

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 ENVIRONMENTALLY CONCERNED CITIZENS)
 ORGANIZATION and BETH FINNEY,)
 4)
 Petitioners,)
 5)
 vs.) No. PCB 98-98
 6)
 LANDFILL L.L.C d/b/a or a/k/a)
 7 WEST END DISPOSAL FACILITY and)
 SALINE COUNTY BOARD OF COMMISSIONERS,)
 8)
 Respondents.)

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13 Proceedings held on March 9, 1998 in
 14 Harrisburg, Illinois before Amy L. Jackson, Hearing
 Officer.

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21 Reporter: Tricia Emde Huff, CSR #084-003532

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APPEARANCES:

For Petitioners: Mr. Ken Bleyer, Esq.
608 S. Park Ave.
Herrin, IL 62948

For Respondents: Mr. Stephen P. Hedinger, Esq.
Suite 325 First of America Center
1 North Old State Capitol Plaza
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1 HEARING OFFICER JACKSON: Good morning,
2 everyone. My name is Amy Jackson and I'm the
3 hearing officer with the Illinois Pollution Control
4 Board. For the record, I note that it is about 9:08
5 a.m. on Monday, March 9, 1998. I also note that
6 members of the public are present today.

7 The proceeding before us is Pollution Control
8 Board Number 98-98, Environmentally Concerned
9 Citizens Organization and Beth Finney versus
10 Landfill L.L.C. d/b/a or a/k/a West End Disposal
11 Facility and the Saline County Board of
12 Commissioners.

13 For the benefit of those present today who may
14 not be familiar with The Board proceedings I'd first
15 like to briefly explain The Board's process in this
16 type of a hearing. First you should know that it is
17 The Board and not me that will make the decision in
18 this case. My job, as a hearing officer, requires
19 me to conduct the hearing process in a neutral and
20 orderly manner so that we have a clear transcript of
21 these proceedings for The Board to review. It is
22 important that The Board be able to follow the
23 record that we make here today.

24 It is also my responsibility to assess the
25 credibility of any witnesses giving testimony today

1 and I will do so on the record at the close of these
2 proceedings.

3 At times I may ask for clarification for the
4 record or ask questions of a witness which I believe
5 are necessary and may aid The Board in making their
6 decision in this case.

7 The complaint in this matter alleges that the
8 decision of the Saline County Board of Commissioners
9 in granting local siting approval for a new
10 pollution control facility to Landfill L.L.C. was
11 against the manifest weight of the evidence, that
12 the hearing process was fundamentally unfair and
13 that The Board of Commissioners lack jurisdiction
14 over the siting application.

15 Neither of the respondents have filed a written
16 answer to the complaint but discovery has taken
17 place and there's currently a motion for partial
18 summary judgement filed on behalf of respondent,
19 L.L.C., pending before The Board on the issue of
20 whether the Saline County Board had jurisdiction to
21 consider the siting application.

22 The Board's procedural rules and the Environmental
23 Protection Act govern these proceedings. They provide
24 that members of the public shall be allowed to speak
25 or submit a written statement at hearing; however,

1 any person offering testimony today shall be subject
2 to cross-examination by the attorneys present.

3 Additionally, any such statement offered by a
4 member of the public shall be relevant to this case
5 and to the issues currently before The Board. I
6 will call for any statements from members of the
7 public after the parties have presented their
8 evidence.

9 At this point I would like to see hands of any
10 members of the public who are present and who do
11 wish to make a statement today. If you could just
12 raise your hands. Okay. I note that no members of
13 the public that are present today have indicated
14 that they wish to make a statement on the record.
15 Of course that may change as the proceedings
16 progress today, as further members of the public may
17 attend, and I'll ask for this again at the close of
18 proceedings.

19 Finally, I want to caution everyone that a board
20 hearing is much the same as being in court and I
21 expect everyone to act appropriately and with proper
22 decorum.

23 I'll ask the parties to make appearances for the
24 record. Let's begin with the petitioner.

25 MR. BLEYER: Thank you. Madam Hearing

1 Officer, and Counsel, my name is Ken Bleyer, that's
2 spelled B, as in boy, l-e-y-e-r. My address is 608
3 South Park Avenue in Herrin, Illinois, 62948. I
4 represent the petitioners, Beth Finney and ECCO.

5 HEARING OFFICER JACKSON: Thank you,
6 Mr. Bleyer. Mr. Hedinger.

7 MR. HEDINGER: Thank you. Ms. Jackson,
8 Mr. Bleyer, my name is Steve Hedinger and I
9 represent the respondent, Landfill L.L.C.

10 HEARING OFFICER JACKSON: And is there
11 anyone here present today on behalf of the Saline
12 County Board of Commissioners? Okay. I note for
13 the record that there appear to be no persons here
14 on behalf of Saline County Board of Commissioners.

15 Mr. Bleyer, Mr. Hedinger, do we have any
16 preliminary matters?

17 MR. BLEYER: Yes, I think so, Ms. Jackson.
18 I have received a copy of a Motion In Limine that
19 Mr. Hedinger has submitted to me this morning.
20 While I haven't had a chance to review every page of
21 it I think, in substance, what is the target of this
22 motion is to establish, on the record, stipulations
23 that have been reached over the past two weeks, and
24 I would be willing to recite, into the record, what
25 I believe those stipulations are and then if

1 Mr. Hedinger is so inclined he can either add to
2 that or modify it in some way.

3 It is my understanding that over the course of
4 approximately one month of discovery, and some
5 disputes we've had along the way, we've more or less
6 narrowed the issues in this case and I believe, as I
7 understand those issues to be, those issues have --
8 are focused around Paragraph 9 of my petition and
9 deal with the allegations that have been made
10 against the proceedings during October of last year
11 and it is my understanding that pursuant to the
12 discovery proceedings that certain of those
13 allegations that I have made are no longer -- my
14 clients no longer wish to pursue those so I would
15 like to make clear, for the record, what those are.

16 First, the allegation dealing with an ex-parte
17 communication. We, on behalf of the petitioners,
18 will identify that particular allegation will not be
19 pursued.

20 The allegation regarding the conflict of
21 interest with the county board member and the
22 applicant will also not be pursued from this point
23 forward.

24 We had given an answer in discovery that part of
25 our complaint was based upon the belief that the

1 hearing officer had been paid by the applicant. We
2 learned in discovery that was not true. We will not
3 be pursuing that either.

4 In addition, we identified, as an objectionable
5 action below, that certain county officials working
6 as an arm of the Saline County Government testified
7 on behalf of the applicant in October of last year
8 and we made it clear, during discovery, that those
9 individuals are Danny January and Randy Koester who
10 are members of the Egyptian Health Department. We
11 will not be attempting to produce any additional
12 evidence beyond what is in the record below to point
13 out what the basis of our allegations are. In other
14 words, we're not going to put any witnesses on
15 today, nor are we going to try to offer affidavits
16 during the public comment period or anything else
17 with respect to Danny January or Randy Koester's
18 testimony. In other words, we intend to be bound by
19 the record below with that particular material and
20 the pursuit of that objectionable action.

21 We have also stated that the -- in discovery
22 that the written resolution of the county board
23 deciding the case was contradictory and we did -- we
24 made that conclusion based upon the fact that there
25 seems to be an incongruency in the vote between the

1 vote on the nine criteria and then an ultimate vote
2 that was taken on the site, the facility, and that,
3 for some reason, is nine to three in the former and
4 ten to two in the latter and we don't believe that
5 makes any sense. We think that points out a
6 confused county board, which has been one of our
7 arguments from the beginning, and we had told the
8 applicant and their attorney that we do not intend
9 to go beyond that particular issue in furtherance of
10 our objection having to do with the written
11 resolution being contradictory in nature. In other
12 words, we, of course, intend to be bound by the
13 record in that regard.

14 We have also indicated that -- in our discovery
15 responses that representatives of the applicant
16 presented technical information in support of this
17 proceeding and we identified to the applicant and
18 their attorney that that has to do with some
19 material that Mr. Acree, who was one of the
20 witnesses in the proceedings below, presented during
21 the public comment period; and, of course, that is a
22 matter of record which we do not intend to pursue at
23 this time either.

24 Now, I believe that, in a nutshell, describes
25 what we have taken from Paragraph 9 of the petition

1 and therefore the balance, as I understand it,
2 represents the matters that remain in dispute, the
3 balance of Paragraph 9. I believe that's my
4 understanding.

5 HEARING OFFICER JACKSON: Mr. Hedinger,
6 I'll give you a chance to respond, but just so I'm
7 clear, the issues you made that you would no longer
8 pursue were all issues that were raised in Paragraph
9 9, Subparagraph C on the issue of whether the
10 application proceedings were fundamentally fair?

11 MR. BLEYER: Pardon me for just a moment.
12 No, no, that's not correct. There are -- there are
13 issues that stem from Paragraph 9C that we will
14 continue to pursue; however, we clarified, in
15 discovery, what the nature of those issues are and
16 we attempted in furtherance of interrogatories and
17 depositions to identify to the applicant and its
18 attorney precisely where we are going with those
19 issues but, no, we are not saying that there isn't
20 anything in 9C that we're not pursuing. I mean,
21 there are issues that we are pursuing, yes.

22 HEARING OFFICER JACKSON: And that's not
23 what I understood. I mean, I understood that there
24 still are remaining issues in Paragraph 9,
25 Subparagraph C that you intend to pursue?

1 MR. BLEYER: Yeah.

2 HEARING OFFICER JACKSON: Some of them will
3 not be pursued?

4 MR. BLEYER: Yeah, some have been waived.
5 Particularly you might note in Paragraph 9C the
6 ex-parte communications and the presence of a
7 conflict of interest. We have clearly waived
8 those. We will not be pursuing those.

9 HEARING OFFICER JACKSON: Okay.
10 Mr. Hedinger.

11 MR. HEDINGER: Thank you. Mr. Bleyer
12 mentioned a Motion In Limine that I had given him a
13 copy of. Basically the Motion In Limine was
14 intended to make a record of the stipulations that
15 he has just gone through so I will not be filing
16 that today, and I believe his stipulations that he
17 just recited comports with my understanding of what
18 we agreed to.

19 For the record, he did mention a gentleman named
20 Mr. Acree. That's A-c-r-e-e.

21 HEARING OFFICER JACKSON: Thank you. Is
22 that the only preliminary matter that we have
23 today?

24 MR. BLEYER: That's all I have.

25 MR. HEDINGER: That's all for me.

1 HEARING OFFICER JACKSON: Okay.

2 Mr. Bleyer, will you be making an opening statement
3 today?

4 MR. BLEYER: No.

5 HEARING OFFICER JACKSON: Mr. Hedinger, do
6 you wish to?

7 MR. HEDINGER: No, I will not either.

8 HEARING OFFICER JACKSON: Okay. Mr. Bleyer,
9 your first witness.

10 MR. BLEYER: Why don't -- I would be
11 willing to accommodate Mr. Koonce's attorney if
12 Mr. Hedinger and you are inclined to do so.

13 HEARING OFFICER JACKSON: Okay. I think
14 our discussions on this issue were off the record so
15 just so the record reflects what happened, we are
16 experiencing some inclement weather in this part of
17 the state and apparently the attorney for
18 Mr. Bleyer's first witness is caught up in some of
19 that weather but expects to be here shortly. If
20 neither attorney has an objection we'll take a short
21 break, go off the record and allow Mr. Koonce's
22 attorney to be present for that questioning.

23 MR. HEDINGER: No objection.

24 MR. BLEYER: No objection.

25 HEARING OFFICER JACKSON: Okay. We'll go

1 off the record then. Thank you.

2 (Whereupon a break was taken.)

3 HEARING OFFICER JACKSON: We can go back on
4 the record. After a brief pause of about 20, 25
5 minutes we're going to go back on the record. I
6 note that Mr. Chris Osborn is here representing the
7 Illinois Central Railroad and he had asked to be
8 present for the testimony of Mr. R.L. Koonce,
9 K-o-o-n-c-e. Okay. Mr. Bleyer, you ready to call
10 your first witness?

11 MR. BLEYER: Yes, I'll call R.L. Koonce.

12 HEARING OFFICER JACKSON: Mr. Koonce, if
13 you'd come up here and please remain standing and
14 raise your right hand, the court reporter will swear
15 you in.

16 (Witness Sworn.)

17 DIRECT-EXAMINATION

18 BY MR. BLEYER:

19 Q. Would you state your name for the record,
20 please.

21 A. R.L. Koonce.

22 Q. And where do you live, Mr. Koonce?

23 A. At 677 South Township Line Road,
24 Thompsonville, Illinois.

25 Q. Where do you work, sir?

1 A. Illinois Central Railroad at an office in
2 Benton, Illinois.

3 Q. What do you do for them?

4 A. I'm train master.

5 Q. How long have you been with them?

6 A. Been with them 39 years.

7 Q. All right. Mr. Koonce, do you recall that
8 last week on the 4th of March I took your
9 deposition?

10 A. Yes, sir, I do.

11 Q. Have you had a chance to review that
12 deposition?

13 A. Yes, sir.

14 Q. Does that deposition accurately reflect
15 what you stated in response to questions put to you?

16 A. Yes, sir.

17 Q. Mr. Koonce, do you know Wayne Hemmerich?

18 A. I met Mr. Hemmerich, yes.

19 Q. And when have you met him?

20 A. In October of '97 and March of '98.

21 Q. Okay. And during the interim between
22 October of 1997 and March of 1998 did you have the
23 occasion to be or see -- be with or see
24 Mr. Hemmerich?

25 A. No, sir.

1 Q. Do you know what Mr. Hemmerich's role in
2 these proceedings has been?

3 A. I understand Mr. Hemmerich was affiliated
4 with Landfill L.L.C. I believe it is.

5 Q. Where did you get that belief from, sir?

6 A. From Mr. Hemmerich.

7 Q. So you have no outside knowledge of what
8 Mr. Hemmerich's role may or may not be?

9 A. No, sir.

10 Q. Do you know Rick Lane?

11 A. Rick Lane? I don't believe so, no.

12 Q. Do you know Robert Wilson?

13 A. No, sir.

14 Q. Do you know John Acree?

15 A. No, sir.

16 Q. All right. I'd like to ask you if you can
17 remember what you were doing on Friday, October 24,
18 1997?

19 A. On that particular day I was in my office
20 and I think that was the day I met with
21 Mr. Hemmerich for the first time.

22 Q. And what is the basis of your belief? In
23 other words, why do you believe you met Mr.
24 Hemmerich that day?

25 A. I wrote a letter and in my response to

1 Mr. Hemmerich in the letter I quoted it that I had
2 met with him on the 24th, or talked to him on the
3 24th.

4 MR. BLEYER: Would the record please
5 reflect that I am showing the witness a copy of a
6 letter identified in this record as C1850 known as
7 Exhibit 52 in the proceedings in October and also
8 identified as Petitioner's Exhibit 1 in a deposition
9 taken last week. Q. Mr. Koonce, would you look at
10 that for just a moment. Have you had a chance to
11 look at the document, sir?

12 A. Yes, sir, I have.

13 Q. Do you recognize it?

14 A. Yes, sir.

15 Q. And how?

16 A. It's a letter I wrote to Mr. Hemmerich on
17 October 27, 1997 and signed by me as R.L. Koonce,
18 Train Master, Illinois Central Railroad.

19 Q. Do you believe that's your signature?

20 A. Yes, sir, I do.

21 Q. Does it reference October 24th?

22 A. Yes.

23 Q. And what is the reference to October 24th?

24 A. It says "This is in response to your
25 inquiry of October 24, 1997".

1 Q. Now, on October 24th did you meet with
2 Mr. Hemmerich or did you speak with him by phone?

3 A. I believe I spoke with him by phone and met
4 with him, I think, on October 27.

5 Q. Did he call you?

6 A. Yes, he did.

7 Q. Did he call you at work?

8 A. Yes.

9 Q. Why did he call you?

10 A. Mr. Hemmerich had several questions
11 regarding the railroad on what we refer to as the
12 Eldorado district which runs between Ferber off our
13 main line over to Eldorado.

14 Q. When you say he had several questions, do
15 you mean by that that he just asked you questions or
16 did you, in return, offer replies?

17 A. Well, he asked questions and I offered
18 replies, yes.

19 Q. Did he do anything other than put questions
20 to you?

21 A. I don't understand what you mean.

22 Q. Was the substance of your conversation on
23 October 24th merely him asking questions and you
24 making replies or did he also provide you with
25 information about Landfill L.L.C.?

- 1 A. He told me that there was a proposal to
2 build a landfill, yes.
- 3 Q. Did he tell you where it was?
- 4 A. Basically in -- off of Macfarland Road I
5 believe it is.
- 6 Q. Do you know exactly where that is going to
7 be; in other words, where the landfill is to be
8 built, Mr. Koonce?
- 9 A. Not precisely, no.
- 10 Q. Did you meet with him on October 27th?
- 11 A. Yes.
- 12 Q. Where?
- 13 A. At my office in Benton.
- 14 Q. Do you recall when?
- 15 A. I don't recall the exact time, no, sir.
- 16 Q. Who was present?
- 17 A. Mr. Hemmerich and myself.
- 18 Q. What was the purpose of the meeting?
- 19 A. Mr. Hemmerich again had some questions that
20 he wanted clarified and I provided them.
- 21 Q. Wasn't that the purpose of the meeting on
22 the 24th -- pardon me, the telephone conversation on
23 the 24th?
- 24 A. Basically, yes, um-hum.
- 25 Q. What was the need for an additional

1 contact?

2 A. Mr. Hemmerich asked me if I would write him
3 a letter regarding this and he just came by the
4 office to ask the questions again and get a
5 clarification on them.

6 Q. Did he ask you that on the 24th or the
7 27th?

8 A. I don't recall if all of the questions were
9 asked on the 24th. I think some of them were, yes.

10 Q. What I'm asking you is did he ask you to
11 write a letter when he spoke to you on the phone on
12 the 24th or did he ask you to write the letter when
13 he saw you on the 27th?

14 A. I believe it was on the 27th.

15 Q. What did Mr. Hemmerich show you when he
16 came to see you on the 27th?

17 A. He showed me a proposal of a map -- a map
18 of a track layout.

19 Q. What do you mean by that, a track layout?

20 A. Just where a track layout would be built
21 into the landfill.

22 HEARING OFFICER JACKSON: Excuse me, sir.
23 You mean a railroad track?

24 A. Yes.

25 HEARING OFFICER JACKSON: Okay. Thank

1 you.

2 MR. BLEYER: Q. So, in other words, he
3 showed you a map that contained -- or proposed to
4 show where a railroad track would be built running
5 to the landfill?

6 A. He showed me what I understood to be a
7 proposal to build one. Possibly could be built,
8 yes.

9 Q. Okay. Well, explain to me why you say
10 proposed. Did the map show where the track was to
11 be constructed?

12 A. It showed the layout. It didn't show
13 exactly -- identify exactly where it would be built,
14 no. It was my understanding it would be built off
15 of the Illinois Central Railroad.

16 Q. Did he tell you it was merely proposed?

17 A. That was the understanding I had, yes.

18 Q. And where did you get that understanding?

19 A. From Mr. Hemmerich.

20 Q. Now, in addition to showing you the map for
21 the proposed track, did he show you anything else?

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

23 Q. Did he read any documents to you that day?

24 A. No, sir.

25 Q. Did he give any documents to you to read?

1 A. No, sir.

2 Q. Have you ever seen Landfill L.L.C.'s
3 application for siting?

4 A. No, I have not.

5 Q. Has anyone ever read any material out of
6 that application to you?

7 A. Not that I recall of, no.

8 Q. Is Mr. Hemmerich the only person, to your
9 knowledge, associated with the landfill that has
10 spoken to you about a matter relative to the
11 landfill?

12 A. Yes, sir.

13 Q. The letter which is the exhibit that you
14 now have in your possession in front of you, Exhibit
15 Number 52 in the proceedings below, where was that
16 letter prepared?

17 A. At my office.

18 Q. And who prepared it?

19 A. I did.

20 Q. When did you prepare it?

21 A. On October 27, 1997.

22 Q. Why did you prepare it?

23 A. I prepared it in response to Mr. Hemmerich.

24 Q. In response to his request?

25 A. In response to his request, yes.

1 Q. Now, prior to being subpoenaed for your
2 deposition last week had you advised anyone with the
3 Illinois Central Gulf that you had written that
4 letter?

5 A. No, sir.

6 Q. Did you copy that letter to anyone at
7 Illinois Central Gulf?

8 A. No, sir.

9 Q. Did Mr. Hemmerich tell you that your letter
10 would become an exhibit in the proceedings on
11 October 27th?

12 A. No, sir.

13 Q. Do you know where Landfill L.L.C. is going
14 to develop rail access?

15 A. From my understanding it would be some
16 place south of our main track running between
17 Galatia and what we consider Ferber, called Ferber,
18 or west end.

19 Q. Between County Line Road and Macfarland
20 Road, do you know where this spur is to be
21 constructed?

22 A. Not exactly, no, sir.

23 Q. Do you know how many cars, railroad cars
24 that is, Landfill L.L.C. will be bringing into and
25 out of the spur if it is constructed?

1 A. No, sir, I don't.

2 Q. Do you know how much time will be required
3 to bring the cars to and from the spur?

4 A. No, sir.

5 Q. Do you know what the cars that Landfill
6 L.L.C. might use would be used for?

7 A. What the cars would be used for?

8 Q. In other words, what the content of the
9 cars would be.

10 A. No, sir.

11 Q. Now, isn't it true, Mr. Koonce, that
12 because you don't know where the spur is you don't
13 know if the spur is going to cause blockages of
14 either the County Line Road or Macfarland Road
15 without knowing the number of cars that Landfill
16 L.L.C. would have or where the spur will be located?

17 A. That's true.

18 Q. I have no further questions.

19 HEARING OFFICER JACKSON: Mr. Hedinger.

20 MR. HEDINGER: Before proceeding with
21 cross-examination I would like to state, for the
22 record, an objection to the entirety of Mr. Koonce's
23 testimony and ask that it be stricken on relevance
24 grounds. This pollution control facility siting
25 review hearing is based on the record developed

1 below and my understanding of the statute and case
2 law is that at this stage of the proceedings the
3 only new evidence that can be developed has to
4 concern either jurisdictional issues or fundamental
5 fairness. It seemed to me the entirety of
6 Mr. Bleyer's questioning related to the merits of
7 the Illinois Central Railroad's role in the
8 underlying petition, the underlying application for
9 siting approval and the proper time to have
10 presented evidence on this issue would have been at
11 the local proceedings rather than at this proceeding
12 and on that basis I would move that the testimony be
13 stricken.

14 HEARING OFFICER JACKSON: Mr. Bleyer, your
15 response.

16 MR. HEDINGER: Thank you, Madam Hearing
17 Officer. The testimony, of course, is relevant. It
18 is relevant because the document that Mr. Koonce has
19 been testifying from here today was introduced into
20 the record at the proceedings below over my
21 objection without him being present at that time.
22 Those objections are well stated in the record.

23 Contrary to the applicant's representations on
24 October 27th by Mr. Wilson that I could have
25 subpoenaed Mr. Koonce to come to the proceedings in

1 the ensuing nights; that, of course, is not correct,
2 I could not have done that and I did not have those
3 powers and did not know the -- did not have the
4 opportunity to cross-examine Mr. Koonce as this
5 particular document was presented. I believe that
6 that was -- it was a mistake to let that document in
7 in the first place because of the fact I couldn't
8 cross-examine him. It was a piece of hearsay that
9 should never have been part of the record.

10 It does go to the issues of fundamental fairness
11 because when you allow documents like that that have
12 such a pertinent purpose in those proceedings to be
13 put in the record, clearly, as a member representing
14 the members of the public, I have a right to come in
15 and cross-examine the originator of that document
16 and I did not have that chance, all I had to do
17 was -- the opportunity to do was to question
18 Mr. Hemmerich and I believe that some of the things
19 that Mr. Hemmerich said on that night and some of
20 the things that Mr. Koonce has testified here to
21 today do not jive, they do not correlate, and I
22 believe had I been given the chance to ask the
23 questions on October 27th it may have impacted on
24 the county board's decision as to the issue of the
25 traffic on the road and where the rail spur was

1 going to be and some other things that had been
2 highly contested throughout the previous three
3 nights so I believe his testimony is very relevant.

4 HEARING OFFICER JACKSON: Mr. Hedinger.

5 MR. HEDINGER: Well, I have not much more
6 to add to what I said previously. I think there's
7 two issues here; one, the fact that what happened at
8 the hearings before the Saline County Board
9 Commissioners, and that stands as it is, and whether
10 or not Mr. Koonce will help or hurt Mr. Bleyer's
11 case I don't think is really relevant to the
12 question of whether there was a breach of
13 fundamental fairness in the way it was handled below
14 or in the right to now develop that testimony that
15 is relevant only to a substantive issue during these
16 proceedings. A substantive siting issue.

17 HEARING OFFICER JACKSON: Okay. My ruling
18 is I'll allow the testimony in and Mr. Hedinger will
19 be allowed to cross-examine him.

20 As you both know, no additional evidence can be
21 submitted or considered by The Board on the issue of
22 the nine siting criteria. Those issues were already
23 determined by the Saline County Board of
24 Commissioners. I will allow this testimony in on
25 Mr. Bleyer's assertion that it does go to his

1 argument of fundamental fairness. Only on that
2 issue, not as to whether any of the nine siting
3 criteria were met. Evidence on that has already
4 been admitted and no further evidence is allowed on
5 those issues so for that limited purpose the
6 testimony is allowed.

7 Obviously if you feel this is an incorrect
8 ruling a motion to strike may be made later and it
9 can be taken up with The Board.

10 MR. HEDINGER: Thank you. So without
11 waiving that objection I will proceed with
12 cross-examination.

13 HEARING OFFICER JACKSON: Yes.

14 CROSS-EXAMINATION

15 BY MR. HEDINGER:

16 Q. Mr. Koonce, I'm Steve Hedinger. We met the
17 other day during your deposition. When was the
18 first time that you had any contact with Mr. Bleyer?

19 A. Last Wednesday in Benton.

20 Q. Okay. And what happened Wednesday in
21 Benton?

22 A. I gave a deposition to Mr. Bleyer.

23 Q. Okay. And when was the first time prior to
24 Wednesday in Benton that you had heard Mr. Bleyer's
25 name?

1 A. I received a subpoena the week before --

2 Q. Okay.

3 A. -- from Mr. Bleyer's office.

4 Q. Okay. So just to make sure I understand,
5 between October 27, 1997, which is the date that you
6 met with Mr. Hemmerich, and the date that you
7 received that subpoena, during that time interval
8 you had never heard from Mr. Bleyer, correct?

9 A. That's true.

10 Q. During that time interval, that same time
11 interval between October 27th and the date of the
12 subpoena, had you heard from any of the following
13 individuals; Keith Finney, John P. Murphy, or Pat
14 Murphy, Paul Spicer or Beth Finney?

15 A. No, sir.

16 Q. Had you ever heard of an organization known
17 as the Environmentally Concerned Citizens
18 Organization?

19 A. Only on the subpoena that I received.
20 That's the first time I heard of them.

21 Q. Okay. Mr. Koonce, are you aware of whether
22 or not there are any regulatory restrictions
23 governing the rights of any individual land owner to
24 create a rail spur to connect with the Illinois
25 Central Railroad's main line?

1 A. I'm not sure I understand your question.

2 Q. Okay. Well, if an individual, suppose a
3 landfill, wanted to build a landfill, could they
4 just do that or is there a regulatory proceeding or
5 regulatory scheme that they have to comply with?

6 MR. BLEYER: I want to show my objection.
7 I asked this witness nothing about regulations
8 involved with placing a spur or installing it. I
9 believe that's beyond the scope of the Direct. I
10 never asked him anything about that.

11 HEARING OFFICER JACKSON: I'm going to
12 allow the question. You inquired as to the
13 placement of a rail spur and I believe this is a
14 reasonable extension of that line of questioning so
15 I'll allow it.

16 MR. HEDINGER: I'm sorry, did we get an
17 answer yet? Q. Do you remember the question?

18 A. You would like to know if there are any
19 regulatory commissions that have to be -- have to
20 approve a rail spur?

21 Q. Yes.

22 A. Yes, there are.

23 Q. Okay. And, first, what's the basis of your
24 knowledge of those regulatory schemes?

25 A. I think it's pretty well common knowledge

1 in the railroad industry that --

2 Q. And how long have you been in the railroad
3 industry?

4 A. Thirty-nine years.

5 Q. Okay. Now, can you tell me, briefly,
6 what -- just a thumbnail sketch of what that
7 regulatory scheme might be before someone could just
8 attach a spur onto the main rail line.

9 A. We have to abide by FRA regulations,
10 Federal Railroad Association regulations that
11 determine specifications for rail spurs. We have
12 our own company engineering department that must
13 approve them. They must be approved by the
14 officials on the IC Railroad.

15 Q. Okay. Are there any state agencies
16 involved?

17 A. If there are public crossings or something
18 to that nature, yes.

19 Q. Okay. And what do you mean by public
20 crossings?

21 A. Public highway crossings that would be
22 built -- a spur being built across a road.

23 Q. Okay. What state agencies would have to be
24 contacted in that regard?

25 A. I think the Illinois Commerce Commission.

1 Q. Okay.

2 A. Department of Transportation.

3 Q. The Illinois Department of Transportation?

4 A. Illinois Department of Transportation.

5 Q. Okay. And just to bring it full circle
6 then, to make sure I understand, if a private land
7 owner, private business owner wanted to build a spur
8 that would cross a public roadway before joining up
9 with your main line, prior to doing so they would
10 have to go through a number of both federal and
11 state regulatory agencies as well as your own
12 internal audit; is that correct?

13 A. That would be correct, yes.

14 Q. Okay. Can you tell me, just in a nutshell,
15 what some of the things that the ICC or the
16 Department of Transportation would require prior to
17 granting approval to take a spur over a roadway.

18 MR. BLEYER: I'd like to show my objection
19 on this. This man doesn't work for the ICC or the
20 Illinois Department of Transportation, number one.
21 Number two, I know you granted a reasonable
22 extension in overruling my objection a moment ago
23 and I think this is going too far. Again, I did not
24 ask this man any of these questions. And, thirdly,
25 I'd like to point out that all of this seems to be

1 going to whether or not this railroad crossing is
2 going to be safe for the roadway. Now, this seems
3 to fly in face of what you just got through saying a
4 moment ago, that his testimony was limited to the
5 issue of fundamental fairness. It doesn't have
6 anything to do with the substance of whether or not
7 the railroad is going to impose an obligation or a
8 burden in some regard that would merit ruling one
9 way or another on the issue of traffic impact so for
10 all three reasons I object to any further questions
11 along this line.

12 HEARING OFFICER JACKSON: Mr. Hedinger.

13 MR. HEDINGER: I think this is just an
14 extension of the questioning of Mr. Bleyer. As I
15 understood, his argument was intended to show
16 prejudice on his client's behalf as a result of this
17 testimony that he wasn't able to cross-examine and
18 if that's the record we're developing then that's
19 the record I'm developing here and I think
20 Mr. Koonce's testimony -- he's 39 years in the
21 railroad industry. Certainly he would have some
22 idea of what some of the restrictions are on placing
23 a spur over a roadway, but if he doesn't know that
24 I'm sure he'll tell us that.

25 HEARING OFFICER JACKSON: With the

1 understanding that this testimony is being developed
2 solely for the purpose of arguments on the issue of
3 fundamental fairness I'll allow the testimony if
4 Mr. Koonce has personal knowledge of the
5 requirements that you're talking about. Mr. Bleyer,
6 your objection is noted.

7 MR. HEDINGER: Q. Mr. Koonce, do you
8 remember the question?

9 A. My general knowledge, with nothing
10 specific, would be that there's several Government
11 agencies that would have to be involved including
12 the Illinois Department of Transportation if it's a
13 crossing that would go across an Illinois state
14 highway. I'm sure it would be the Federal
15 Government if it went across an interstate highway
16 or a federal highway. Same thing would apply for a
17 county, if it went across a county highway, county
18 Government would be involved, and it would probably
19 be -- there would probably be studies of rail
20 traffic going across the crossing, there would be
21 studies made of the amount of traffic -- automobile
22 traffic going across the crossing. All these
23 studies and plans would be submitted and have to be
24 approved by some regulatory agency, depending on
25 where it's located. They would make the decision.

1 They would have the final say.

2 Q. Okay. Bear with me just a moment, please.
3 Sorry for the delay. Mr. Koonce, just a couple
4 other questions here. Mr. Bleyer asked you about
5 whether you had, at any time, shown a copy of your
6 October 27 letter to anyone else within the Illinois
7 Central Railroad Organization. Would that be
8 something that you would expect, as a result of your
9 job description duties, that you would be required
10 to do? In other words, would you expect that you
11 would have to show that to someone?

12 A. Not necessarily. This was in response to
13 questions that anyone could have answered of a
14 representative of the railroad and I would have
15 given.

16 Q. And who would you have given these answers
17 to? Is there only a certain class of people that
18 you would have answered or do you answer anyone who
19 comes in?

20 A. I would probably take into consideration
21 who asked the questions, yes.

22 Q. Okay. Well, if Mr. Bleyer had contacted
23 you prior to that subpoena, is there anything that
24 you said here today that you would not have told
25 him?

1 A. Not that I can think of.

2 Q. Okay. I have no further questions.

3 HEARING OFFICER JACKSON: Mr. Bleyer, any
4 Redirect?

5 REDIRECT-EXAMINATION

6 BY MR. BLEYER:

7 Q. Mr. Koonce, what are the considerations
8 that you would take advisement from in determining
9 who you would write such a letter for?

10 A. If I understand what you're asking I would
11 take into consideration anyone who -- anyone who
12 came to my office or anyone who gave me a call and
13 asked for information that I could provide I would
14 take into consideration who they were, who they
15 represented. If I felt that the questions that I
16 provided would be public knowledge or not in any way
17 to harm the railroad I would probably take that into
18 consideration before I answered questions of this
19 nature. The questions that were answered -- or
20 asked are fairly simple questions.

21 Q. Well, did you know who Wayne Hemmerich was
22 before he talked to you on the 24th?

23 A. I knew who Mr. Hemmerich was -- who he
24 represented himself to be, yes, from what he told
25 me.

1 Q. Okay. But you didn't know him before that,
2 did you?

3 A. No, I did not.

4 Q. Okay. And then when you wrote the letter
5 for him on the 27th, your only knowledge of him had
6 been your phone call the Friday before?

7 A. That's correct.

8 Q. And until he called you on the 24th, you
9 didn't know who he represented either, did you?

10 A. No, sir, I didn't.

11 Q. And when you wrote the letter for him, the
12 only knowledge you had about who he represented was
13 what he had told you on the previous Friday; isn't
14 that correct?

15 A. That's true.

16 Q. I don't have anything further.

17 MR. HEDINGER: No Recross.

18 HEARING OFFICER JACKSON: Okay. This
19 witness is here today pursuant to a Subpoena Duces
20 Tecum. Is he released now? Any --

21 MR. HEDINGER: Mr. Bleyer's subpoena.

22 MR. BLEYER: Well, I think I'd like to wait
23 until the proceedings are done. We're going to be
24 done here shortly so -- I don't anticipate recalling
25 him, no, but I want to wait until we're completely

1 done.

2 HEARING OFFICER JACKSON: Okay. Mr.
3 Koonce, you're free to step down and I'd ask that
4 you just remain in the courtroom for the remainder
5 of these proceedings. Thank you. Mr. Bleyer, your
6 next witness.

7 MR. BLEYER: I have no further witnesses.

8 HEARING OFFICER JACKSON: Mr. Hedinger, do
9 you have any witnesses?

10 MR. HEDINGER: Yes, we will call Mr. Keith
11 Finney.

12 HEARING OFFICER JACKSON: Mr. Finney, come
13 forward, please. Please raise your right hand, the
14 court reporter will swear you in.

15 (Witness sworn.)

16 DIRECT-EXAMINATION

17 BY MR. HEDINGER:

18 Q. Please state and spell your name for the
19 record.

20 A. Keith Finney, F-i-n-n-e-y.

21 Q. And Mr. Finney, are you familiar with an
22 organization known as the Environmentally Concerned
23 Citizens Organization?

24 A. Yes.

25 Q. Okay. And are you affiliated with that

1 group?

2 A. Yes.

3 Q. Okay. Can you tell us, what is the nature
4 of that group, what is that group organized to do.

5 A. Trying to keep the landfill out of our
6 backyard.

7 Q. Okay. And can you tell me when that
8 organization was created approximately?

9 A. I think it was August of '97.

10 Q. August, 1997. And who are the members of
11 the organization at that time?

12 A. Same as they are now, me, my wife, Beth
13 Finney, Paul Spicer, Pat Murphy.

14 Q. Okay. And Pat Murphy is also known as John
15 P. Murphy; is that correct?

16 A. Yes.

17 Q. Have there ever been any members of the
18 organization other than the four of you?

19 A. No.

20 Q. Okay. And Mr. Finney, you were present at
21 the time that the Saline County Board of
22 Commissioners voted on the application for approval
23 of the Landfill L.L.C. application, were you not?

24 A. Yes.

25 Q. And were other members of your organization

1 also present?

2 A. Pat Murphy, and I think Paul was there.

3 Q. Paul Spicer?

4 A. Yes.

5 Q. Was Mr. Bleyer there?

6 A. No.

7 Q. And at that time, Mr. Finney, did either
8 you or Mr. Murphy or Mr. Spicer raise or attempt to
9 raise any objection to the county commissioners
10 prior to their vote?

11 MR. BLEYER: Ms. Jackson, I want to show an
12 objection on this. Number one, I put on evidence
13 today having to do with an exhibit that was put into
14 evidence identified as Exhibit Number 52 at the
15 proceedings below. I don't know what any of this
16 has to do with that exhibit that went in. I don't
17 know what the constitution of ECCO or, for that
18 matter, the vote of the county board on December
19 18th of 1997 has got to do with that at all. That's
20 number one. Number two, I don't really know where
21 Counsel is leading with these questions. I don't
22 know what this has to do with this proceeding here
23 today. There is certainly no motion pending that
24 would substantiate an argument of any kind that ECCO
25 or its members or Ms. Finney or Mr. Finney have

1 failed to do something that they should have done.

2 There's certainly no motion to that effect.

3 As you adequately pointed out at the beginning
4 of these proceedings, there's never been any answer
5 filed by the applicant to this petition to challenge
6 anything that we've said in our petition, or done,
7 so I object to questioning Mr. Finney unless he
8 wants to ask him questions about what I've opened
9 the door on here today having to do with Exhibit
10 Number 52 and the fundamental fairness of allowing
11 that exhibit in over hearsay objections.

12 HEARING OFFICER JACKSON: Mr. Hedinger, do
13 you have a response?

14 MR. HEDINGER: Sure. Mr. Koonce testified
15 that he had never heard of those four individuals
16 but as far as I'm aware the record did not state who
17 those four individuals were and I think now we've
18 established that those are the four members of the
19 petitioner in this case, in this pollution board
20 proceeding, and I think that was a necessary loose
21 end I needed to tie up. And the County Board of
22 Commissioners board hearing I think just goes to the
23 issue of prejudice and what attempts were taken to
24 protect their rights during the proceedings, not
25 only for this issue that we're -- that Mr. Bleyer

1 has presented evidence on but for the other
2 remaining issues that may still exist in this
3 petition and this was my last question so where it's
4 leading we will now see.

5 HEARING OFFICER JACKSON: Okay. I'm going
6 to allow the questioning. The evidence you put on
7 this morning does not limit Mr. Hedinger in the
8 presentation of his case. The claims in your
9 petition open the door to his case so because this
10 line of questioning may offer further light on that
11 I'm going to allow the questioning. Objection is
12 overruled. You can answer.

13 MR. HEDINGER: Q. The question was, I
14 believe, whether during the vote of the Saline
15 County Board of Commissioners either you or any of
16 the other members of the Environmentally Concerned
17 Citizens Organization that were in attendance that
18 day objected or attempted to object to anything that
19 the Board of Commissioners was doing?

20 A. No.

21 Q. No further questions. Thank you.

22 HEARING OFFICER JACKSON: Mr. Bleyer, any
23 Cross?

24 CROSS-EXAMINATION

25 BY MR. BLEYER:

1 Q. Were you offered a chance to make any
2 objections that day?

3 A. No one was.

4 Q. Okay. That's all I wanted to ask.

5 HEARING OFFICER JACKSON: Any Redirect,
6 Mr. Hedinger?

7 MR. HEDINGER: No.

8 HEARING OFFICER JACKSON: You may be
9 excused. Mr. Hedinger, next witness.

10 MR. HEDINGER: Our last witness, I believe,
11 is Mr. Wayne Hemmerich.

12 HEARING OFFICER JACKSON: Mr. Hemmerich, if
13 you'd raise your right hand the court reporter will
14 swear you in.

15 (Witness sworn.)

16 DIRECT-EXAMINATION

17 BY MR. HEDINGER:

18 Q. Please state and spell your name for the
19 record.

20 A. Wayne Hemmerich, H-e-m-m-e-r-i-c-h.

21 Q. And Mr. Hemmerich, are you related or
22 affiliated in any way with the respondent in this
23 proceeding, Landfill L.L.C.?

24 A. I work for Rick Lane who is a co-owner of
25 Landfill L.L.C.

1 Q. And are you the same Wayne Hemmerich that
2 testified on a number of occasions during the
3 proceedings before the Saline County Board of
4 Commissioners?

5 A. Yes, I was.

6 Q. In particular, Mr. Hemmerich, are you the
7 same Wayne Hemmerich that testified concerning
8 notices which were sent concerning -- sent and
9 otherwise disseminated concerning the proposed
10 application for the pollution control facility?

11 A. Yes, I was.

12 Q. And can you tell me, briefly, what the
13 notices were intended to do.

14 A. The notices which I -- which we mailed and
15 which were also, for the most part, hand delivered
16 were notifying the property owners in the area of
17 our intent to file a siting request with Saline
18 County.

19 Q. How did you determine who should be given
20 that notification?

21 A. I was --

22 MR. BLEYER: Ms. Jackson, I want to show my
23 objection on this. You've already ruled that he can
24 bring in additional material based on my petition,
25 and that's fine, but I'll adopt the objection he

1 made to my presenting Mr. Koonce in these
2 proceedings and state to you that I don't believe
3 that it is appropriate, at this stage, to put a
4 representative of the applicant on to try to clean
5 up the record in relation to how he served notices.

6 Now, they were represented by an attorney at the
7 proceedings below. He's sitting right there with
8 him today, Robert Wilson. He asked him question
9 after question after question about notices that
10 were served, the means that they were served and
11 then he offered a lot of material into evidence that
12 was accepted by the hearing officer and a record has
13 been made on that point. Now, I have not presented
14 here today, or by way of my petition, anything in
15 furtherance of that and I think it is utterly
16 ridiculous for us to sit here and listen to the
17 applicant come in today and try to present
18 additional material in furtherance of this issue
19 having to do with whether or not proper service was
20 made, so I object. I think this exceeds the purpose
21 for this hearing and, like I said, I assumed the
22 same argument that Mr. Hedinger just made, however,
23 in this particular case we're not talking about an
24 issue having to go to fundamental fairness, he's
25 testified about matters having to do with

1 jurisdiction so I believe it's inappropriate.

2 HEARING OFFICER JACKSON: Mr. Hedinger.

3 MR. HEDINGER: Well, I believe jurisdiction
4 is one of those issues that additional evidence is
5 permitted during the board hearings, but even to the
6 extent there isn't there is a -- well, let me say
7 that. I don't believe that is the case. I believe
8 it is allowed during the Pollution Control Board
9 proceedings and I think there are numerous cases
10 where, particularly objectors, appear during these
11 proceedings and put on evidence that there wasn't
12 jurisdiction and certainly the inverse of that must
13 also be true, but I will say this, in addition to
14 that, Mr. Bleyer has specifically raised the
15 jurisdictional issue in his petition. He has
16 clarified that issue in his interrogatory response
17 and I think we have it nailed down; however I have
18 not yet seen his response to our motion for summary
19 judgement and, frankly, this is just a little
20 clarification evidence to make sure that there are
21 no misunderstandings on a point related directly, I
22 believe, to the issue of these -- I think the
23 objection and response are taking longer than the
24 testimony would have.

25 HEARING OFFICER JACKSON: Okay. I do note

1 that lengthy testimony was given during the Saline
2 County Board of Commissioners hearing on this matter
3 so I would caution you not to just replicate what
4 was already done, what is already before The Board
5 in the record; however, the issue of jurisdiction
6 has been raised in the petitioner's complaint and
7 I'm going to allow some limited questioning on that
8 issue but --

9 MR. HEDINGER: I have two more questions.
10 I'm sorry, I don't know if we had an answer. Could
11 you read the last question back, please.

12 (Whereupon the question was read
13 back by the court reporter.)

14 A. I was given a list of property owners
15 around the proposed site, the property line site.

16 Q. Were John P. Murphy and Mr. Guye on that
17 list?

18 A. Yes, they were.

19 Q. Can you tell me in what manner those two
20 individuals were served.

21 A. They were served by certified mail and also
22 in person.

23 Q. Can you tell us the circumstances
24 surrounding the personal service and how you know
25 that.

1 A. I notified them in person, myself.

2 Mr. Murphy, I found him on -- he was on his tractor
3 and I talked to him and Mr. Guye was at his house.

4 Q. Do you recall what date that occurred?

5 A. June 24th.

6 Q. Okay.

7 HEARING OFFICER JACKSON: Excuse me. June
8 24th of 1997?

9 A. Yes.

10 MR. HEDINGER: No further questions.

11 HEARING OFFICER JACKSON: Mr. Bleyer.

12 MR. BLEYER: I don't have any questions.

13 HEARING OFFICER JACKSON: Okay. The
14 witness is excused.

15 MR. HEDINGER: The L.L.C. has no further
16 witnesses.

17 HEARING OFFICER JACKSON: Any rebuttal,
18 Mr. Bleyer?

19 MR. BLEYER: No.

20 HEARING OFFICER JACKSON: Okay. As the
21 hearing officer I am required to make a statement as
22 to the credibility of the witnesses here today. The
23 statement is to be based on my legal judgement and
24 experience. Accordingly, I hereby state that I
25 found the witnesses here today to be credible and

1 therefore credibility is not an issue in these board
2 proceedings.

3 As the attorneys know, an expedited transcript
4 has been requested and should be available within
5 three business days.

6 Before I continue, I forgot to ask, again, if
7 any members of the public who are present wish to
8 make statements on the record at this time. If so,
9 please indicate with a raised hand. Okay. There
10 being none I'll continue with the briefing
11 schedule.

12 As we discussed, I think during our prehearing
13 conferences, the briefing schedule is going to be
14 somewhat tight due to the statutory decision
15 deadline in this case. The briefing schedule which
16 we previously discussed and which I'm prepared to
17 order on the record today would require the
18 petitioner's brief be filed by 5:00 p.m. Friday,
19 March 20, respondent's brief by Friday, March 27,
20 also 5:00 p.m., and petitioner's reply brief by 5:00
21 p.m. Thursday, April 2 and the record will close at
22 that time.

23 I ask both parties that if you need to Fax a
24 copy of your brief to get it to opposing counsel by
25 5:00 p.m. on the due date, that you do so. The

1 schedule is tight and they'll need every available
2 opportunity to get responses put together. Is this
3 briefing schedule acceptable, Mr. Bleyer?

4 MR. BLEYER: Well, I guess it will have to
5 do.

6 HEARING OFFICER JACKSON: Mr. Hedinger.

7 MR. HEDINGER: Let me just double check
8 here. Now, the service by Fax is being authorized.
9 Is filing by Fax also authorized?

10 HEARING OFFICER JACKSON: Service on
11 opposing counsel by Fax is being authorized. As for
12 copies coming into The Board, just file those by
13 First Class Mail.

14 MR. HEDINGER: Not that I anticipate any,
15 but we'll deal with it in advance, in the event we
16 have any motions that are directed toward yourself,
17 would those be authorized by Fax as well?

18 HEARING OFFICER JACKSON: Yes. At this
19 time any motions between now and the closing of the
20 record that need to be filed or that you believe
21 should be directed to the hearing officer, you are
22 authorized to file those by facsimile so they can be
23 resolved without disrupting the briefing schedule.

24 MR. HEDINGER: Okay. That works for me
25 then.

