

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 LAND AND LAKES COMPANY,)
4 SIERRA CLUB, MIDEWIN TALLGRASS)
5 PRAIRIE ALLIANCE, AUDUBON COUNCIL)
6 OF ILLINOIS, and ILLINOIS AUDUBON)
7 SOCIETY,)

8 Petitioners,)
9 vs.) PCB 99-136
10) (Consolidated with
11 WILL COUNTY BOARD and WASTE) (PCB 99-139)
12 MANAGEMENT OF ILLINOIS, INC.,)

13 Respondents.) VOLUME II

14

15

16 The following is the transcript of
17 proceedings held in the above-entitled matter,
18 taken stenographically by Terry A. Stroner, CSR, a
19 notary public within and for the County of Cook and
20 State of Illinois before, John C. Knittle, Hearing
21 Officer, at 14 West Jefferson Street, Joliet
22 Illinois on the 2nd day of June, 1999, A.D.,
23 commencing at the hour of 9:30 a.m.

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1 A P P E A R A N C E S:

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HEARING TAKEN BEFORE:

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Will County Board;

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8 BY: MR. DONALD J. MORAN

9 Appeared on behalf of the Respondent,
Waste Management of Illinois, Inc.

10

11 ALSO PRESENT: Mr. Ronald Flegal
Mr. Jack Darin
12 Ms. Victoria Pierce
Ms. Kathy Dodge
13 Mr. Bob Merrifield
Ms. Kathy Glenn
14 Ms. Marie Tipsord
Mr. Lee Addleman
15 Ms. Kathleen Konicki

16

NO EXHIBITS WERE MARKED

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1 HEARING OFFICER KNITTLE: Good morning. My
2 name is John Knittle and I'm the hearing officer for
3 the Pollution Control Board. We are in the second
4 day of hearings in this matter.

5 This matter is entitled Sierra Club,
6 Midewin Tallgrass Prairie Alliance, Audubon Council
7 of Illinois and the Illinois Audubon Society versus
8 Will County Board and Waste Management of Illinois,
9 Inc. That's consolidated with Land and Lakes
10 Company versus Will County Board and Waste
11 Management of Illinois Inc. Those are PCB Nos.
12 99-136 and 99-139.

13 It's June 2nd, approximately 9:45 a.m. I
14 note for the record -- are there any members of the
15 public here today? I see someone I don't recognize.
16 You, sir.

17 MR. DARIN: My name is Jack Darin, Sierra Club.

18 HEARING OFFICER KNITTLE: Okay. Are you here
19 to offer public testimony?

20 MR. DARIN: No.

21 HEARING OFFICER KNITTLE: Again, I note that
22 Kathleen Konicki is here as a member of the public.
23 Other than that, I do not see anyone not affiliated
24 with either one of the parties or one of our local

1 press agencies.

2 A couple things I want to talk about
3 before we begin. We left last night addressing how
4 we were going to deal with the testimony of Kathleen
5 Konicki. I will also note for the record that we
6 have a motion for a continuance filed by the Sierra
7 Club this morning. Al Ettinger has provided copies
8 to all the appropriate parties and provided me with
9 the appropriate numbers of copies.

10 I've had a chance to evaluate the
11 situation a little bit and here's what I think about
12 it and where I stand.

13 I'm not going to accept Kathleen Konicki's
14 motion. I don't think it's appropriate for a member
15 of the public to file a motion to continue. She is
16 not a party to this. She has no standing. Nor am I
17 inclined to accept Sierra Club's motion for a
18 continuance. His case is closed and it appears to
19 me to circumvent a ruling on Ms. Konicki's motion.

20 However, I want to make this clear so that
21 there is no misunderstanding. If all the parties
22 agree to this continuance, I will accept that. I
23 think there may have been a misunderstanding
24 yesterday and I want to clear that up.

1 However, I will not alter the briefing
2 schedule nor will I alter the public comment period
3 so the parties should be advised before they state a
4 position on this motion that they will have to
5 timely file the briefs in accordance with the
6 schedule decided upon yesterday.

7 We are faced with a very tight time frame
8 and I want to allow sufficient time to consider this
9 matter, which I find to be a very important
10 matter, and I think it's important that they have
11 sufficient time for their consideration for this
12 hearing. That's why the briefing schedule was set
13 as it is and we have this statutory decision
14 deadline we have to meet.

15 Also, any problems with the timing of
16 depositions of Ms. Konicki or availability of
17 rebuttal witnesses that may or may not be called for
18 her testimony are problems for the parties to
19 address, and if the parties are agreeing to this
20 motion to continue, they are going to have to agree
21 under those conditions. So that's going to be
22 something for everybody to consider.

23 With that, I want to give Mr. Ettinger a
24 chance to make any comments he wants to make on his

1 motion.

2 MR. ETTINGER: Well, I think the motion says
3 about all I want it to say except I would want to
4 make clear that this certainly wasn't any design
5 Sierra Club had come to circumvent. If anything, I
6 think we have been reacting the best we could to the
7 advances they developed regarding the temporary
8 restraining order.

9 And frankly, I didn't imagine there would
10 be any need for such a motion as this or until Ms. Konicki
11 came in yesterday and said that there was an
12 appellate court decision that was expected on June
13 7th.

14 I believe that might allow her to testify
15 unrestrained by the temporary restraining order.
16 That makes it -- our position is that members of the
17 public who might have something relevant to say
18 should be allowed to say it and that's really the
19 basis of our motion.

20 HEARING OFFICER KNITTLE: Okay. Before we get
21 to comment on all the representatives, different
22 parties, I did want to state for the record that I
23 note in Paragraph No. 4 you state that Petitioner's
24 believe that all members of the public should be

1 afforded the opportunity to present proper testimony
2 in these proceedings and I agree and I want to state
3 for the record that they had proper opportunity and
4 this has been publically noticed properly under the
5 regulations and the public comment period is still
6 open for people to come in and offer public
7 testimony.

8 Also, we have another option that people
9 can file a written public comments that the board
10 will consider. I just want to make that clear that
11 the opportunity for any member of the public to
12 offer public comment is important to this board and
13 this has been considered and is still underway.

14 So with that, let's go with Elizabeth
15 Harvey for Land and Lakes Company.

16 MS. HARVEY: Thank you, Mr. Hearing Officer.

17 As I stated yesterday, I have no objection
18 to a continuance of -- for an additional hearing
19 period to allow Ms. Konicki to testify consistent
20 with whatever appellate court rules.

21 However, my concern is the ability to
22 address any issues that may come up either through
23 her testimony or through the rebuttal testimony. I
24 would have no objection, if the hearing officer

1 allows, to the petitioners anyhow being able to
2 address anything that comes up from Ms. Konicki's
3 testimony or any rebuttal testimony in our reply
4 brief rather than the opening briefing if indeed the
5 scheduling of another hearing date would make it
6 impossible to address in the June 16th opening
7 brief.

8 HEARING OFFICER KNITTLE: Thank you, Ms. Harvey.
9 Mr. Moran?

10 MR. MORAN: Yes. In view of what occurred
11 yesterday, when we heard Ms. Konicki begin to
12 testify, I don't believe that there would be any
13 purpose served in delaying or continuing any
14 testimony given the fact we have also scheduled
15 today's hearing and it would seem to me that all
16 this can do is lead to further logistical and other
17 practical problems.

18 I've requested time and time again to take
19 her deposition. I know it hasn't happened for a
20 number of reasons, but I am not prepared to go
21 forward and agree this thing ought to be kicked
22 again into next week or the following week or
23 whatever we're going to do here.

24 There is some pretty tight time frames and

1 also scheduling for me and I suspect perhaps for
2 others -- they can speak for themselves -- and I
3 can't see logistically continuing this past June 7th
4 to try to work out both a time for me to take her
5 deposition and a time for her to testify in this
6 proceeding, if she ends up testifying at all.

7 So I object to continuing this proceeding
8 for the purpose of presenting any testimony. I
9 think if she's going to be allowed to testify,
10 again, I will say, I want to take her deposition. I
11 will take her deposition now and let her testify
12 today and just go forward and get this thing done.

13 HEARING OFFICER KNITTLE: Thank you, Mr. Moran.
14 Ms. Zeman?

15 MS. ZEMAN: I'll begin by clarifying the record
16 in some respects.

17 Yesterday, during the information that
18 was presented by Ms. Konicki, there were certain
19 statements made with respect to the representations
20 of the Will County Board in the pending proceeding
21 before Judge Penn. I have spoken with Dennis Walsh
22 of Klein, Thorpe and Jenkins, who represents the
23 Will County Board on the TRO matter, and with
24 respect to his representation to Judge Penn, the

1 representation was that if Sierra Club moves to
2 continue prior to closing their case solely to allow
3 Ms. Konicki to testify as a witness in Sierra's
4 case, then the Will County Board would not object to
5 a continuance.

6 I wanted to make that clear because we are
7 back today based on a certain representation. And
8 even though the motion, as presented by the Sierra
9 Club this morning, does not exactly comport to the
10 representation and we do not feel we are, therefore,
11 bound. In order to proceed today, we will not
12 object to Sierra Club's motion to continue subject
13 to certain things that we would like clarified for
14 the record with respect to how her testimony will
15 proceed and I will let Mr. Helsten address that.

16 MR. HELSTEN: Mr. Hearing Officer, we
17 cannot -- we will not object, but we cannot join for
18 the same logistical reasons that Mr. Moran talked
19 about.

20 In accord with your ruling earlier, I
21 understand you saying if we all agreed then we're
22 going to, at our paret, be putting in rebuttal
23 evidence. Our position is it's not our fault.
24 We're in the position we are in sitting here today.

1 We had Mr. Glasgow here last night, the state's
2 attorney, ready, standing by from 5:00 to 7:00 when
3 there were other things he probably could have done.
4 But he, of course, knows the importance of this
5 board's decision and he says I will make myself
6 available knowing the importance of this board and
7 of its decision. We would have had him here this
8 morning, but he has a prior conflicting engagement.

9 Now, the next time that we can have him
10 here is Friday. Okay. He would, by necessity, have
11 to go on first based on his schedule on Friday.
12 Then does that lead me enough time because I have
13 reviewed the proof prepared by the Sierra Club and I
14 can assuredly tell you that I will be on the stand
15 rebutting, as Mr. Glasgow will very forcefully,
16 certain contentions in there.

17 Does that leave us enough time after
18 Mr. Glasgow gets -- after Ms. Konicki gets done
19 Friday, which is the next logical date, and
20 Mr. Glasgow and then me, before we start our hearing
21 on Waste Management's appeal of the one objection in
22 the early afternoon, which is the point that
23 Mr. Moran raised right now? I am not sure. As I
24 told -- as I advised you, Mr. Knittle, yesterday,

1 then Monday, I'm out of the box and then we're at
2 the curious paradox that that places us in, is we're
3 denied the opportunity if this continues over to
4 next week to present rebuttal testimony when we're
5 not the cause of the problem and if we tried to file
6 something in our brief, I'm sure there will be a
7 motion to strike from the other side. Your
8 statement, even under oath, wasn't subject to
9 cross-examination da da da da and there we go.

10 HEARING OFFICER KNITTLE: So if I -- I just
11 want to be clear on your position regarding Sierra
12 Club's motion to continue.

13 Are you objecting to the motion or are
14 you just not agreeing with the motion?

15 MS. ZEMAN: We are not objecting to the motion.

16 MR. HELSTEN: We are just not agreeing.

17 HEARING OFFICER KNITTLE: You are not agreeing
18 to continue.

19 Mr. Moran, of course, has objected to the
20 motion and I think for very appropriate reasons, the
21 motion is going to be denied.

22 As I've stated, I'm not sure of the
23 propriety of his motion. However, even assuming a
24 proper motion, I do think that the public has been

1 afforded the opportunity to present proper testimony
2 in these proceedings and in light of the statutory
3 decision deadline. If we're not going to get the
4 briefing done and the available rebuttal witnesses,
5 I don't think that it's fair to the respondents to
6 be put in that position of not being able to provide
7 appropriate rebuttal testimony.

8 So I'm going to deny the motion to
9 continue, which takes us to the next issue.

10 MR. ETTINGER: I don't want to argue with you,
11 but I want to clarify one thing. I -- perhaps he
12 just misspoke, but Mr. Helsten suggested that I had
13 written the offer of proof that was offered. As I
14 believe I made it clear yesterday, what I offered
15 originally was Ms. Konicki's petition, which I had
16 nothing to do with writing. Then I did make an
17 offer of proof orally and I just wanted to clarify
18 that.

19 MR. HELSTEN: I'm sorry. I misunderstood. I
20 stand corrected then.

21 MR. ETTINGER: Thank you.

22 HEARING OFFICER KNITTLE: Thank you, Mr. Ettinger.

23 As I said, that takes us to the next issue
24 now that the motion for continuance has been denied

1 and that is, as I see it, Ms. Konicki, are you still
2 interested in providing public testimony today?

3 MS. KONICKI: Yes, I am.

4 HEARING OFFICER KNITTLE: Please, I want to lay
5 out some ground rules before I get started on the
6 public testimony.

7 We talked yesterday about allowing her to
8 testify without objections until she is finished and
9 then you have your right to reserve your rights to
10 object afterwards, cross-examine, and to file an
11 appropriate motion to strike.

12 I want -- I would like to proceed that way
13 as long as that's still okay with the respondent.
14 So Ms. Konicki, just so you understand, you're going
15 to be sworn in and you will be able to testify.
16 After you're done testifying, you are going to be
17 subject -- however you want to do it -- you are
18 going to be subject to cross-examination and then
19 you can state your objections and motions.

20 MR. PORTER: Voir dire and possibly then state
21 objections, then if there's anything left over,
22 cross-examination. That's all.

23 HEARING OFFICER KNITTLE: Is that acceptable to
24 the petitioner?

1 MS. HARVEY: Certainly.

2 HEARING OFFICER KNITTLE: That's fine. Then
3 under those circumstances, you are free to testify.

4 MS. KONICKI: Thank you.

5 HEARING OFFICER KNITTLE: Pardon?

6 MS. KONICKI: Thank you.

7 HEARING OFFICER KNITTLE: Oh, and please have a
8 seat and try to remain seated throughout the
9 testimony.

10 MS. KONICKI: May I also get some ground rules
11 clarified for my benefit?

12 HEARING OFFICER KNITTLE: Yes, ma'am, but first
13 let's swear you in.

14 (Witness sworn.)

15 WHEREUPON:

16 KATHLEEN KONICKI

17 called as a witness herein, having been first duly
18 sworn, deposeeth and saith as follows:

19 HEARING OFFICER KNITTLE: What can I clarify
20 for you?

21 MS. KONICKI: I hope you will be patient with
22 me. My experience is strictly with -- as an
23 attorney in a court of law, but I would hope that
24 the procedures we follow here might somewhat

1 approximate what we find in a court of law.

2 I would like to object to the proceedings
3 followed so far to the extent that I have three
4 counsel to contend with for one client, that client
5 being the County Board. In a court of law, one of
6 them would be the designated speaker. They could
7 put their three little heads together, but one would
8 speak. Whenever there's been an objection raised
9 the procedure so far has been to go down each one of
10 the three counsel for the County Board and let each
11 one of them speak. I think that is extremely unfair
12 to me --

13 HEARING OFFICER KNITTLE: Let me interject real
14 quick, Ms. Konicki. I will --

15 MS. KONICKI: My train of thought --

16 HEARING OFFICER KNITTLE: Hold on. I'm the
17 hearing officer and I'm going to interject when I
18 think it's appropriate and I think it's appropriate
19 at this time.

20 I want to state for the record that all
21 day yesterday Mr. Porter was a representative for
22 the Will County Board. I don't think Ms. Zeman
23 spoke until the closing, and I don't think Mr. Helsten
24 spoke until the late afternoon when he was

1 addressing your testimony, Ms. Konicki -- and
2 cross-examination.

3 MR. PORTER: And I will be conducting
4 cross-examination today.

5 HEARING OFFICER KNITTLE: And I'd be happy to
6 ask them -- Mr. Porter, will you be doing any voir
7 dire under cross-examination to any objections?

8 MR. PORTER: Yes.

9 MS. KONICKI: So I only need to deal with one
10 person at a time. What I objected to -- what I
11 objected to that took place yesterday was the fact
12 that you roundrobin down each of the attorney's here
13 and by allowing three opinions for one client, you
14 made it look like the majority of legal opinion was
15 on that side and actually there's been an obvious
16 consensus or conclusion among the three attorney's
17 for one client. To that, I object. It's your call
18 in the proceeding. I want the record to show I
19 objected to that.

20 HEARING OFFICER KNITTLE: I think the
21 transcript will bear out what happened yesterday,
22 but your objection is noted for the record.

23 MS. KONICKI: Thank you. I would like to have
24 clarified for me my opportunity when there is an

1 objection to my testimony, if it were to be raised,
2 let's say, on something other than privilege, like
3 on hearsay, my right to respond to defend myself.
4 There were some hearsay objections raised yesterday,
5 which I felt made me look -- made me look bad to a
6 non-informative observer. I want to make sure
7 something out of that comes forward today. I would
8 like to know whether or not I have the opportunity
9 to defend the testimony I am giving.

10 Some -- they were -- objections were
11 raised yesterday that she's not allowed to go into
12 legal argument just to testify. I'm obviously
13 wearing two hats here. I need to testify, but I
14 also need to be able to defend my right to say what
15 I need to say if an objection is raised. Do I have
16 that right?

17 HEARING OFFICER KNITTLE: Is there an objection
18 to -- after the objections are made to allow Ms. Konicki
19 to respond?

20 MR. PORTER: During her statements, I'm not
21 waiving any objections to the legal argument. When
22 I make my legal arguments to strike the vast
23 majority of the testimony, I think it's appropriate
24 she be allowed to respond.

1 HEARING OFFICER KNITTLE: Is that sufficient,
2 Ms. Konicki?

3 MS. KONICKI: I'm not quite sure what he said.
4 I would like the opportunity to respond whenever he
5 raises an objection. If he waits until the end,
6 then I can wait until the end.

7 HEARING OFFICER KNITTLE: While you're
8 testifying, I am going to ask you not to act as an
9 attorney, but after you're done with your
10 testifying, legal issues, objections and motions to
11 strike, I'll allow you to respond accordingly.

12 MR. MORAN: And these would be the objections
13 raised by any of the attorneys?

14 HEARING OFFICER KNITTLE: Any of the lawyers
15 for any of the parties can object. I'm requesting
16 that one attorney represent the Will County Board in
17 this matter in terms of asking the questions.

18 MS. KONICKI: The other thing -- my impression
19 of the public hearings was that they were two-fold,
20 that they could serve to take additional testimony
21 or evidence, but there is also an opportunity for
22 public comment; am I correct on that?

23 HEARING OFFICER KNITTLE: I think there's a
24 variety of reasons we have hearings, how we have

1 them before the Pollution Control Board, and I will
2 state that we do want to obtain any evidence that we
3 think is relevant and proper to the record and we
4 also want to provide the opportunity for members of
5 the public to comment on the proceedings.

6 So insofar as what I stated, that is
7 correct, but I will state there are a number of
8 reasons for the hearings that we have and the
9 reasons why we are having them. I am not qualified
10 to say why the legislature or the various agencies
11 promulgated these regulations or did what they did.

12 MR. MORAN: Mr. Hearing Officer, if I might get
13 some further clarification, perhaps inform Ms. Konicki
14 as to some of the problems found at this hearing.

15 The hearing itself, obviously, on the
16 basis of the appeals filed, cannot consider any new
17 evidence as it relates to the statutory criteria.
18 The specific purpose for these kind of hearings is
19 to address issues presumably related to fairness.
20 It's my understanding -- correct me if I'm
21 wrong -- that parties aren't free in this kind of a
22 hearing to present either new evidence or any
23 different evidence on any of the statutory criteria
24 as it's related to the records established below.

1 So that for purposes of -- I'm not sure what she
2 intends to talk about -- but clearly if she starts
3 talking about specific criteria and some of the
4 material that's contained in the petition for review
5 that's been dismissed, it seems to me that would not
6 be a proper area of testimony for this hearing.

7 HEARING OFFICER KNITTLE: I agree with that
8 statement. I would ask, however, that you wait
9 until she's done testifying and move to strike it
10 and if she testified to something that I do not
11 think is relevant to the issue of fundamental
12 fairness and is about a subject that should be
13 related to the record of the County Board, I will
14 strike it.

15 MR. ETTINGER: Excuse me. I think -- I think
16 we probably agree most of the way. I'm not quite
17 sure, though, as far as public comment goes the
18 public could comment on whether or not the manifest
19 weight of the evidence has been met. Obviously,
20 they can't reargue the siting hearing issues, but I
21 think it would be at least a legitimate public
22 comment to say I have read the opinion of the Will
23 County Board and I find that that does not meet the
24 manifest weight of the evidence.

1 HEARING OFFICER KNITTLE: She can testify
2 and, you know, like I said, we'll have the
3 objections and I'm not going to rule on that right
4 now in the hypothetical.

5 MR. ETTINGER: Sounds good.

6 HEARING OFFICER KNITTLE: However, if she does
7 testify accordingly and they do object, you will
8 have a chance to respond.

9 MS. KONICKI: The reason I got into this area
10 is I intend to, I guess, take a bifurcated approach
11 to my appearance here today. That was two-pronged.

12 HEARING OFFICER KNITTLE: I understand.

13 MS. KONICKI: Well, you looked like I was
14 talking Greek. I apologize. That wasn't my intent
15 when I used that term.

16 I want to exercise my right to testify
17 here today. I also want to exercise my right to
18 hear general comments, which might be regarded as
19 argument or whatever by counsel. I have the right,
20 I believe, to wear both those hats today as a member
21 of the public and I am giving notice that I will do
22 so.

23 HEARING OFFICER KNITTLE: As I said, we are
24 going to allow you to testify. However you want to

1 testify is up to you. We're going to let you
2 testify all the way through, then you're going to
3 have objections and motions to strike to deal with
4 at that point. Once again, until I hear what you
5 are testifying to, I'm not going to preliminary
6 rule.

7 MS. KONICKI: But just so I understand at one
8 point I'm going to be giving testimony and at
9 another point I'm going to be asked to comment on
10 the process that took place. I'm not going to be
11 giving testimony.

12 HEARING OFFICER KNITTLE: Well, as I -- we've
13 just stated, I'm not going to guarantee that that's
14 not going to be stricken from the record.

15 MS. KONICKI: That's fine, but there is a point
16 in which I need to be under oath, some points for
17 which I don't.

18 HEARING OFFICER KNITTLE: You are under oath
19 right now.

20 MS. KONICKI: Does everyone who come in here
21 for public comment go under oath for everything they
22 say to this body?

23 HEARING OFFICER KNITTLE: Had you been here at
24 the beginning of the hearing you would have, and it

1 is true, that at this hearing anybody who wants to
2 provide public comment is going to be sworn in and
3 subject to cross-examination.

4 MS. KONICKI: For every form of -- that's what
5 I needed to know.

6 HEARING OFFICER KNITTLE: That's my ruling for
7 this hearing. Once again, I'm not prepared to state
8 what happens at every hearing regarding landfills,
9 regarding anything, regarding any other subject
10 matter. All I'm prepared to tell you at this
11 hearing I stated for the record early in the
12 proceedings is that anybody coming here to testify
13 is going to be subject to being sworn in and subject
14 to cross-examination for all the parties.

15 MS. KONICKI: May I also clarify for the
16 record, my understanding is that Mr. Helsten did
17 take the stand yesterday and testify as to issues
18 going to the fairness and the proceedings followed.

19 HEARING OFFICER KNITTLE: Yeah. And that is in
20 transcript and Ms. Konicki I'm going to ask you
21 pretty soon to stop asking for clarifications and
22 start testifying, but as to that question, yes.

23 MS. KONICKI: It may be relevant to arguments
24 that may defend to what I say.

1 HEARING OFFICER KNITTLE: I'm asking -- I'm
2 directing you to begin your testimony. I'm not
3 going to sit here and answer questions for somebody
4 that could have been here yesterday, that could have
5 had a representative explain this to you. Our time
6 is valuable. Think it's appropriate for you to
7 question the hearing officer about what happened
8 yesterday. So what I'm telling you is if you want
9 to testify your opportunity to do so is now.

10 MS. KONICKI: I will testify. I will apologize
11 that I was not here by design yesterday. I was
12 forced to -- under a time limit that expired
13 yesterday -- to be at an order to file my pleading
14 appeal paper so --

15 HEARING OFFICER KNITTLE: I understand.

16 MS. KONICKI: -- you understand I was not being
17 discourteous to you for not being here.

18 HEARING OFFICER KNITTLE: I'm suggesting that
19 you're bordering on discourtesy at the moment.
20 I'm not suggesting your presence here was --
21 yesterday or your non-presence was in any way
22 discourteous whatsoever.

23 MS. KONICKI: Thank you very much.

24 MR. MORAN: Mr. Hearing Officer, may I just

1 clarify one thing, hopefully this will expedite our
2 hearing this morning and that is my understanding is
3 that the order of proceedings this morning will be
4 Ms. Konicki will present her testimony, any parties
5 who have objections or motions to strike they will
6 address those after she's concluded, and then after
7 that has been concluded, if there was any testimony
8 that is left standing, cross-examination by the
9 parties.

10 HEARING OFFICER KNITTLE: I think that's what
11 we agreed to, correct.

12 Ms. Konicki, the floor is yours.

13 MS. KONICKI: It is my understanding as a
14 member of the county board that at the time
15 Mr. Helsten participated in the public hearing
16 portion siting process that he was functioning as
17 attorney for the County Board. He had participated
18 in closed sessions of the County Board, executive
19 sessions. He had rendered legal advice to the
20 County Board during those sessions. He rendered
21 legal advice to the County Board outside of those
22 sessions on a one-on-one basis at which we would
23 approach him.

24 The County Board and myself were informed

1 after the close of the public hearings that he had
2 not been our attorney -- at any point in time -- he
3 had not been the County Board's attorney. I was
4 given that information by Mr. James Glasgow at which
5 point in time Mr. Glasgow made an offer to retain
6 for the County Board their own attorney if that is
7 what they wanted. The County Board requested to be
8 appointed their own attorney and Mr. Glasgow
9 appointed Ms. Zeman.

10 I approached Mr. Phil Mock of the state's
11 attorney's office and asked him how
12 Ms. Zeman came into the picture. The reply I was
13 given is that she had been recommended by others
14 including Mr. Helsten and I asked how Mr. Helsten
15 had come to us. I was informed that he had come to
16 us, his name, had come forward to the county from
17 our waste -- the county's waste services division.

18 I have seen pay records kept on file in
19 the county clerk's office. I have requested under a
20 foia a copy of those, I did so last Wednesday. I
21 still have not received my copies.

22 Mr. Helsten's fees are paid out of the
23 land users waste services budgetary item as are
24 Ms. Zeman's fees. Both are paid. Ms. Zeman's fees

1 do not come out of Mr. Glasgow's budget. They do
2 not come out of the County Board's budget. So
3 although the claim is that she is our attorney,
4 she's paid by our waste services department. Waste
5 services has been viewed as a proponent -- the waste
6 services division now has been viewed as a proponent
7 of the landfill operation of the siting of the
8 landfill. I find it most incongruous that our
9 County Board attorney would be paid by someone other
10 than the County Board or Mr. Glasgow's office.

11 At a meeting of the County Board -- this
12 is the full County Board that was closed to the
13 public under expectation of the Closed Meetings Act,
14 and this is a meeting that was closed -- the closure
15 of which was challenged by the press in the
16 appellate court action. The court ruled the County
17 Board could go ahead and close it for the purpose
18 represented. I was present at that meeting. The
19 discussions that took place during that meeting went
20 beyond the exception to the Closed Meeting Act. I
21 objected. Specifically what took it beyond were
22 comments that Ms. Zeman was making and testimony
23 that she was giving.

24 The meeting had been called for the County

1 Board to discuss the landfill siting application.
2 However, once the public was excluded and the
3 meeting began, the speaking was done by
4 Ms. Zeman -- probably about 75 percent of all
5 conversation that took place was conversation by
6 Ms. Zeman. She evaluated very favorably the Olson
7 report, that's the report issued by Dean Olson or at
8 least titled being by Dean Olson and County Waste
9 Services Division. She vouched by the report and
10 went so far as to vouch for some of the applicant's
11 witnesses, specifically Earth Tech saying that she
12 knew them personally. She worked with them before
13 and they did good work. I objected strenuously at
14 the meeting that she had gone beyond the confines of
15 the Closed Meeting Act, that Ms. Zeman was now
16 giving testimony past the close of time periods for
17 either public comment for testimony and that we
18 were -- the meeting was in violation of the Open
19 Meetings Act.

20 The County Board's attorney at the time
21 representing on procedural matters was Dennis Walsh.
22 He never said anything. He sat there quiet. The
23 chair -- the person chairing the committee allowed
24 Ms. Zeman to simply defend herself and give the

1 opinion of what she was doing was fine and proper.
2 Once she had to say that in terms of endorsing that
3 report and endorsing the witnesses, she endorsed the
4 report -- she endorsed it as being a fair and
5 accurate summary of the volumes and volumes and
6 volumes of transcripts that all County Board members
7 had been giving of the public hearing. We are
8 talking about a stack of trial transcripts probably
9 a foot and a half tall. That I am down to the
10 definite impression very few County Board members
11 actually read. I did. I feel that what she did was
12 my opinion, as an attorney and as a member of the
13 board, what she did was in violation of the Open
14 Meeting Act was highly prejudicial to the case. I
15 believe it buys the case irreversibly in favor of
16 the application being approved. She was viewed by
17 myself and by the members of the board as being very
18 third-party and impartial and given, you know, trust
19 that went along with that.

20 I was present when the three members --
21 the board's three members siting committee met in
22 open session to discuss what recommendation they
23 would make to the County Board. Ms. Zeman was also
24 there and I thought she went out of her way to nudge

1 the committee towards simply adopting the Olson
2 report as their own report. This is what the
3 committee ultimately did with no discussion. This
4 is a committee that heard days and days and days of
5 public hearing, highly contested, and had nothing to
6 say other than this documented report.

7 I have been in political life a long time,
8 and it's very difficult for me to believe that that
9 testimony so contested and so lengthy can be put
10 aside in a report simply adopted unless there were a
11 meeting of minds prior to that. Very -- I say that
12 for my experience in political life it was highly
13 unusual.

14 I have seen county documentation to
15 support the contention of the public that the
16 original tonnage -- included a tonnage for the
17 landfill -- included the arsenal use. I think it
18 was like about seven or ten million tons of what the
19 landfill was going to be. That would include --
20 that was to include the county's 20-year needs plus
21 what was going to be generated by the arsenal --
22 clean up at the arsenal. Now, subsequent to
23 all -- back up. That tonnage was tonnage that was
24 agreed to even by the objectors to the landfill. A

1 number of groups objected to the landfill being
2 sited so close to what are regarded as national
3 treasurers being the Midewin National Tallgrass
4 Prairie and the Abraham Lincoln Veteran Cemetery.
5 But those groups backed off their opposition as
6 negotiations proceeded over the size of the landfill
7 was promised not to be over a certain size.

8 Now, subsequent to that, county's waste
9 services division came before the County Board and
10 recommended an amendment to the county's Solid Waste
11 management plan. This amendment almost doubled the
12 County's 20-year waste disposal made and that what
13 we were told is that -- we being the County Board
14 were told -- is that areas that had not been
15 included before, specifically areas on the border of
16 the county, were now being included. In other
17 words, given municipality whose boundaries overlap
18 county boundaries, you know, you can either exclude
19 a whole municipality or include the whole
20 municipality and before we had the county -- our
21 waste services had excluded all those areas, now
22 they were going to include them. And they
23 recommended that we, the County Board, amend our
24 Solid Waste management plan to show these higher

1 figures. We did that.

2 At no time did our waste services division

3 advise us that in doing so we would -- we the County

4 Board -- would no longer be able to object to a

5 larger sized landfill on the basis that was not

6 consistent with county's consolidated, you know,

7 Solid Waste management plan. I felt that was very

8 -- as a County Board member -- I felt very deceived

9 by that because there was quiet a bit of outcry over

10 the size of the landfill and we didn't have a leg --

11 we felt -- I felt as a member of the County Board

12 that I didn't have a leg, you know, the county board

13 didn't have a leg to stand on because it wasn't

14 consistent with our plan that's one of the criteria

15 that we were told we could object to under siting

16 the application. But it wasn't there any longer

17 because the size was now consistent with the plan.

18 I believe with the expertise of our waste services

19 division I feel that they knew this. I feel they

20 have a responsibility to tell us and they did not do

21 so until the plan was already amended and they were

22 there for the County Board and it was closed for

23 objecting to the size of landfill based on our

24 20-year plan.

1 I have talked to some members of my county
2 board who felt that once we had amended our plan to
3 show this larger tonnage it would be politically
4 embarrassing or difficult to reject the application
5 on that basis that had we known earlier -- we County
6 Board members known earlier -- the legal effect of
7 that amendment, this would have been certainly
8 significant and perhaps stopped our approving the
9 amendment to our plan.

10 As a member of the County Board and a
11 long-time political observer out here, I have tried
12 to figure out -- I have an opinion as to the why and
13 wherefores of what's taking place and it seems to me
14 to trace back to our waste services division. And a
15 very earnest and concerted effort on their part to
16 get this application approved. It's an effort that
17 as I've watched the process it's my opinion that
18 has been aided and abetted by attorneys recommended
19 by that division whose loyalty has been to that
20 division and not to the County Board or constituents
21 of this county. These were attorneys who also have
22 been paid by that division. I don't recall the
23 County Board ever being given the choice of who
24 would pay these fees. We never said let waste

1 services pay it. Somehow, waste services,
2 Mr. Olson's division, just somehow paid these and
3 the issue never became us.

4 I also want to point out as a member of
5 the County Board I am not aware of the County Board
6 ever taking a vote to exercise the attorney/client
7 privilege to silence me here today, or to prevent me
8 from saying anything I've ever said.

9 I do want to say that I've been a resident
10 of the county for over ten years. I've been a
11 member of the board for over two years. I have been
12 displeased with the legal advice given as to this
13 case by counsel that would include Mr. Glasgow's
14 office. What my understanding from Mr. Glasgow is
15 that the state's attorney's office represents the
16 County Board in the landfill siting application and
17 then the other attorneys, Ms. Zeman, Mr. Helsten,
18 they were appointed to special assistant state's
19 attorney, but they didn't work for his office.
20 Again, they worked for his -- they were not paid for
21 by -- their salaries were not paid out of his
22 office. I have seen the records in his office and
23 viewed the material, but the paychecks were cut by
24 Mr. Olson's division. But Mr. Glasgow generated us

1 those -- strike that.

2 No, I'll go forward. Mr. Glasgow's advice
3 to us and along with Mr. Helsten, is that the County
4 Board was acting in a quasi judicial capacity and
5 could not comment publically on siting the
6 application one way or the other. I believe that
7 the advice given us was far to cautious, far overly
8 stringent and did little except to keep the County
9 Board disadvantaged and a lot of us in the dark as
10 to the process. Some of us could read the material,
11 all the transcripts, some of us couldn't; but under
12 the advice given us by the state's attorney's
13 office, those of us who read it couldn't communicate
14 with those of us who didn't. I think that was a
15 serious handicap. I think it went far beyond the
16 law in the area.

17 It is my understanding that at the time
18 Mr. Helsten participated in the public hearing
19 process of the landfill siting, that he wasn't
20 acting as an attorney for the County Board at the
21 time. I reviewed the transcripts from that public
22 hearing process very thoroughly and my general
23 overall impression is that he viewed himself as
24 working in tandem with Mr. Moran, the applicant. He

1 threw a few bones towards the objectors, but not
2 many.

3 My reason -- I am going to clear for the
4 record -- my reason for objecting to Ms. Zeman's
5 role during that public hearing is she did cross the
6 line and go into expert -- she became an expert
7 witness and began giving testimony and that
8 objection certainly was made.

9 MR. PORTER: I'm sorry. I am having trouble
10 hearing you.

11 MS. KONICKI: I'm sorry.

12 HEARING OFFICER KNITTLE: Do you need the last
13 part repeated?

14 MR. PORTER: That would be nice, yes.

15 HEARING OFFICER KNITTLE: Can you read that
16 back?

17 (Whereupon, the requested
18 portion of the record
19 was read accordingly.)

20 MS. KONICKI: At a subsequent hearing which was
21 made open to the public, Ms. Zeman started going
22 into the same area, only this time in the public
23 meeting she was very careful to stay away from an
24 expert opinion position that she had taken during

1 the closed meeting. When she endorsed -- at the
2 closed meeting when she endorsed that report of the
3 fair and accurate summary, based on my opinion as a
4 proponent for it, she also disparaged opposing
5 experts, the testimony that had been given by
6 opposing experts.

7 She looked across the room in a very
8 peculiar fashion, made eye contact with all the
9 County Board members she could, and advised them
10 that as they -- as you -- her words were as you know
11 Mr. Olson found the testimony of opposing experts
12 not to be credible. That's all she said on that.
13 Of all the testimony they gave, which was extensive,
14 they came down to that one liner. And I do feel
15 that what she said both, in terms of speaking --
16 vouching personally for several of applicant's
17 witnesses -- that would be for the record Earth
18 Tech -- they had, I believe two witnesses at the
19 public hearing that her vouching personally for
20 them -- her vouching for the fairness and accuracy
21 of the evidence summary contained in the report and
22 her disparaging comments as to the expert, the
23 credibility of opposing experts, had an effect on
24 that board that at that point it was a foregoing

1 conclusion which way the board was going to go in
2 terms of adopting the report and I don't know if
3 there was any way of doing it. My impression going
4 into that meeting -- and I was one who voted to
5 close that meeting to the public -- was that we the
6 County Board were going to be discussing that
7 report, and no sooner did the doors shut it was
8 turned over to Ms. Zeman, she just start running
9 down the report and endorsing it. I had expected
10 and I was prepared to discuss the merits of the --
11 some merits of the expert testimony. I had read it
12 very thoroughly and was up on it and ready to
13 express my concerns to my fellow board members in
14 hopes of influencing their opinions, their position
15 or getting them to think and perhaps picking up
16 positions from other County Board members. That's
17 not the way the meeting went. It was Ms. Zeman
18 going down the Olson report, endorsing --
19 discouraging the witnesses and then after that the
20 County Board -- she had addressed -- she did address
21 questions which had been submitted by County Board
22 members and answered, but very few questions from
23 the County Board. I think the County Board might
24 have occupied about -- the County Board might have

1 only occupied about 25 percent of the testimony of
2 the conversations or whatever that took place during
3 that meeting.

4 She did -- she did at the closed session
5 do what she had done during the open session -- the
6 three meetings cited -- during the closed session
7 she actually advised that they should go just ahead
8 and adopt those reports as their own reports. Of
9 course, that's what the board subsequently did.

10 Now, during the open meeting she simply
11 said that -- advised the three-members siting
12 committee, kind of a little nudging motion, that
13 they could do that. Of course, that's what they did
14 do. I -- in looking back over the whole process
15 with those persons present, I feel there was a very
16 strong effort by all attorneys, this specifically,
17 Mr. Helsten, Ms. Zeman to push the County Board
18 toward doing whatever waste services wanted the
19 County Board to do and having gone through the money
20 records of how the money flowed, I am very upset --
21 my understanding is that all our attorneys' fees
22 were paid -- county's fees -- were paid by Waste
23 Management, which means that money flowed from Waste
24 Management to our waste services division and then

1 out to both of our County Board attorneys, who then
2 turned around and endorsed the waste services
3 department.

4 That's my concern with the fairness of the
5 process that was followed. I feel it was tied too
6 tightly to not only both the applicant and the --
7 our own -- the county's own waste services division,
8 which, I believe, was a less advised attorney than a
9 proponent of the application from day one. I looked
10 back and I feel very strongly and this is -- I will
11 endorse here under oath the positions taken by the
12 County Board members in the forum and that's that
13 this was a done deal before the merits of the case
14 were sifted out through the application process.

15 HEARING OFFICER KNITTLE: Anything else,
16 Ms. Konicki?

17 MS. KONICKI: Can you give me a moment?

18 HEARING OFFICER KNITTLE: Sure.

19 MS. KONICKI: We were advised by Mr. Glasgow's
20 office when he told us that Mr. Helsten did not
21 represent us, had never represented us, that
22 county's waste services division was a proponent of
23 the applicant's siting application and that's why
24 Mr. Helsten, as their attorney, could not also be

1 our County Board attorney. That was the rationale
2 giving to us and why we needed to bring on board
3 another attorney, which in this case, of course,
4 of Mr. Helsten's recommendation, he was part of the
5 recommending force, so I understand why Ms. Zeman
6 came on board. In my opinion, it would have been --
7 the only word I can use is a process -- is someone
8 who's been through it and has the opinion that would
9 be very consensual.

10 I would like the record also to show that
11 under -- Will County operates under the county
12 executive form of government. Under that form of
13 government, our county executive, who is one
14 Mr. Charles Adelman, enjoys the power of
15 recommending to the County Board who it should hire
16 as an employee. In other words, he has the
17 authority in law to take applications and sift
18 through them and pick who from the file of
19 applicants he would like to recommend be hired by
20 the county. He more or less is like a gate between
21 us and the people who apply for positions. The
22 practice has been -- the practical matter out
23 here -- we on the County Board have not been
24 aggressive with him in terms of who he recommends.

1 Perhaps, because we dropped the ball, we've let
2 him -- we pretty much approved whoever -- it's
3 starting to change recently, but I make that point
4 because I want the record to show that Mr. Olson is
5 someone, you know, traces back to Mr. Addleman's
6 regime and his power to recommend. I think it's
7 significant because of Mr. Addleman's subsequent
8 action during the siting process excusing himself
9 from it is that he could go out and publically
10 campaign for the larger tonnage. It seems like he
11 is political and personally very in favor of it,
12 which makes me very -- all the more uncomfortable
13 when I realize what Mr. Olson -- and I believe
14 Mr. Olson's loyalties virtually all county employees
15 at this point far too many feel a loyalty towards
16 Mr. Adelman, not towards the County Board.
17 Although, we the County Board rely on what they tell
18 us to be good or bad or true or not true, there are
19 loyalties I feel that are not to us or to public,
20 but to Mr. Adelman as to the one who got them their
21 job.

22 I also would like to state for the record
23 that I realize my hazard in testifying here today.
24 I have given it a lot of thought and tried to show

1 due respect for the court's order. Much of what
2 I've said I've said publically before. No claim of
3 privilege has been made. I've testified in
4 substantial compliance with the petition for review
5 that I filed and I'm not aware of any motion to
6 strike that was ever made on that pleading by the
7 County Board or any of their attorneys.

8 HEARING OFFICER KNITTLE: Anything else,
9 Ms. Konicki?

10 MS. KONICKI: I think I will close with that,
11 thank you.

12 HEARING OFFICER KNITTLE: Thank you. I want to
13 take a five-minute recess, make it six. Back at
14 10:45.

15 (Whereupon, after a short
16 break was had, the
17 following proceedings
18 were held accordingly.)

19 HEARING OFFICER KNITTLE: Do you want to resume
20 your seat on the chair up here? Can we go back on
21 the record? Are we back on the record? We're back
22 on the record and Ms. Konicki let me remind you that
23 you are still under oath. I think we have some
24 objections.

1 MR. PORTER: We do indeed. Rick Porter for the
2 county. I object to Ms. Konicki's testimony in
3 total and move that it be stricken from the record
4 for the following reasons.

5 First, it is completely irrelevant and
6 immaterial because it deals with matters not
7 pertaining to siting. It involves discussions
8 concerning the Solid Waste management plan rather
9 than siting applications.

10 In addition, it should be stricken
11 because it violates on numerous occasions the
12 attorney/client privilege. It violates the
13 privilege on the decision-making process of the
14 board. It involves hearsay, double hearsay, and
15 compound hearsay. It involves conjecture, surmise
16 and speculation and in particular, speculation as to
17 the mental thoughts and impressions of others, and
18 it provides legal conclusions and argument.

19 In light of the inadmissability of the
20 vast majority of everything that Ms. Konicki had to
21 say, we suggest it be stricken as a whole and
22 therefore not presented to the Pollution Control
23 Board. If necessary we will file this written
24 motion.

1 HEARING OFFICER KNITTLE: Is that all, Mr. Porter?

2 MR. PORTER: Yes.

3 HEARING OFFICER KNITTLE: You don't want to
4 address specifics?

5 MR. PORTER: If the board feels it's necessary
6 to address the specific testimony, I have and am
7 prepared to do so.

8 HEARING OFFICER KNITTLE: By the board do you
9 mean --

10 MR. PORTER: I'm sorry, if the hearing officer
11 believes it's necessary to address the specifics
12 here.

13 HEARING OFFICER KNITTLE: Let's hear what the
14 other parties have to say. Mr. Moran.

15 MR. MORAN: Yes. I join in that motion. I
16 underscore again if we consider in its entirety the
17 testimony that we have just heard from Ms. Konicki
18 none of it, not a single word of what she indicated
19 and what she testified about is probative of any
20 issue of fundamental fairness as has been raised by
21 either the Sierra Club or by Land and Lakes in this
22 proceeding. Her main contentions and statements are
23 related to the tonnage, as you recall, which was an
24 issue apparently raised a number of years ago and

1 the whole notion of a landfill was raised here in
2 Will County and the problems and the difficulties
3 and the disagreement that may have attended those
4 discussions, political and otherwise. Her
5 contention that that change in tonnage, as she
6 called it, somehow resulted in decisions made
7 without -- well, which she disagreed for whatever
8 reason. Those discussions, the amended Solid Waste
9 plan and the question as to who Mr. Helsten may have
10 represented or didn't represent who is looking out
11 for the county's interests, was the manner and form
12 of consideration of contractual and other matters
13 it doesn't further our inquiry in this proceeding
14 one iota. Therefore, it is entirely irrelevant and
15 ought to be stricken.

16 HEARING OFFICER KNITTLE: Thank you, sir.
17 Ms. Harvey.

18 MS. HARVEY: Land and Lakes does not have a
19 position in the motion to strike, thank you.

20 HEARING OFFICER KNITTLE: Mr. Ettinger.

21 MR. ETTINGER: I believe -- I agree with the
22 respondent that much of the testimony is irrelevant
23 to this proceeding. However, I believe there are
24 some -- some pieces of it particularly with regard

1 to the alleged testimony given to the board after
2 the close of the hearing record that is relevant to
3 the fundamental fairness of the proceedings and
4 while there may be other objections to some of the
5 form in which that testimony was given, I do not
6 believe that the entire testimony that we heard is
7 irrelevant to this proceeding and can be stricken.

8 MR. PORTER: May I respond to that?

9 HEARING OFFICER KNITTLE: Yes. And then we
10 agreed to let Ms. Konicki respond to these
11 objections as well so why don't you go -- would you
12 rather go before or after her?

13 MR. PORTER: After. Thank you.

14 HEARING OFFICER KNITTLE: Ms. Konicki.

15 MS. KONICKI: Yes. In terms of the objections
16 I do feel that I was in the position here today to
17 testify as to what may be called a lay expert
18 witness, in terms of coming to the bottom lines on
19 conclusions and things.

20 I also feel that the attorney/client
21 privilege needs to be revoked by the County Board.
22 Opposing counsel, respondents, have taken the
23 position that in order for the privilege to be
24 waived there would be a vote by the County Board to

1 waive it. I would support that no report be
2 exercised for the board to invoke it. Much of the
3 attorney/client claim was testimony that I gave and
4 was critical of them. I find it in some documents a
5 privilege that attorneys are allowed to invoke for
6 their own protection something that the client
7 invoked for -- the client has not done that here. I
8 also think that once the pleadings, my pleadings in
9 this case were filed, that had the attorney/client
10 privilege been of concern, it would have been and
11 should have been exercised at that point in time. I
12 think there's a point where materials were released
13 to the public and it's been let go so broadly and
14 with no objections at that point don't act within
15 the privilege and try to bring it back under
16 control.

17 The other thing I would like to also point
18 out that again the purpose of the privilege is to
19 encourage clients, in full disclosure to their
20 lawyers, not vice versa and much of what I've
21 testified to was things that we were told by our
22 lawyers. Now, I realize that some of that was also
23 covered, but the -- I don't think it's covered as
24 broadly as counsel would like it to be and

1 specifically I -- for the attorney/client -- I'm
2 just going to make some points of law that I think
3 are relevant to my testimony.

4 Communication involved in the privilege
5 must relate to matters that are actually or at least
6 apparently necessary for legal advice or
7 representation. It's not anything that a client may
8 say and an attorney may say to his client.

9 Also, any information gained by the lawyer
10 from other sources, which in this case I believe it
11 would be the recommendation from Mr. Helsten to
12 employee Ms. Zeman or from Dean Olson to employee
13 Ms. Zeman. Mr. Glasgow is not privileged, was not
14 privileged. That is not information that came from
15 the County Board, but it came from outside sources
16 and I think that my testimony as to that there's no
17 fault within the privilege.

18 Also, you know, peer witness advice, that
19 example does not fall -- you're going to get more
20 into opinions and legal advice and I think for
21 simply stated on the record how we came to have
22 Ms. Zeman or Mr. Helsten does not simply fall within
23 the privilege. The identity of a client has already
24 been held -- if you would like case law -- I

1 think for the record. I'm reading through a legal
2 summary in this area for the points that I'm making
3 for the law. I have case law available to cite if
4 it would be helpful, but the identity -- the simple
5 identity of the client is never a matter within the
6 privilege, so I believe when I was testifying as to
7 who Mr. Helsten represented, whether it was or was
8 not discussions that took place, it did not
9 represent the County Board that was going to detail
10 the identity of who his client was. It was never
11 the County Board.

12 Also, the scope or object of employment
13 has also been held not to fall within the privilege.
14 I believe that's worth a lot of my testimony, you
15 know, who worked for who, what they were hired to do
16 is specifically Mr. Helsten -- my being told by
17 Mr. Glasgow he represented the waste services. I
18 think that's going to identify the client in the
19 scope of his employment. That's not -- those are
20 not privileged matters.

21 I think there also has to have been an
22 expectation of confidential communications and while
23 I realize they were in a closed meeting, I do not
24 think that any time -- I think an attorney can be

1 relied to know especially when an objection is
2 raised to draw that attorney's attention to the
3 problem. I think the attorney can expect to know
4 whether or not what they are saying within that
5 meeting properly falls within exceptions to the
6 Closed Meeting Act. At that time if it doesn't, I
7 don't think that attorney or that attorney's client
8 has any expectation of confidence in those
9 communications that would fall within the
10 attorney/client privilege as a practical matter,
11 certainly not as a public policy conversation, which
12 is obviously -- a client -- I think we -- a client
13 may waive the attorney/client privilege, they may
14 waive it one way. They may do that by calling the
15 attorney to testify and I think Mr. Helsten
16 certainly opened the door probably broadly with his
17 testimony when he took the stand.

18 Also, the attorney/client privilege does
19 not cover situations which have been breached by the
20 lawyer to his client as a member of the County Board
21 who was at that closed meeting, I believe that
22 Mr. Walsh and indeed Ms. Zeman had breached their
23 duty to the County Board in not giving them
24 more accurate legal advice on the limitation for

1 which we would close that meeting and then staying
2 within those limitations.

3 On the hearsay objection, I understand
4 that the rules of evidence before the Pollution
5 Control Board are just a little bit broader than
6 they are in a court of law and I took that into
7 consideration. My understanding at that is that I
8 realize that some of what I said is hearsay, but my
9 understanding of the permissible scope of testimony
10 before the PCB is that -- I don't have the exact
11 verbiage that was given to me, I took down -- but
12 basically that hearsay in a PCB is admissible if
13 it's, you know, if it's relevant and probable to
14 that and, of course, but also if it's such as would
15 be relied upon by a reasonably prudent person in
16 the conduct of his business and while I may have
17 been, you know, in a court of law what I have
18 said -- what I testified to may have been hearsay,
19 for example, Mr. Glasgow advised us I think it falls
20 within that exception to the hearsay rule as
21 recognized by the Pollution Control Board.
22 Obviously, Mr. Glasgow is the attorney for the
23 County Board and is someone upon whom I would rely
24 as a County Board member and what he told me and I

1 think that it's not irresponsible to put that on the

2 record here. I think that's pretty much it.

3 HEARING OFFICER KNITTLE: Thank you, Ms. Konicki.

4 Mr. Porter, do you want to respond?

5 MR. PORTER: Yes. In regard to Mr. Ettinger's

6 comment, the process is clear that public comment is

7 only to be on issues that are relevant to the issues

8 we are here to decide or we are here to present

9 evidence on, which are fundamental fairness and the

10 parties, Waste Management Inc., and the County Board

11 have just argued that all of the testimony was

12 completely irrelevant. The Sierra Club has

13 acknowledged that, but for the testimony regarding

14 statements to the board after the close of the

15 hearing record, that evidence, if it's in closed

16 session, is clearly attorney/client privilege. I

17 don't think I need to speak more about it, it should

18 be stricken. If the comments regard public

19 sessions, they are duplicative of the minutes that

20 have already been admitted into this record and

21 therefore stricken. Accordingly, all of the

22 testimony by acknowledgment of the parties is either

23 irrelevant or duplicative.

24 One comment in regard to Ms. Konicki's

1 statements, the attorney/client privilege may only
2 be waived by the client and that client is the
3 County Board who has never waived that privilege.

4 Again, if the hearing officer needs, I
5 will address each and every item of testimony of
6 Ms. Konicki.

7 HEARING OFFICER KNITTLE: Let me ask
8 Mr. Ettinger first. Mr. Ettinger, are you prepared
9 to state that aside from these statements to the
10 board at the closed session that the rest of the
11 testimony is not relevant?

12 MR. ETTINGER: I'm not sure that -- frankly,
13 it was a long -- a lot of testimony. I would -- I
14 wish there was some way we could break it into
15 categories. The only things I felt were troublesome
16 and if true did go to fundamental fairness related
17 to it -- related to, I think Ms. Konicki's word was
18 "testimony" given by attorneys at hearings or rather
19 at sessions of the board regarding the credibility
20 of witnesses or what the board should do with regard
21 to making decisions with regard to the criteria that
22 were in the nature of evidentiary remarks. I
23 believe that under the Cole case and some other
24 things it has been recognized that the mere fact

1 that you're an attorney to one of the parties or
2 rather an attorney for the decision-making body does
3 not allow you to add to the record to the extent
4 that's true, and frankly I would rather it were not
5 true, that is highly relevant.

6 HEARING OFFICER KNITTLE: Let me ask a couple
7 questions of Ms. Konicki.

8 The closed session, the statements that
9 were made by Ms. Zeman, was that a closed Will
10 County Board session?

11 MS. KONICKI: It was -- no members -- members
12 of the public were excluded. I think it was a
13 special called meeting of the full County Board.

14 HEARING OFFICER KNITTLE: Nobody but the Will
15 County Board was present, I mean other than
16 Ms. Zeman.

17 MS. KONICKI: And Mr. Walsh.

18 HEARING OFFICER KNITTLE: I don't know who he
19 is.

20 MS. KONICKI: He's another attorney for the
21 County Board.

22 HEARING OFFICER KNITTLE: Well, this is -- I'm
23 not going to exclude all of her testimony, but I'd
24 be willing to start off by stating that so far as I

1 could tell at least those statements made to the
2 Will County Board at the closed session should be
3 given by attorney/client privilege and I would
4 sustain that objection in the striking of those
5 statements. I have taken notes myself, but in light
6 of the fact that Mr. Ettinger doesn't agree that
7 it's all irrelevant, it's hard for me at this point
8 to strike all her testimony. If you have certain
9 items you wish to strike, I'd be happy to go through
10 them.

11 MR. PORTER: I guess I would like to reiterate
12 that if it is not in a closed session meeting then
13 it is contained within minutes which this hearing
14 has already produced and therefore duplicative.

15 HEARING OFFICER KNITTLE: I understand that.
16 It's my understanding there was some question as to
17 whether there were minutes that accurately
18 represented the total detail of what went on at that
19 session.

20 MR. PORTER: May I voir dire the witness on
21 that issue?

22 HEARING OFFICER KNITTLE: Certainly.

23

24

1 BY MR. PORTER:

2 Q. Isn't it true that at every board meeting
3 at the beginning of the meeting there is a vote on
4 the minutes of the last meeting?

5 A. Correct.

6 Q. Isn't it true --

7 A. As a general practice assuming generally,
8 yes.

9 Q. And isn't it true that in regard to all of
10 the public meetings you testified to that the
11 minutes were approved by the board?

12 A. I'm -- I cannot recall any minutes not
13 being approved. I cannot --

14 Q. At no time since you've been on the board
15 have the minutes not been approved, have they?

16 A. That is a true statement.

17 MR. PORTER: In light of that Mr. Hearing
18 Officer that the minutes have been approved by the
19 board that's a true and accurate copy of the
20 reflection of what took place during the hearing.
21 Again, the only potentially relevant testimony has
22 already been admitted into evidence is part of
23 public record and therefore Ms. Konicki's testimony
24 is duplicative on these issues and should be

1 stricken.

2 HEARING OFFICER KNITTLE: Go ahead Mr. Ettinger.

3 MR. ETTINGER: I would just say that the
4 attorney/client privilege issues are very complex
5 and not knowing what exactly would be said I was not
6 able to make -- do the research that would be
7 necessary on this. I really hesitate to use the
8 term because it's not appropriate in this case, but
9 there are cases under the crime/fraud exception and
10 other things which recognize that -- where the
11 attorney's testimony is itself relevant to
12 "misconduct" and like I said I wish to put those all
13 in quotes, making clear I'm not accusing anyone of a
14 crime or anything of a fraud or anything like that,
15 that there are exceptions to the attorney/client
16 privilege.

17 HEARING OFFICER KNITTLE: I understand those
18 exceptions. I was basing my ruling on the fact that
19 I didn't see any evidence of crime or fraud in her
20 testimony and it wasn't --

21 MR. ETTINGER: I'm not saying that there
22 is -- I'm not saying -- I believe that there are
23 probably cases analogous to the crime/fraud
24 exception that would allow attorneys or would void

1 the attorney/client privilege whether they were
2 verbal acts or other statements by an attorney that
3 were relevant to the proceeding being offered for
4 something, showing something other than the request
5 for advice of a client.

6 HEARING OFFICER KNITTLE: If such cases exist
7 and they very well may, I would advise you since you
8 don't know the name of them or the fact they do
9 exist put it in some sort of motion to the Illinois
10 Pollution Control Board and they can overrule my
11 decision on the opposed meeting.

12 MR. ETTINGER: Very well.

13 MS. KONICKI: If I may also make one more
14 argument of the attorney/client --

15 HEARING OFFICER KNITTLE: Yes. Is this going
16 to relate to the closed session?

17 MS. KONICKI: Yes.

18 HEARING OFFICER KNITTLE: Okay. I don't want
19 any more argument on that. I've decided --

20 MS. KONICKI: On the privileges also --

21 HEARING OFFICER KNITTLE: I've decided that the
22 comments made by Ms. Zeman at the closed session are
23 covered by attorney/client privilege. It doesn't
24 mean that that privilege can be waived. That

1 privilege can be made by the attorney on behalf of
2 the client. To do so -- I'm reading from
3 McCormick's here -- it's presumed in the absence of
4 evidence to the contrary. I don't have any evidence
5 to the contrary so I'm going to allow that privilege
6 to stand. So I don't want any more argument on
7 this. If you want to state something briefly for
8 the record.

9 MS. KONICKI: It's just one more legal point on
10 it and it's something -- there is no case law -- my
11 position here today has been that the
12 attorney/client privilege is something that I
13 personally possess along with 26 other board members
14 and that it does not belong to the group. For the
15 information of all parties and, yourself,
16 Mr. Hearing officer that that issue is before the
17 Appellate Court it's kind of phrased in terms of a
18 shield or a sword. There is no case law. There is
19 none that Mr. Walsh on behalf of the County Board
20 and myself ever turned up showing it ever being used
21 as a sword, which basically is the function to stop.
22 There is no case law. I understand your ruling and
23 I respect it. There is no case law whatsoever to
24 support it and is now an issue that's up on that.

1 HEARING OFFICER KNITTLE: Again, depending on
2 what the Appellate Court does I would advise both
3 parties to address it if they want the board to
4 consider it further. But, as far as I'm concerned I
5 can tell it's privileged information. It is going
6 to be excluded.

7 As to the rest of it, I can't agree that
8 everything said at the open session is not relevant.
9 I can't recall her exact testimony, but I'm not
10 going to blanketly exclude everything as being
11 duplicative. I know we had some voir dire on the
12 fact that the minutes are an accurate representation
13 of what happened, but that -- I don't know if that's
14 everything that happened at the meeting and I don't
15 know if that's everything she testified to. It may
16 be relevant material. In addition to the minutes
17 there may not be. I just -- based on her testimony
18 I can't recall the specific testimony, without
19 seeing it in writing, so I'm not going to blanketly
20 exclude all that. If you have something specific,
21 I'd be happy to address it.

22 MR. PORTER: I am prepared to address various
23 other objections that I held my tongue to during her
24 examination as long as I can acquire an

1 understanding that we are not waiving our right to
2 file a written motion upon receipt of transcripts
3 because I have the same issue that you do. I can't
4 remember verbatim everything she said.

5 HEARING OFFICER KNITTLE: If we can point out
6 something that I find -- agree with that it is
7 objectionable and needs to be stricken, I'll strike
8 it and I think I will state for the record
9 especially in light of the unusual circumstances I
10 don't think you'd waive your right anyway, but I
11 would state that it's my understanding that your
12 right is not being waived.

13 MR. PORTER: The first thing I would like to
14 bring up I would object to all testimony regarding
15 conversations with Mr. Glasgow. The witness
16 testified those conversations took place in a
17 hallway between herself and Mr. Glasgow and are
18 accordingly attorney/client privileged as she was a
19 member of the County Board at that time discussing
20 board business.

21 HEARING OFFICER KNITTLE: Ms. Konicki, was
22 there anyone else present when you and Mr. Glasgow
23 were talking?

24 MS. KONICKI: It was -- yes. There was --

1 whether it's other county employees and even members
2 of the public, it's a crowded hallway, but when you
3 have one of these meetings and this was at this
4 typically -- it was an executive committee meeting,
5 a lot of people were there.

6 HEARING OFFICER KNITTLE: Let me clarify my
7 question. I think I misphrased it.

8 Was there anyone other than members of the
9 Will County Board and their attorneys there?

10 MS. KONICKI: Yes. Yes.

11 HEARING OFFICER KNITTLE: Were they able --

12 MS. KONICKI: May I clarify. They weren't part
13 of the conversation, but they were moving back and
14 forth through a fairly narrow hallway.

15 HEARING OFFICER KNITTLE: Nobody else was part
16 of the conversation?

17 MS. KONICKI: Nobody else was part of the
18 conversation, no.

19 HEARING OFFICER KNITTLE: Mr. Porter, do you
20 have something?

21 MR. PORTER: I think given that testimony, I
22 think it's clear the attorney/client privilege has
23 not been waived.

24 MS. KONICKI: May I --

1 HEARING OFFICER KNITTLE: You can respond.

2 MS. KONICKI: The -- my understanding of the
3 burden of proof in this area is that initially your
4 burden, respondents' burden, was met when they
5 simply -- on the issue of the attorney/client
6 relationship and then a communication between two
7 parties. But once that privilege has been -- or if
8 it is challenged or contested then the burden shifts
9 back to the respondent to establish all of the
10 elements necessary to sustain privilege and that
11 would be what we are talking about, legal advice.
12 We are talking about communications relating to that
13 purpose made in confidence by the client at his
14 insistence permanently protected and not waived. So
15 I think there is a little bit more required out of
16 the respondent than what he has supported here today
17 to not complain that you couldn't -- that you
18 just -- it hasn't been made.

19 HEARING OFFICER KNITTLE: Mr. Porter.

20 MR. PORTER: I believe the record is clear that
21 in regard to the conversation Mr. Glasgow was
22 concerning an ongoing siting hearing, a quasi
23 judicial process, and accordingly subject to
24 attorney/client privilege.

1 HEARING OFFICER KNITTLE: I'm going to sustain
2 that objection as well. Go ahead, Mr. Ettinger.

3 MR. ETTINGER: I agree to sustain that
4 objection although this may be useless at this
5 point. I just want to point on the record we've now
6 blocked out or may block all conversations between
7 Ms. Konicki and Mr. Glasgow. It's through Mr. Glasgow's
8 attorney, but --

9 HEARING OFFICER KNITTLE: Let me just clarify.

10 MR. ETTINGER: If that is his motion, frankly,
11 I don't remember everything she testified about with
12 regarding conversations with Mr. Glasgow.

13 HEARING OFFICER KNITTLE: Let me clarify that
14 for you. I'm not blocking out all testimony, but I
15 am ruling on and striking this conversation in the
16 hallway between Mr. Glasgow and Mr. Konicki after
17 one of these sessions.

18 MR. PORTER: May I voir dire the witness
19 briefly on that issue?

20 HEARING OFFICER KNITTLE: Sure.

21 BY MR. PORTER:

22 Q. Isn't it true that all of your testimony
23 regarding the conversation with Mr. Glasgow you were
24 referring to the conversation you had with him in

1 the hallway outside of a County Board member
2 meeting?

3 A. I would need that question repeated.

4

5 (Whereupon, the requested

6 portion of the record

7 was read accordingly.)

8 BY MR. PORTER:

9 Q. Can I rephrase the question?

10 Isn't it true that all of your testimony
11 regarding conversations with Mr. Glasgow were
12 actually referring to a conversation you had with
13 him allegedly outside of the County Board meeting in
14 a hallway between you and he?

15 A. To be very honest with you I would have to
16 see the testimony.

17 Q. Do you have your notes in front of you
18 regarding the testimony you gave today?

19 A. All I have is my petition for review and I
20 tried to go pretty much in my testimony by that
21 petition for review.

22 Q. And today when you were testifying you did
23 have a document in your hand the entire time;
24 correct?

1 A. It was the petition for review.

2 Q. And you used that document to assist you in
3 that testimony; is that right?

4 A. Correct.

5 Q. Please look through that document and point
6 out to me any of your testimony today regarding any
7 communications beyond the one communication
8 allegedly in the hallway with Mr. Glasgow?

9 A. Well, I -- I think I did talk --

10 HEARING OFFICER KNITTLE: Ma'am, can you speak
11 up the court reporter is having trouble hearing.

12 BY MS. KONICKI:

13 A. I believe I testified to his recommendation
14 of Christine Zeman and that wasn't part of the
15 hallway conversation.

16 Q. Where did that conversation take place?

17 A. That would have taken place -- honestly, I
18 don't recall. It was at -- it was at a executive
19 committee meeting. I don't recall if it was open or
20 closed.

21 MR. ETTINGER: May I ask one question?

22 HEARING OFFICER KNITTLE: Mr. Porter, are you
23 finished or do you mind if Mr. Ettinger interjects?

24 MR. PORTER: I don't mind if Mr. Ettinger

1 interjects.

2 BY MR. ETTINGER:

3 Q. When you asked Mr. Glasgow whatever
4 question you had asked, were you requesting legal
5 advice?

6 A. No.

7 Q. Were you requesting information regarding
8 it was within his knowledge as a -- drop that out.

9 HEARING OFFICER KNITTLE: Mr. Porter

10 BY MR. PORTER:

11 Q. If I understand, what date was this alleged
12 communication regarding the appointment of Ms. Zeman
13 as attorney to the County Board?

14 A. To the best I can tell it was -- the time
15 window is going to be after the close of the public
16 comment session and the siting process before her
17 actual date of hire.

18 Q. So you don't know?

19 A. I don't.

20 Q. And you do not recall if it was a
21 communication given in closed executive session; is
22 that correct?

23 A. That's correct.

24 MR. PORTER: In light of the lack of foundation

1 regarding this communication, I would move that it
2 be stricken.

3 HEARING OFFICER KNITTLE: Ms. Konicki, what
4 question did you ask Mr. Glasgow; do you recall?

5 MS. KONICKI: Actually, I believe that was --
6 we're getting the two conversations here all tangled
7 up.

8 HEARING OFFICER KNITTLE: No. We've got the
9 one in the hallway, I'm not concerned about that one
10 right now. I'm more concerned about the other
11 conversation that you had with Mr. Glasgow at some
12 other point in time, if you recall.

13 MS. KONICKI: I think it was a conversation
14 with Mr. Mock where I asked him -- I asked him where
15 the attorney had come from. Mr. Glasgow recommended
16 Ms. Zeman. I believe he had recommended Zeman to
17 the County Board if she would be retained, but that
18 I had asked Mr. Mock where did Helsten come from,
19 where did Zeman come from trying to unravel it.

20 MR. PORTER: I'm sorry, Mr. Hearing Officer
21 what was your question?

22 HEARING OFFICER KNITTLE: I wanted to know what
23 question she asked Mr. Glasgow that we are talking
24 about the question -- the second conversation, but

1 now you are talking about a different person and --

2 MS. KONICKI: I believe that was my testimony.

3 HEARING OFFICER KNITTLE: Am I the only who's
4 confused?

5 MR. PORTER: You are not the only one that's
6 confused.

7 BY MR. PORTER:

8 Q. You have now testified to two separate
9 conversations with Mr. Glasgow; correct?

10 A. Yes.

11 Q. One that took place in a hallway, which we
12 have already addressed, and another which you are
13 not exactly sure where it took place or when it took
14 place regarding the appointment of Ms. Zeman as
15 attorney for the board.

16 Were those the same conversations or were
17 those two different conversations?

18 MS. KONICKI: I wish you wouldn't use -- this
19 conversation, this one meeting, I am present and
20 listening to his presentation, so it's not really
21 conversation --

22 MR. PORTER: I understand. Let me interrupt.

23 BY MR. PORTER:

24 Q. When Mr. Glasgow informed you that Ms. Zeman

1 would be representing the board, that was in a
2 meeting with the County Board; correct?

3 A. He didn't say she would be, he recommended
4 her to the County Board.

5 MR. PORTER: I apologize for misspeaking.

6 BY MR. PORTER:

7 Q. When Mr. Glasgow, in your statement, said
8 that he recommended Ms. Zeman to represent the
9 County Board, that statement was made at a board
10 meeting; correct?

11 A. At a meeting -- I believe it was an
12 executive committee meeting. He may have also been
13 at the board meeting, but at that point it
14 was --

15 Q. You do not know whether or not that meeting
16 was a closed session meeting and subject to the
17 attorney/client privilege or an open meeting; is
18 that correct?

19 A. No, I do not.

20 Q. You did not pose any question to him at
21 that meeting, it was merely a conversation of the
22 state's attorney to the board; correct?

23 A. I think -- no. I think I did ask him
24 questions about her background.

1 HEARING OFFICER KNITTLE: Within the context of
2 board meeting? The executive committee meeting?

3 MS. KONICKI: There were --

4 HEARING OFFICER KNITTLE: Ms. Konicki, was
5 there a second conversation that took place with
6 Mr. Glasgow outside of the executive meeting?

7 MS. KONICKI: We sat around as a group after the
8 meeting, a couple of us stayed and I was one of
9 them.

10 HEARING OFFICER KNITTLE: Is that the hallway
11 conversation?

12 MS. KONICKI: No, it's not.

13 HEARING OFFICER KNITTLE: At that point in time
14 you sat around in a group?

15 MS. KONICKI: A couple of us and Mr. Glasgow
16 was there.

17 HEARING OFFICER KNITTLE: Were those members of
18 the Will County Board?

19 MS. KONICKI: You know, that's another
20 situation where there are other people -- there are
21 other people coming and going in that room.

22 MR. PORTER: I would just reiterate my motion
23 to strike this testimony on the grounds for
24 attorney/client privilege. I don't believe there

1 has been enough testimony to void that privilege and
2 the board is asserting that privilege.

3 HEARING OFFICER KNITTLE: Which conversation
4 exactly?

5 MR. PORTER: Well, I thought we already
6 addressed -- on the conversation in the hallway --

7 HEARING OFFICER KNITTLE: I have got the
8 hallway. I agreed to strike that.

9 MR. PORTER: Now, in regard to this executive
10 committee meeting where the witness says Mr. Glasgow
11 recommended Ms. Zeman, we do not have sufficient
12 testimony as to whether or not that is a closed
13 session meeting or an open session meeting and
14 therefore I motion to strike that.

15 MS. KONICKI: If I may, I do recall -- you have
16 the meeting, you had the recommendation during the
17 meeting, and then you have a small group of us
18 staying in the room after the meeting then adjourned
19 and continuing the discussion further. At that
20 point you have members of the press, you have
21 members of the public, you have people just in an
22 open room and I know we were not the only ones in
23 there.

24 MR. PORTER: Again, I do not believe that is

1 standard whether or not other people are in the
2 vicinity to waive that.

3 HEARING OFFICER KNITTLE: I'm going to grant
4 this. Not only do I think it's the attorney/client
5 privilege, I'm a little uncertain as to the
6 foundation. You don't know when it was, you don't
7 know where it was. We do allow hearsay and this is
8 clearly hearsay. However, we allow hearsay that's
9 relevant and that a serious person would rely upon,
10 you know, serious affairs. I don't think this
11 constitutes that. You know -- you don't know when
12 it was and you don't --

13 MS. KONICKI: I know a narrow window.

14 HEARING OFFICER KNITTLE: But, regardless I'm
15 going to strike this testimony. As I stated
16 previously -- I don't know if you have here -- you
17 can make a motion -- not you -- but somebody who's a
18 party can make a motion to the board -- I'm not even
19 sure actually. If in fact this testimony is thought
20 to be relevant, a motion could be made to the board
21 by someone who is a party in standing that it needs
22 to be reconsidered by the decision. But, in this
23 point in time I don't think that's relevant
24 testimony, so I'll agree to strike that.

1 MR. ETTINGER: Let me just make clear when you
2 say strike testimony, that's done various ways in
3 various courts and places. It's -- we're still
4 going to get a transcript which includes this?

5 HEARING OFFICER KNITTLE: Right.

6 MR. ETTINGER: So in fact there will be an
7 offer of proof that is --

8 HEARING OFFICER KNITTLE: Well, it will be on
9 the transcript, but until there is some sort of
10 motion made to the board it's going to be stricken
11 and I will instruct the board to disregard that
12 testimony.

13 MR. ETTINGER: I understand.

14 HEARING OFFICER KNITTLE: I'm working on the
15 fact that the board will in fact disregard that
16 testimony unless they get a motion from the other
17 parties.

18 MR. ETTINGER: All I am asking is -- all I want
19 to do is make sure that the record will be available
20 so that if such a motion is made -- I don't know if
21 it will be or not -- that we will have that
22 transcript.

23 HEARING OFFICER KNITTLE: Yes. It will be in
24 the transcript. I am not going to strike it out of

1 the transcript before it is public.

2 MR. PORTER: May I move on?

3 HEARING OFFICER KNITTLE: Yes, sir.

4 Just so we're clear we have stricken the
5 conversation with Mr. Glasgow, both conversations.

6 MR. PORTER: And I believe those other
7 conversations testified to as we voir dired the
8 witness earlier so, therefore -- if I understand
9 correctly -- all communications with Mr. Glasgow
10 have been stricken?

11 HEARING OFFICER KNITTLE: Aside from the
12 one that at this meeting that he was not
13 communicating directly to Ms. Konicki he was
14 informing the board. I've agreed to strike anything
15 made at a closed session. I haven't agreed --

16 MR. PORTER: But I thought you struck that on
17 the grounds of foundation because we didn't know the
18 date.

19 HEARING OFFICER KNITTLE: I wasn't referring to
20 that, but I'd be inclined to.

21 MR. PORTER: I would then motion to strike
22 that communication as well because we do not know
23 the date, the time or whether or not that was a
24 closed or open session meeting.

1 HEARING OFFICER KNITTLE: I would grant that.

2 MR. PORTER: And I know I am belaboring the
3 point, but therefore -- if I understand
4 correctly -- all communications of Mr. Glasgow have
5 been stricken.

6 HEARING OFFICER KNITTLE: At least the three
7 that I am aware of, the three that we have
8 discussed. If there was something else in her
9 direct testimony that's not included in those three
10 instances that we have not discussed, I don't know.

11 MR. PORTER: If you recall I voir dired the
12 witness and asked her to tell us whether or not any
13 of the communications she testified to were outside
14 of the communication in the hallway and that's where
15 we have this other communication or two and
16 therefore I think the record is clear the witness
17 has testified that in voir dire that all of the
18 communications we had been referring to in regard to
19 Mr. Glasgow have been stricken by this hearing
20 officer. I think that's convoluted, do you want me
21 to say that again?

22 HEARING OFFICER KNITTLE: No. I think I
23 understand what you are saying and if the
24 conversation that she has testified that took place

1 with Mr. Glasgow have been stricken.

2 MR. PORTER: All right. Let's move on.

3 BY MR. PORTER:

4 Q. In regard to conversations you had with

5 Mr. Phil Mock, isn't it true that conversation was

6 between yourself and Mr. Mock again in a hallway?

7 A. I believe it took place in the County Board

8 meeting room -- conference room where we hold our

9 County Board meetings.

10 Q. Okay. But it was not during the County

11 Board meeting, it was during a conversation between

12 you and he?

13 A. That's correct.

14 Q. Again, I would assert that communication

15 regarding -- strike that. Let me ask one more voir

16 dire question, if I may.

17 Isn't it true that your testimony today

18 only related to one conversation with Mr. Phil Mock

19 that's the one we have just discussed?

20 A. Correct.

21 MR. PORTER: I would move that that testimony

22 regarding conversations with Mr. Phil Mock be

23 stricken as attorney/client privilege.

24 MR. ETTINGER: One question.

1 HEARING OFFICER KNITTLE: Yes.

2 BY MR. ETTINGER:

3 Q. May I just ask what was the subject matter
4 of your discussion with Mr. Mock?

5 A. I wanted to find out how the attorneys
6 Helsten and Zeman came to the County.

7 Q. And was that a request for legal advice?

8 A. No --

9 Q. Just answer the question?

10 A. No.

11 MR. ETTINGER: Thank you.

12 HEARING OFFICER KNITTLE: Mr. Porter, can you
13 explain how that's a request for legal advice.

14 MR. PORTER: Again, that goes to an ongoing
15 hearing of the county in their quasi judicial
16 function.

17 MS. KONICKI: May I -- I believe these people
18 came -- recommended him by other people. Ms. Zeman
19 was recommended to --

20 HEARING OFFICER KNITTLE: Can you speak up?

21 MS. KONICKI: -- Glasgow and other people that
22 were there and I believe that that's information
23 that he gained from other sources that he should
24 hire them. I don't believe that's their privilege.

1 I think that's something he was free to tell me it's

2 just -- it's not legal advice.

3 MR. PORTER: Again, she was a member of the

4 County Board and therefore a client of Mr. Mock and

5 discussing County Board activity with Mr. Mock.

6 HEARING OFFICER KNITTLE: Kathy Glenn, can you

7 hear back there you've been making motions?

8 MS. GLENN: I do have trouble hearing

9 Ms. Konicki.

10 HEARING OFFICER KNITTLE: Ms. Konicki, I'm

11 going to have to ask you to continue to speak up.

12 If you don't think you can, we can string a

13 microphone in there.

14 MS. KONICKI: I was -- I had responded that I

15 didn't feel the --

16 HEARING OFFICER KNITTLE: I don't think you

17 have to re-respond.

18 MS. GLENN: I heard that.

19 HEARING OFFICER KNITTLE: I'm going to overrule

20 this one and allow this one to go in. I don't see

21 how this is a communication or legal advice.

22 MR. MORAN: But that's just on the

23 attorney/client basis?

24 HEARING OFFICER KNITTLE: Correct. That's the

1 only motion I have at this point.

2 MR. MORAN: You are excluding irrelevant --

3 MR. PORTER: Thanks, Mr. Moran. And I would

4 also motion to strike that testimony as it's

5 completely irrelevant to the issue of fundamental

6 fairness.

7 HEARING OFFICER KNITTLE: Granted.

8 MR. PORTER: I assure you that silence is a

9 good thing.

10 I would motion that the testimony of this

11 witness that other members of the board had various

12 mental impressions be stricken and in particular and

13 as an example she testified that members of the

14 board viewed the waste services department and

15 counsel as impartial. Again, that dives into

16 conjecture.

17 HEARING OFFICER KNITTLE: Anything, Mr.

18 Ettinger? Ms. Konicki.

19 MS. KONICKI: I think I am going to -- I was in

20 a position to know how they were reviewed in terms

21 of that being part of the thought process or

22 discussion process. I don't know if it's part of

23 that. I think it's just a state of mind of the

24 County Board members. I certainly -- I testified to

1 my own state of mind and --

2 HEARING OFFICER KNITTLE: I will definitely
3 allow your testimony as to your own state of mind to
4 stand on that issue; however, I agree that unless
5 there is a strong showing of bad faith -- this is my
6 understanding of the law -- that the mental process
7 of adjudicators are privileged -- administrative
8 adjudicators and adjudicators, so I'm going to grant
9 the motion. It didn't pertain to Ms. Konicki's
10 impression, did it, Mr. Porter?

11 MR. PORTER: No. And so all communications
12 regarding mental impressions, feelings and opinions
13 and the sentiments of other County Board members
14 should be stricken; is that correct?

15 HEARING OFFICER KNITTLE: I was referring to
16 the specific communication. Once again, I would
17 hate to give a blanket statement that I may or may
18 not agree with that whatever testimony it probably
19 was, in fact, a mental impression. But I was
20 striking the conversation, your example about the
21 impression, maybe you can restate it for me so I can
22 write it down.

23 MR. PORTER: There was testimony in this
24 witnesses statement that the County Board members

1 believed Ms. Zeman and Mr. Helsten and waste
2 services to be impartial and that that somehow --
3 that they eventually came to the conclusion that
4 they were impartial. That dives into mental
5 impressions of other board members and should be
6 stricken.

7 HEARING OFFICER KNITTLE: Yeah. I agree.

8 MS. KONICKI: May I --

9 HEARING OFFICER KNITTLE: Yes.

10 MS. KONICKI: I don't know if they ever came to
11 a conclusion that she was not impartial. That
12 was my -- and I guess, I probably should stand here
13 today because it was part of the --

14 HEARING OFFICER KNITTLE: Could you speak up
15 again? That way.

16 MS. KONICKI: What I would view is a type of
17 misconduct that would take something out of the
18 attorney/client privilege.

19 MR. PORTER: I also move that any testimony
20 regarding the amendment to the Solid Waste
21 management plan be stricken as irrelevant. It does
22 not go to the issue of siting and by no means the
23 issue of fundamental fairness.

24 HEARING OFFICER KNITTLE: Any objection to

1 that?

2 MR. ETTINGER: No position.

3 HEARING OFFICER KNITTLE: Ms. Konicki, do you
4 have an objection to that?

5 MS. KONICKI: I do, but I won't argue to --

6 HEARING OFFICER KNITTLE: I can't see how it's
7 relevant unless somebody explains to me why.

8 MS. KONICKI: I don't think standing by itself
9 you will find the relevance. I think it's relevant
10 only as part of the bigger picture, so depending on
11 what's left after you make it, it may or it may not
12 be relevant.

13 HEARING OFFICER KNITTLE: I am going to grant
14 that motion.

15 MR. PORTER: At one point the witness testified
16 that any member of the committee present at the
17 public session -- strike that. Excuse me.

18 At one point the witness testified that at
19 a subsequent meeting Ms. Zeman was very careful to
20 avoid saying what had been done at the closed
21 meeting. Again, that calls for conjecture and
22 should be stricken.

23 HEARING OFFICER KNITTLE: Mr. Ettinger.
24 Ms. Harvey, I am not ignoring you you just haven't

1 had any response to any of these motions.

2 MS. HARVEY: Correct.

3 HEARING OFFICER KNITTLE: Skipping right to

4 Mr. Ettinger.

5 MR. ETTINGER: I don't agree with his objection

6 but, I don't see the relevance of whether or not

7 Ms. Zeman is careful or not, so I agree the

8 statement that she was very careful could be

9 stricken.

10 MS. KONICKI: If I would, I -- to me the

11 testimony is trying to stir up a process by which I

12 feel that people have a conflict of interest because

13 they were paid by Waste Management not by the County

14 Board or by a proponent of Waste Management then the

15 pattern of constantly finding out which statement

16 that would benefit Waste Management or it's

17 proponent. The change in demeanor between the

18 closed and open meetings I felt was my testimony

19 goes to a point that it was different. It was

20 telling and I don't know if it's conjecture. I saw

21 it. I could tell whether the person was being more

22 careful in one situation than in another and whether

23 there was a change of behavior.

24 HEARING OFFICER KNITTLE: I'm going to strike

1 it if your testimony is that Chris Zeman was
2 intending to be very careful. You can't testify as
3 to what she was trying or not trying to do.

4 MS. KONICKI: What I observed was a change in
5 demeanor from the closed meeting, you know, very
6 careless to very careful and not behave that same
7 way in an open session.

8 HEARING OFFICER KNITTLE: Right. As I stated I
9 am striking any testimony that Chris Zeman was
10 attempting to be very careful. I don't think that
11 anybody other than Ms. Zeman knows whether she was
12 intending to be careful or not. I'm specifically
13 stating -- I mean, I'm not stating she's not, I'm
14 just allowing your testimony that she may appear to
15 have been acting differently.

16 MS. KONICKI: Right. I don't remember -- I
17 don't know if any of that testimony I said she was
18 intending. I was just trying to -- I was describing
19 what I saw and how that -- my impression of what she
20 was doing.

21 HEARING OFFICER KNITTLE: I'm striking as to
22 Chris Zeman's intentions.

23 MR. PORTER: And the last one that I recall the
24 witness testified that she believed Mr. Olson and

1 all employees felt a loyalty to Mr. Adelman who got
2 them their job and this some how impacted their
3 involvement in this case. That clearly calls for
4 conjecture and is irrelevant.

5 HEARING OFFICER KNITTLE: Mr. Ettinger.

6 MR. ETTINGER: I don't have anything to say on
7 that.

8 HEARING OFFICER KNITTLE: Ms. Konicki.

9 MS. KONICKI: I would just say again I think
10 it's an opinion -- it's opinion testimony that
11 within my confines as a lay expert -- expert meaning
12 that I have knowledge beyond that of the general
13 public in this area of the Will County Board.

14 HEARING OFFICER KNITTLE: I am going to grant
15 that motion. I'll strike that as well.

16 That was your last one, right Mr. Porter,
17 because I have a couple things I want to say about
18 this whole process.

19 MR. PORTER: Yes.

20 HEARING OFFICER KNITTLE: It's very unusual for
21 the hearing officer at a hearing like this to strike
22 any public testimony. We generally let anyone come
23 in and I wanted to note for the record that the
24 reason we are doing this; number one, is we've had

1 some trouble with Ms. Konicki's testimony, but I
2 think it's an unusual circumstance because she was a
3 party to this case and so she is under a temporary
4 restraining order and I've tried to accommodate all
5 the needs of both parties and Ms. Konicki, who as a
6 citizen has a right to speak her peace. I hope
7 we've done that to the best of our ability and
8 Ms. Konicki, I do want to advise you again that you
9 can file a public statement up until the end of the
10 public comment period, which is June 16th and if you
11 have testimony or if you think you haven't been
12 given a full opportunity to comment I urge you to
13 take advantage of that. I'm not trying to prevent
14 you from testifying, but these are unusual
15 circumstances and I think we are going to have to do
16 what we can do here.

17 So that being said I think -- was that it
18 or do you want to still conduct cross-examination.

19 MR. PORTER: I have one cross-examination
20 question.

21 C R O S S - E X A M I N A T I O N

22 by Mr. Porter

23 Q. Isn't it true that the attorneys Helsten
24 and Zeman were paid by the county?

1 A. They were not paid by the County Board.

2 Q. They were paid by the county of Will; is
3 that correct?

4 A. They were paid by the waste services
5 division which is part of the county of Will.

6 MR. PORTER: Nothing further.

7 HEARING OFFICER KNITTLE: Is there any other
8 cross-examination for Ms. Konicki?

9 MR. MORAN: Yes.

10 HEARING OFFICER: Please proceed.

11 C R O S S - E X A M I N A T I O N

12 by Mr. Moran

13 Q. Ms. Konicki, when did you first become
14 aware that a site application had been filed for
15 what is now a company called the Prairie View
16 Recyclery Facility?

17 A. If you are looking for anything other than
18 a window, I can't give it to you.

19 Q. Do you have any general recollection as
20 you sit here today as to when that application was
21 filled? Was it some time in '98 '97, '99?

22 A. I believe it was filed in the latter half o
23 of '98.

24 Q. And do you know how you came to be informed

1 that the application was filed?

2 A. When I really started following it I became
3 aware of it was when your client cited five volume
4 or six volume binders that were delivered.

5 Q. And that was delivered to your residence?

6 A. Correct.

7 Q. And do you remember when that was?

8 A. That's the date I'm giving you. It would
9 be some time in the latter half of '98.

10 Q. Now, when you received that application,
11 did you have any understanding at that time as to
12 how large or what the capacity of this proposed
13 facility was going to be?

14 A. At that point I already knew that the
15 tonnage had basically doubled from what had been
16 represented early to the public.

17 Q. And when you saw the tonnage had basically
18 doubled from what had been represented to the
19 public, do you have any -- can you give us any
20 numbers in terms of either in cubic yards or tons or
21 whatever you recall as being the appropriate
22 measure, what the change had been?

23 A. I remember the debate on the County Board
24 floor were -- oh, I think at the low end opponents

1 were asking for three million tons and more middle
2 of the roaders were trying to take it up into the
3 five or seven range and I believe the committee
4 board -- I was a member at that time -- took what I
5 thought was an aggressive position and went for ten.
6 That will give you a -- rather than holding me to
7 exact numbers -- that will give you a ballpark. I
8 would refer you use it as a ballpark of where these
9 figures were -- maybe it was ten, but it wasn't up
10 there to 20.

11 Q. Did you support the ten million ton figure?

12 A. I think at that point as I recall -- I am
13 not certain, I may be guessing -- I believe I did --
14 I believe I was uncomfortable, but I stretched
15 forward which I got particularly around 20.

16 Q. So you were -- I think you said
17 particularly angry when you learned that the site
18 capacity was up to 20?

19 A. The application and then the political move
20 on the board would approve something. I stretched
21 my limit approving the initial.

22 Q. And when did you learn that the site
23 capacity had been increased to 20 tons?

24 A. I believe it became an issue for me when

1 the application came through.

2 Q. In other words, when it was filed?

3 A. When I got your -- I do apologize for
4 not -- all I can tell is when I began, when the
5 binders were delivered to my front door and that's
6 when the conversation about the County Board members
7 began to focus in on this issue and that kind of
8 thing.

9 Q. And would it refresh your recollection if
10 I were to state that the application was filed on
11 August 14th, 1998?

12 A. That would sound about right.

13 Q. So that would have meant that would you
14 have received the application maybe some time in
15 August of 1998?

16 A. It could have been September, it could
17 been October. When you say -- are talk about the
18 binders at my front door?

19 Q. Yes.

20 A. It would've been some time after -- it was
21 some time after.

22 Q. It was at that time you learned that the
23 capacity of the proposed facility was to be 20
24 million tons?

1 A. That's the number I focused in on.

2 Q. And you were opposed to that 20 million
3 ton figure; is that correct?

4 A. Yes. On -- that's politically not
5 necessarily -- personally.

6 Q. So personally you were opposed to the 20
7 million ton figure?

8 A. Politically. I felt it was an unfair --
9 unfair to our constituents. In terms of my personal
10 feelings on it, the constituents, had the county
11 residents supported the 20, I would have supported
12 the 20.

13 Q. Just so I'm clear your opposition is the
14 20 million ton figures was based on your political
15 view?

16 A. Well, my view of what my constituents, the
17 County Board constituents, what they had been
18 promised they'd agreed to.

19 Q. You held that view as of August 19th when
20 you learned of the 20 million ton figures?

21 A. Yes.

22 Q. Did you also hold that view personally?

23 A. I don't think I've ever -- all I can say
24 on that is if the various segments of Will County

1 communicated pretty much beyond 20 million it
2 doesn't fit in the landscape.

3 MR. ETTINGER: Excuse me. We have gone a while
4 and what's the relevance?

5 MR. MORAN: What's the relevance?

6 MR. ETTINGER: Is this objection relevant?

7 HEARING OFFICER KNITTLE: Mr. Moran.

8 MR. MORAN: By virtue of whatever testimony she
9 has made here today I'm not sure what still stands.
10 In any event the issue with respect to any testimony
11 that remains this testimony is directly toward the
12 County Board member who was advised to in a quasi
13 judicial capacity consider an application that was
14 filed for a proposed landfill which was filed in
15 August of 1998 and we just heard testimony that
16 based upon the proposed site capacity of this
17 facility, she was opposed to this proposal prior to
18 any hearing being held and prior to her reviewed
19 application. I think that's a very relevant
20 consideration for her credibility as part of these
21 proceedings.

22 HEARING OFFICER KNITTLE: Overruled.

23 BY MR. MORAN:

24 Q. During the course of the application

1 procedure or the siting process, did you have any
2 communications or contact with any of the
3 constituents -- I think you identified them
4 previously -- with respect to this facility.

5 Let me restate the question. From August
6 14th, 1998 through the start of the hearing on
7 November 16th of 1998, from that period of time did
8 you have any communications with any of your
9 constituents with respect to this proposed landfill?

10 A. I had one gentleman from the American
11 Legion -- I don't know his name -- leave a message
12 on my answering machine that would be it and I might
13 tell you that in terms of when I use the political
14 versus the personal distinction, personal means I'm
15 open-minded to the application. Politically, I'm
16 aware that it's controversial in the community.

17 It was like one part of my decision-making
18 process. You weren't dead in the water on your
19 application on that one thing.

20 MR. MORAN: I will move to strike all the
21 testimony with respect to her personal versus
22 political distinction which was in response to the
23 question that I asked.

24 HEARING OFFICER KNITTLE: Yeah. I'm going to

1 grant that. Ms. Konicki, you have to answer the
2 question especially on cross-examination put to you
3 and you have to answer those with yes or no and
4 please do.

5 BY MR. MORAN:

6 Q. So other than the one constituent you
7 referred to, you had no communications or contacts
8 with any of your constituents from August 14th of
9 1998 through November 16th of 1998 regarding the
10 opposed landfill?

11 A. Communications was your term?

12 Q. Communication or contacts, yes.

13 A. There may have been -- there may have been
14 some letters from decisions which came to me, not
15 many, most of them went to the circuit clerk's
16 office. It was pretty -- not something that I -- I
17 don't believe I ever discussed with the
18 constituents.

19 Q. Do you recall the contents of any of these
20 letters that you received?

21 A. No. I don't.

22 Q. You don't recall whether they were in
23 favor of or opposed to or indifferent to the
24 landfill?

1 A. My general impression was that anything I
2 received would have been opposed.

3 Q. Now, let's focus on the period from
4 November 16th of 1998 until the decision by the
5 county on March 4th of 1999. During that period did
6 you have any discussion with Mr. Charles Norris?

7 A. No, I did not.

8 Q. Did you have any discussions with a
9 Mr. Kevin Salam?

10 A. No, I did not.

11 Q. Did you have any discussions with a Roberta
12 Jennings?

13 A. No, I did not.

14 Q. Did you have any communications or contacts
15 of any kind with either of those three individuals
16 from November 16th, 1998 through March 4th 1999?

17 A. No, I did not.

18 Q. Ms. Konicki, you previously had prepared
19 and submitted a petition to review the decision of
20 the County Board in this instance. And that's a
21 document that's entitled Petition for Review
22 Decision by Will County Board Approving Siting
23 Application for Prairie View Landfill submitted by
24 Waste Management Inc., is that correct?

1 A. I believe that's correct. I think I know
2 the document you're referring to. Yes, it is,
3 correct.

4 Q. Did you prepare this document?

5 A. I did, yeah.

6 Q. And let's see if I have copy to show you to
7 move this examination along.

8 Do you have it with you by any chance?

9 A. I have mine.

10 Q. Oh, you do, very well. I'm sorry. I don't
11 need to get a copy.

12 If I can direct your attention to --
13 well, the petition isn't paginated so I will go by
14 paragraph number.

15 If I direct your attention to Paragraph 31
16 where it indicates as follows -- or states as
17 follows: Applicant's own data shows that
18 applicant's highly geological interpretation does
19 not support its geologic stratigraphic
20 interpretation resulting in a conceptual model that
21 is fatally flawed. Did you prepare that statement?

22 A. Yes, I did.

23 Q. What is the geologic stratigraphic
24 interpretation which the applicant included in its

1 application to which you're referring in Paragraph
2 31?

3 A. That would be the fact that you're
4 assuming -- the application assumed that it -- this
5 was basically a non-porous meeting.

6 Q. I'm sorry. You said it was a non-porous
7 meeting?

8 A. Non-permeable to us.

9 Q. Non-permeable?

10 A. Water does not flow through it or if it
11 does, it's at a very slow rate.

12 Q. So that your contention in Paragraph 31 is
13 that the geologic stratigraphic interpretation does
14 not support the notion that the underlying
15 stratigraphy is non-permeable; is that what you're
16 saying there?

17 A. That your client is assuming -- your client
18 turned up water data that itself showed that the
19 data that was used by the opposing experts and does
20 not support the contention that that is a
21 non-fractured median out there. Your client's
22 contention was that that median was not fractured.

23 Q. And what was the basis for your statement
24 in Paragraph 31? What facts or information did you

1 consult or did you rely upon?

2 A. I know what your client assumed he had a
3 non-fractured median from her testimony of her own
4 experts.

5 Q. How did you become aware of my client's
6 testimony with respect to this issue?

7 A. It's part of the transcripts.

8 Q. When did you obtain those transcripts?

9 A. They were handed out to the County Board
10 members. I don't know the exact date.

11 Q. And is it your testimony that you prepared
12 this statement without any assistance or without any
13 consultation of any persons?

14 A. Absolutely.

15 Q. Are you saying that with respect to
16 Paragraph 29 on page four -- I guess it's page four
17 this isn't paginated -- you state that the
18 applicant's interpretation of its test data is
19 internally consistent. The inconsistencies
20 established either the landfill was unsafe as
21 proposed to be designed and or monitored or that
22 additional tests need to be run for applicant's
23 burden of proof under section 39.282 is amended; is
24 that correct?

1 A. Correct.

2 Q. What information or facts did you use as a
3 basis for submitting and preparing this statement?

4 A. I believe that's both Norris and Jennings.

5 Q. Well, when you say it's both Norris and
6 Jennings what are you referring to?

7 A. Their testimony at the hearings.

8 Q. Other than the Norris and Jennings
9 testimony, were there any other facts or information
10 that you used as a basis in preparing and submitting
11 Paragraph 29?

12 A. Strictly what's in the transcript.

13 Q. You are talking about the transcript
14 proceedings before the Will County Board?

15 A. Before the siting committee. The three
16 member siting committee. The public -- transcripts
17 from public hearing, that's all.

18 Q. What are the additional tests that you
19 refer to in Paragraph 29 that need to be run?

20 A. You know, to be honest with you at this
21 point unless I have my notes in front of me my
22 summaries of the testimony given, I'm not going to
23 be able to answer.

24 MR. ETTINGER: May I object again to relevance

1 here. As I understand Mr. Moran's argument he's
2 arguing that this goes to bias. I think the bias
3 here is already clear on the record. She filed a
4 petition to overturn the decision and as we've
5 already heard, so nobody is accusing her of being an
6 unbiased witness in this proceeding whether or not
7 she was biased in the siting proceeding is
8 irrelevant at this point unless Mr. Moran wants to
9 base his appeal on that.

10 HEARING OFFICER KNITTLE: Mr. Moran.

11 MR. MORAN: Well, clearly the bias isn't the
12 issue here. The issue is credibility. Credibility
13 of this witness who's coming forward and attempting
14 to offer information that presumably relates to
15 fundamental unfairness when this witness all along
16 had opposed the application and it worked in
17 conjunction with witnesses who were working with the
18 objectors.

19 MS. HARVEY: I would like to --

20 MR. MORAN: It goes to the credibility issue.

21 HEARING OFFICER KNITTLE: Ms. Harvey.

22 MS. HARVEY: I would like to join in
23 Mr. Ettinger's objection. I understand that
24 Mr. Moran is exploring her credibility as to what

1 she has testified, but I have two problems with it.

2 First of all, I don't believe that I ever
3 heard Ms. Konicki testify that although she had a
4 political opposition to the size of the facility
5 that she had -- that pre-determined or made her
6 decision on the application at that point.

7 Secondly, he's going through in some
8 detail on a petition for review that has been
9 dismissed from this proceeding as to how she
10 prepared that petition for review, which she has
11 already testified to as how she did it and said that
12 the sum of her information -- she said that at least
13 twice -- showed the transcripts and the application
14 materials.

15 HEARING OFFICER KNITTLE: Mr. Moran, I'm
16 incline to grant these unless we can -- I don't see
17 what -- I don't see what you're trying to accomplish
18 in terms of the credibility issue here, but if you
19 could it explain to me I'll allow you to continue.

20 MR. MORAN: Well, with respect to credibility
21 again, you have a witness who's presumably offering
22 as testimony going to fundamental fairness, the fact
23 that she contends there was fundamental unfairness
24 an individual, who throughout the course of this

1 siting application, has proposed the application and
2 has been in essence taking every step and engaging
3 in every measure to oppose it and to see that it is
4 defeated. That's goes principally to her
5 credibility to address the issues of fundamental
6 fairness, and if she indeed was -- had prepared a
7 petition to review, which in going through this I
8 don't intend to belabor in going point-by-point, but
9 there was no question that these items were not
10 prepared by Ms. Konicki. They were prepared by
11 someone and perhaps she adopted them and
12 incorporated them.

13 MS. KONICKI: I did.

14 MR. MORAN: And the fact is that it could not
15 be prepared by Ms. Konicki and that all goes to
16 credibility. It goes to her credibility to present
17 issues in this forum in this fashion.

18 HEARING OFFICER KNITTLE: Ms. Harvey.

19 MS. HARVEY: She's testified under oath at
20 least twice that she prepared this petition for
21 review. Now, she may have taken some of that
22 language from the materials that she's testified she
23 consulted in preparing the petition for review, but
24 she's been very clear that she prepared the petition

1 for review with no help. She testified to that
2 under oath and I'm not sure where we are going with
3 Mr. Moran drawing the conclusion that although she's
4 testified differently that she didn't.

5 HEARING OFFICER KNITTLE: Yeah. Mr. Moran, I'm
6 inclined to agree unless we can have some additional
7 testimony from someone else to show that she is not
8 telling the truth under oath or something, I'm going
9 to sustain the objection and ask you to move along.

10 MR. MORAN: With that I have nothing further.

11 HEARING OFFICER KNITTLE: Ms. Konicki, as of
12 now you are under cross-examination, so I'm going to
13 allow you to proceed here. Ms. Harvey do you have
14 any cross-examination?

15 MS. HARVEY: I think one question just so I'm
16 clear in my own mind.

17 CROSS - EXAMINATION

18 by Ms. Harvey

19 Q. Ms. Konicki, when you were discussing your
20 political opposition to the size of the proposed
21 facility was it your testimony that you had made a
22 determination on whether or not to vote in favor of
23 or against the application at that point?

24 A. I did not determine my position of that

1 application until I went through the public
2 transcripts and that's when I became fully aware of
3 it and that's when I really got it.

4 MS. HARVEY: Thank you. I don't have anything
5 else.

6 HEARING OFFICER KNITTLE: Mr. Ettinger.

7 MR. ETTINGER: I have no questions.

8 HEARING OFFICER KNITTLE: Thank you, ma'am, you
9 may step down. Are there any other members of the
10 public who wish to give a comment at this point in
11 time? Seeing none, I see none. Let's go off the
12 record.

13 (Whereupon, a discussion
14 was had off the record.)

15 HEARING OFFICER KNITTLE: We are back on the
16 record after an off-the-record discussion. The
17 parties indicated they have nothing further that
18 they wish to address at this point. We have no one
19 from the public who wants to provide any additional
20 public comment at this point. I am going to post a
21 notice outside of this room informing members of the
22 public who do come and wishing to give public
23 comment, that the hearing has been closed, but that
24 they can file a written public comment with the

1 Board up until June 16th. I want to thank everybody

2 for their time and thank you very much.

3 (Whereupon, no further

4 proceedings were had in

5 in the above-entitled cause.)

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1 STATE OF ILLINOIS)

2) SS.

3 COUNTY OF C O O K)

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6 I, TERRY A. STRONER, CSR, do

7 hereby state that I am a court reporter doing

8 business in the City of Chicago, County of Cook, and

9 State of Illinois; that I reported by means of

10 machine shorthand the proceedings held in the

11 foregoing cause, and that the foregoing is a true

12 and correct transcript of my shorthand notes so

13 taken as aforesaid.

14

15

16 _____

17 Terry A. Stroner, CSR

18 CSR No. 004361

19

20 SUBSCRIBED AND SWORN TO

21 before me this ____ day

22 of _____, A.D., 1999

23 _____

24 Notary Public