

1 ILLINOIS POLLUTION CONTROL BOARD  
2 MARCH 6, 2003

3 CITY OF KANKAKEE, )  
4 )  
5 Petitioner, )  
6 )  
7 -vs- ) No. PCB 03-125  
8 ) (Third-Party Pollution  
9 COUNTY OF KANKAKEE, COUNTY BOARD ) Control Facility  
10 Sitting)  
11 OF KANKAKEE, and WASTE MANAGEMENT )  
12 OF ILLINOIS, INC., )  
13 )  
14 Respondents. )  
15 MERLIN KARLOCK, )  
16 )  
17 Petitioner, )  
18 )  
19 -vs- ) No. PCB 03-133  
20 ) (Third-Party Pollution  
21 COUNTY OF KANKAKEE, COUNTY BOARD ) Control Facility  
22 Sitting)  
23 OF KANKAKEE, and WASTE MANAGEMENT )  
24 OF ILLINOIS, INC., )  
25 )  
26 Respondents. )  
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1 KEITH RUNYON, )  
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 2 Petitioner, )  
 )  
 3 -vs- ) No. PCB 03-135  
 ) (Third-Party Pollution  
 4 COUNTY OF KANKAKEE, COUNTY BOARD ) Control Facility  
 Sitting)  
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 5 OF KANKAKEE, and WASTE MANAGMENT )  
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 6 OF ILLINOIS, INC., )  
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 7 Respondents. )

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

## 1     A P P E A R A N C E S

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

9                     On behalf of the Petitioner  
10                    City of Kankakee;

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

16                    On behalf of the Petitioner  
17                    Merlin Karlock;

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

                      On behalf of the Petitioner  
                      Michael Watson;

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

                      Appearing Pro Se;

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

2             Hinshaw & Culbertson, By  
3             Mr. Richard S. Porter  
4             100 Park Avenue  
5             Rockford, Illinois 61101  
6             (815) 490-4900

7                     and

8             Swanson, Martin & Bell, By  
9             Ms. Elizabeth S. Harvey  
10            330 North Wabash Street  
11            Chicago, Illinois 60611  
12            (312) 923-8260

13                     On behalf of the Respondents  
14                     County of Kankakee,  
15                     County Board of Kankakee;

16                     Pedersen & Houpt, By  
17                     Mr. Donald J. Moran  
18                     161 North Clark Street  
19                     Suite 3100  
20                     Chicago, Illinois 60601-3224  
21                     (312) 261-2149

22                     On behalf of the Respondent  
23                     Waste Managment of Illinois.

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

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

9 AUDIENCE MEMBER 1: I might.

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

13 MR. HALLORAN: Yes, ma'am?

14 AUDIENCE MEMBER 2: Me too.

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

19 AUDIENCE MEMBERS: (Nodding head.)

20 MR. HALLORAN: We encourage you to talk.

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

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

3 I would like to talk a moment about the  
4 board's hearing process. I think the majority of  
5 you understand and are familiar with the process.  
6 I will not be making the ultimate decision in the  
7 case. Rather, it is the Pollution Control Board  
8 who will. They will review the transcript of this  
9 proceeding and the remainder of the record and  
10 decide the case. My job is to ensure that an  
11 orderly hearing takes place and that a clear  
12 record is developed so that the Board can have all  
13 the proper information before deciding the case.

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

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

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

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

6 MR. RUNYON: Yes. My name is Keith  
7 Runyon. I'm a resident of Kankakee County. I  
8 live in Bourbonnais, Illinois; and I'm here  
9 representing myself. And the case I'm going to  
10 present is that the applicant and County failed to  
11 comply with the County's solid waste plan and in  
12 so doing, the siting should not be entered; it  
13 should be denied.

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

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

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

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



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

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

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

7           MR. HALLORAN: Mr. Leshen.

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

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

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

13          MR. HALLORAN: Ms. Harvey.

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

17          MR. HALLORAN: Mr. Moran.

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

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

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

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

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

24 The document that was, in fact, filed was

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

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

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

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

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

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

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

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

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

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

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

1 to me.

2 MR. HALLORAN: Okay. Thank you.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

1 motion. Those have all been addressed.

2 MR. HALLORAN: That's my question.

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

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

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

24 MR. HALLORAN: Well, it is entitled here

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

8 The next one, Mr. Moran, if you can  
9 summarize. I'm sorry. Mr. Runyon, did you have a  
10 question?

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

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

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

16 MR. HALLORAN: Mr. Mueller.

17 MR. MUELLER: I will be quick.

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

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

7 MR. HALLORAN: Okay.

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

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

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

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

24 MR. MUELLER: Yes.

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

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

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

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

21          MR. MUELLER: Sister.

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

1 MR. HALLORAN: Mr. Porter.

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

5 MR. MUELLER: That's correct.

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

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

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

12 MR. HALLORAN: Okay. I think I'll  
13 overrule the County's and Waste Management's  
14 objection. I think you'll have ample time to  
15 cross examine him, and I'll allow him to take the  
16 stand and testify. Motion for leave to file your  
17 list of witnesses, Mr. Mueller, is granted.  
18 Ms. Pohlenz, did you --

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

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



1 have the motion --

2 MR. MORAN: Our motion in limine.

3 MR. HALLORAN: Motion in limine.

4 MR. LESHEN: Mr. Halloran.

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

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

12 MR. HALLORAN: You know, that's denied as  
13 well. I think the Petitioners had every  
14 opportunity to ask for it way back when as early  
15 as April 24th when you had your list of deponents  
16 out. It wasn't until Dr. Idleburg even suggested  
17 through counsel that -- was it Ms. Fox -- I think  
18 it was Ms. Fox opened the door to any kind of  
19 evidence deposition. Now, all of a sudden the  
20 Petitioners say, Hey, that's not a bad idea. I  
21 find that it's not timely raised, and I deny the  
22 City's and Mr. Watson's objection -- or request.

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

1 and Criterion 3.

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

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

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

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

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

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

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

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

21 This was never done. We asked for the  
22 diploma throughout the course of the public  
23 hearings. We were denied. We were told --  
24 actually, strike that. We were told Waste

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

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

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

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

9 MR. MORAN: Three.

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

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

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

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

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

14 MR. HALLORAN: Mr. Porter.

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

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

1 based on Ms. Pohlenz's representations.

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

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

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

24 MR. LESHEN: Was it?



1           MR. HALLORAN: Yes. They upheld your  
2 motion for reconsideration and I think Ms. Pohlenz  
3 joined in as well, maybe yes; maybe no. But in  
4 any event, yes, they upheld my rulings. I don't  
5 know why it's not posted yet. There is no hard  
6 copy out. Usually it takes -- if the board  
7 meeting was Thursday, they usually get it out  
8 Monday or Tuesday.

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

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

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

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

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

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

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

13 MR. POWER: I believe so.

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

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

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

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

24 MR. RUNYON: This was handed to us

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

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

4 MR. HALLORAN: Mr. Mueller.

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

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

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

22            MR. HALLORAN: Mr. Leshen.

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

1 Second, I would like to refer you, at this point,  
2 to evidence that we intend to present at this  
3 hearing, specifically, a letter from Dale  
4 Hoekstra, division vice president Illinois  
5 landfill division, the gentleman who is seated to  
6 my left. Throughout the negotiations that lead to  
7 the amended and restated landfill agreement that  
8 has been approved, Waste Management negotiated  
9 based on the assumption that the Kankakee County  
10 solid Waste Management plan would continue to  
11 embrace and support only one landfill within the  
12 county. We are -- we were pleased that the Board  
13 amended its solid Waste Management plan on October  
14 9th, 2001. And then it goes on to say that they  
15 will pay for a defense of the County's solid waste  
16 plan.

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

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

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

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

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

13 MS. POHLENZ: Mr. Hearing Officer, having  
14 received this today after getting here, I don't  
15 have an opportunity to respond specifically to the  
16 case law cited in the County's motion, but I will  
17 say that the host agreement in this sense is more  
18 than legislative determination. It is a  
19 determination that is made on its face. We've had  
20 testimony and we've presented evidence during the  
21 course of this hearing that the host agreement, in  
22 fact, provides an up-front approval for the  
23 landfill in the sense that there are accelerated  
24 payments made by Waste Management for the

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

18 MR. LESHEN: Shake Martin.

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

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

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

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

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

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

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

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

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

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

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

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

1 testify live. One of them being Leo Whitten.

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

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

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

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

10 MR. HALLORAN: Thank you.

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

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

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

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

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

24 MR. HALLORAN: Sorry. Which testimony is

1 that?

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

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

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

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

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

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

17 MR. PORTER: The objection is overruled.

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

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

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

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

16 MR. HALLORAN: Okay.

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



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

4                   MR. FLYNN: There is one further  
5 stipulation. The deposition of Bruce Clark,.  
6 C L A R K. Let me see if I have it in the pile  
7 here. In addition to Mr. Clark's deposition,  
8 we've also reached a stipulation concerning some  
9 foundational testimony. We intend to offer some  
10 of the tapes as evidence and whether or not  
11 they're admissible and on what issues they're  
12 admissible, may be in dispute; but the fact that  
13 Mr. Clark would testify that the tapes produced  
14 during in discovery are authentic, the foundation  
15 has been stipulated to.

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

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

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

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

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

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

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

9 MR. RUNYON: Mr. Hearing Officer, I've  
10 decided I don't want to call any witnesses  
11 whatsoever. I'm subscribing entirely to your  
12 directive that says I must restrict what I do to  
13 the record, and I would hope those same handcuffs  
14 would apply to Waste Management and the County.

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

23 Before we take a quick break --

24 MR. RUNYON: I have just one minor

1 housekeeping issue. I'd like -- I have not  
2 written a formal complaint. I would simply like  
3 to verbalize this, in that I was precluded from  
4 three telephone conference calls. I don't know  
5 why that happened. On two of the occasions I sat  
6 by my phoning expecting those calls to come in.  
7 On the third occasion, I was told I would be  
8 advanced a copy of a telephone number to call in  
9 which I never received. As a consequence, I was  
10 excluded from participation in those, which I  
11 think augers against the fundamental fairness of  
12 my particular participation here in this hearing.  
13 Well, in discussing this matter with you, I was  
14 assured that none of the issues discussed had  
15 anything in particular to do with my case. I was  
16 preemptively precluded from perhaps bringing up  
17 issues that did have to do with my case. So I  
18 would have to launch a complaint here that my --  
19 that fundamental fairness was denied on my behalf  
20 in this hearing.

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

1     you're filing an objection orally albeit.  On.  
2     April 26th, sir, you were involved, I think --  
3     actually, I think April 24th, there was a  
4     telephone status conference and you were present.  
5     And at that time, I set the status conference for  
6     April 23rd.  I faxed you a copy of this order and  
7     it came back confirmed.  When the order came  
8     out -- I'm looking for the other order here.  The  
9     April 17th order, which you were a party to.  I  
10    don't see where you did not appear.  I changed the  
11    status conference to April 24th and not April  
12    23rd, that was canceled.  I believe I tried you  
13    personally -- and when we talked on -- I have a  
14    note somewhere down here you called a day later.  
15    I we talked.  I left a voice mail, and I said I  
16    faxed you this order.  It came back confirmed.  
17    That I did switch the telephonic status conference  
18    to April 24th.  I believe I tried to get ahold of  
19    you that date and to no avail based on the phone  
20    number you have filed with the Board.

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

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

15               MR. RUNYON:  I was aware that the one on  
16    the 23rd was shifted to the 24th only after the  
17    fact because I sat at my phone from about.  
18    9:00 o'clock in the morning until 1:00 o'clock in  
19    the afternoon.  As I recall, that call was  
20    scheduled for either 10:00 or 10:30 that morning  
21    --

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

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

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

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

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

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

2 MR. PORTER: Mr. Halloran --

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

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

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

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

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

23 MR. POWER: On the supplement?

24 MR. HALLORAN: Yes. I never received a



1 supplement. Mr. Flynn.

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

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

23 MR. PORTER: We still don't know who  
24 exactly they are going to call remaining on our

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

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

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

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

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

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

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

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

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

1                   MR. HALLORAN: Hearing Officer Exhibit  
2     14.

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

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

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

1 if I'm not mistaken. We also have, I believe, or  
2 are close to a stipulation on Mr. Martin. We have  
3 offered to stipulate to his deposition testimony  
4 with inquiry on a couple new matters. And I  
5 think, in general, we may have an agreement, but  
6 that may be --

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

10 MR. HALLORAN: So accepted.

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

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

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

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

2 MR. HALLORAN: We should orally say now  
3 and then you can also argue in the post-hearing  
4 briefs. All we have a stipulation to in these  
5 letters regarding Hoekstra are the foundation of  
6 respective foundations of the letter.

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

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

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

1           MR. HALLORAN: Correct. The Hearing  
2 Officer Exhibit No. 16, the Martin. I changed  
3 that around a little bit. I had it 18, but it  
4 is -- Mr. Martin's exhibit is No. 16 then. Well,  
5 I guess before we go too far afield, would the  
6 party, I guess, Mr. Moran, would you like to state  
7 whatever objections you have to the hearing  
8 officer exhibits 17 and 18?

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

12           MR. LESHEN: Which one do you have?

13           MR. PORTER: January 7th.

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

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

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

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

7 As indicated, our stipulation was that --  
8 and Mr. Hoekstra indeed authored these letters and  
9 sent them, but with respect to their content  
10 relating to the plan and the with respect to their  
11 content relating to the host agreement, we would  
12 object to their admission for those purposes or  
13 with respect to those statements.

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

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



1       regardless, it is still not relevant.

2               MR. LESHEN:   May I respond?

3               MR. HALLORAN:  Mr. Leshen.

4               MR. LESHEN:  I think that these letters  
5 highlight the difficulty in separating a  
6 negotiation and prejudgment process that is  
7 inextricably intertwined.  Waste Management  
8 negotiated based upon the assumption that the  
9 Kankakee solid Waste Management plan would  
10 continue to embrace and support only one landfill  
11 within the county.  We are pleased that the Board  
12 amended its solid waste plan in order to reaffirm  
13 the County's long standing position.  Direct quote  
14 from Mr. Hoekstra.

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

1 process that brings us here today.

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

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

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

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

5 MR. PORTER: Understood.

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

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

15 MR. RUNYON: Mr. Hearing Officer, I don't  
16 know exactly how you want to handle this. I'm  
17 going to rely on your judgment on this.

18 Basically, the case I'm going to present is simply  
19 a highlighting and an accumulation of the  
20 testimony on the record by the argumentation where  
21 we cite -- where I cite that the County is not --  
22 the applicant is not in compliance with the solid  
23 waste plan.

24 The record I have produced is relatively

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

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

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

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

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

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

1 confirmation fax. And this is going back to your  
2 objection regarding not getting the orders. I  
3 do recall -- and quite clearly -- because I stayed  
4 30 minutes after my departure time to fax all  
5 these on.  
6 April 17th and I received a confirmation on each  
7 and every party involved in this case. So what  
8 happened to your order, this is the order changing  
9 the hearing -- the telephonic status conference  
10 from April 23rd to April 24, I do not know. But  
11 with that said, I just want to make the record  
12 clear. And anyway, proceed.

13 MR. RUNYON: Thank you.

14 MR. MORAN: If I can interrupt. I  
15 apologize for interrupting. But I believe  
16 Mr. Runyon in his petition challenged this  
17 decision on the basis of whether the proposal was  
18 consistent with Criterion 8. With respect to this  
19 hearing, or at least my understanding as to the  
20 purpose of this hearing is to address issues  
21 relating to fundamental fairness and address those  
22 issues through argument and through penetration of  
23 testimony. If Mr. Runyon only proposes to only  
24 give skeletally his argument on whether the

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

7 MR. PORTER: Join.

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

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

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

14 MR. RUNYON: Thank you.

15 MR. HALLORAN: Thank you.

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

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

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

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

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

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



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

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

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

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

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

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

1 the solid waste plan.

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

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

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

1 page 334 on their very own solid Waste Management  
2 plan. The applicant failed to produce one shred  
3 of evidence that suggested any preliminary input  
4 was garnered from the public in site selection or  
5 design of a facility as required by the solid  
6 waste plan. In fact, what happened was throughout  
7 they produced information which tended to  
8 corroborate that. Testimony from a Ron Greenburg  
9 from Ottawa Township, who said on June 19th of  
10 2002, he was first approached by Waste Management  
11 and told what they were going to do, not consulted  
12 and asked for his opinions or asked for site  
13 selection, but told.

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

1           We can go throughout this and I got about  
2 18 pages of the documentation that substantiates  
3 all of this. Once again, not one denial on the  
4 part of the applicant. As a consequence, the  
5 preponderance of the evidence once again suggests  
6 that the applicant and the County are noncompliant  
7 with the County's solid waste plan and we would  
8 suggest that the application be denied on that  
9 basis.

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

1 writing. None of the evidence in the hearing will  
2 point to the fact that anyone ever extended that  
3 agreement. There isn't one shred of evidence.  
4 And, in fact, Mr. Moran stated very eloquently  
5 himself, Volume 18, page 21, Lines 1 through 8,  
6 this agreement was appropriate whether the County  
7 or Waste Management Illinois entered into it. The  
8 document is here. It speaks for itself. It is  
9 clear in all of its details. It seems to me it  
10 would be inefficient, inappropriate, not helpful  
11 in any way to evaluate, explore that agreement as  
12 part of this hearing. That is really the basis of  
13 my concern by allowing an inquiry into the host  
14 agreement. So Mr. Moran talks about the clarity  
15 and the authority of that host-fee agreement.  
16 That host-fee agreement automatically  
17 self-nullified June the 1st, 2002. A new  
18 application, an application was not submitted  
19 until August 16, 2002. Therefore, that host-fee  
20 agreement was null and void. And, once again, it  
21 would indicate that the preponderance of the  
22 evidence shows that the applicant and the County  
23 were not compliant with the County's own solid  
24 Waste Management plan.

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

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

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

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

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

8           Thirdly, in order to expedite this  
9 opening statement, I would reiterate and reallege  
10 all of the arguments and allegations set forth in  
11 a written motion to dismiss on fundamental  
12 fairness filed by me on behalf of Mr. Karlock on  
13 the first day of the hearing and already part of  
14 the record. I think the facts as set forth in  
15 that motion speak for themselves. I believe the  
16 rulings of the Board and the Hearing Officer, with  
17 respect to the inadmissibility of evidence  
18 regarding the solid Waste Management plan and its  
19 amendments and the inability to call attorneys as  
20 witnesses, has emasculated our ability to prove  
21 the allegations in that motion, but would  
22 reiterate for the record and the Board the fact  
23 that it is our enduring position that the solid  
24 Waste Management plan and its amendments was the



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

13 In addition to that, Mr. Halloran, we  
14 believe the evidence is going to show that the  
15 decision of the County Board was against the  
16 manifest weight of the evidence on Criterion 2,  
17 and I'll reserve further argument pending simply  
18 briefing that issue for the entire Board.

19 We would adopt Mr. Runyon's argument with  
20 regard to Criterion 8 and with regard to  
21 Criterion 3, we would adopt the argument of Mike  
22 Watson, and in addition, point out that the  
23 failure of the Hearing Officer to strike the  
24 testimony of Patricia McGar, rendered those

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

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

7 MR. FLYNN: Good afternoon. On behalf of  
8 Mr. Watson, myself and Jennifer Pohlenz have filed  
9 a petition to set aside the County Board's  
10 decision giving siting approval to Waste  
11 Management in its application. The bases for our  
12 petition are numerous. Many of which are not  
13 before you for consideration. We have contested  
14 almost all of the independent criteria, statutory  
15 criteria, that the Petitioner did not meet the  
16 manifest weight of the evidence. We are not  
17 afforded an opportunity to add new evidence to  
18 those issues at this time and do not intend to do  
19 so. We will rely upon the record produced alone.

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

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

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

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

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

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

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

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

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

24           But at the end, we believe that the

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

5 MR. HALLORAN: Thank you Mr. Flynn.  
6 Mr. Leshen.

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

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

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

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

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

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

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



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

2           County.

3           MR. PORTER: Rick Porter for the County.

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

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

1 present public comment 30 days following that  
2 hearing. To assure the proceedings were fair to  
3 all concerned, the County established a procedure  
4 on communications which far exceeded any  
5 requirement in the law. The County Board was  
6 counseled not to speak with any party after the  
7 application was filed and before the decisions was  
8 issued. Indeed, the evidence is there were no  
9 such communications. The regional planning  
10 commission was counseled not to speak with any  
11 party after application was filed and before a  
12 decision was rendered. And, indeed, there were no  
13 such communications. Likewise, even County staff  
14 was counseled not to speak with Waste during the  
15 relevant time period and there were no such  
16 communications.

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

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

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

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

3 Mr. Mueller's contention in his opening  
4 regarding potential communications between Waste  
5 counsel an the County's counsel because Waste and  
6 County were involved in another proceeding, is  
7 facetious to the extreme. Mr. Mueller himself was  
8 involved in that proceeding. Clearly he's not  
9 suggesting that somehow he was having ex parte  
10 communications because he was involved in the same  
11 case and there will be no evidence of any such.  
12 ex parte communications presented here today.

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

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

1 record regarding his accommodation. He went there  
2 on a specific day in October of 2001 and  
3 requested -- sorry, October 2002, and requested  
4 the complete application and was allegedly shown  
5 only a portion of it and not the operating record.  
6 However, the testimony will also be clear that it  
7 was in the building and ultimately made available  
8 to Mr. Mueller who never returned to seek that  
9 operating record again. Furthermore, his own  
10 expert, Mr. Morris, reviewed that operating record  
11 on November 18, 2002, and there was substantial  
12 cross-examination concerning the operating record  
13 at the underlying hearing.

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

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

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

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

4 MR. HALLORAN: Could you state your name?

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

7 MR. HALLORAN: You can stand up there.

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

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

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

18 MR. HALLORAN: If I can --

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

21 MR. HALLORAN: Sure, Ms. Pohlentz.

22

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

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

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

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

22           MR. HALLORAN: Yes.

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

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

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

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

11 MR. HALLORAN: Is that 2002?

12 MR. FLYNN: March 29, 2002, which is when  
13 the initial application was filed and apparently  
14 or allegedly never withdrawn. Therefore, any ex  
15 parte communications from that date or any  
16 communications from that dated up until January  
17 31st, 2003, would be ex parte.

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

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



1 MR. HALLORAN: All right.

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

3 Because --

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

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

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

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

17

18

19

20

21

22

23

24

1 (Witness duly sworn.)

2 WHEREUPON

3 LEONARD MARTIN

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

6 EXAMINATION

7 BY MS. POHLENZ:

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

16 A. That's correct.

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

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

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

22 A. I believe many were in attendance.

23 Q. Mr. Kruse?

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

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

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

6 A. Yes, did he.

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

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

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

16 A. I believe he did.

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

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

1 Q. But he talk about the proposed expansion?

2 A. I believe he did.

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

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

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

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

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

17 A. I believe he was a designated speaker.

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

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

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

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

1 believe, that was the second time, yeah. I  
2 believe that's right.

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

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

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

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

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

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

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

19 A. If I what?

20 Q. Missed any planning, zoning meetings?

21 A. I don't believe so.

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

1 Waste Management was discussed?

2 MR. PORTER: Objection.

3 MR. HALLORAN: Okay. Mr. Porter.

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

6 MR. HALLORAN: Okay. Ms. Pohlenz.

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

9 MR. HALLORAN: Okay.

10 BY MS. POHLENZ:

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

17 MR. MORAN: Objection.

18 MR. HALLORAN: Mr. Moran.

19 MR. MORAN: Relevance.

20 MR. PORTER: Same objection.

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

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

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

14 BY THE WITNESS:

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

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

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

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

3 A. No.

4 MR. PORTER: Same objection.

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

6 Mr. Porter, can you --

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

9 MR. HALLORAN: Thank you.

10 BY THE WITNESS:

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

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

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

24 BY MS. POHLENZ:



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

4 MR. PORTER: Objection.

5 MR. HALLORAN: I am having trouble  
6 hearing. Could you move the mic closer.

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

9 BY MS. POHLENZ:

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

13 MR. PORTER: Same objection.

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

15 MR. PORTER: Irrelevant.

16 MR. HALLORAN: Ms. Pohlenz.

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

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

3           BY THE WITNESS:

4           A. I believe that Mr. Helston was  
5           representing us when we had discussions, but  
6           remember what date the discussions was. He was at  
7           a number of our meetings, but I can't tell you  
8           which ones and I can't tell you exactly what was  
9           discussed at any of these meetings; and oftentimes  
10          it was open meetings.

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

17          MR. MORAN: Objection.

18          MR. HALLORAN: Mr. Moran?

19          MR. MORAN: Relevance.

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

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

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

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

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

7 MR. HALLORAN: You're kind of swallowing  
8 your words. The County Board at the time of the  
9 siting application was represented by Ms. Harvey.  
10 The county staff was represented by Mr. Helston  
11 and Mr. Porter.

12 MR. HALLORAN: Correct.

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

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

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

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

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

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

10 MR. LESHEN: The pending issue at that  
11 time for consideration by the Board was the  
12 argument with regard to the underlying aquifer.  
13 That clearly was the subject of -- the Board was  
14 considering or should have been considering and  
15 would have been outside the amvet for ex parte  
16 communications.

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

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

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

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

8 BY MS. POHLENZ:

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

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

13 A. Say that again.

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

16 A. Yes.

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

24 A. I would have no --

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

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

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

7           MR. FLYNN:  No.  I think the.

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

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

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

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

22          MS. POHLENZ:  Would you have --

23 BY THE WITNESS:

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

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

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

4 MR. HALLORAN: Thanks, Ms. Pohlenz.

5 MR. LESHEN: I have no questions.

6 MR. HALLORAN: Mr. Porter.

7 EXAMINATION

8 BY MR. PORTER:

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

14 A. Say that again.

15 Q. Do you recall being counseled by the  
16 State's attorney to base your decision regarding  
17 the landfill application only upon the evidence  
18 that was submitted at the hearing, correct?

19 A. Right.

20 Q. And did you do that?

21 A. Yes.

22 MR. PORTER: Nothing further.

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

24 MR. MORAN: No questions.

1 MR. HALLORAN: Any redirect of  
2 Mr. Martin?

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

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

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

9 MR. FLYNN: Mr. Hoekstra.

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

12 (Witness duly sworn.)

13 WHEREUPON:

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

17 EXAMINATION

18 BY MR. FLYNN:

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

20 A. Yes.

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

23 A. He was.

24 Q. You met with him on prior occasions?



1 A. Yes.

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

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

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

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

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

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

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

20 A. Yes.

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

22 A. Yes.

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

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

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

5 MR. HALLORAN: Thanks.

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

8 MR. HALLORAN: Okay.

9 BY MR. FLYNN:

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

13 A. Yes.

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

16 A. Yes.

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

20 A. Apparently, it is.

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

22 A. Yes.

23 Q. That phone number is Mr. Addleman's phone  
24 number or do you recognize it as being

1 Mr. Addleman's phone number?

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

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

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

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

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

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

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

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

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

18 BY MR. FLYNN:

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

22 A. To Mr. Addleman's?

23 Q. Yes, sir.

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

1 period; that's correct.

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

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

7 Q. Correct.

8 A. No.

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

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

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

16 A. That is correct.

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

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

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

24 A. No, incorrect.

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

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

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

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

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

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

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

19 A. That is correct.

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

23 A. Correct.

24 Q. Have you made a search for your phone

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

2 A. No, I have not.

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

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

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

11 A. Yes.

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

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

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

20 A. Sure.

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

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

24 Q. And although as you indicate limited, you

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

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

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

16 A. Correct.

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

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

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

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

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

5 A. That is correct.

6 Q. Now, if we go back to your cell phone at,  
7 approximately, 12:12 p.m., you made a call to  
8 Mr. Addleman's cell phone at (630) 816-932,  
9 correct?

10 A. That is correct.

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

13 A. Yes.

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

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

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

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



1 expert on phone -- on cellular communications.

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

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

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

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

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

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

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

8 MR. MORAN: Well, assuming that is the  
9 case, these are the records produced by the phone  
10 company. This witness is to give opinions as to  
11 why there apparently is some inconsistency? It  
12 may be that the timing on both of these phones is  
13 not consistent.

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

16 MR. FLYNN: Just a couple.

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

19 BY MR. FLYNN:

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

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

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

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

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

11          A.    That is correct.

12          Q.    What is VM out dial?

13          A.    I'm sorry?

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

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

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

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

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

1 still in the voice mail?

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

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

5 A. No, that was a Vorizon change.

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

8 A. Don't know.

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

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

12 MR. HALLORAN: Objection overruled.

13 MR. PORTER: May I approach the witness?

14 MR. HALLORAN: Yes.

15 EXAMINATION

16 BY MR. PORTER:

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

19 A. Yes.

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

22 A. Yes, I believe it did.

23 MR. PORTER: Nothing further.

24 MR. FLYNN: One follow-up question.

1 MR. HALLORAN: Mr. Moran.

2 EXAMINATION

3 BY MR. MORAN:

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

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

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

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

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

16 A. Yes, sir.

17 MR. MORAN: Nothing further.

18 MR. HALLORAN: Mr. Leshen.

19 MR. LESHEN: Nothing.

20 MR. HALLORAN: Mr. Flynn.

21 FURTHER EXAMINATION

22 BY MR. FLYNN:

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

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

3 A. During the month of January 2003?

4 Q. Correct.

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

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

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

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

18 A. I don't think that was one of the items  
19 discussed at the deposition, what time it started  
20 and what time it ended.

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

23 A. No, I don't.

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

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

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

7 MR. HALLORAN: Sorry?

8 MR. PORTER: Objection.

9 MR. HALLORAN: Mr. Moran.

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

13 MR. HALLORAN: Mr. Porter.

14 MR. PORTER: I need it read back.

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

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

19 MR. PORTER: Object, improper  
20 impeachment.

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

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

1 BY MR. FLYNN:

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

5 A. Correct.

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

8 A. That is correct.

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

13 A. Would have been roughly.

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

15 MR. HALLORAN: Mr. Porter, recross?

16 MR. PORTER: No thank you.

17 MR. HALLORAN: Mr. Moran?

18 MR. MORAN: Nothing.

19 MR. HALLORAN: Mr. Leshen?

20 MR. LESHEN: No, sir.

21 MR. HALLORAN: Mr. Hoekstra, you may step  
22 down. Thank you very much. It looks like we have  
23 one member of the public and -- actually two. Any  
24 public comment?



1 AUDIENCE MEMBERS: (Shaking head.)

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

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

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

10 MR. MORAN: No.

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

12 MR. PORTER: I object to relevancy.

13 MR. HALLORAN: Objection overruled.

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

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

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

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

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

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

3 (Witness duly sworn.)

4 WHEREUPON

5 STANLEY JAMES

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

8 EXAMINATION

9 BY MR. FLYNN:

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

12 A. Last name James, Stanley James.

13 Q. J A M E S?

14 A. Correct.

15 Q. First name Stanley

16 A. Stanley.

17 Q. Do you know Afrin Gill?

18 A. Yes.

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

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

22 Q. Are you a member of the Board?

23 A. Yes.

24 Q. Have you had conversations with Mr. Gill

1 from time to time?

2 A. Like in regards to what?

3 Q. Anything?

4 A. Oh, yeah.

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

8 A. Yes.

9 Q. When did that conversation take place?

10 A. It has been about 10 years ago.

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

13 MR. HALLORAN: Objection, overruled.  
14 I'll allow it.

15 BY MR. FLYNN:

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

18 A. No, I'm not.

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

22 A. Not that I'm aware of.

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

1 ago?

2 A. Correct.

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

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

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

17 A. Correct.

18 MR. PORTER: Objection.

19 MR. HALLORAN: Mr. Porter.

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

1 Management is clearly irrelevant.

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

5 BY MR. FLYNN:

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

8 A. At one of the meetings.

9 Q. And when did that meeting take place?

10 A. Now you're really pushing me.

11 Q. Approximately.

12 A. Time of day you're talking

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

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

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

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

1 Winsleman was the judge at the time and they had  
2 to appoint some committees to review how they were  
3 going to handle this landfill situation because of  
4 this new law. There was a committee made up of  
5 myself and several others. And then there was a  
6 committee made up of other neighbors, and then  
7 Afrin Gill oversaw all of that and he correlated  
8 everything he heard and brought it back to the  
9 County Board meeting. At the time I don't recall  
10 the discussion other than that.

11 MR. FLYNN: That's it.

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

14 MR. PORTER: (Shaking head.)

15 MR. HALLORAN: Mr. Moran.

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1 EXAMINATION

2 BY MR. MORAN:

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

7 A. Yes.

8 Q. And who did you tell it to?

9 A. Several people.

10 Q. Anybody on the County board?

11 A. Yep.

12 Q. Who?

13 A. Chuck Rushe when he was on it.

14 Q. Chuck who?

15 A. Rushe.

16 Q. Chuck Rushe was on the county board?

17 A. Yes.

18 Q. And you told him?

19 A. Uh-huh.

20 Q. Who else did you tell?

21 A. Several people.

22 Q. Other county board members?

23 A. I don't recall that.

24 MR. HALLORAN: Could you speak up?

1 BY THE WITNESS:

2 A. I don't recall for sure if the  
3 conversation came up. This has been some time  
4 ago.

5 Q. Did you believe at that time there was  
6 anything inappropriate about this alleged payment  
7 for a trip to Mr. Gill to Hawaii?

8 A. I thought it was unusual.

9 Q. Did you believe it was inappropriate?

10 A. Yeah, I told him so.

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

13 A. Yes.

14 Q. Other than Mr. Rushe?

15 A. Probably.

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

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

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

23 BY MR. MORAN:

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



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

3 A. No.

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

6 A. No.

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

11 A. Nope.

12 MR. MORAN: I have nothing else.

13 MR. HALLORAN: Mr. Leshen?

14 MR. LESHEN: No, sir.

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

17 MR. FLYNN: No.

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

20 (Witness excused.)

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

24 MR. FLYNN: If I may just one

1 housekeeping matter.

2 MR. HALLORAN: Sure.

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

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

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

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

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

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

9 MR. FLYNN: I did want to comment. I  
10 would like the record to be complete too. But  
11 allowing an affidavit of somebody without giving  
12 us an opportunity to cross examine I believe would  
13 be inappropriate. In this case in terms of giving  
14 an offer of proof, our hands have been tied. In  
15 terms of all the participants to the conversation,  
16 we've been effectively barred from calling them as  
17 witnesses, which is why I'm submitting the answer  
18 to Interrogatory No. 4 as proof that the  
19 conversation took place.

20 MR. HALLORAN: Anything further?

21 MR. PORTER: No.

22 MR. MORAN: No.

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

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

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

12 MR. HALLORAN: County?

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

20 MR. HALLORAN: Anything further?

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

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

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

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

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

17 MR. HALLORAN: My ruling was confusing  
18 based on myself and the arguments of the parties.  
19 I'm only allowing it in as an offer of proof  
20 because I previously ruled that any conversations  
21 or whatever, any discovery between Moran and the  
22 attorneys, is that correct, on the April 17th  
23 order? Does that -- Mr. Leshen.

24 MR. LESHEN: If understood your ruling

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

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

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

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

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

24             MR. HALLORAN: Well I would kind of like

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

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

6 MR. HALLORAN: That's fine.

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

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

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

15 MR. LESHEN: Mr. Halloran.

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

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

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

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

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

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

16 MR. HALLORAN: Okay.

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

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



1           MR. HALLORAN: Fair.

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

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

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

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

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

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

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

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

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

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

1 discovery. Come on.

2 MR. HALLORAN: You know, my knee-jerk  
3 reaction at this late hour is to concur with  
4 Mr. Leshen's argument. Again, you stated at one  
5 point you represented him and now, you're kind of  
6 taking a step back.

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

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

24 MR. PORTER: I think we're creating

1 issues before they exist.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 MS. POHLENZ: With all due respect,,  
9 Mr. Hearing Officer, there is nothing in the  
10 order discussion or asserting that. And now to  
11 bar me, is unfair.

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

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

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

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

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

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

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NOREEN E. THOMPSON, CSR, RPR

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18 CSR No. 084-004182

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

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NOTARY PUBLIC

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