

1 ILLINOIS POLLUTION CONTROL BOARD
2 MAY 5, 2003

3 CITY OF KANKAKEE,)
4)
5 Petitioner,)
6)
7 -vs-) No. PCB 03-125
8) (Third-Party Pollution
9 COUNTY OF KANKAKEE, COUNTY BOARD) Control Facility
10 Sitting)
11 OF KANKAKEE, and WASTE MANAGEMENT)
12 OF ILLINOIS, INC.,)
13)
14 Respondents.)
15 MERLIN KARLOCK,)
16 Petitioner,)
17)
18 -vs-) No. PCB 03-133
19) (Third-Party Pollution
20 COUNTY OF KANKAKEE, COUNTY BOARD) Control Facility
21 Sitting)
22 OF KANKAKEE, and WASTE MANAGEMENT)
23 OF ILLINOIS, INC.,)
24)
25 Respondents.)

1 KEITH RUNYON,)
)
 2 Petitioner,)
)
 3 -vs-) No. PCB 03-135
) (Third-Party Pollution
 4 COUNTY OF KANKAKEE, COUNTY BOARD) Control Facility
 Sitting))
)
 5 OF KANKAKEE, and WASTE MANAGMENT)
)
 6 OF ILLINOIS, INC.,)
)
 Respondents.)

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Record of proceedings had at the hearing in
 the above-entitled cause before the HONORABLE BRADLEY P.
 HALLORAN, Judge of said Court, commencing at 1:00 p.m. on the
 5th day of May, C.E., 2003.

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

2 City of Kankakee, By
3 Mr. Kenneth A. Leshen
4 and
5 Mr. L. Patrick Power
6 385 East Oak Street,
7 Kankakee, Illinois 60901
8 (815) 933-0500

9 On behalf of the Petitioner
10 City of Kankakee;

11 George Mueller, P.C., By
12 Mr. George Mueller
13 501 State Street
14 Ottawa , Illinois 61350
15 (815) 433-4705

16 On behalf of the Petitioner
17 Merlin Karlock;

18 Querrey & Harrow, Ltd., By
19 Ms. Jennifer J. Sackett Pohlenz
20 and
21 Mr. David J. Flynn
22 175 West Jackson Boulevard
23 Suite 1600
24 Chicago, Illinois 60604
25 (312) 540-7662

26 On behalf of the Petitioner
27 Michael Watson;

28 Mr. Keith Runyon
29 1165 Plum Creek Drive
30 Suite D
31 Bourbonnais, Illinois 60914
32 (815) 937-9838

33 Appearing Pro Se;

34

1 A P P E A R A N C E S: (Continued)

2 Hinshaw & Culbertson, By
3 Mr. Richard S. Porter

3 100 Park Avenue
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5 and

6 Swanson, Martin & Bell, By
Ms. Elizabeth S. Harvey
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8 (312) 923-8260

9 On behalf of the Respondents
County of Kankakee,
10 County Board of Kankakee;

11
Pedersen & Houpt, By
12 Mr. Donald J. Moran
161 North Clark Street
13 Suite 3100
Chicago, Illinois 60601-3224
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15 On behalf of the Respondent
Waste Management of Illinois.
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1 MR. HALLORAN: Good morning everyone. My
2 name is Bradley Halloran. I'm a hearing officer
3 with the Illinois Pollution Control Board, and I'm
4 assigned to this matter. I'm going to read the

5 caption. All the respondents are the same, so I
6 will not repeat them. City of Kankakee,
7 Petitioner, vs. County of Kankakee, County Board
8 Kankakee, Waste Management of Illinois, Inc., are
9 the Respondents, PCB 3-125; Merlin Karlock,
10 Petitioner, vs. County of Kankakee, et al.,
11 PCB3-133; Michael Watson, Petitioner, vs. County
12 of Kankakee, PCB 3-134; and finally Keith Runyon,
13 Petitioner, vs. County of Kankakee, et al., PCB
14 3-135. Those matters are consolidated. We also
15 have another matter, which we'll deal with at the
16 conclusion of this hearing, and that matter is
17 3-144 and that's entitled Waste Management of
18 Illinois, Petitioner, vs. The County of Kankakee.
19 I believe that case was severed on April 17th from
20 these cases. With that said, is the Public -- can
21 you hear me all okay back there? You know, I was
22 fired as the audio guy from grade school.
23 Mr. Leshen, do you know how to work this thing?
24 Now, I think the members of the public

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1 can hear me okay now. There is about five members
2 of the public out there. Do any of you wish to
3 give a comment or testify under cross-examination?
4 I see a queerly-puzzled look. You can either
5 stand up and give a public comment and that will
6 be weighed accordingly, or you can stand up and

7 give comment; and if you're cross examined under
8 oath, that will be weighed accordingly as well.

9 AUDIENCE MEMBER 1: I might.

10 MR. HALLORAN: Well, let me know when you
11 feel the urge, and we'll try to work you in as
12 soon as possible.

13 MR. HALLORAN: Yes, ma'am?

14 AUDIENCE MEMBER 2: Me too.

15 MR. HALLORAN: We have two me's. Just
16 let me know or when we break, kind of pull me
17 aside and let me know if you're ready to talk,
18 okay?

19 AUDIENCE MEMBERS: (Nodding head.)

20 MR. HALLORAN: We encourage you to talk.

21 In any event, this hearing has been
22 scheduled in accordance with the Illinois
23 Environmental Protection Act and the Pollution
24 Control Board Rules of Procedure. It will be

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1 conducted according to the procedural rules found
2 in Section 107.400 and 101 Subpart F.

3 I would like to talk a moment about the
4 board's hearing process. I think the majority of
5 you understand and are familiar with the process.
6 I will not be making the ultimate decision in the
7 case. Rather, it is the Pollution Control Board
8 who will. They will review the transcript of this

9 proceeding and the remainder of the record and
10 decide the case. My job is to ensure that an
11 orderly hearing takes place and that a clear
12 record is developed so that the Board can have all
13 the proper information before deciding the case.

14 After the hearing, the parties will have
15 an opportunity to submit post-hearings briefs.
16 These too will be considered by the Board as well
17 as public comments. I will set a date for the
18 post-hearing briefing schedule after we're
19 finished with the case in chief. Finally, I do
20 want to caution that this hearing is much like a
21 hearing or a trial, and I would expect the
22 appropriate decorum.

23 I think before we start, we'll let the
24 parties introduce themselves. We do have some

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1 preliminary matters that we have to take care of.
2 After we deal with the preliminary motions, we
3 will entertain opening statements.

4 Mr. Runyon, would you please state your
5 name for the record and who you represent.

6 MR. RUNYON: Yes. My name is Keith
7 Runyon. I'm a resident of Kankakee County. I
8 live in Bourbonnais, Illinois; and I'm here
9 representing myself. And the case I'm going to
10 present is that the applicant and County failed to

11 comply with the County's solid waste plan and in
12 so doing, the siting should not be entered; it
13 should be denied.

14 MR. HALLORAN: Thank you, Mr. Runyon.
15 Mr. Mueller. You can stay seated.

16 MR. MUELLER: I am George Mueller. I
17 represent Merlin Karlock who participated as an
18 objector at the local siting hearing.

19 MR. HALLORAN: Thank you, Mr. Mueller.
20 Ms. Pohlenz.

21 MS. POHLENZ: My name is Jennifer Sackett
22 Pohlenz. I represent Petitioner Michael Watson,
23 who participated before the local level during the
24 siting hearing.

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1 MR. FLYNN: Good afternoon. My name is
2 Dave Flynn, and I represent Michael Watson.

3 MR. HALLORAN: Thank you, Mr. Flynn.
4 Mr. Power.

5 MR. POWER: I'm Patrick Power. I'm here
6 on behalf of the City of Kankakee.

7 MR. HALLORAN: Mr. Leshen.

8 MR. LESHEN: Kenneth A. Leshen. I'm here
9 also on behalf of the City of Kankakee.

10 MR. HALLORAN: Thank you. Mr. Porter.

11 MR. PORTER: Rick Porter on behalf of the
12 County of Kankakee and County Board of Kankakee.

13 MR. HALLORAN: Ms. Harvey.

14 MS. HARVEY: Elizabeth Harvey also on
15 behalf of the County Board and the County of
16 Kankakee.

17 MR. HALLORAN: Mr. Moran.

18 MR. MORAN: Donald Moran on behalf of
19 Waste Management of Illinois, Inc., a respondent
20 and applicant.

21 MR. HALLORAN: I guess that's it. First
22 I want to address -- there were a few motions that
23 came in on Friday, I believe, May 2nd; and there
24 was a couple responses. Actually, another motion

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1 filed by the County this morning and also
2 responses from Watson filed this morning. I think
3 what we'll do this way, Mr. Moran from Waste
4 Management filed on May 2nd an objection to
5 Petitioner Michael Watson's list of witnesses to
6 testify at the public hearing, a motion to strike,
7 and for sanctions. I should start off -- if any
8 sanctions, I defer to the Board as I must. Also
9 Mr. Moran filed on May 2nd Waste Management of
10 Illinois a motion in limine to bar evidence
11 relating to Patricia Beever McGar and Criterion 3.

12 Mr. Moran, would you briefly summarize
13 these two motions, please.

14 MR. MORAN: Yes. Addressing first the

15 motion to bar and the motion for sanctions. On
16 Friday May 2nd, Petitioner Watson filed what
17 purported to be a list of witnesses identifying
18 those witnesses it either intended to call or
19 might at some point call during the course of this
20 hearing. That was done pursuant to the order of
21 you, Mr. Hearing Officer, for the parties to
22 identify the witnesses they intended or wished to
23 call.

24 The document that was, in fact, filed was

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1 not merely a list of witnesses; but it included
2 within a listing of names a request that various
3 witnesses be produced at this hearing. It
4 requested that certain evidence -- I'm sorry --
5 deposition transcripts be admitted as part of this
6 hearing, be stipulated to, so it was really in the
7 form of a motion to have certain transcripts
8 stipulated to. And based upon the orders that you
9 had previously entered with respect to certain of
10 the witnesses identified in this list of
11 witnesses, that those witness, one, would not have
12 to be produced for their depositions; and the
13 other orders that were put in place with respect
14 to the conduct of this hearing, that list of
15 witnesses prepared and submitted by Watson
16 exceeded both the authority given to Watson to

17 prepare that list and then the attempt to include
18 within the list the notice to produce and
19 requirement that witnesses be produced at this
20 hearing.

21 Our motion is directed to striking that
22 portion of the list of witnesses that went beyond
23 a mere designation of what witnesses were intended
24 to be called, inasmuch as notices to produce and

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1 other motions within a list were improper and
2 certainly without any authority. We had also
3 requested sanctions -- and as you pointed out,
4 that's something that you won't be in a position
5 to address -- but our motion basically is directed
6 to the list of witnesses we believe was not filed
7 or prepared pursuant to any authority this
8 Petitioner had and those portions of the list of
9 witnesses that went beyond the mere naming of the
10 witnesses ought to be stricken. Would you like me
11 to address the second motion in limine?

12 MR. HALLORAN: Well, thanks for asking.
13 Mr. Pohlenz or Mr. Flynn, would you care, you
14 filed a response -- Here we go. Response to Waste
15 Management's motion in limine. Would you like to
16 briefly summarize that?

17 MR. MORAN: Mr. Hearing Officer, you mean
18 the motion to bar? The motion in limine is a

19 separate motion.

20 MR. HALLORAN: Sorry. You were going to
21 discuss the motion. Response to Waste
22 Management's motion to bar and for sanctions?

23 MS. POHLENZ: Yes. First as with respect
24 to, I guess, the format of this document, the

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1 document as it states, please consider this a
2 Rule 237. It goes on to state that if the people
3 below are going to be stated by Waste Management
4 to be witnesses as opposed to parties and if Waste
5 Management is going to assert that Pollution
6 Control Board Rule 101.662(a) applies, then there
7 is a request made in that document that Waste
8 Management's own counsel inform Petitioner Watson
9 immediately as to whether they will object to
10 producing those people.

11 This is because during the discussion
12 with the hearing officer that occurred on May 1st,
13 it was discussed that we would produce a witness
14 list. It was further discussed at a practical --
15 from a practical perspective how were we to be
16 able to subpoena these people who -- particularly
17 those people who had been produced under the
18 control of Waste Management? Such as Mr. Hoekstra
19 is here today. So I can't see how an objection
20 could be made to someone who is being produced by

21 the party to this proceeding.

22 MR. HALLORAN: Mr. Hoekstra is here
23 today?

24 MR. MORAN: Yes, he's sitting right next

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1 to me.

2 MR. HALLORAN: Okay. Thank you.

3 MS. POHLENZ: Secondly, the other portion
4 of that request states that if you will not
5 produce this person, then inform us of their
6 address so we can serve a subpoena. I don't think
7 that's not objectionable. It is merely a request
8 that was made contemporaneously with submitting
9 this document. As to the request to stipulate,
10 That was something that was raised by Petitioner
11 Watson's counsel during that telephone conference
12 on May 1st in order to make this procedure more
13 efficient. The fact that we give notice as to
14 some of the witnesses that we were prepared to --
15 at that stage on Friday -- stipulate to the
16 deposition transcripts. How is that
17 objectionable? If they don't want to stipulate,
18 they don't want to stipulate to it; and we produce
19 them at the hearing. And none of those witnesses,
20 by the way, concerned Waste Management. All the
21 stipulations related to the County, and from my
22 understanding, that will help aid this proceeding

23 become shorter because a stipulation will be
24 reached or has been reached. So I don't see how

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1 that is objectionable and cause to strike our
2 witness list.

3 Finally, with respect to Waste
4 Management's objections in its motion, it pertains
5 to two people. One is Lee Addleman and the second
6 is Mr. Moran. With the respect to Lee Addleman,
7 he was a witness who was included on the City of
8 Kankakee's notice of deponents, the list of
9 deponents earlier in this matter. Waste
10 Management responded with some objections to
11 that -- and by the way, a step backwards,
12 Petitioner Watson joined in that list of the City
13 of Kankakee.

14 Waste Management filed some objections
15 with respect to producing Mr. Addleman for his
16 discovery deposition. The hearing officer ruled
17 on those objections and found that Mr. Addleman
18 did not need to be produced. There was never a
19 request for Mr. Addleman to be produced during
20 trial or during the hearing in this matter.
21 Mr. Watson is making that request in this list.

22 In addition to that, he provides an
23 alternative. Understanding that Waste Management
24 has asserted health reasons for Mr. Addleman

1 without any verified evidence or medical affidavit
2 to support such an assertion, we ask in the
3 alternative that if Mr. Addleman is not produced
4 than either his evidence deposition be allowed be
5 to be taken or alternatively written questions,
6 certified questions and certified answers, be
7 allowed to be submitted to him. Nothing in that
8 is objectionable. It is a request that is
9 perfectly within the boundaries of the rules of
10 practice.

11 Finally, with respect to Mr. Moran,
12 Mr. Moran was listed on the witness list; and his
13 name was specifically footnoted. And in that
14 footnote it acknowledges that the hearing officer
15 has ruled on both the discovery deposition of
16 Mr. Moran, which was not allowed, as well as
17 the -- I believe it was Petitioner Karlock's
18 request do produce Mr. Moran at this hearing,
19 which was also ruled; and it states, This is a
20 reservation of rights of Petitioner Watson.

21 Pursuant to at least one analogous case
22 facts of the Chrysler Corporation, which is an
23 Illinois Supreme Court case, it's been held that
24 you can abandon your rights to appeal an issue if,

1 in fact, you don't preserve them. This is merely
2 consistent with the concept that a legal withdraw
3 for failure to preserve. And surely if we didn't
4 raise Mr. Moran's name on this list in a
5 reservation of our rights to raise this as an
6 issue on appeal, then they would argue we had no
7 right to raise that issue because we never asked
8 to have Mr. Moran called as a witness to testify.
9 This is not something that was done repetitively.
10 It is not something that was done more than once.
11 We asked for him to be produced on this list with
12 a footnote reserving our rights to raise this
13 issue. Acknowledging the fact that the hearing
14 officer in this case has made those orders and
15 certainly it was not made in any disrespect to the
16 hearing officer or to the Pollution Control Board
17 and the findings today.

18 Lastly, with respect to the sanctions
19 that is requested by Waste Management, I don't
20 think anything within the motion fulfills the
21 factors laid out in 101.800 Subsection C, but in
22 addition to that, they ask for monetary sanctions,
23 which clearly aren't allowed under the rules. And
24 as you said, Mr. Hearing Officer, since that will

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1 not be taken up by you, that argument will rely on
2 our written response as it pertains to that

3 argument.

4 MR. HALLORAN: Okay. Thank you.

5 Regarding Mr. Addleman, I already made the ruling
6 in my, I believe, April 30th order and we had
7 talked about it April 24th, I think, in a
8 telephone conference in the context of deposition;
9 and I feel by extension, it also involves his
10 presence at the hearing as well, his testimony;
11 and I'm basing that on Mr. Moran's
12 representations. There was no response by Watson
13 at that time because it was logical that if you
14 cannot be deposed, you're not going to be able to
15 come to the hearing to testify and be cross
16 examined. So to that extent, I -- Mr. Addleman
17 will not testify today.

18 Mr. Moran based on my ruling on.
19 April 30th, also will not testify and I appreciate
20 you reserving with for appeal. And Mr. Hoekstra
21 is here, so he will testify. I believe I have
22 already approved that in one of my prior orders as
23 far as the depositions go. So I'm not sure what
24 is left in this motion. And I assume -- I think

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1 some of the parties have stipulated to some of the
2 depositions. So I'm not sure what's left of your
3 motion, Mr. Moran, if anything, regarding the
4 motion to strike.

5 MR. MORAN: Our motion was simply
6 intended to address what we believe was your order
7 and ask the parties to prepare the list of
8 witnesses. The list of witnesses Watson submitted
9 contained notices to produce, contained motions
10 for requested relief. Obviously, attempted
11 indirectly what couldn't be done directly and that
12 was attempt to have me and Mr. Addleman appear at
13 this hearing. Obviously, that was inappropriate.
14 Obviously, it was attempting again to revisit an
15 issue that you had decided. And, if indeed, the
16 only true reason was to preserve that record for
17 the record or preserve that issue for an appeal,
18 it could have been stated as such. It wasn't. It
19 was addressed as a notice to produce and as a
20 request for leave to depose Mr. Addleman upon
21 written examination or otherwise.

22 MR. HALLORAN: Okay. Sounds like you're
23 addressing --

24 MR. MORAN: And that was the basis of the

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1 motion. Those have all been addressed.

2 MR. HALLORAN: That's my question.

3 MR. MORAN: And I guess my question is at
4 that point we ask that that portion of the list of
5 witnesses be stricken as, I think, you just
6 indicated you had ruled previously on the

7 different witnesses and those requests were
8 proper.

9 MR. HALLORAN: And I held that Mr. Moran
10 would not testify based on my April 30th. I just
11 held that Mr. Addleman will not testify based on
12 my April 30th order. And Mr. Hoekstra -- Is it
13 Hoekstra or Hoekstra? Hoekstra is present.
14 Excuse me. Ms. Pohlenz.

15 MS. POHLENZ: Mr. Halloran, just to be
16 clear, it wasn't a motion to strike that was filed
17 by a Waste Management. It was a motion to bar to
18 prevent these people from testifying. They are
19 not changing their motion apparently and seeking
20 to strike my document or portions of my document,
21 which I think are inappropriate because what, in
22 effect, they are seeking to do is strike my
23 reservation.

24 MR. HALLORAN: Well, it is entitled here

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1 Motion to Strike, Waste Management, so I don't
2 think I have to strikeout anything. I've made my
3 ruling. So that is my ruling based on Waste
4 Management's objection just for Michael Watson's
5 list of witnesses to testify at the public
6 hearing, motion to strike, and for sanctions. And
7 that's that.

8 The next one, Mr. Moran, if you can

9 summarize. I'm sorry. Mr. Runyon, did you have a
10 question?

11 MR. RUNYON: No. Ms. Pohlenz stated what
12 I had wanted to state.

13 MR. HALLORAN: All right. Yes Ms.
14 Pohlenz.

15 MR. POHLENZ: Mr. Mueller first or me?

16 MR. HALLORAN: Mr. Mueller.

17 MR. MUELLER: I will be quick.

18 Mr. Halloran , due to a recent surgery, I've been
19 mainly out of the office the last couple weeks and
20 had not received a copy of your order directing
21 the parties to prepare a list of the witnesses
22 they intend to call, and while that's nobody's
23 fault but my own, I would ask leave to disclose my
24 witnesses at this time. It is not going to be a

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1 surprise to anybody. I'm going to call Ester Fox,
2 who I've already deposed by way of evidence
3 deposition and Charles Norris who was disclosed as
4 having met with Ms. Fox during her evidence
5 deposition, and Mr. Norris' sister, whose name I
6 don't even know, who was with him.

7 MR. HALLORAN: Okay.

8 MR. MUELLER: And I ask for leave under
9 the circumstance to call those even though I have
10 not timely disclosed them.

11 MR. HALLORAN: And I hope you're feeling
12 better, Mr. Mueller. I think the reason why you
13 didn't hear me request a list of witnesses on.
14 May 1st, is that I think you had a -- you had to
15 leave the telephonic status for a conference for a
16 conflict or to deal with another matter

17 MR. MUELLER: I did leave the conference
18 shortly before -- when I thought we were winding
19 down.

20 MR. HALLORAN: Okay. Well, since
21 Mr. Mueller's interjection, any objection to
22 Mr. Mueller? I assume, Mr. Fox's deposition was
23 taken at 6:00 p.m. on May 1st?

24 MR. MUELLER: Yes.

23

1 MR. HALLORAN: And also you say the
2 Norrises, Mr. Norris and --

3 MR. MUELLER: And his sister. They were
4 disclosed by Mrs. Fox as being individuals with
5 whom she talked regarding some of the subject
6 matter of her deposition, and I'd like to call
7 them. They're going to be 5-minute witnesses
8 each. As I indicated, I don't think so this is a
9 surprise to the County.

10 MR. HALLORAN: Mr. Moran, any objection?

11 MR. MORAN: Yes. Had these witnesses
12 been identified on Thursday or Friday, for that

13 matter, as witnesses who would address portions of
14 Ms. Fox's testimony, there may very well have then
15 been an opportunity for either the applicant or
16 the County to inquire as to what these witnesses
17 were going to talk about. We have not been able
18 to do that. Nobody has had any opportunity to
19 figure out what Mr. Norris and his daughter --
20 sister? Is it his sister?

21 MR. MUELLER: Sister.

22 MR. MORAN: His sister -- may testify
23 about with respect to a visit to the County and
24 speaking with Ms. Fox.

24

1 MR. HALLORAN: Mr. Porter.

2 MR. PORTER: If I understand correctly,
3 we are not going to be calling Ester. We're going
4 to be submitting the evidence deposition.

5 MR. MUELLER: That's correct.

6 MR. HALLORAN: I think Mr. Moran's
7 objection is just to Mr. Norris --

8 MR. MORAN: Ms. Fox. Certainly we agreed
9 that her evidence deposition will be submitted.

10 MR. PORTER: I will merely join in
11 Mr. Moran's comment

12 MR. HALLORAN: Okay. I think I'll
13 overrule the County's and Waste Management's
14 objection. I think you'll have ample time to

15 cross examine him, and I'll allow him to take the
16 stand and testify. Motion for leave to file your
17 list of witnesses, Mr. Mueller, is granted.

18 Ms. Pohlenz, did you --

19 MS. POHLENZ: I just wanted to ask if
20 your ruling to Waste Management's motion to
21 strike, we would like to -- Petitioner Watson
22 requests to do an offer of proof with respect to
23 Mr. Addleman and with respect to Mr. Moran.

24 MR. HALLORAN: That's denied. Okay. We

25

1 have the motion --

2 MR. MORAN: Our motion in limine.

3 MR. HALLORAN: Motion in limine.

4 MR. LESHEN: Mr. Halloran.

5 MR. HALLORAN: Just a minute Mr. Leshen.

6 MR. LESHEN: The City of Kankakee would
7 like to join in Petitioner Watson's request for
8 leave to proffer -- to put forward an offer of
9 proof, and if you deemed it inappropriate to do it
10 through live witnesses, we would like to do it
11 through statement.

12 MR. HALLORAN: You know, that's denied as
13 well. I think the Petitioners had every
14 opportunity to ask for it way back when as early
15 as April 24th when you had your list of deponents
16 out. It wasn't until Dr. Idleburg even suggested

17 through counsel that -- was it Ms. Fox -- I think
18 it was Ms. Fox opened the door to any kind of
19 evidence deposition. Now, all of a sudden the
20 Petitioners say, Hey, that's not a bad idea. I
21 find that it's not timely raised, and I deny the
22 City's and Mr. Watson's objection -- or request.

23 Okay. Mr. Moran, your motion in limine
24 to bar evidence relating to Patricia Beever McGar

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1 and Criterion 3.

2 MR. MORAN: Yes. Petitioner Watson has
3 served subpoenas on two representatives of Richard
4 J. Daley College requiring their appearance here
5 to give testimony regarding the transcripts and
6 the attendance and I guess registration history of
7 Ms. McGar at Daley College. The attempt that's
8 being made is one that relates to a witness who
9 testified on Criterion 3 during the siting
10 hearings and is an attempt to show through
11 evidence of these witnesses that somehow that
12 witness testified falsely or incorrectly at the
13 siting hearing. It is indeed addressed to an
14 issue that was presented at the siting hearing,
15 argued at the siting hearing, and resolved at the
16 siting hearing by the County Board. This is an
17 attempt now to introduce evidence going to the
18 credibility of a witness at the siting hearing,

19 which is entirely inappropriate for this specific
20 hearing and on that basis, our request is that you
21 bar any offered evidence relating to this issue.

22 MR. HALLORAN: And regarding your motion
23 in limine, that goes to Patricia McGar and is that
24 Listenbee as well?

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1 MR. MORAN: It's actually Sandra
2 Listenbee and Marianne Powers were the two
3 individuals that were subpoenaed.

4 MR. HALLORAN: And I do have Watson's
5 response that was filed this morning with me, and
6 I assume the Board as well, but I'll follow up.
7 Response to Waste Management's motion in limine,
8 Ms. Pohlenz.

9 MS. POHLENZ: Yes. Mr. Hearing officer,
10 Waste Management cites in support of its argument
11 and this motion the Land O'Lakes case as well as
12 Landfill 33 vs. Effingham County Board. For the
13 proposition that the Pollution Control Board
14 cannot reweigh credibility and testimony of the
15 witnesses and thus their testimony should be
16 barred. Waste Management's citation of the law,
17 however, is incomplete. Illinois Supreme Court
18 has held and as recently as October, I believe,
19 2002 -- 2002 I know in Eychaner vs. Gross, E Y C H
20 A N E R vs. Gross, G R O S S, et al , that a court

21 should defer credibility to be determined by the
22 trier of fact unless such determinations are
23 against manifest weight of the evidence.
24 Furthermore, the Illinois Supreme Court has held

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1 in People vs. The -- People of The State of
2 Illinois vs. More that perjury is fundamentally
3 unfair on its face.

4 The purpose for calling these two
5 individuals is two-fold. The first purpose is
6 that we believe Ms. McGar and we believe that the
7 evidence will show that Ms. Beever McGar committed
8 perjury. That she did not tell the truth, that
9 she lied on the stand under oath concerning her
10 credentials, and she never obtained a degree from
11 Daley College. We'll present testimony to that
12 effect.

13 Additionally, it is unfair from a
14 procedural perspective. Cross-examination of
15 Ms. McGar -- Beever McGar was stopped based on
16 Waste Management's -- on this issue, based on
17 Waste Management's representation that it will
18 produce her diploma which she stated was in his
19 attic as well as it would produce her again for
20 further cross-examination on the issue.

21 This was never done. We asked for the
22 diploma throughout the course of the public

23 hearings. We were denied. We were told --
24 actually, strike that. We were told Waste

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1 Management was still looking for it. At the very
2 end of the hearings, we asked for the diploma and
3 we asked for Ms. Beever McGar to be put back on
4 the stand. We were denied. Waste Management
5 refused, retracting its representation made, that
6 representation we relied on in stopping our
7 cross-examination. So this wasn't a
8 fully-developed issue at the level of the hearing.
9 We have an opportunity to develop it at this
10 point, and because it directly affects fairness,
11 we wish to proceed and be provided that evidence.

12 Furthermore , a downplay as to the
13 significance of this is inappropriate.
14 Essentially what we're being told is that an
15 applicant can lie under oath and it still can meet
16 the nine criteria based on the representations
17 forming the underlying -- that testimony, that
18 individual's testimony. Purger shouldn't be
19 condoned in any circumstance, and we should be
20 allowed to present evidence concerning this
21 unfairness.

22 MR. HALLORAN: Now, this may be a case of
23 first impression, but, you know, I do find that
24 the Board in its review does not reweigh the

1 evidence, the credibility decisions in the
2 lower -- in the siting decision, the local siting
3 decision, especially as it pertains to the
4 criterion or criteria. With that said, though, I
5 will allow Ms. Powers and Ms. Listenbee to testify
6 but only as an offer of proof. And Mr. Moran can
7 make his objections accordingly regarding
8 reference to the criterion -- is it 9?

9 MR. MORAN: Three.

10 MR. HALLORAN: (Continuing.) -- at the
11 appropriate time. So, again, I guess I sustain
12 Mr. Moran's motion in limine as to the extent of
13 calling this Ms. Listenbee and Ms. Powers to the
14 stand, but I'll allow you to bring them up with an
15 offer of proof and then the Board will decide.

16 Okay. The other motion is -- and this
17 might be moot. I just did a brief reading. The
18 response -- Watson's response to the County's
19 motion to bar it for sanctions. The County filed
20 a motion to bar it for sanctions on May 2nd
21 arguing a number of issues. Mr. Watson filed a
22 response today. Is that my understanding that
23 basically, again, I don't know, your list of
24 witnesses somehow just preserve the issue to

1 appeal. Do I need to rule on anything now or --

2 MS. POHLENZ: In my motion -- in my
3 response, I state that I believe the motion is
4 moot. The complaint here is that we name
5 Ms. Harvey and we footnoted that and we stated
6 that we acknowledge the hearing officer's previous
7 rulings, and we state that it was made to -- it
8 was listed because we're reserving our right to
9 proceed with this objection on appeal.

10 I think the brunt of the motion by the
11 County is to seek sanctions against Petitioner
12 Watson for apparently reserving his rights in this
13 regard.

14 MR. HALLORAN: Mr. Porter.

15 MR. PORTER: I think the hearing officer
16 doesn't need a lot of discussion about this. The
17 ruling was made by the hearing officer and the
18 board barring the testimony of Ms. Harvey and
19 despite that, we receive a pleading listing her as
20 a witness. That was the result of our motion for
21 sanctions, and that is why it was filed.

22 MR. HALLORAN: Okay. If needed, I will
23 grant the County's motion to bar if you, in fact,
24 need it. Otherwise, I consider the issue moot

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1 based on Ms. Pohlenz's representations.

2 Ms. Harvey, you gave me another motion
3 this morning, and I'll be darned if I can find it.
4 Mr. Leshen.

5 MR. LESHEN: Just as a comment or joining
6 in the arguments put forth by counsel for
7 Mr. Watson, I would represent that I spoke this
8 morning to the -- to a clerk at the Illinois
9 Pollution Control Board at about -- between 10:30
10 and 11:00, although I won't vouch for at what
11 moment within that half hour, approximately that
12 time -- and was informed that the Board's decision
13 denying the reconsideration of your ruling
14 regarding Mr. Moran, the testimony of Mr. Moran
15 and Ms. Harvey had not yet been posted and was
16 going to be posted in about 10 minutes. So it's
17 my understanding that, in fact, contrary to the
18 assertions of the County in their motion that the
19 Board had made that decision at least in terms of
20 its public notification, it had not been done at
21 least as of 10:30 this morning.

22 MR. HALLORAN: I assure you that it was
23 done Thursday, May 1st at the Illinois --

24 MR. LESHEN: Was it?

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1 MR. HALLORAN: Yes. They upheld your
2 motion for reconsideration and I think Ms. Pohlenz
3 joined in as well, maybe yes; maybe no. But in

4 any event, yes, they upheld my rulings. I don't
5 know why it's not posted yet. There is no hard
6 copy out. Usually it takes -- if the board
7 meeting was Thursday, they usually get it out
8 Monday or Tuesday.

9 MR. LESHEN: I'm not disputing that they
10 upheld your decision and that that was done on.
11 May 1st. I'm just saying in terms of what was
12 available to us, at least in terms of checking the
13 web site, it wasn't posted until sometime later on
14 this morning.

15 MR. HALLORAN: Okay. And also you bring
16 up a good point too regarding things flying
17 through the clerk's office. You mentioned it
18 briefly.
19 May 1st in a telephonic status conference
20 regarding Mr. Addleman. I did not receive the fax
21 copy -- amended fax copy of the list of witnesses
22 from the City with Mr. Addleman's name on it. I
23 looked through all my stuff three times, and I
24 have two fax copies of the list of -- I guess

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1 deponents at the time. Neither one of them
2 contained the name of Mr. Addleman.

3 MR. LESHEN: I can't dispute what you
4 received obviously, but I know it was faxed to you
5 later -- two minutes later that morning, and we'll

6 try to come up with verification.

7 MR. HALLORAN: But I don't have it,.

8 So ...

9 MR. LESHEN: I understand just in terms
10 of completeness of the record.

11 MR. HALLORAN: Did you follow it up with
12 a hard copy.

13 MR. POWER: I believe so.

14 MR. HALLORAN: It could be in my office
15 as we speak, but in any event --

16 MR. POWER: I'm going to have to follow
17 up on that and I'll check.

18 MR. HALLORAN: I've already made my
19 ruling and that was just an FYI.

20 The County filed a motion in limine to
21 bar evidence relating to the host agreement. I
22 don't know if the Petitioners had a chance to take
23 a look at this.

24 MR. RUNYON: This was handed to us

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1 immediately before the hearing. I've had a chance
2 to look at it and I think we can respond to No. 4.

3 MR. MUELLER: I'm prepared to respond.

4 MR. HALLORAN: Mr. Mueller.

5 MR. MUELLER: I guess I get the lead
6 then. The cases cited by Ms. Harvey -- since I
7 appear to have been the attorney on a number of

8 them -- are all distinguishable, I think, because
9 the host agreement in this case does not represent
10 merely some legislative act that occurred prior to
11 or in general time proximity with the siting
12 hearing. In this case, the host agreement has
13 been a sword which both the County and Waste
14 Management have been able to use as a way of
15 having justifying ex parte communications
16 throughout the pendency of this case. In
17 addition, the host agreement has -- I should say
18 the host agreement and the County plan amendments
19 which are in part and parcel the same thing. Have
20 indicated biased and predisposition on the part of
21 this Board. It is basically in furtherance of its
22 obligations under the host agreement that Waste
23 Management participated in the Town & Country
24 siting hearings in June of last year and

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1 thereafter, and it is in furtherance of what it
2 perceived to be its obligations under that host
3 agreement that Waste Management was able to engage
4 in communications with the County purportedly on
5 the issue of litigation strategy related to the
6 Town & Country proceedings, which communications
7 we've maintained are ex parte communications, many
8 of which took place after this particular
9 application was filed.

10 So I think in this case here, where you
11 have multiple plan amendments following an
12 amendment of a host agreement, all of which are
13 intertwined followed by ex parte communications
14 that the parties say are related to their joint
15 efforts in another case -- the host agreement is
16 not just some legislative enactment. The host
17 agreement is not some legislative activity that
18 took place in a vacuum and took place at a time
19 when the siting hearing and ex parte
20 communications between the parties were not
21 contemplated.

22 MR. HALLORAN: Mr. Leshen.

23 MR. LESHEN: Yes. First the City would
24 adopt the arguments put forth by Mr. Mueller.

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1 Second, I would like to refer you, at this point,
2 to evidence that we intend to present at this
3 hearing, specifically, a letter from Dale
4 Hoekstra, division vice president Illinois
5 landfill division, the gentleman who is seated to
6 my left. Throughout the negotiations that lead to
7 the amended and restated landfill agreement that
8 has been approved, Waste Management negotiated
9 based on the assumption that the Kankakee County
10 solid Waste Management plan would continue to
11 embrace and support only one landfill within the

12 county. We are -- we were pleased that the Board
13 amended its solid Waste Management plan on October
14 9th, 2001. And then it goes on to say that they
15 will pay for a defense of the County's solid waste
16 plan.

17 I will also suggest to you that in
18 Leonard -- nickname Shake Martin's deposition, he
19 vouches for that. Mr. Martin has been a -- I
20 think 20-year County Board member and had also
21 been from 1998, I believe, December 1st, 1998, to
22 November of 2000, the chairperson of the Kankakee
23 County Board. And if I can just have a moment.
24 Mr. Martin says in response to the following

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1 question: When the host agreement was proposed
2 and agreed to by the Board, was it your
3 understanding at that point based on the host
4 agreement that Waste Management was going to be the
5 sole provider of waste services in the county?
6 And after objections by Mr. Moran and Mr. Porter,
7 he says, Yes. And it goes on. And was it also
8 your understanding at that point that Waste
9 Management -- that the site that Waste Management
10 currently operated is going to be expanded that
11 the site for Waste Management to operate has to be
12 expanded for new landfill? Yes. Did you share
13 that perception and discussion with members of the

14 board? Yes. And then he goes on to say that the
15 siting at that point was a forgone conclusion.

16 Now, it seems to me that fundamentally
17 the issue of -- this issue not only goes to the
18 heart of the case, but you also ruled on it. And
19 you told us that while the adoption of the solid
20 waste plan, the legislative determinations that
21 went into the adoption of the solid waste plan
22 were not a subject of discovery, you left the door
23 open very specifically to discussions of how the
24 host agreement was adopted. And if you look at

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1 the time line in terms of Mr. Hoekstra's responses
2 to the County, Mr. Martin's representations under
3 oath regarding the fact that this was a foregone
4 conclusion and then shared that with other members
5 of the County Board, then that by definition is
6 the heart of what needs to be covered in this
7 hearing in terms of fundamental fairness. So
8 based on that argument as well as the fact that
9 you've already ruled on that, we are asking that
10 you deny that motion in limine.

11 MR. HALLORAN: Thank you, Mr. Leshen.
12 Ms. Pohlenz.

13 MS. POHLENZ: Mr. Hearing Officer, having
14 received this today after getting here, I don't
15 have an opportunity to respond specifically to the

16 case law cited in the County's motion, but I will
17 say that the host agreement in this sense is more
18 than legislative determination. It is a
19 determination that is made on its face. We've had
20 testimony and we've presented evidence during the
21 course of this hearing that the host agreement, in
22 fact, provides an up-front approval for the
23 landfill in the sense that there are accelerated
24 payments made by Waste Management for the

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1 expansion. Payments made well before the siting
2 hears were finished, and payments made before the
3 siting decision was made by the County Board.
4 They are not insignificant payments. They are in
5 excess of a half million dollars. They were made
6 to the County based on this expansion. I think
7 that goes straight to the issue of prejudgment.
8 And thus is relevant to this proceeding.

9 Without actually reviewing these cases
10 but based on a general knowledge of what the cases
11 have dealt with concerning a host agreement, I
12 don't believe -- but I'll condition that on the
13 fact that I have not gone through specifically and
14 read these -- that any of them deal with these
15 issues where you have up-front accelerated fees
16 for expansion, and I think this is very relevant
17 to the County Board's determination.

18 MR. HALLORAN: Thank you, Ms. Pohlenz.
19 Mr. Runyon, I don't mean to slight you. If you
20 have any remarks or statements, just jump in.

21 MR. RUNYON: I don't I have anything
22 regarding -- as long this motion is not intended
23 to stop the review of things that are on the
24 record.

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1 MR. HALLORAN: Thank you, Mr. Runyon. I
2 don't think I need any response unless you feel
3 compelled to respond to the Petitioners regarding
4 this.

5 MR. PORTER: It depends on your ruling.
6 I won't respond.

7 MR. HALLORAN: You can have all the time
8 you want, Mr. Porter. That's what we're here for.

9 MR. PORTER: Briefly then. First,
10 Mr. Martin never testified to any foregone
11 conclusion. Mr. Martin made it very clear that
12 indeed he gave full consideration to the evidence
13 as did every Board member. Second, there was no
14 prepayment of an accelerated payment for siting
15 approval. I think is what Ms. Pohlenz
16 referenced -- the host agreement, which is already
17 part of the record, establishes that indeed there
18 are payments that now must be made even had site
19 approval not been granted because Waste Management

20 was now operating out of county waste. That is
21 what the payment is she's talking about.

22 The host agreement itself as to
23 discovery, perhaps appropriately, the hearing
24 officer allowed discovery on the issue to

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1 determine whether or not it was relevant. There
2 was no testimony given at any point that it was in
3 any way evidence of a pre adjudication of the
4 merits, and accordingly under the case law, it
5 should be barred from this hearing.

6 MR. HALLORAN: Mr. Moran, anything to
7 add.

8 MR. MORAN: Not other than what's been
9 indicated so far.

10 MR. HALLORAN: Thank you. I don't need
11 any more argument, Mr. Leshen. Feel free to --

12 MR. LESHEN: I just want to -- I don't
13 want to argue. I just want to clarify because
14 Mr. Porter said that --

15 MR. HALLORAN: You can bring that up at
16 the appropriate time. Whose deposition are you
17 reading from?

18 MR. LESHEN: Shake Martin.

19 MR. HALLORAN: Mr. Martin is going to be
20 taking the stand, so you can inquire as to him
21 regarding depositions at that time

22 MR. LESHEN: For the record then, because
23 there was a misstatement of Mr. Martin's
24 testimony. I'm trying not to be obstreperous

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1 here. I just think it's important --

2 MR. HALLORAN: I think the Board -- go
3 ahead, Mr. Leshen. But give the Board more
4 credit. They can find out if there is a
5 misstatement or not.

6 MR. LESHEN: Page 15, Line 6 -- Line 4,
7 At that point your mind was a foregone conclusion?
8 6, answer, it seemed that way. So there is no use
9 talking about it. And that is in no way meant to
10 disparage the thorough inquiry that I know the
11 Board will make in this case.

12 MR. HALLORAN: I know. Thank you. The
13 County's motion in limine to bar evidence relating
14 to the host agreement is denied, and that is in
15 part based upon my -- I believe my April 17th
16 order regarding discovery. Also, I was not
17 supplied with any of the cases cited by the County
18 as well. But just a cursory look at them, you
19 know, I think based on these cases that were given
20 to me, I think the Board reviews the issue on a
21 case-by-case basis and, in fact, they're the ones
22 who decided whether or not to throw it out or
23 whether or not there is a fundamental fairness

24 issue. I don't think it's the hearing officer's

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1 position to do that. In any event, I will deny
2 the County's motion to bar evidence relating to
3 that host agreement.

4 With that said, I think that takes care
5 of all my written motions in front of me. Now,
6 Mr. Porter, Ms. Harvey, Mr. Moran, feel free to
7 object at the appropriate time when discussions of
8 the host agreement come up. However, it would
9 probably be more like a standing objection at that
10 point.

11 With that said, it's my understanding
12 that there has been some stipulation and that's
13 why, actually, this hearing was scheduled for 1:00
14 and it didn't start until about 1:45. Does
15 anybody want to take the lead to let me know,

16 MR. FLYNN: I believe we have reached a
17 stipulation instead of calling the following
18 witnesses live to submit their discovery
19 deposition. Those individuals being Leo Whitten.

20 MR. HALLORAN: Hold on. Mr. Flynn, I'm
21 trying to find your mic.

22 MR. FLYNN: I'll speak up. There has
23 been a stipulation to use the depositions of a
24 variety of witnesses as opposed to calling them to

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1 testify live. One of them being Leo Whitten.

2 MR. HALLORAN: Could you spell the name,
3 please.

4 MR. FLYNN: W H I T T E N. Elmer Wilson,
5 W I L S O N; Karl Cruse, K R U S E; Christopher
6 Rubak, R U B A K.

7 MR. HALLORAN: Sorry. Mr. Flynn, I
8 didn't get that.

9 MR. FLYNN: Christopher Rubak, R U B A K.

10 MR. HALLORAN: Thank you.

11 MR. FLYNN: Douglas Graves, G R A V E S;
12 Pamela Lee, L E E; Wesely Wiseman, W I S E M A N;
13 Michael VanMill, V A N, capital, M I L L;
14 Christine Richardson, R I C H A R D S O N; Juanita
15 Baker, .
16 B A K E R; George Washington, Jr.; W A S H I N G T
17 O N; and then we have the evidence deposition of
18 Ester Fox, F O X. And I have copies of these
19 transcripts which I will present to the Board now,
20 if the Board is willing to receive them.

21 MR. HALLORAN: Any comment on the
22 stipulation?

23 MR. LESHEN: One comment and that is that
24 the County had reserved signature -- or actually,

1 the witnesses had reserved signature in some of

2 these, if not all of these, and I think as part of
3 the stipulation, we have stipulated that these
4 will be admitted to be considered by the Board
5 regardless of whether they have been signed or
6 not; is that a fair statement, Mr. Porter?

7 MR. PORTER: I agree. I do have one more
8 comment on the stipulation. Within the
9 depositions there are various objections to
10 testimony regarding Waste Management's plan and/or
11 its amendment. Those objections, as I understood,
12 were previously sustained by the hearing officer
13 and no discovery was to be allowed on those
14 issues. Rather than risk having to come back, I
15 allowed an offer of proof on various occasions. I
16 don't want my silence to the stipulation to anyone
17 in any way reflect that I believe that those are
18 relevant or admissible testimony; and, of course,
19 in my pleadings from this point forward, I will be
20 arguing that those objections were sustained by
21 this hearing officer and that testimony is
22 inadmissible and is merely in evidence as an offer
23 of proof.

24 MR. HALLORAN: Sorry. Which testimony is

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1 that?

2 MR. PORTER: Any testimony concerning
3 Waste Management's plan.

4 MR. HALLORAN: The record will so note
5 that. Mr. Runyon, now have you --

6 MR. FLYNN: I have one more thing on the
7 stipulation, in terms of the host agreement,
8 you've already ruled on that so that will be
9 admissible and those objections will be stricken.

10 MR. HALLORAN: Sorry. Those objections
11 will be stricken.

12 MR. FLYNN: Correct. It is my
13 understanding that you ruled that that question on
14 the host agreement is going to be permitted.

15 MR. HALLORAN: Right. I'll permit it.
16 I'm not going to strike the objection.

17 MR. PORTER: The objection is overruled.

18 MR. FLYNN: Right. With regards to the
19 solid Waste Management plan, you indicated that
20 you would not allow discovery on that item and
21 there were some questions but the questioning was
22 very limited, and I don't believe this would
23 constitute our offer of proof on that item. It is
24 my understanding that you're not go to allow an

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1 offer of proof on the solid Waste Management plan
2 and the adoption of that plan. Because if you are
3 going to allow an offer of proof on that, we do
4 have additional questions and testimony that we
5 would solicit.

6 MR. HALLORAN: Where am I going to allow
7 an offer of proof on the solid Waste Management
8 plan or its adoption? I guess I'm not following
9 you. You know, I said any evidence or testimony
10 regarding the solid waste plan, as I ruled before,
11 is a legislative process and the Board will not
12 hear evidence on such.

13 MR. FLYNN: And as such, we are not going
14 to offer a formal offer of proof on that issue
15 based upon your ruling.

16 MR. HALLORAN: Okay.

17 MR. FLYNN: That's all I'm saying. There
18 is some indication that some of the questioning in
19 here would stand as an offer of proof and to the
20 extent it does, it does. And all I'm saying is
21 it's incomplete and the reason it hasn't been
22 furthered is that it is my understanding that that
23 is not going to be permitted during this
24 proceeding.

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1 MR. HALLORAN: Correct. I think the
2 Board has got that on the record, so we'll be able
3 to --

4 MR. FLYNN: There is one further
5 stipulation. The deposition of Bruce Clark,
6 C L A R K. Let me see if I have it in the pile
7 here. In addition to Mr. Clark's deposition,

8 we've also reached a stipulation concerning some
9 foundational testimony. We intend to offer some
10 of the tapes as evidence and whether or not
11 they're admissible and on what issues they're
12 admissible, may be in dispute; but the fact that
13 Mr. Clark would testify that the tapes produced
14 during in discovery are authentic, the foundation
15 has been stipulated to.

16 With regards to the solid Waste
17 Management plan and two resolutions that occurred
18 prior to the Board's accepting the application and
19 passing the application, there is going to be a
20 stipulation to the foundation on those items.
21 There is no stipulation as to their admissibility
22 or to what extent, but in terms of laying the
23 foundation, we're not going to force Mr. Clark to
24 come in here and testify.

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1 The two resolutions that I'm specifically
2 speaking to are Resolution No. 01-10-09-393 and
3 Resolution 02-13-12-481. And in terms of the
4 solid Waste Management plan, we will give the --
5 once we have a certified copy, we'll give it to
6 the County to review to make sure we're both
7 talking about the same plans; and then we'll
8 provide copies of the two resolutions to
9 Mr. Porter so we're on the same page as to the

10 resolutions we're stipulating to.

11 MR. PORTER: I believe that was going to
12 be clear. However, I want to make it absolutely
13 clear, the only thing we are stipulating to is
14 that they will be offered into the records once I
15 see them. I have not yet. I'm not going to
16 require Mr. Clark to come and testify if they're
17 admissible or should be barred from the record.
18 We'll fight that battle when they're formally
19 offered at that time if that makes sense.

20 MR. HALLORAN: Yes. Thank you very much,
21 Mr. Porter.

22 MR. FLYNN: Once we have the copies,
23 we'll provide them to Mr. Porter and then we'll
24 stipulate as to the foundation as to authenticity,

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1 ultimate admissibility, and then we'll probably
2 quarrel a little over it.

3 MR. HALLORAN: Okay. Thanks. Mr.
4 Runyon, you expressed interest at one point or
5 another -- in fact, I think you faxed me
6 something, you're notice. You were hoping to have
7 Mr. VanMill here. Now, you're in agreement to
8 that stipulation.

9 MR. RUNYON: Mr. Hearing Officer, I've
10 decided I don't want to call any witnesses
11 whatsoever. I'm subscribing entirely to your

12 directive that says I must restrict what I do to
13 the record, and I would hope those same handcuffs
14 would apply to Waste Management and the County.

15 MR. HALLORAN: Thank you very much. With
16 that said, any more preliminary housekeeping
17 matters we need to discuss? My intention was
18 to -- we can do an opening and we'll take a quick
19 break, like a 10-minute break. And after we do
20 opening, if any members of the public want to
21 stand up here and give comment or testify, we'll
22 do that.

23 Before we take a quick break --

24 MR. RUNYON: I have just one minor

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1 housekeeping issue. I'd like -- I have not
2 written a formal complaint. I would simply like
3 to verbalize this, in that I was precluded from
4 three telephone conference calls. I don't know
5 why that happened. On two of the occasions I sat
6 by my phoning expecting those calls to come in.
7 On the third occasion, I was told I would be
8 advanced a copy of a telephone number to call in
9 which I never received. As a consequence, I was
10 excluded from participation in those, which I
11 think augers against the fundamental fairness of
12 my particular participation here in this hearing.
13 Well, in discussing this matter with you, I was

14 assured that none of the issues discussed had
15 anything in particular to do with my case. I was
16 preemptively precluded from perhaps bringing up
17 issues that did have to do with my case. So I
18 would have to launch a complaint here that my --
19 that fundamental fairness was denied on my behalf
20 in this hearing.

21 MR. HALLORAN: Thank you. You did leave
22 a voice mail and a fax, and I telephoned you on
23 Friday; and I discussed with you what exactly
24 happened. You seemed to be fine with that. Now

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1 you're filing an objection orally albeit. On.
2 April 26th, sir, you were involved, I think --
3 actually, I think April 24th, there was a
4 telephone status conference and you were present.
5 And at that time, I set the status conference for
6 April 23rd. I faxed you a copy of this order and
7 it came back confirmed. When the order came
8 out -- I'm looking for the other order here. The
9 April 17th order, which you were a party to. I
10 don't see where you did not appear. I changed the
11 status conference to April 24th and not April
12 23rd, that was canceled. I believe I tried you
13 personally -- and when we talked on -- I have a
14 note somewhere down here you called a day later.
15 I we talked. I left a voice mail, and I said I

16 faxed you this order. It came back confirmed.
17 That I did switch the telephonic status conference
18 to April 24th. I believe I tried to get ahold of
19 you that date and to no avail based on the phone
20 number you have filed with the Board.

21 And the last one, because with these fast
22 receivings, the state -- at least my telephone is
23 not capable of bringing all the parties in on one
24 line. Mr. Porter, the County, was very nice and

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1 agreed that they would initiate the call. In
2 fact, I think a fax came out, and I believe
3 Mr. Porter's secretary confirmed and that the fax
4 was sent to you, Mr. Runyon, giving you, I
5 believe, the AT&T number and I believe a time.
6 And with that said, there is nothing more I can
7 say other than I picked up your voice mail on
8 Friday. Your faxed was faxed to me on Friday at
9 home. I called you shortly thereafter, and I told
10 you what had transpired at the telephone status
11 conferences, the orders summarized it. You seemed
12 to be happy with that and now, again you're
13 objecting. So with that said, if you have any
14 other response, sir

15 MR. RUNYON: I was aware that the one on
16 the 23rd was shifted to the 24th only after the
17 fact because I sat at my phone from about.

18 9:00 o'clock in the morning until 1:00 o'clock in
19 the afternoon. As I recall, that call was
20 scheduled for either 10:00 or 10:30 that morning
21 --

22 MR. HALLORAN: As I stated, sir, I faxed
23 you an order on April 17th and, I believe, I had
24 it in my office that the fax was confirmed. And I

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1 will note for the record, there was about three or
2 four times where your fax machine does not pick up
3 and it has failed on me. And I guess that's the
4 nature of the beast regarding private fax
5 machines, either out of paper or whatnot; and I
6 tried everything possible to include you in the
7 telephone conferences. You were fine were that at
8 one point, and now you're having second guesses.
9 But the bottom line is, that all that went before
10 the telephone conference was summarized in my
11 orders.

12 MR. RUNYON: I would simply like to say
13 that I was informed by Mr. Porter that the call
14 would be made on the afternoon of the 24th, and
15 once again sat by my phone and never got a
16 telephone call.

17 MR. HALLORAN: As I stated for the
18 record, sir, I believe I tried to contact you that
19 day. You may proceed, but we're going over this

20 same thing again and again.

21 MR. RUNYON: One final word. I never did
22 receive a fax regarding the call-in number for the
23 final teleconference call. That having been said,
24 I'll rest. Thank you.

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1 MR. HALLORAN: Thank you, Mr. Runyon.

2 MR. PORTER: Mr. Halloran --

3 MR. HALLORAN: Go ahead, Mr. Porter.

4 MR. PORTER: One of those phone calls, I
5 was placed in responsibility of getting everybody
6 on the phone, and I have a recollection of calling
7 Mr. Runyon and not receiving an answer. Likewise,
8 I did inform Mr. Runyon that he would be receiving
9 that fax. And if he never got it, he certainly
10 never called our office and asked for it again.

11 MR. HALLORAN: Thank you, Mr. Porter.
12 Mr. Power.

13 MR. POWER: With regard to the issue
14 regarding the supplemental notice for a list of
15 deponents.

16 MR. HALLORAN: I think we're off that,
17 sir. We can discuss that later if you want. I
18 think that was a moot issue. I don't have it in
19 my office. We never received it. So, you know,
20 there you go. You can file it with your
21 post-hearing brief. But, you know, I assume

22 Mr. Addleman's name is here.

23 MR. POWER: On the supplement?

24 MR. HALLORAN: Yes. I never received a

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1 supplement. Mr. Flynn.

2 MR. FLYNN: Two things. I'm going to
3 hand you the transcripts at this point in time so
4 I don't forget to give them to you. And No. 2 for
5 a housekeeping matter, the two individuals from
6 Daley College I plan on making arrangements to
7 have them here first thing tomorrow morning, and I
8 need to get ahold of them now in order to secure a
9 time. First of all, I want to know whether I have
10 your permission to schedule them at 10:00 a.m.
11 tomorrow.

12 MR. HALLORAN: That's fine. Depending
13 on -- it looks like we've stipulated to a number
14 of witnesses. We'll go with that. But if you
15 don't mind -- and I'll take the exhibits, I guess,
16 the stipulated exhibits right now. But I would
17 like to at least get the opening arguments over
18 with. I don't assume -- I don't presume it will
19 be that long, and then you can call Daley College
20 is that fine? Or Ms. Pohlenz, will you give
21 opening statement? Who was going to give an
22 opening statement?

23 MR. PORTER: We still don't know who

24 exactly they are going to call remaining on our

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1 list, and I have the entire County Board basically
2 waiting to receive that. I have let them all know
3 that we've stipulated to these. And I'd like to
4 know who it is they want me to now present..

5 MR. HALLORAN: Let me get to that,
6 Mr. Porter. I want to note for the record that I
7 have received into evidence pursuant to the
8 comments made during the discussion of the
9 stipulation. I have received the deposition of
10 Ester Fox. I have received the deposition of
11 George Washington, Jr., the deposition of Juanita
12 Baker, the deposition of Christine Richardson, the
13 deposition of Michael VanMill, the deposition of
14 Wesely Wiseman, the deposition of Pamela Lee, the
15 deposition of Jeffery Bruce Clark, the deposition
16 of Douglas Graves , the deposition of Christopher
17 Rubak, the deposition of Karl Kruse, the
18 deposition of Elmer Wilson, and the deposition of
19 Leo Whitten. And I'll label these Hearing Officer
20 Exhibits 1 through 13 respectively. These are
21 admitted into evidence.

22 Mr. Porter, I'm sorry. Your concern is
23 you have a list of witnesses and you want to find
24 out --

1 MR. PORTER: As far as I know the only
2 individual I know is Shakey Martin and Mike
3 Quigley. Mike Quigley is no longer a Board
4 member. So we're clear, I am going to send
5 everybody else home and tell Mr. Martin to come
6 over. Is that --

7 MR. FLYNN: Yes, I believe so. We've
8 stipulated and the reason was to avoid calling
9 them, so send them home as far as I'm concerned.

10 MR. HALLORAN: Okay. Let's before we do
11 opening, if any, let's take -- sounds like some
12 people need a 15-minute break, including myself.
13 So we'll be back here at, say, 3:10.

14 (Whereupon, a break was taken,
15 after which the following
16 proceedings were had:)

17 MR. HALLORAN: We're back on the record.
18 Back hard at work trying to handle stipulations.
19 Anyone want it take lead as to what we stipulated
20 too.

21 MR. FLYNN: I believe we have a
22 stipulation on Mr. Quigley, Q U I G L E Y, first
23 name Michael; and I guess we can mark that as
24 Exhibit No. 14.

1 MR. HALLORAN: Hearing Officer Exhibit
2 14.

3 MR. FLYNN: We have a stipulation on Dale
4 Hoekstra, H O E K S T R A, although I am going to
5 be calling him as a witness to inquire on a couple
6 matters not covered in his deposition. They will
7 be brief. There has also been a stipulation as to
8 the foundation for two letters authored by
9 Mr. Hoekstra. The first dated January 7th, 2002,
10 directed to Karl Kruse and signed by Mr. Hoekstra.
11 The second letter is dated March 11th, 2002, sent
12 to Kankakee County Board members and signed by
13 Mr. Hoekstra. So his deposition along with those
14 two exhibits, I believe, are being stipulated to
15 with minimal additional examination.

16 MR. HALLORAN: So in a nutshell,
17 Mr. Martin will be testifying today. Mr. Hoekstra
18 in a limited way and that appears to be all today;
19 and then we have Mr. Mueller's two witnesses
20 tomorrow, the Norris family, and the people from
21 the Daley College too, those are Watsons, that's
22 four and Bruce Clark.

23 MR. FLYNN: No. Bruce Clark has been
24 stipulated to. I believe is Jeffery Bruce Clark,

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1 if I'm not mistaken. We also have, I believe, or
2 are close to a stipulation on Mr. Martin. We have

3 offered to stipulate to his deposition testimony
4 with inquiry on a couple new matters. And I
5 think, in general, we may have an agreement, but
6 that may be --

7 MR. PORTER: In specific, we have an
8 agreement and I will cross examine him. So
9 stipulated.

10 MR. HALLORAN: So accepted.

11 MR. FLYNN: So Quigley I think we can
12 mark as 14, Mr. Hoekstra's deposition is Exhibit
13 15; the letter January 7th, No. 16; the letter of.
14 March 11th, No. 17; Mr. Martin's deposition No.
15 18. And I will submit those items at this time.

16 MR. HALLORAN: And I think just for
17 convenience and consistency, I will mark those
18 Hearing Officer exhibits. Mr. Leshen.

19 MR. LESHEN: I know there are objections
20 to relevancy on the grounds -- will be objections
21 on the grounds of relevancy on Mr. Moran and those
22 letters. Do you want to argue that now to make a
23 record on the letters that were drafted and sent
24 by Mr. Hoekstra? Do you want to -- did you want

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1 us to argue that in briefs or post-hearing briefs?

2 MR. HALLORAN: We should orally say now
3 and then you can also argue in the post-hearing
4 briefs. All we have a stipulation to in these

5 letters regarding Hoekstra are the foundation of
6 respective foundations of the letter.

7 MR. LESHEN: Does anyone want to make an
8 objection?

9 MR. HALLORAN: Hold on. I've accepted
10 from Mr. Flynn another few of the Hearing Officer
11 exhibits. And they will be marked. The
12 deposition of Dale -- deposition of Michael
13 Quigley is Hearing Officer Exhibit 14, deposition
14 of Dale Hoekstra is Hearing Officer Exhibit No.
15 15, the deposition of Leonard Martin is No. 16,
16 and the two letters, one dated January 7th, 2002,
17 from Mr. Hoekstra to Karl Kruse , will be Exhibit
18 No. 17, I believe, Hearing Officer Exhibit 17; and
19 the letter dated.
20 March 11th to the Kankakee County Board members
21 from Mr. Hoekstra, will be Hearing Officer Exhibit
22 18. I believe, that's correct.

23 MR. MORAN: Can we make the Martin
24 Hearing Officer Exhibit 16.

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1 MR. HALLORAN: Correct. The Hearing
2 Officer Exhibit No. 16, the Martin. I changed
3 that around a little bit. I had it 18, but it
4 is -- Mr. Martin's exhibit is No. 16 then. Well,
5 I guess before we go too far afield, would the
6 party, I guess, Mr. Moran, would you like to state

7 whatever objections you have to the hearing
8 officer exhibits 17 and 18?

9 MR. PORTER: Mr. Hearing Officer, I have
10 not been tendered a copy of those. I just found
11 one of those.

12 MR. LESHEN: Which one do you have?

13 MR. PORTER: January 7th.

14 MR. LESHEN: I think it was actually in
15 the request to produce.

16 MR. PORTER: I'm sure it was. Thank you.

17 MR. MORAN: Yes. Mr. Hearing Officer,
18 our objections to both Hearing Officer No. 17 and
19 No. 18 relate to the same objection that we have
20 made throughout these proceedings relating to any
21 reference or discussion of the County solid Waste
22 Management plan. Both of these documents contain
23 numerous references to that plan, address the
24 plan, and we object to their substantive admission

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1 for reasons of arguing any points about the plan.
2 In addition, we also object substantively to these
3 letters to the extent that they refer to and
4 relate to the host agreement which also is
5 referred to in various portions of the text of
6 both of these letters.

7 As indicated, our stipulation was that --
8 and Mr. Hoekstra indeed authored these letters and

9 sent them, but with respect to their content
10 relating to the plan and the with respect to their
11 content relating to the host agreement, we would
12 object to their admission for those purposes or
13 with respect to those statements.

14 MR. HALLORAN: Thank you, Mr. Moran.
15 Mr. Porter.

16 MR. PORTER: I have an additional
17 statement. March 11, 2002, letter solely relates
18 to the solid Waste Management plan and I believe
19 the hearing officer has been consistent that such
20 information is irrelevant, inadmissible, not
21 likely to lead to admissible evidence and should
22 not be admitted. Likewise, the January 7th, 2002,
23 plan -- sorry -- letter primarily involves
24 expansion plan but mentions the host agreement

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1 regardless, it is still not relevant.

2 MR. LESHEN: May I respond?

3 MR. HALLORAN: Mr. Leshen.

4 MR. LESHEN: I think that these letters
5 highlight the difficulty in separating a
6 negotiation and prejudgment process that is
7 inextricably intertwined. Waste Management
8 negotiated based upon the assumption that the
9 Kankakee solid Waste Management plan would
10 continue to embrace and support only one landfill

11 within the county. We are pleased that the Board
12 amended its solid waste plan in order to reaffirm
13 the County's long standing position. Direct quote
14 from Mr. Hoekstra.

15 Now, the separation of -- the artificial
16 separation of these documents seems to me is not
17 only prejudicial but as I stated before,
18 artificial. The prejudgment process links the
19 Waste Management plan with the host agreement.
20 There is nothing in either of these letters that
21 talks about the legislative process. They simply
22 state facts that are relevant to the negotiation
23 process. That is why I think these documents are
24 not only admissible but highly probative of the

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1 process that brings us here today.

2 MR. HALLORAN: Okay. I have faith in the
3 Board, and it may be hard to distinguish. There
4 is no really no bright line here. But any
5 reference in these letters, the January 7th letter
6 or the March 11th letter, that pertains solely to
7 the solid Waste Management plan is inadmissible;
8 and I will ask the board to disregard. Any
9 information in these letters regarding the host
10 agreement, I will allow in. So with that ruling,
11 I will accept the Hearing Officer Exhibit Nos. 17
12 and 18.

13 MR. LESHEN: In order to preserve this
14 for the record, you have previously overruled or
15 denied rather offers of proof regarding this
16 issue. I assume that you're ruling will be
17 consistent and I, therefore, ask that it be
18 reserved for the record.

19 MR. HALLORAN: I'll take it as an offer
20 of proof, right. Any references in these letters
21 that are in regard to solid Waste Management plan,
22 I ask the Board to disregard, but I will take it
23 as an offer of proof and they can take a look at
24 it that way. As far as these depositions of

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1 Michael Quigley, Dale Hoekstra, Leonard Martin, I
2 will accept them into evidence premised on the
3 condition of the prior objections that have been
4 made.

5 MR. PORTER: Understood.

6 MR. HALLORAN: And I think the record is
7 clear on that. You gentleman and ladies have been
8 referenced.

9 With that said, I think we have
10 Mr. Leonard Martin was going to take the stand
11 first. Sorry. Mr. Porter, thank you. I read
12 your mind. Let's go with some openings.
13 Mr. Runyon, would you like to give an opening
14 statement, please?

15 MR. RUNYON: Mr. Hearing Officer, I don't
16 know exactly how you want to handle this. I'm
17 going to rely on your judgment on this.
18 Basically, the case I'm going to present is simply
19 a highlighting and an accumulation of the
20 testimony on the record by the argumentation where
21 we cite -- where I cite that the County is not --
22 the applicant is not in compliance with the solid
23 waste plan.

24 The record I have produced is relatively

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1 long and it is carefully documented by page, by
2 line, by volume, by date from the record. So the
3 only way I can fully do that is as to go through
4 it. And if that is the pleasure of the chair, I'd
5 be happy to do that.

6 MR. HALLORAN: Are you going to reserve
7 that for post-hearing or are you going to go ahead
8 and lay it out and lay it out again in the
9 post-hearing briefs.

10 MR. RUNYON: I can lay it out skeletally
11 at this point, I guess, and then in post-hearing
12 certainly, I'll produce the full record as I've
13 put it together.

14 MR. HALLORAN: Now, what you're about to
15 state is what the evidence is going to show. It
16 will not be argumentative?

17 MR. RUNYON: I will not go through the
18 evidence itself. The evidence is documented in
19 this. But I will simply go through the skeletal
20 outline that I've put together.

21 MR. HALLORAN: Proceed. But before you
22 proceed, I went out to my van, it is kind of a
23 traveling office; and I looked through all my
24 documents and I must have recycled the

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1 confirmation fax. And this is going back to your
2 objection regarding not getting the orders. I
3 do recall -- and quite clearly -- because I stayed
4 30 minutes after my departure time to fax all
5 these on.

6 April 17th and I received a confirmation on each
7 and every party involved in this case. So what
8 happened to your order, this is the order changing
9 the hearing -- the telephonic status conference
10 from April 23rd to April 24, I do not know. But
11 with that said, I just want to make the record
12 clear. And anyway, proceed.

13 MR. RUNYON: Thank you.

14 MR. MORAN: If I can interrupt. I
15 apologize for interrupting. But I believe
16 Mr. Runyon in his petition challenged this
17 decision on the basis of whether the proposal was
18 consistent with Criterion 8. With respect to this

19 hearing, or at least my understanding as to the
20 purpose of this hearing is to address issues
21 relating to fundamental fairness and address those
22 issues through argument and through penetration of
23 testimony. If Mr. Runyon only proposes to only
24 give skeletally his argument on whether the

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1 proposal is consistent with Criterion 8, I think
2 we are unnecessarily prolonging part of this
3 hearing, and perhaps he can be simply reminded
4 that he can present all those arguments in briefs
5 to the Board. Maybe this hearing isn't the way to
6 do that.

7 MR. PORTER: Join.

8 MR. RUNYON: Mr. Hearing Officer, I filed
9 my petition with the Board, that petition was, in
10 fact, accepted with the Board; and I have
11 proceeded to prepare my case along the guidelines
12 of the Board using only the testimony that is on
13 the record. I would certainly hope that there was
14 nothing controversial on the record. I have not
15 attempted to go above and beyond it. I am
16 strictly sticking with Criterion 8 which talks
17 about compliance with the County's solid waste
18 plan; and, you know, if it does not satisfy the
19 requirements of the applicant's attorney, I'd be
20 happy to go through the entire document that I've

21 produced here at this point. I think he will find
22 that there is nothing on here that is not in the
23 record but what it is is a highlighting and a
24 consolidation of all of the areas -- the three

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1 areas in particular in which the County and the
2 applicant does not comply with the solid waist
3 waste plan.

4 MR. HALLORAN: We'll see how you start
5 off. If you feel the need to be, I guess,
6 redundant, you may well be and you may want to get
7 it on record or if you want to save it for
8 post-hearing briefs. It sounds like you want to
9 do both. So I guess, depending on the length
10 of -- I assume you're going to read it verbatim.
11 I don't know how much you have. I'll let you
12 start and see where we go, Mr. Runyon, because I
13 want you to have your day at the hearing.

14 MR. RUNYON: Thank you.

15 MR. HALLORAN: Thank you.

16 MR. RUNYON: I appreciate the opportunity
17 to present this case which pleads for denial of
18 the siting application for the proposed Kankakee
19 County landfill, and this is a basis I've already
20 mentioned on the fact that it would appear that
21 the applicant's application does not comply with
22 the County's solid Waste Management plan.

23 The plan particularly in Criterion 8 --
24 now I am not introducing this into the record, and

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1 it is not to be the weight of the evidence. It is
2 the weight of the solid waste plan, about 450
3 pages. And the thing that is important about that
4 is, in reviewing compliance it appears that the
5 applicants witness Ms. Smith out of all 450 pages
6 could only find three criterion by which she
7 judged compliance. One was that there should be
8 only one landfill in the county. No. 2 a host fee
9 agreement and the landfill is the preferred method
10 of waste disposal.

11 The lowest fee agreement is the only one
12 relevant to the respondent's case today.

13 Ms. Smith chose to exclude public involvement in
14 the site selection process, prohibition of site of
15 landfill above or near a ground water recharge
16 zone or a heavily used aquifer, and the applicant
17 failed to prove the existence of a valid host fee
18 agreement prior to the siting hearing.

19 The application failed to provide with
20 the provisions that we've already talked about,
21 the provisions of public involvement over an
22 aquifer and so on. These are all in the record so
23 the following is a review of those three areas of
24 noncompliance, and I'm trying to get through these

1 very quickly. Number 1 failure to comply with a
2 provision that prohibits landfill locations above
3 or near a ground water recharge zone or a heavily
4 utilized water supply aquifer. The applicant
5 failed to present a shred of evidence on the
6 record that proves applicant's plan provides for
7 the provision or the provision of the solid waste
8 county solid Waste Management plan. Applicant's
9 attorney Moran acknowledges this is in his closing
10 argument that the proposed facility is located
11 near or above a major aquifer in that argument.
12 He disputes the plan but says this: But the plan
13 doesn't prohibit location of the facility above a
14 aquifer within the county because if that were the
15 case, the county plan would have been simple
16 because we all heard Cellerion Delemond (phonetic)
17 which is major aquifer in this county underlies
18 the entire county. There wouldn't be a site ever
19 located. The plan would have said no landfills in
20 the county, none.

21 Unfortunately, that argument is a straw
22 argument because that isn't what the prohibition
23 says. The prohibition says that the solid waste
24 plan prohibits the siting of a landfill over an

1 aquifer where there is a recharge area or over a
2 heavily utilized water supply aquifer. So what
3 he's done is broaden the argument to say --

4 MR. HALLORAN: If I may interject.
5 You're kind of getting a little argumentative,
6 Mr. Runyon.

7 MR. RUNYON: Fine. Anyway, the witness
8 Nicodem (phonetic) failed to dispute that the
9 proposed site is one of the least desirable sites
10 in the county for a landfill, and that was brought
11 out in the testimony. He failed to actually in
12 any way refute that. Witness Norris testified
13 that the proposed facility is to be built above
14 the major aquifer that supplies water to the
15 Kankakee metropolitan area, and he's pretty lavish
16 in his statement about that. That was never in
17 any way refuted by the applicant.

18 Witness Norris testified that the
19 proposed facility is located right over the major
20 aquifer which is the major water supply aquifer
21 for the metropolitan area. Once again, never
22 denied by the applicant. Neither of applicant nor
23 the County ever denied that the proposed facility
24 is situated over the major aquifer in violation of

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1 the solid waste plan.

2 I am going to skip pretty much to the end

3 because all it is at this point is a repetition of
4 the various attorneys also citing the fact that
5 the proposed landfill site is over a major
6 aquifer. And simply go to the conclusion which
7 states, the preponderance of the evidence suggests
8 that, in fact, the applicant has failed to comply
9 with the solid waste plan in the area of
10 prohibiting a location of a landfill over a major
11 water supply aquifer.

12 Number 2, public involvement is crucial
13 throughout the landfill site selection process.
14 Once again, never denied by the applicant or the
15 County. And, in fact, what it says specifically
16 is public involvement is crucial throughout the
17 landfill. This is Volume 29, page 73. Through
18 the landfill site selection process solicited from
19 the initial stages of the process throughout solid
20 waste advisory committees, public hearings,.
21 et cetera, local criteria, blah-blah-blah.

22 Now, you might think these words came
23 from a contemporary text on how to site a landfill
24 but, in fact, they do not. These words are on

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1 page 334 on their very own solid Waste Management
2 plan. The applicant failed to produce one shred
3 of evidence that suggested any preliminary input
4 was garnered from the public in site selection or

5 design of a facility as required by the solid
6 waste plan. In fact, what happened was throughout
7 they produced information which tended to
8 corroborate that. Testimony from a Ron Greenburg
9 from Ottawa Township, who said on June 19th of
10 2002, he was first approached by Waste Management
11 and told what they were going to do, not consulted
12 and asked for his opinions or asked for site
13 selection, but told.

14 As a matter of fact, after the closing of
15 the formal hearings during the public comment
16 period, Mr. Addleman entered a record into that --
17 into the record saying -- a letter into the record
18 stating all of the activities that Waste
19 Management had involved itself in and involved the
20 public in to inform the public of what Waste
21 Management was going to do, not to elicit any kind
22 of information about site selection or design of a
23 system. In fact, Attorney Byer warned that that
24 would happen.

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1 We can go throughout this and I got about
2 18 pages of the documentation that substantiates
3 all of this. Once again, not one denial on the
4 part of the applicant. As a consequence, the
5 preponderance of the evidence once again suggests
6 that the applicant and the County are noncompliant

7 with the County's solid waste plan and we would
8 suggest that the application be denied on that
9 basis.

10 Finally, No. 3, prior to granting a
11 siting approval of a host-fee agreement must be
12 established. The -- that's a pretty clear-cut
13 indication. What happened was there was a
14 host-fee agreement, an agreement written and it
15 was approved by the County Board December 11th,
16 2002 or 2001. It was submitted with the initial
17 application. That application -- the application
18 was submitted in March of 2002. However, because
19 that application had to be withdrawn, there was an
20 automatic clause that stipulates what has to
21 happen if there is no application on file as of
22 June 1, 2002. And it is very explicit. It states
23 that the County Board may, in fact, extend or
24 consent to an extension through writing, by

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1 writing. None of the evidence in the hearing will
2 point to the fact that anyone ever extended that
3 agreement. There isn't one shred of evidence.
4 And, in fact, Mr. Moran stated very eloquently
5 himself, Volume 18, page 21, Lines 1 through 8,
6 this agreement was appropriate whether the County
7 or Waste Management Illinois entered into it. The
8 document is here. It speaks for itself. It is

9 clear in all of its details. It seems to me it
10 would be inefficient, inappropriate, not helpful
11 in any way to evaluate, explore that agreement as
12 part of this hearing. That is really the basis of
13 my concern by allowing an inquiry into the host
14 agreement. So Mr. Moran talks about the clarity
15 and the authority of that host-fee agreement.
16 That host-fee agreement automatically
17 self-nullified June the 1st, 2002. A new
18 application, an application was not submitted
19 until August 16, 2002. Therefore, that host-fee
20 agreement was null and void. And, once again, it
21 would indicate that the preponderance of the
22 evidence shows that the applicant and the County
23 were not compliant with the County's own solid
24 Waste Management plan.

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1 As a consequence, we would urge the
2 Pollution Control Board to deny siting based on
3 the fact that -- noncompliance -- there was no
4 compliance with the solid waste plan. And that's
5 all I have in summary.

6 MR. HALLORAN: Thank you, Mr. Runyon. I
7 guess we'll be consistent. Mr. Mueller.

8 MR. MUELLER: I'll be very brief,
9 Mr. Halloran. The evidence we believe will show
10 that the County Board lacked jurisdiction to

11 conduct this siting hearing, and I believe an
12 excellent record has already been made with
13 respect to the failure to properly notify
14 adjoining land owners specifically the Kellers.
15 In addition, the County Board lacked jurisdiction
16 because the applicant failed to comply with all of
17 the prehearing filing requirements, namely, that
18 the applicant failed to file the operating record
19 with the county clerk in such a way as to have the
20 same readily available to the public for
21 inspection.

22 Now, the applicant would argue that they
23 did file the record, but the point is, the
24 evidence will show that that record was up until

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1 the first day of the hearing not available to the
2 public generally; and, therefore, in the
3 alternative to the jurisdictional argument, we
4 would argue that the failure to have that record,
5 the IEPA filings required in Section 39.2(c)
6 available to the public rendered the proceedings
7 fundamentally unfair.

8 Thirdly, in order to expedite this
9 opening statement, I would reiterate and reallege
10 all of the arguments and allegations set forth in
11 a written motion to dismiss on fundamental
12 fairness filed by me on behalf of Mr. Karlock on

13 the first day of the hearing and already part of
14 the record. I think the facts as set forth in
15 that motion speak for themselves. I believe the
16 rulings of the Board and the Hearing Officer, with
17 respect to the inadmissibility of evidence
18 regarding the solid Waste Management plan and its
19 amendments and the inability to call attorneys as
20 witnesses, has emasculated our ability to prove
21 the allegations in that motion, but would
22 reiterate for the record and the Board the fact
23 that it is our enduring position that the solid
24 Waste Management plan and its amendments was the

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1 vehicle used by the County in this case in order
2 to facilitate improper.
3 Ex parte communications with the applicant and
4 that the attorneys for the County were the vehicle
5 and the instruments for most of those ex parte
6 communications. The bulk of those ex parte
7 communications, in fact, were in the nature of
8 Waste Management and the County working together
9 to propose Town & Country in an application for
10 site approval before the City of Kankakee. A good
11 bit of which occurred after this application was,
12 in fact, filed.

13 In addition to that, Mr. Halloran, we
14 believe the evidence is going to show that the

15 decision of the County Board was against the
16 manifest weight of the evidence on Criterion 2,
17 and I'll reserve further argument pending simply
18 briefing that issue for the entire Board.

19 We would adopt Mr. Runyon's argument with
20 regard to Criterion 8 and with regard to

21 Criterion 3, we would adopt the argument of Mike
22 Watson, and in addition, point out that the
23 failure of the Hearing Officer to strike the
24 testimony of Patricia McGar, rendered those

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1 proceedings fundamentally unfair. For all of
2 those reasons, we would ask that the decision of
3 the County granting siting approval with
4 conditions be reversed.

5 MR. HALLORAN: Thank you, Mr. Mueller.
6 Ms. Pohlenz, Mr. Flynn.

7 MR. FLYNN: Good afternoon. On behalf of
8 Mr. Watson, myself and Jennifer Pohlenz have filed
9 a petition to set aside the County Board's
10 decision giving siting approval to Waste
11 Management in its application. The bases for our
12 petition are numerous. Many of which are not
13 before you for consideration. We have contested
14 almost all of the independent criteria, statutory
15 criteria, that the Petitioner did not meet the
16 manifest weight of the evidence. We are not

17 afforded an opportunity to add new evidence to
18 those issues at this time and do not intend to do
19 so. We will rely upon the record produced alone.

20 We have contested the approval also on
21 jurisdiction. We do not believe the Petitioner
22 has met the criteria set forth in 415 ILCS 5/39.2
23 Subparagraph B. However, our record on that issue
24 has been adduced at the siting hearing in terms of

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1 affidavit in terms of testimony of Mr. and
2 Mrs. Keller and additional evidence put forth the.
3 We do not intend to offer any additional evidence
4 on that item at this hearing.

5 We do intend to offer some testimony
6 concerning Ms. Beever McGar and her lack of
7 credentials. At the time of the hearing, she
8 testified that she had obtained a degree from
9 Daley College. It was our contention that she did
10 not. Two personnel from Daley College will be
11 here tomorrow to testify that she did not qualify
12 for a degree. She never applied for a degree nor
13 was she ever granted a degree. We believe that
14 evidence is relevant based on two main issues.
15 First of all, it poisons all of the testimony of
16 this individual. And as a result, prevents of
17 applicant from meeting Criterion No. 3 as it is
18 clearly beyond the manifest weight of the

19 evidence.

20 The second part is the proceeding becomes
21 fundamentally unfair as the applicant, in this
22 case, Waste Management, made representations that
23 they would produce a degree that she did, in fact,
24 have a degree or in the alternative, they agreed

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1 to produce her for cross-examination. A degree
2 was never produced nor was Ms. McGar presented for
3 additional cross-examination. So based on that,
4 that proceeding was also fundamentally unfair. We
5 believe that the unavailability of the record,
6 assuming the record was completely filed, also
7 made the proceedings fundamentally unfair. The
8 record from Mr. Clark will show that in addition
9 to various findings contained in the application,
10 certain boxes of documents concerning the
11 operating record apparently were on file.

12 Only certain county employees were
13 allowed to accept the documents and if anyone
14 requested the document, only certain people were
15 allowed to produce such. This created a situation
16 where people could, and in this case did, request
17 a full record that was apparently supposed to be
18 on file; and these individuals were turned away
19 with a portion or very little of the record.

20 In addition, to Mr. Clark, you're going

21 to have the evidence deposition of Ester Fox and
22 you'll have testimony from some of the Board
23 members indicating that the record made available
24 to them was extremely limited. You're also going

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1 to have some testimony concerning ex parte
2 communications. One of those communications being
3 between Mr. Moran and Ms. Harvey. You're also
4 going to hear some testimony indirectly about that
5 conversation through some of the Board members.
6 You're also going to hear some testimony
7 concerning Board Member Kruse concerning a
8 conversation related to the solid Waste Management
9 plan, which Mr. Mueller pointed out was the
10 County's vehicle for communicating with the
11 applicant in an ex parte fashion.

12 You're also going to hear testimony from
13 Mr. Martin through his deposition that on occasion
14 during the siting application hearings, that he
15 and other Board members would discuss the topics
16 at work being covered at the hearing and these, in
17 fact, are ex parte communications. The purpose of
18 this hearing is to adduce new and additional
19 evidence which is going to be molded based upon
20 your prior rulings as what will and will not be
21 admissible. It is not going to be the complete
22 record as most of the record for this matter has

23 been developed alone.

24 But at the end, we believe that the

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1 record alone will demonstrate adequately that
2 these proceedings were fundamentally unfair and as
3 a result, the approval should be overturned.

4 Thank you.

5 MR. HALLORAN: Thank you Mr. Flynn.

6 Mr. Leshen.

7 MR. LESHEN: My name is Kenneth A. Leshen
8 and along with L. Patrick Power, we are the
9 dually-appointed assistant city attorneys for the
10 City of Kankakee. We would adopt and ratify each
11 of the arguments made, each of the opening
12 statements made and adopt and ratify those as
13 stated.

14 MR. HALLORAN: Thank you, Mr. Leshen.
15 You, Ms. Harvey. I was trying to be consistent
16 Mr. Porter. But, Mr. Moran, would you like to
17 give an opening or --

18 MR. MORAN: Yes. As Mr. Flynn indicated,
19 the purpose of this hearing is to adduce any new
20 evidence that may relate to the issue of
21 fundamental fairness. Fundamental fairness as it
22 relates to either prejudgment of the application
23 by the County, fundamental unfairness as it
24 relates to possible ex parte communications or

1 contacts which lead to some specific demonstrable
2 prejudice in the ultimate outcome of the case.

3 I am not going to address any of issues
4 as they relate to evidence in the record. That's
5 been established before the County below. But
6 with respect to the fundamental fairness issues
7 raised by four of the Petitioners, what we have
8 seen thus far is and what we will not see during
9 the course of this hearing is any evidence that
10 relates to any specific instances where there has
11 been even the suggestion or inference of a
12 prejudgment of the siting application.

13 Moreover, there will be no specific
14 allegations and no evidence presented that will
15 relate to any ex parte communication or contact
16 which in any way prejudiced any of these
17 Petitioners. Indeed, it will be difficult to
18 present any evidence that relates in any way to an
19 ex parte contact or communication that occurred
20 during the period from August 16th of 2002, which
21 is the date of the filing of the application that
22 is at issue here and January 31st of 2003, which
23 is the date the County decided this siting
24 application.

1 Fundamental fairness relates to the
2 ability and opportunity of participants to present
3 whatever case they have, to cross examine
4 witnesses, to obtain and receive impartial rulings
5 on evidence from the hearing officer. In this
6 instance, in these hearings before the hearing
7 officer, before Kankakee County, that is precisely
8 what occurred. We will not hear today any
9 evidence from any of these Petitioners that they
10 were in any way precluded from presenting whatever
11 case they had. Although at times there were
12 representations made specifically by Petitioner
13 Watson about presenting witnesses that were never
14 born out and that were never presented. So we
15 don't have any of that in this case. All we have
16 are a welter of general conclusory allegations
17 about improper communication, prejudice; but
18 what we won't see are the facts to support any of
19 them. And as such, we will develop and present
20 all the arguments with respect to both the
21 criterion and the fundamental fairness arguments
22 in our brief but we will be requesting that the
23 Board both reject these petitions and affirm the
24 decision of the County Board.

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1 MR. HALLORAN: Thank you, Mr. Moran.

2 County.

3 MR. PORTER: Rick Porter for the County.

4 At know time were there any ex parte
5 communications between applicants Waste Management
6 Incorporated of Illinois and the County Board,
7 which is the decision maker, between the date the
8 application was originally filed on March 29, '02,
9 and refiled on August 16, '02, until a decision
10 was rendered on January 31st, 2003.

11 Indeed in opening statements, no -- there
12 was very few mention even of alleged ex parte
13 communication. This applicant was the subject of
14 a thorough and intensive hearing. This
15 application was the subject of intensive hearing
16 in front of the regional planning commission and
17 the County Board from November 18, 2002, through
18 December 6 of 2002. These hearings were overseen
19 by independent hearing officer John Cartin. Each
20 Petitioner of this proceeding was given
21 opportunity to present a case and even allowed
22 cross-examination of the applicant's witnesses.
23 After the Section 39.2 hearings, the public
24 interjectors were also given the opportunity to

1 present public comment 30 days following that
2 hearing. To assure the proceedings were fair to
3 all concerned, the County established a procedure

4 on communications which far exceeded any
5 requirement in the law. The County Board was
6 counseled not to speak with any party after the
7 application was filed and before the decisions was
8 issued. Indeed, the evidence is there were no
9 such communications. The regional planning
10 commission was counseled not to speak with any
11 party after application was filed and before a
12 decision was rendered. And, indeed, there were no
13 such communications. Likewise, even County staff
14 was counseled not to speak with Waste during the
15 relevant time period and there were no such
16 communications.

17 No such communications took place even
18 though County staff merely drafted a
19 recommendation and had no decision-making
20 authority. Accordingly, there was established
21 procedure which far exceeded requirements of the
22 law. In this case, there was no prehearing by the
23 County before the application was filed. As a
24 matter of fact, the application was not even

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1 reviewed by the County before it was filed. In
2 this case, there was truly an independent hearing
3 officer selected rather than a County executive or
4 authority or attorney -- excuse me.

5 The County Board and even the regional

6 planning commission followed their instructions to
7 the T and acted as a judge and provided an
8 impartial hearing to all the parties. The only
9 communications that will be discussed in this
10 hearing are contained in the depositions which
11 have been admitted into evidence already. It
12 involved negotiation of a host agreement, which
13 was executed on December 21, 2001, months before
14 the application was filed. Actually, eight months
15 before the specific application at issue in this
16 case. At no time during the host agreement
17 negotiations did the County ever assure its
18 responsibility to conduct a fair Section 39.2
19 hearing. On the contrary, the host agreement,
20 which is part of the underlying record, explicitly
21 provides that nothing in this agreement shall
22 affect or obviate the County's obligation under
23 415 ILCS 5/39.2 to fairly, objectively review the
24 siting application to be filed by Waste

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1 Management. Indeed, that's exactly what happened
2 in this case.

3 Mr. Mueller's contention in his opening
4 regarding potential communications between Waste
5 counsel and the County's counsel because Waste and
6 County were involved in another proceeding, is
7 facetious to the extreme. Mr. Mueller himself was

8 involved in that proceeding. Clearly he's not
9 suggesting that somehow he was having ex parte
10 communications because he was involved in the same
11 case and there will be no evidence of any such.
12 ex parte communications presented here today.

13 As to the discussions about the operating
14 record and whether it was available, the testimony
15 that will be presented during this hearing will be
16 indeed that the operating record and the entire
17 application was available to the public in a
18 variety of formats. It was available at the
19 County Board offices in the County clerk's office
20 and it was available at four different library
21 locations where copies of the application and the
22 record existed, operating record existed.

23 There is testimony, again, in
24 Mr. Mueller's affidavit that is already in the

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1 record regarding his accommodation. He went there
2 on a specific day in October of 2001 and
3 requested -- sorry, October 2002, and requested
4 the complete application and was allegedly shown
5 only a portion of it and not the operating record.
6 However, the testimony will also be clear that it
7 was in the building and ultimately made available
8 to Mr. Mueller who never returned to seek that
9 operating record again. Furthermore, his own

10 expert, Mr. Morris, reviewed that operating record
11 on November 18, 2002, and there was substantial
12 cross-examination concerning the operating record
13 at the underlying hearing.

14 For all of these reasons we would
15 ultimately ask the Pollution Control Board that
16 the decision that the underlying proceedings were
17 more than fundamentally fair and that the County
18 Board decision be affirmed.

19 MR. HALLORAN: Thank you, Mr. Porter.
20 Before we proceed, I believe it is the City's and
21 Mr. Watson's witness, Mr. Leonard Martin, correct?
22 I see maybe two members of the public out there.
23 Does anybody wish to make a comment or testify at
24 this point in time? Stand up, ma'am. Would you

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1 like to come up and testify or just give public
2 comment.

3 MS. O'DOEL: May I just make a statement?

4 MR. HALLORAN: Could you state your name?

5 Ms. O'DOEL: Patricia O'Doel, O,
6 apostrophe, D O E L.

7 MR. HALLORAN: You can stand up there.

8 MS. O'DOEL: I just wanted to say that I
9 was interested in being a part of the public
10 hearing and did, in fact, participate from
11 beginning to and --

12 MR. HALLORAN: Ms. O'Doel, excuse me. Do
13 you wish to be cross examined? If so, I'm going
14 to put you under oath or is this just a public
15 comment?

16 MS. O'DOEL: It's a comment based on --
17 I'm not sure.

18 MR. HALLORAN: If I can --

19 MS. POHLENZ: Can I explain the
20 difference?

21 MR. HALLORAN: Sure, Ms. Pohlenz.

22

23 (Whereupon, a discussion
24 was had off the record.)

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1 MS. O'DOEL: I just wanted to make a
2 statement that regarding the availability of all
3 of the documentation and the application. I was
4 interested in the hearing and participated, but I
5 did not know there was anything available until
6 the first morning of the hearing; and when it was
7 stated that it was at three or four libraries.
8 And one of the ones listed is Bourbonnais and I'm
9 in there a fair amount, and I did not know it was
10 there. And so as I left between hearings, I did
11 check there and asked questions and eventually we
12 did locate the application; but I was not aware of
13 it by any means ahead of time so I could have

14 looked at it.

15 MR. HALLORAN: Thank you. I see what you
16 mean. Thank you very much. Your public comment
17 will be in the record and the Board will take a
18 look at it and weigh it accordingly. Off the
19 record for a minute.

20 MR. FLYNN: Just one thing before we go
21 off the record?.

22 MR. HALLORAN: Yes.

23 MR. FLYNN: Mr. Moran made a comment that
24 the relevant time period was from August 16th,

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1 2002, until the time the decision was made on
2 January 31st, 2003. Mr. Porter referenced.
3 March 29th as the time the initial application was
4 filed. It would be our contention that the
5 applicable time period that is relevant is March
6 29th, 2002, through January 31st, 2003.

7 MR. HALLORAN: The March 29th date is
8 historical because?

9 MR. FLYNN: That's when the application
10 was first filed.

11 MR. HALLORAN: Is that 2002?

12 MR. FLYNN: March 29, 2002, which is when
13 the initial application was filed and apparently
14 or allegedly never withdrawn. Therefore, any ex
15 parte communications from that date or any

16 communications from that dated up until January
17 31st, 2003, would be ex parte.

18 MR. HALLORAN: Mr. Moran, any comment?

19 MR. MORAN: I have no problem with that.
20 Make it March 29th, 2002, to January 31, 2003. It
21 is interesting you put in other argument and other
22 forums as to what is the appropriate period is.
23 But if Ms. Pohlenz and Mr. Flynn understand that
24 to be the period, I'll go along with that.

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1 MR. HALLORAN: All right.

2 MR. FLYNN: Just so it is clear,.

3 Because --

4 MR. HALLORAN: Is this part of the
5 opening?

6 MR. FLYNN: No, it's not part of the
7 opening. I wanted to avoid objecting during
8 Mr. Moran's opening statement which is why I'm
9 making the statement at this point in time because
10 we believe that time period to be relevant because
11 although it may have been withdrawn, it was never
12 physically removed or taken off file.

13 MR. HALLORAN: Thank you, Mr. Flynn. Off
14 the record for a second.

15 (Whereupon, a discussion
16 was had off the record.)

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1 (Witness duly sworn.)

2 WHEREUPON

3 LEONARD MARTIN

4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MS. POHLENZ:

8 Q. Good afternoon Mr. Martin. My name is
9 Jennifer Sackett Pohlenz. I'm going to be asking
10 you a couple questions that were not covered in
11 your deposition in this matter. I understand that
12 there was a farm bureau luncheon in early January
13 of 2003 and that you were in attendance in this
14 luncheon. The dates have been given to me as
15 January 2003.

16 A. That's correct.

17 Q. Were you in attendance at that farm
18 bureau luncheon?

19 A. Yes, I believe it was the interview club.

20 Q. Who else do you recall was in attendance
21 from the farm bureau?

22 A. I believe many were in attendance.

23 Q. Mr. Kruse?

24 A. Yes, he was there. Ms. Lee, Ms. Bernard,

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1 myself, Mr. Whitten, Mr. Wilson -- Reverend
2 Wilson, Mr. Washington. There may have been
3 others, but I don't recall them right now.

4 Q. My understanding is that Mr. Mike VanMill
5 attended that luncheon --

6 A. Yes, did he.

7 Q. Mike VanMill, just so people here know
8 who he is I'm sure everybody in this room knows
9 who he is. Maybe not people reading the
10 transcript.

11 A. Yes. He's our planning director of the
12 county.

13 Q. My understanding was that at this
14 luncheon, he spoke about Waste Management's
15 proposed landfill?

16 A. I believe he did.

17 Q. And do you remember, is it accurate that
18 he spoke about the proposed landfill expansion as
19 it pertains to land use in the surrounding area,
20 was that a topic?

21 A. I can't exactly remember his subjects,

22 but I believe that did he talk about the landfill.
23 Exactly what he said about the landfill, I can't
24 tell you exactly. I don't recall that.

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1 Q. But he talk about the proposed expansion?

2 A. I believe he did.

3 Q. Did he talk about the existing site as
4 well?

5 A. About the existing? I don't recall. I
6 really don't.

7 Q. Do you remember any other topics that he
8 discussed or spoke about?

9 A. I think he just spoke generally about
10 planning and zoning matters throughout the county,
11 particularly those of interest to the farm
12 community.

13 Q. Do you remember -- was Mike VanMill a
14 designated speaker? Was he scheduled to speak
15 that day or was this sort of something impromptu
16 where he got up and started talking to the group?

17 A. I believe he was a designated speaker.

18 Q. Do you recall for how long he spoke
19 approximately?

20 A. I don't recall exactly, no.

21 Q. In addition, in early January, before the
22 County Board voted on Waste Management's proposal,
23 the vote was January 31st, 2003; is that correct?

24 A. Yes. That was the second time. I

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1 believe, that was the second time, yeah. I

2 believe that's right.

3 Q. There was a planning, zoning, and
4 agricultural committee meeting on January 22nd,
5 2003; is that right?

6 A. I can't tell you exactly. I'd have to
7 check my records.

8 Q. Are you a member of that planning
9 committee?

10 A. I'm a member of that committee.

11 Q. And how many meetings were there in
12 January?

13 A. I couldn't tell you without checking my
14 records. I have the record of all those things at
15 home, but I had no idea you were going to ask me
16 about that.

17 Q. Do you recall whether or not you missed
18 any meetings in January?

19 A. If I what?

20 Q. Missed any planning, zoning meetings?

21 A. I don't believe so.

22 Q. At one of the planning and zoning --
23 agricultural planning meetings at which you were
24 present and we have on tape, an amendment to this

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1 Waste Management was discussed?

2 MR. PORTER: Objection.

3 MR. HALLORAN: Okay. Mr. Porter.

4 MR. PORTER: I was objecting to the
5 question.

6 MR. HALLORAN: Okay. Ms. Pohlenz.

7 MS. POHLENZ: This is just context --
8 this question is to help him recall.

9 MR. HALLORAN: Okay.

10 BY MS. POHLENZ:

11 Q. But an amendment to the solid Waste
12 Management plan was discussed. Do you recall
13 being in a meeting of the planning and zoning,
14 agricultural zoning meeting in which an amendment
15 to the solid Waste Management meeting was
16 discussed in January 2003?

17 MR. MORAN: Objection.

18 MR. HALLORAN: Mr. Moran.

19 MR. MORAN: Relevance.

20 MR. PORTER: Same objection.

21 MS. POHLENZ: I'm just talking about the
22 meeting. County Board Member Martin raised the
23 question during the content of that meeting and it
24 had to do with the application. He admitted

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1 telling Mr. Helston (phonetic) about it during the

2 context of that meeting, but the subject matter
3 they were discussing at the meeting led to this
4 communication, was the solid Waste Management plan
5 amendment in 2003 which was not the solid Waste
6 Management plan as amended at the time that this
7 application was voted on. So, you know, to the
8 extent -- I'm laying the context for the
9 discussion that occurred between Mr. Helston and
10 the rest of the County board.

11 MR. HALLORAN: I'll allow a little
12 latitude if you are just going to lay a foundation
13 for context. The objections are overruled.

14 BY THE WITNESS:

15 A. I would have to ask you to restate the
16 question. This play has got me confused.

17 Q. Let me try to reask it. On January
18 22nd, 2003, we have a tape of a planning zoning
19 and agricultural meeting, and on that tape, there
20 is a discussion to an amendment of the solid Waste
21 Management plan discussed. It appears you were
22 present at that meeting.

23 A. Probably. If it -- yes, I would have
24 been there.

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1 Q. And do you recall that the topic of
2 conversation was the solid Waste Management plan?

3 A. No.

4 MR. PORTER: Same objection.

5 MR. HALLORAN: Hold on, Mr. Martin.

6 Mr. Porter, can you --

7 MR. PORTER: He can answer. In light of
8 his answer, I'll withdraw the objection.

9 MR. HALLORAN: Thank you.

10 BY THE WITNESS:

11 A. I can't recall right off the top of my
12 head. I really don't. There were other -- there
13 were meetings that we probably discussed this, but
14 the dates and so forth I can't tell you. I'd have
15 to go back to my records, and I keep -- not total
16 records, but I keep my minutes from the various
17 meetings that we have.

18 Q. Do you recall at one of the planning and
19 zoning committee meetings asking a question --
20 Strike that.

21 MR. HALLORAN: Ms. Pohlenz, could you
22 speak up a little. Mr. Leshen and I are trying to
23 hear.

24 BY MS. POHLENZ:

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1 Q. Mr. Martin, did Mr. Helston represent the
2 County Board in discussions involving the Waste
3 Management plan?

4 MR. PORTER: Objection.

5 MR. HALLORAN: I am having trouble

6 hearing. Could you move the mic closer.

7 MS. POHLENZ: This is as close as it
8 gets.

9 BY MS. POHLENZ:

10 Q. Is it right that Mr. Helston was advising
11 the County Board with respect to an amendment of
12 the solid Waste Management plan in 2003?

13 MR. PORTER: Same objection.

14 MR. HALLORAN: And that is, Mr. Porter?

15 MR. PORTER: Irrelevant.

16 MR. HALLORAN: Ms. Pohlenz.

17 MS. POHLENZ: Same. Without going back
18 and playing the tape for this witness, I'm just
19 trying to get to the question concerning the
20 communication that I heard between him and
21 Mr. Helston. If I can do it through this
22 question, if he recalls that occurring, then I can
23 get to the next question, if not. I'll go out and
24 get the tape.

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1 MR. HALLORAN: Very well. Objection
2 overruled.

3 BY THE WITNESS:

4 A. I believe that Mr. Helston was
5 representing us when we had discussions, but
6 remember what date the discussions was. He was at
7 a number of our meetings, but I can't tell you

8 which ones and I can't tell you exactly what was
9 discussed at any of these meetings; and oftentimes
10 it was open meetings.

11 Q. Do you recall asking Mr. Helston a
12 question at one of the planning zoning and
13 agricultural committee meetings concerning whether
14 or not the same aquifer that underlies the Town &
15 Country landfill was the same aquifer as Waste
16 Management proposed expansion?

17 MR. MORAN: Objection.

18 MR. HALLORAN: Mr. Moran?

19 MR. MORAN: Relevance.

20 MR. HALLORAN: We are getting pretty far
21 into the solid Waste Management Plan aren't we,
22 Ms. Pohlenz? It is going beyond context.

23 MS. POHLENZ: I didn't ask about the
24 solid Waste Management plan. I asked about a

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1 conversation between the County Board member
2 Martin and Mr. Helston concerning --

3 MR. HALLORAN: County Board Member Martin
4 and Dan Helston?

5 MS. POHLENZ: Yes. Who was not
6 representing the County Board at that time.

7 MR. HALLORAN: You're kind of swallowing
8 your words. The County Board at the time of the
9 siting application was represented by Ms. Harvey.

10 The county staff was represented by Mr. Helston
11 and Mr. Porter.

12 MR. HALLORAN: Correct.

13 MS. POHLENZ: Ex parte communication
14 rules say that the County Board, although it can
15 confer with its own counsel, should -- since the
16 county staff is a participant of this proceeding,
17 so this will show that conversation with the
18 applicant is an ex parte communication.

19 MR. PORTER: These communications arose
20 in the context of the solid Waste Management plan.

21 MR. HALLORAN: I agree. Based on the
22 question -- I know you're shaking your head, but
23 I'll ask Ms. Pohlenz. It is hard to -- anyway. I
24 agree with Mr. Porter and I assume Mr. Moran has

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1 the same objection. And I think you are getting
2 into the amendment or the solid Waste Management
3 plan which we cannot do.

4 MR. PORTER: May I be heard briefly on
5 that point? This is the pending issue--

6 MR. HALLORAN: Mr. Power, this is kind of
7 an anomaly. I know you're working with the mics,
8 I'll let you go ahead. Mr. Leshen is really
9 taking the lead.

10 MR. LESHEN: The pending issue at that
11 time for consideration by the Board was the

12 argument with regard to the underlying aquifer.
13 That clearly was the subject of -- the Board was
14 considering or should have been considering and
15 would have been outside the amvet for ex parte
16 communications.

17 MR. HALLORAN: Well that is fine, but
18 anything that even touches on the solid Waste
19 Management plan or the amendment thereto, I've
20 already ruled, the Board has ruled that it is
21 undiscoverable.

22 MR. POWER: The question related to the
23 underlying aquifer and that subject matter was
24 under consideration or should have been under

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1 consideration at that time and beyond the amvet of
2 the third-party consultation.

3 MR. HALLORAN: I'm going to sustain
4 Mr. Moran's and Mr. Porter's objection. However,
5 Ms. Pohlenz, I'll allow you to go forward under an
6 offer of proof. So if you want to restate the
7 question to Mr. Martin as an offer of proof.

8 BY MS. POHLENZ:

9 Q. Mr. Martin, with respect to the County --
10 the tapes -- Strike that.

11 Are you aware that audiotapes are taken
12 of county board meetings and committee meetings?

13 A. Say that again.

14 Q. Audiotapes, cassette tapes, are made of
15 county board meetings?

16 A. Yes.

17 Q. And with respect to the tapes from the
18 planning, zoning and agricultural committee
19 meetings in January of 2003, would you have any
20 issue with respect to the accuracy of those tapes
21 and recording any commentary you made during the
22 course of that meeting or with respect to the
23 recording any questions you may have asked ?

24 A. I would have no --

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1 MR. PORTER: Objection, foundation. This
2 witness has not heard those tapes. How can he
3 testify?

4 MR. MORAN: Is this the offer of proof?

5 MR. HALLORAN: Is this the offer of
6 proof?

7 MR. FLYNN: No. I think the.

8 MR. MORAN: This is not an offer of
9 proof?

10 MR. HALLORAN: I said you can go ahead
11 and restate the question as an offer of proof.
12 Then you went on a tangent of the tapes.

13 MS. POHLENZ: Well the tapes would be
14 part of the offer of proof because the discussion
15 is within those tapes, so that is why I was asking

16 him about the tapes initially.

17 MR. HALLORAN: Mr. Porter, I'll overrule
18 your objection. Mr. Martin, you may answer; and
19 this is not under an offer of proof. I guess
20 Ms. Pohlenz questions is regarding the committee
21 meetings are taped, correct?

22 MS. POHLENZ: Would you have --

23 BY THE WITNESS:

24 A. I would have no argument with the tapes.

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1 The tapes as far as I'm concerned would be
2 accurate.

3 MS. POHLENZ: That's all I have.

4 MR. HALLORAN: Thanks, Ms. Pohlenz.

5 MR. LESHEN: I have no questions.

6 MR. HALLORAN: Mr. Porter.

7 EXAMINATION

8 BY MR. PORTER:

9 Q. Regarding the farm bureau meeting, can
10 you recall a mention by the Kankakee State's
11 attorney that the County Board should base its
12 decision only upon the evidence that was submitted
13 at the Section 39.2 proceeding?

14 A. Say that again.

15 Q. Do you recall being counseled by the
16 State's attorney to base your decision regarding
17 the landfill application only upon the evidence

18 that was submitted at the hearing, correct?

19 A. Right.

20 Q. And did you do that?

21 A. Yes.

22 MR. PORTER: Nothing further.

23 MR. HALLORAN: Thank you. Mr. Moran.

24 MR. MORAN: No questions.

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1 MR. HALLORAN: Any redirect of

2 Mr. Martin?

3 MS. POHLENZ: I have nothing further for
4 questioning of Mr. Martin. Thank you.

5 MR. HALLORAN: Mr. Martin, you may step
6 down. Thank you for your time.

7 THE WITNESS: Thank you. I guess we have
8 Mr. -- who do we have?

9 MR. FLYNN: Mr. Hoekstra.

10 MR. HALLORAN: Mr. Hoekstra, step up and
11 raise your behind please.

12 (Witness duly sworn.)

13 WHEREUPON:

14 DALE HOEKSTRA,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 EXAMINATION

18 BY MR. FLYNN:

19 Q. Mr. Hoekstra, do you know Mr. Quigley?

20 A. Yes.

21 Q. You understand that he's a board member
22 for the board of the County of Kankakee?

23 A. He was.

24 Q. You met with him on prior occasions?

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1 A. Yes.

2 Q. Was he present with the group from the
3 County Board that visited the Waste Management
4 facility at Sutler Still?

5 A. I do not recall if he was present at that
6 time.

7 Q. Do you recall him ever appearing at
8 Sutler Still for a meeting between the County of
9 Kankakee and Waste Management?

10 A. I don't recall if he was part of that
11 group or not.

12 Q. How many times have you ever had
13 discussions with Mr. Quigley? What I'm getting at
14 is that on more than a half dozen occasions you've
15 had conversations with him?

16 A. It could be in the range of a half dozen
17 or so, yeah.

18 Q. You know who he is when I talk about
19 Mr. Quigley, correct?

20 A. Yes.

21 Q. And he knows who you are, correct?

22 A. Yes.

23 Q. Now, I'm going to have the reporter mark
24 these as Watson Exhibit No. 1 and No. 2 with No. 1

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1 being a phone invoice from Mr. Hoekstra and No. 2
2 being an invoice for Mr. Addleman.

3 (Whereupon, Exhibit Nos. 1-2
4 were marked for identification.)

5 MR. HALLORAN: Thanks.

6 MR. FLYNN: That's the only copy I have
7 at this time and I want the witness to use them.

8 MR. HALLORAN: Okay.

9 BY MR. FLYNN:

10 Q. Showing you what's been marked as Watson
11 Exhibit No. 1, that's a printout from January
12 31st, for your cell phone, correct.

13 A. Yes.

14 Q. And that's also what we had marked as
15 Exhibit No. 1 at your deposition?

16 A. Yes.

17 Q. An then No. 2, Watson Exhibit No. 2 that
18 also appears to be a printout of a cell phone bill
19 for January 31st, 2003, correct?

20 A. Apparently, it is.

21 Q. There is a phone number at the top?

22 A. Yes.

23 Q. That phone number is Mr. Addleman's phone

24 number or do you recognize it as being

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1 Mr. Addleman's phone number?

2 A. I'd have to check to see if it is his
3 phone number. I'm not sure.

4 Q. Is it your testimony that you don't know
5 Mr. Addleman's phone number?

6 A. No, I don't know his phone number by
7 heart.

8 Q. Do you have a Rolodex that you can check?

9 A. I don't have a Rolodex with me, no.

10 Q. Do you have any way to verify whether or
11 not that is Mr. Addleman's cell phone number?

12 MR. MORAN: We'll stipulate that is
13 Mr. Addleman's cell phone number.

14 MR. HALLORAN: Thank you, Mr. Moran. So
15 stipulated.

16 MR. MORAN: It is Addleman even they got
17 me mispronouncing his name.

18 BY MR. FLYNN:

19 Q. With regards to Watson Exhibit No. 2, it
20 indicates at the top billing period January 27
21 through February 26th, 2003, correct?

22 A. To Mr. Addleman's?

23 Q. Yes, sir.

24 A. January 27th to February 26th, 2003,

1 period; that's correct.

2 Q. With regards to Watson Exhibit No. 1,
3 which is for your cell phone number, is there any
4 indication as to what year it is?

5 A. You're asking about my phone invoice what
6 year it is?

7 Q. Correct.

8 A. No.

9 Q. Are you the one who provided this
10 document for discovery in this case, that being
11 Watson Exhibit No. 1?

12 A. No. I believe it was provided through
13 our region office, our area office.

14 Q. This record would have been on file at
15 that office?

16 A. That is correct.

17 Q. You also have another cell phone,
18 correct?

19 A. I used to have another cell phone, that's
20 correct.

21 Q. You had another cell phone from the time
22 of March of 2002 through January 31st, 2003, with
23 a cell phone number (630) 305-7820?

24 A. No, incorrect.

1 Q. When was (630) 305-7820 your phone
2 number?

3 A. It was not. It was (312) 305-7820.

4 Q. When was (312)305-7820 your phone number?

5 A. I had that cell phone before I had the
6 (630)334-7820 portable phone. That particular
7 phone, that you're referring to the 312 number,
8 was my cell phone for quite a few years prior to
9 the (630) 334-7820 number and it was still in
10 existence for a period of time during the
11 existence of the (630) 334-7820, if you stick with
12 me, and is a permanently-mounted telephone in my
13 truck.

14 Q. Is (312) 305-7820 an accurate number for
15 March of 2002 through January 31st, 2003?

16 A. Yes, I believe it was still active.

17 Q. And the truck that you're talking about,
18 is that your company vehicle?

19 A. That is correct.

20 Q. That's a vehicle that you used while
21 conducting business on behalf of your employer,
22 correct?

23 A. Correct.

24 Q. Have you made a search for your phone

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1 records for (312) 305-7820 for January 31st 2003?

2 A. No, I have not.

3 Q. Have you been asked to make a search for
4 your phone records for that time period?

5 A. Not for that -- that phone is set up so
6 that it automatically gives the caller the.
7 (630) 334-7820 number, a message to call me at
8 that phone.

9 Q. Do you get bills for (312) 305-7820
10 phone?

11 A. Yes.

12 Q. You do receive calls on that phone,
13 correct?

14 A. I think -- I think they come in very rare
15 because, again, it automatically goes to a message
16 and tells the caller to contact me at.
17 (630) 334-7820.

18 Q. My question is that phone was capable of
19 receiving phone calls, correct?

20 A. Sure.

21 Q. That phone is capable of making phone
22 calls, right?

23 A. Sure. During that time period, yes.

24 Q. And although as you indicate limited, you

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1 have, during that time, received phone calls and
2 have made phone calls during that time on that
3 phone?

4 A. I can't testify as to whether I have or

5 not, I don't believe so. I use the other phone
6 primarily for business purposes and, again, as I
7 stated, that phone is set up for the individual
8 who calls on that number to call me at (630)
9 334-7820.

10 Q. I want you to take a look at Watson
11 Exhibit No. 2. And if you go down to, I believe,
12 it would be identified as phone call No. 61,
13 January 31st 3:22, p.m. This would indicate that
14 a call was made from Mr. Addleman's telephone to
15 your phone (630) 334-7820, correct?

16 A. Correct.

17 Q. Now, if you look at Watson Exhibit No. 1,
18 which is your phone bill for the same time, 3:22,
19 would I be correct that there is no corresponding
20 incoming call for that time on your invoice?

21 A. No, it shows 3:30 p.m.

22 Q. I asked you about 3:22, which is when the
23 call was made from Mr. Addleman's phone?

24 A. No, there is no 3:22 on this one.

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1 Q. If we go back to Mr. Addleman's telephone
2 bill, the phone call we just talked about, 3:22,
3 it has a duration of 1 minute and 6 seconds,
4 correct?

5 A. That is correct.

6 Q. Now, if we go back to your cell phone at,

7 approximately, 12:12 p.m., you made a call to
8 Mr. Addleman's cell phone at (630) 816-932,
9 correct?

10 A. That is correct.

11 Q. And that phone call was for one minute in
12 duration, correct?

13 A. Yes.

14 Q. And if we go to Mr. Addleman's telephone
15 bill, Watson Exhibit No. 2 and we go down to?
16 12:12 p.m. there is no correlating receipt of that
17 phone call on his bill; is that correct?

18 A. There is a 12:12 p.m. notification that
19 says incoming, which is typically how most phones
20 receive. So there is a correlation there of an
21 incoming call to Mr. Addleman's phone.

22 Q. Is there any indication what number came
23 from?

24 A. There is no number on here. I'm not an

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1 expert on phone -- on cellular communications.

2 Q. With regards to these other calls, do you
3 know whether or not the number -- Strike that. Do
4 you know whether or not the numbers listed for any
5 of these phone calls are actually calls dialed out
6 or are they -- are some of them incoming calls, if
7 you know?

8 MR. MORAN: Objection. Foundation,

9 relevance, now we're getting to the question of
10 the accuracy of phone records between two
11 employees of the same company. I don't know where
12 this is going or how this in any way relates to
13 some form of.

14 Ex parte communication.

15 MR. PORTER: I join in the relevancy
16 objections.

17 MR. HALLORAN: I'm waiting, Mr. Flynn, to
18 see where this is going. Your response.

19 MR. FLYNN: There is one phone call that
20 apparently -- these records are records produced
21 by Waste Management as being the phone records and
22 complete phone records of Mr. Addleman and Mr.
23 Hoekstra for January 31st, 2003. There is one
24 call from Mr. Addleman's cell phone that does not

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1 correlate with the bill from Mr. Hoekstra's cell
2 phone with the two call -- with the two phone
3 numbers matching up. That phone call is not on
4 here. So I think that brings into question the
5 accuracy and completeness of the phone records we
6 were presented with.

7 MR. PORTER: Again, how is that relevant?

8 MR. MORAN: Well, assuming that is the
9 case, these are the records produced by the phone
10 company. This witness is to give opinions as to

11 why there apparently is some inconsistency? It
12 may be that the timing on both of these phones is
13 not consistent.

14 MR. HALLORAN: How many questions do you
15 have left?

16 MR. FLYNN: Just a couple.

17 MR. HALLORAN: I'll allow a little
18 latitude. Objection is overruled.

19 BY MR. FLYNN:

20 Q. My question that is pending is whether or
21 not all the phone numbers listed on Exhibit No. 2,
22 whether or not they are all outgoing calls or
23 whether there is a combination between outgoing
24 and incoming, if you know?

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1 A. I don't really know how to differentiate
2 between what is incoming and outgoing on a Nextel
3 telephone. I don't own a Nextel.

4 Q. Do you know on Watson Exhibit No. 1 any
5 of the numbers for the Star 86 reference?

6 A. Star 86 is a feature on the Vorizon
7 cellular telephone that allows you to retrieve
8 messages.

9 Q. That would be calls placed by you to your
10 voice mail?

11 A. That is correct.

12 Q. What is VM out dial?

13 A. I'm sorry?

14 Q. The reference on Watson Exhibit No. 1,
15 second from the last one it is VM out dial?

16 A. I have no idea. You have to call
17 Vorizon.

18 Q. Does your phone have the option of
19 returning a call while you're in the voice mail
20 feature?

21 A. I'm not sure I understand the question.

22 Q. If you call up voice mail to get your
23 messages and you have a message from someone, can
24 you dial that number and talk to that person while

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1 still in the voice mail?

2 A. Yes. It does have. That was most
3 recently set up.

4 Q. Do you know when that was set up?

5 A. No, that was a Vorizon change.

6 Q. Do you know whether or not the VM outdial
7 refers to that scenario?

8 A. Don't know.

9 MR. FLYNN: That's all I have.

10 MR. PORTER: I'd just renew my objections
11 to strike the testimony.

12 MR. HALLORAN: Objection overruled.

13 MR. PORTER: May I approach the witness?

14 MR. HALLORAN: Yes.

15

EXAMINATION

16 BY MR. PORTER:

17 Q. Mr. Hoekstra, you attended a January 31,
18 2003, meeting, correct.

19 A. Yes.

20 Q. Isn't it true that that meeting concluded
21 at 11:17 a.m.?

22 A. Yes, I believe it did.

23 MR. PORTER: Nothing further.

24 MR. FLYNN: One follow-up question.

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1 MR. HALLORAN: Mr. Moran.

2 EXAMINATION

3 BY MR. MORAN:

4 Q. Mr. Hoekstra, the phone that you have in
5 your truck, have you talked to any human being on
6 the other end of a line from a phone in that truck
7 at any time since January 1st of this year?

8 A. I think I talked to my wife once on that
9 phone.

10 Q. That's been since January 1st of 2003?

11 A. Yeah, that I believe is the only call I
12 ever made.

13 Q. The only time that you ever talked to
14 another human being that was on the other end of
15 the line using that phone?

16 A. Yes, sir.

17 MR. MORAN: Nothing further.

18 MR. HALLORAN: Mr. Leshen.

19 MR. LESHEN: Nothing.

20 MR. HALLORAN: Mr. Flynn.

21 FURTHER EXAMINATION

22 BY MR. FLYNN:

23 Q. Two questions. Are you absolutely
24 positive that you have not spoken to anyone on

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1 your phone in your truck during the month of
2 January 2003 other than your wife?

3 A. During the month of January 2003?

4 Q. Correct.

5 A. I am certainly confident that I don't
6 have any phone calls on that line during that
7 time.

8 Q. Is it possible that you have phone calls
9 on that line from someone other than your wife
10 during January 2003?

11 A. I don't believe so. All the phones are
12 forwarded.

13 Q. Now, you indicated at your deposition
14 that you did not know what time the board meeting
15 started or ended on January 31st, 2003. Had you
16 reviewed something or spoken to somebody that
17 reviewed your -- refreshed your recollection?

18 A. I don't think that was one of the items

19 discussed at the deposition, what time it started
20 and what time it ended.

21 Q. You don't recall being asked those
22 questions and giving answers?

23 A. No, I don't.

24 Q. It's your testimony here today that the

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1 meeting ending at 11:17, that's something you
2 remember; and had you been asked the question as
3 to what time that meeting ended on January 31st,
4 2003, that would have been the answer you gave?

5 MS. POHLENZ: Objection. That's not what
6 he said.

7 MR. HALLORAN: Sorry?

8 MR. PORTER: Objection.

9 MR. HALLORAN: Mr. Moran.

10 MR. MORAN: I'll object to the form of
11 the question and it mischaracterizes what this
12 witness testified to.

13 MR. HALLORAN: Mr. Porter.

14 MR. PORTER: I need it read back.

15 MR. HALLORAN: We can read it back and
16 you may have to rephrase it.

17 (Whereupon, the record
18 was read as requested.)

19 MR. PORTER: Object, improper
20 impeachment.

21 MR. FLYNN: I'm not trying to he impeach
22 the witness.

23 MR. HALLORAN: Let's try to rephrase the
24 question.

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1 BY MR. FLYNN:

2 Q. Sir, you just give testimony here today
3 that the meeting on January 31st, 2003, ended at
4 11:17 a.m.?

5 A. Correct.

6 Q. And that is something that you remember,
7 correct?

8 A. That is correct.

9 Q. Had you been asked that question at your
10 deposition in terms of what time the meeting on
11 January 31st ended, you would have answered
12 approximately 11:17 a.m.?

13 A. Would have been roughly.

14 MR. FLYNN: That's all I have.

15 MR. HALLORAN: Mr. Porter, recross?

16 MR. PORTER: No thank you.

17 MR. HALLORAN: Mr. Moran?

18 MR. MORAN: Nothing.

19 MR. HALLORAN: Mr. Leshen?

20 MR. LESHEN: No, sir.

21 MR. HALLORAN: Mr. Hoekstra, you may step
22 down. Thank you very much. It looks like we have

23 one member of the public and -- actually two. Any
24 public comment?

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1 AUDIENCE MEMBERS: (Shaking head.)

2 MR. HALLORAN: Now, Mr. Flynn, I see you
3 have the Watson's Exhibit No. 1 and 2, are you
4 going to offer them into evidence?

5 MR. FLYNN: They are being offered into
6 evidence.

7 MR. HALLORAN: Mr. Porter, Mr. Moran, any
8 objections to Watson's Exhibit No. 1 and/or No. 2
9 being offered into evidence?

10 MR. MORAN: No.

11 MR. HALLORAN: No objection by Mr. Moran.

12 MR. PORTER: I object to relevancy.

13 MR. HALLORAN: Objection overruled.

14 Watson's Exhibit No. 1 and 2 admitted into
15 evidence. We can go off the record for a second.

16 (Whereupon, a discussion
17 was had off the record.)

18 MR. HALLORAN: We'll see everybody back
19 here at 5:30.

20 (Whereupon, a break was taken,
21 after which the following
22 proceedings were had:)

23 MR. HALLORAN: We're back on the record
24 after about a 25 minute break. Mr. Stan James

1 graciously agreed to come in and testify. He's
2 Watson's.

3 (Witness duly sworn.)

4 WHEREUPON

5 STANLEY JAMES

6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. FLYNN:

10 Q. Would you state your name and spell your
11 last name for the record, please?

12 A. Last name James, Stanley James.

13 Q. J A M E S?

14 A. Correct.

15 Q. First name Stanley

16 A. Stanley.

17 Q. Do you know Afrin Gill?

18 A. Yes.

19 Q. Is Afrin Gill a member of the Kankakee
20 County Board?

21 A. No. He was an employee, I believe.

22 Q. Are you a member of the Board?

23 A. Yes.

24 Q. Have you had conversations with Mr. Gill

1 from time to time?

2 A. Like in regards to what?

3 Q. Anything?

4 A. Oh, yeah.

5 Q. During any of those conversations, did
6 Mr. Gill ever tell you that Waste Management paid
7 for a trip he took to Hawaii?

8 A. Yes.

9 Q. When did that conversation take place?

10 A. It has been about 10 years ago.

11 MR. PORTER: Object to relevancy. Move
12 to strike.

13 MR. HALLORAN: Objection, overruled.

14 I'll allow it.

15 BY MR. FLYNN:

16 Q. Are you aware that Mr. Gill took a recent
17 trip to Hawaii?

18 A. No, I'm not.

19 Q. Are you aware of any gifts or monies
20 received by County employees from Waste
21 Management?

22 A. Not that I'm aware of.

23 Q. Only thing that you're aware of is a trip
24 to Hawaii Mr. Gill indicated he received 10 years

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1 ago?

2 A. Correct.

3 Q. Can you tell me why he received that
4 trip, if you know?

5 A. Well, that's when we were -- I was part
6 of a committee at large on -- in regards to our
7 landfill and he was chairing the thing, and then
8 he mentioned we couldn't have a meeting because he
9 was going to Hawaii. And I asked him pretty good
10 trip. How are you getting there and who sponsored
11 it; and he told me Waste Management. And that was
12 the total conversation.

13 Q. At that point in time, both yourself and
14 Mr. Gill were sitting on a committee that was
15 considering issues related to the existing
16 landfill?

17 A. Correct.

18 MR. PORTER: Objection.

19 MR. HALLORAN: Mr. Porter.

20 MR. PORTER: Irrelevant for a variety of
21 issues. Issues 10 years ago have no relevancy.
22 Two, Mr. Gill Afrin Gill was not a decision maker
23 in this process. Therefore, whether or not he
24 ever received a gift 10 years ago from Waste

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1 Management is clearly irrelevant.

2 MR. HALLORAN: I'll let the answer stand,
3 but I'll entertain no more questions regarding
4 things that happened 10 years ago.

5 BY MR. FLYNN:

6 Q. When did your conversation with Mr. Gill
7 take place?

8 A. At one of the meetings.

9 Q. And when did that meeting take place?

10 A. Now you're really pushing me.

11 Q. Approximately.

12 A. Time of day you're talking

13 Q. No. Time in terms of what year it took
14 place.

15 A. I don't have my notes here, but I have
16 all the records from when we had those meetings;
17 but I want to say it was an evening meeting. It
18 was every bit of 10 years ago.

19 Q. Do you recall whether or not those
20 meetings related to negotiation of a host
21 agreement?

22 A. No, I'm not. I can't tell you what the
23 meetings were about. That's when we had passed --
24 there was a law that had come into play and

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1 Winsleman was the judge at the time and they had
2 to appoint some committees to review how they were
3 going to handle this landfill situation because of
4 this new law. There was a committee made up of
5 myself and several others. And then there was a
6 committee made up of other neighbors, and then

7 Afrin Gill oversaw all of that and he correlated
8 everything he heard and brought it back to the
9 County Board meeting. At the time I don't recall
10 the discussion other than that.

11 MR. FLYNN: That's it.

12 MR. HALLORAN: Thank you, Mr. Flynn.

13 Mr. Porter.

14 MR. PORTER: (Shaking head.)

15 MR. HALLORAN: Mr. Moran.

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1 EXAMINATION

2 BY MR. MORAN:

3 Q. Mr. James, have you ever told a story
4 about Waste Management supposedly ever paying for
5 a trip for Mr. Gill to Hawaii to anyone else
6 before today?

7 A. Yes.

8 Q. And who did you tell it to?

9 A. Several people.
10 Q. Anybody on the County board?
11 A. Yep.
12 Q. Who?
13 A. Chuck Rushe when he was on it.
14 Q. Chuck who?
15 A. Rushe.
16 Q. Chuck Rushe was on the county board?
17 A. Yes.
18 Q. And you told him?
19 A. Uh-huh.
20 Q. Who else did you tell?
21 A. Several people.
22 Q. Other county board members?
23 A. I don't recall that.
24 MR. HALLORAN: Could you speak up?

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1 BY THE WITNESS:
2 A. I don't recall for sure if the
3 conversation came up. This has been some time
4 ago.
5 Q. Did you believe at that time there was
6 anything inappropriate about this alleged payment
7 for a trip to Mr. Gill to Hawaii?
8 A. I thought it was unusual.
9 Q. Did you believe it was inappropriate?
10 A. Yeah, I told him so.

11 Q. Did you tell anybody else you thought it
12 was inappropriate?

13 A. Yes.

14 Q. Other than Mr. Rushe?

15 A. Probably.

16 Q. Do you have any recollection as you sit
17 here whether you did or are you just speculating
18 now?

19 MR. FLYNN: Objection, argumentative,
20 asked and answered, and form.

21 MR. HALLORAN: Mr. Moran, can you
22 rephrase that, please.

23 BY MR. MORAN:

24 Q. Mr. James, did you ever tell the Kankakee

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1 State's attorney or anyone else that you thought
2 that this was inappropriate?

3 A. No.

4 Q. You didn't tell any law enforcement
5 authorities, did you?

6 A. No.

7 Q. Did you ever have any discussion with
8 Mr. Gill about this alleged trip after this
9 discussion 10 years ago when he first told you
10 about it?

11 A. Nope.

12 MR. MORAN: I have nothing else.

13 MR. HALLORAN: Mr. Leshen?

14 MR. LESHEN: No, sir.

15 MR. HALLORAN: Thank you. Mr. Flynn, any
16 redirect?

17 MR. FLYNN: No.

18 MR. HALLORAN: You may step down,
19 Mr. James. Thank you very much.

20 (Witness excused.)

21 MR. HALLORAN: With that, last witness I
22 think we're going to conclude the hearing for
23 today.

24 MR. FLYNN: If I may just one

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1 housekeeping matter.

2 MR. HALLORAN: Sure.

3 MR. FLYNN: In the Answers to
4 Interrogatories filed by Waste Management, Answer
5 to Interrogatory No. 4 they reference a
6 conversation between Mr. Moran and Ms. Harvey and
7 this court, through various rulings have barred us
8 from calling Ms. Moran or Ms. Harvey to lay a
9 foundation that this conversation took place; and
10 at this time, I would like to offer the Answers to
11 Interrogatories as evidence that the conversation
12 took place.

13 MR. HALLORAN: The county or Waste
14 Management any objection?

15 MR. MORAN: Well, f there is going to be
16 a submission in the Answers to Interrogatories, I
17 suspect there ought to be for sake of completeness
18 the affidavit that was attached to the County's
19 pleading, that being the affidavit of Ms. Harvey
20 in which this conversation was further described.
21 I mean, other than the objections, we have for the
22 obvious reasons, I'm not going to belay the votes.
23 But for the sake of completeness, if you are
24 inclined to allow this in as an offer of proof or

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1 otherwise, for the sake of completeness we should
2 include that affidavit.

3 MR. PORTER: Well, this is nothing but a
4 discovery response. This is not appropriate for
5 the record. The affidavit Mr. Moran is speaking
6 of is attached to a pleading. Therefore, is in
7 the record.

8 MR. HALLORAN: I agree. Mr. Flynn.

9 MR. FLYNN: I did want to comment. I
10 would like the record to be complete too. But
11 allowing an affidavit of somebody without giving
12 us an opportunity to cross examine I believe would
13 be inappropriate. In this case in terms of giving
14 an offer of proof, our hands have been tied. In
15 terms of all the participants to the conversation,
16 we've been effectively barred from calling them as

17 witnesses, which is why I'm submitting the answer
18 to Interrogatory No. 4 as proof that the
19 conversation took place.

20 MR. HALLORAN: Anything further?

21 MR. PORTER: No.

22 MR. MORAN: No.

23 MR. HALLORAN: If I do allow your Answers
24 to Interrogatories to come in, and for the sake of

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1 completeness, I will request the affidavit of.
2 Ms. Harvey to come in as well. And so --
3 otherwise, I will not let your Answers to
4 Interrogatories come in. However, I'll allow it
5 in as an offer of proof without the affidavit.

6 MR. FLYNN: If you're going to allow the
7 Waste Management Answers to Interrogatories to
8 come in and Ms. Harvey's affidavit to come in, for
9 completeness purposes, then I would also ask for
10 the County's Answers to Interrogatories be part of
11 that too.

12 MR. HALLORAN: County?

13 MR. PORTER: I certainly don't understand
14 the purpose. The County's answers were there were
15 no substantive contacts between Waste Management
16 and County personnel including Ms. Harvey and that
17 is born out by her affidavit, which makes it
18 absolutely clear that there were no such

19 communications.

20 MR. HALLORAN: Anything further?

21 MR. FLYNN: I would disagree with his
22 characterization, but for completeness purposes,
23 both interrogatories do seek information
24 concerning communications. The communication

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1 between Ms. Harvey and Mr. Moran being one of
2 those communications, and if you're going to allow
3 in the affidavit, because I'm offering the
4 interrogatory, then I think both sets of
5 interrogatories should be part of the record.

6 MR. HALLORAN: I will allow your request,
7 Mr. Flynn, along with Ms. Harvey's affidavit must
8 be included for completeness. Now, will I get a
9 copy of that? We can do that as an exhibit?

10 MR. FLYNN: We will mark it as Watson
11 Exhibit No. 3. And if I can have until tomorrow
12 to obtain copies for you Mr. --

13 MR. MORAN: Mr. Hearing Officer, is it
14 accurate that you are allowing these for purposes
15 of an offer of proof to be made and these exhibits
16 are not being admitted as part of the record?

17 MR. HALLORAN: My ruling was confusing
18 based on myself and the arguments of the parties.
19 I'm only allowing it in as an offer of proof
20 because I previously ruled that any conversations

21 or whatever, any discovery between Moran and the
22 attorneys, is that correct, on the April 17th
23 order? Does that -- Mr. Leshen.

24 MR. LESHEN: If understood your ruling

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1 correctly, your ruling was that if it came in only
2 as an offer of proof, then Ms. Harvey's affidavit
3 would not come in. That only the answers to the
4 interrogatories --

5 MR. HALLORAN: That was my ruling, and
6 there was further argument. So it will come in
7 but it will only come in with Ms. Harvey's
8 affidavit. So it will come in not as an offer of
9 proof but it will come in over the objection of
10 Waste Management and the County.

11 MR. PORTER: So we're clear, Ms. Harvey's
12 affidavit is already in the record.

13 MR. HALLORAN: But to make it complete
14 and I can move on --

15 MR. FLYNN: To make it complete and
16 clear, I'm going to tender to you right now the
17 Waste Management Answers to Petitioner Watson's
18 Interrogatories which I'll ask be marked as Watson
19 Exhibit No. 1 or No. 3 and the County's Answers to
20 Petitioner Watson's Interrogatories, which I'll
21 ask that you mark as Exhibit No. 4, and according
22 to Mr. Porter, you already have the affidavit or

23 it is already part of the record.

24 MR. HALLORAN: Well I would kind of like

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1 it all together so I can wrap it up in a bow and
2 give it to the Board instead of them looking
3 through the record, if you have an extra.

4 MR. FLYNN: Well, we can present that
5 tomorrow because we don't have a copy today.

6 MR. HALLORAN: That's fine.

7 MR. FLYNN: And we do stand on our
8 objection and take exception to your ruling as to
9 our ability to call these witnesses.

10 MR. HALLORAN: You've done that four or
11 five times, Mr. Flynn. You've made it quite
12 clear.

13 MR. FLYNN: I just want to avoid any
14 waiver problem.

15 MR. LESHEN: Mr. Halloran.

16 MR. HALLORAN: Just a minute, Mr. Leshen,
17 please.

18 MR. LESHEN: Mr. Halloran, we have the
19 issue in terms of housekeeping of Mr. Gill's
20 written responses. It is our contention and I
21 believe Ms. Watson -- Mr. Watson's attorneys'
22 intention a lot of possessives in there -- to
23 submit those written discovery questions, I guess
24 written deposition questions tomorrow and to the

1 County who has acted as his attorney in this
2 discovery issue.

3 So I guess the question would be how --
4 in terms of closure of the record and having a
5 chance to review them, how are we going to go
6 about that?

7 MR. HALLORAN: Whose deposition is this?
8 Mr. Gill?

9 MR. LESHEN: I think your ruling was that
10 written questions could be tendered to Mr. Gill
11 but not -- but oral questions could not based on
12 his physicians opinion, and based on that and
13 given the flood of other motions that have gone on
14 here, we'll be able to tender those questions but
15 not until tomorrow morning.

16 MR. HALLORAN: Okay.

17 MR. LESHEN: Then the question is what
18 kind of time limit then will the County be able to
19 get to Mr. Gill tomorrow?

20 MR. PORTER: Mr. Gill is not a County
21 employee anymore, so I cannot in any way assert
22 that I have control or ability to contact him. We
23 have filed an objection to his deposition as a
24 courtesy.

1 MR. HALLORAN: Fair.

2 MR. PORTER: I can make a phone call to a
3 number I have.

4 MS. POHLENZ: Mr. Halloran, if I may. It
5 was the County's proposal in their response in
6 their supplemental letter from his doctor where
7 they suggested new questions be submitted and if
8 they are going to now object to that that should
9 have been made clear at that time. They filed a
10 motion on his behalf to quash his deposition. I
11 don't see why it is convenient for someone to
12 represent someone when it's convenient and when
13 it's not, it's not.

14 MR. HALLORAN: Well, didn't I rule that
15 Mr. Gill didn't need to come to the hearing?

16 MS. POHLENZ: You ruled that he would
17 have to answer written questions, written
18 testimony in this proceeding.

19 MR. HALLORAN: You know, and we'll
20 address this further tomorrow, but I'm also
21 looking at Section 101.626 regarding written
22 testimony, and the person whose written testimony
23 is introduced must be available for
24 cross-examination. This is kind of a little

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1 different situation where the County or

2 Dr. Addelburg -- excuse me. But the County did
3 not object to it at that point regarding the
4 written deposition.

5 MS. HARVEY: We don't object. It is not
6 the County's suggestion that he sit for written
7 questions. We don't have an objection.

8 MR. HALLORAN: Dr. Addelburg has come up
9 on his own.

10 MS. HARVEY: Correct. As Mr. Porter
11 pointed out, we're happy to get those questions to
12 him. Our point is that we do not have control
13 over him so however we cannot make a promise.

14 MR. LESHEN: If I may, my response to
15 that is they represented him in the discovery
16 motion moving to quash an appearance. My
17 understanding of the rules of professional
18 responsibility is you can't float in and out of
19 representation. You can't say, Well, I represent
20 you for one aspect of discovery but not for
21 another one. It seems -- It is late and I'm
22 trying to be polite, but it seems at best somewhat
23 suspicious when I go, Gee, I represent this guy.
24 But I can't produce him. I can't get him the

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1 discovery. Come on.

2 MR. HALLORAN: You know, my knee-jerk
3 reaction at this late hour is to concur with

4 Mr. Leshen's argument. Again, you stated at one
5 point you represented him and now, you're kind of
6 taking a step back.

7 MS. HARVEY: As the person who drafted
8 that motion, I stated in there that we provided a
9 courtesy representation to Mr. Gill only because
10 the issues to which he was at issue arose out of
11 the course of his former employment. Neither
12 Mr. Porter nor I have said today that we wouldn't
13 do our best to get it to him. We don't have any
14 control over him is the only point, and the record
15 should be clear that we don't have any. Just like
16 we didn't have Mr. Quigley or other former board
17 members.

18 MR. HALLORAN: Perhaps I misread your
19 representations because I took it as you were
20 representing him and in not just in kind of a
21 courtesy-type thing in and out, whatever. You are
22 or you are not. But, again, based on your
23 efforts, you can get the questions from Mr. Gill.

24 MR. PORTER: I think we're creating

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1 issues before they exist.

2 MR. HALLORAN: I agree. Maybe we won't
3 have to discuss this tomorrow.

4 MR. LESHEN: Will you try to reach him
5 tonight then to get this done is that your plan?

6 MR. PORTER: If you give me some
7 questions.

8 MR. LESHEN: Here is the issue. The
9 problem is that -- and we've seen this in
10 discovery in this case. The problem is we step
11 up -- they don't try to reach him tonite. We give
12 him the questions tomorrow. They can't reach him
13 tomorrow. The hearing is over, oh, gee. We did
14 our best.

15 MR. HALLORAN: Excuse me, Mr. Leshen.
16 This order came out May 1st. Is that the May 1st?
17 Yes. And now you're just going to submit
18 questions today?

19 MS. POHLENZ: Mr. Hearing Officer, I can
20 address the time frame. I'm happy to do that. On
21 May 1st you presented the order to us. On May 1st
22 I also, right after your telephone conference with
23 the parties, I had a one-hour response to the
24 motion. I did that. After that, I also

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1 represented that I had two afternoon hearings,
2 which I did. On Friday May 2nd I had other
3 commitments, work commitments, as well as an
4 afternoon full of depositions relating to this
5 matter. Following that, we received three
6 motions; one of those was received on Friday and I
7 wrote a response on Friday. Two, was received on

8 Monday.

9 MR. HALLORAN: Ma'am, if you are getting
10 to the lack of time, we discussed this many of
11 times. And I can sympathize with you. I have 119
12 other cases, and I have to get those done as well
13 as the case before me. I'm merely saying the
14 order came in on May 1st and it looks like the
15 questions have not been posed to Mr. Gill.

16 MS. POHLENZ: The questions will be
17 prepared.

18 MR. HALLORAN: We'll see tomorrow. This
19 is four days later going on five.

20 MS. POHLENZ: And there was no objections
21 to submitting the questions when we had counsel
22 representing him who now has stated they don't
23 represent him. And if they didn't represent him
24 at the time, as I recall, the May 1st order you

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1 ruled that they did have standing because they
2 represented him, and overruled my objection based
3 on standing.

4 MR. HALLORAN: But there is a time line.
5 I assumed the questions would be submitted to the
6 County or Mr. Gill prior to 6:00 o'clock on May
7 5th when I made the ruling on May 1st.

8 MS. POHLENZ: With all due respect,,
9 Mr. Hearing Officer, there is nothing in the

10 order discussion or asserting that. And now to
11 bar me, is unfair.

12 MR. HALLORAN: Well, we'll talk about it
13 like this, Ms. Pohlenz, I think a lot of things
14 are unfair. This hearing will be concluded today.
15 We'll pick it up tomorrow at 9:00 a.m.

16 (Which were all the proceedings
17 had in the above-entitled cause
18 on this date.)

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1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS.

3 NOREEN THOMPSON, being first duly sworn,
4 on oath says that she is a Certified Shorthand
5 reporter doing business in the City of Chicago,
6 County of Cook and the State of Illinois;

7 That she reported in shorthand the
8 proceedings had at the foregoing trial;

9 And that the foregoing is a true and
10 correct transcript of her shorthand notes so taken
11 as aforesaid and contains all of the proceedings

12 had at the said trial.

13

14

15

NOREEN E. THOMPSON, CSR, RPR

16

17

18 CSR No. 084-004182

19 SUBSCRIBED AND SWORN TO
20 before me this 8th day of
21 May, C.E., 2003.

21

22 NOTARY PUBLIC

23

24