BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ESG WATTS, INC.
(SANGAMON VALLEY LANDFILL),
Petitioner,
vs. No. PCB 98-002
SANGAMON COUNTY BOARD,
Respondent.

Proceedings held on December 7, 1998 at 9:40 a.m., at 600 South Second Street, Third Floor Conference Room, Springfield, Illinois, before the Honorable Kathleen Crowley, Hearing Officer.

Reported by: Darlene M. Niemeyer, CSR, RPR
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I N D E X

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
Petitioner's Exhibit 1	12	113
Petitioner's Exhibit 2	15	113
Petitioner's Exhibit 3	36	113
Petitioner's Exhibit 4	95	--
Petitioner's Exhibit 5	115	115

P R O C E E D I N G S

(December 7, 1998; 9:40 a.m.)

HEARING OFFICER CROWLEY: Good morning. This is a hearing being conducted by the Illinois Pollution Control Board in the matter of Docket Number PCB 98-2, ESG Watts, Inc., the Sangamon Valley Landfill, versus the Sangamon County Board.

My name is Kathleen Crowley, and I am the Board's Hearing Officer in this matter.

We are here today on the July 3rd, 1997 petition filed by ESG Watts challenging the decision of the Sangamon County Board to deny local siting approval to overfill at the ESG Watts Sangamon Valley Landfill.

If the parties would make their appearances, please.

MR. NORTHRUP: Charles Northrup for petitioner, ESG Watts.

MR. WOODWARD: Larry Woodward for petitioner, ESG Watts.

MR. SMITH: My name is Robert Smith. I am on behalf of the County of Sangamon.

MR. GAB: Dwayne Gab, on behalf of the County of Sangamon.

HEARING OFFICER CROWLEY: For the record, there are no members of the public here who are not

affiliated with either one of the other party.

MR. NORTHRUP: Correct.

MR. SMITH: Well, there is an attorney representing some of the witnesses that is here, but otherwise, no.

HEARING OFFICER CROWLEY: Okay. Are there any preliminary matters we need to do deal with?

MR. NORTHRUP: Yes, I guess there are a couple that we could talk about. The first thing, I am going to use three exhibits today, and they are -- I have not marked them, but there is a professional services agreement between the County of Sangamon and Hanson Engineers.

There is a January 31, 1997 statement of qualifications to provide engineering services for Sangamon Valley Landfill which was prepared for Sangamon County by Hanson Engineers. That constitutes a cover letter as well as the statement of qualifications.

And then the third document is a letter dated March 17, 1997, from John Jenkins to Mr. Aiello of the County Clerk, the Sangamon County Clerk.

Now, these three documents, we believe, should be in the record that is before the Board. I had gone to the county offices last week. That's where these

documents -- that's where I found these documents, one of which, the March 17th letter from Jenkins is actually file stamped, but none of these documents appear in the record before the Board in the Chicago offices.

So I guess at this point I would just ask the State's Attorney's office if they will stipulate to the inclusion of these documents in the record.

MR. SMITH: Without actually reviewing the documents that you have in front you, Mr. Northrup, I can't agree to stipulate.

MR. NORTHRUP: Well, why don't you take a look at them. Again, these documents were all found in the file at the County Clerk's office as a part of the record. In fact, one of them is actually file stamped.

HEARING OFFICER CROWLEY: And am I not correct, Mr. Northrup, that these documents all predate the May 30th, 1997 siting denial by the County?

MR. NORTHRUP: That is correct. That is correct. It may be that I can lay a foundation for all of these documents, too, with the Hanson witnesses.

HEARING OFFICER CROWLEY: We will let Mr. Smith examine them.

MR. SMITH: We would stipulate to the foundation,

Mr. Northrup.

MR. NORTHRUP: The other document, that I did not mention, which I do not have a copy of, that I would also ask that you stipulate to is the County's RFP, their initial request for proposal that they sent out to the various engineering companies, which I don't have a copy of, by the way.

MR. SMITH: Yes, that's fine. I don't have any objection.

MR. NORTHRUP: I think that takes care of my preliminary.

HEARING OFFICER CROWLEY: Mr. Smith, did you have anything?

MR. SMITH: No, no preliminary motions.

MR. NORTHRUP: Should I go ahead?

HEARING OFFICER CROWLEY: Is everyone here who needs to be here?

MR. NORTHRUP: We are still waiting for two witnesses, but we can proceed without them.

HEARING OFFICER CROWLEY: All right. If we would like to proceed with opening statements then, please.

MR. NORTHRUP: I am going to reserve any opening statement and argument for my brief.

HEARING OFFICER CROWLEY: Mr. Smith?

MR. SMITH: I will do the same.

HEARING OFFICER CROWLEY: Fine.

MR. NORTHRUP: In that case, my first witness, and notwithstanding the Board's order of Thursday, would be Robert Smith.

MR. GAB: Judge, we will object. Relevance.

HEARING OFFICER CROWLEY: Sustained.

MR. NORTHRUP: Okay. In that case, let me ask a quick question of Mr. Trapp.

HEARING OFFICER CROWLEY: All right. We are off the record.

(Discussion off the record.)

HEARING OFFICER CROWLEY: We are back on the record.

MR. NORTHRUP: As my next witness I would call George Jamison.

MR. TRAPP: Madam Hearing Officer, do you mind if I sit here just so I can hear a little better?

HEARING OFFICER CROWLEY: Not at all.

MR. TRAPP: Thank you.

MR. SMITH: Mr. Trapp, could you introduce yourself since you spoke?

MR. TRAPP: Oh, yes. I am sorry. I am William Trapp.

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

G E O R G E J A M I S O N,

having been first duly sworn by the Notary Public, saith as follows:

DIRECT EXAMINATION

BY MR. NORTHRUP:

Q Could you go ahead and state your name for the record.

A George Jamison, J-A-M-I-S-O-N.

Q Are you currently employed, Mr. Jamison?

A Yes.

Q Where is that?

A Hanson Engineers.

Q What do you do at Hanson Engineers?

A I am the vice president of the company, and I manage our waste management department.

Q Okay. Were you in that position in December of 1996?

A Yes.

Q With the same general duties?

A Yes.

Q Are you familiar with a siting application filed by ESG Watts?

A I was familiar with it. I am less familiar than I was, but I have seen it.

Q Okay. How are you familiar with that?

A Pardon me?

Q How are you familiar with the application?

A We reviewed that as part of our -- as part of the professional services that we provided to the County.

Q Okay. So you were retained by the County in this matter?

A Yes.

Q Okay. And what is it that you were supposed to do for the County in this matter?

A I don't specifically recall all of the details, but it was essentially to act as a consultant to them in the review of the siting application.

Q Who was your client in this matter?

A I don't remember which -- if there was a particular unit of County government other than County. I just don't recall.

Q How do you normally determine who your client is?

A I don't think I understand the question.

Q Well, you indicated that you were not sure what unit of County government your client was in this case?

A No, I said I didn't recall.

Q Okay. You would agree that Sangamon County

is made up of various departments and units?

A Certainly.

Q Okay. Can you tell me which one of those departments or units you were working for when you were reviewing the application?

A Not without reference to the contract. My recollection is that we were retained generally by the County as an entity, but I don't recall what the contract said.

Q Okay. So would you look to the contract to define for you who your client was?

A That would be one place I would look.

MR. NORTHRUP: Okay. Let me show you what I will ask the court reporter to mark as Exhibit Number 1, Petitioner's Exhibit Number 1.

(Whereupon said document was duly marked for purposes of identification as Petitioner's Exhibit 1 as of this date.)

Q (By Mr. Northrup) Can you just review that for me with an eye towards defining who your client was in this matter?

A This is a signed professional service agreement dated March 11th of 1997, and it indicates here that the client is County of Sangamon.

Q In this -- during your review of the siting

application, did you ever meet with any members of the Sangamon County Board?

A We met with -- I don't remember the name of the committee offhand, but it was the landfill committee or the siting review committee. I am not sure of the terminology without referencing our files or some other records.

And there are -- as I understand the make-up of that committee, there are members of the County Board that comprise the membership of that committee, so to that extent I guess that would be correct, yes.

Q How many times would you have met with members of the siting review committee?

A Well, if that is the committee, the name of the committee I am not sure of, but if that's the committee that I recall, then it probably would have been maybe twice, but I don't know. I don't recall specifically.

Q Okay.

A I think you were at all of those meetings.

Q Okay. That was my next question.

A But I don't recall on either count as to how many meetings specifically, without records, or who was present. My general recollection is that you were there, but I don't know.

Q Well, do you have any specific recollection of meeting with anyone on the siting review committee where I or Mr. Woodward was not present?

A I just don't recall.

Q Okay. Did you ever meet with any representatives of the Sangamon County Department of Public Health?

A Yes.

Q Okay. Who would that have been?

A Mr. Stone.

Q Okay. Was he the only person from Public Health?

A I believe there were probably also members of our firm that may have had some interaction with other people from that department as we collected records and documentation. So there may have been other incidental contact, but our primary point of contact with that department would be Mr. Stone.

Q Okay. But you didn't meet with anybody else?

A I could have incidentally met other people and just not recall it.

Q Okay. Do you recall what the purpose of any of those meetings were?

A The primary purpose was to collect the records and information and to move through the scope

of services that we were to provide. A lot of it dealt with scheduling and progress of the work.

Q Did you meet with -- throughout this process, which I will represent to you began on December 2nd, when the siting application was filed, and May -- December 2nd of 1996 and May 31 of 1997, when the County made its final decision, did you meet with any representatives of the State's Attorney's office?

A Yes.

Q Who would that have been?

A Robert Smith.

Q Do you recall on how many occasions you met with Mr. Smith?

A No.

Q Do you recall the substance of any of those meetings?

A Again, I think it primarily related to the progress of our review and schedule and generally updates on the progress of the project.

MR. NORTHRUP: Let me ask the court reporter to mark Petitioner's Exhibit Number 2.

(Whereupon said document was duly marked for purposes of identification as Petitioner's Exhibit 2 as of this date.)

Q (By Mr. Northrup) Can you identify that for

me, please?

A It is a letter dated January 31st, 1997, to the Sangamon County Department of Public Health, and it is a submittal of a statement of qualifications to provide engineering services related to review of an application for site approval for the Sangamon Valley Area 1 overfill.

Q You will note it is signed by an individual named Robert Cusick; is that right?

A Yes, that's correct.

Q Who is Robert Cusick?

A He is another officer in our company.

Q Okay. Now, there is a document attached to that January 31 letter; is that correct?

A Yes.

Q Okay. Can you tell me what that is?

A Well, it appears to be a statement of qualifications as referenced in the letter, but I have not compared it with what we submitted. So I would assume that is what it is.

Q On the table of contents, you will note under roman numeral one, large cap B, team experience. Can you turn to that section, please?

A Okay.

Q Okay. Now, Hanson had performed work for ESG

Watts prior to the siting application; is that correct?

A I believe that's correct, yes.

Q Okay. Some of that experience is depicted there at the section that is identified as team experience?

A Right.

Q Okay. Is that an accurate depiction of the work that Hanson had done for ESG Watts?

MR. SMITH: I would object to the form of the question. What does Mr. Northrup mean by accurate? It is a misleading question.

THE WITNESS: It is really hard to judge that without review of the records. It does reflect that we had performed services for Watts, and whether it is all inclusive or -- I am not sure what you mean by accurate.

Q (By Mr. Northrup) Okay. Well, other than the five items that are set out there, do you have any knowledge of any other work that Hanson performed for Watts prior to the siting application?

A Not as an unaided recollection. That would require some research.

Q Take a look at number three which says, 1993, comma, Phase I and Phase II cultural resources survey

for ESG Watts, Inc. Can you tell me what a cultural resource survey is?

MR. SMITH: We will object as to the relevancy.

MR. NORTHRUP: It is just aiding the Board in some of the past work that Hanson has performed for Watts.

MR. SMITH: Why is that relevant?

HEARING OFFICER CROWLEY: I am unsure of what relevance --

MR. NORTHRUP: Without an explanation of what the cultural resources survey is, the Board is not going to know what it is. I think there is testimony in his deposition, either Mr. Jamison or someone else, that that is, in fact, work that was performed in relation to a siting application.

HEARING OFFICER CROWLEY: I will give you some latitude.

And I will allow you to answer if you can, Mr. Jamison.

THE WITNESS: A cultural resources survey is a survey that is conducted to identify those resources, and those can be archeological or historic resources. I am not sure in this case if we actually performed that for Watts or for one of their engineers, but a survey is basically done to identify those as part of permitting processes.

Q (By Mr. Northrup) Okay. Well, let's expand on that a little bit. Why does a company do a cultural resources survey?

A Generally it is a requirement of a permitting process.

Q Okay. And a permitting process would include a siting process?

A It could, but it can also be other types of permits.

Q Do you know specifically in this case whether the work that Hanson did was in relation to a permit or a siting matter?

A I have no idea.

(Mr. Northrup and Mr. Woodward confer briefly.)

Q (By Mr. Northrup) Mr. Jamison, do you ever recall advising Watts that you had submitted a proposal in the siting application to work for the County?

A I don't know if I -- could you repeat that?

Q Do you recall ever advising Watts that you had submitted this statement of qualifications to the County?

MR. SMITH: Objection as to relevancy.

MR. NORTHRUP: It goes to the conflict of interest, and whether or not there might be some

argument down the road that Watts waived the conflict if, in fact, Hanson had ever requested Watts' permission to submit the statement of qualifications.

HEARING OFFICER CROWLEY: I will allow you to answer. It may be arguably relevant.

THE WITNESS: I don't recall specifically whether we informed Watts. But one of the reasons that we tried to list under team experience the past services that had been provided to any client related to the landfill, for example, in team experience here, was to be sure that was known and open. And this is a submittal to a public agency, so we did want that to be known, that we had done work at that site in the past for more than one client.

MR. NORTHRUP: Those are all of the questions I have.

HEARING OFFICER CROWLEY: Mr. Smith?

MR. SMITH: I don't have anything.

HEARING OFFICER CROWLEY: All right. Thank you.

(The witness left the stand.)

MR. NORTHRUP: As my next witness I would call John Jenkins.

HEARING OFFICER CROWLEY: Please swear the witness.

(Whereupon the witness was sworn by the Notary

Public.)

J O H N J E N K I N S,

having been first duly sworn by the Notary Public, saith as follows:

DIRECT EXAMINATION

BY MR. NORTHRUP:

Q Can you state your name for the record, please.

A John Jenkins.

Q What do you do for a living, Mr. Jenkins?

A I am employed at Hanson Engineers.

Q What do you do at Hanson Engineers?

A I am a geo technical engineer, and I also manage the material testing group.

Q Okay. Are you familiar with a siting application filed by ESG Watts?

A I am familiar with an application, yes. It has been awhile since I have reviewed it.

Q Okay. How are you familiar with the application?

A We reviewed the application as part of our -- part of the services we provided to the County of Sangamon.

Q What role did you play in those review services?

A I was the project manager for the company.
Q And what does a project manager do?
A Well, my view of project manager is to work with the various people involved on the project and coordinate their work, make sure that the schedules are met, and the deliverables are provided.
Q Who was your client in this case?
A My understanding is the County of Sangamon.
Q Could you be any more specific than that?
A I don't think I can. That's my understanding, and that's what the contract -- our agreement was the County of Sangamon.
Q Okay. Did you ever meet with any members of the County Board? This is all related to the application, of course.
A Yes. I attended a meeting of the -- of a committee of the Board, the committee that was reviewing this -- this application. It was a -- you were at the meeting.
Q Okay. Do you recall any other meetings with members of the County Board where I was not present?
A No, I don't recall any.
Q Did you ever meet with any representatives of the Sangamon County Department of Public Health?
A I met with Jim Stone.

Q On how many occasions did you meet with Mr. Stone?

A I don't recall specifically. Probably two, I think I recall. I don't know if there may have been more than that.

Q Do you recall when during the process you had these meetings with Mr. Stone? Were they before the actual hearings or were they during the hearings?

A There was a meeting before the hearings, and that was to discuss procedural issues, physical issues, like where the hearing would take place or hearings would take place, what the form of the hearings would be.

Q How about the 2nd meeting?

A I recall -- if I recall correctly, it was after the hearings, and it was to discuss what we would -- Hanson Engineers was to provide, or not what we were to provide, but what the schedule was and the -- any reports or reports that we would provide.

Q The second meeting, who was in attendance?

A Jim Stone and George Jamison.

Q Were there any representatives of the Sangamon County State's Attorney office present?

A I don't recall that -- I don't think so.

Q How about the first meeting where you were

discussing procedural issues? Who else was present at that meeting?

A George Jamison, I believe. I would be fairly certain he was there. Possibly Robert Smith.

Q Anybody else?

A I can't recall for sure.

Q Would you, from time to time during the siting process, meet with representatives of the State's Attorney's office?

A Well, prior to the hearings and during the hearings we met with Robert Smith.

Q On how many occasions do you recall meeting with Mr. Smith prior to the hearings?

A I can't recall the number.

Q Okay. More or less than five?

A Before the hearings? Probably more than five but something maybe on that order.

Q During the hearings, do you recall how many times you met with Mr. Smith?

A No, I don't.

Q Would you meet -- during the hearings, would you meet with Mr. Smith outside of meeting with him at actual hearing time itself?

A Yes.

Q Okay. Do you recall how many times?

A No.

Q Okay. Would you routinely meet with him before every hearing?

A Session?

Q Session.

A I don't know if it would be routinely. Before some of them certainly. Before all of them, I don't imagine so.

Q What types of issues would you discuss with Mr. Smith at these meetings, either before or during the hearing process?

MR. SMITH: I am going to object as to the relevancy.

MR. NORTHRUP: It goes to the nature of the relationship between Hanson and the State's Attorney's office.

MR. SMITH: Why is that relevant to --

MR. NORTHRUP: And whether they were exercising their -- ultimately, whether they were exercising their independent judgment.

HEARING OFFICER CROWLEY: I will sustain the relevancy objection.

THE WITNESS: Can you repeat the question?

HEARING OFFICER CROWLEY: You don't have to answer it.

THE WITNESS: Oh, okay.

Q (By Mr. Northrup) Did anyone from the State's Attorney's office -- strike that. You testified at the hearings, correct?

A Yes.

Q Other employees from Hanson testified at the hearings, correct?

A That's correct.

Q How did you prepare for your testimony?

A For my testimony? I don't really -- how would I prepare? We reviewed the application from the technical point of view. I am not sure I really know how to answer the question other than we reviewed the application, and we identified issues or technical issues that we had questions on or that we found -- that we had questions on or found that were not present in the application and, therefore, had questions as to what -- where this information might be, if it did exist.

Q When you say "we," who do you mean?

A Hanson Engineers, the project team.

Q Did anyone from the State's Attorney's office assist you in your preparation for the hearing?

A Assist us in -- assist me in the preparation? I worked with -- Robert Smith and myself

discussed these technical issues. If I recall, he asked questions during the hearing, and they were issues that we had discussed together.

Q Did you discuss your specific testimony with Mr. Smith prior to the hearings?

A Discussed in at least a general way. I guess the answer is we discussed it in a general way.

Q You attended all of the hearings, correct?

A Yes. Yes, I think all of the hearings. If not all, most of them.

Q Okay. And during those hearings, Mr. Smith examined and cross-examined witnesses, correct?

A Correct.

Q During the hearing process, did you assist Mr. Smith in preparing examination or cross-examination questions for the witnesses who were on the stand?

A I think we would say we assisted in the cross-examination questions for sure. During the testimony we would have questions and we might write them down.

Q What did you do with them once you wrote them down?

A In some cases, we would have given them to Mr. Smith.

Q Okay. Then would he ask those questions of the witnesses?

A In some cases he would ask those questions or questions along the lines of what we were writing down.

Q Just in general, what might prompt you to write down a question and then pass it to Mr. Smith?

A It would have been a response to a -- to testimony on technical issues.

Q Well, on an issue that you felt hadn't been fully explained?

A Possibly.

Q On an issue that you felt the application might have been lacking?

A Possibly, yes.

Q Prior to the hearings, had you made any determination as to whether the application, as submitted by Watts, satisfied the nine criteria set out in the Environmental Protection Act?

MR. SMITH: I am going to object. Mr. Jenkins' opinion as to whether the nine criteria were met is not relevant.

HEARING OFFICER CROWLEY: I am terribly sorry. But I just didn't catch that.

MR. SMITH: I am sorry. Mr. Jenkins' personal

opinion as to whether the nine criteria had been met or had not been met is not at issue and is irrelevant.

MR. NORTHRUP: Well, he is the project manager. Of course, it is relevant. It is going to go to whether or not they exercised any independent judgment in reviewing the application.

HEARING OFFICER CROWLEY: I will overrule the objection. You can answer that question if you can.

THE WITNESS: Could you read it back?

MR. NORTHRUP: Could you read it back.

(Whereupon the requested portion of the record was read back by the Reporter.)

THE WITNESS: No.

Q (By Mr. Northrup) Prior to the hearings, had you made any determination as to whether the application contained sufficient information for you to make a determination under the Act with respect to the nine criteria?

A Speaking personally for myself, I would say that the answer is no. I had not made that determination.

Q At any time during your review of the siting application, were you ever asked, you meaning you personally or Hanson Engineers, ever asked to provide engineering alternatives to the removal of the waste

from the landfill?

A Were we ever asked to provide them?

Q Correct.

A No.

Q Did you ever offer any?

A Did we ever offer any to --

Q Right, to your client?

A There was a discussion or discussions with Robert Smith, and the questions during the hearings regarding alternative -- engineering alternatives. That would be the extent of it.

Q Okay. I am a little confused. You said that you had discussions with Robert Smith during the hearings?

A Discussion -- we had discussions with Robert Smith on technical issues. There was discussions in a general way, not specifically for this landfill, of engineering alternatives. During the hearings questions were asked of Watts, or the engineers, whether these had been considered.

Q Okay. I am still a little confused. So prior to the hearings there were discussions with Robert Smith and then during the hearings?

A During the hearings as a course of the hearings, during the testimony.

Q Okay. Do you recall if you ever communicated to Robert Smith that he should ask questions of the witnesses on engineering alternatives?

A Well, I seem to recall that those questions were asked. Presumably we possibly -- we had discussed this with Robert Smith prior to the hearings.

Q Did you or anyone at Hanson present any testimony regarding engineering alternatives?

A Not that I recall.

Q At the time of the hearing you had worked at Hanson for how long?

A What year was the hearing?

Q The hearings were in 1997, in the spring of 1997.

A So I was going on seven years.

Q Okay. And had you worked on any matters involving ESG Watts prior to that point?

A Yes.

Q Okay. Did you ever advise anyone at ESG Watts that Hanson had prepared a statement of qualifications in this matter?

A I am sorry. I -- can you repeat the question?

Q Yes. Did you at any time advise anybody at

ESG Watts that Hanson had, in fact, prepared a statement of qualifications, and were going to bid on this job?

A We didn't bid on the job. We submitted a statement of qualifications.

Q Submitted a statement of qualifications?

A But, no.

Q Did you ever meet with anyone at the Illinois Environmental Protection Agency about the siting application?

A At what point in time? At any time?

Q Any time from December 2nd, 1996, through May 31 of 1997?

A We had a meeting with someone from the Illinois Environmental Protection Agency at some point prior to the hearings, and the purpose of the meeting was to discuss -- well, it wasn't to discuss. It was to, if I recall correctly, to identify any additional technical information that was available regarding the landfill.

Q Now, prior to this meeting you had submitted a FOIA request to the Agency?

A Yes.

Q Had you received a response to that request by the time of this meeting?

A I believe so.

Q Were you in attendance at this meeting?

A Yes.

Q Do you recall was the meeting with an individual named Chris Leadman?

A I believe that's correct.

Q Do you know what his position was at the Agency?

A No, not specifically.

Q Do you know why you were meeting with him as opposed to anybody else from the Agency?

A I presume at some point we were informed maybe by -- maybe through documents in the -- that we obtained in the FOIA -- through the FOIA request or in the application, somehow we were informed that he was knowledgeable I guess about the landfill, and that's why we met with him to find out if there was any additional information. I don't -- but I don't specifically recall why, you know.

Q Did you advise any representative of ESG Watts that you were going to have this meeting with the IEPA?

A No.

Q Do you recall that the siting review committee requested that Hanson prepare a final report

for them to review in this matter?

A I don't specifically recall.

Q Do you recall drafting some kind of final report for the committee?

A I recall that we drafted a draft report for the committee.

Q And this was at their request?

A At the committee's request?

Q At the committee's request?

A It was -- the requirements for a report -- if I recall, the requirements for a report were included in the scope of services.

Q You did, in fact, prepare that report?

A There was a requirement for the report in the scope of services. We were -- and we prepared a report, a draft report. The scope of services may have been modified to not include a final report. I am really not -- I can't recall exactly.

Q What did you do with the draft report? Did you submit it to the committee?

A I don't recall exactly who we submitted it directly to. I would assume the committee, but I am not sure if it would have been a committee or the Department of Public Health.

Q Okay.

A Or the county clerk. The record would show it. I just don't recall.

Q Do you recall showing that draft report to Mr. Smith prior to its formal submission to the clerk or the committee or Public Health?

A I don't specifically recall. I don't think that we showed them the final -- I am fairly certain that we didn't show them the final draft report until it was submitted.

Q Did you show them any drafts along the way prior to getting to the final draft?

A I don't recall. It may be possible that he saw a predraft draft.

Q During the actual hearing process, did you have any communications with any members of the siting review committee?

A Communications, no. What is communications?

Q Did you talk to anybody?

A We saw them in the hallway.

Q Okay.

A I may have said hi.

Q Anything of substance related to the application?

A Nothing of substance. The only -- the only thing -- nothing of substance. During the hearings

one of the Board Members leaned over the rail and made some -- made a comment or something about drilling or something like that. And that was it.

Q I mean, was the comment directed towards you?

A No.

Q Okay. Did you respond in any way or did anybody from your side of the table respond?

A He asked some question regarding drilling, and my response was I don't know or something like that. It was not -- I didn't provide any --

Q Do you recall which committee member it was?

A It is -- the name Bob Nagelini (spelled phonetically). I think I remember that.

MR. NORTHRUP: May I ask the court reporter to go ahead and mark this as Petitioner's Exhibit number 3.

(Whereupon said document was duly marked for purposes of identification as Petitioner's Exhibit 3 as of this date.)

Q (By Mr. Northrup) Can you just go ahead and identify that for me?

A It is a letter from Hanson Engineers to the Office of the County Clerk, Sangamon County, and it is a filing in memorandum and support of the entry of appearance.

Q Is that your signature on the last page?

A Yes, it is.

CROSS EXAMINATION

BY MR. WOODWARD:

Q As to Petitioner's Exhibit Number 3, and the first sentence -- excuse me -- the second sentence -- the first sentence, you indicate that this memorandum is filed in support of an entry of appearance filed by the County of Sangamon; is that correct?

A That's what it says. That's the first sentence, though, right.

Q Is it the first sentence?

A Okay.

Q Well, there is no comma after Inc., so I was not sure. At the time you wrote this, then, did you understand that the County of Sangamon was a party to this proceedings?

A I don't recall. Just from what it says it appears that we filed a support of -- the entry of appearance filed by the County of Sangamon, so it appears that it was our impression that there was an entry of appearance filed by the County of Sangamon.

Q And is it your understanding that entry of appearance that that makes them a party?

A No, I am not certain exactly what that means.

Q Okay.

A My understanding would be more that they have filed information just as a -- anybody from the public could file.

Q Now, the prior questions as to the County of Sangamon, you indicated that it was your understanding it was County of Sangamon generally, is that correct, that was your client?

A Our client, yes.

Q Here the County of Sangamon is identified as your client, right, somewhere in this document?

A HEI has been retained by Sangamon County, correct.

Q Now, retained by Sangamon County, does that include the County Board?

A That's a question I don't know the -- I mean, I don't know the answer to. It seems to me that is a legal question.

Q Didn't you indicate that the professional services agreement, which I think is identified as -- has been marked as Petitioner's Exhibit Number 1, that part of that document was that you were to prepare a final report?

A That's correct.

Q And who was that final report to go to?

A It would be the client, which would be the

County of Sangamon.

Q Well, I want to direct your attention to page two of Petitioner's Exhibit Number 1.

A Okay.

Q What is number -- does number eleven, in fact, say prepare finding of fact report for approval of committee?

A Yes, it does.

Q Okay. Is the committee a committee of the County Board?

A I don't -- I would assume so. I don't know that -- if it was defined in here or not.

Q Well, they were your client. Did you understand them to be a committee of the County Board?

A No, I understood them to be the County. I don't know that I understood it to be specifically a committee.

Q When you attended the hearings, were there any persons sitting as part of the committee who were not members of the County Board?

A I don't believe so.

Q All right. Did you understand that the committee was then to give a recommendation to the County Board?

A Yes.

Q Okay. So you -- also on page two of petitioner's Exhibit Number 1, number ten talks about the -- excuse me -- number nine talks about preparing written evidence and testimony at the public hearing; is that correct?

A That's correct.

Q As part of the scope of services, and prepare a summary report after public hearing if requested by the client. Is that also part of the scope of services?

A Yes.

Q So weren't you, in fact, doing two things in this process; assisting a party to the proceedings, and cross-examining and serving as an adverse party, and then serving as a consultant to the decision maker?

MR. SMITH: Objection. Argumentative.

HEARING OFFICER CROWLEY: I will sustain the objection to the form of the question. This is your witness.

Q (By Mr. Woodward) Did you serve two roles in this process?

A No, I don't believe so. Our role was technical review of the application, and that was -- in a nutshell that was our role, and that's what we

provided.

Q In performing what you considered your role, did you provide assistance in cross-examining witnesses?

A Yes.

Q And did you prepare a draft or final report for the siting review committee, which summarized evidence and gave recommendations?

A We prepared a draft report which summarized the evidence. The draft report did not provide recommendations. I don't believe that -- I don't recall that we provided recommendations at all. We just summarized the report or the application.

(Mr. Northrup and Mr. Woodward confer briefly.)

MR. WOODWARD: May I approach the witness?

HEARING OFFICER CROWLEY: Yes.

Q (By Mr. Woodward) Are you telling me that you don't recall whether your draft report had any recommendations in it?

A Yes.

Q Okay. Would examining the draft report refresh your memory?

A Conceivably, yes.

MR. SMITH: I am going to object to handing the witness something outside the public record. On pages

13231 to 13283 -- I am sorry -- 13176 to 13230 is the report of the Regional Pollution Control Facility and Hanson's review of the application, so what he is attempting to hand him, there is an official copy in that box over there.

MR. WOODWARD: Okay. I will pull it out of that box if you want me to.

HEARING OFFICER CROWLEY: Okay. Off the record.

(Discussion off the record.)

HEARING OFFICER CROWLEY: Back on the record.

Q (By Mr. Woodward) I am handing you what is labeled Volume -- roman numeral -- I think that's 54 of the official record. Directing your attention to page C13236, would you read that particular paragraph?

A Which one?

Q The one I am directing you to.

A Overall, the application appears to lack the details necessary to demonstrate compliance to the statutory criteria and, thus, few of the criteria required for approval of the application have been met.

Q Is that a recommendation?

A I would consider that to be more a summary of our opinion.

Q So it is a statement of opinion that you are

giving the Sangamon Review Board in your draft final report?

A A statement of our position or our view of it.

Q Now, there are some charts starting on page C13237 and going to C13251. And in those charts do you not set forth what the criteria number is, the section of the code that gives that criteria, the criteria description, and the applicable regulatory section, and then you state an opinion as to whether there is sufficient documentation, insufficient documentation, or it does not meet compliance; is that correct?

A That's correct.

Q And on page C13239 are there not two where you have stated that it does not meet compliance, two separate lines?

A That's correct, that's what it says.

Q Is that a recommendation since this is a draft report?

A No, I would not call it a recommendation. Again, it is our opinion as to whether this -- the application met the compliance or information provided in that application met compliance with these applicable regulatory sections.

Q Okay. Then on page C1324, again, there is another one line in the chart on that page that says -- where you have given your opinion, Hanson Engineers opinion that there is something in that criteria that was not -- that does not meet the compliance, in the application that does not meet the criteria stated on that page, correct?

A The application does not meet the criteria stated on this page, that's correct, the applicable regulatory section.

Q On that page there is several where you have indicated, or that Hanson Engineers has indicated, that there is insufficient documentation to determine whether they are in compliance or not; is that correct?

A With those regulatory criteria or sections, yes.

Q And in every case in this chart you are saying if -- that you have not given a recommendation but just the opinion of Hanson Engineers; is that correct?

A Yes.

Q Did you understand the County Board -- excuse me -- the siting review board having a belief that you served as independent consulting engineers to them?

MR. SMITH: Objection. Calls for speculation, what the County Board review members may have thought.

MR. WOODWARD: I don't believe there is speculation. Personally, I was at one of the meetings, and that statement was made where he said he was present.

MR. SMITH: Mr. Woodward is going to now recuse himself from the case and be a witness in the case, if he wants to testify.

MR. WOODWARD: I didn't say I wanted to testify. He is saying speculation. I am saying he can say whether a County Board Member who sat on the --

HEARING OFFICER CROWLEY: He can -- the witness can testify as to his understanding, if any.

You can respond to that question.

THE WITNESS: You will have to repeat it.

MR. WOODWARD: Okay.

HEARING OFFICER CROWLEY: Read back the question, please.

(Whereupon the requested portion of the record was read back by the Reporter.)

THE WITNESS: I don't know what their belief was.

Q (By Mr. Woodward) Was it ever expressed at a meeting in which you attended by any member of the committee in open session?

A I don't specifically recall them saying that.

Q Thank you.

(Mr. Northrup and Mr. Woodward confer briefly.)

Q (By Mr. Woodward) I believe you testified prior to a question directed to you by Mr. Northrup that you did not give ESG Watts or anybody at ESG Watts notice that you were submitting a proposal in response to the request for proposals issued by the County of Sangamon; is that correct?

MR. SMITH: I am going to object. It has been asked and answered.

HEARING OFFICER CROWLEY: It has been answered.

MR. SMITH: They have two Counsel. Let's keep it so that we are not asking the same questions over all of the time.

Q (By Mr. Woodward) One step further. Did you ever seek the permission from anyone, from anybody at ESG Watts to do so?

MR. SMITH: Objection as to relevancy.

MR. WOODWARD: Again, it goes to the issue of whether there is a conflict of interest, and as stated by the rules of professional ethics governing engineers, whether they could serve in the role of consultants to the County of Sangamon when they had done prior work for ESG Watts, and whether there was

bias on the part of Hanson Engineers.

And because this report was -- appears to be heavily relied upon by the siting review board, it goes to the issue of whether that bias affected their judgment. I mean, since this is prepared summary of the evidence and gave opinions, I believe it is very relevant in that regard.

HEARING OFFICER CROWLEY: I believe this is outside the scope of what the Board will consider here. I will allow you to answer the question as an offer -- ask the question as an offer of proof if you would care to.

MR. WOODWARD: Yes, I would.

HEARING OFFICER CROWLEY: So this is an offer of proof. You may answer if you can.

THE WITNESS: To my knowledge -- are you asking me personally?

Q (By Mr. Woodward) I am asking if you did.

A No, no.

HEARING OFFICER CROWLEY: Mr. Smith, as part of the offer of proof, do you have any question for Mr. Jenkins on that point?

MR. SMITH: No questions.

HEARING OFFICER CROWLEY: All right. That concludes the offer of proof?

MR. WOODWARD: Yes, and I am finished with questioning.

HEARING OFFICER CROWLEY: All right. Fine. Mr. Smith, do you have cross for Mr. Jenkins?

MR. SMITH: Just a few.

HEARING OFFICER CROWLEY: Okay.

CROSS EXAMINATION

BY MR. SMITH:

Q Mr. Jenkins, you indicated that you testified during the course of this landfill siting hearing; is that correct?

A That's correct.

Q And you were subject to cross-examination?

A That's correct.

Q Mr. Northrup had an opportunity to ask you questions?

A Yes, I believe he did.

Q Okay. Did he ask you substantial questions about the relationship between ESG Watts and Hanson Engineers prior to Hanson working for the County, if you recall?

A Yes, I recall that he did ask questions involving that. I don't specifically remember what questions.

Q Mr. Northrup also just referred to

engineering alternatives, and whether they were brought up during the course of the proceedings. Was landfill mining mentioned as a possible alternative to the removal of waste?

A During the hearings was that --

Q Yes.

A I believe that -- I believe that that was asked of the -- of the Watts engineer.

Q Okay. While you were subject to cross-examination, Mr. Northrup could have asked you about landfill mining, couldn't he?

A I assume so.

Q Mr. Northrup referred to a contact that you had with Robert Nagelini, a County Board Member?

A Uh-huh.

Q Do you recall the substance of the question Mr. Nagelini asked when he leaned over the railing, as you referred to it?

A It had to do with -- it must have been a discussion or testimony of drilling at or around the land site, the landfill site. And his question was involving something about could they drill -- could they have -- did they drill vertically or horizontally, or could they have drilled horizontally or something to that effect, and that was the

question.

Q Okay. Do you recall how you responded to that question?

A I believe I said I don't know.

Q Okay. But that's a good question to ask?

A Yes.

Q Okay.

A Something like that, but I didn't want to -- I was conscious of trying not to provide any answer to him, because I was aware that I was not to be talking to any Board Members.

Q Okay. How were you made aware that you were not supposed to talk to any Board Members?

A It was part of the discussions that we had had in-house. We are aware of previous landfill siting cases or whatever where contact with the members who are making the decision has been an issue.

Q And you had in-house discussion about these Pollution Control Board cases or appellate court cases that talk about fundamental fairness?

A Right.

Q And not having ex parte contacts?

A Exactly.

MR. SMITH: I don't have anything further.

HEARING OFFICER CROWLEY: Anything on redirect?

MR. NORTHRUP: Yes.

REDIRECT EXAMINATION

BY MR. NORTHRUP:

Q I kind of missed that last question. You indicated that there were in-house discussions about the issues of fundamental fairness and that type of thing?

A Yes. I recall a -- I don't know if it is a publication. It was a summary of some Pollution Control Board or appellate cases where ex parte contact was an issue, and I reviewed that document, and I know I have discussed it with others.

Q Okay. Did you discuss it with Mr. Smith?

A It is very likely possible. I don't specifically recall, but I would imagine so.

Q Do you think it was Mr. Smith who provided you with this publication?

A No, I don't believe it is.

Q Other than leaving the waste in place, removing it, or landfill mining, what other engineering alternatives might have been available to ESG Watts?

MR. SMITH: I am going to object. The testimony concerning the merits of the criteria are supposed to be based solely upon the record. Mr. Northrup is now

attempting to try to put in technical evidence involving criteria, which is not appropriate at this juncture.

MR. NORTHRUP: Mr. Smith specifically raised the single issue of landfill mining. Again, whatever other alternatives are out there, and which Hanson may have discussed prior to the hearing, go to whether or not Hanson exercised its independent judgment in presenting those alternatives or not presenting those alternatives to the Board.

MR. SMITH: In response, during the course of Mr. Jamison's testimony or any of the other three individuals from Hanson Engineers that testified during the course the proceedings, Mr. Northrup could have said, okay, you don't like our application. What about these things? Or do you have any other alternatives? At no time did he choose to ask about these environmental alternatives that he now wants to put in front of the Board. I don't believe it is relevant, and ask the Board to sustain the objection.

MR. NORTHRUP: Again, it is not an issue.

HEARING OFFICER CROWLEY: I am going to sustain the objection and I also believe it is outside the scope of cross-examination.

MR. NORTHRUP: I don't have any further

questions.

MR. SMITH: Nothing further.

HEARING OFFICER CROWLEY: Thank you. I am sorry. I do have one question. As the Hearing Officer in this proceeding, I don't make decisions or recommend decisions to the Pollution Control Board. My job is to provide a record that is as easy for them to work with and as complete as possible.

If you could just -- we have been speaking about landfill mining. If you could just give us, in a short form, what your understanding of landfill mining is.

THE WITNESS: My understanding is that it is the selective removal of a portion of the parts of the waste that could be recycled or recovered, so that would remove -- that would, in effect, remove a portion of the waste.

HEARING OFFICER CROWLEY: Thank you. I just wanted some definition of the term that was close to the testimony.

THE WITNESS: Okay.

HEARING OFFICER CROWLEY: Thank you.

(The witness left the stand.)

HEARING OFFICER CROWLEY: I think it would be appropriate to take five minutes.

(Whereupon a short recess was taken.)

HEARING OFFICER CROWLEY: All right. Back on the record.

Mr. Northrup, your next witness.

MR. NORTHRUP: Scott Yankey.

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

A L A N S C O T T Y A N K E Y,

having been first duly sworn by the Notary Public, saith as follows:

DIRECT EXAMINATION

BY MR. NORTHRUP:

Q Can you go ahead and state your name for the record.

A It is Alan, A-L-A-N, Scott Yankey.

Q Where do you work?

A Hanson Engineers.

Q And you were involved in the review of the Watts siting application?

A Yes.

Q Kind of in general tell me what role you played in the review of the application?

A I reviewed the application -- portions of the application that included descriptions of the site geology and hydrogeologic conditions.

Q You are a hydrogeologist?

A Yes. As --

Q Did you -- go ahead.

A I am sorry. As well as information obtained from the IEPA as part of the FOIA request. I reviewed that data as well.

Q Okay. Did you testify at the hearing?

A Yes.

Q During the -- or prior to the hearings, did you meet with anyone from the IEPA?

A Yes, I believe there was one meeting at the IEPA.

Q Do you recall who you met with?

A From earlier Chris Leadman was mentioned. That jogs a memory.

Q Okay. Did you advise anyone at ESG Watts of this meeting at the IEPA?

A No, I did not.

Q Was anyone from ESG Watts at that meeting?

A I don't believe so.

Q Who was at the meeting beside yourself and Mr. Leadman?

A Myself, Chuck Burgert, John Jenkins, perhaps Devin Moose, I believe. I believe that's it.

Q Okay. During your review of the application,

would you from time to time meet with Robert Smith of the State's Attorney's office?

A Yes.

Q Do you recall about how many times you would have met with him?

A Prior to the hearings?

Q Prior to.

A Several. I would say five or more.

Q You did indicate you testified at the hearing; is that correct?

A Yes.

Q Did Mr. Smith help you or help prepare you for your testimony?

A He informed me a little bit logistically, I suppose, about how things would be handled, if that's what you mean.

Q Did you discuss the specifics of your testimony with Mr. Smith?

A Yes.

Q Did you and Mr. Smith put together some specific questions that you were going to be asked?

A I formulated some questions that I thought would be good questions.

Q And were those questions ultimately asked of you?

A Some of them. Some of them weren't, I think.

Q Other than testifying at the hearing, did you attend all of the hearings?

A Not all of the hearings. I don't recall exactly how many I attended, but certainly not all of them.

Q During the hearings that you attended, did you provide questions to Mr. Smith that he in turn could ask the witnesses?

A I don't believe that I did, no.

Q During your review of the application, did you know that Hanson had done some prior work for ESG Watts?

A Yes.

Q And how did you come by that knowledge?

A Just kind of secondhand. I had heard it mentioned that we had done some work there before.

Q During Hanson's review of the application, were there -- and this is prior to the hearings. Were there any discussions regarding the merits of the application?

A I don't recall exactly, but probably.

Q During those discussions, did you discuss what you might or what might be -- what you might have

felt were shortcomings of the application?

A Probably so, yes.

Q Did you ever at any time prior to the hearings or during discuss any method or means by which those shortcomings could be addressed or overcome?

A Yes, I believe so, probably.

Q Okay. Do you recall whether you or anyone at Hanson ever presented any of those methods or means to the site review committee?

A No, I don't believe so. These were mainly items that came up as part of the review process, more of between ourselves type of discussions.

Q Were you ever asked to develop any engineering alternatives to any of the shortcomings in the application?

A No, I don't believe so.

Q Who was Hanson's client in this matter?

A Sangamon County, as far as I know.

Q Does that include the Sangamon County State's Attorney's office?

A I don't know.

Q Does it include the Sangamon County Department of Public Health?

A I don't know.

Q Does it include the siting review committee?

A I don't know.

Q Does it include the Sangamon County Board?

A I am not sure.

Q Did anyone at Hanson ever tell you, with any more specificity than just Sangamon County, who your client was during this project?

A Not that I am aware of, no.

Q Based upon your participation in the process, what is your understanding of who your client was?

A I don't know that I ever expressed any burning desire to find that out. I had tasks to perform, and it didn't really make much difference who the client was.

Q Other than Mr. Smith, did you meet with anyone from the Sangamon County State's Attorney's office?

A I don't believe so.

Q Okay. During the whole process did you ever meet with anyone from the Sangamon County Department of Public Health?

A Yes.

Q Okay. Who was that?

A I believe his last name was Alexander. I think he was someone from Public Health that had

experience at the landfill.

Q How many occasions did you meet with him?

A Once, I believe.

Q Where was that?

A We took -- we went to the landfill and had a tour of the facility there.

Q Did you ever meet with Jim Stone in relation to the application?

A Not that I recall. I may have.

Q Okay. Did you ever meet with or communicate with any members of the siting review committee during this process?

A No. Just in passing to say hello is all.

Q How about any other Members of the County Board, other than those that were on the siting review committee?

A No.

MR. NORTHRUP: I don't have any further questions.

HEARING OFFICER CROWLEY: Mr. Smith?

MR. SMITH: No questions.

HEARING OFFICER CROWLEY: Thank you. You are excused.

(The witness left the stand.)

MR. NORTHRUP: My next witness is Charles

Burgert.

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

C H A R L E S E. B U R G E R T,

having been first duly sworn by the Notary Public, saith as follows:

DIRECT EXAMINATION

BY MR. NORTHRUP:

Q Can you state your name for the record.

A It is Charles E. Burgert.

Q And you are --

HEARING OFFICER CROWLEY: Excuse me one moment. Would you like a glass of water?

THE WITNESS: Yes.

(Whereupon a short recess was taken.)

HEARING OFFICER CROWLEY: Excuse me for interrupting, Mr. Northrup.

MR. NORTHRUP: That is okay.

Q (By Mr. Northrup) We have your name on the record, right?

A Yes.

Q You are currently employed at Hanson Engineers?

A That is correct.

Q You are a geo technical engineer?

A Yes.

Q And you participated in the review of the ESG Watts siting application?

A Yes.

Q Give me a real in general synopsis of what you did as far as your review?

A I reviewed the clay liner, the clay cover aspects, the -- I guess some of the aspects with the slopes of the landfill, and some of the surface hydrology aspects.

Q Okay. You did testify at the hearing?

A Yes, I did.

Q Prior to the hearings, did you meet with anyone from the Illinois EPA?

A We had one meeting, which has been mentioned previously here, with Chris Leadman.

Q Did you advise anyone at ESG Watts of that meeting?

A No.

Q And there was no one from ESG Watts at the meeting, correct?

A No.

Q Why were you meeting with Mr. Leadman?

A We were -- the purpose of the meeting was to try and develop more of an understanding of the

history of the landfill.

Q Did you bring anything with you to the meeting?

A Yes, I brought some drawings that were from the application, and I believe we brought some historical drawings that came from the FOIA request.

Q During Hanson's review of the application, would you from time to time meet with Mr. Robert Smith?

A Yes, Robert came to our office several times.

Q Do you recall how many times?

A I can't give you a specific number, but I am sure it was more than five times. There was about a one or four week period maybe.

Q Did Mr. Smith help prepare you for your examination?

A I wouldn't say that Mr. Smith helped prepare me.

Q Did he assist you in any way with respect to your testimony?

A I don't think he assisted me either.

Q Did you discuss any questions that he might ask you?

A I discussed my findings with Mr. Smith, and

in my particular presentation it involved upwards of about 26 figures and drawings, and I did suggest questions to Mr. Smith so that we could organize the presentation of those drawings in a clear and concise manner to the hearing.

Q Did Mr. Smith in general follow along with the suggestions that you had made?

A I think as far as in general that we did follow a format to present the information.

Q During the hearing, would you from time to time provide Mr. Smith with questions that he could ask other witnesses who might be on the stand?

A There was one gentleman that -- Mr. Burgstrom (spelled phonetically) and he was the opposing expert, I guess you would say, to my testimony. And during his testimony or even prior to his testimony, I prepared some general questions, because he had inconsistencies with some of our findings, and thought it would be good to have those asked so we could try and understand his basis.

Q And were those questions ultimately asked?

A In general I would say that they were. I can't say word for word that they were.

Q After Mr. Smith had had this opportunity to ask the questions that you suggested, did you have any

remaining concerns with Mr. Burgstrom's testimony?

A I think there is still areas of inconsistencies between our findings and Mr. Burgstrom's reports, but it would take more than questions to get answers to those.

Q What would it take other than questions?

A I think it would take additional site investigations.

Q At any time throughout this process, did you advise Mr. Smith that additional site investigation might be warranted?

A I think that if I recall, when we show or at least when our findings were developed and they were inconsistent with Mr. Burgstrom's findings that the only way you could get an answer to them is by more site investigations. And even if you did more site investigations possibly you couldn't get all of the answers to the inconsistencies.

Q Did you so advise Mr. Smith of that fact?

A I don't know if I specifically advised him of that, as much as just in discussing my findings indicated that there is areas that need additional work if they can be determined.

Q Did you ever advise anyone on the site review committee that additional investigation might be

warranted?

A I don't believe anyone ever asked that question.

Q So I take it that's a no, you did not advise anyone on the committee?

A Well, once again, I will say I was never asked that question.

Q And, again, I will ask you, did you ever advise anyone on the committee that additional site investigation might be warranted?

MR. SMITH: Objection. Asked and answered.

MR. NORTHRUP: Well, that's the point, Your Honor. It has not been answered. If you would instruct --

HEARING OFFICER CROWLEY: I will allow him to answer. Please do.

THE WITNESS: Okay. Would you please read it again? Did I --

Q (By Mr. Northrup) Did you ever advise anybody on the committee that additional investigation might be warranted?

A I never advised anyone on the committee that additional investigation could be warranted, but then again -- well, I will leave it like that.

Q Throughout this process did you ever have any

communications with anybody on the site review committee?

A Yes, one.

Q Okay. Tell me about that.

A There was a gentleman at -- during a break, when I was out in the hallway, who came up to me and introduced himself, and when he introduced himself I told him that I couldn't talk to him.

Q That was the only communication that you had with anybody on the committee?

A Yes, that's correct.

Q Did you ever have any communications with anybody on the Sangamon County Board other than anyone who might have been on the committee?

A Not to my knowledge, no.

Q Did you ever have any communications with anybody from the Sangamon County Department of Public Health during this process?

A One time I believe I talked to Mr. Stone about I needed a location to put our exhibits to store them.

Q Anything of substance related to the application?

A No.

Q During the review of the application, did you

ever become aware that Hanson had performed some prior work for ESG Watts?

A I believe I became aware of that during the hearings possibly. I think it was during the hearings.

Q All right. Do you recall how you became aware of that?

A I think I heard some questions asked during the hearing about that.

Q Who was Hanson's client in this matter?

A I never found that out. I don't know.

Q Did you ever ask anyone?

A No.

Q Throughout this process and -- well, based upon your participation in this process, what was your understanding of who Hanson's client was?

A Sangamon County.

Q Did Sangamon County include the Sangamon County State's Attorney's office?

A I would just say Sangamon County. Once again, I did my work on the technical aspects. I was not involved in the contract or any other of those aspects, so I had no specific knowledge as to who the client was.

Q Well, I am asking you about your perception?

A My perception would be Sangamon County.

Q Okay. Did that include the State's Attorney's office?

A I -- well, once again, Sangamon County, I guess it doesn't include it.

Q I am sorry?

A I don't get where you are going at here.

Q Well, did you say it does or does not include the State's Attorney's office?

A I didn't view the State's Attorney's office as our client, if that's what you are asking.

Q Okay. Who did you view as your client?

A I viewed Sangamon County, I guess, as our client. Once again, I had no knowledge of exactly who our client was. I just concentrated on the technical aspects.

Q Did Sangamon County include the Department -- the Sangamon County Department of Public Health?

A I don't know.

Q Did it include the site or siting review committee?

A I don't know.

Q Did it include the Sangamon County Board?

A I don't know.

(Mr. Northrup and Mr. Woodward confer briefly.)

Q (By Mr. Northrup) During Hanson's review of the application, were there any discussion regarding the merits of the application?

A You know, the best answer that I could give to that is the paragraph that we have written in the summary report, because I think that summarizes our opinion on the application rather well.

Q Well, prior to the actual hearings, were there --

A Oh, prior to the hearings.

Q Right.

A Okay.

Q Were there any discussions as to the merits of the application?

A To the merits? I don't recall that. Once again, I concentrated on a specific area and not on all ten criteria on the report. I was only involved in one.

CROSS EXAMINATION

BY MR. WOODWARD:

Q You testified that you could not speak to any County Board member outside the hearing. Can you tell me why you could not?

A As I recall, there had been a member who had leaned over the railing and asked John a question, and

that I believe that was brought up by either yourself or Mr. Northrup as, you know, wanting an explanation or something to the hearing officer. So at that point we were instructed that we should not talk at all. Of course, when the gentleman introduced himself and wanted to talk to me, I just apologized and said I am sorry, but we are not allowed to talk to the Members on the Board.

Q From a perception standpoint, are you usually not allowed to talk to your client?

A I don't understand the question.

Q Okay. I believe you indicated that you never found out who your client was. He asked from your perception whether it included the siting review board, and you said you didn't know. So now I am asking you from normal engineering practices, are you not allowed to speak to your client?

A I don't know what relevance that has here, them being our client. So I don't know what --

Q I am not asking you to understand the reason for the question. I am asking you to answer the question.

A I think the -- I find the question unanswerable, I guess.

Q Okay. Would the fact that you could not

speak to members of the siting review board affect or help you to form a perception that the siting review board was not your client?

A I don't understand what you are saying, actually.

Q What factors normally go into your forming a perception of who your client is?

MR. SMITH: I am going to object as to the relevancy as to Mr. Burgert's interpretation of who his client was, how that is relevant to these proceedings.

MR. WOODWARD: I think that goes to the very heart of our argument of denial of fundamental due process. We have a group of engineers who have signed a contract with the County of Sangamon who have now said we never bothered to find out who our client was, so we don't know whether they engaged in improper contact or not. We don't know whether they -- their opinions were restricted solely to opinions on the record, or whether they gave them directly to -- because none of them can remember.

So I am asking this gentleman to tell me what it is that forms a perception of who his client is in a normal circumstance. I am trying to find out whether he is being truthful when he says I don't know -- I

don't know who my client is, and I don't have a perception of who my client is.

THE WITNESS: Can I answer?

HEARING OFFICER CROWLEY: If you care to, yes.

THE WITNESS: The previous answer I gave, which is the truthful answer in this case, is that I concerned myself with the technical aspects of the clay liner, the clay cover, the slopes, the surface hydrology. I was not involved in the contract negotiations. I was not involved in the request for proposal. I was not involved in any of those items. So I can't answer your questions.

Q (By Mr. Woodward) As an engineer you were involved in giving expert testimony, were you not?

A On the areas that I investigated.

Q And as an engineer don't you have some professional ethics that restrict your ability to -- restrict your abilities to do certain things when you serve as an expert witness?

HEARING OFFICER CROWLEY: I am going to stop this here. This is your witness. He has answered the question you have asked him more than once.

MR. WOODWARD: That's all I have.

HEARING OFFICER CROWLEY: Thank you. Mr. Smith, do you have anything?

MR. SMITH: Thanks.

CROSS EXAMINATION

BY MR. SMITH:

Q In your meeting with Chris Leadman of the Illinois Environmental Protection Agency, did Mr. Leadman express an opinion as to the merits of the application?

A No, he did not. As a matter of fact, when we went into Mr. Leadman's office, he specifically told us right out before anything was said he told us that he could not express an opinion on the landfill. He could not express any opinions to us at all. That if we had some kind of historical question about when certain areas were filled, that he might be able to help us with that. But he was very specific about that.

Q Mr. Northrup asked you questions concerning the conflicting nature of your testimony in relationship to Dr. Burgstrom's testimony, and that your solution may be additional site investigations. During the course of the proceedings testifying you were subject to cross-examination; isn't that true?

A Yes.

Q Mr. Northrup could have asked you questions about, Mr. Burgert, your findings were totally

different than what Mr. Burgstrom's are. What can we do to solve these problems. He could have asked these questions?

A Yes.

Q Did he ever ask you those questions?

A Not to my recollection.

Q Would your opinions have been different as to the merits of the application if ESG Watts was your client?

A No, our findings are our findings.

MR. SMITH: All right. I don't have any further questions.

HEARING OFFICER CROWLEY: Mr. Northrup?

MR. NORTHRUP: I have just a couple quick follow-up.

REDIRECT EXAMINATION

BY MR. NORTHRUP:

Q When you met with Mr. Leadman, did you discuss what regulatory standards would be applicable to the review of the application?

A That was not in my area. I didn't discuss that.

Q Did someone discuss it at the meeting?

A You know, if someone did, I don't recall it.

Q If, in fact, as Mr. Smith posed, if ESG Watts

was your client, and there were deficiencies in the application, you would have told them how to fix those deficiencies, would you not?

A I don't know if I could or not.

Q At least you would have told them?

A Pardon me?

Q You would have told them where their application or where their proposal was deficient if they were your client?

A Well, I guess I am confused on where this is leading. Because what I did was examine the available information --

Q Well, I know, and I am not asking --

A -- and compare it to theirs.

Q I am not asking --

A And that there is significant inconsistencies.

Q It is a simple question.

A I am sure it is simple.

Q If ESG Watts was your client and they asked you for your technical support and services in looking at an application, and if you felt that it was deficient, you would tell them?

A If they had a deficient application as far as the clay liner, the clay cover, the items that I

looked at, if they were submitting an insufficient application in those areas and I was working for them, which I wasn't, I guess I would, yes.

MR. NORTHRUP: Okay. I don't have any further questions.

MR. SMITH: Nothing further.

HEARING OFFICER CROWLEY: Thank you very much.

THE WITNESS: Thank you.

(The witness left the stand.)

MR. NORTHRUP: Well, I have got two more probably, you know, about the same, half an hour each, so I don't know if you want to go ahead or --

HEARING OFFICER CROWLEY: Off the record.

(Discussion off the record.)

HEARING OFFICER CROWLEY: We are back on the record.

We have determined that we will take a ten minute break at this point. We will go through lunch, so if you can find a soft drink or a cookie or something, feel free to bring it back with you. We will resume again at noon.

(Whereupon a short recess was taken.)

HEARING OFFICER CROWLEY: All right. We are back on the record.

MR. NORTHRUP: We call Devin Moose.

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

D E V I N M O O S E,

having been first duly sworn by the Notary Public, saith as follows:

DIRECT EXAMINATION

BY MR. NORTHRUP:

Q Could you state your name for the record, please.

A Devin Moose.

Q And you are the director of a company called Engineering Solutions?

A Yes.

Q Where is that at?

A Geneva, Illinois.

Q And you are a geo technical engineer by training?

A Civil engineering with geo technical emphasis.

Q Okay. And you are familiar with the Watts siting application that is at issue in this case?

A Yes.

Q Okay. What role did you play in the review of that -- well, in the review of the application?

A I was retained by Hanson Engineers to assist

them.

Q Assist them more specifically with what?

A Initially the assignment was to provide advice and provide my experiences in sitings in other cases and procedurally how a project like that is managed. And then as the work load increased, I was requested to evaluate the application versus some of the criteria.

Q Now, had you ever worked on a -- or worked on a case involving siting where it was just related to an overfill?

A Not only an overfill, no.

Q Okay. But there were some cases that you had worked on in your prior experience that at least dealt in some fashion with an overfill?

A I believe, yes.

Q Okay. Was one of those the Land of Lakes facility in Romeoville?

A Yes.

Q Okay. And another one was in Jackson County?

A Yes.

Q The proceeding in Romeoville, Land of Lakes, who was your client in that case?

MR. SMITH: Objection as to relevancy.

MR. NORTHRUP: It is going to go to the fact that

Mr. Moose will be able to explain a little bit about the relationship between who is the client of the consultant and that type of thing.

HEARING OFFICER CROWLEY: Do you have any response, Mr. Smith?

MR. SMITH: Once again, either Hanson's interpretation of who their client was or Mr. Moose, as a subcontractor to Hanson Engineers, who their interpretation of the client is, is not really relevant. None of them were the decision makers. None of them had a vote in this final land site.

The Sangamon County Board could have said, Hanson Engineers, you have the greatest piece of papers, but we don't buy it. We like Mr. Northrup's argument better. The fact that the County Board chose Hanson's report, it does not matter. Their opinion as to -- Hanson's opinion as to who their client was is not relevant to the subject matter of this proceeding.

MR. NORTHRUP: It goes to the entire heart of the argument that there has a been a breach of Watts' -- or that fundamental fairness has not been followed in this case.

MR. SMITH: How does who Mr. Moose represented in the Land of Lakes case have anything to do with the fundamental fairness of the hearing with the Sangamon

County?

MR. NORTHRUP: Because it is going to be additional evidence in cases like this the consultant knows who their client is, knows very well who their client is, and it is either going to be the State's Attorney's office, or it is going to be the County Board. But there is none of this mishmash of, well, I guess our client is Sangamon County, and who are they, well, gee, we don't really know.

HEARING OFFICER CROWLEY: I am going to sustain the relevance objection. But I will allow you to enter the testimony as an offer of proof.

MR. NORTHRUP: Okay.

Q (By Mr. Northrup) And in the Land of Lakes case --

HEARING OFFICER CROWLEY: And please do let me know when you have finished your offer of proof, so that we can get Mr. Smith's questions in.

MR. NORTHRUP: Okay.

Q (By Mr. Northrup) The Land of Lakes facility, you represented the Will County State's Attorney's office?

A I believe we were employed by Will County, yes.

Q Wasn't it not the Will County State's

Attorney's office?

A Will County was my contact for the project. The Will County State's Attorney's office was our contact.

Q And in Jackson County, that was also the Jackson County State's Attorney's office?

A That was our contact for that project, yes.

MR. NORTHRUP: Now, would your ruling also pertain to questions on just how he determines who his client is and that type of thing?

HEARING OFFICER CROWLEY: Yes.

MR. NORTHRUP: Okay.

Q (By Mr. Northrup) Mr. Moose, how do you define who your client is?

A Sometimes it can be defined by who is paying you. Sometimes it can be defined by in a contract specifically identifying the client. Sometimes it can be defined by who your project manager is. So I think it changes a little bit depending on the type and nature of the project.

MR. NORTHRUP: Okay. That's all I have on that. Thank you.

HEARING OFFICER CROWLEY: Mr. Smith, did you have any cross on the offer of proof?

MR. SMITH: Yes.

CROSS EXAMINATION (offer of proof)

BY MR. SMITH:

Q Mr. Moose, are you familiar with the Illinois Environmental Protection Act Regional Pollution Control Facility Siting in Illinois Report?

A I have seen it. I don't recall it specifically.

HEARING OFFICER CROWLEY: Can we have a date on that, please, Mr. Smith?

MR. SMITH: It is from November 12, 1981, through December 13, 1994. The publication date is January of 1995.

HEARING OFFICER CROWLEY: Thank you.

Q (By Mr. Smith) During that time period, there was approximately 80 applications to local governments for landfill expansions of regional pollution control type facilities, do you know?

A It sounds reasonable.

Q And of those 80 cases, how many were the State's Attorney's office the contacts for?

A I don't recall.

MR. SMITH: Okay. I don't have anything further.

HEARING OFFICER CROWLEY: All right. Anything on redirect?

REDIRECT EXAMINATION (offer of proof)

BY MR. NORTHRUP:

Q Isn't it true that as far as identifying who the client is that that is something that is identified up front before you really begin any substantive work on a project?

A Generally it is defined up front, but it can change over time. In this particular case -- and I should correct myself. In the case of Will County and Jackson County, my clients were those counties. And when I say Will County, I mean the citizens of Will County are who I hold my obligations to.

My contact, my person that I report and interact with in Will County was a member of the State's Attorney's office. But I think that generally it is defined up front, and in a case like the Jackson County and Will County -- and when I say county, I am referring to the citizens of that county. I do have contacts within those, and these two cases that you cited were State's Attorney's offices.

Q In a case where you represent the citizens of a county, how are their instructions or desires known to you?

A Well, their instructions are funneled through my contact, which may or may not be the State's Attorney's office. And in many cases it is, but my

obligation is to a bigger purpose. It is to the people and the health, safety, welfare kind of criteria. It really goes to my obligation to the public.

Q But you would agree that this concept of the fact that you represent the county has to be funneled through some elected official, like the State's Attorney's office or --

A No, I don't agree with that.

Q So how do you -- so then do you make the decision what is best for the citizens of that county?

A No, not in the respect of who I report to.

Q Okay. Well, who makes that decision then?

A That is usually a decision that is made within the unit of government who is going to be the project leader for that particular project.

HEARING OFFICER CROWLEY: Which may or may not be an elected official?

THE WITNESS: That's correct.

Q (By Mr. Northrup) So in a situation like that, the citizens are somewhat separate and apart from the decision maker, correct?

A I think your question was in a decision like that -- you would have to be more specific. Can you tell me --

Q Well, in a case where you were working under the impression that, you know, you are representing the citizens of a county, the final decision on whether or not a facility gets sited does not rest with the citizens, it rests with the County Board or whatever other entity the statute may require?

A Well, I think that was a pretty broad question. One, I don't think I represent the citizens. I work on behalf of the citizens. They may be my client. So I guess the way the question was phrased about me representing the citizens is really not what I meant to impart in my responses.

MR. NORTHRUP: Okay. That's it for me.

HEARING OFFICER CROWLEY: That concludes the offer of proof?

MR. SMITH: Yes. I don't have any questions.

HEARING OFFICER CROWLEY: Fine.

Q (By Mr. Northrup) Okay. So you were a subconsultant to Hanson Engineers in this case?

A Correct.

Q Okay. At some point in the -- when were you brought in to the project?

A I don't recall the date. It was sometime, I believe, after the application was filed.

Q Okay. Were you at some point during your

work in the case advised that Hanson had done prior work for ESG Watts?

A I became aware of it at some point.

Q Do you recall how you became aware of that?

A It was probably a meeting that was held within Hanson's Engineering office where it -- where I became aware that there was knowledge about the Springfield site, and without specifics I remember arriving at the conclusion that I was informed, well, we worked on that site, we, meaning Hanson.

Q During your involvement in the project, did you meet with anyone from the Illinois EPA?

A Yes.

Q Who was that?

A Chris Leadman.

Q Was this meeting the one that has been discussed by other witnesses this morning?

A It appears as so, yes.

Q Okay. At that meeting -- there was no representatives from ESG Watts at the meeting, correct?

A No, not to my recollection.

Q Do you know if ESG Watts was advised that that meeting was going to take place?

A They may have been.

Q Did you have any knowledge that they were?
A We were at the landfill facility immediately prior to going to the IEPA. We toured the landfill facility with representatives of Watts. I would be surprised that they were not aware that we were going to the IEPA from that location, but I don't recall specific conversations.
Q Okay. When you were at the meeting with Chris Leadman was the issue of what regulatory standards would be applicable in the review discussed?
A They may have been.
Q What do you recall about those discussions, if anything?
A I don't recall, other than in a general way, much about the discussions. We were there to get historical information on the facility, to fill in missing data gaps, to find the status of certain documents that we did not retrieve at our FOIA. And the specifics of the conversation I don't recall precisely.
Q During the pendency of the project, were you ever asked to provide or devise any engineering alternatives to the removal of the waste?
A I am not sure -- I will have to ask you to repeat the question. But as far as devising

engineering alternatives for removal of the waste, in my opinion, no, we were not asked to devise that. And the second qualifier or the first one that you asked, I don't recall what that was.

Q Well, it was during the pendency of the proceeding, were you ever asked to provide any engineering alternatives or devise to the removal of the waste?

A We did not devise any. Alternatives were discussed.

Q Did you testify at the hearing?

A No.

Q Do you recall any of those alternatives ever being discussed at the hearing?

A I don't recall precisely what was discussed at the hearings that I attended.

Q All right. Are you aware that those alternatives were presented in any fashion to the siting review committee?

A I am not aware whether they were or they weren't.

Q During the review process, did you meet with any members of the Sangamon County Board?

A No.

Q Did you meet with any members of the siting

review committee?

A No.

Q Did you meet with any members of the -- or employees of the Sangamon County Department of Public Health?

A Yes.

Q Who is that?

A I do not recall their names.

Q Okay.

A They attended the landfill tour with us, and there was a site inspector from Sangamon County that was familiar with the site. There may have been more than one.

Q Other than that individual, anybody else?

A Not to my recollection, meetings. There were social exchanges between Mr. Stone and myself during the hearings, but I don't recall any meetings with anybody else.

Q Never any substantive discussion of the application?

A No to my recollection, no.

Q Okay. During the review process, did you meet with anyone from the Sangamon County State's Attorney's office?

A Yes.

Q Who would that have been?

A Mr. Smith.

Q Did you discuss the substance of the application?

A Yes.

Q How many times would you have -- do you recall meeting with Mr. Smith?

A My recollection is that it would have been between five and ten.

Q At any of those meetings was the testimony of Hanson employees discussed, the potential testimony of Hanson employees?

A My recollection is that, yes, it would have been.

Q Okay. On how many occasions, if you recall?

A I don't recall.

Q You did attend some of the hearing yourself; is that correct?

A Yes.

Q Would you from time to time communicate with Mr. Smith questions that you felt would be appropriate to be asked of the witnesses?

A Yes.

Q Do you have any idea on how many occasions that occurred?

A No.

Q Okay. Would Mr. Smith ask those questions?

A Occasionally.

Q Okay. But not always?

A Not always.

Q Based upon your participation in the process, do you have an understanding as to who Hanson's client was in this matter?

A My understanding is it would have been Sangamon County.

Q And would that include -- would Sangamon County include the Sangamon County Board?

A To the extent that they are citizens of Sangamon County, yes.

Q How about the siting review committee?

A The same answer.

Q How about the State's Attorney's office?

A The same answer.

Q And the Department of Public Health?

A The same answer.

(Mr. Northrup and Mr. Woodward confer briefly.)

Q (By Mr. Northrup) Is it your belief that a siting application -- or a siting request can be judged just on the application itself?

A If there are -- if it is a prima facie case

and there is no testimony it may be necessary, but generally my understanding is that the application needs to be evaluated based on the record, and the record includes the application testimony, written comments, and all information that is in the record.

CROSS EXAMINATION

BY MR. WOODWARD:

Q Did you give a deposition in this matter on May 13th, 1998?

A I believe sometime back in May I did. I don't recall the date.

Q Now, as to your meeting with Chris Leadman, was that part of the substantive questions placed to you during the course of your application, what the substance of that meeting was?

A I am not aware of any application that -- I don't understand the question.

Q I am talking about during the course of your deposition, was the substance of the meeting with Chris Leadman, was that placed -- do you recall that being placed to you?

A No, I don't recall the substance of the deposition.

MR. WOODWARD: May I approach the witness.

MR. SMITH: I would object to him handing him the

deposition and asking him -- to direct questions to him concerning the questions that were asked to see if his recollection needs to be refreshed by looking at the deposition.

MR. WOODWARD: Fine.

Q (By Mr. Woodward) Do you recall a question being asked of you, do you recall any discussions about what regulations would be applicable in the review of the application?

A Not specifically, no.

Q Okay. Do you recall giving an answer just generally, generally I think this was our opinion based upon our experience in numerous other sites in Illinois. My recollection is the siting application itself referred to compliance with these regulations in this format and a meeting was held at the IEPA with the permit reviewer at the time, Chris Leadman, who I think concurred with the analysis or the regulatory structure that a facility would be governed under?

A I don't recall, no.

MR. WOODWARD: Okay. Now may I approach the witness.

HEARING OFFICER CROWLEY: Yes.

Q (By Mr. Woodward) Is that a transcript of your deposition?

A I have no idea. I requested a right to review these transcripts, and I was not really given the opportunity to do so.

MR. SMITH: I would object to the use of this deposition. One, it has not been marked in any type of exhibit and, two, he has not laid the proper foundation.

MR. WOODWARD: Could you mark this, please.

(Whereupon said document was duly marked for purposes of identification as Petitioner's Exhibit 4 as of this date.)

HEARING OFFICER CROWLEY: That was the deposition of Devin Moose from what date, please?

MR. WOODWARD: May 13th, 1998.

HEARING OFFICER CROWLEY: Thank you.

Q (By Mr. Woodward) I am handing you what has been marked as Petitioner's Exhibit Number 4.

A Yes.

Q Is that your deposition transcript?

A It appears to be one, but I am not sure it is true and accurate.

Q As to page 31, starting with line 3, and going to page 32, line 5, would you review that, please?

A (Witness complied.) Okay.

Q Now, do the lines -- do the pages and lines that I have indicated deal with discussion of the regulations identified as 814, Subpart C?

A They -- no.

Q Up here?

A Well, yes, it covers a lot of things.

Q Okay. Now, back down on line 22, when it says this was our -- line 21 and 22, where it says, this was our opinion, are you talking about 814 Subpart C is applicable regulations?

A I am responding to the question that is just above it.

Q Okay. What is your opinion then at that point? Is it that --

A My opinion --

MR. SMITH: Hold it. Excuse me, Devin. I am going to object. One, it is not proper impeachment. Two, he has not laid the foundation for the document in front him. It is not improper impeachment, if that is what he is attempting to do.

Q (By Mr. Woodward) Well, after reading that, is that -- were those pages and lines?

HEARING OFFICER CROWLEY: Sustained. I will let you try to --

MR. WOODWARD: I assumed she was sustaining. I am

sorry.

HEARING OFFICER CROWLEY: That's all right.

Q (By Mr. Woodward) As to the pages and lines that I directed your attention to, is that an accurate transcription of your deposition testimony?

A No, I don't accept that. I specifically requested the right to review my transcript, and I was denied the right.

Q You are now being given that opportunity to review those particular pages and lines, and is that an accurate transcription?

A I have no way of -- this is six months later or seven months later. I can't recall precisely what I said seven months ago.

MR. WOODWARD: Okay. I will go at this a different way.

Q (By Mr. Woodward) Before you met with Chris Leadman, did you have an opinion as to what applicable regulations applied to the application of ESG Watts for siting approval at the Sangamon Valley landfill?

MR. SMITH: I am going to object as to the relevancy, what Mr. Moose's opinion as to what the regulations implied. It could have been matters of record. They could have called him as potential witness at the landfill trial if they so desired. We

are getting outside the scope of what criteria was required. They are only supposed to be as to matters of record, and not to go outside.

MR. WOODWARD: I am not asking this for the purpose of establishing what standards do apply. I am asking this for the purpose of determining whether he did have an opinion as to what standards apply before he met with Chris Leadman. He now has indicated that he does not recall the substance of that meeting, and I am going to try to reach what his recollection is a different way from the transcript.

MR. SMITH: I would object as to what relevancy, whether he had an opinion as to whether 814 Subpart C, Subpart D, or 811 apply. It is the final -- the County Board made a determination of what regulations should apply or shouldn't apply, and that's the issue, not Mr. Moose's.

MR. WOODWARD: I believe a part of our objection is that the meeting with Chris Leadman was an ex parte communication that we should have been notified of and had the right to attend, and if a discussion of what applicable standards were going to be made applicable to our application that we would have input into that at that time.

Now, that is particularly relevant to the issue of

denial of due process. You can go all you want to about we didn't ask it at the hearing, but the issue of denial of due process was objected to at the hearing, and we were told that if we wanted to pursue it, we would have to hire other counsel, pay -- I mean, pay for the other counsel, which was not a proper response to that objection.

Now, I think we have a right to pursue this when this is the hearing -- this hearing is specifically to establish a record as to whether there was a denial of due process.

MR. SMITH: In response, I would refer the Hearing Officer to the petition for hearing. Nowhere in any of the allegations that are alleged in the petition that there was improper contact with members of the Environmental Protection Agency. So now we are even outside the scope of the petition for hearing. Nowhere do they allege that there was improper contact between anybody and the Environmental Protection Agency.

MR. NORTHRUP: Well, first of all, that petition reserves our right to bring up whatever other issues we happen to come across. And the first time we learned about this meeting was in the deposition of Mr. Yankey back in May. So we are following up.

There is no issue that we waived this. We didn't know about it until we had to depose the Hanson people.

HEARING OFFICER CROWLEY: I will allow the questions. I am not sure of the relevance at this point. I will give you some latitude and let you ask the question, and then we will see where we go.

Q (By Mr. Woodward) At the time you met with -- I believe the question is -- rather than having you read it back, I will restate it.

The question is, at the time that you met with Chris Leadman, did you have an opinion as to what regulatory standards were applicable to the application of ESG Watts, Inc., for local siting approval for the Sangamon Valley landfill?

A My recollection is that I had an understanding of what regulatory structure it was governed under, but I had not at that time done an analysis on my own.

Q Was your understanding that the regulatory structure was Part 814, Subpart C?

A That was the understanding that I was working under at that time.

Q Okay. In your meeting with Chris Leadman, was that issue discussed?

A I don't recall specifically.

Q You don't recall ever making a statement that Chris Leadman concurred in that analysis?

A Not in the context in which you just presented it. That's not consistent with the context of that accurate or inaccurate testimony that you got in front of you. It is generally, to the best of my recollection type qualifiers, and the general understanding of the regulatory structure that I was working with at that time came from the siting application which said that Subpart C were the regulations that it was governed under.

HEARING OFFICER CROWLEY: And that's 35 Illinois Administrative Code, Part 814.

THE WITNESS: Correct.

MR. WOODWARD: I have no further questions.

HEARING OFFICER CROWLEY: Mr. Smith?

CROSS EXAMINATION

BY MR. SMITH:

Q Mr. Moose, you indicated that you worked for Environmental Solutions?

A Engineering Solutions.

Q Sorry. Engineering Solutions. Is that a subsidiary of Geo Tech?

A Envirogen.

Q Does either Engineering Solutions or

Envirogen currently have a contract with ESG Watts to perform work at the Sangamon Valley Landfill?

A Yes, we do.

Q Did you get permission from the County of Sangamon before entering into this agreement with ESG Watts to work for --

MR. NORTHRUP: I will object. What is the relevance?

MR. SMITH: They brought out issues of Hanson Engineering and the normal practice of asking your former clients if it is okay to work for your current clients. I am going to show that their own engineers, they didn't do the same courtesy.

MR. NORTHRUP: In the context of the siting --

HEARING OFFICER CROWLEY: If you care to -- the objection is sustained. If you care to do it, it would be as an offer of proof.

MR. SMITH: I will make an offer of proof.

THE WITNESS: What is the question pending? I am sorry.

Q (By Mr. Smith) Did either Engineering Solutions or Envirogen seek permission or inform the County of Sangamon that you were then going to be working on the ESG Watts application to try to get approval for this overfill?

A No.

Q Did you ask Hanson Engineers or advise Hanson Engineers that either Engineering Solutions or Envirogen was going to be working for ESG Watts in relationship to the application that had previously been pending before the Sangamon County Board?

A There was an attempt to reach Hanson Engineering to let them know, and our efforts at contacting one another were not successful.

HEARING OFFICER CROWLEY: I am sorry? Your efforts --

THE WITNESS: Efforts at contacting one another were not successful.

Q What attempts did you make?

A I placed phone calls to George Jamison. He was at the time out of the office on an extended trial. And enough time had gone by between phone calls that we just never connected. At the time it had been six or seven months since I heard anything from anybody relative to the project. And I was unaware that there was litigation going on. So I thought the project was over, done and closed.

So Watts actually approached me and asked to get a -- asked us to get involved in their Taylor Ridge facility, and we moved down to also come up with some

plans for Sangamon Valley. I did not feel comfortable calling the County, because I did not want to end run my client. My client was Hanson. And I thought it was inappropriate for me to call Hanson's client.

Q Did you follow-up your unanswered phone calls with a letter?

A No, I did not.

Q Do you know the fax number for Hanson Engineers?

A I don't recall, but I am sure I have it available.

Q Could you fax things to them during the course of the proceedings?

A Sure.

MR. SMITH: I don't have anything further on the offer of proof.

HEARING OFFICER CROWLEY: Any cross on the offer of proof?

CROSS EXAMINATION

BY MR. NORTHRUP:

Q Have you attempted to meet with any representatives of Sangamon County on the Sangamon Valley Landfill?

A Yes.

Q And has the County responded to those

requests?

A Responded? They have met with us, yes.

MR. NORTHRUP: No further questions.

Q (By Mr. Smith) When you --

HEARING OFFICER CROWLEY: That ends the offer of proof?

MR. SMITH: That's correct. I am sorry.

Q (By Mr. Smith) When you took a tour of the landfill facility with the representative from the Sangamon County Department of Public Health, were there any County Board Members present?

A No.

Q Was there any members of the siting review committee present?

A No.

Q Did you attend all of the meetings of the siting review committee?

A No.

Q Did you attend the final County Board meeting in which the resolution was discussed?

A No.

Q You indicated that occasionally you asked -- you handed questions to be asked that were not asked of the witnesses. Do you recall that statement?

A Yes.

Q Okay. Were there any questions that were not asked that changed the recommendations to Hanson, your client?

A I didn't make any recommendations.

Q 39.2 indicates that an applicant shall file a -- excuse me. 415 ILCS 5/39.2(c) of the Environmental Protection Act says, an applicant shall file a copy of its request, with the County Board of the county or the governing body of the municipality in which the proposed site is located. The request shall include (1) the substance of the applicant's proposal and (2) all documents, if any, submitted as of that date to the Agency pertaining to the proposed facility, except trade secrets.

Mr. Northrup earlier asked you is it possible just to decide the case alone on the application itself. Do you recall that question?

A Yes.

Q Doesn't the statute require more than just an application? You have to submit all documents that were submitted pertaining --

MR. NORTHRUP: Objection. The statute speaks for itself.

Q (By Mr. Smith) -- pertaining to the proposed facility?

HEARING OFFICER CROWLEY: The statute speaks for itself.

Q (By Mr. Smith) During the course of this siting application, did Hanson's have to file a Freedom of Information Act request with the Environmental Protection Agency?

A Hanson did file a Freedom of Information request to obtain additional information, that is correct.

Q Three boxes of information -- approximately three banker boxes of information was retained from the Agency that was not included in the original application?

A My recollection is that it was more than that, but it was certainly a substantial amount of information.

Q And those documents were necessary for Hanson to --

MR. NORTHRUP: Objection. He seems to be going to the merits of the application.

MR. SMITH: Mr. Northrup asked questions concerning how can you decide -- can you just decide the case on the application alone. I am expanding that you need more. Hanson needed more than what was filed.

HEARING OFFICER CROWLEY: I will overrule the objection. Go ahead.

THE WITNESS: In my opinion, additional information was necessary in order to evaluate the application.

MR. SMITH: All right. I don't have anything further.

HEARING OFFICER CROWLEY: All right. Thank you very much, Mr. Moose.

THE WITNESS: You are welcome.

(The witness left the stand.)

HEARING OFFICER CROWLEY: Can we go off the record for just a second.

(Discussion off the record.)

MR. NORTHRUP: We now call Jim Stone.

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

J A M E S S T O N E,

having been first duly sworn by the Notary Public, deposeth and saith as follows:

DIRECT EXAMINATION

BY MR. NORTHRUP:

Q Could you state your name for the record, please.

A James Stone.

Q And you are the Director of the Sangamon County Department of Public Health?

A That's correct.

Q You held that position since at least December of 1996?

A Yes.

Q You are familiar with the siting proceeding that we have all been talking about?

A Yes.

Q Can you describe for me the role that your department played in this matter?

A In the County's ordinance regarding the siting process, the Health Department is listed as -- this is not verbatim -- its role is to assist the committee, the siting committee in getting whatever would be necessary to go through the process. I spent time basically getting conference rooms, making sure documents were at meetings, as needed, arranging schedules, things of that nature.

Q Okay. We have talked a lot about the siting review committee. Can you explain exactly what that is and who makes it up?

A The siting review committee consists of the County Board Solid Waste & Management Planning Committee plus the County Board Chairman acting as

chair of the siting committee.

Q And that is the committee that all of the hearings were before?

A That's correct.

Q Would you from time to time have occasion to interpret the siting ordinance?

A It depends on how you say interpret. I looked at the ordinance as far as the deadlines were concerned and the time frames, things of that nature. As far as to the merit of the application or the case if front of us, I would not see that as the definition of the interpretation, no.

Q With respect to the deadlines and the time frames and all of that, would you from time to time call upon the State's Attorney for advice?

A I did after reviewing the ordinance. Any time I looked at the deadline, I tried to confirm with Mr. Smith whether or not I was correct in that interpretation.

Q Okay. On those occasions when you would call upon the State's Attorney, Mr. Smith, did these occur both prior to the beginning of the hearings and during the actual hearing process?

A Actually, the whole issue of deadlines I believe we dealt with before the hearings actually

began. Because it was, again, my best recollection of the ordinance, it is kind of like a clock starts ticking when the application is filed. And all of the deadlines then start to kind of fall in domino affect based on that, and based on when the hearings are first held.

Q Would the siting committee meet periodically throughout this process?

A They did.

Q Okay. Were you present at those meetings?

A Some of them.

Q Okay. At the meetings that you were present, was Mr. Smith present?

A He may have been.

Q Do you ever recall at any of the meetings that you attended the committee asking specific questions of Mr. Smith?

A Specific questions?

Q Regarding the ordinance or the process, that type of thing?

A I think there was some discussion, yes, about the process of what they had to do to go through the siting, because it was new to everyone.

Q Okay. And do you recall Mr. Smith responding to those questions?

A I don't recall any specific response, no.

Q No, but did he respond?

A If he was in the meeting and the County Board asked him a question he probably responded. Whether or not he said anything, I don't know.

Q Okay. Did you ever request the State's Attorney's office to file a formal appearance on behalf of the Department of Public Health?

A No, not to my knowledge.

Q Okay. Other than the siting review committee meetings, and during throughout this process, do you ever recall the State's Attorney's -- the State's Attorney either formally or informally advising the committee on matters related to the ordinance, the siting ordinance?

A I don't remember any specific advice, no.

MR. NORTHRUP: Those are all of the questions I have.

HEARING OFFICER CROWLEY: All right. Thank you. Mr. Smith?

MR. SMITH: No questions.

(The witness left the stand.)

MR. NORTHRUP: The petitioner rests, I guess.

HEARING OFFICER CROWLEY: I don't believe that you have moved any of the exhibits that we have marked.

MR. NORTHRUP: I was not sure if I needed to or with the stipulation up front that they are part of the record.

HEARING OFFICER CROWLEY: Petitioner 1 through 3 have been stipulated to. If you are moving them, we will enter them as marked.

MR. NORTHRUP: Okay.

HEARING OFFICER CROWLEY: Exhibit Number 4 was marked.

MR. NORTHRUP: I would offer 1 through 3 that we stipulated up front and then also, though, there was the additional --

MR. SMITH: The offer of proof.

MR. NORTHRUP: What was the other document?

MR. SMITH: The RFP.

MR. NORTHRUP: Yes, the RFP, which I think you also said that you didn't have a problem with, that I didn't have a copy of.

MR. SMITH: I don't have a problem with that.

MR. NORTHRUP: It is actually 1 through 3.

HEARING OFFICER CROWLEY: And then 5.

(Whereupon said documents were entered into evidence as Petitioner's Exhibits 1 through 3 as of this date.)

MR. WOODWARD: On Number 5 we will obtain a copy

and submit to Mr. --

HEARING OFFICER CROWLEY: If Mr. Smith can give me a copy, I will copy it and give it to you guys.

MR. SMITH: I was looking for it. I didn't bring my whole filing cabinet full of stuff. I don't have it with me right now.

MR. NORTHRUP: Do we need to do a schedule while we are here on the record, as far as briefs?

HEARING OFFICER CROWLEY: Let's go off the record for a moment.

(Discussion off the record.)

HEARING OFFICER CROWLEY: We are back on the record.

Off the record we have been discussing the briefing schedule. First, I would ask, does anyone care to make closing arguments here or do you want to reserve them for briefs.

MR. NORTHRUP: I will reserve for briefs.

MR. SMITH: I will just reserve.

HEARING OFFICER CROWLEY: Okay. Fine. The briefing schedule that we have agreed on is based not on the February 28th, 1999 due date that I currently show, but on a June 30th, 1998 due date. We will be receiving a written separate waiver on that shortly, correct, Mr. Northrup?

MR. NORTHRUP: Yes.

HEARING OFFICER CROWLEY: So based on a June 30th, 1999 due date, the petitioner's brief is due January 25th, 1999. The respondent's brief is due February 16th, 1999. And any reply brief the petitioner may chose to file would be due March 2nd, 1999.

The only matter left over is that we have to get a copy of Petitioner's Exhibit Number 5 to mark and get to everyone. And I think that takes care of everything that we have here.

All right. Do you have anything additional, Mr. Northrup?

MR. NORTHRUP: No, I believe that's it, Your Honor.

HEARING OFFICER CROWLEY: Mr. Smith?

MR. SMITH: No.

HEARING OFFICER CROWLEY: Okay. Fine. At this point we will adjourn the hearing in PCB 98-2. We had noticed that we were going to begin the hearing in AC 98-4 immediately upon conclusion of 98-2 hearing.

We will reconvene at 2:00 and open that hearing at that point. Thank you.

MR. NORTHRUP: Thank you.

(Whereupon said document was duly marked at a later time after the hearing for purposes of

identification, and was entered into evidence as Petitioner's Exhibit 5 as of this date.)

(Exhibits were retained by Hearing Officer Crowley.)

STATE OF ILLINOIS)
) SS
COUNTY OF MONTGOMERY)

C E R T I F I C A T E

I, DARLENE M. NIEMEYER, a Notary Public in and for the County of Montgomery, State of Illinois, DO HEREBY CERTIFY that the foregoing 116 pages comprise a true, complete and correct transcript of the proceedings held on the 7th of December A.D., 1998, at 600 South Second Street, Third Floor Conference Room, Springfield, Illinois, in the case of ESG Watts, Inc. v. Sangamon County Board, in proceedings held before the Honorable Kathleen Crowley, Hearing Officer, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 14th day of December A.D., 1998.

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

CSR License No. 084-003677
My Commission Expires: 03-02-99