTLE: Does anybody else wish to give a

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1 statement?

2 All right. Seeing none, I will state that the Illinois
3 Pollution Control Board is always welcoming any and all
4 statements from members of the public and statements of interest
5 from citizens. We do take those seriously and we appreciate your
6 time and effort in giving them to us. That takes us to closing
7 arguments.

8 Let's go off the record for a moment.

9 (Discussion off the record.)

10 HEARING OFFICER KNITTLE: All right. We are now back on
11 the record after an off-the-record discussion concerning briefing
12 schedules and whatnot.

13 Ms. Homeyer, you have indicated that you are going to waive
14 your closing argument?

15 MS. HOMEYER: Yes, we will waive closing argument and we
16 will just address the issues in our brief.

17 HEARING OFFICER KNITTLE: Okay. Mr. Moran?

18 MR. MORAN: Yes, we will also waive argument at this time.

19 MR. BARICEVIC: We will waive.

20 HEARING OFFICER KNITTLE: All right. Mr. Baricevic is
21 waiving as well.

22 Are there any motions before we close up here that we have
23 to address before the end of the hearing, Ms. Homeyer?

24 MS. HOMEYER: No.

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1 HEARING OFFICER KNITTLE: Mr. Moran?

2 MR. MORAN: No.

3 HEARING OFFICER KNITTLE: Mr. Baricevic?

4 MR. BARICEVIC: No.

5 HEARING OFFICER KNITTLE: All right. That being said, we
6 have talked about the briefing schedule. The briefing schedule

7 that I will set -- that is being set now and it will also be
8 documented in my hearing report, which will go out after I
9 receive the transcript, because I have to check the transcript
10 and make sure it is accurate, which I am sure it will be, and
11 then go from there.

12 We have got Petitioner's briefs will be due on September
13 12th. The Respondent's briefs will be due on September 26th.
14 Then the Petitioner's reply briefs will be due on October 3rd.
15 Bear in mind that there is no mailbox rule on this in this
16 instance because of the statutory decision deadline, so they have
17 to be in the Board's offices on those dates.

18 I have a credibility determination to make. I am going to
19 wait until I read the transcript and make that in my hearing
20 report.

21 I do want to go over all of the exhibits one by one real
22 quick. If anybody comes up with an error or an inconsistency
23 when I am going through this, just let me know.

24 Starting on August 22nd, I have Petitioner's Exhibit Number

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1 1, which is a certificate for American Bottom Conservancy. That
2 was admitted.

3 Petitioner's Number 2, a certificate for ESL CAN. That was
4 admitted.

5 Petitioner's Number 3 is letter a from Mr. Baricevic to Ms.
6 Homeyer. That was admitted.

7 Petitioner's Number 4 was a host agreement between the
8 Village and Waste Management. That was denied.

9 Petitioner's Number 5 was a copy of the McLeod Phone
10 Directory for the area. That was admitted.

11 Petitioner's Number 6 was a copy of the Ameritech Phone
12 Directory for the area. That was admitted.

13 Petitioner's Number 7 was the Flood Insurance Rate Map for
14 St. Clair, what we have been referring to as FEMA. That was
15 admitted over objection.

16 Petitioner's Number 8 was a prospectus, and that was
17 admitted.

18 Petitioner's Number 9 was a public notice for underlying
19 hearing. That was admitted.

20 Petitioner's Number 10 was a Ms. Manso to Ms. Andria
21 letter, dated 12-15-99. That was admitted.

22 Petitioner's Number 11 was a log sheet for the sign in to
23 view the -- was it the transcript or was it the siting
24 application?

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1 MR. MORAN: For the siting application.

2 HEARING OFFICER KNITTLE: For the siting application. That
3 was admitted.

4 Petitioner's Number 12 was the form S-8 for Waste
5 Management, the registration statement that was downloaded from

6 the internet. That was admitted.

7 Petitioner's Number 13 was Waste Management Form 8-K,
8 downloaded from the internet. It also dealt with registration
9 issues. That was admitted.

10 Petitioner's Number 28 was an aerial map, and that was
11 denied.

12 Petitioner's Number 30 was a newspaper article, which was
13 also denied. At this point we had an offer of proof regarding
14 the newspaper article, as you recall.

15 Petitioner's Number 14 was a legal notice of the Milam
16 expansion, dated February 23rd, 2000. That was admitted.

17 Petitioner's Number 15 was a legal notice of the Milam
18 expansion, dated February 29th, 2000. That was admitted.

19 Petitioner's Number 16 was a legal notice of Milam
20 expansion, dated March 1st, 2000. That was also admitted.

21 Petitioner's Number 26 was a transcript of the underlying
22 hearing, only two pages, though, the court reporter's
23 certification. That was a photocopy. That was admitted.

24 Petitioner's Number 17 was an Andria letter to Manso, dated

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1 April 5th. That was admitted.

2 Petitioner's Number 18 was a postal delivery confirmation
3 receipt. That was admitted.

4 Petitioner's Number 29 was a letter from Kathy Andria to
5 Prsha, dated April 26th, 2000. That was admitted.

6 Petitioner's Number 19 was Andria to Prsha, another letter
7 regarding a FOIA request, dated May 3rd, 2000. That was
8 admitted.

9 Petitioner's Number 24 was a letter from Prsha to Andria,
10 dated May 8th. That was admitted.

11 Petitioner's Number 20 was a letter from Prsha to Andria,
12 dated May 4th, 2000. That was admitted.

13 Petitioner's Number 21 was a letter from Andria to Prsha,
14 dated May 5th, 2000. That was admitted.

15 Petitioner's Number 22 was a letter from Andria to Prsha,
16 dated May 7th. That was admitted.

17 Petitioner's Number 23 was a letter from Prsha to Andria,
18 dated May 8th. That was admitted. I should note that I have
19 down here that is a different letter than another letter dated on
20 the 8th, which is Petitioner's Exhibit Number 24.

21 MS. HOMEYER: That is correct.

22 HEARING OFFICER KNITTLE: Two distinct letters,
23 correct?

24 MS. HOMEYER: Yes, they are.

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1 HEARING OFFICER KNITTLE: All right. Petitioner's Number
2 25 is a letter from Prsha to Andria, dated May 9th. That was
3 admitted.

4 Petitioner's Exhibit Number 27 is an Ordinance Number 573.

5 That was admitted.

6 Petitioner's Number 31 is a letter from Andria to Prsha.
7 This contains the handwritten notes that we discussed earlier,
8 dated May 3rd. That was admitted as well.

9 MS. HOMEYER: I don't have a copy of it.

10 HEARING OFFICER KNITTLE: Okay. Maybe Mr. Baricevic could
11 make --

12 MS. HOMEYER: Is this the one we changed from 28 to 31?

13 MR. MORAN: Right.

14 HEARING OFFICER KNITTLE: Yes, because the aerial map was
15 Number 28. I remember Mr. Baricevic and the eagle eye back
16 there.

17 MS. HOMEYER: What do you have down as Number 31? What is
18 it?

19 HEARING OFFICER KNITTLE: The letter that you are holding
20 right there, the letter from Andria to Prsha, dated May 3rd, with
21 handwritten notes.

22 MS. HOMEYER: Okay. That's Number 31. Okay. Thank you
23 very much.

24 MS. ANDRIA: The map is a photograph, an aerial photograph,

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1 just to clarify.

2 HEARING OFFICER KNITTLE: Yes, the -- I have an aerial map,
3 but it is an aerial photograph. Either way, it has been denied.

4 MS. HOMEYER: Right.

5 HEARING OFFICER KNITTLE: This takes us to today's
6 exhibits. We started off with an offer of proof by Mr. Moran.

7 We had Hearing Officer Exhibit Number 1, which is a memo of
8 Kathy Andria. That was admitted.

9 Hearing Officer Exhibit Number 2, which is notes of Kathy
10 Andria. That was admitted.

11 Waste Management Number 1, Answers and Objections to the
12 Interrogatories. That was admitted.

13 Waste Management Number 2, that was a certificate of Waste
14 Management's corporate structure. That was admitted.

15 Then there was Hearing Officer Exhibit Number 3.

16 MS. HOMEYER: Now, that I don't have a copy of.

17 HEARING OFFICER KNITTLE: These are the handwritten notes
18 of Kathy Andria. That was admitted as well.

19 Maybe Mr. Baricevic can get us another copy of this before
20 we go.

21 That's all I have. Is there any exhibits that I have
22 missed?

23 MR. MORAN: Did you get Waste Management's Number 1 and 2?

24 HEARING OFFICER KNITTLE: Yes, Answers and Objections to

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1 Interrogatories and the certificate.

2 MR. MORAN: Right. Okay.

3 HEARING OFFICER KNITTLE: And you had no exhibits, Mr.

4 Baricevic?

5 MR. BARICEVIC: None.

6 HEARING OFFICER KNITTLE: Ms. Homeyer, did I miss anything?

7 MS. HOMEYER: No. I would like to try and get a copy of

8 our Exhibit 29 and also today's Hearing Officer Exhibit Number 3.

9 HEARING OFFICER KNITTLE: Okay. That is up to Mr.

10 Baricevic.

11 MR. BARICEVIC: Just go ahead give me what you want. Is

12 that it?

13 MS. HOMEYER: Yes, Exhibit 29 and Hearing Officer Exhibit

14 Number 3.

15 HEARING OFFICER KNITTLE: That is all I have. Is there

16 anything further?

17 MR. BARICEVIC: Not from me.

18 MS. HOMEYER: Not from me.

19 MR. MORAN: Nothing further.

20 HEARING OFFICER KNITTLE: Okay. Thank you all very much.

21 MS. HOMEYER: Thank you.

22 MR. BARICEVIC: Thank you.

23 MR. MORAN: Thank you.

24 HEARING OFFICER KNITTLE: Just for the record, no members

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1 of the public have since come in to offer any statements of

2 interest. So that's it. Thank you.

3 (Hearing exhibits were retained by Hearing Officer

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C E R T I F I C A T E

I, DARLENE M. NIEMEYER, a Notary Public in and for the County of Montgomery, State of Illinois, DO HEREBY CERTIFY that the foregoing 161 pages comprise a true, complete and correct transcript of the proceedings held on the 23rd of August A.D., 2000, at the St. Clair County Building, County Board Conference Room, Belleville, Illinois, in the case of American Bottom Conservancy, East St. Louis Community Action Network, Kathy Andria and Jack Norman v. Village of Fairmont City and Waste Management of Illinois, Inc., in proceedings held before John C. Knittle, Chief Hearing Officer, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 28th day of August A.D., 2000.

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

CSR License No. 084-003677
My Commission Expires: 03-02-2003

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