

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SALINE COUNTY LANDFILL,

Petitioner,

vs.

No. PCB 04-117

(Permit Appeal)

ILLINOIS ENVIRONMENTAL

PROTECTION AGENCY,

Respondent,

Proceedings held on March 3rd, 2004, at 12 p.m., at the  
Saline County Detention Center, 1 North Main Street, Harrisburg,  
Illinois, before Carol Sudman, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR  
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P R O C E E D I N G

(March 3rd, 2004; 12 p.m.)

HEARING OFFICER SUDMAN: Good afternoon. My name is Carol Sudman, and I'm a hearing officer with the Pollution Control Board. This is the hearing for PCB 04-117, Saline County Landfill vs. IEPA. It is March 3, 2004, and we are beginning at 12 noon.

I'll note for the record that there are about 20 members of the public present. Members of the public are allowed to provide public comment if they so choose.

At issue in this case is the EPA's denial of petitioner's request for permit modification.

You should know it is the Pollution Control Board, and not me, that will make the final decision in this case. My purpose is to conduct the hearing in a neutral and orderly manner so that we have a clear record of the proceedings. I will also assess the credibility of any witnesses on the record at the end of the hearing.

The Board's procedural rules and the Act provide that members of the public shall be allowed to speak or submit written statements at hearing. Any person offering such testimony today shall be subject to cross-examination by both of the parties. Any such statements offered by the public must be relevant to the case at hand. I will call for any statements from members of the

1 public at the conclusion of the proceedings.

2 This hearing was noticed pursuant to the Act and the  
3 Board's rules and will be conducted pursuant to Sections 101.600  
4 through 101.632 of the Board's procedural rules.

5 At this time I would ask the parties to make their  
6 appearances on the record.

7 MR. KONZEN: Brian Konzen, attorney for petitioner, Saline  
8 County Landfill.

9 MR. KIM: John Kim for Illinois Environmental Protection  
10 Agency.

11 MR. HEDINGER: Steve Hedinger and Rob Wolf for intervening  
12 counsel.

13 HEARING OFFICER SUDMAN: Thank you very much. Are there  
14 any preliminary matters to discuss on the record?

15 MR. KONZEN: I have one, ma'am. Should I remain seated?

16 HEARING OFFICER SUDMAN: Yes.

17 MR. KONZEN: The preliminary thing, if I understand Mr.  
18 Wolf just a moment ago, Mr. Hedinger is appearing as a special  
19 assistant state's attorney, would I be correct?

20 MR. WOLF: He's here with me as counsel, yes, from the  
21 state's attorney's office, that's correct.

22 MR. KONZEN: Well, his entry of appearance said as  
23 additional counsel. And if I understood you correctly, before  
24 the record started, you said special assistant state's attorney.

1 I'd like to clarify that. Because one is a public official.

2 MR. WOLF: He's initial counsel.

3 MR. KONZEN: He's not a special assistant state's attorney  
4 then?

5 MR. WOLF: Well, we can get in an argument if you want.

6 MR. KONZEN: Well, which is he, sir?

7 MR. WOLF: He is -- he is representing with the state's  
8 attorney's office today.

9 MR. WOLF: He is a special assistant state's attorney then?

10 MR. KIM: Can I ask what the relevance to this is?

11 MR. WOLF: Yeah, I'm not sure what the relevance is.

12 MR. KONZEN: The relevance is that the County Board  
13 terminated that special assistant state's attorney position in  
14 February 2003.

15 MR. WOLF: That is incorrect. That is false. They did not  
16 do it legally. May I approach?

17 HEARING OFFICER SUDMAN: Well, I don't think this is  
18 necessary. He's filed an appearance, and I'm going to let him  
19 appear today. I don't want to spend a lot of time with it so...

20 MR. WOLF: He has not been legally terminated, Carol, from  
21 the State's Attorney's office position working on this matter by  
22 the County Board, officially or legally.

23 HEARING OFFICER SUDMAN: Okay. Well, I'm going to find no  
24 problem with that.

1 MR. WOLF: Thank you.

2 MR. KONZEN: May I submit one document as an offer of  
3 proof?

4 HEARING OFFICER SUDMAN: Yes.

5 MR. WOLF: We would object.

6 MR. HEDINGER: We would object to the offer of proof.

7 HEARING OFFICER SUDMAN: Well, let me -- let's see what it  
8 is.

9 MR. KONZEN: The record will reflect it is the February 28,  
10 2003, notice from Mr. Hedinger signed by the County Board  
11 chairman notifying him of his termination. The corresponding  
12 letter is September 3, 2003, and the minutes of the September  
13 27th, 2003, County Board meeting.

14 MR. WOLF: Sir, what you don't understand is, is that the  
15 Saline County Board did not properly understand how to terminate  
16 a person that works for or through my office. And they, I  
17 believe, understand that now and they have never officially,  
18 legally terminated Steve Hedinger officially, okay, legally. But  
19 that's not the issue for you in my opinion anyhow. That's  
20 between me and the County Board. And that's not been done, sir.  
21 It's not relevant here.

22 HEARING OFFICER SUDMAN: I will take this as an offer of  
23 proof. My finding is that there is no problem with Mr.  
24 Hedinger's appearance here today. Do you have a document that's

1 already labeled Petitioner's Exhibit 1 or should I --

2 MR. KONZEN: That would have to be marked as one, please,  
3 or Offer of Proof 1, however you want to keep it separated, Madam  
4 Hearing Officer.

5 HEARING OFFICER SUDMAN: Okay. Well, I'll label it as  
6 Petitioner's Exhibit 1 for now. Are there any other preliminary  
7 matters to discuss on the record?

8 MR. WOLF: We have a pending Motion in Limine.

9 HEARING OFFICER SUDMAN: The Motion in Limine I reviewed,  
10 and I reviewed the response as well. I'm going to agree with the  
11 petitioner that at this time I feel it's too broad to rule on in  
12 total. I would like to address those issues if, and when, they  
13 arrive.

14 MR. WOLF: What about the -- All right. Thank you.

15 MR. KIM: I think there is one remaining prehearing motion  
16 then. The Illinois EPA filed a Motion for Order of Protection in  
17 accompanying privilege log prior to the deposition that was taken  
18 of Joyce Munie, immediately prior to the deposition of Joyce  
19 Munie be taken.

20 It was discovered that some of those documents, actually  
21 all of those documents that were identified, the privileged logs  
22 were included in the administrative record through an  
23 administrative over site.

24 As you remember, the parties then contacted you by



1 telephone to bring the situation to your attention of the counsel  
2 for the Agency through some very cursory review and cited two  
3 cases that we believe were in support of contention. That the  
4 inadvertent disclosure should not result in the ultimate  
5 disclosure of the documents.

6 Since that time, and again, I would note that the Motion  
7 for Protection, did not contemplate that those documents had  
8 already been included in the administrative record.

9 Since that time the petitioner has filed a response and  
10 then a letter supplementing the response to the Motion for  
11 Protection Order. And this morning I served upon the parties and  
12 the Hearing Officer, and a Motion for Relief policy applies and  
13 were applied to the petitioner's response.

14 The intent behind the reply was basically to sort of  
15 summarize all of the Agency regarding these documents and the  
16 privileges that may be attached. And the issue about the  
17 inadvertent disclosure, those have not been rolled into one  
18 coherent document. I can summarize the arguments that are made  
19 there, summarize the Agency's position if you like?

20 HEARING OFFICER SUDMAN: Yes, I would like that. Thank  
21 you.

22 MR. KIM: Well, and again, you can -- and a copy will be  
23 mailed today so we can follow-up

24 HEARING OFFICER SUDMAN: Okay.

1           MR. KIM: But in essence, the Agency's position is that  
2 these are protected documents that, despite the inadvertent  
3 disclosure, should not made -- should not continue to be a part  
4 of the record, and they should be, in fact, pulled from the  
5 record from all copies.

6           The documents have been identified as being subject to  
7 either or both an attorney and client and attorney-work product  
8 privilege. Those privileges will apply regardless whether or not  
9 all the documents are so identified or so labeled. Some of the  
10 documents on the privilege logs are labeled as being subject to  
11 privilege. Some are not. But again, if you look at the scope  
12 and the conditions that need to be met to determine whether or  
13 not the documents should be subject to an attorney-client  
14 privilege or attorney-work product privilege, we believe that  
15 they are all satisfied.

16           HEARING OFFICER SUDMAN: Now do you stamp as exempt  
17 documents that you -- that would count as privileged in your  
18 agency?

19           MR. HEDINGER: Yes. As best I can tell, what happened is  
20 this. The Illinois EPA's Bureau of Land is the bureau that  
21 maintains the complete permit file for a permit application.  
22 Part of that permit file would be the application itself, any  
23 review or notes, any internal correspondence or memoranda, and  
24 then the final decision on that permit application.

1           If an appeal is filed of the decision, then that -- those  
2 documents are compiled by the permit staff and forwarded to the  
3 Agency's division of legal counsel where they are then copied and  
4 then filed and forwarded to the Board and opposing counsel.

5           The Bureau of Land has a system by which they review all  
6 documents in the file to determine whether or not those documents  
7 are subject to a privilege claim. If they are, those documents  
8 are pulled from the file, a one-page insert that simply says  
9 exempt file is inserted in their place and those pulled documents  
10 are maintained in a separate folder called an exempt folder. And  
11 accordingly, those documents would have a stamp placed on them  
12 that would state exempt.

13           As best as I can tell, what happened here, the copy of the  
14 file that was presented to us for copying with the division of  
15 legal counsel had not yet undergone the screening process. As  
16 best as I can tell, that's simply because of the time frames  
17 involved. And I believe there were a number of Freedom of  
18 Information Act requests for that file at the same time we were  
19 sort of asking for the file so that we could prepare the  
20 administrative record in this case.

21           So because of a number of things, the system that is  
22 usually to make sure those kind of things don't get in there,  
23 sort of got ahead of itself. And we were given a copy of the  
24 documents before they had been subject to the screening.

1           Now when the time came for me to prepare my privilege log,  
2 I went to the technical file and I pulled the exempt file, which  
3 should contain all the privilege documents, and it did, and had  
4 those exempt stamps on it. And that's what I prepared, and  
5 that's what I submitted as part of the attachment -- the  
6 attachment to the motion.

7           If we compare those documents to the documents that also  
8 unfortunately made it into the record, there is no exempt stamp  
9 on there. Meaning, that basically we got the file before they  
10 had a chance to review it. I don't know why that happened. I  
11 can only guess it was in a rush to get the record out on time  
12 with the sort of tight time frame that we had on this hearing.

13           There is a system in place though, and it doesn't normally  
14 screen those documents. And those documents, this is the first  
15 time that I can think of, in all these cases, where those  
16 documents ended up in the file that was presented to us for  
17 coping into the record. So it's a very isolated instance.

18           I don't know if Mr. Isringhausen has any kind of recall in  
19 this office so far in terms of whether or not this happened, but  
20 this has never happened before. It's unfortunate. It was  
21 clearly a snafu. I certainly take the blame for not maintaining  
22 an over site on this.

23           But given there was this inadvertent disclosure, the Agency  
24 then is asking the Board to -- despite that, to continue to

1 maintain what we believe are the privilege stats of the  
2 documents.

3           Prior to the deposition I provided the Hearing Officer and  
4 opposing counsel with two cases that I believe, again my quick  
5 review, were spoke to the issue. One was the case of Joliet Sand  
6 & Gravel and the other was the case of Dalen vs. Ozite,  
7 O-z-i-t-e.

8           In the Joliet case, which is an appeal heard by the  
9 Appellate Court by the Board of Decisions, an issue came up  
10 concerning certain memos which were placed into the  
11 administrative record by a permit -- by the permit staff. They  
12 were inadvertently placed in there. It was after they discovered  
13 they were placed in there, counsel for the Agency attempted to  
14 withdraw those documents. An issue came up and the Board agreed  
15 that those particular documents did not have relevance to the  
16 pending case, and therefore, they should have been properly  
17 disclosed -- or I'm sorry, excluded from the record.

18           The rationale behind the Board's decision and the Appellate  
19 Court's decision is that those documents were not relevant.  
20 That's not the same thing we have here. Here we're talking about  
21 a privilege. But it is the same in that, you know, a document  
22 being irrelevant to a pending case and a document being  
23 privileged, are both legitimate justifications for excluding  
24 documents from including them in the administrative record. So

1 in that case, clearly the Board and the Appellate Court agreed  
2 that documents that have been inadvertently placed into the  
3 record should not -- and where there was legitimate reason for  
4 those documents not to be there, should be withdrawn, and, in  
5 fact, were withdrawn.

6 The second case that we cited to was the Ozite case. That  
7 case presented basically three different means by which the court  
8 could decide whether or not the documents that was inadvertently  
9 disclosed, should -- should be excluded or -- if the disclosure  
10 basically ended any kind of client privilege.

11 The first two tests that the court reviewed were what they  
12 called sort of mechanical applications. In order words, one, if  
13 the party that inadvertently did the disclosure did not intend to  
14 do so, then the document would not be disclosed. It would be  
15 excluded. Two, the document made its way out, it made its way  
16 out. The Court did not find that either of those rationales were  
17 persuasive. Again, they felt that it was -- neither one took  
18 into account the specific facts regarding the documents.

19 The test they ultimately applied was the third test, which  
20 is a balancing test. That balancing test, and the fact that they  
21 had three different tests, was the result that by the Court's  
22 review there were different courts taking different approaches on  
23 what to do with these type of situations. Again, the test they  
24 ultimately went with was the balancing test. And the test that

1 was employed is five factors that the Court reviewed to determine  
2 whether or not the inadvertent disclosure resulted in the  
3 document being disclosed and for that protection of exclusion.

4 One was reasonableness of the precautions taken to prevent  
5 the disclosure; two, the time taken to rectify the error; three,  
6 the scope of discovery; four, the extent of the discovery; and  
7 five, the overriding issue of fairness.

8 Our position is if the Board were to weigh all five of  
9 those factors, they would all weigh all five of those factors,  
10 they would all weigh in favor of those documents being excluded  
11 from the record. One, reasonableness of the precautions taken to  
12 prevent the disclosure. Again, there is a system in place to  
13 make sure that these type of documents don't make their way in  
14 there.

15 Clearly that system, this one particular case, this  
16 isolated case, did not work. And that's why we're talking about  
17 this today. But the fact that the Hearing Officer was provided  
18 with what the counsel for the Agency believed to be the, you  
19 know, correctly excluded documents, indicates that there is a  
20 system that is employed by the Agency on a regular basis to make  
21 sure that this does not happen.

22 Two, the time taken to rectify the error. Again, I think  
23 it was in the minutes after counsel for the Agency was informed  
24 that these documents were in the record. It was after it was

1 brought to my attention that I attempted to contact the Hearing  
2 Officer, and I attempted to contact the opposing counsel.  
3 Opposing counsel was actually en route to the Agency to perform  
4 the deposition, but I think as soon as he arrived, I informed him  
5 of the situation and this was something that we needed to  
6 address. So certainly within the hour of my finding out this, we  
7 brought this to the Hearing Officer's attention.

8 Three, the scope of the discovery. In this case it wasn't  
9 discovery that was ultimately produced for the administrative  
10 record. And again, the record is supposed to maintain --  
11 supposed to contain all documents that the Agency relied upon and  
12 through the course of making their decision, but clearly the  
13 Board's rules address that don't contemplate, and have never  
14 contemplated, that privilege documents should be included in the  
15 record. So the Board's regulations to find the scope of the  
16 record do not take into consideration the Agency would be  
17 required to disclose privileged documents within the  
18 administrative record.

19 Four, the extent of the discovery. Again, this is not so  
20 much discovery. This is more the detail, something that came  
21 about in the preparation for the administrative record.

22 And then five, the overriding issue of fairness.  
23 Especially this would seem to weigh in favor to the Agency.  
24 There's no prejudice that we would argue that would befall the



1 petitioner if these documents were excluded. The petitioner was  
2 aware of the uncertain status of these documents before the  
3 deposition of Joyce Munie was taken. There hasn't been any  
4 testimony provided and given today. Parties haven't made any  
5 arguments to the Board, and most likely the Board will not  
6 conduct any type of review of the administrative review of this  
7 case.

8 Ms. Munie has provided testimony during the deposition, and  
9 I imagine provide testimony here, that at least my -- and I'm not  
10 speaking for petitioner, but to my understanding that allows them  
11 to make any and all arguments that they need to make in terms of  
12 doing this. I'm sure they would prefer to be able to argue off  
13 of these documents, but the fact that those documents would help  
14 their case as oppose to hurt them is not what's relevant here.

15 The Agency, however, through prejudice and unfairness,  
16 would clearly be at a disadvantage. Those documents that would  
17 otherwise be considered privileged under any other normal review  
18 by the Board, by Hearing Officer, would now, again because of  
19 this inadvertent disclosure, be maintained within the  
20 administrative record.

21 The remedy that we're at is pretty straight forward. Just  
22 to pull those documents out of the administrative record and ask  
23 that no reference to those documents be made in the final  
24 arguments and the post-hearing arguments presented to the Board.

1           That's basically our argument. That's what's contained in  
2 the reply, and that's what the reply attempts to summarize the  
3 Motion Protection Order and the two cases that were cited to the  
4 Hearing Officer.

5           HEARING OFFICER SUDMAN: Mr. Konzen?

6           MR. KONZEN: We have from the beginning, Madam Hearing  
7 Officer, pleaded in paragraph 5, our Petition For Review, there  
8 was a longstanding position regarding expiration of local sitings  
9 taken by the Environmental Protection Agency. And there was a  
10 sudden, dramatic reversal of that position taken by the Agency  
11 without any warning whatsoever to petitioner.

12           We submit that that is clearly documented in the December  
13 4, 2003, correspondence. Therefore, in order to prove what we  
14 have pleaded, that evidence is directly on point, and therefore,  
15 the overriding issue in fairness falls in favor of petitioner.  
16 I'm the one who's going to be prejudiced if I can't present that  
17 evidence.

18           The disclosure further goes greatly beyond, and I'm talking  
19 about the Ozite balancing criteria here. The end disclosure is  
20 greater than what I believe has been discussed here. It isn't  
21 just an issue of exemption stamps. The witness who has been  
22 called today testified as to her understanding of some of those  
23 documents in her deposition. There was no objection about it at  
24 the time. Privilege is the one objection that can be waived in a

1 discovery deposition, and we believe it was here and that  
2 evidence is before the Hearing Officer.

3 The scope of the discovery, again, looking at the  
4 deposition, did request information as to who had input in and  
5 what caused reversal in position by the Agency. We believe that  
6 we're allowed to present this testimony today. You will see it  
7 was these documents. To make a complete record we have to have  
8 these in.

9 And further, Ozite is an appellate opinion. The Illinois  
10 Supreme Court in the Waste Management to the Surplus Lions case  
11 talks about and establishes an at-issue exception to privilege  
12 cited in our brief. These documents are for the reason stated  
13 what is at issue here. The sudden change and reversal of  
14 position by the Agency. For all these reasons we need that -- we  
15 need those documents. The horse is out of the barn.

16 HEARING OFFICER SUDMAN: Would the intervener like to --

17 MR. HEDINGER: We support the Agency without further  
18 argument.

19 MR. KIM: Mr. Konzen raised a point that I skipped over in  
20 my argument which was that the deponent, Ms. Munie, testified as  
21 to her understanding of these documents. I think that if you  
22 were to look at the cited portions of the deposition transcript  
23 that he provided in his response, and indeed you look at the  
24 entire transcript, at no time did she testify as to what was

1 contained in the memorandum, or as that matter, what was  
2 specifically was interpreted, you know, what specific  
3 interpretation was provided by the Attorney General's office.  
4 She simply stated that she had misunderstanding as to what those  
5 documents had originally intended. She did receive the legal  
6 interpretation from the Attorney General's Office, and -- and she  
7 testified that she was -- it was her decision whether or not to  
8 follow anyone's legal advice as to what to do, and I think the  
9 decision, I think, speaks for itself.

10 If the opposing counsel states that the issue here is the  
11 sudden change in the Agency's position, that's not really the  
12 issue here. The issue here is whether or not the Agency's  
13 decision contained within the four squares in its final decision.  
14 It's correct. You know, certainly it involves a matter of law,  
15 and I think ultimately what the Board is going to potentially  
16 decide, how this one particular provision to the Environmental  
17 Protection Act should be interpreted, but I don't think that  
18 there is any reason to believe that these memoranda are going to  
19 be the ultimate deciding factor as to whether or not the Agency  
20 was correct or incorrect as to the final decision. The final  
21 decision is what brings the issue for the people.

22 MR. KONZEN: Madam Hearing Officer, on page 117, of the  
23 deposition, I asked a question: You have already testified to  
24 the impact, I believe, of the December 4th, 2003, correspondence

1 that changed everything? Answer, yes. Question, including  
2 whether or not my client got a permit? Answer, yes. The  
3 December 4th, 2003, correspondence are the last two documents in  
4 the privilege log.

5 MR. KIM: At no time does she state what's in that letter.  
6 She states that after she received the letter, she made a change  
7 in her decision. That doesn't disclose the contents of the  
8 letter.

9 MR. KONZEN: Page 29 and 30, if I can for the hearing  
10 officer, I believe talks about her understanding of those  
11 communications, and I'm happy to tender that.

12 HEARING OFFICER SUDMAN: I -- I don't think I need to see  
13 it. I don't want to get too mired down in detail at this point  
14 because I really already made my decision on how I'm going to  
15 rule on this instance.

16 I have reviewed the case law cited by the parties, as well  
17 as a few other cases, and I'm going to rule that the documents in  
18 question are covered by the attorney-client and work product  
19 privilege, and that the inadvertent disclosure does not waive the  
20 privilege. Therefore, I'm granting respondent's Motion For  
21 Protective Order.

22 I will give you some explanation for my ruling here today.  
23 I reviewed a case called IEPA vs. Celotex, C-e-l-o-t-e-x, PCB  
24 79-145, December 6, 1984. The Board held that while the

1 attorney-client relationship between two agencies of government,  
2 such as the IEPA and the AG, has some unique aspects, it is  
3 generally analogous to more typical attorney-client  
4 relationships.

5 I also noted that the case petitioner cited, Waste  
6 Management vs. International Surplus Lions Insurance Company, 579  
7 N.E.2d. 322, the Court held that the purpose of the  
8 attorney-client privilege is to encourage and promote full and  
9 frank consultation between a client and legal advisor by removing  
10 the fear of compelled disclosure of information.

11 With respect to whether the privilege was waived by  
12 inadvertent disclosure, the intent to disclose is a crucial  
13 consideration and I find that the privilege was not waived by  
14 accidental disclosure.

15 Mr. Kim has already done a balancing test analysis from the  
16 Dalen vs. Ozite Corporation case, and I agree that the IEPA has  
17 met this test and that the privilege was not waived.

18 I would also like to call your attention West Suburban  
19 Recycling and Energy Center vs. IEPA, PCB 95-119 and 95-125,  
20 October 17th, 1996. In that case the petitioner argued that the  
21 Agency acted inappropriately in its internal review process and  
22 that some of the denial points were manufactured.

23 The Board noted that the issue was the degree to which the  
24 thought process of the decision-maker or decision-making

1 personnel is privileged. The Board found insufficient evidence  
2 of improper behavior on the part of the Agency and thus the Board  
3 refused to invade the Agency's internal deliberations.

4           The Board also discussed the application of the  
5 predecisional deliberative process privilege based on Federal  
6 case law. Morehead vs. Lane stated that a general policy exists  
7 in the state of Illinois against requiring the disclosure of  
8 predecisional material, and that the primary rationale for the  
9 intergovernmental opinion privilege is that effective and  
10 efficient governmental decision-making requires a preflow of  
11 ideas among government officials and that inhibition will result  
12 if communications may be revealed to outsiders. This principle  
13 forbids judicial investigation into methods by which the decision  
14 is reached. The matter is considered and contributing influences  
15 over the role played by the work of others.

16           The Board did not base its decision on that privilege. But  
17 it did reach the same conclusion. For those reasons I'm granting  
18 the respondent's Order of Protection and those documents will not  
19 be considered part of the administrative record. Are there any  
20 other preliminary issues to discuss on the record?

21           MR. KONZEN: Petitioner moves to admit the January 4th,  
22 2002, permit denial document. This was previously argued before  
23 the Hearing Officer and we discussed resolution or if that could  
24 be glanced over was a joint motion to admit. We --

1 HEARING OFFICER SUDMAN: And that's not currently in the --  
2 MR. KIM: No, it is not.  
3 HEARING OFFICER SUDMAN: -- record.  
4 MR. KIM: And the Illinois EPA has no objection to this  
5 document.  
6 HEARING OFFICER SUDMAN: Okay.  
7 MR. KONZEN: May we mark this Petitioner 1?  
8 HEARING OFFICER SUDMAN: 2, Petitioner 2.  
9 MR. KONZEN: 2. Yes, that's correct.  
10 HEARING OFFICER SUDMAN: I am marking as Petitioner's  
11 Exhibit 2, the January 4th, 2002, letter to Saline County  
12 Landfill from Joyce Munie. Are there any more preliminary  
13 matters?  
14 MR. KONZEN: The motion by petitioner to admit the  
15 responses to our request to admit, including the revision of  
16 February 27th, there are two separate documents. The original  
17 answers which were argued in the motion to compel and the  
18 February 14th revised are signed. We sent you those. They're  
19 signed by Mr. Kim and by his --  
20 HEARING OFFICER SUDMAN: Oh, is there any objection?  
21 MR. KIM: None from the Illinois EPA.  
22 MR. HEDINGER: And our only objection would be without  
23 waiver of potential to say it's irrelevant, and any of the  
24 requests were not facts of law, we would ask those be preserved.



1 But otherwise we have no objection to the documents.

2 HEARING OFFICER SUDMAN: Being admitted?

3 MR. KONZEN: These are the originals, and these are the  
4 revisions after the Motion to Compel was argued.

5 HEARING OFFICER SUDMAN: Okay. So Petitioner's Exhibit No.  
6 3 is the Response to Petitioner's First Request For Admission of  
7 Facts. Petitioner's Exhibit 4 is the Amended Response to  
8 Petitioner's First Request For Admission of Facts. Are there any  
9 other preliminary matters? Okay, I guess not. Mr. Konzen, would  
10 you like to make an opening statement?

11 MR. KONZEN: First for clarification, Madam Hearing  
12 Officer, have you ruled on -- You are admitting them?

13 HEARING OFFICER SUDMAN: Oh, yes, Petitioner's Exhibit 1  
14 through 4 are admitted, with number 1 being an offer of proof,  
15 I'm sorry. Would you like to make an opening statement?

16 MR. KONZEN: I would propose the parties go strictly to  
17 testimony because we have a number of people in a small room.

18 HEARING OFFICER SUDMAN: Okay. I'll take that as a no.  
19 Mr. Kim, would you like to make an opening statement?

20 MR. KIM: A very short one. The Illinois EPA believes that  
21 the final decision under review was issued correctly and that the  
22 application of the facts and law that led up to the issuance of  
23 that letter were appropriate and should be affirmed by the Board.

24 HEARING OFFICER SUDMAN: Would the intervenor like to make

1 an opening statement?

2 MR. HEDINGER: Also very brief.

3 HEARING OFFICER SUDMAN: Mr. Hedinger is speaking.

4 MR. HEDINGER: The County of Saline would point to those  
5 numerous cases that identify the local siting proceedings of the  
6 most important part of the process of opening and developing a  
7 new landfill. We would point to those cases that have  
8 unambiguously spoken to the improvements of allowing the local  
9 decision-makers to have a complete and full view of the proposal  
10 for a new pollution control facility.

11 In this case, the intervention is intended to support the  
12 right of the Saline County Board to review current information  
13 pertaining to Saline County Landfill, Inc.'s proposed facility.  
14 The permit application at issue here is merely, well, nearly  
15 8 years old at this time. It is based upon ancient in terms of  
16 modern waste technology, ancient information, and ancient  
17 conditions; and the law is very clear.

18 Section 39.2(f) was intended to protect counties, such as  
19 Saline County, and their right to have current information with  
20 respect to facilities that are going to be sited in their  
21 boundaries.

22 No one is -- not at least of Saline County, decided that no  
23 one is opposed to this landfill. However, they -- we are here to  
24 support the right of the County Board to have a fresh look of

1 current conditions for this facility. And more importantly,  
2 we're here to support the law which we believe unambiguously  
3 requires that after 3 years, without a development permit having  
4 been filed, the siting application expired. And we would ask the  
5 Board to support the Agency's denial of this permit application.

6 HEARING OFFICER SUDMAN: Thank you. Mr. Konzen, you may  
7 present your case.

8 MR. KONZEN: I call Joyce Munie, please.

9 HEARING OFFICER SUDMAN: Ms. Munie we will put you next to  
10 the court reporter who will swear you in.

11 (Whereupon, the witness was sworn by the Notary Public.)

12 J O Y C E M U N I E,  
13 having been first duly sworn by the Notary Public, saith as  
14 follows:

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. KONZEN:

17 Q. Joyce, could you please state your name and occupation  
18 for the court reporter?

19 A. Joyce Munie. I manage the Permit Section, Bureau of  
20 Land, Illinois Environmental Protection Agency.

21 Q. And how long have you been permit section manager for  
22 the Bureau of Land?

23 A. About 5 years now.

24 Q. And how long have you been with the permit section

1 generally?

2 A. In the Bureau of Land, since 1992.

3 Q. What are your duties as permit section manager?

4 A. I'm responsible to ensure that all solid waste  
5 management facilities are regulated in accordance with all the  
6 rules and regulations.

7 Q. Now landfills come under what bureau at the IEPA?

8 A. The Bureau of Land.

9 Q. And who at the IEPA has the authority to grant or to  
10 deny a landfill's application for development permit?

11 A. I do.

12 Q. What is a development permit?

13 A. A development permit is a permit that allows a facility,  
14 particularly here a landfill, to be constructed in accordance  
15 with the rules and regulations.

16 Q. As permit section manager, do you have the authority to  
17 write letters to other officials of state or local government  
18 stating the IEPA's position on certain issues?

19 A. Yes.

20 Q. Are you familiar with a development permit application  
21 at the IEPA Log No. 2003-113?

22 A. Yes.

23 Q. And who was the applicant?

24 A. Saline County Landfill, Inc.

1 MR. KONZEN: Request to mark, please.

2 HEARING OFFICER SUDMAN: I'm marking as Petitioner's  
3 Exhibit 5 the December 5th, 2003, letter to Saline County  
4 Landfill from Joyce Munie.

5 Q. (By Mr. Konzen) I'm going to hand the witness what the  
6 Hearing Officer has marked as Exhibit 5 and ask her if she can  
7 identify that document, please?

8 A. It's the denial of Log No. 2003-113 dated December 5th,  
9 2003, and signed by me.

10 MR. HEDINGER: For the record this document is also in the  
11 record; is that right, Mr. Konzen?

12 MR. KONZEN: Yes. Move to admit Exhibit 5.

13 HEARING OFFICER SUDMAN: Okay. Exhibit 5 is admitted.

14 Q. (By Mr. Konzen) I believe you just testified your  
15 signature is on that permit denial. Who made the decision to  
16 issue that permit denial?

17 A. I did.

18 Q. Who had input in the decision to deny?

19 A. Christine Roque, Chris Liebman. Sorry. Roque is  
20 R-o-q-u-e and Liebman is L-i-e-b-m-a-n.

21 Q. I think I need to clarify the question a little bit.

22 A. Sure.

23 Q. Who -- Did anyone recommend this permit be denied to  
24 you?

1           A.    The Illinois Attorney General's Office.

2           MR. HEDINGER:  I'm going to object to hearsay.

3           MR. KONZEN:  I'm asking who recommended, not to the truth

4 of the matter asserted.

5           HEARING OFFICER SUDMAN:  I'll allow it.

6           A.    The Illinois Attorney General.

7           Q.    (By Mr. Konzen)  Who at the Illinois Attorney General's

8 Office recommended?

9           A.    Tom Davis.

10          Q.    Do you know his position at the Illinois Attorney

11 General's Office.

12          A.    He is an assistant attorney general there.

13          Q.    Did anyone within the Environmental Protection Agency

14 recommend to you that the permit be denied other than on a --

15 other than on a legal issue --

16          MR. HEDINGER:  I'm going to object.

17          MR. KONZEN:  If I could finish the question.

18          MR. HEDINGER:  Sure.

19          Q.    (By Mr. Konzen)  Other than on the issue of local siting

20 expiration?

21          MR. HEDINGER:  I'm going to object the answer seeks

22 attorney-client privileged communication.

23          MR. KONZEN:  I said excluding legal communication on the

24 siting expiration.

1 MR. HEDINGER: And I'll reiterate hearsay. He is offering  
2 for the truth of the matter asserting.

3 MR. KONZEN: I'm indicating whether or not the  
4 communication was made.

5 MR. HEDINGER: And if his question is asking for input from  
6 anybody other than attorneys within the Agency or within the  
7 Attorney General's Office, then I would withdraw my objection. I  
8 took his question to be sort of including that.

9 HEARING OFFICER SUDMAN: Would you repeat your question?

10 MR. KONZEN: Sure, I can rephrase it. It's been amended a  
11 few times, hasn't it?

12 Q. (By Mr. Konzen) Other than attorneys, did anyone within  
13 the IEPA recommend to you that this permit be denied?

14 A. No.

15 MR. HEDINGER: Same objection.

16 HEARING OFFICER SUDMAN: I'll allow it.

17 Q. (By Mr. Konzen) Were there any other reasons for the  
18 denial of the Saline County Landfill's permit other than what is  
19 stated in your December 5th permit denial letter?

20 MR. HEDINGER: I'm going to object to that. It's  
21 irrelevant. The permit denial letter frames issues on this  
22 appeal. Whether or not there were any other reasons, they would  
23 have to be listed in that letter, and that's a basic Board permit  
24 appeal case law.

1 MR. KONZEN: If the attorneys will stipulate to that, I  
2 might be able to withdraw question.

3 MR. HEDINGER: I don't think we have to. I think the  
4 letter is in the record.

5 MR. KONZEN: You're not going to stand by your objection in  
6 stipulation?

7 HEARING OFFICER SUDMAN: Well, it's in the letter. I think  
8 she can answer the question. Go ahead. If you remember the  
9 question.

10 A. Can you ask the question again?

11 MR. KONZEN: Can the court reporter read it back, please?

12 (The Reporter read from the record as follows: Were there  
13 any other reasons for the denial of the Saline County  
14 Landfill's permit other than what is stated in your  
15 December 5th permit denial letter?)

16 A. No.

17 Q. (By Mr. Konzen) What is the Ground Water Assistance  
18 Unit?

19 A. They are a part of the permit section. They review the  
20 applications, specifically, the portions that relate to ground  
21 water. The hydro-geology, the geology, and the ground water  
22 monitoring system.

23 Q. Did the Ground Water Assistance Unit review Saline  
24 County Landfill's permit application in this Log No. 2003-113?



1 A. Yes.

2 Q. What were the results of their review?

3 A. They recommended that a permit be issued.

4 Q. If you were concerned the development permit application  
5 presented by Saline County Landfill might have a potential  
6 negative impact on the ground water, would you have so stated in  
7 the --

8 MR. HEDINGER: Objection.

9 MR. KONZEN: I would like to finish the question. May I  
10 finish the question?

11 HEARING OFFICER SUDMAN: Finish the question, please.

12 Q. (By Mr. Konzen) Would you have so stated in your  
13 December 5th permit denial letter?

14 MR. HEDINGER: I'm going to object. Speculation, no  
15 foundation.

16 MR. KONZEN: It's not speculation as to what the witness  
17 would have stated. I'm asking her. I'm not speculating about  
18 someone else.

19 MR. HEDINGER: No relevance as well.

20 HEARING OFFICER SUDMAN: I -- I think it's pretty -- You  
21 can go ahead and ask, but I think we're kind of getting off on a  
22 tangent here. I'll let you answer this one question.

23 A. If there had been any points for the denial, it would  
24 have been stated in the denial letter.

1 Q. (By Mr. Konzen) What is an Environmental Protection  
2 Engineer?

3 A. They are engineers who work at the Illinois  
4 Environmental Protection Agency.

5 Q. Did an Environmental Protection Engineer review Saline  
6 County Landfill's permit application?

7 A. Yes.

8 Q. And what were the results of that review?

9 MR. HEDINGER: I'm going to object to hearsay.

10 MR. KONZEN: Same answer as before.

11 MR. HEDINGER: No, the previous question was, were there  
12 anybody who made recommendations. Now he's directly asking what  
13 did this third party, who's not in the room with us here today,  
14 is saying.

15 HEARING OFFICER SUDMAN: Well, can you clarify what you  
16 mean what were the results?

17 MR. KONZEN: Sure.

18 Q. (By Mr. Konzen) What was the recommendation from the  
19 Environmental Protection Engineer?

20 MR. HEDINGER: And again, earlier he had said did you  
21 receive recommendations. Now he's asking what was that  
22 recommendation.

23 MR. KONZEN: We've already -- we've already allowed in the  
24 same question on the Ground Water Assistance Unit, and I can move

1 on after this question is answered.

2 HEARING OFFICER SUDMAN: Okay.

3 A. She recommended a permit.

4 MR. HEDINGER: I'm going to object to the question and the  
5 answer because of lack of foundation. We don't know who she was.

6 MR. KONZEN: I'm willing to ask that question.

7 HEARING OFFICER SUDMAN: Well, I think we are starting to  
8 move into an area of irrelevance here. I mean, if there's  
9 anything to clarify, I mean, I'd like to get back to what Ms.  
10 Munie can testify to.

11 MR. KONZEN: That's fine. Moving on. Please mark -- I  
12 believe we're up to six, Madam Hearing Officer.

13 HEARING OFFICER SUDMAN: Yes, I've marked Exhibit No. 6, a  
14 letter to Mr. Steve Hedinger, from Joyce Munie dated March 12th,  
15 2003.

16 MR. HEDINGER: Once again, for the record, Mr. Konzen, is  
17 this already in the record that has been submitted by the Agency?

18 MR. KONZEN: Yes, it is.

19 HEARING OFFICER SUDMAN: Are you moving to admit at this  
20 time?

21 MR. KONZEN: Yes.

22 HEARING OFFICER SUDMAN: Admitting Petitioner's Exhibit 6.

23 Q. (By Mr. Konzen) Can you identify for me that document  
24 please, Ms. Munie?

1           A.    It's a March 12, 2003, letter to Steve Hedinger signed  
2 by me.

3           Q.    Did you sign this letter in your official capacity as  
4 permit section manager?

5           A.    Yes.

6           Q.    I'm going to direct your attention to the second page of  
7 that letter where it says, Status of 1996 Local Siting Approval.  
8 The first full paragraph below that, are you with me on that?

9           A.    Yes.

10          Q.    Could you read for the record so it's clear the second  
11 sentence of that paragraph?

12          A.    "The Illinois EPA has not come to the same conclusion."

13          Q.    I'm sorry. The third sentence.

14          A.    "Instead we have interpreted Section 39.2(f) of the  
15 Illinois Environmental Protection Act to mean that a landfill's  
16 local siting approval expires within 3 years of being granted  
17 only if an application for development permit has not been made  
18 during that 3-year period."

19          Q.    And who is we in that sentence?

20          A.    The Illinois Environmental Protection Agency.

21          Q.    Was that statement true and correct as of the date that  
22 you signed that letter?

23          A.    Yes.

24          Q.    Was that statement true and correct up until the first

1 week of December?

2 A. Of 2003, yes.

3 Q. Could you read for the record the last sentence of that  
4 paragraph?

5 A. "This interpretation has consistently been employed in  
6 answering questions from potential operators in reviewing permit  
7 applications."

8 Q. And was that statement true and correct as of March 12,  
9 2003?

10 A. Yes.

11 Q. Do you know whether those statements met with the  
12 approval of the IEPA's Division of Legal Counsel?

13 MR. HEDINGER: Objection.

14 Q. (By Mr. Konzen) As of the date you signed the letter?

15 MR. KIM: I'm going to object. Calls for an answer seeking  
16 attorney-client privilege communication.

17 HEARING OFFICER SUDMAN: Sustained.

18 Q. (By Mr. Konzen) Were the representatives of Saline  
19 County Landfill ever told by anyone in the permit section that a  
20 local siting approval expired only if an application for a  
21 development permit has not been made within 3 years?

22 A. Yes.

23 Q. And who told Saline County Landfill that?

24 A. I did.

1 MR. HEDINGER: I'm going to -- Go ahead.

2 MR. KONZEN: I'm not asking for the truth of the matter  
3 asserted.

4 HEARING OFFICER SUDMAN: Are you asking did she, is that  
5 your question, or are you asking someone else?

6 MR. KONZEN: I think that's going to be the answer based on  
7 prior discovery. I can ask the question differently.

8 HEARING OFFICER SUDMAN: Please.

9 Q. (By Mr. Konzen) Did you make such a statement to the  
10 representatives of the Saline County Landfill?

11 A. Yes.

12 Q. Did you make the statement to the representatives of  
13 Saline County Landfill in person or on the phone?

14 A. In person.

15 Q. Do you recall who you made that statement to?

16 A. No.

17 Q. Would it have been sometime in 1993?

18 A. In 1993?

19 Q. Oh, I'm sorry, 2003. 2003.

20 A. Probably.

21 Q. In your capacity as permit section manager, how long  
22 have you so interpreted Section 39.2(f) of the Environmental  
23 Protection Act to mean a local siting approval expires only if an  
24 application for develop permit has not been made within 3 years

1 of the local siting?

2 A. Since I've only been manager for 5 years, 5 years.

3 Q. Do you know how long the permit section has so  
4 interpreted Section 39.2(f)?

5 MR. HEDINGER: Objection, no foundation. This clearly  
6 would have to dip into some sort of hearsay based on 5 years  
7 predating her position.

8 MR. KONZEN: She testified previously she's been with the  
9 Permit Section, Bureau of Land since 1992, if I heard her  
10 correctly. If she knows, she can answer.

11 HEARING OFFICER SUDMAN: Well, I'm going to rule that it's  
12 really not relevant.

13 Q. (By Mr. Konzen) When did you, as permit section  
14 manager, change your position from your interpretation of Section  
15 39.2(f) as stated in your March 12th letter?

16 A. December 5th, 2003.

17 Q. So that's the same day the permit denial was issued to  
18 Saline County Landfill?

19 A. Yes.

20 Q. To your knowledge did Saline County Landfill receive any  
21 warning of your change of your interpretation of the statute?

22 A. No.

23 MR. HEDINGER: I'm going to object. What would be the  
24 basis? Warning from whom, and warning for what sort? And also

1 object to the characterization of the warning.

2 HEARING OFFICER SUDMAN: Yeah, I'm --

3 MR. KONZEN: I can ask the question differently.

4 HEARING OFFICER SUDMAN: Would you, please?

5 Q. (By Mr. Konzen) Did you in any way, as permit section  
6 manager, communicate with Saline County Landfill that you  
7 intended to change your interpretation of Section 39.2(f) of the  
8 act before you did so?

9 MR. HEDINGER: Objection, relevant. And as a matter of  
10 fact, if we could simply have the right to have a broader  
11 objection to all of this testimony concerning the topic that  
12 we're on in this belief by the permit section on one  
13 interpretation that changed on December 5th. As I read the case  
14 law and -- well, the first place Mr. Konzen has not pled any  
15 estoppel arguments in his petition, so if he's trying to move for  
16 estoppel, he hasn't pled it and is not here. But moreover, to  
17 get there he has to show the Agency knew it was wrong and  
18 intentionally misled the -- in this case, the applicant. And Ms.  
19 Munie has already testified that she had, as far as she knew, her  
20 interpretation was right clear up until December 5th.

21 So if there were some prior miscommunication to the Saline  
22 County Landfill, Inc., it was not with any intentional or intent  
23 on the part of the Agency to -- to surprise anyone or to trick  
24 anyone and, therefore, there is no basis for any estoppel there.



1 And I would point to the Medical Disposal Services case for that.

2 MR. KONZEN: We haven't argued estoppel here, Madam Hearing  
3 Officer. What we argued was there was a lengthy and consistent  
4 interpretation of an Agency of a statute and then it reversed  
5 itself and then my client, as a result, was denied a permit.

6 Now that clearly goes to whether or not the denial of my  
7 client's permit was arbitrary and capricious.

8 Further, there is an issue here that Mr. Hedinger is not  
9 raising. He has consistently argued to this Agency, documents in  
10 this record that the government's interpretation of the statute  
11 is entitled to some deference. I submit he cannot possibly be  
12 entitled to any deference when there was a sudden and dramatic  
13 reversal of a consistent provision taken which was communicated  
14 to my client in advance. That's not an estoppel argument. It  
15 certainly is, however, goes to the issue of deference which I  
16 didn't raise, Mr. Hedinger did. It certainly goes to whether  
17 this is arbitrary and capricious, and it certainly makes it  
18 relevant.

19 MR. WOLF: Can I make an objection on that too as to what  
20 he's asking about?

21 HEARING OFFICER SUDMAN: Yes.

22 MR. WOLF: Because the people he is talking about  
23 apparently aren't here and apparently aren't in the room today  
24 and apparently we haven't heard from them, and so that's all

1 irrelevant and it's not evidence. It's all just suggestions that  
2 it's accurate. That there's no proof of it. And there's no  
3 evidence of it, and there's no witnesses here to testify other  
4 than the lady that's on the stand now, Joyce Munie.

5 MR. KONZEN: That's not true. Mr. Hasenyager here seated  
6 to my left is --

7 MR. WOLF: We haven't heard it. So why can she be  
8 questioned about something that is not on the witness stand yet?

9 MR. KONZEN: If I could finish without being interrupted,  
10 Madam Hearing Officer. Mr. Hasenyager is very willing to take  
11 the stand after Ms. Munie and testify that he heard her make  
12 those statements. If I could finish this, however, it might not  
13 even be necessary.

14 HEARING OFFICER SUDMAN: Mr. Kim?

15 MR. KIM: Well, I would only note -- I mean, and I don't  
16 know if there's a short end to all of this. But I think, you  
17 know, the argument Mr. Konzen stated -- Well, first of all, they  
18 are arguments obviously. I'm sure he'll make those in  
19 post-hearing briefs as is appropriate. But Ms. Munie has already  
20 testified she held one interpretation on a certain date, a  
21 different interpretation on a different date, testified as to her  
22 understanding during the 5 years she's been in her position. I  
23 think anything beyond that really is redundant. We've already  
24 established that in a not relevant report is going to be -- in

1 essence going to be any different than what she's already  
2 testified to.

3 THE COURT: Well, I'm going to sustain the respondent and  
4 intervenor's objection for the following reason: There was a  
5 Board case called Village of Fox River Grove vs. IEPA, PCB  
6 97-156, December 18th, 1997. In that case the Village argued  
7 that the Agency's decision to impose a lower affluent limitation  
8 was arbitrary because there had been no changes in the fact from  
9 the previous MTBS permit application. And that the only factor  
10 that changed was that the reviewer was different.

11 The Agency responded that it didn't matter who the reviewer  
12 was because the only thing that matters is the Agency's final  
13 decision. The Board held that the Agency's prior actions and any  
14 prior interpretations were not relevant to that decision on  
15 appeal.

16 The Board is not bound by the Agency's interpretation of  
17 the Act, therefore, what -- any prior interpretations by the Act  
18 -- of the Act by the Agency, whether or not they flip flop or  
19 whether they're inconsistent, aren't relevant because the Board  
20 reviews that issue and interprets the Act for itself. So I'm  
21 going to hold that this questioning -- the line of questioning to  
22 Ms. Munie regarding any change in interpretation of the Act is  
23 not relevant to this appeal. It doesn't mean that you can't  
24 argue it in your post-hearing brief, but I'm not going to allow

1 evidence to be admitted on that line of questioning.

2 MR. WOLF: Thank you. And I'm also going to ask an  
3 objection -- or that any witness that's going to plan on  
4 testifying here today be excluded from this particular room at  
5 this time so they're not involved in the process of the witness  
6 on the stand. That's -- In other words, if this gentleman is  
7 going to be called as a witness, I think we have a right to  
8 exclude him from this room right now.

9 MR. KONZEN: I think we're done with that line of inquiry.  
10 If he was --

11 MR. WOLF: That isn't my objection. My objection is as to  
12 the witness. You've indicated he's going to be called as a  
13 witness.

14 MR. KONZEN: He may, yes.

15 MR. WOLF: And because he may, then I think we have a right  
16 to have him excluded from the room right now because there's  
17 another witness on the stand.

18 MR. KONZEN: I think that's waived. I think Motions to  
19 Sequester need to be presented at the beginning.

20 MR. WOLF: Well, you just mentioned in my objection that  
21 he's going to be planned on called as a witness. Now that I'm  
22 aware that he's going to be called as a witness potentially, I  
23 have the right to have him excluded so he's not hearing this  
24 witness testify.

1           MR. KONZEN: Mr. Wolf, you were on the phone with the  
2 hearing officer --

3           MR. WOLF: That's my objection. That's not even evidence.

4           HEARING OFFICER SUDMAN: Please speak one at a time.

5           MR. KONZEN: I'd like to finish -- I'd like to finish my  
6 answer, if I may. You were present and listening on the phone  
7 when I disclosed that Mr. Hasenyager as a witness.

8           MR. WOLF: Where I was present? Up in Springfield or  
9 something you say?

10          MR. KONZEN: You were on the phone with us and --

11          MR. KONZEN: And it's just hearsay, ma'am, and I'm just  
12 saying right here he's saying that he's going to call him as a  
13 witness. I think he should be excluded -- have him excluded  
14 because there's another witness on the stand now.

15          HEARING OFFICER SUDMAN: Well --

16          MR. WOLF: There's no waiver when you exclude witnesses.  
17 That can be done at any time.

18          HEARING OFFICER SUDMAN: She's already been testifying for  
19 20 minutes.

20          MR. WOLF: Well, it wasn't until a minute or two ago that  
21 he said he was going to probably call him as a witness.

22          HEARING OFFICER SUDMAN: Well, you know, that's fine. Mr.  
23 Hasenyager, would you mind waiting outside until we're finished  
24 with this witness?

1 (Mr. Hasenyager exits the room.)

2 MR. WOLF: Thank you, ma'am.

3 MR. KONZEN: Madam Hearing Officer, I'd like to make an  
4 offer of proof in the form of letting the witness answer the last  
5 question, if you've ruled on it.

6 HEARING OFFICER SUDMAN: I don't recall what that was.

7 MR. KONZEN: Nor do I. If we could hear it back.

8 (The Reporter read from the record as follows: Did you in  
9 any way, as permit section manager, communicate with  
10 Saline County Landfill that you intended to change your  
11 interpretation of Section 39.2(f) of the act before you  
12 did so?)

13 A. Am I allowed to answer now?

14 HEARING OFFICER SUDMAN: Yes.

15 A. The answer is no.

16 Q. (By Mr. Konzen) Administrative Record page 234 through  
17 309, please. We probably won't be marking this. I just think it  
18 will save some time if we have it in the record. It's in the  
19 administrative record on the pages cited.

20 HEARING OFFICER SUDMAN: Okay.

21 Q. (By Mr. Konzen) Is there a draft permit for Saline  
22 County Landfill in this Log No. IEPA 2003-113?

23 A. Yes.

24 Q. Who prepared it?

1 A. Christine Roque, R-o-q-u-e.  
2 Q. Who does she work for at the Agency?  
3 A. Chris Liebman, L-i-e-b-m-a-n.  
4 Q. And who does he work for?  
5 A. Me.  
6 Q. Because you previously testified it's your decision?  
7 A. Yes.  
8 Q. Directing your attention to page 309 of the  
9 administrative record, I think it should be the last page of the  
10 draft permit.  
11 MR. HEDINGER: I'm going to object to the questioning with  
12 regard to the draft permit, the draft.  
13 MR. KONZEN: Well, I haven't asked the question yet.  
14 HEARING OFFICER SUDMAN: I don't know where this is going.  
15 But it's in the record so I will allow you to ask a question on  
16 it.  
17 Q. (By Mr. Konzen) Are there any initials on that page?  
18 A. Yes.  
19 Q. And whose initials are there?  
20 A. Christine Roque, Chris Liebman and Gwenyth Thompson,  
21 G-w-e-n-y-t-h.  
22 Q. And why do these people issue draft permits as the one  
23 you have in front of you?  
24 A. It's their way to indicate to me that they have reviewed

1 the notes, the records and the draft permits and are in agreement  
2 with it.

3 Q. When you say in agreement with it, you mean?

4 A. That they are recommending the permit.

5 Q. Was that draft permit ready for your signature should  
6 you have so decided to issue it?

7 A. Yes.

8 Q. Have you named for us now, over the course of your  
9 testimony today, the various permit reviewers at the IEPA who so  
10 reviewed this development permit application of Saline County  
11 Landfill?

12 A. I believe I have not named Ground Water Assistance  
13 Engineers.

14 Q. And just so the record is clear, who are they?

15 A. Paul Eisenbrandt, E-i-s-e-n-b-r-a-n-d-t, and Mike  
16 Summer, S-u-m-m-e-r.

17 Q. And it was the recommendation of these various permit  
18 reviewers at IEPA unanimous to issue the permit?

19 A. Yes.

20 Q. Do you routinely follow the recommendation of your  
21 reviewers when the recommendation is unanimous?

22 MR. HEDINGER: Objection. There is no relevance to any of  
23 this, I mean, the final decision with this matter. And she's  
24 already testified that she was ready to issue or had one



1 interpretation of the statute clear up until the day she denied  
2 the permit. And, furthermore, all the things that these other  
3 people reviewed were not a basis for denial of the permit.

4 HEARING OFFICER SUDMAN: Sustained. Do you have any  
5 specific questions about any of the documents in the record?

6 MR. KONZEN: Yes.

7 Q. (By Mr. Konzen) Is it correct to state that the only  
8 reason you did not follow the permit reviewers' unanimous  
9 recommendation is because the Attorney General's Office  
10 recommended that you deny the permit?

11 MR. KIM: Objection.

12 MR. HEDINGER: Objection.

13 MR. KONZEN: She's previously testified, and I'm entitled  
14 -- The door is open. I'm entitled to walk in that door.

15 MR. WOLF: No, that's privileged information. I think you  
16 just ruled on it so that should be obvious.

17 HEARING OFFICER SUDMAN: Yeah, I don't know if you like to  
18 rephrase that. But you're asking her if the AG advised her to  
19 deny the application?

20 MR. KONZEN: I will rephrase.

21 HEARING OFFICER SUDMAN: Thank you.

22 Q. (By Mr. Konzen) Is it correct to state that the only  
23 reason you did not follow the permit reviewers' unanimous  
24 recommendation and issue a permit to my client is because you

1 received a communication from the Attorney General's Office  
2 without asking what was in the communication?

3 MR. KIM: Well, I'm just going to object simply because the  
4 reason he's asking for is basically the reason that was stated in  
5 the denial letter. The denial letter is very clear on it's face  
6 as to why the Agency denied the permit application.

7 MR. KONZEN: What he's doing is answering for the witness.  
8 I would like to hear what the witness has to say.

9 MR. KIM: She's already testified that any denial reasons,  
10 any denial correspondence, even the final decision, there's only  
11 one. This question has been asked and answered.

12 MR. KONZEN: Well, I'm asking her why she didn't follow the  
13 unanimous recommendation of her permit reviewers. I think that's  
14 slightly different.

15 MR. KIM: That is a different question though than what he  
16 just asked her. He did not ask her why she did not follow the  
17 recommendation. He asked her if was there any other reason. And  
18 I'm saying the only reason for the denial is what is found in the  
19 denial letter. If he's going to ask that, that's a different  
20 question altogether.

21 MR. KONZEN: Well, I think counsel is trying to communicate  
22 to the witness how to answer here. I'd like to -- Can you rule  
23 on my last question?

24 HEARING OFFICER SUDMAN: If you would rephrase the

1 question.

2 MR. KONZEN: Can you read the question back?

3 (The Reporter read from the record as follows: Is it  
4 correct to state that the only reason you did not follow  
5 the permit reviewers' unanimous recommendation and issue a  
6 permit to my client is because you received a  
7 communication from the Attorney General's Office without  
8 asking what was in the communication?)

9 HEARING OFFICER SUDMAN: I'm going to sustain the objection  
10 then.

11 Q. (By Mr. Konzen) Since you became permit section  
12 manager, can you tell me how often you deny permits that are  
13 unanimously recommended to you by your permit reviewers?

14 MR. KIM: Objection, relevance.

15 MR. HEDINGER: Objection.

16 HEARING OFFICER SUDMAN: Sustained.

17 Q. (By Mr. Konzen) Did you have any specific interest in  
18 the waste footprint proposed in the Saline County Landfill  
19 application for development permit in this Log No. 2003-113?

20 A. Yes.

21 Q. And did you receive any recommendation from your staff  
22 reviewers about that?

23 A. Yes.

24 Q. And what was that?

1           A.    That the waste footprint was consistent with the local  
2 siting approval.

3           Q.    Did you agree?

4           A.    Yes.

5           Q.    And to -- Did the Saline County Landfill Development  
6 Permit Application in this Log No. 2003-113 propose a landfill  
7 expansion with an interior separation berm?

8           A.    Yes.

9           Q.    How wide was that interior separation berm supposed to  
10 be?

11          A.    100 foot.

12          Q.    Was it ever your understanding that Saline County  
13 Landfill could avoid returning for local siting if it submitted  
14 an amended permit application or a different permit application  
15 proposing a separation berm wider than 50 feet?

16          A.    Yes.

17          Q.    And up until December 5th, 2003, what was that  
18 understanding?

19          A.    That the siting was valid and that the permit, if  
20 technically adequate, could be issued.

21          Q.    And I take it technically adequate means it conforms  
22 with the expectations of the various permit reviewers?

23          A.    It confirms to all the rules and regulations.

24          Q.    And that's what your permit reviewers look for?

1 A. Yes.

2 Q. After its 1996 local siting approval, did a vertical  
3 expansion permit be issued to Saline County Landfill?

4 A. I don't recall.

5 Q. I'm going to refresh the witness's recollection. Give  
6 her a minute to review that document.

7 HEARING OFFICER SUDMAN: Okay.

8 MR. HEDINGER: Is that in the record?

9 MR. KIM: Can we identify the document that's been handed?

10 HEARING OFFICER SUDMAN: Yes.

11 Q. (By Mr. Konzen) It is -- I gave you my copy. What is  
12 the log no., please?

13 A. It is December 31st, 1999, permit with Log No. 1996-147,  
14 Permit No. 1996-147-LFM.

15 Q. Yes, it is attached to my Petition For Review previously  
16 filed. Have you had a chance to review the document?

17 A. Yes.

18 Q. So I ask the question, did a vertical expansion permit  
19 issued to Saline County Landfill after its 1996 local siting  
20 approval?

21 A. Specifically this permit approved a vertical expansion  
22 of the existing landfill.

23 Q. So the answer is yes?

24 A. Yes.

1 Q. Did that permit for vertical expansion -- Well, first of  
2 all, what's the date of that?

3 A. December 31st, 1996.

4 Q. Did that permit for vertical expansion dated December  
5 31st, 1996, include an air space which was the subject of the  
6 1996 local siting approval?

7 A. I don't know.

8 MR. WOLF: I'm going to object somewhat to the extent I  
9 don't know who wrote the letter. It's not been conformed here in  
10 the room of who wrote it, and whether she was familiar with it  
11 back at that time, and otherwise she may just be reading a letter  
12 that somebody else -- I just ask him if it should be --

13 MR. KONZEN: Can I clarify?

14 HEARING OFFICER SUDMAN: Please.

15 Q. (By Mr. Konzen) Can you identify that document a little  
16 further?

17 A. Yes. This document was signed by Ed Bakowski. I  
18 reviewed it in my capacity as the solid waste unit manager.

19 MR. WOLF: So who was it signed by, ma'am, I'm sorry?

20 A. Edwin C. Bakowski, B-a-k-o-w-s-k-i.

21 MR. WOLF: Is that refreshing your memory, or is that  
22 something that you just don't remember as you testified earlier?

23 MR. KONZEN: If he wants to voir dire the witness, he has  
24 to so move it, Madam Hearing Officer. I would like to proceed

1 with my next question.

2 HEARING OFFICER SUDMAN: Would you like to question the  
3 witness?

4 MR. WOLF: Again, my objection is that the fact is she said  
5 she didn't remember, and if it's not a report she signed, all  
6 we're doing is listening to her testify to what somebody else  
7 said.

8 MR. KONZEN: If I may respond. What she said to us is she  
9 didn't remember was whether or not this permit application she's  
10 holding, that we've been talking about from December 31st, 1996,  
11 included air space that was subject of a 1996 local siting. And  
12 I can -- She said didn't remember. I can refresh her  
13 recollection on that with a previously admitted exhibit, the  
14 response to the IEPA to --

15 MR. HEDINGER: He's refreshing her memory. That's not  
16 valid at all to that. How can he refresh her memory unless he's  
17 a witness here today.

18 MR. KONZEN: I'd really like to finish a sentence without  
19 being interrupted by Mr. Wolf.

20 MR. WOLF: Well, albeit.

21 HEARING OFFICER SUDMAN: Would everybody please speak one  
22 at a time so the court reporter can get everything down.

23 MR. KONZEN: Exactly. I can tender this is an exhibit  
24 previously admitted by ruling of the Hearing Officer. The

1 Request to Admit the First Response of Exhibit 3. I'm going to  
2 direct the witness to --

3 MR. WOLF: I'll object to her looking at it, Madam Hearing  
4 Officer, because she said she didn't remember. Now he is trying  
5 to tell her who it was or explain to her. If she doesn't  
6 remember, she doesn't remember.

7 MR. KONZEN: Well, she signed Exhibit No. 3.

8 MR. WOLF: Well, that's not in evidence yet and I'm  
9 objecting. You weren't a witness to her signature there. But  
10 what I'm talking about now, what she's talking about now, she  
11 said she did not remember that.

12 HEARING OFFICER SUDMAN: Mr. Konzen, would you like to lay  
13 some foundation?

14 MR. KONZEN: Yes, I would be glad to. I'm going to start  
15 by going back to Exhibit No. 3, the Request to Admit. I'm going  
16 to hand them to Ms. Munie and ask her if she could -- Well, first  
17 off, I'm going to hand the witness Exhibit No. 3, the first set  
18 of Request to Amend the First Answers. Take a minute to flip  
19 through that, Ms. Munie.

20 A. Okay.

21 Q. (By Mr. Konzen) Did anyone on behalf of the permit  
22 section sign those?

23 A. This document? No.

24 Q. The response -- Directing your attention to the last



1 page.

2 MR. WOLF: Your Honor, again, he's trying to testify and  
3 point things out to the witness. She's already answered it. She  
4 said no to it. He's trying to further get an answer on it. I  
5 don't understand.

6 Q. (By Mr. Konzen) If I may further follow-up, have you  
7 seen Exhibit 3 before?

8 A. Yes.

9 Q. How did you come to see it?

10 A. I discussed it with John Kim.

11 Q. Okay. Without getting into attorney-client  
12 communication, did you have any input in those answers?

13 A. Yes.

14 Q. Are you familiar with those answers?

15 A. Yes.

16 Q. Directing your attention to request to admit number 9?

17 A. Yes.

18 Q. Are you familiar with that answer?

19 A. Yes.

20 Q. Take a minute to read it, of course. And were those  
21 answers true and correct?

22 MR. HEDINGER: I'm going to object. This is where my  
23 reserved objection when this document was admitted comes into  
24 play. I believe this Request No. 9 calls for a legal conclusion.

1 It's not a request to admit facts and, therefore, not properly  
2 indicates a request for -- that document itself could request or  
3 this witness can answer.

4 MR. KONZEN: You know, we got started here with an attempt  
5 to refresh the witness's recollection, Madam Hearing Officer. I  
6 think if I went back through it and asked it, she could answer.

7 HEARING OFFICER SUDMAN: Let me read number 9. We were  
8 talking about request to admit number 9?

9 MR. KONZEN: Correct.

10 HEARING OFFICER SUDMAN: And again, what was your question,  
11 Mr. Konzen?

12 MR. KONZEN: The question I wanted to ask, that started all  
13 this is, did that permit for vertical expansions from  
14 December 31st, '96, include air space that was the subject of the  
15 1996 local siting approval. I'm not asking -- That's what I'm  
16 asking the witness now. And I believe Request No. 9 has  
17 refreshed her recollection.

18 MR. HEDINGER: And I would object to the question on the  
19 basis it calls for a legal conclusion. He believes, and quickly,  
20 it's my objection for this request for hearing.

21 MR. KIM: Real quickly. In the alternative if you decide  
22 to overrule Mr. Hedinger's objection, if you read Request No. 9,  
23 if you find that to be relevant, the question and the answer, I  
24 think this exhibit has been admitted into evidence. It's exactly

1 what he's asking. It's already before us. So it's been asked  
2 and answered.

3 MR. KONZEN: But this -- the witness said she didn't  
4 recall. I'm refreshing her recollection.

5 MR. KIM: The Agency has already, if this question is going  
6 to go in, the Agency has already admitted the answer to this  
7 question. I don't think it has -- She's already testified she  
8 doesn't recall.

9 MR. KONZEN: You're answering?

10 MR. WOLF: She did testify she didn't recall. We're no  
11 further from that than we were then.

12 HEARING OFFICER SUDMAN: Okay. Let's start fresh. I'm  
13 going to allow her to answer the question one more time. I don't  
14 recall her answering.

15 MR. KONZEN: I can repeat it for the witness for sake of  
16 argument.

17 HEARING OFFICER SUDMAN: Yes.

18 Q. (By Mr. Konzen) Did that December 31st, 1996, permit  
19 for vertical expansion include air space that was the subject of  
20 the 1996 local siting approval?

21 A. I don't know.

22 Q. Even after refreshing your recollection of  
23 September 9th?

24 MR. WOLF: Your Honor, I'm going to object again. Again,

1 he's trying to ask her the same question. Her answer has been I  
2 don't know, I don't know. What else can she say?

3 HEARING OFFICER SUDMAN: I'll allow that question to stand.  
4 So even after reviewing the document, is your answer the same?

5 A. Yes.

6 Q. (By Mr. Konzen) Directing your attention back to your  
7 March 12, 2003, letter, do you still have it in front of you?

8 A. Yes.

9 Q. There's a reference on the second page IEPA Log No.  
10 2001-362. Are you with me on that?

11 A. Yes.

12 Q. What kind of permit application was Log No. 2001-362?

13 A. The renewal of the 1996-147 LFM permit.

14 Q. Is that the December 31st, 1996, permit we've been  
15 discussing?

16 A. Yes.

17 Q. Who was the permit applicant?

18 A. Saline County Landfill, Inc.

19 Q. At any time did Log No. 2001-362 contain a development  
20 permit application seeking an expansion of Saline County  
21 Landfill?

22 A. Yes.

23 Q. What happened to that application for expansion?

24 A. It was identical to the application that had been denied

1 previously. And I recommended to the applicant that if it was  
2 not withdrawn from the renewal, I would have to deny the renewal,  
3 and, therefore, it was subsequently withdrawn.

4 Q. Thank you. You've answered the next three questions I  
5 was going to ask you there. That's fine. Was it your intention  
6 to copy your March 12, 2003, letter to the representatives of  
7 Saline County Landfill?

8 MR. HEDINGER: Objection. Relevance of her intention.

9 HEARING OFFICER SUDMAN: What was the request? To send  
10 copies?

11 MR. KONZEN: Was it your intention to send a copy, yes.

12 HEARING OFFICER SUDMAN: I'll allow it.

13 A. That would be our normal business practice.

14 Q. (By Mr. Konzen) Was this March 12, 2003, letter  
15 available to the public?

16 A. Yes.

17 MR. KONZEN: Subject to redirect, I have no further  
18 questions of this witness.

19 HEARING OFFICER SUDMAN: Thank you.

20 MR. KONZEN: Thank you, Ms. Munie.

21 HEARING OFFICER SUDMAN: Mr. Kim?

22 MR. KIM: I'll defer to Mr. Hedinger.

23 MR. HEDINGER: We'll go first. I have a few questions.

24 CROSS-EXAMINATION

1 QUESTIONS BY MR. HEDINGER:

2 Q. What is a renewal permit?

3 A. The landfill permits, such as the one issued to Saline  
4 County, are subject to expiration. And prior to a permit  
5 expiring, they must submit an application to renew the permit.

6 Q. We're talking about what kind of permit that would be  
7 subject to expiration?

8 A. For a landfill that was operated after September 18th,  
9 1992.

10 Q. But which permit? Is it an operating permit that is  
11 subject to expiration?

12 A. It is the LFM, which is the permit for the facility.

13 Q. Okay. Is it -- Tell me what is included in that kind of  
14 a permit application, renewal permit application?

15 A. Renewal permit application must contain any changes that  
16 have occurred to the facility, and also must evaluate or  
17 re-evaluate the ground water impact assessment and any changes to  
18 the ground water impact assessment. It must also do a survey of  
19 the site and include cost estimates or any changes to the cost  
20 estimates.

21 Q. Okay. And where in the regulation is the authority for  
22 these renewal permis; do you know?

23 A. It's 811 through 813.

24 Q. 811 through 13. And that's Title 35 of the Illinois

1 Administrative Code; correct?

2 A. Yes.

3 Q. Is it -- is one of the purposes of a renewal permit  
4 application to seek development of a whole new expansion of a  
5 facility?

6 A. An application for renewal can contain changes that are  
7 being proposed to the facility.

8 Q. Including a development permit?

9 A. Including a proposal to expand the facility, yes.

10 Q. Mr. Konzen asked you some questions about the waste  
11 footprint and whether or not that was consistent with the siting  
12 approval, do you remember that line of questioning?

13 A. Yes.

14 Q. Isn't it true that your office, the -- Well, the -- he  
15 also asked you questions about this draft permit; right?

16 A. Yes.

17 Q. That draft permit included some proposed, or would have  
18 -- if it had been issued, would have included some proposed  
19 conditions; right?

20 A. Yes.

21 Q. One of those conditions pertained to that berm; correct?

22 A. Yes.

23 Q. What was that condition?

24 A. In the application there was reference to,

1 notwithstanding any other provisions, we don't give up our rights  
2 to consider or ask for waste disposal within this berm. And the  
3 condition specifically stated that the permit was not allowing or  
4 authorizing disposal of waste within that 100-foot buffer area.

5 Q. Okay. So just to paraphrase what you just said, the  
6 permit application asked once again to get rid of the berm as  
7 such and fill it up with trash; right?

8 A. No.

9 MR. KONZEN: Sorry. I withdraw. Let her answer.

10 A. No.

11 Q. (By Mr. Hedinger) What was your answer?

12 A. No, it did not.

13 Q. Okay. And why do you say that?

14 A. The designs were clear in that there was a 100-foot  
15 separation of -- without waste in it. However, there was some  
16 disclaimer language within the application that said that they  
17 considered that area sited and they reserve their rights to, in  
18 the future, come back and submit an application for disposal  
19 within that area.

20 MR. HEDINGER: Okay. Okay. That's all the questions I  
21 have. Would it be okay for Mr. Wolf to ask a question as well?

22 MR. KONZEN: For the record I object to that. Good cop,  
23 bad cop is not normally permitted though.

24 MR. WOLF: We're both bad.



1 HEARING OFFICER SUDMAN: I'll allow it, Mr. Wolf.

2 CROSS-EXAMINATION

3 QUESTIONS BY MR. WOLF:

4 Q. A little while ago a question by Mr. Konzen, your answer  
5 was it didn't correct the problem. Can you describe that a  
6 little better? You mentioned did not correct the problem, were  
7 you talking about the Saline County Landfill?

8 MR. KONZEN: I think this mischaracterizes prior testimony.

9 Q. (By Mr. Wolf) Well, I heard the term did not correct  
10 the problem. Do you recall that at all?

11 A. I don't recall making a statement.

12 Q. Was that under reapplication where they did not correct  
13 the problem?

14 MR. KONZEN: Asked and answered.

15 MR. WOLF: Well, I'm asking further questions, if I can be  
16 allowed to.

17 MR. KONZEN: I think it mischaracterizes. Same objection.

18 HEARING OFFICER SUDMAN: Well, I'm not sure what -- Go  
19 ahead and clarify yourself.

20 Q. (By Mr. Wolf) Well, there was a question and answer  
21 they didn't correct the problem, did that relate to the berm?

22 A. I don't recall the answer, therefore, I don't recall the  
23 question.

24 Q. Okay. The bottom line is, that the results of your

1 decision was based on the law was on -- your decision not to  
2 reallow it to be reopened?

3 MR. KONZEN: I don't understand the question, therefore,  
4 object.

5 Q. (By Mr. Wolf) Well, the permit was denied. Was it  
6 denied only because the law was not being followed; is that  
7 correct?

8 HEARING OFFICER SUDMAN: Do you understand the question?

9 MR. WOLF: Or if she doesn't understand the question.

10 A. I wouldn't characterize it as that.

11 Q. (By Mr. Wolf) On your December 5th, 2003, letter that  
12 you signed, okay, do you recall in that what you stated as to why  
13 you denied your application?

14 A. Yes.

15 Q. And what was that?

16 A. Because the siting had expired.

17 Q. And was that your sole reason for that ruling?

18 A. Yes.

19 Q. And the expiration, approximately how late had it  
20 expired?

21 A. I'm sorry?

22 Q. How many years late was it as far as expiration? When  
23 was the expiration in your opinion? When did that occur?

24 A. When did the siting expire?

1 Q. Yes.

2 A. Under the law, 3 years.

3 Q. Okay. And was it not approximately 7 years later that  
4 they reapplied?

5 A. They reapplied?

6 Q. Yes, 4 years later, after the time expired?

7 HEARING OFFICER SUDMAN: You talking about the appeal at  
8 hand?

9 MR. WOLF: Yes.

10 HEARING OFFICER SUDMAN: And you're asking how --

11 MR. WOLF: How many years late. How many years late.

12 HEARING OFFICER SUDMAN: By late, you mean the expiration  
13 of the local siting?

14 A. I did not make that evaluation.

15 Q. (By Mr. Wolf) You did not. Okay. But your evaluation  
16 that it had expired?

17 A. By determination was that the siting had expired.

18 Q. And that was based solely on what the law is; is that  
19 correct?

20 A. It was based on my understanding of the -- I'm sorry.  
21 Could you ask that question in a little bit different way maybe?

22 Q. Was that decision based solely upon what the law is; is  
23 that correct?

24 A. My decisions are always based solely on what the law is.

1 Q. And that's solely what that decision was based on; is  
2 that correct?

3 MR. KONZEN: Asked and answered.

4 HEARING OFFICER SUDMAN: I agree. She answered it.

5 MR. WOLF: Okay. That's it.

6 HEARING OFFICER SUDMAN: Mr. Kim?

7 CROSS-EXAMINATION

8 QUESTIONS BY MR. KIM:

9 Q. I just have a few questions, ma'am. If they tend to  
10 stray a little bit, I think they're all -- Ms. Munie, just so we  
11 can clarify, the -- who was it within in the Illinois EPA that  
12 has final authority to issue decisions on permit application?

13 A. For landfills? I do.

14 Q. And you're not beholden or under obligation of any of  
15 your staff to make that decision, are you?

16 A. No.

17 Q. And are you aware of any requirement in the Board  
18 regulations or in the Environmental Protection Act that requires  
19 any kind of notification, prenotification, of a final decision  
20 other than the final decision itself on a permit application?

21 A. Not for these type of landfills, no.

22 Q. And I think I understand where Mr. Wolf was getting at.  
23 Let me try to get that in a different way. Do you recall when  
24 the local siting approval, most recent local siting approval, was

1 for this site?

2 A. I believe it was 1996.

3 Q. Okay. And do you have the Exhibit No. 2 in front of  
4 you?

5 A. I don't have the number. Can you tell me what it is?

6 Q. It is the December 5, 2003, decision.

7 A. Yes.

8 Q. Would you look at the first paragraph of that letter,  
9 please?

10 A. Yes.

11 Q. And after you've had a chance to look at it, would you  
12 let me know what the earliest -- It indicates that the  
13 information was received on multiple dates, in terms of what made  
14 up this permit application; is that right?

15 A. Yes.

16 Q. What was the earliest date that you received information  
17 on the permit application?

18 A. April 7th, 2003.

19 Q. I'm not going to ask you about content, but I'm just  
20 simply asking you about more whether or not you received  
21 something. Other than in the context of Permit Log No. 2001 --  
22 2003-113, have you ever received any kind of correspondence or  
23 legal interpretation from the Attorney General's Office regarding  
24 the Environmental Protection Act and siting?

1           A.    No.

2           MR. KONZEN:  I'm sorry.  I wasn't given a chance to -- Can  
3 I hear that question again?

4           MR. KIM:  Yeah, let me try and clarify it.

5           MR. KONZEN:  I may not have an objection.

6           MR. KIM:  Yeah, no, it's --

7           Q.    (By Mr. Kim)  Other than in the context of Permit Log  
8 No. 2003-113, which is the permit application that led to the  
9 final decision under appeal, have you ever received any  
10 interpretation from the Illinois Attorney General's office  
11 regarding local siting approval?

12          MR. KONZEN:  Relevancy.

13          MR. KIM:  Well, there's been a number of questions  
14 concerning the documents that were reviewed by Ms. Munie.  And  
15 I'm just trying to establish whether or not she's been exposed to  
16 any such documents in the past.

17          MR. KONZEN:  My response is that if counsel wants to open  
18 the door and let in what he argued so strenuously to keep out  
19 earlier in the communications, I'll let him go that way.  But I  
20 want to warn him right now that's where I'm heading.

21          MR. KIM:  That's a good point.  I'll withdraw that  
22 question.  I have nothing further.

23          HEARING OFFICER SUDMAN:  Okay.  Mr. Konzen?

24          MR. KONZEN:  No redirect of this witness.

1 HEARING OFFICER SUDMAN: Okay. Ms. Munie, you may step  
2 down. We're going to take a five-minute break. We'll go off the  
3 record.

4 (A short break was taken.)

5 HEARING OFFICER SUDMAN: Mr. Konzen, do you have any more  
6 witnesses to call?

7 MR. KONZEN: No, ma'am.

8 HEARING OFFICER SUDMAN: Okay. Do you have anything  
9 further for your case?

10 MR. KONZEN: No further testimony or exhibits tendered at  
11 this time subject to -- Well, if I understood correctly, the  
12 other attorneys have told me they have no witnesses to tender and  
13 no evidence; is that correct?

14 MR. WOLF: No witnesses, that's correct. Mr. Kim, is that  
15 the --

16 HEARING OFFICER SUDMAN: That was my next question. Are  
17 you concluded with your case, Mr. Kim?

18 MR. KIM: Yes.

19 HEARING OFFICER SUDMAN: Okay. Intervenor?

20 MR. HEDINGER: No, nothing.

21 HEARING OFFICER SUDMAN: Okay. Well, if everybody has  
22 concluded their case, I would like at this time to start with the  
23 public comments.

24 Let me explain to you that there are two different types of

1 public comments that you can make. One is a sworn statement in  
2 which the court reporter will swear you in and you will be under  
3 oath, and the attorneys will be able to cross examine you. Or  
4 you can simply do a public comment which is not made under oath  
5 and the attorneys would not cross examine you. You can also  
6 submit written public comment either now or within the public  
7 comment deadline that we'll set in a little bit here. You can  
8 send written comment to the public comment to the clerk of the  
9 Board in Chicago.

10 Having said that, I would like to begin taking comments  
11 from -- May I see a show of hands of who here would like to make  
12 a public comment. Okay. Well, let's just work our way across  
13 the room. We'll start with you, sir. If you'll please come up  
14 and have a seat up here. Would you like to -- Well, first, I'm  
15 sorry, let me ask you your name, please.

16 MR. LAMBERT: Ryan Lambert. I'm a member of the Saline  
17 County Board.

18 THE COURT: Saline County Board. Would you like to make a  
19 public comment or sworn statement?

20 MR. LAMBERT: A public comment.

21 HEARING OFFICER SUDMAN: Okay. Would you have a seat.  
22 Okay. You got his name?

23 COURT REPORTER: Yes.

24 MR. LAMBERT: My name is Ryan Lambert. I'm a member of the



1 a Saline County Board. I'm a chairman of the budget committee  
2 and a member of the landfill committee. As a Board, we've sent  
3 two letters to Illinois EPA supporting this landfill and asking  
4 that this landfill could be opened if there was no environmental  
5 issues.

6 As a budget committee chairman, I understand the business  
7 aspect that we've had with Saline County Landfill. They've been  
8 a could business partner to us. They brought quite a bit of  
9 money into our County government. If there's no environmental  
10 issues, I would personally like to see the permit granted.  
11 That's all I have.

12 HEARING OFFICER SUDMAN: Thank you very much, sir.

13 MR. LAMBERT: And also I have a written statement from  
14 somebody that couldn't be here.

15 HEARING OFFICER SUDMAN: Okay. You have a written public  
16 comment. I will take that to the clerk's office for you. This  
17 is a letter from Danny Reagan, Saline County Treasurer. I will  
18 file this with the Board's clerk and the public comment.

19 MR. LAMBERT: Thank you.

20 HEARING OFFICER SUDMAN: You, sir, in the corner.

21 MR. LUCE: I'm Dylan Luce. And I'm also a member of the  
22 County Board.

23 HEARING OFFICER SUDMAN: Would you like to make a sworn  
24 statement or a public comment?

1 MR. LUCE: Public Comment.

2 HEARING OFFICER SUDMAN: Okay. Thank you.

3 MR. LUCE: I'm not used to sitting. My name is Dylan Luce,  
4 D-y-l-a-n L-u-c-e. I'm like Mr. Lambert. I'm also a member of  
5 the budget committee and a member of the claims committee.

6 And I'd like to say that we have, as a Board, voted to look  
7 to see if we can keep this landfill open. It's one of the bigger  
8 money generators for our County. Like most counties in the state  
9 right now, we're going through real economic times.

10 You know, I'm not an environmental specialist. I'm just a  
11 concerned citizen of this County. And, you know, I figure I  
12 leave that to the experts. You know, the experts know if there's  
13 any environmental issues that would jeopardize anything here in  
14 the County.

15 All I know is that Midwest Waste has been a good partner to  
16 the County. They've been timely in their payments. They've  
17 helped us out numerous times when we were in some tough  
18 situations. I would just like to say, as Ryan stated earlier,  
19 that we would like to see it remain open if there are no problems  
20 with it along the lines of environmental issues.

21 HEARING OFFICER SUDMAN: Thank you, sir. You, sir, in the  
22 back.

23 MR. INGRAM: I have a resolution signed by the Board, and I  
24 would like to make a comment too.

1 HEARING OFFICER SUDMAN: Okay. You would like to make a  
2 public comment and not a sworn statement?

3 MR. INGRAM: Right.

4 HEARING OFFICER SUDMAN: Okay. Would you state your name?

5 MR. INGRAM: My name is Chuck Ingram. I'm the chairman of  
6 the Saline County Landfill Committee. And I'd just like to take  
7 a moment or two to kind of tell what the landfill committee has  
8 tried to learn about landfills, because when we all came on the  
9 Board, this problem had already started. We inherited it.

10 And I was reading through some of the documents and I came  
11 across Mr. Hedinger's name, and I had no idea who he was. So I  
12 saw Mr. Wolf in the hall between court duties one day, which I  
13 shouldn't have done, and he was gracious enough to say, well,  
14 he's working for my office but it's not costing the County any  
15 money. So I thought in my little pea brain that's keen of odd.  
16 So I went to the phone and I called Mr. Hedinger, if he remembers  
17 the phone call, and I told him who I was and what he was actually  
18 doing for the landfill, and he said he was trying to make  
19 everything go legal.

20 And I said, well, are you working for both the landfills or  
21 just one landfill? He said, no, he's just working for -- on the  
22 issues to the Saline County Landfill. And I also asked him then,  
23 I couldn't understand why an environmental attorney in  
24 Springfield would work for little old Saline County for nothing.

1 And he made the statement he would have to see Mr. Wolf about  
2 that. Then we talked a little bit more, and I take him as his  
3 word. He's doing what the opposition of the landfill is supposed  
4 to do, and I respect their decision on that.

5 But then it came back to the Board. At one time I  
6 recommended to the Board that we release Mr. Hedinger of his  
7 duties because we don't know who's paying him, and he's not  
8 representing the Board's position on the landfill since we'd  
9 already voted before to send letters of recommendation to the  
10 Environmental Protection Agency. And that's how that letter we  
11 talked about earlier, him being fired and what have you, arose.

12 And we were told later then that we did not have the power  
13 to release him of duties. That was Mr. Wolf's deal. So we  
14 didn't release him. And that basically brings us back to where  
15 we are now.

16 In that too, also I called Mrs. Roque isn't the lady  
17 Jessica you said her name was?

18 MS. MUNIE: Christine Roque.

19 MR. INGRAM: Christine Roque. Okay. I called her three or  
20 four times to try to find out what was going on, if the landfill  
21 was doing what they were supposed to do. And she told me as far  
22 as all -- as the stuff came into her, they was reviewing it and  
23 for the date there would be a decision made.

24 Well, I think on about the third or fourth I called Joyce

1 at -- this is before the permit was -- it was going to be  
2 reviewed, and I asked her if there was anything we could do that  
3 -- to show our approval of the landfill, and she said that she  
4 goes by what the law says. And if they meet all the  
5 requirements, they will get the permit. And I assume that's what  
6 took place.

7 Then on, supposed to be the fifth, I believe when the  
8 permit was to be reviewed, and then I asked Mr. Ben Simpson, the  
9 chairman of the Board, and I was up in the office and we called  
10 her a day or two after the permit sits, and learned it had to be  
11 denied. And I asked her, well, I got to make a report to the  
12 Board, so what should I tell them exactly what happened. And she  
13 told me that the landfill met all technical requirements but it  
14 was denied because of a letter sent down from the Attorney  
15 General's Office, and so that's what I reported to the Board.  
16 And then we heard about this hearing being here. So at this time  
17 I'd like to read -- This is a legal document because the Board  
18 voted on it at the last meeting.

19 HEARING OFFICER SUDMAN: Is it something that I could take?  
20 Do you need it?

21 MR. INGRAM: Well, they kind of wanted me to read it.

22 HEARING OFFICER SUDMAN: Okay. Well, how long is it?

23 MR. INGRAM: Take me about that long. I'm not a real fast  
24 reader.

1 HEARING OFFICER SUDMAN: Okay.

2 MR. INGRAM: And first of all, I got to put on my glasses.  
3 This says Resolution R0429. Whereas on November 21st, 1996, the  
4 County Board of a Saline County, Illinois, granted local siting  
5 approval for proposed expansion of the Saline County Landfill.

6 And whereas following that local siting approval, Saline  
7 County Landfill Incorporated submitted to the Illinois  
8 Environmental Protection Agency an application for permit to be  
9 planned that the sanitary landfill, in accordance with that local  
10 siting approval on November the 21st, 1996.

11 And whereas on February 27, 2003, the County Board of the  
12 County of Saline adopted a resolution that a letter be sent to  
13 the Environmental Protection Agency requesting that State Agency  
14 permit the expansion of Saline County Landfill, as long as it met  
15 all environmental requirements.

16 And whereas the Saline County Board chairman and the  
17 chairman of the Landfill Committee of the Saline County Board  
18 forwarded a letter to the Environmental Protection Agency in  
19 support of expanding the Saline County Landfill as long as all  
20 EPA requirements are met.

21 And whereas on or about December 5th, 2003, Illinois  
22 Environmental Protection Agency denied a permit for expansion of  
23 Saline County Landfill for reasons unrelated to environmental  
24 safety, and that the Saline County Landfill then appealed that

1 decision to the Illinois Pollution Control Board.

2 And whereas without prior permission or knowledge of the  
3 Saline County Board, the office of Saline County State's Attorney  
4 filed on January 27th, 2004, a Motion to Intervene in that permit  
5 to appeal before the Illinois Pollution Board, to oppose  
6 expanding the Saline County Landfill.

7 Now it is hereby resolved as follows: The motion of the  
8 State's Attorney interview me before the Illinois Pollution  
9 Control Board in case PCB 04-117 is contrary to the position  
10 repeatedly stated by the County Board, the County Board chairman  
11 and landfill committee of the Saline County Board.

12 The Saline County Board continued to support the proposed  
13 expansion of the Saline County landfill so long as all  
14 environmental safety requirements are met. The chairman of the  
15 Saline County Board is hereby authorized and requested to forward  
16 a correspondence to the Environmental Protection Agency and to  
17 the clerks of the Pollution Control Board with a copy of this  
18 resolution. It confirmed that the State's Attorney of Saline  
19 County does not represent the position of Saline County Board  
20 when it seeks to intervene in the permit appeal of the Saline  
21 County Landfill called PCB 04-117. And it's signed on the date  
22 the 26th by the Chairman Ben Simpson and William McClusky, County  
23 Chairman. Do you want this then?

24 (Members of the public clap.)

1 HEARING OFFICER SUDMAN: Sure, I'll take that.

2 MR. INGRAM: That's all I have.

3 HEARING OFFICER SUDMAN: I will ask the clerk to record  
4 this as Public Comment 2. Ma'am.

5 MS. PAVELONIS: Me?

6 HEARING OFFICER SUDMAN: Yes.

7 MS. PAVELONIS: Can you tell me the difference between the  
8 sworn testimony and --

9 HEARING OFFICER SUDMAN: Well, a sworn testimony -- I mean,  
10 both of them will be considered by the Board. A sworn testimony  
11 does carry more weight than a public comment, you know, because  
12 it is made under oath and it is subject to cross-examination by  
13 the attorneys.

14 MS. PAVELONIS: But they'll all be taken for consideration?

15 HEARING OFFICER SUDMAN: They all will be considered by the  
16 Board, yes. Would you please state your name?

17 MS. PAVELONIS: Miki, M-i-k-i, Pavelonis,  
18 P-a-v-e-l-o-n-i-s.

19 HEARING OFFICER SUDMAN: Are you here on behalf of anyone?

20 MS. PAVELONIS: No, I'm not. I'm on behalf of myself. My  
21 name Miki Pavelonis. And I'm currently the township assessor for  
22 Harrisburg Township. I've been involved in Saline County  
23 government for a long time and have served on the County Board  
24 for 7 years. I was a County Board member in '96 when the Saline



1 County Landfill received it's siting from the County Board.

2 My friend, Chuck Fitzpatrick, was the landowner of the  
3 landfill at the time. And I understand he is still affiliated  
4 with Midwest Waste.

5 I would like to point out to the Pollution Control Board  
6 that only one member on the current County Board was a member of  
7 the County Board at that siting time. That member is Mike  
8 Milstead, who has consistently refused to vote for the current  
9 Saline County Board's motion for the proposal of the Saline  
10 County Landfill.

11 In '96 I attended every session when the siting application  
12 was presented. That was a long time ago. It's ancient history.  
13 8 years have passed since that began.

14 I understand the Pollution Control Board is here to  
15 consider whether the landfill filed a permit application in time.  
16 From my reading the newspaper, it looks to me like the landfill  
17 filed a permit application within 3 years of the siting and which  
18 was denied. And after that permit application was denied, filed  
19 another permit application which is being considered here today.  
20 That application was filed in 2003, which was 7 years after the  
21 first.

22 My question is: How many applications can Saline County  
23 Landfill, Inc. file and have denied before the siting expires?  
24 The first application was filed and the permit was denied.

1 3 years have passed. Excuse me. At that time the landfill  
2 should have been required to go back for another siting.

3 There is a reason why there is limitations on a number of  
4 years they have to file the permit. The situations change. The  
5 nine criteria addressed in the application approval involved  
6 health and safety consideration, market consideration, traffic  
7 consideration and property value consideration. Many of these  
8 things have changed over the 8-year period of time. They have  
9 said the reason is there are ground water questions. Questions  
10 about more than one fault line. Questions about property values,  
11 and questions about the roadway. The landfill may be able to  
12 address all these questions that have been mentioned in the  
13 newspaper.

14 But the point is, they should have to address the question  
15 so that any decisions made by the County Board will be fully  
16 informed decisions made on consideration of the nine criteria and  
17 current circumstances. The circumstances may be the same, better  
18 or worse. The current Saline County Board has not heard of any  
19 evidence and has no clue whether this is a good site for a  
20 landfill.

21 Some members of Saline County Board voted in favor of a  
22 resolution claiming to support the landfill solely because they  
23 believe the landfill will bring additional money to Saline  
24 County. Without hearing any evidence six members voted for, five

1 members vote against and two members read. This vote was stuck  
2 in the dark without too many facts, solely for the money.

3 We should not ignore the environment. The law says we  
4 should protect it. Just because some members of the Board want  
5 money for the County.

6 If the landfill can have a permit application denied, and  
7 just because a permit application was filed at the end of the  
8 3-year period, file one or more application for the development  
9 period over the next 40 years, then there's no point in having a  
10 3-year limitation on the period for filing application after a  
11 siting approval. In fact, there is no point in having a siting  
12 approval.

13 It's time for the County Board to take another look. The  
14 3-year limitations is there for a reason. And when I was sitting  
15 here earlier, I was speaking with the former sheriff. I read in  
16 the paper recently, like 10 years ago, when you were the head of  
17 the budget committee and you were saying this week we may not be  
18 able to make the payroll. So this lack of money didn't start  
19 yesterday. I think it's been going on for a long time. I've  
20 walked in their shoes. I know how difficult it is. I appreciate  
21 the work they've done because I've been there. I think we have  
22 something more important than money here. We have our  
23 environment to protect, and I think we should be able to find  
24 some other way to find the money for this County. Thank you.

1 THE COURT: Thank you very much. I'm not sure who was  
2 first. Sir.

3 MR. WILLIAMS: My name is Ownly, O-w-n-l-y, Williams and  
4 I'm the paster of the --

5 HEARING OFFICER SUDMAN: Yeah, and you would like to make a  
6 public comment?

7 MR. WILLIAMS: Yes. I'm the pastor of the Harvest  
8 Deliverance Daily Church, one block here from this facility. And  
9 I'm here on behalf the landfill to speak up for them because I  
10 feel they have been a benefit to this area and also to our  
11 church.

12 At the present time we have a food pantry, clothing  
13 outreach and a hot meal for the people all over the area, not  
14 just for Harrisburg. And we also have a produce farm. Well,  
15 this landfill has furnished us a tractor for the last 2 years to  
16 take and work-up the property where -- that we can prepare the  
17 ground to plant the tomatoes and produce that we raise to help  
18 fund, you know, the projects that we have going on. And any time  
19 that I have needed them, I've called Brother Ken, and this one  
20 time that they brought even a hydro hoe out of their pit in order  
21 to come open an irrigation ditch for us so that we can water the  
22 tomatoes, because of the temperature and the tomatoes possibly  
23 burning up.

24 And also being a minister, I've sat here and listened to

1 all of the comments that's been made here. On the decisions that  
2 we make and the things that we do, we have to account for them,  
3 not only while we're down here, but one day we're going to stand  
4 before God, and the wrong that we have permitted to happen in our  
5 lives and our brothers that we have missed over. God's going to  
6 hold us accountable for that.

7 And this is a dangerous thing, you know, that I see so many  
8 individuals that call their self Christians, that are going to  
9 church every day and sitting in church and then, you know,  
10 standing up for wrong.

11 Now I don't know exactly what is all wrong in this County  
12 but I know something is not wrong. Because the bible says we are  
13 to get to the root of the problem. And it's your decision to  
14 make a decision on whether this thing can be approved or not.

15 I say all of this evidence that has been presented here  
16 today, you'd be able to get to the root of the problem, which  
17 isn't your job to do that. And what we need to begin to do is to  
18 pray that the Lord will reveal actually what it going on in this  
19 County because this County is in trouble. But I just pray that  
20 you let the Lord lead you in the right direction to make it  
21 right.

22 (Members of the public clap.)

23 HEARING OFFICER SUDMAN: Thank you, sir.

24 MR. FITZPATRICK: My name is John Fitzpatrick. Yes, I'm

1 the brother of Chuck Fitzpatrick but, no, I do not have any  
2 prejudice there.

3 HEARING OFFICER SUDMAN: Sir, you're just making a public  
4 comment?

5 MR. FITZPATRICK: Yes. And I worked for Midwest Waste one  
6 time, and we parted ways on not a good note, so I'm not crazy  
7 about Midwest Waste, and I'm not crazy about West Side Landfill.

8 But what I am is the owner and the president of  
9 Environmental Waste Consultant. And we audit landfills. And  
10 what I see here today is a great concern. And the concern is  
11 this, for the Pollution Control Board. The IEPA is a great  
12 Agency. A good, sound Agency. I've dealt with Georgia, Texas,  
13 Missouri, Indiana, Oregon, Washington and many of them. And all  
14 of us who deal with Illinois like you. You do a good job.

15 And what we like was they lived by the law. And when it  
16 come out of the permit section and it was permitted, it stayed  
17 permitted. And politics didn't play into it.

18 Now there is a lot of us now in the environmental community  
19 seeing politics being played. We hope that the Pollution Control  
20 Board will stand above that and do what they've always done, is  
21 back the Agency.

22 One thing we can say for this whole affair is that you're  
23 about to change the way I-35 and the Illinois Code and  
24 regulations are set to site and approve landfills. The

1 ramifications here are what I'm concerned with. Not just Saline  
2 County Landfill. But I'm worried about the outreaching  
3 ramifications it's going to cause for all the landfill industry  
4 and every community in this state. And with that, I hope you  
5 make the right decision. Thank you.

6 (Members of the public clap.)

7 HEARING OFFICER SUDMAN: Thank you. Anybody else like to  
8 make any public comment? I do not see any other hands. So I  
9 would say before we hear closing arguments, let's go off the  
10 record and discuss the briefing schedule.

11 (A discussion was held off the record.)

12 HEARING OFFICER SUDMAN: We just had an off-the-record  
13 discussion regarding post-hearing briefs. The parties have  
14 agreed to a briefing schedule as follows: First the transcript  
15 of these proceedings will be available from the court reporter on  
16 March 8th. We requested an expedited transcript in this matter  
17 due to the fact that decision deadline is May 5th.

18 We will post the transcript on the Board's website that  
19 day, or certainly by the next day. The public comment deadline  
20 for anyone wishing to submit written public comment will be  
21 March 31st. Public comment must be filed in accordance with  
22 Section 101.628 of the Board's procedural rules.

23 The petitioner's brief will be due March 22nd. The  
24 respondent's brief and the intervenor's brief will be due

1 April 5th. Due to the tight time frame in this matter, the  
2 mailbox rule will not apply, and I'm authorizing the filing of  
3 briefs by fax.

4 At this time, Mr. Konzen, would you like to make a closing  
5 argument.

6 MR. KONZEN: Briefly, yes, Madam Hearing Officer.

7 HEARING OFFICER SUDMAN: Okay.

8 MR. KONZEN: It's very clear and, in fact, should be  
9 undisputed that there is no environmental safety issue here.  
10 There's not ground water issue or engineering or public safety  
11 issue here. The sole question is the interpretation of the  
12 Statute 39.2(f) as to whether or not the local siting expired or  
13 not.

14 I urge the Pollution Control Board to determine IEPA to get  
15 it right the first time when they held it for several years,  
16 consistently as Ms. Munie has stated in her March 12th, 2003,  
17 letter. That once the development permit application is timely  
18 filed, that's undisputed here as well, once that's timely filed,  
19 the local siting does not expire. We submit that the reversal  
20 position by the Agency is unjustified, arbitrary and capricious.  
21 Thank you.

22 HEARING OFFICER SUDMAN: Thank you. Mr. Kim, would you  
23 like to make a closing statement?

24 MR. KIM: We would waive a closing statement.



1 HEARING OFFICER SUDMAN: Intervenor?

2 MR. HEDINGER: In direct response to Mr. Konzen's posing  
3 argument, we would point out by definition, the Environmental  
4 Protection Agency is our governing body. The General Assembly of  
5 the State of Illinois to do -- to govern how the environment in  
6 this state is to be maintained.

7 We would disagree that just because the IEPA finds nothing  
8 wrong, that there might not be public safety issues or other  
9 issues. There are numerous issues in the siting statute that are  
10 never looked at by the IEPA. Traffic, the IEPA doesn't care.  
11 Need, the IEPA doesn't care. The property values, the IEPA  
12 doesn't care. There is a reason for the siting screen, the  
13 general assembly, and they're the ones that set it up, and we put  
14 a time limit on siting approvals to avoid stale sitings. And as  
15 we said in our opening, it is the position of the intervenor that  
16 the Saline County Board should have the right to current  
17 information in deciding whether this landfill meets the statutory  
18 requirements. Not 8-year old information. We ask that the Board  
19 affirm the Agency's denial of this permit.

20 HEARING OFFICER SUDMAN: Thank you. I will now proceed to  
21 make a statement as to the credibility of witnesses testifying  
22 during this hearing. Based on my legal judgment and experience I  
23 find that -- well, we had one witness and that she was credible.  
24 I will also note that all of the members of the public making

1 public comments were credible as well.

2 At this time I will conclude the proceedings. I thank all  
3 of you for your participation. We stand adjourned.

4 (Hearing exhibits retained by Hearing Officer Sudman.)

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 90 pages comprise a true, complete and correct transcript of the proceedings held on the 3rd of March of A.D., 2004, at Saline County Detention Center, 1 North Main Street, Harrisburg, Illinois, in the case of Saline County Landfill versus Illinois Environmental Protection Agency, in proceedings held before Hearing Officer Carol Sudman, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 4th day of March A.D., 2004.

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Beverly S. Hopkins  
Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

CSR License No. 084-004316