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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--------------------------------|---|------------------------------------|
| FOX MORAINE, LLC |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB No. 07-146 |
| |) | (Pollution Control Facility Siting |
| |) | Appeal) |
| UNITED CITY OF YORKVILLE, CITY |) | |
| COUNCIL |) | |
| |) | |
| Respondent. |) | |

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 7, 2008, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed via electronic filing the attached **United City of Yorkville's Reply in Support of Its Motion in Limine # 3**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE

By: /s/ Leo P. Dombrowski
One of their Attorneys

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**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

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YORKVILLE'S REPLY IN SUPPORT OF ITS MOTION IN LIMINE # 3

Fox Moraine would have the Hearing Officer believe that the positions its counsel took on behalf of the Kankakee County Board in *Waste Mngt. v. County Bd. of Kankakee County*, PCB 04-186, are the same it advances here on behalf of Fox Moraine. In fact, in *Waste Mngt.*, Fox Moraine's counsel argued that statements made by a Kankakee County Board member that she opposed all landfills in the County should be excluded from the Pollution Control Board hearing. The Hearing Officer granted the County's motion. Yet Fox Moraine takes a radically different position here.

I. FOX MORaine CITES NOT A SINGLE STATEMENT THAT IT CLAIMS MIGHT OVERCOME THE STRONG PRESUMPTION OF THE CITY COUNCIL'S OBJECTIVITY AND FAIRNESS.

In its Motion in Limine, Yorkville cited case law holding that even strong views made during an election campaign or otherwise do not overcome the presumption that Council Members were objective in judging the siting application. *Waste Mngt. of Illinois v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1040 (2nd Dist. 1988) ("There is a presumption that administrative officials are objective and capable of fairly judging a particular controversy. Moreover, the fact that an administrative official has taken a public position or expressed strong views on an issue before the administrative agency does not overcome the presumption.") In its

response to the motion, Fox Moraine does not cite a single alleged statement by any Council Member that might rise to a level overcoming this weighty presumption. Instead, Fox Moraine generally argues that some unspecified statements could show prejudgment. (Resp. at p. 3.)

Fox Moraine has not come close to reaching the high hurdle set by the Appellate Court and the Board. Without showing strong evidence of bias—that the Council members actually prejudged the adjudicative criteria—the presumption applies, and Fox Moraine should not be permitted to question Council Members about, argue regarding, or otherwise reference Council Members' campaign statements.

II. FOX MORAINE CANNOT DISTINGUISH ITS OWN ATTORNEYS' ARGUMENTS REGARDING FIRST AMENDMENT PROTECTION OF CAMPAIGN STATEMENTS, WHICH APPLY HERE WITH EQUAL FORCE.

Fox Moraine makes only a weak-hearted attempt to distinguish the arguments its own attorneys made to bar campaign statements in *Waste Mgmt. v. County Bd. of Kankakee County*, PCB 04-186, on the basis of the First Amendment. After all, its attorneys successfully sought to bar reference to a Kankakee County Board Member's campaign statements that she was "opposed to proposed landfills being sited in Kankakee County." (Waste Mngt. Motion in Limine at p. 2, attached as Exhibit A.) Not only is this statement far more specific than any allegedly made by Council Members here (that "a safe, state-compliant landfill" might be "an oxymoron" or that "a perfect scenario" for a landfill involved "nothing around it for acres," it being "safe as far as leakage," and having "no impact on traffic"), but the statements in *Waste Mngt.* are pointedly opposed to a landfill, unlike any statement at issue here.

At the hearing in *Waste Mngt.*, Fox Moraine's attorneys argued that the following statements were protected under the First Amendment and should be excluded from consideration:

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- (1) The Board member had signs posted outside her campaign office that were anti-landfill—"No dump, no Chicago garbage." (Tr. 346:23-349:19, attached as part of Exhibit B.)
- (2) The Board member's campaign literature noted she "was opposed to the landfills in Kankakee County and making Kankakee a home for regional landfills. That was in my campaign literature." (Exh. B at 353:5-354:12.)
- (3) The Board Member explicitly stated, before she voted on the proposed landfill at issue, that she opposed the proposal because it was not environmentally sound. (Exh. B at 354:22-357:1.)

The Hearing Officer agreed with Fox Moraine's counsel and granted their motion in limine.

Fox Moraine now claims that these statements were "general" in nature and had nothing to do with the pending siting application. (Resp. at p. 4, fn. 1.) Statements that someone is opposed to every proposed landfill in the county and that she had already found the landfill application deficient before she took her vote are very specific. Fox Moraine's attempt to add the modifiers "general" or "generally" to such statements does not render them any less specific or pointed.

Moreover, Fox Moraine's suggestion that the type of campaign in which a statement is made should make a difference to its admissibility on appeal defies logic. In both this case and in *Waste Mngt.*, the person who made the statement became or was a member of the governing body that voted on the landfill siting application. The type of campaign was not the an important factor (or, in fact, even mentioned as a factor in Kankakee County's motion in limine) to exclude the statements in that case. Instead, the motion Fox Moraine's attorneys filed maintained that "statements made in the context of a campaign for *public office* are not relevant to the issues" in the case. (Exhibit A at p. 2.) The Yorkville Council Members were likewise running for public office. Thus, just as Fox Moraine's counsel argued in *Waste Mngt.*, the campaigning Council Members' statements should be excluded as protected by the First Amendment.

III. CONCLUSION.

The Hearing Officer should grant Yorkville's motion in limine to bar all arguments, statements, questions, testimony, or evidence of any kind from any party or its counsel that refer to, directly or indirectly, any oral or written statements made by Yorkville City Council Members while campaigning for the April 17, 2007 elections.

Respectfully submitted,

UNITED CITY OF YORKVILLE, CITY
COUNCIL

By: _____ /s/ Leo P. Dombrowski
One of Its Attorneys

Dated: October 7, 2008

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EXHIBIT A

COPY

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 04 2005

STATE OF ILLINOIS
Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS, INC.)

Petitioner,

vs.

COUNTY BOARD OF KANKAKEE
COUNTY, ILLINOIS,

Respondent.

Case No. PCB 04-186

MOTION IN LIMINE

NOW COME Defendants, COUNTY OF KANKAKEE and COUNTY BOARD OF KANKAKEE, by and through their attorneys, HINSHAW & CULBERTSON LLP, and before trial, moves this Court in limine to exclude from the trial of this matter, the following information:

Any and all arguments, statements, questions, testimony, or evidence of any kind from Plaintiffs, Plaintiffs' counsel, or Plaintiffs' lay and expert witnesses that make reference to, directly or indirectly, by stating, comparing, inferring, or referring to any fact, allegation, or conclusion regarding any statements, whether oral or written, made by Ms. Ann Bernard, County Board Member, during her State Representative election campaign regarding her opposition to several proposed landfills in Kankakee County, as such testimony or evidence is not relevant to this case and will not assist the trier of fact.

I. INTRODUCTION

Ms. Ann Bernard was elected to the Kankakee County Board in 1996. Her current term will expire in 2006. In November, 2003 Ms. Bernard ran for a Illinois State Representative position. During her campaign, Ms. Bernard never specifically mentioned WASTE MANAGEMENT OF ILLINOIS, INC. or its proposed landfill expansion in Kankakee County. Rather, Ms. Bernard simply indicated in her General Assembly Questionnaire and her campaign

materials that she was generally opposed to proposed landfills being sited in Kankakee County, and merely indicated in materials published after the County Board's vote on Waste Management's second siting application that she had voted against the landfill. Respondent has reason to believe that Petitioner will attempt to introduce Ms. Bernard's statements as evidence that Ms. Bernard was biased. However, as a matter of law, any statement, oral or written, regarding Ms. Bernard's opposition to proposed landfills in Kankakee County during her election campaign for State Representative should be disregarded by this court as inadmissible evidence, as such statements made in the context of a campaign for public officer are not relevant to the issues particularly involved in this case.

II. ARGUMENT

Ms. Bernard's public statements, both written and oral, made during her election campaign for State Representative opposing landfilling in Kankakee County were not in contravention of the Illinois Environmental Protection Act (Act). In fact, Section 39.2(d) of the Act expressly allows such statements and, in pertinent part, provides as follows: "The fact that a member of the county board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue." 415 ILCS 5/39.2(d) (emphasis added). Therefore, Section 39.2(d) clearly provides that Ms. Bernard was free to make public statements concerning her opinion on landfills and/or proposed landfills in general and/or those landfills proposed in Kankakee County. Because Section 39.2(d) specifically allows county board members to express their opinions related to landfill site review proceedings and landfills generally, any such statements made by Ms. Bernard are not relevant and should not, therefore, be admitted into evidence or considered at the Board hearing.

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Pursuant to this Board's procedural rules, evidence may be admitted at a Board hearing only if it is "material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged." 35 Ill. Adm. Code §101.626(a). In this case, Ms. Bernard's statements concerning the proposed landfill are not relevant because, as set forth in Section 39.2(d), such statements are not improper. Illinois courts define "relevant evidence" as that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *Wojcik v. City of Chicago*, 299 Ill. App.3d 964, 971, 702 N.E.2nd 303, 309 (1st Dist. 1998) (emphasis added). Pursuant to Section 39.2(d), any statements made by Ms. Bernard are of no consequence to this action because, as a matter of law under this provision, such statements could not be used as a basis to disqualify Ms. Bernard from voting on the application.

Additionally, this Board should refuse to admit or consider the statements made by Ms. Bernard in her political campaign because Ms. Bernard had an absolute right to make those statements. *See* U.S. Const., Amend. I; *see also* 5 U.S.C. § 7323(c) (expressly allowing even employees of the federal government to express opinions on political subjects). In fact, Ms. Bernard arguably had a duty, obligation and responsibility, as a candidate for public office, to express her opinion on all pertinent political subjects. In fact, she was specifically asked her opinion about such matters in the General Assembly Questionnaire. As such, this Board should find that Ms. Bernard, as a candidate for political office, was privileged to express her political opinion without fear of formal interrogation.

Furthermore, the statements made by Ms. Bernard cannot be used to establish that the proceeding was fundamentally unfair because the fact that Ms. Bernard made statements regarding her legislative position on the proposed landfill will not overcome the presumption that, as an administrative official, Ms. Bernard was objective in judging the siting application.

See Waste Management of Illinois, Inc. v. Pollution Control Board, 175 Ill.App.3d 1023, 530 N.E.2d 682 (2d Dist. 1988); *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139 (June 19, 1997). As such, those statements are not relevant and should not be considered by this Board.

CONCLUSION

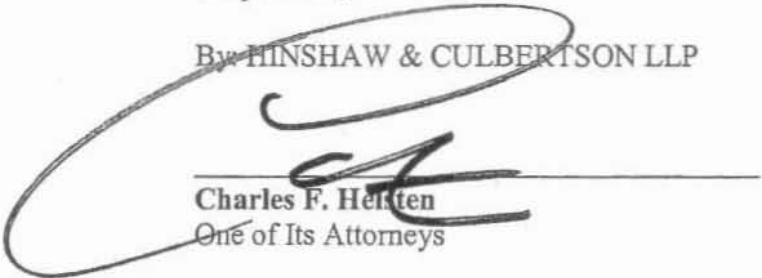
Because public statements made by Ms. Bernard regarding her position on proposed landfills in Kankakee County were not in contravention of Section 39.2 and, in fact, are expressly protected under Section 39.2(d), and further do not establish that the siting proceeding was unfair, they are not relevant and should be barred.

WHEREFORE Respondent, COUNTY BOARD OF KANKAKEE COUNTY, ILLINOIS, by and through its attorneys, HINSHAW & CULBERTSON LLP, respectfully requests this honorable Court to instruct Plaintiffs, Plaintiffs' counsel, and Plaintiffs' lay and expert witnesses not to mention, refer to, interrogate, argue, or make any statement regarding the information cited above. It is further requested that the Court instruct Plaintiffs and Plaintiffs' counsel to instruct each and every witness appearing for Plaintiffs to strictly follow this Order.

Dated: 4/1/05

COUNTY BOARD OF KANKAKEE
COUNTY, ILLINOIS,
Respondent,

By HINSHAW & CULBERTSON LLP



Charles F. Heisten
One of Its Attorneys

HINSHAW & CULBERTSON LLP
100 Park Avenue
Rockford, IL 61105
815/490-4900
815/490-4901 (fax)

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on April 1, 2005, a copy of the foregoing was served upon:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601-3218

Donald J. Moran
Pedersen & Houpt
161 N. Clark Street, Suite 3100
Chicago, IL 60601-3242
(312) 641-6888
(312) 641-6895 FAX

Mr. Brad Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, 11th Floor
Chicago, IL 60601
(312) 814-8917
(312) 814-3669 FAX

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.



HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61101
815/490-4900
815/490-4901 (fax)

EXHIBIT B

0001

1 ILLINOIS POLLUTION CONTROL BOARD
2
3
4 WASTE MANAGEMENT OF ILLINOIS, INC.,)
5)
6 Petitioner,)
7)
8 Vs) PCB 04-186
9)
10 COUNTY BOARD OF KANKAKEE COUNTY,)
11)
12 Respondent.)
13

14 REPORT OF PROCEEDINGS had before HEARING
15 OFFICER BRADLEY P. HALLORAN, taken stenographically
16 before TERRY A. BUCHANAN, CSR, a notary public
17 within and for the County of Will and State of
18 Illinois, at 189 East Court Street, Kankakee,
19 Illinois, on the 6th day of April, A.D., 2005,
20 commencing at 9:15 o'clock a.m.
21
22
23
24

0002

1 A P P E A R A N C E S:
2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
6 (312) 814-8917
7 BY: BRADLEY P. HALLORAN, HEARING OFFICER
8
9 PEDERSEN & HOUP, T
10 161 North Clark Street
11 Suite 3100
12 Chicago, Illinois 60601
13 (312) 261-2149
14 BY: MR. DONALD J. MORAN and
15 MS. NANCY RICHARDSON
16
17 Appeared on behalf of the Petitioner,
18
19
20
21
22
23
24

0003

1 HINSHAW & CULBERTSON,
2 100 Park Avenue
3 Rockford, Illinois 61105
4 (815) 490-4900
5 BY: MR. CHARLES F. HELSTEN and
6 MR. RICHARD PORTER

7 A. Yes.
8 Q. And were these individuals citizens?
9 MR. PORTER: Again, I'm going to
10 object. Perhaps this could be done in the
11 offer of proof at this time. Now we're
12 asking for elaboration as to what those
13 communications entailed on the campaign
14 trail.

15 MR. MORAN: I just said were they
16 citizens.

17 HEARING OFFICER HALLORAN: That's
18 true. So I overrule it at this time, but
19 stand ready, Mr. Porter. You may answer.

20 BY THE WITNESS:

21 A. Yes.
22 MR. MORAN: At this point it does make
23 sense to proceed with what I think will be
24 the offer of proof on the matters relating to

0346

1 the statements she made during her campaign
2 tomorrow morning. There are a number of
3 documents and I'm not sure how you will -- if
4 you will even allow me to present these
5 documents in the offer of proof. I would ask
6 to be able to do that, to go through them, to
7 establish them, to have her testify about
8 them and it appears -- the only reason I
9 suggest this is obviously it appears the hour
10 is a little late and we're all having
11 difficulty understanding my questions and it
12 may make sense to put this off until
13 tomorrow.

14 MR. PORTER: As much as I would like
15 to do that, Ms. Bernard has a conflict
16 tomorrow and needs to finish up tonight.

17 HEARING OFFICER HALLORAN: I guess
18 there we have it, fortunately or
19 unfortunately. Anyway, you may proceed, Mr.
20 Moran.

21 MR. MORAN: Thank you.

22 BY MR. MORAN:

23 Q. Ms. Bernard, did you see the signs
24 that were posted all over the community that said no
0347
1 dump, no Chicago garbage?

2 A. Yes.

3 Q. Do you have any information as to who
4 placed those signs at various locations throughout
5 the community?

6 A. I would assume it would be landfill
7 opponents.

8 Q. Do you have any information to
9 indicate that Mr. Harrison was putting these signs
10 all over the place?

11 A. I think he might have been.

12 Q. Did he offer to give you a sign to put
13 on your property?

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14 A. He stopped by the campaign office, I
15 believe, or -- somebody stopped by and brought
16 signs.

17 Q. And were those signs posted outside of
18 your campaign office?

19 A. I think we had one.

20 MR. PORTER: I'm going to object and
21 move to strike based on the motion in limine.

22 MR. MORAN: She was given a sign
23 probably by Mr. Harrison, elected to put it
24 where she thought it was appropriate. It

0348

1 seems to me that the sign and whatever it
2 means is appropriate actions that go apart
3 from any issue relating to prejudgement.

4 HEARING OFFICER HALLORAN: I'm going
5 to have to agree with Mr. Porter. I'm
6 looking at this motion in limine and what I
7 ruled on it. It's basically any statements
8 made by Ms. Bernard and a sign in her yard or
9 property is a statement. So I would sustain
10 Mr. Porter's objection. Again, you can go in
11 an offer of proof if you so choose.

12 MR. MORAN: Well, why don't we go into
13 the offer of proof?

14 HEARING OFFICER HALLORAN: Sounds
15 good.

16 BY MR. MORAN:

17 Q. Ms. Bernard, did you take that sign
18 that said no dump, no Chicago garbage and authorize
19 its placement at your campaign headquarters?

20 A. Well, we actually had a stand sign
21 that you put the letters on like a grocery store and
22 my campaign had put something like that up before
23 those other signs even came about, I believe.

24 Q. So you had this other sign, which is

0349

1 like the grocery store sign?

2 A. Right, where you put the letters.

3 Q. And what did that say?

4 A. Something like no outside garbage, no
5 Chicago garbage. You know, it's been over a year.
6 I don't recall the exact wording.

7 Q. And I thought you said a few moments
8 ago that the signs that were posted about the town
9 saying no dump, no Chicago garbage was also a sign
10 that your campaign or you took and then placed on
11 the property at your campaign headquarters?

12 A. Well, I believe I might have had a
13 small lawn sign as well because when you put out
14 political signs you have a lot of them.

15 Q. And the best of your recollection is
16 there was one of these signs put at your campaign
17 headquarters?

18 A. There was the big one and I think
19 there was a small one.

20 Q. With respect to the communications

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21 that you had with the citizens during your campaign
22 that we've mentioned a little bit earlier today,
23 these discussions related to the proposed expansion?

24 A. I believe the discussions just related
0350

1 to landfills in general, environmental issues, other
2 things I was running on.

3 Q. Did they relate to landfills in
4 Kankakee County?

5 A. I mentioned some of that in my
6 campaign literature, I believe.

7 Q. I'm talking now about your
8 communications with the citizens.

9 A. Well, when I was knocking on doors if
10 it came up as a topic of discussion, it was
11 discussed, if it came up at a forum, it was
12 discussed.

13 Q. And were you asked by any of these
14 persons what your position was on the proposed
15 expansion of the Waste Management landfill?

16 A. What I would tell people is what I
17 wanted to do as a state representative in the 79th
18 District if elected.

19 Q. And what you would say is what you
20 intended to do with respect to the proposed
21 expansion of the Waste Management landfill?

22 A. No. It was to do with just, you know,
23 looking at new technologies and different things in
24 general. The Illinois solid waste plan has called
0351

1 for things like incineration, waste reduction,
2 alternative technologies and landfill has been, I
3 believe, a choice of last resort if I'm not
4 mistaken.

5 Q. Did anyone ask you what your position
6 was on the proposed expansion of the Waste
7 Management landfill?

8 A. You know, they might have. I knocked
9 on so many doors.

10 Q. Well, didn't Mr. Keller ask you what
11 your position was?

12 A. No, I don't believe so.

13 Q. You don't recall Mr. Keller asking you
14 that?

15 A. No, I don't recall that.

16 Q. And you don't remember any person
17 asking you at any point in time prior to the primary
18 election what your position was on the proposed
19 expansion of the existing Waste Management landfill?

20 A. Well, you know, it might have come up
21 in a debate and it might have come up door to door
22 and as far as I was concerned, once the hearings
23 were over, I heard the evidence I needed to hear.

24 Q. What was your position on the proposed
0352

1 expansion of the Waste Management landfill?

2 MR. PORTER: Sorry. I object. If

3 we're going to ask what she announced her
4 position to be on the election trail, I think
5 that could be done within the offer of proof,
6 but what he's doing right now is again
7 attempting to delve into the mental
8 impressions of a County Board member by back
9 dooring it in through this offer of proof.

10 HEARING OFFICER HALLORAN: Could you
11 read that question back, Terry?

12 (Whereupon, the requested
13 portion of the record
14 was read accordingly.)

15 HEARING OFFICER HALLORAN: Mr. Moran?

16 MR. MORAN: It's an offer of proof.

17 We're asking her about what her position was
18 regarding the proposed expansion.

19 MR. HELSTEN: Well, Mr. Moran, is this
20 an offer of proof on her position as a
21 political candidate or are you going beyond
22 that? Is it limited to her position as a
23 candidate for office? I guess that was my
24 concern when I heard the question. It seems

0353

1 sort of open ended and maybe beyond the offer
2 of proof. If the offer of proof was just on
3 her position as -- and her activities as a
4 political candidate.

5 MR. MORAN: The question is designed
6 to elicit her views or belief on the proposed
7 expansion. It doesn't inquire as to the
8 mental processes by which she arrived at any
9 conclusion or arrived at her position or in
10 any way relate to the means by which she
11 considered whatever she considered to reach
12 an adjudicatory decision.

13 HEARING OFFICER HALLORAN: Yeah. I
14 don't think it right now delves into the
15 mental processes and is still under an offer
16 of proof. So at this time I am going to
17 overrule Mr. Porter's objection. You may
18 answer.

19 BY THE WITNESS:

20 A. Yeah. I had it in my campaign
21 literature that I was opposed to the landfills in
22 Kankakee County and making Kankakee a home for
23 regional landfills. That was in my campaign
24 literature.

0354

1 BY MR. MORAN:

2 Q. And that opposition was to both the
3 proposed expansion of the Waste Management landfill
4 and the proposed Town & Country landfill in Otto
5 Township, is that correct?

6 A. It was even beyond that because about
7 five years ago Van Drunnen (phonetic) tried to put
8 ground up garbage on his farm land and Jerry Joyce
9 has a really messy operation out on the western edge

10 of the county, there's sludge that's been spread in
11 Pembroke. I mean, there are several operations out
12 there, the Bauer operation.

13 MR. MORAN: Mr. Hearing Officer, if I
14 might approach the witness?

15 HEARING OFFICER HALLORAN: You may.

16 BY MR. MORAN:

17 Q. Ms. Bernard, let me show you what we
18 have marked as WMII Exhibit No. 4. Have you had a
19 chance to look through it?

20 A. Yeah. I don't know which part you
21 want me to look through.

22 Q. I guess I first just wanted you to
23 identify WMII Exhibit No. 4 for us.

24 A. It's the IVI-IPO 2004 general assembly

0355

1 questionnaire.

2 Q. Did you prepare the responses to this
3 questionnaire?

4 A. Yes.

5 Q. And all the responses are true and
6 accurate?

7 A. It's my words.

8 Q. When did you prepare these answers to
9 the questionnaire?

10 A. It says here January 2003, but that
11 had to be 2004.

12 Q. And were the answers to the
13 questionnaire submitted in January of 2004?

14 A. I believe it would have been some time
15 around then.

16 Q. I'm directing your attention,
17 Ms. Bernard, for a moment to page eight --

18 A. Yes.

19 Q. -- of Exhibit 4 the answer written to
20 question No. 44, the first full paragraph. Could
21 you read for us out loud the last two sentences in
22 that first full paragraph?

23 A. This answer was in regards to the
24 questions that said your comment should include --

0356

1 HEARING OFFICER HALLORAN:

2 Ms. Bernard, could you slow down, please?
3 Thank you.

4 BY THE WITNESS:

5 A. This answer is in response to a
6 question that said your comments should include
7 enforcement of pollution statutes, recycling and
8 waste management. So the two sentences, just for
9 clarification, it says as far as recycling and waste
10 management, I have been an avid proponent of
11 recycling and using cleaner alternatives such as
12 closed loop gasification. Two regional landfills
13 are being proposed for --

14 HEARING OFFICER HALLORAN:

15 Ms. Bernard, slow down. Thanks.

16 BY THE WITNESS:

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17 A. I'm sorry. Two regional landfills are
18 being proposed for Kankakee County and both are
19 situated over aquifers. I oppose both proposals.
20 Neither is environmentally sound, especially over
21 the long term.

22 Q. And those were accurate and true
23 statements when you made them in January of 2004?

24 A. Yes. When I was filing out the

0357

1 campaign questionnaire.

2 Q. Ms. Bernard, I'm going to show you
3 what's been marked as WMII Exhibit No. 5. I'll ask
4 you to take a look at that.

5 MR. PORTER: Mr. Helsten's concern is
6 Mr. Moran is still in his offer of proof
7 until he tells us otherwise?

8 HEARING OFFICER HALLORAN: Yes, that's
9 my understanding.

10 MR. HELSTEN: Thank you.

11 HEARING OFFICER HALLORAN: Thank you.

12 BY MR. MORAN:

13 Q. Ms. Bernard, have you seen WMII
14 Exhibit No. 5 before?

15 A. Yes.

16 Q. Can you tell us what it is?

17 A. It's an endorsement letter.

18 Q. And it was prepared by whom?

19 A. Leonard shakey Martin.

20 Q. And he's a fellow County Board member?

21 A. Yes.

22 Q. Are all the statements contained in
23 this letter accurate?

24 A. I would say so.

0358

1 Q. And this article appeared on
2 March 10th, 2004 in the Kankakee Daily Journal?

3 A. That's what it says here on the
4 printout.

5 Q. Let me show you we've marked as WMII
6 Exhibit No. 6. Take a look at that and then when
7 you've completed reviewing it, if you can identify
8 it for us.

9 A. I'm ready.

10 Q. What is it?

11 A. It's a page from my campaign web site.

12 Q. When was this prepared?

13 A. I believe 2004.

14 Q. When in 2004?

15 A. Probably January.

16 Q. Are all the statements contained in
17 WMII Exhibit No. 6 true and accurate?

18 A. Yes.

19 MR. MORAN: Mr. Halloran, that
20 concludes the offer of proof.

21 HEARING OFFICER HALLORAN: Okay.

22 BY MR. MORAN:

23 Q. Ms. Bernard, were you aware that the

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CERTIFICATE OF SERVICE

I, Patti Racky, a non-attorney, certify that I caused a copy of the foregoing **Notice of Filing and United City of Yorkville's Reply in Support of Its Motion in Limine # 3** to be served upon the Hearing Officer and all Counsel of Record listed on the attached Service list by sending it via Electronic Mail on October 7, 2008.

/s/ Patti Racky

[x] Under penalties as provided by law pursuant to ILL. REV. STAT. CHAP. 110 – SEC 1-109, I certify that the statements set forth herein are true and correct.

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